

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

December 2-3, 2002
Room 514-S—Statehouse

Members Present

Senator Dwayne Umbarger, Chairman
Representative Melvin Neufeld, Vice Chairman
Senator Karin Brownlee
Senator Stan Clark
Senator U. L. "Rip" Gooch
Representative Carl Holmes
Representative Bill Light
Representative Laura L. McClure
Representative Janice Pauls
Representative Tony Powell

Members Absent

Senator Chris Steineger
Representative L. Candy Ruff

Staff Present

William G. Wolff, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Judy Glasgow, Committee Secretary

Others Present

David Pope, Kansas Department of Agriculture
Leland Rolfs, Kansas Department of Agriculture
Tom Ford, Aquila
Jack Taylor, Liberal
Bob Boaldin, Morton County, Elkhart

Gary Gold, City of Hugoton, Stevens Company Economic Development
J. C. Long, Aquila
Dale Reed, City of Liberal
Gary Baker, Stevens County, Hugoton
Chris Wilson, Groundwater Management District 3
Hank Hansen, Groundwater Management District 3
Steve Johnson, Kansas Gas Service
Ward Loyd, Representative, District 123
Larry Powell, Representative, District 117
John Mitchell, Kansas Department of Health and Environment
George McCaskill, Kansas Department of Health and Environment
Sandy McAdam, Kansas Department of Health and Environment
Scott Rothschild, *Lawrence Journal World*
Faith Loretto, Department of Administration
D. Keith Meyers, Department of Administration
Rod Bieker

Monday, December 2

The meeting was called to order by Chairman Umbarger at 2:10 p.m.

Chairman Umbarger recognized David Pope, Chief Engineer, and Lee Rolfs, Staff Attorney, Kansas Department of Agriculture, Division of Water Resources (KDA), to speak to the proposed rules and regulations noticed for hearing by KDA on issues recommended by the Western Kansas Groundwater Management District No. 1 Board. KAR 5-21-6, water-measuring devices; KAR 5-21-7, change in the use made of water from irrigation use to any other type of beneficial use.

Mr. Rolfs explained that these rules and regulations are a direct result of House Sub. for SB 430 passed by the 2002 Legislature. This legislation required that all policies and standards of the Groundwater Management Districts (GMD) be made into rules and regulations.

In response to a question, Mr. Rolfs stated that both of these regulations are new and that all new wells will be required to have meters, but in some, measuring requirements used on wells approved in the past will be grandfathered.

It was suggested by a Committee member that in KAR 5-21-6, when making reference to regulations, the specific numbers should be used. Mr. Rolfs stated that this change could be done.

Several members were concerned about the exemption for existing nonfull pipe flow under the normal operating flow rate in District 1. Mr. Rolfs stated that because of the expense of replacing the lines this option was requested by the board. This was the only District that asked for this exemption.

Mr. Rolfs continued his review for the proposed rules and regulations for KDA, Division of Water Resources, Equus Beds Groundwater Management District No. 2 Board. KAR 5-22-1, well spacing requirements; KAR 5-22-4, metering; KAR 5-22-4a, water flowmeter requirement; KAR 5-22-5, revoked; and KAR 5-22-12, application processing requirements and procedures.

The Committee had no questions concerning these rules and regulations.

Mr. Rolfs spoke to the proposed rules and regulations for KDA, Division of Water Resources, Northwest Kansas Groundwater Management District Board No. 4. KAR 5-24-5, allowable appropriation-reasonable use; KAR 5-24-7, well construction criteria; KAR 5-24-8, resource development plans; KAR 5-24-9, water flowmeters; and KAR 5-24-10, exemptions for up to 15 acre-feet of groundwater.

Members noted that in KAR 5-24-5 (b) (3) line 3, the phrase "to municipal use" should read "for municipal use" and the second "to" should be removed. Mr. Rolfs stated these changes would be made.

Several questions were raised concerning the meaning of "municipalities" and how it is used in these regulations. Staff suggested making a definition of municipalities which would apply to this regulation, or to key it in to the acquisition of water rights for municipal use since that is defined in the appropriation act.

Staff also noted in KAR 5-24-7 that the effective date needs to be clarified to avoid confusion; as written it would appear that there are two effective dates. A Committee member suggested that specific regulations be noted in KAR 5-24-7 (a) to make the reference clearer for the reader. Mr. Rolfs stated this could be done with no problem.

Members questioned the use of the word "may" in KAR 5-24-8. After discussion it was stated that applications for irrigation use do not require a plan, but the Board does require a plan to be submitted for all other uses.

Several members sought clarification as to who had authority over oil and gas and salt water drilling. Mr. Rolfs stated these areas are under the jurisdiction of the Department of Health and Environment.

Mr. Rolfs then continued his review of proposed rules and regulations relating to Southwest Kansas Groundwater Management District Board No. 3 filed by KDA, Division of Water Resources. KAR 5-23-4, revoked; KAR 5-23-4a, revoked; KAR 5-23-4b, revoked; KAR 5-23-5, revoked; KAR 5-23-6, water-measuring devices; KAR 5-23-16, well construction requirements due to high chloride concentrations; and KAR 5-23-17, water appropriations limits.

Mr. Pope addressed the Committee concerning the proposed changes in KAR 5-23-17 (Attachment 1 and 2).

In reviewing the economic impact statement for KAR 5-23-17, members were generally concerned about whether or not cities, counties, or school districts had been contacted to determine what impact this regulation would have on them. A member said no

one was notified in the affected area of 60 to 90 miles. Other questions concerning the fiscal impact statement concerned the number of applications received each year and the fact that 60 to 70 applications more accurately reflect the number per year, not 140 as stated.

Gary Baker, Consultant for the City of Liberal, was recognized by Chairman Umbarger to speak in opposition to the proposed rules and regulations (Attachment 3 and 4). Mr. Baker stated that items that concern him are the lack of public debate on the issue, and that Oklahoma has no controls governing groundwater development over these same areas.

Committee members had several questions concerning the makeup of the Groundwater District No. 3 Board. Mr. Baker stated that there are 15 members and that one member is elected from industry, one member is elected from municipalities and one from surface water users, the remainder are farm irrigators.

A Committee member stated that the lack of public debate came from the way the notice of hearing for the August meeting was advertised. It was listed under the heading of "Continued development appropriations of water" and this was where the discussion for closing the district to further water use came up. There have been no public hearings in any of the counties which are affected by this decision and none is planned. The public hearing will be at Garden City which is not in the affected area. Some Committee members suggested legislation perhaps should be introduced to change the composition of the Board to more fairly represent industry and municipalities.

Mr. Baker presented written testimony from the Southwest Kansas Irrigation Association in opposition to the proposed rules and regulations (Attachment 5).

There being no questions for Mr. Baker, the Chairman thanked him for his presentation before the meeting.

The Chairman then called upon Tom Ford, Chairman, Cimarron Basin Advisory Committee, to speak in opposition of the proposed rules and regulations (Attachment 6). Mr. Ford stated that closing the district to new large water well drilling will severely impact the growth of industries and could prevent new industries from locating in the area. He asked the Committee to amend or revoke KAR 5-23-17 and thereby allow more time and allow further time for further studies and the development of an alternative plan.

Chairman Umbarger thanked Mr. Ford for his appearance before the Committee.

Mr. Jack Taylor, Executive Director of the Liberal Chamber of Commerce, was recognized by the Chairman to speak in opposition to the proposed rules and regulations (Attachment 7). Mr. Taylor stated that a major concern is that residents of the Oklahoma Panhandle could drill all the wells they could get permitted and drain the very aquifer that is to be protected. Purchasing water rights from present owners, he said, will inflate the value of existing water rights.

Mr. Taylor presented written testimony from Board of County Commissioners, Seward County, Kansas (Attachment 8) and from Village Realty, Liberal, (Attachment 9).

Mr. Taylor was thanked for his testimony before the Committee by the Chairman.

Dale Reed, Mayor of the City of Liberal, appeared before the Committee in opposition to the proposed rules and regulations proposed by Southwest Kansas Groundwater Management District No. 3 (Attachment 10). Mr. Reed stated that the City of Liberal has taken proactive measures to conserve water. This includes replacing 90 percent of water meters in the city, identifying and repairing all leaks, including the small leaks program, and recycling storm water. He suggested that, since this District is the second largest in the nation, perhaps it should be divided into two districts for more equitable representation and local control.

Written testimony was provided by Joe Sealey, Public Works Director, City of Liberal (Attachment 11).

There being no questions, Mr. Reed was thanked for his appearance before the Committee.

Chairman Umbarger recognized Bob Boaldin, Chairman, Board of Morton County Commissioners, to speak in opposition to the proposed rules and regulations (Attachment 12). Mr. Boaldin stated that these proposed regulations have determined the future of the cities, counties, and school districts in this area. They will not be able to grow and the financial impact will be devastating.

There were no questions and the Chairman thanked Mr. Boaldin for his appearance before the Committee.

Gary Gold, member of the Hugoton City Council and Stevens County Economic Development Board, was recognized by the Chairman to speak in opposition of the proposed rules and regulations (Attachment 13). Mr. Gold stated that the new regulations would have negative effects on the City of Hugoton and on economic development opportunities in Stevens County.

The members had no questions for Mr. Gold and the Chairman thanked him for his appearance.

Chairman Umbarger then called on Steven Hansen, Executive Director, Southwest Kansas Groundwater Management District No. 3, to speak in support of the proposed rules and regulations (Attachment 14). Mr. Hansen went over the criteria that the Board used to approve the new rules and regulations.

A Committee member questioned whether or not it would be better to pass rules and regulations that would say the drilling of new wells would be temporarily suspended until there has been a period of 12 months of above normal rainfall. Mr. Hansen explained the water table formula, stating that it allows 40 percent of the saturated thickness to be depleted in a 25 year period, but the 25 year period has never been defined. He stated that David Pope had stated previously that the District would have to determine when to end this 25 year cycle since it was not meant to be indefinite.

Several members were very concerned about how the public notice was worded for the August meeting. It seemed misleading and not clear that this was to be a meeting to close the District to new drilling. Members also were concerned that individual entities who would be directly affected had not been contacted. Questions were raised about notification to newspapers on the proposed action and the fact that no public hearings were held.

Other questions from Committee members concerned what the Board was doing to curtail overpumping. Mr. Hanson explained that at the last meeting the Board passed a resolution supporting the current reading of the law and directed the Chairman to take whatever means available under current law to curtail overpumping. He also stated that the Board will be proposing legislation in 2003 to allow the district boards the right to grant exceptions when they are needed.

Committee members suggested that the legislation be brought up in the 2003 Session for adjusting the Board composition so that the interests of industry and municipalities be given more representation on the GMD boards.

Chairman Umbarger thanked Mr. Hansen for his testimony before the Committee.

The Chairman recessed the meeting until 9:00 a.m., on December 3, in Room 531-N.

Tuesday, December 3

Chairman Umbarger asked for action on the minutes of the Committee for November 12, 2002. *Representative Pauls moved, seconded by Representative Neufeld, to approve the minutes of the November 12 meeting. The motion carried.*

Chairman Umbarger recognized John Mitchell, Department of Health and Environment, Bureau of Waste Management, to review proposed regulations noticed for hearing. KAR 28-29-3, definitions; KAR 28-29-20, restrictive covenants and easements; KAR 28-29-101, revoked; and KAR 28-29-109, special waste.

Staff suggested the term "Director" may not be necessary as it does not seem to be used in the regulations, at least not those being proposed. Staff also suggested that the statutory definition of "garbage" be reviewed in KSA 47-1501 to see if it fits the definition as used in these regulations. A Committee member suggested that the term "MSWLF" be listed under its own alphabetic letter in the definition section rather than under the term "new facility" as that would be a more logical place to look for it.

Committee members noted that the definition for "disposal areas" should be clarified in its use under KAR 28-29-20 to ensure that old disposal areas were not covered under this regulation since it is intended to cover only those permitted after the effective date of the regulation. Further, a member suggested, for purposes of consistency, that the term used be "solid waste disposal area," or, in the alternative, define "disposal area" as "solid waste disposal area." One or the other approaches should be used in all instances so that it is clear what is being referred to.

There being no other Committee questions, the Chairman thanked Mr. Mitchell for his appearance.

Joe Fritton, Director of Facilities Management, Kansas Department of Administration, was recognized by Chairman Umbarger to speak to the proposed rules and regulations noticed for hearing by the Department of Administration. KAR1-17-2, same use of state-owned or state-leased motor vehicles; KAR 1-17-5a, permanently assigned vehicles; KAR 1-17-6, requests for state-owned or state-leased motor vehicles on a daily or trip basis; KAR 1-17-7a, agency responsibility for state-owned or state-leased vehicles; KAR 1-17-7b, revoked; KAR 1-17-7c, accident repairs; KAR 1-17-8, use rates and charges for motor pool vehicles; KAR 1-17-18, state-owned or state-operated motor vehicles; accident reporting requirements; KAR 1-23-2, program administration; KAR 1-23-8, accident reporting requirements; KAR 1-45-1 through 1-45-17, revoked; KAR 1-45-18, definitions and application of regulations; KAR 1-45-19, application for a parking contract and issuance of a parking permit; KAR 1-45-20, parking permit required; KAR 1-45-21, parking fees; KAR 1-45-22, parking fees for state parking garage; KAR 1-45-23, parking restrictions; KAR 1-45-24, violations and enforcement; KAR 1-47-1, applicability; KAR 1-49-1, personal conduct limitations and animal restrictions; and KAR 1-49-12, smoking prohibited.

Mr. Fritton stated that the proposed changes in Article were raised in an audit of several agencies concerning their vehicle usage (Attachment 15). State employees driving state vehicles can affect the public image of state government as well as state budgets. State employees drive state vehicles as many as 2 million miles, annually.

A member suggested that the reference in KAR 1-17-2 to personal friend should be changed to reflect that no one who is not a state employee is permitted to ride in a state car. Another member asked whether the Department could use a distinctive sticker or identification for Regents vehicles to distinguish them from other state-owned and driven vehicles.

Staff noted in KAR 1-17-7a under appeals that the provision in paragraph (2) stating the final determination will be by the Governor, appears contrary to the Kansas Administrative Procedures Act (KAPA). (See also KAR 1-45-24.) It appears that the appeal right has been cut off short of an appeal to the district court. Mr. Fritton stated the matter would be reviewed to be consistent with KAPA. Further, staff suggested that KAR 1-17-18 may need to be broadened to allow a state employee or state official involved in an accident to talk to more entities than those provided in the regulation. Mr. Fritton stated that they had broadened it with the proposed language, but would look at it again to determine if it should be further broadened.

There being no further questions the Chairman thanked Mr. Fritton for his presentation.

The Chairman announced that the rules and regulations noticed for hearing by the Kansas Insurance Department were withdrawn and no hearing would be held.

Chairman Umbarger asked staff to review the rules and regulations previously reviewed by the Committee as proposed rules and regulations and now filed as permanent for the following agencies:

Board of Accountancy
Department on Aging
Department of Agriculture
State Corporation Commission
Board of Healing Arts
Department of Health and Environment
Kansas State Historical Society
Insurance Department

Board of Nursing
Kansas Parole Board
Kansas Real Estate Commission
Kansas Board of Regents
Board of Technical Professions
Division of Water Resources
Department of Wildlife and Parks

Rod Bieker was recognized by the Chairman to speak to the proposed rules and regulations noticed for hearing by the Kansas State Department of Education. KAR 91-38-1, definitions; 91-38-2, general limitations and requirements; 91-38-3, school transportation supervisor; duties and responsibilities; 91-38-5, annual inspection of school vehicles; 91-38-6, school transportation driver qualifications; and 91-38-7, driver's duties and responsibilities.

Committee members suggested that in KAR 91-38-3 the reference to "videotaped" should be changed to include other electronic recording devices. In KAR 91-38-7 a member noted that the prohibition against towing may be too narrow and suggested that towing be allowed by a school bus as long as no students were being transported.

Chairman Umbarger thanked Mr. Bieker for his assistance in the review of the proposed rules and regulations.

COMMENTS ON PROPOSED RULES AND REGULATIONS

Department of Education

The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning school accreditation. After discussion, the Committee expressed the following comments.

- KAR 91-38-3. In subsection (c)(4), change "videotaped" to "electronically recorded."
- KAR 91-38-7. In subsection (k), consider allowing towing when there are no student passengers on board the bus.

Chief Engineer—Division of Water Resources

The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning proposals of the groundwater management district. After discussion, the Committee expressed the following comments.

Groundwater Management District No. 1.

- KAR 5-21-6. In subsection (a), add the specific KAR citations in lieu of the reference to "the regulatory specification of the chief engineer"

Groundwater Management District No. 2.

- Had no comment.

Groundwater Management District No. 3.

- The Joint Committee on Administrative Rules and Regulations believes that closing areas to further new appropriations, except for domestic, temporary, and term permits, is a significant public policy consideration. In that light, the Committee is concerned that the board gave limited notice of its potential actions in this regard. Additionally, the Committee is concerned that the current makeup of the board of directors may not be representative of all the water users and suggests the statutes governing the election of members be reviewed by the Legislature.

Specially, regarding KAR 5-23-17:

- The Committee recommends that the Chief Engineer withdraw this proposed regulation from consideration, as well as the proposed revocations of KAR 5-23-4, 4a, 4b, and 5.
- Further, the Committee recommends that the process for adopting KAR 5-23-17 be restarted beginning with the groundwater management board of directors. As the board reopens the issues associated with this regulation, it should give expanded notice of its intentions that are specifically set forth on a published agenda. The notice of the meeting at which these issues will be considered should be published widely and sent specifically to those parties directly and indirectly affected by the board's actions, *i.e.*, cities, counties, school districts, and economic development agencies.
- The Committee also recommends that the appropriate standing Committees of the Legislature, in the 2003 Session, review existing groundwater management district statutes with respect to the election of the members of the boards of directors with the intention of balancing representation on the boards among all water users. The Committee finds the economic impact statement submitted with KAR 5-23-17 to be misleading and incomplete. The number of applications (140) used is an inflated number and should be revised to reflect a number closer to an annual average of applications received (70-75). The economic impact statement did not consider the costs to cities, counties, and school districts in an area that may be closed to further water appropriation that will need additional water

supplies in the future. These costs must be estimated and include any future economic impact statement.

- Finally, the Committee believes the boards of the groundwater management districts should address the issues associated with declining water tables.

Groundwater Management District No. 4.

- KAR 5-24-5. In subsection (b)(3), in the third line rewrite to say "water rights 'for' municipal use," and delete the word "to" at the end of that line.
- KAR 5-24-7. Review the language in subsection (a) related to "the effective date of this regulation" to ensure that there is no conflict between the original 1983 effective date of the regulation and the changes effective upon the adoption and publication of the proposed changes.
- KAR 5-24-9. Cite the specific regulation referred to in line three of subsection (a).

Department of Administration

The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning state-owned motor vehicles, vanpool program, parking in state-owned parking lots and garages, vehicle traffic on state-owned property, and personal conduct. After discussion, the Committee expressed the following comments.

- KAR 1-17-2. In subsection (b)(2), clarify that only persons on official state business are authorized to ride in a state-owned or state-leased vehicle.
- KAR 1-17-7a. Review to ensure that the language of subsection (c)(2) does not conflict with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (see also 1-45-24 (b)(2) and (3)).
- General Comment: Consider issuing a specifically identifiable license plate for Regents institutions.
- KAR 1-17-18. Rewrite to broaden the persons an employee involved in an accident may talk with following an accident (see also 1-23-8).
- KAR 1-45-24. What is the authority of the Secretary to impound or place a lien upon a vehicle as proposed in subsection (c).

Department of Health and Environment

The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning solid waste management. After discussion, the Committee expressed the following comments.

- KAR 28-29-3. In subsection (ii), move the definition of MSWLF to paragraph (1) of the subsection.
- KAR 22-28-20. Clarify that the requirements of subsection (c) apply prospectively.
- General Comment: Throughout the regulations change "disposal area" to "solid waste disposal area" or, in the alternative, define solid waste disposal area to mean disposal.

The meeting was adjourned at 12:25 p.m.

Prepared by Judy Glasgow
Edited by Bill Wolff

Approved by Committee on:

January 22, 2003