

MINUTES

HOUSE COMMITTEE ON WATER

August 17-18, 2021
Lakin and Garden City, Kansas

Members Present

Representative Ron Highland, Chairperson
Representative Boyd Orr, Vice-chairperson
Representative Lindsay Vaughn, Ranking Minority Member
Representative Stephanie Byers
Representative Suzi Carlson
Representative Chris Croft
Representative Brett Fairchild
Representative Christina Haswood
Representative Jim Minnix
Representative Michael Murphy
Representative Joe Newland
Representative Bill Rhiley
Representative Adam Smith
Representative Jerry Stogsdill (August 18)
Representative Brandon Woodard, appointed substitute member to the Committee

Members Absent

Representative J. Russell Jennings
Representative Adam Thomas
Representative Ponka-We Victors

Staff Present

Meredith Fry, Kansas Legislative Research Department (KLRD)
Heather O'Hara, KLRD
Victoria Potts, KLRD (August 18)
Kyle Hamilton, Office of Revisor of Statutes
Chris Waggoner, Office of Revisor of Statutes
Nancy Fontaine, Committee Assistant (August 18)

Conferees – August 17

Mike Heinitz, City of Lakin
Fred Jones, City of Garden City
Mark Rude, Groundwater Management District No. 3
Randy Hayzlett, Groundwater Management District No. 3
Bill Golden, Kansas State University

Conferees – August 18

Brad Mears, Assistant Executive Director, Kansas Municipal Utilities
Katie Miller, Director of Technical Services, Kansas Municipal Utilities
Allyn Lockner, private citizen
Titus Jaeger, private citizen
Hugh Brownlee, private citizen
Tracy Streeter, Former Director of the Kansas Water Office
Tom Willis, T&O Farms
Ken McCarty, McCarty Family Farms and Dairy
Zion Roth, The Garden City Company – Roth Family Farm
Mark Rude, Groundwater Management District No. 3
Susan Metzger, Kansas State University Research and Extension
Brett Oelke, Groundwater Management District No. 4
Farrin Watt, private citizen
Frank Mercurio, Syracuse Dairy
Michael Ramsey, Attorney
Leo Henning, Deputy Secretary and Director of Environment, Kansas Department of Health and Environment
Connie Owen, Director, Kansas Water Office
Earl Lewis, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture
Mike Beam, Secretary of Agriculture
Bill Golden, Kansas State University
Gerald Schultz, Attorney

TUESDAY, AUGUST 17 AFTERNOON SESSION

Tour of Lakin Nanofiltration Water Treatment System

Committee members and staff traveled to the Lakin Nanofiltration Water Treatment System at 1590 Road 160, Lakin, Kansas, and toured the facility.

Tour of Amazon Ditch Flume

Committee members and staff then traveled to the Amazon Ditch Flume at 1482 Road R, Lakin, Kansas, and toured the location.

Tour of Beymer Water Recreation Park

Committee members and staff then traveled to the Beymer Water Recreation Park, located three miles south of Lakin on Highway K-25, and toured the location.

Presentation at the Finnup Center for Conservation Education, Garden City Zoo

Committee members and staff traveled to the Garden City Zoo, located at 312 E Finnup Drive, Garden City, Kansas. Dr. Bill Golden, Kansas State University, provided a presentation on the economics of water on agriculture in western Kansas.

WEDNESDAY, AUGUST 18 ALL DAY SESSION

Presentation on Kansas Municipal Utilities and the Municipal Water Connection

Brad Mears, Assistant Executive Director of Kansas Municipal Utilities (KMU) and Katie Miller, Director of Technical Services, KMU, presented on municipal water infrastructure.

Committee members and staff departed the Clarion Inn for Garden City Community College, located at 801 Campus Drive, Garden City, Kansas.

Welcome

Chairperson Highland welcomed members, staff, and guests to this portion of the Committee meeting being held in the Endowment Room of the Beth Tedrow Student Center.

Public Comment Period

Dr. Allyn Lockner, Ph.D., private citizen, spoke briefly in support of development and implementation of water policies to ensure adequate quantity and quality of water. His recommendations are based on the Kansas Water Vision and its mission statements. Due to technical difficulties, Mr. Lockner was unable to complete his oral testimony via Webex ([Attachment 1](#)).

Titus Jaeger, private citizen and member of the Upper Arkansas Regional Advisory Committee, spoke about the goals of the Regional Advisory Committee. He said he represents four generations of his family, who have farmed in western Kansas for 100 years. He stated his ancestors developed water resources that have been credited with reducing the effects of the droughts in the 1950s and early 2000s. Mr. Jaeger noted the Arkansas River has completely lost stream flow from Garden City to Dodge City, resulting in the loss of an entire ecosystem. He recommended three ways to address this issue of water quantity in western Kansas: conservation-minded stewardship, a complete rewrite of Kansas water laws with neighboring states, and new sources of supply. He said conservation can be achieved with an augmentation plan, which is imperative. He said there are new sources of supply, and now is the time to act. Mr. Jaeger responded to questions from Committee members ([Attachment 2](#)).

Mark Rude, Executive Director, Southwest Kansas Groundwater Management District (GMD) No. 3, proposed three legislative improvements to improve water policy. First, provide resources to the Kansas Department of Agriculture to improve citizen self-help information from the postings that provide citizens with a place to check for water right application activity.

Second, clarify that water augmentation activity can occur by any GMD to better manage water supply in water-short or polluted areas. Third, the GMD Act (KSA 82a-1020 *et seq.*) authorized a mechanism of self-determination in "...the right of local water users to determine the destiny with respect to the use of groundwater insofar as it does not conflict with the basic laws and policies of the state of Kansas ...". Mr. Rude stated the right of self-determination should apply not only to individual water users but also to groups such as GMDs. GMDs should be able to be recognized as aggrieved parties and participate in the hearing process laid out in KSA 82a-1901. Mr. Rude responded to questions from Committee members ([Attachment 3](#)).

Hugh Brownlee, private citizen, provided oral testimony in support of water protection.

Written-only testimony was submitted by the Kansas Grain Sorghum Producers Association ([Attachment 4](#)).

Committee Discussion

Water Quality and Quantity Issues

Committee members discussed how to conserve and extend the longevity of the Ogallala Aquifer. Representative Vaughn noted there is no silver bullet, but the Committee had heard testimony on the success with Locally Enhanced Management Areas (LEMAs), and the Committee should consider expanding that program throughout the state to conserve water in the aquifers before they run out. Chairperson Highland stated this will be discussed further during the next legislative session.

Members discussed the issue of uranium in water systems in western Kansas. Chairperson Highland stated several towns are working to remove the uranium from their water systems. Smaller towns cannot afford the necessary infrastructure, but there are steps being taken to assist these communities.

Leo Henning, Deputy Secretary and Director of Environment, Kansas Department of Health and Environment, provided further information on the uranium issue. He said there was sedimentary rock deposited over a large area, and uranium is more concentrated in this area than most rocks. As ground water percolates through this rock, it carries small amounts of uranium with it, which then shows up in water systems. Mr. Henning responded to questions from Committee members.

Chairperson Highland asked Connie Owen, Director of the Kansas Water Office, to provide an update on issues with water in eastern Kansas. She stated eastern Kansas relies primarily on surface water and reservoirs. There has been a dramatic decline in capacity in reservoirs due to sediment being deposited in them. She said traditional dredging is expensive and does not really solve the problem, so there is a project being considered as a pilot that would provide for water injection dredging of Tuttle Creek Lake.

Director Owen made members aware that in the last couple days, the U.S. Bureau of Reclamation placed a Tier 1 Restriction on use of the Colorado River for the Lower Colorado River Basin for the first time. This primarily impacts states such as Arizona and New Mexico. Some of the same types of issues are occurring with the headwaters of the Missouri River, which impacts Kansas. There have already been cautions issued to downstream users to restrict water use. Chairperson Highland noted the recent census shows growth in population

along the eastern part of the state, and water availability may impact the State's ability to support the changing population and to attract new industry. Director Owen responded to questions from Committee members.

Earl Lewis, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, responded to questions from Committee members regarding water quality issues and interstate compacts.

Infrastructure Challenges

Chairperson Highland stated there are aging and decaying water infrastructure and water treatment systems across the state. He said for small communities to survive, the Legislature must help them because it is very costly to update these systems. The funding is not readily available, and such a large amount of funding cannot be obtained through a tax increase.

Representative Vaughn noted the State Water Plan Fund has not been fully funded since 2008; since 1991, total underfunding totals more than \$77 million. She noted a recommendation from the 2017 Blue Ribbon Task Force proposed a sales tax carve out to help fund the Water Plan, which might be considered. The Committee needs to focus on a sustainable and protected fund.

There was discussion about the possibility of funds coming from the legalization of sports gambling and marijuana, which would not require tax increases. There was also discussion regarding possibly moving to alternative crops that do not require as much water. It was pointed out, however, that alternative crops also result in requirements for things like alternative processing, transportation, and marketing.

Mike Beam, Secretary of Agriculture, responded to questions from Committee members regarding water for agricultural purposes. He said there has been some research into crops that require less water, including cotton and sorghum. He said private companies have done a phenomenal job over the last ten years of identifying crops that require less water, but this research needs to continue.

Dr. Bill Golden, Kansas State University, indicated Kansas State University has started a new project looking at cotton as a crop. He said it generates the profits of corn on half the water.

Representative Fairchild said industrial hemp has been legalized in Kansas, but is still overly regulated, resulting in farmers hesitating to grow it even though it uses one-third the amount of water that corn requires. Chairperson Highland said many of the requirements are imposed by the U.S. Department of Agriculture, so the Legislature would need to work with them to decrease the restrictions.

Chairperson Highland recessed the meeting at 10:50 a.m. Committee members and staff departed for The Garden City Company's Water Technology Farm, located at 4770 Chmelka, Garden City, Kansas.

Presentation at The Garden City Company's Water Technology Farm

Committee members heard a presentation from representatives of the Kansas Water Office on the history and creation of water technology farms. Committee members also heard a presentation on the benefits of new technologies on the conservation of water from a panel of farmers who are part of the Kansas Water Office's Water Technology Farm program.

Committee members and staff returned to Garden City Community College. Chairperson Highland reconvened the meeting at 1:45 p.m. Ryan Ruda, President, Garden City Community College, also welcomed members back to Garden City Community College.

Locally Enhanced Management Area Panel Presentation

Mr. Rude provided introductory remarks for the panel discussion and provided general information on Locally Enhanced Management Area (LEMA) processes.

Susan Metzger, Kansas State University Research and Extension, moderated the panel discussion regarding LEMAs, which included the following members: Brett Oelke, farmer and GMD No. 4 Board President; Farrin Watt, Wichita County farmer; and Frank Mercurio, Engineer for Syracuse Dairy. The members of the panel introduced themselves and provided information on their backgrounds.

Ms. Metzger asked the panelists about considerations when entering into a LEMA for different uses of water. Mr. Mercurio stated the Wichita County Water Conservation Area (WCA) was started because large cattle operations were running out of water, but there is a complete interconnection of the water needs for livestock markets, the feed for the livestock, and communities. The WCA started using soil moisture monitoring to help with irrigating and added high-tech water meters, so they know where they are using water and can manage it better.

Mr. Watt stated many users in his LEMA have chosen to stay with more restrictive water standards previously used by the WCA, as they have been successful with the lesser amounts of water. He said they also can bank water and use the savings in the harder years. He stated these users believe it is the right thing to do to invest in the futures of families.

Ms. Metzger noted some say LEMAs are not enough to impact the levels in the aquifers in the short and long term. Mr. Oelke indicated there are wells on his property with observation tubes, and water levels both inside and outside the LEMA can be tracked; a steeper decline has been seen in the wells outside the LEMA.

Ms. Metzger asked the panelists to discuss why there are only three LEMAs in place when this tool has been an option for ten years. Mr. Oelke and Mr. Mercurio said they feel there is a fear of the unknown economic impact of reducing water usage and concern that families may not be able to keep the farm for future generations. However, with increased data on farm practices and water usage, that unknown no longer exists. Mr. Watt added the primary drawback of the LEMA program is there are not enough in place, and the ones in place are not restrictive enough.

Mr. Oelke thanked those legislators who enacted the LEMA statute and said he only wishes it had been started long ago, as it is a great tool. Mr. Mercurio also indicated users have gotten good support from the state agencies involved in this program, including from the

technical side. He said this has been a positive thing and, while there are some details about the statute that need to change, stakeholders have to dig in and do something. Mr. Watt added it is the users' responsibility to make sure the water is here, not just for farming, but for the livelihood of communities.

Presentation on Current Issues in Kansas Water Law

Attorney Mike Ramsey provided a presentation on current issues relating to Kansas water law. He said water is the essential resource. Every aspect of life deals with water, from energy production to residential and recreational uses. Western Kansas uses more water than eastern Kansas, but there is a finite supply statewide, and some locations are depleted. Mr. Ramsey discussed water rights and the difference between groundwater and surface rights, as well as the process for applying for water rights. He continued with a discussion on points of diversion and rate of diversion. He said there is a process for changing water rights and state and local constraints on water use. Finally, Mr. Ramsey discussed interstate and federal constraints on water use ([Attachment 5](#)).

Presentation on Aquifer Issues in Western Kansas

Leo Henning, Deputy Secretary and Director of Environment, Kansas Department of Health and Environment (KDHE), provided an overview of the Division of Environment. He said KDHE works to protect and improve the health and environment of Kansans. The Division of Environment works to ensure clean air, water, and soil. When it comes to water, his organization is focused on the quality of water, not the quantity. He said KDHE is responsible for implementing the following federal programs:

- Clean Water Act – 1972;
- Safe Drinking Water Act – 1974;
- Comprehensive Environmental Response, Compensation and Liability (also known as the Superfund Law) – 1980;
- Resource Conservation and Recovery Act – 1976;
- Surface Mining Control and Reclamation Act – 1977; and
- Clean Air Act – 1963.

He said that regarding the Clean Water Act, KDHE provides for point-source permitting. There are various types of permitting depending on the use. He further discussed the Watershed Restoration and Protection Strategy.

Mr. Henning said that to administer the Safe Drinking Water Act, KDHE provides for a system for delivery to the public for human consumption. It administers 979 public water supply systems in Kansas.

He said the State also has a State Revolving Fund that is used for public water supply and water pollution control. Since 1997, Kansas has loaned \$896 million from the Kansas Public Water Supply Loan Fund. From the Kansas Water Pollution Control Revolving Fund, Kansas has loaned \$1.38 billion since 1989 ([Attachment 6](#)).

Connie Owen, Director of the Kansas Water Office, discussed water planning in Kansas. She said the Water Office provides for coordination and policy of water issues. The day before the meeting, the Kansas Water Authority, which is an advisory board, was presented with the draft of the 5-year update to the Water Plan. This document identifies issues relating to water and includes recommendations for those issues. She said the document will go out for public comment shortly, and there will also be public hearings. The Water Office will modify the plan based on public input.

Director Owen added that this is a time of fundamental choice; everyone is saying something must be done, or it will not end well. Director Owen responded to questions from Committee members ([Attachment 7](#)).

Earl Lewis, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, provided an overview of the Division of Water Resources' role in managing water resources. He discussed the changes in points of diversion that have happened over time, as well as the changes in the water table. He further discussed the reported water use for Kansas counties ([Attachment 8](#)).

Chairperson Highland thanked the staff for all the work that went into putting this tour together and then recessed the meeting at 4:42 p.m. He said Committee members will attend a presentation this evening regarding neighbor water conflicts.

Presentation at the Golf Club at Southwind

Committee members and staff traveled to the Golf Club at Southwind, located at 77 Grandview Drive, Garden City, Kansas.

Gerald Schultz, attorney, presented to the Committee on water rights issues in southwest Kansas.

Prepared by Nancy Fontaine

Edited by Victoria Potts and Meredith Fry

Approved by the Committee on:

September 13, 2021

(Date)