

## MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on January 31, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Clay Aurand - excused  
 Representative Becky Hutchins - excused  
 Representative Bruce Larkins - excused  
 Representative Ray Merrick - excused  
 Representative Jeff Peterson - excused  
 Representative Ted Powers - excused  
 Representative Daniel Thimesch - excused  
 Representative Jonathan Wells - excused

Committee staff present: Mary Torrence, Revisor of Statute's Office  
 Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Gary Blackburn, Director, Bureau of Environmental Remediation, KDHE, 1000 SW Jackson, Ste. 410, Topeka, KS 66612  
 Rick Bean, Chief, Remedial Section, Bureau of Environmental Remediation, KDHE, 1000 SW Jackson, Ste. 410, Topeka, KS 66612  
 Al LeDoux, Director, Kansas Water Office, 901 SW Kansas Ave., Topeka, KS 66612-1249  
 Clark Duffy, Assistant Director, Kansas Water Office, 901 SW Kansas Ave., Topeka, KS 66612-1249  
 Tom Bogner, Chair Ogallala Mngt. Advisory Committee, 10055 Eagle Rd., Dodge City, KS 67801  
 Representative Tom Sloan  
 Alvin Fishburn, Rural Water District #5, Douglas County, 295 E. 550 Road, Overbrook, KS 66524  
 Dave Yearout, KS Association of County Planning & Zoning Officials, 6206 SW 9<sup>th</sup> Terrace, Topeka, KS 66615  
 Gary Hanson, 2887 SW MacVicar Ave., Topeka, KS 66611  
 Kim Gulley, League of Kansas Municipalities, 300 SW 8<sup>th</sup> Avenue, Topeka, KS 66603-3912

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She opened the floor for bill introductions and asked if anyone wished to request a bill.

Gary Blackburn, Kansas Department of Health and Environment, requested a bill regarding Environmental Use Controls; prohibition or restriction of activities on or use of property where contamination has occurred. (See attachments 1 & 2)

Rep. Dan Johnson made a motion the bill requested by KDHE be introduced. Rep. Vaughn Flora seconded the motion. Motion carried.

Chairperson Freeborn welcomed Rick Bean, KS Department Health and Environment, to the committee. Mr. Bean reviewed the Voluntary Cleanup and Property Redevelopment Program (VCPRP). The VCPRP was enacted by the Kansas Legislature on July 1, 1997. The purpose of the Act is to allow voluntary cleanups of contaminated properties with oversight by the Kansas Department of Health and Environment (Department) to promote the transfer, redevelopment and reuse of contaminated properties and protect public health and the environment. The Department shall publish annually in the Kansas Register a summary of the number of applicants, the general categories of those applicants and the number of cleanups completed pursuant to this act. This annual report describes the activities accomplished by the Department in the VCPRP for the period

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on January 31, 2002.

of December 31, 2000 to December 31, 2001. The previous annual reports to the legislature contained descriptions of VCPRP activities that reflected significant program building and implementation. VCPRP Program activities conducted during 2001 continued to involve program building and implementation while increased attention was provided to VCPRP program refinement. In September 2001, the program released the second version of the Risk-based Standards for Kansas (RSK) manual which provides a risk based approach to voluntary cleanups across Kansas. The RSK manual allows voluntary parties to take a tiered, risk based approach to address contamination at their properties. The approaches and contaminant concentrations described in the RSK manual follow the regulations as developed by the regulation committee which consisted of twelve major stakeholders. Program refinement will be an on-going objective for the VCPRP during the upcoming year. As of December 31, 2001, the Department has received a total of 227 completed application packages of which 219 properties have been determined eligible to participate in the program. A total of 206 voluntary agreements have been signed. Voluntary Cleanup Investigations have been initiated or completed at 156 properties. Currently, 39 properties have entered the cleanup phase in either the preliminary cleanup proposal process, cleanup planning stage, or in the active cleanup phase; cleanups have now been completed at 11 properties. To date, the Department has issued 39 No Further Action Determination letters. Although the Voluntary Cleanup and Property Redevelopment Program is only four years old, the program has become a preferred option for owners of contaminated property to appropriately address their environmental concerns. A significant development was achieved during last year in the VCPRP program. On March 2, 2001, a Memorandum of Agreement (MOA) was signed between the United States Environmental Protection Agency (USEPA) and the department acknowledging the adequacy of Kansas' VCPRP program. The MOA includes assurances to participating parties that there will be no federal involvement at properties properly addressed in the VCPRP program. This assurance provides participating parties a finality that their property has been addressed and does not present a risk to public health or the environment. ( See attachment 3) An Annual Program Report for the Voluntary Cleanup and Property Redevelopment Program was distributed. ( See attachment 4) Discussion followed.

Chairperson Freeborn congratulated the Department for getting approval from the United States Environmental Protection Agency acknowledging the adequacy of Kansas' Voluntary Cleanup and Property Redevelopment Program and for having a very good and understandable report.

The Chairperson thanked Mr. Bean for the briefing and welcomed Al LeDoux, Director, Kansas Water Office. The Kansas Water Office gave an update to the committee on State Water Plan Issues; Ogallala Management and Total Maximum Daily Loads. ( See attachment 5 & 6) Mr. LeDoux addressed the committee and believes the top issues that the Kansas Water Authority and Kansas Water Office are addressing are those of quantity, with the Ogallala-High Plains Aquifer, and quality, as total maximum daily loads are established and must be met in our surface waters. There has been an awareness for a number of years that the water resources of the High Plains Aquifer are not unlimited. It has been heavily developed, there are over 18,400 wells in the Ogallala aquifer alone and that level of use cannot be supported indefinitely. **House Substitute for SB287** generated new discussion on how to manage that water resource far into the future to continue to meet the water needs of western Kansas. This is one of the largest water resource challenges we are facing. One idea that developed out of the studies for the **SB287** reports was the "two pools" management approach. This concept was presented to this committee about one year ago and at over 50 meetings, most of them in western Kansas. The Kansas Water Authority wanted to hear what people thought of this approach, and while the idea generated a lot of discussion, there were mixed reactions. The Kansas Water Authority decided to get advice from those most directly involved and impacted, western Kansans. The Director of the Kansas Water Authority appointed both advisory committees, and worked to get a geographic diversity and variety of backgrounds on the two committees. The water planning process allows for the input of all Kansans on the use and management of our water resources. Basin advisory committee, conservation districts, groundwater management districts, the general public, state agencies all have several opportunities to review and comment on the draft plan, before the Authority finalizes it in July. The Ogallala Aquifer Management Advisory Committee's report has five primary recommendations, 17 guiding principles, and a number of specific programmatic, technical and time frame recommendations in appendix A & B. ( See pages 1 thru 7, attachment 5) Discussion followed.

Tom Bogner, Chairman, Ogallala Management Advisory Committee, was welcomed. He discussed the Ogallala Management Report Recommendations; (1) Delineate Ogallala aquifer into aquifer subunits. (2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on January 31, 2002.

Within each aquifer subunit in decline or suspected decline, define a water use goal. (3) Assign a priority of high, medium or low to each aquifer subunit. (4) Support and expand programs to extend and conserve the life of the Ogallala aquifer. (5) Research and education on the Ogallala aquifer. The three western Groundwater Management Districts are to be the lead on defining these aquifer subunits, water use goals and priorities for their areas. The Division of Water Resources are to define them for areas of the Ogallala aquifer outside of the districts and Kansas Water Office, Division of Water Resources, Kansas Geological Survey and Kansas State University are to cooperate and assist. If approved the next steps are; No new legislation planned; Groundwater management Districts #1, 3, and 4 submit protocols and time schedules by November 2002 for the FY 2005 Kansas Water Plan, and; Target state program resources to high priority aquifer subunits to achieve water use goals. (See pages 8 thru 10, attachment 5) Discussion followed

Clark Duffy, Assistant Director, Kansas Water Office, was welcomed. Mr. Duffy briefed the committee on the Status of Federal Action on Conservation of the Ogallala Aquifer. Issues considered in the Federal Farm Bill; (1) Conservation Reserve Program Enhancement; (2) Ground Water Conservation Cost Share; (3) Federal Block Grants to States; and (4) Commodity Incentive Program. Issues Corrdinated through Western States Water Council; (1) High Plains Aquifer Coordination Council; (2) Modeling, Monitoring & Mapping; (3) Research; (4) Education; (5) Federal Assistance for Economic Stability. He reviewed the Status of Total Maximum Daily Loads as of January 2002 and the Kansas Water Plan of TMDLs; State Water Plan Funds dedicated for FY 2002 almost 2.6 million dollars. This does not represent total investment which includes local, federal and other State resources. (See pages 11, 13, and 14, attachment 5) Discussion followed.

The Chairperson thanked the Kansas Water Office staff for their briefing and opened the hearing on **HB2607**.

**HB2607: Rural water districts mail ballot elections.**

Representative Tom Sloan was recognized. He addressed the committee in support of the bill, which he sponsored. He believes Rural Water Districts are quasi-governmental units developed by the citizens who desire safe drinking water, approved by the appropriate county commissions, and regulated by the Department of Health and Environment. They do not have taxing authority, but rely on the sale of water and other services for operating funds. Under current law, members of a Rural Water District's Board of Directors are elected at their annual meeting and generally serve without pay. This is a simple bill that will permit, but not require, Rural Water Districts to conduct their annual director elections by mail ballot. The expectation is that additional persons will participate and that the resulting boards will be more representative of their patrons. (See attachment 7)

Alvin Fishburn, Rural Water District #5, Douglas County, was welcomed. He testified in support of the bill on behalf Water District #5, which supplies water service to 885 patrons in an area lying south and southwest of the City of Lawrence. Historically there is low patron turn out at annual meetings of water districts and quite often the only attendees are standing board members. The potential process would be to send the notice of annual meetings to patrons of the district and include a biography of candidates nominated by a nominating committee. Included with the letter would be a ballot listing candidates and a benefit unit holder verification card that would require patron signatures and sates. Ballots would be returned to the District office or carried to the annual meeting. These would be counted by nominating committee members at the annual meeting. (See attachment 8)

Clark Duffy, Kansas Water Office, was welcomed. He supports the bill on behalf the Kansas Water Office and believes one of the fundamental principles of the State Water Resources Planning Act is recognition of the importance of public participation in addressing water issues. Mail ballot elections have proven effective in increasing citizens' participation in other subdivisions of government. (See attachment 9)

Written only testimony was submitted by Elmer Ronnebaum, General Manager, Kansas Rural Water Association, in support of the bill. This bill would provide that rural water districts in Kansas could, if they so chose, to hold elections of directors by mail ballot. (See attachment 10) Discussion followed.

Chairperson Freeborn closed the hearing on **HB2607** and opened the hearing on **HB2624**.



CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on January 31, 2002.

**HB2624: Rural water districts and public wholesale water supply districts; wastewater treatment works, facilities and services.**

The Chairperson recognized Representative Tom Sloan. He addressed the committee in support of the bill, which he sponsored. This bill would include rural water districts on the list of public/quasi-public agencies authorized to operate and maintain public wastewater (sanitation sewer) systems. He distributed a letter which he received from John E. Taylor, Chairman, Board of County Commissioners, Franklin County, the County Commissioners have reviewed the bill and applaud the efforts by Rep. Sloan. However, request that the bill be amended to permit Rural Water Districts to contract with the governing body (County Commissioners or City Council) only for the operation and maintenance of wastewater systems within their respective districts. (See attachment 11)

David Yearout, Kansas Association of County Planning and Zoning Officials, was welcomed to the committee. He testified in support of the bill with three recommended changes which he believes was the original "intent" of this change to state law. He believes the bill, as drafted, appears to empower Rural Water Districts with the ability to initiate the establishment of sanitary sewer services within or without the established service territory of that District. It also would enable Rural Water Districts to "contract" for the operation and maintenance of sanitary sewer services. The idea has some merit, but the approach presented within the bill is not the answer to deal with the problems facing counties. (See attachment 12)

Clark Duffy, Kansas Water Office, was welcomed back to the committee. The KWO supports the intent of the bill while recognizing that the concepts proposed in this legislation need additional thought, further refinement and study. This bill is one approach to address the problem with the continued proliferation of onsite septic systems in suburban areas. The importance of addressing the problem of failing onsite systems has been heightened by the need to address high priority TMDLs in many of these same suburban areas. The concepts in the bill would provide a creative method to address this problem. However, care should be taken to ensure that this is a coordinated approach that will be supported by the Kansas Department of Health and Environment and local units of government. (See attachment 13)

Gary H. Hanson, Counsel to the Kansas Rural Water Association, was welcomed to the committee. He testified in support of the bill because it would allow Rural Water Districts and Public Wholesale Water Districts to contract to operate wastewater systems. The bill as introduced would allow PWWSD's to also acquire and then own and hold wastewater facilities. He suggests that the bill be amended to delete these provisions. After committee discussion it was suggested that lines 15 to 19, of the bill, be deleted. ( See attachment 14)

The Chairperson welcomed Kim Gulley, Director of Policy Development, League of Kansas Municipalities. She testified in opposition to the bill and believes this bill would serve to undermine subdivision and zoning regulations imposed by cities. Many such regulations include requirements concerning water and wastewater treatment. Authorizing a housing subdivision, for example, to establish its own system just outside of the city limits would serve to undermine the planning rules and the growth of the existing system. And, should that area ever be annexed, there would be no way to insure that the new system would be of the same quality as the existing city system. (See attachment 15) Committee discussion followed.

Chairperson Freeborn thanked guests for their participation and the committee for their attention. She reviewed next week's committee agenda.

The meeting adjourned at 5:15 p.m. The next meeting is scheduled for Tuesday, February 5, 2002.



# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: January 31, 2002

NAME	REPRESENTING
Rick Bean	KDHE
Gary Blackburn	KDHE
Gary Hanson	KRWA
DAVID YEARTOUT	KACPZO
Tom Slattery	AGC of KS
Kath Bradshaw	Budget
Kim Gulley	LKM
Judy Mohr	KAC
Ken Peterson	KS PETROLEUM Council
Dave Holtzman	Pioneer & Upland
Mary Ellen Condie	REAP
Red Gessler	KDHE
Clay Duffey	KWO
Al LeDoux	KWO & KWA
Blain Fishburn	Dy Rural (Water #5
Larry Wray	Dy. Co. Rural Water #5
Annah Kessinger	Harris News Service
Ruth & Phillip	K106A
Chris Wilson	20 KS GMD 3

**ENVIRONMENTAL USE CONTROLS**  
**Proposed Bill - 2002**

**Section 1. - DEFINITIONS.**

(1) The following definitions shall be applicable to this act:

(a) "Department" means the Kansas Department of Health and Environment.

(b) "Environmental Use Control" means a restriction, prohibition or control of one or more uses of, or activities on a specific property to ensure future protection of public health and the environment when environmental contamination, pollution or hazardous substances remain on the property following the appropriate remedial activities as directed by the department. Environmental Use Controls created pursuant to this Act, runs with the property, and is binding on the owner and subsequent owners, lessees, and other users of the land.

(c) "Owner" means any of record of property and, any person or entity authorized to make decisions regarding the transfer of the subject property or placement of encumbrances on the subject property, other than by the exercise of eminent domain.

(d) "Person" means an individual, trust, firm, joint stock company, corporation, federal government including a government corporation, partnership, state, municipality, commission, political subdivision of a state or any interstate body.

(e) "Protective Structures" means an engineered structure implemented as part of the remedial action to control or respond to a release or threat of release of environmental contamination, pollution or hazardous substances. Protective structures include capping, fencing, berming, diking, drainage structures, or other structures that may control erosion, migration or other releases of environmental contamination.

(f) "Property" means real property.

(f) "Remedial Activities" means any site cleanup, soil and ground water monitoring, remedial action, corrective action, emergency action, removal action and any other actions necessary or appropriate to respond to a release or threat of release of environmental contamination.

(g) "Secretary" means the secretary of the department of health and environment.

*House Environment  
1-31-02  
Attachment 1*

## Section 2 - APPLICATION.

(1) An owner of property may, with departmental approval, restrict the use of the owner's property to mitigate the risk posed to the human health and environment by imposing on the property an appropriate environmental use control.

(2) The owner or an authorized representative of the owner of the property must make application to the department for approval of an environmental use control;

(a) the owner or an authorized representative of the owner of the property must complete and submit an environmental use control application on forms provided by the department.

(b) the environmental use control application must be accompanied by a non-refundable \$1,000 fee to be deposited in the Environmental use control fund. Additional fees may be required to be deposited in the Environmental use control fund as a condition of application approval for properties where the term of the environmental use control is projected to require oversight which will exceed the \$1,000 fee. A reimbursement agreement may be entered into by the department and the applicant where future oversight cost are difficult to determine.

(c) financial assurance may be required based on the potential for long term maintenance cost of protective structures and the potential for release or migration of hazardous substances from the property. The responsible party shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability. The demonstration of financial capability must be adequate to provide remedies which are protective of human health and/or the environment should the proposed remedial fail;

(d) the environmental use control application must include an accurate legal description or survey of the property.

(3) The department shall review the application:

(a) if the application is disapproved by the department, the applicant may modify the environmental use control application in a manner necessary to obtain department approval and resubmit the application for department's approval;

(b) if the application is approved by the department, the department shall provide a written approval to the applicant documenting the approval.

(1) an environmental use control pursuant to this Act may be approved by the department only for the protection of human health and environment from a remediated or contaminated property of the state;



### **Section 3 - DURATION.**

- (1) An environmental use control may be granted either in perpetuity or for a term of years as determined by the department. An environmental use control may not be approved for a term of years unless provisions are included that ensures the protection of human health and the environment beyond the expiration of the environmental use control.
- (2) An environmental use control that restricts property runs with the land and is binding on all successors in interest to property until the environmental use control is removed upon the departments approval.
- (3) An environmental use control must be removed if the requesting party demonstrates to the department's satisfaction that the original risk to the human health or the environment which created the need for the control is no longer present. An owner or other interested party must submit a request to the department for approval to remove all or a portion of the environmental use controls from the property. The department shall review the request and provide the owner with its decision to approve or deny the request within 120 days from the department's receipt of the request. If the department denies the request, justification shall be provided the owner with a written explanation of the denial which may include the applicant has not provided the documentation to demonstrate that the request is protective of human health and/or the environment as determined by the department;
- (4) If the department approves an owner's request to remove all or a portion of the environmental use controls, the owner shall file the approval with the county clerk in the county in which the property is located.
- (5) An environmental use control may not be extinguished, limited, or impaired through adverse possession, abandonment, waiver, lack of enforcement or other common law principles relating to covenants or by the exercise of eminent domain.
- (6) Notwithstanding any other provision of law, including any common law requirement for privity of estate, an environmental use control shall run with the land and shall bind the owner of the property, the owners successors and assigns, and any person using the property.
- (7) The department shall not acquire any liability by virtue of accepting an environmental use control.

### **Section 4 - RESTRICTIONS AND USES.**

- (1) An environmental use control pursuant to this Act may restrict or prohibit the following activities or uses of the property;
  - (a) disturbing soil caps, soil covers, soil surfaces, berms, drainage structures, or other structures that may cause erosion or migration of hazardous substances at or from the property;

(b) excavating, dredging or digging into the soil caps, soil covers, soil surfaces, berms, drainage structures, or other structures that may cause a release or migration of hazardous substances at or from the property;

(c) drilling or using water wells for domestic or other purposes;

(d) residential, commercial, agricultural, or industrial uses of the property may be limited or access may be restricted to the property or protective structures to protect the public from exposures to contaminants;

(e) storage of equipment or materials, pasturing of animals, constructing or placing structures such as buildings on or above soil caps, soil covers, soil surfaces, berms, drainage structures, or other structures;

(f) planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption, or undesirable vegetation which may be a detrimental to the environmental use controls; or

(g) any other activity or use detrimental to or interfering with the remediation or cleanup of the property or detrimental to the preservation of remedial or protective structures, measures, or technologies employed at the property.

(2) An environmental use control pursuant to this Act may include or require the following:

(a) prompt notification to the department of transfers of the property or any proposed changes in land use for the property;

(b) maintenance of remedial structures or systems at the property, such as soil caps, soil covers, soil surfaces, berms, drainage structures, vegetation, monitoring wells or other structures.

(c) department access to the property as necessary to inspect and monitor remediation activities, monitoring wells, surface streams and protective structures and to ensure implementation and enforcement of the requirements, restrictions, and other limitations of the environmental use controls; or

(d) any other obligations necessary to reduce or eliminate risks or threats to human health and the environment from the property.

(3) All interests not transferred or conveyed in by the environmental use control shall remain in with the owner, including the right to engage in all uses of the properties that are not inconsistent with the environmental use control and not expressly prohibited by the environmental use control or by law.

**Section 5 - RECORDING.**

(1) An environmental use control must be recorded by the county clerk in the county in which the property is located and shall include:

- (a) the notarized original environmental use control agreement;
- (b) an adequate legal description or legal survey of the property.

(2) The applicant must provide to the department a notarized copy of the approved environmental use control agreement for the property.

(3) Environmental use controls recorded by the owner of property that restricts or requires certain uses or activities relating to such property pursuant to this Act shall be considered valid and enforceable by its terms.

**Section 6 - ENFORCEABILITY.**

(1) Upon receipt of information that approved environmental use controls are not being implemented in accordance with approved environmental use control agreement and/or present a hazard to health of person(s) or the environment, the secretary may take such actions as may be necessary to protect the health of person(s) or the environment. The action the secretary may take shall include, but not be limited to:

- (a) Issuing an order directing the owner of the property subject to the environmental use controls to take such steps as are necessary to correct the deficiencies(s) and/or fully implement the approved environmental use controls.
- (b) The secretary may retract the approval of the remedial action for the subject property, which included the environmental use control as part of the remedy and require that the owner implement remediation of the property to a cleanup standard which will allow for unrestricted use of the property.
- (c) Commencing an action to enjoining acts or practices set forth in the approved environmental use controls or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin such actions which result in approved environmental use controls not being implemented or not being fully or properly implemented and/or present a hazard to health of person(s) or the environment. Upon demonstration by the secretary that approved environmental use controls are not being implemented in accordance with approved environmental use control agreement and/or present a hazard to health of person(s) or the environment, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.



(d) Applying to the district court in the county in which an order of the secretary under subsection (1)(a) will take effect, in whole or in part, for an order of the court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection for a court order shall have precedence over other cases in respect to order of trial.

(2) Any such order of the secretary pursuant to subsection (a)(1) is subject to hearing and review in accordance with K.S.A. 65-3440 and amendments thereto.

(3) Notwithstanding subsections (1) and (2) of this Act, the county or district attorney of every county is hereby authorized and directed to file appropriate actions for enforcement of environmental use controls. The county or district attorney filing the action shall notify the secretary before filing the action.

(a) In any action initiated by a county or district attorney, upon a showing by a county or district attorney that approved environmental use controls are not being implemented and/or present a hazard to health of person(s) or the environment, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(b) In any action brought by a county or district attorney in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will ~~is likely to~~ occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

(4) An environmental use control may not be separated from the property and survives foreclosure of a mortgage, lien, or other encumbrance, as well as tax sales and the issuance of a tax deed.

#### **Section 7 - DEPARTMENT OVERSIGHT.**

(1) The department will provide oversight of the environmental use control for the property to ensure that the environmentally controlled property is being used only for the purposes permitted by the terms of the environmental use control and are not being used in a manner that is prohibited or restricted by the terms of the environmental use control.

(2) The department shall develop and maintain an environmental use control tracking system on all approved environmental use control agreements. The tracking system data shall be made available to the public and must include the following:

- (a) name of the property;
- (b) address including the city and county;
- (c) legal description of the property;
- (d) description of the environmental use control; and
- (e) duration of the environmental use control;

**Section 8 - ENVIRONMENTAL USE CONTROL FUND.**

(1) There is established a fund in the state treasury the environmental use control fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

- (a) Moneys collected from the application fee;
- (b) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and
- (c) interest attributable to the investment of moneys in the fund.

(2) Moneys in the environmental use control fund shall be expended for costs of:

- (a) Review of environmental use control applications;
- (b) oversight of remedial projects which include an environmental use control as an element of their remedy as defined in Section 9 of this Act;
- (c) activities performed by the department to address immediate or emergency threats to human health and/or the environment related to properties under this Act;
- (d) development and operation of the environmental use control tracking system; and
- (e) administration and enforcement of the provisions of this Act.

(3) On or before the 10<sup>th</sup> of each month following the month in which moneys are first credited to the environmental use control fund, and monthly thereafter on or before the 10<sup>th</sup> of each month, the director of accounts and reports shall transfer from the state general fund to the environmental use control fund interest earnings based on:

- (a) The average daily balance of moneys in the environmental use control fund for the preceding month; and

(b) the net earnings rate of the pooled money investment portfolio for the preceding month.

(4) All expenditures from the environmental use control fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for purposes set forth in this section.

**Section 9 - RULES AND REGULATIONS.**

(1) The secretary may adopt rules and regulations to implement the provisions of this Act.

**Section 10 - ANNUAL REPORT.**

(1) The department shall publish annually in the Kansas Register a summary of the number of approved environmental use control agreements pursuant to this Act.

**Section 11 - SEVERABILITY.**

(1) If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

**Section 12 - EFFECTIVE DATE.**

(1) This act shall take effect and be in force from and after its publication in the statute book.



**KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
PROPOSED BILL - 2002**

**Use of Environmental Use Controls to Protect Public Health and the Environment**

**What is an Environmental Use Control?**

Environmental Use Controls are usually, but not always, legal controls, intended to restrict or prohibit human activities and future property use in such a way as to prevent or reduce exposures to hazardous substances or residual contamination.

**Why should this proposed legislation be considered?**

The proposal to establish Environmental Use Controls provides property owners and developers with a method of limiting the amount of remediation performed at a site by establishing limits for the future property use. This program would allow the owner to elect to restrict the future property use rather than performing a clean up for unrestricted use. The agency currently allows some sites to be remediated to non-residential standards if a restriction is placed on the deed. At this time there is no method of tracking these sites to determine if the restrictions on the deed are followed. If the property changes hands the department has no method of requiring that these restrictions be followed by the new owner.

**Objective of an Environmental Use Control Statute:**

To provide a mechanism to allow the property owner or responsible party the alternative of controlling the access and use of the property as an element of a remedial action. Long term protection of the public and environment are a primary responsibility of the department. Environmental Use Controls would allow a contaminated property to be remediated to a lesser degree if an Environmental Use Control were used to limit future use of the property.

**Some Examples of Benefits to Parties Effected?**

*The public* - When a cleanup of contaminant is protective for industrial or commercial exposures, but not residential exposures, Environmental Use Controls could be used to prevent future residential use from taking place on the impacted property.

*Owners of contaminated properties* - When a cleanup includes capping to prevent exposure to the contaminant, Environmental Use Controls are needed to prohibit activities that could damage the cap, thus costing the owner of the property additional funds to readdress the contamination. Additionally, when an owner is performing a cleanup of a property whose intended future use is for industrial purposes, the remedial action could be stopped at industrial levels without fear that the public may be exposed in the future.

*Prospective purchasers, future developers, local government agencies* - Registering Environmental Use Controls will help protect those entities interested in purchasing or developing a property by making those parties aware of the environmental condition of the property and restrictions/prohibitions on property use.

*Construction workers* - Environmental Use Controls may prohibit or restrict excavation at a property where contamination is left in place which will help prevent unacceptable exposure to construction and utility workers.

*House Environment  
1-31-02  
Attachment 2*

## Example of the need for Environmental Use Controls

The state of Kansas contains many sites where soil is contaminated by lead and many other contaminants from previous operations. The common method of protecting the public from lead contamination is by capping the material in place. Recently a battery disposal site was discovered while a new housing development was being constructed (see attached photos). This site was located in the city of Olathe where a battery plant had disposed of waste many years ago. The disposal had been performed in accordance with the laws at the time; however, had children been allowed to play in the soil at this site they would have very likely suffered ill effects. Due to the magnitude of the wastes at this site, complete remediation could not be performed, so the waste was stabilized in place and covered with soil. The housing development plans had to be abandoned. Without an institutional control statute, this site will likely be considered for development again some day in the future.

There are hundreds of sites across the state where contaminated soils are present at a magnitude that makes remediation to a residential standard impractical. Many of these sites are improved dramatically by consolidation and capping of the waste with soil, clay asphalt or concrete. This process is very effective for commercial or industrial sites where exposure to the soil can be limited. Attached are some photos of sites where contaminants have been capped in place as part of the remedial action. Through an environmental use control program, the property owner can restrict future land use indicating that contamination is present in the soil as part of the remedial action for the site. This would allow the waste to remain on site while the owner is allowed to return the site to productive use. The public would be protected because the land use restriction would clearly state the limitations that the owner had agreed to as part of the cleanup.



# Former Battery (Lead) Landfill in Residential Area

2-3



Site discovery during residential development



Cap construction nearing completion





# Former Refinery Property, Montgomery County Residential Property Impact

2-4

**Photo 1**



*Residential property impacted by sludge mobilization and seepage.*

**Photo 2**



*Closeup of sludge waste seeping through surface on residential property.*

**Photo 3**



*Excavated area of sludge impact on residential property.*

**Photo 4**



*Residential property following remediation and sodding.*



# Former Drum Recycling Facility

2-5



Discovery of Site



Cap construction



Erosion following completion



Erosion following completion



# Former Battery (Lead) Landfill Underlying Golf Course

2-6



Cap construction over exposed battery landfill debris



Exposure of battery debris following erosion of cap





# Former Refinery Property Montgomery County

**Photo 1**



*Seepage and mobilization of subsurface sludge associated with former refinery operations.*

**Photo 2**



*Sampling and characterization of sludge material.*

**Photo 3**



*Stabilization of sludge waste. Impacted soils mixed with cement kiln dust to raise pH and demobilize subsurface waste.*

**Photo 4**



*Placement and compaction of clay cap.*

**Photo 5**



*Construction of drainage swale.*

**Photo 6**



*Subject property following remediation, cap construction, and sodding.*

**HOUSE ENVIRONMENT COMMITTEE**

**BRIEFING OF THE**

**VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM**

**January 31, 2002**

**Presented by: Kansas Department of Health and Environment**

*House Environment  
1-31-02  
Attachment 3*



## BRIEFING ON THE VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

January 31, 2002

Good afternoon Madam Chairperson and members of the House Environment Committee. My name is Rick Bean and I am the Chief of the Remedial Section for the Kansas Department of Health and Environment (KDHE). I am here this afternoon to discuss the annual report for the Voluntary Cleanup and Property Redevelopment Program.

The Voluntary Cleanup and Property Redevelopment Act was enacted by the Kansas Legislature on July 1, 1997. The purpose of the Act is to allow voluntary cleanups of contaminated properties with oversight by the department to promote the transfer, redevelopment and reuse of contaminated properties and protect public health and the environment. The VCPRP is designed for low to moderate priority contaminated sites. Property owners that address contamination on their property can receive a "no further action" determination from the department to provide protection from potential environmental liabilities.

Regulations for the program were developed by the department working in cooperation with a regulation development committee consisting of twelve stakeholders including: Kansas Bankers Association, Kansas Petroleum Council, Kansas League of Municipalities, Kansas Fertilizer and Chemical Association, Kansas Sierra Club, Kansas Grain and Feed Association, Kansas Association of Realtors, Kansas Chamber of Commerce and Industry, Kansas City Brownfields Consortium. Regulations were promulgated on June 26, 1998.

In accordance with the law, the department publishes an annual program report in the Kansas Register which describes the activities accomplished by the department in the Voluntary Cleanup and Property Redevelopment Program for the calendar year. Please refer to the tables and figures in your handout for a summary of the program. Tables 1 and 2 summarize the activities in the program since its inception just four years ago. As of December 31, 2001, the department had received a total of 227 completed application packages of which 219 properties have been determined eligible to participate in the program. A total of 206 voluntary agreements have been signed. Voluntary Cleanup Investigations have been initiated or completed at 156 properties and 39 properties have entered the Voluntary Cleanup phase. As of December 31, 2001 the department had issued 39 No Further Action Determination letters.

Figure 1 shows the cumulative total of applications received by KDHE over the last four years. New applications are received by the department at an average rate of 4.7 per month or approximately 56 sites per year.

Figure 2 presents the category breakdown of properties within the VCPRP by percentage. As illustrated, the three primary categories of VCPRP applicants are the Oil and Gas industry which have 70 properties or 31% of the properties participating in the program, the Ag-Industry with 52 applicants or 23% of the total and Manufacturing/Industry which also have 52 applicants.

## BRIEFING ON THE VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

January 31, 2002

For today's briefing, two additional figures have been added. The first figure breaks down the number of applications received per year and the number of "no further action" determinations issued by the department. No further action determinations issued by the department is one of the primary performance indicators for the VCPRP. As shown on the figure, the number of "no further action" determinations over the last four years has increased each year. It is anticipated that this increasing trend will continue as properties finish their investigation phases and proceed through the cleanup phases. Generally, cleanups and the issuance of a "no further action" determination can be finished within a year if only soil contamination is involved. However, longer time frames are required to cleanup contaminated ground water at properties. In Kansas, approximately 80 percent of the properties currently entered into the VCPRP have documented ground water contamination.

The last figure in the handout shows a state-wide distribution of the properties participating in the VCPRP. Contaminated properties are located throughout our state with a higher distribution associated with populated areas such as Wichita, Kansas City and Salina.

Although the Voluntary Cleanup and Property Redevelopment Program is only four years old, the program has become a preferred option for owners of contaminated property to appropriately address their environmental concerns. A significant development was achieved during last year in the VCPRP program. On March 2, 2001, a Memorandum of Agreement (MOA) was signed between the United States Environmental Protection Agency (USEPA) and the department acknowledging the adequacy of Kansas' VCPRP program. The MOA includes assurances to participating parties that there will be no federal involvement at properties properly addressed in the VCPRP program. This assurance provides participating parties a finality that their property has been addressed and does not present a risk to public health or the environment.

I appreciate the opportunity to provide you today's briefing on behalf of the Kansas Department of Health and Environment. Gary Blackburn, Bureau Director of Environmental Remediation and I will be glad to answer any questions that you may have at this time. Thank you Madam Chairperson and Committee members.

BRIEFING PRESENTED BY:

Rick L. Bean, L.G.  
Chief, Remedial Section  
Bureau of Environmental Remediation  
Kansas Department of Health and Environment

**KANSAS DEPARTMENT OF HEALTH OF ENVIRONMENT  
DIVISION OF ENVIRONMENT  
BUREAU OF ENVIRONMENTAL REMEDIATION  
REMEDIAL SECTION**

**ANNUAL PROGRAM REPORT  
FOR THE  
VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM**

Pursuant to the requirements of K.S.A. 65-34,161 et seq.

**ACTIVITIES FROM DECEMBER 31, 2000 TO DECEMBER 31, 2001**

*House Environment  
1-31-02  
Attachment 4*

**BACKGROUND:** The Voluntary Cleanup and Property Redevelopment Act was enacted by the Kansas Legislature on July 1, 1997 (Kansas Statutes Annotated 65-34,161 through 65-34,174). The purpose of the Act is to allow voluntary cleanups of contaminated properties with oversight by the Kansas Department of Health and Environment to promote the transfer, redevelopment and reuse of contaminated properties and protect public health and the environment. Article 71 of the Kansas regulations, specifically K.A.R. 28-71-1 through 28-71-12 were promulgated June 26, 1998, officially establishing the Voluntary Cleanup and Property Redevelopment Program (VCPRP). The law and program is administered by the Kansas Department of Health and Environment (the “department”).

Under the VCPRP, stakeholders performing cleanup of contaminated properties that meet the criteria in the law (low to medium priority sites with minimal risk) can receive a “no further action” determination from the department to provide some protection from potential liabilities. Adjacent property owners who did not contribute to the contamination may also receive protection from the department through such determinations. A streamlined process is utilized to address these sites in an expeditious manner to encourage the redevelopment or enhancement of such properties. Clearly defined cleanup standards that identify the extent of cleanup have been developed and are provided to the voluntary party early in the program so the time and costs involved in cleanup can be determined. The VCPRP is truly voluntary and is designed for industry and businesses to properly address contamination on their property through a private/state partnership. There are no additional burdens or requirements placed on voluntary parties that participate in the program.

**REPORT SUMMARY:** In accordance with K.S.A. 65-34,173, the department shall publish annually in the Kansas register a summary of the number of applicants, the general categories of those applicants and the number of cleanups completed pursuant to this act. This annual report describes the activities accomplished by the department in the VCPRP for the period of December 31, 2000 to December 31, 2001.

The previous annual reports to the legislature contained descriptions of VCPRP activities that reflected significant program building and implementation. VCPRP Program activities conducted during 2001 continued to involve program building and implementation while increased attention was provided to VCPRP program refinement. In September 2001, the program released the second version of the Risk-based Standards for Kansas (RSK) manual which provides a risk based approach to voluntary cleanups across Kansas. The RSK manual allows voluntary parties to take a tiered, risk based approach to address contamination at their properties. The approaches and contaminant concentrations described in the RSK manual follow the regulations as developed by the regulation committee which consisted of twelve major stakeholders. Program refinement will be an on-going objective for the VCPRP during the upcoming year.

A significant development was achieved in the VCPRP program during this reporting period. The department has been in negotiation with Region VII of the United States Environmental Protection Agency for over two years to obtain a Memorandum of Agreement (MOA) relative to the VCPRP. The MOA was executed effective March 2, 2001. The MOA provides USEPA’s acknowledgment of the adequacy of Kansas’ VCPRP program. The MOA also provides assurances to voluntary parties that there will be no federal involvement at properties properly addressed in the VCPRP. The additional assurance from USEPA enhances the departments actions in issuing a No Further Action determination in terms of appeasement of environmental liability.



As reported in last year's annual report, the 2000 Kansas Legislature passed the Agriculture and Specialty Chemical Remediation Act (SB 501) and this bill was signed into law by Governor Graves. This law establishes an industry-supported remediation fund to provide financial aid to property owners faced with costs associated with soil or groundwater contamination caused by agricultural and specialty chemicals such as fertilizers and pesticides. The VCPRP has been identified as one of two programs through which agriculture-related properties with contamination problems will be addressed. The VCPRP still maintains a rather significant percentage of agriculture-related projects; the numbers of agriculture-related applications to the VCPRP is expected to increase with the new funding mechanism for property owners with these types of problems. The VCPRP will coordinate efforts with the Kansas Agricultural Remediation Board (KARB) to ensure that contaminated agricultural sites are handled in an efficient manner. The VCPRP provided names of participating voluntary parties to the KARB so an informational mailing could be sent out to agri-businesses.

As of December 21, 2001, the department has received a total of 227 completed application packages of which 219 properties have been determined eligible to participate in the program. A total of 206 voluntary agreements have been signed. Voluntary Cleanup Investigations have been initiated or completed at 156 properties. Currently, 39 properties have entered the cleanup phase in either the preliminary cleanup proposal process, cleanup planning stage, or in the active cleanup phase; cleanups have now been completed at 11 properties. To date, the department has issued 39 No Further Action Determination letters.

The rate at which applications have been received by the VCPRP program has remained fairly constant; the average number of applications received for 1999 was 3.9 applications per month; 5.9 applications per month in 2000; and 4.3 applications per month in 2001. An average of 53 new voluntary cleanup properties enter the program each year. One of the primary performance indicators for the VCPRP would be the number of "no further action" letters (NFA) issued. The number of NFAs issued per year has increased and will be expected to continue on this trend as properties finish their investigations and proceed through the cleanup phase. This can be demonstrated by reviewing the number of NFAs issued each year: for 1998 only 3 NFAs were issued, 4 NFAs were issued in 1999; 9 NFAs were issued in 2000; and 23 NFAs were issued in 2001 as properties finish the investigation and/or cleanup phase. Cleanup and issuance of a NFA can be fairly quick if only soil contamination is involved. Longer periods of time are required to cleanup contaminated ground water at properties. In Kansas, approximately 80% of all the VCPRP properties involve ground water contamination.

Tables 1 and 2 summarize the number of applicants, the general categories of those applicants and the number of voluntary actions completed pursuant to K.S.A. 65-34,161 through 65-34,174. Figure 1 depicts the number of applications received to the program, and Figure 2 depicts the percentage of applications received relative to applicant category.

TABLE 1  
**SUMMARY OF VOLUNTARY APPLICATIONS**

Applicant Category	Contaminant Class Category				Total
	Class I	Class II	Class III	Class IV	
Agri-Business	0	2	14	36	52
Industry	7	4	24	17	52
Commercial	9	1	5	4	19
Oil/Gas Related	0	7	28	35	70
Governmental Entity	0	2	1	1	4
Private Citizen	6	3	1	1	11
Railroad Related	0	1	9	9	19
Class Category Total	22	20	82	103	227

**TOTAL APPLICATIONS: 227**

TABLE 2  
**SUMMARY OF VOLUNTARY ACTIONS**

Type of Voluntary Action	Voluntary Action Totals				
	2001	2000*	1999*	1998*	1997*
Applications Denied	4	2	1	1	0
Applications in Review	4	0	3	0	0
Applications Approved	219	173	100	56	6
Vol. Agreements Signed	206	162	96	46	3
Vol. Investigation	156	114	57	19	0
Vol. Cleanup Initiated	39	27	17	3	0
Vol. Cleanup Complete	11	6	2	0	0
NFA Letters Issued	39	16	7	3	0

\* From annual report to legislature for respective year.

**Note: As of January 25, 2002, four additional applications have been received (total = 231), and two additional No Further Action Determinations have been issued (total = 41).**

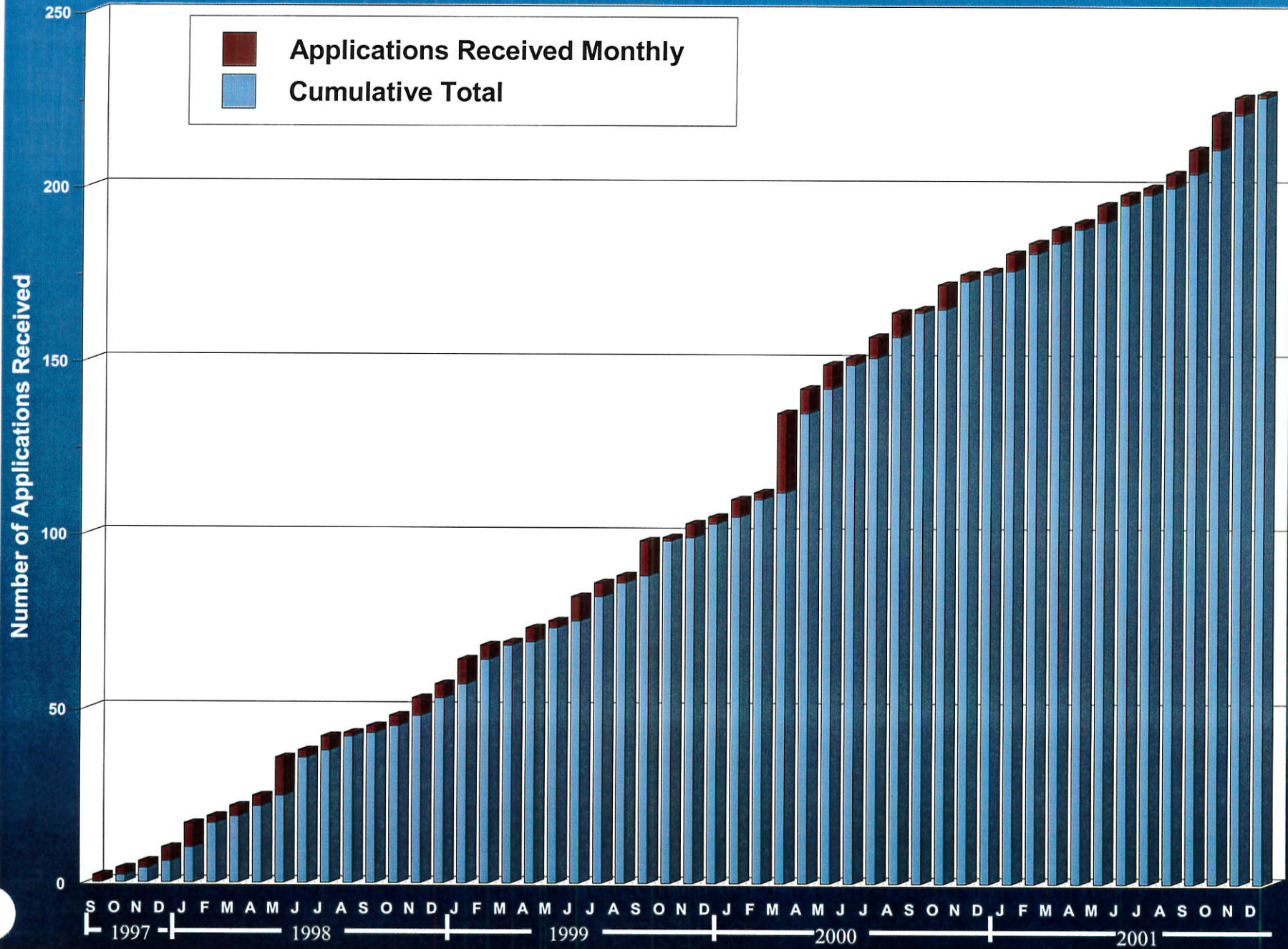
**Definitions:** "Class one contamination (Class I)" means suspected or confirmed contamination is determined to exist on the eligible property, and the eligible property is not a source of contamination or is located adjacent to a property with a known source of contamination.

"Class two contamination (Class II)" means suspected or confirmed soil contamination is determined to exist on the eligible property, there is no known or suspected soil contamination emanating off the eligible property and there is no known or suspected ground water contamination.

"Class three contamination (Class III)" means suspected or confirmed soil or ground water contamination, or both, is determined to exist on the eligible property, and there is no known or suspected soil or ground water contamination that has migrated off the eligible property.

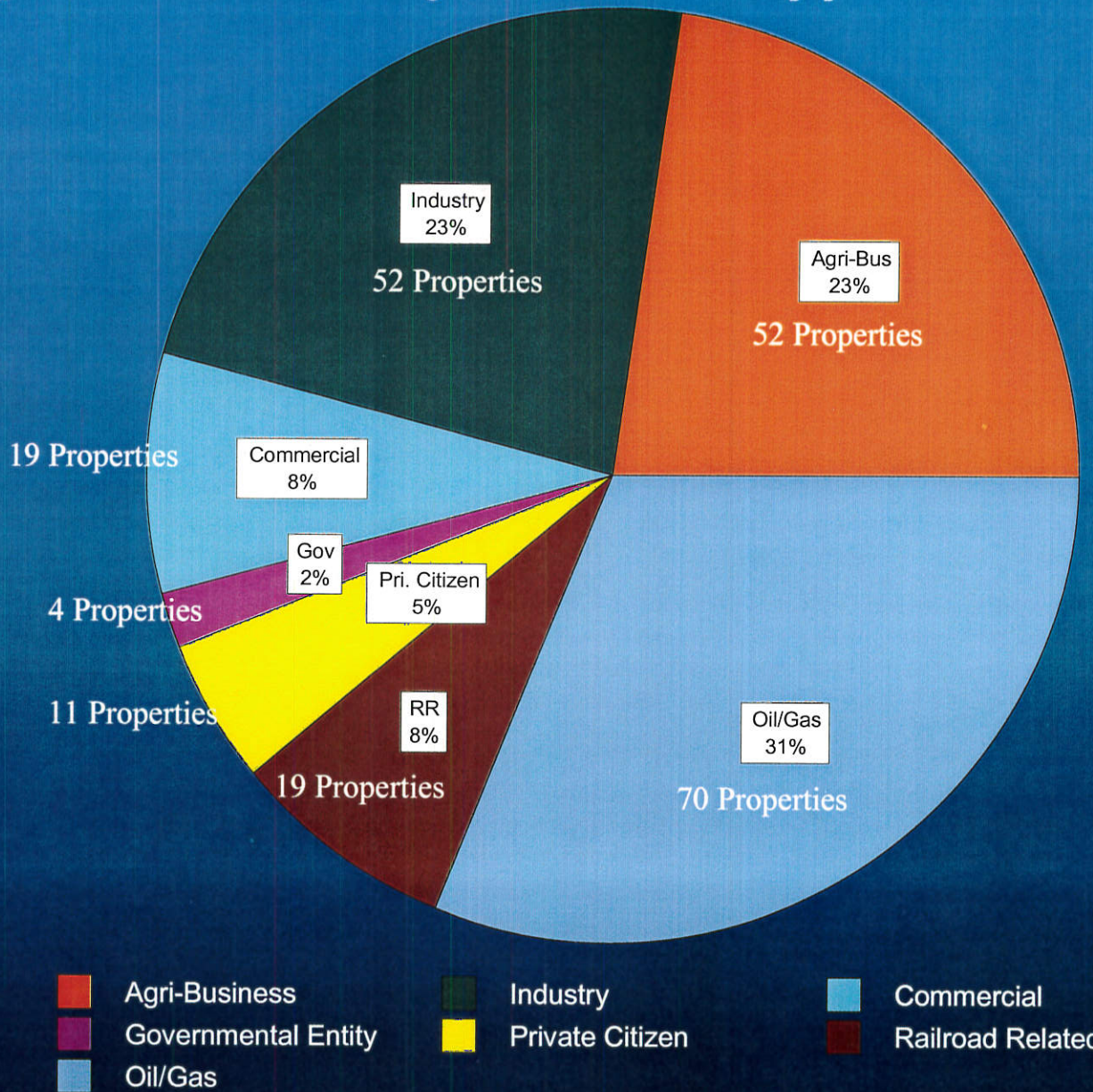
"Class four contamination (Class IV)" means suspected or confirmed soil or ground water contamination, or both, and the contamination exists on and off the eligible property.

# Figure 1 - Cumulative Total of Applications Received



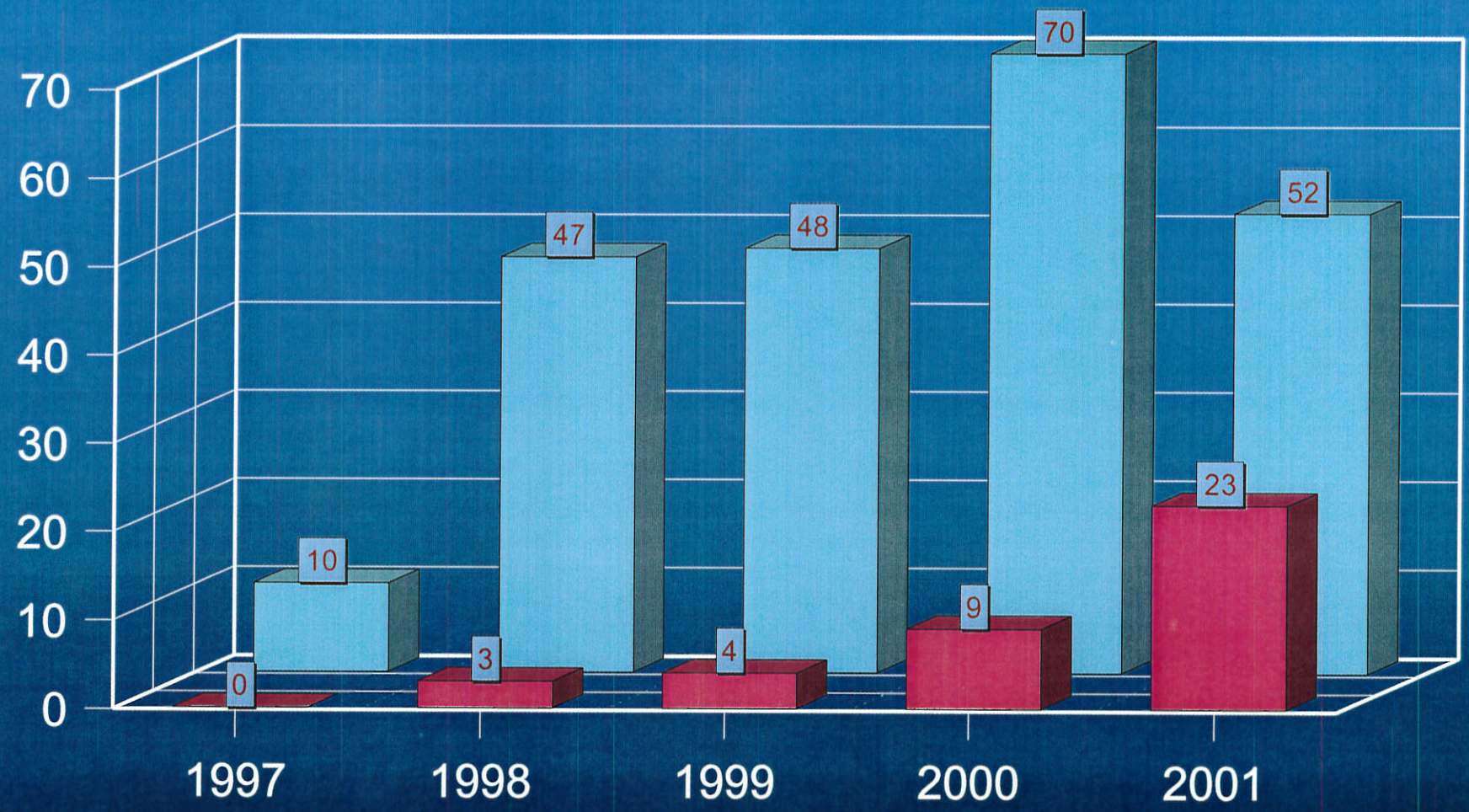


# Figure 2 - Summary of VCPRP Applicant Categories





# Applications and No Further Actions Issued



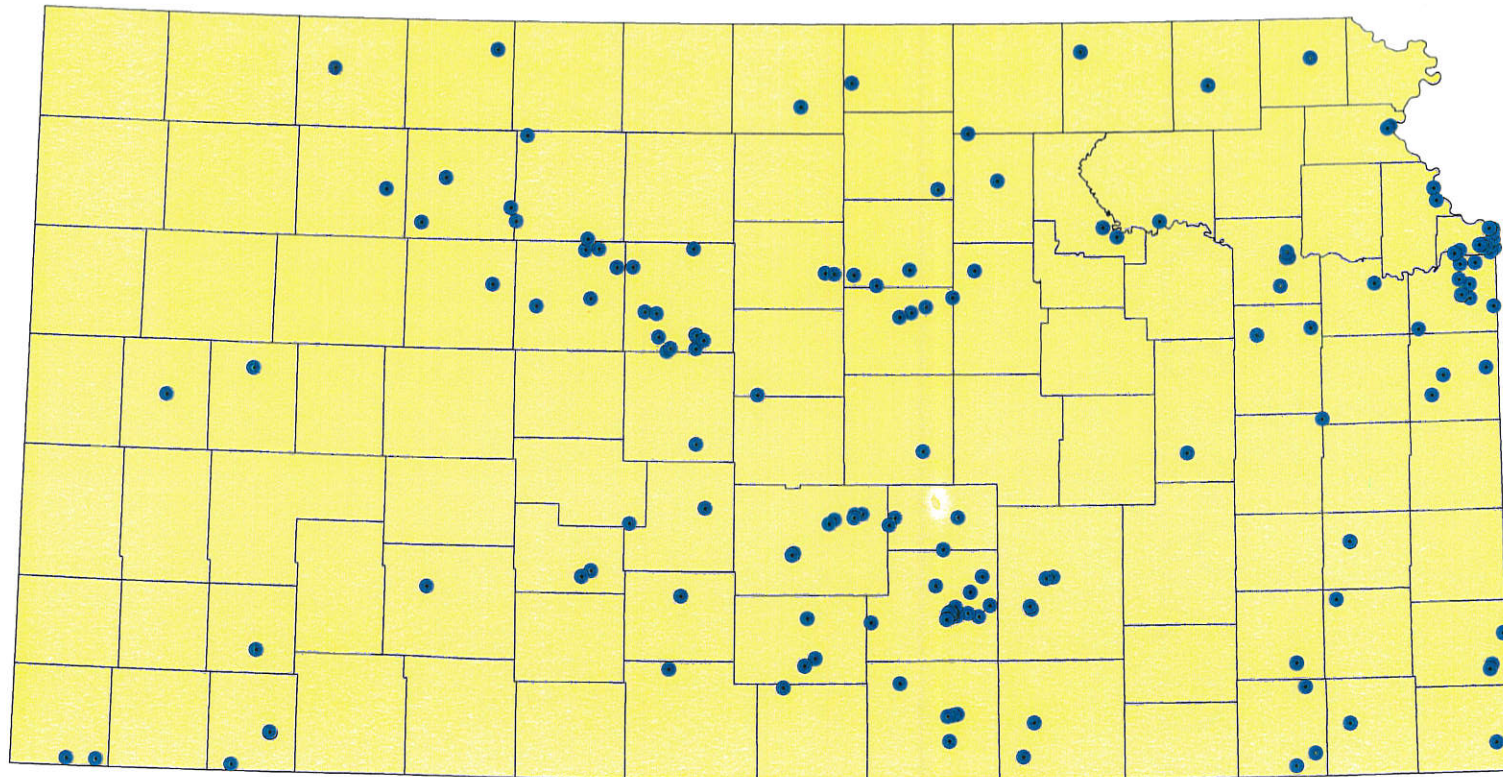
■ Applications Received per Year  
■ No Further Actions Issued per Year

Based on data submitted for the 2001 Annual Report



# VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

## Spatial Distribution of Participating Properties



● VCPRP site location

\* locations may be obscured by overlap in metropolitan areas

Briefing to the  
House Environment Committee  
Update on State Water Plan Issues:  
Ogallala Management and  
Total Maximum Daily Loads  
January 31, 2002, 3:30 a.m., Room 231-N

---

Al LeDoux, Director, Kansas Water Office  
Clark Duffy, Assistant Director, Kansas Water Office  
Tom Bogner, Chair Ogallala Mngt. Advisory Comm.

---

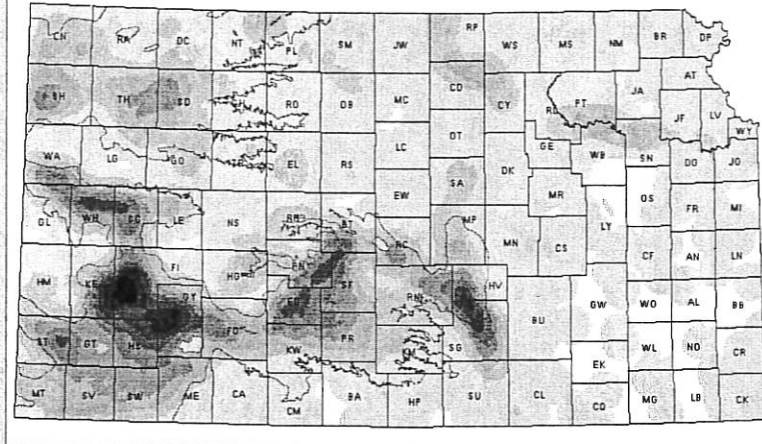
The top issues that the Kansas Water Authority and Kansas Water Office are addressing are those of quantity, with the Ogallala – High Plains Aquifer, and quality, as total maximum daily loads are established and must be met in our surface waters.

*House Environment  
1-31-02  
Attachment 5<sup>1</sup>*

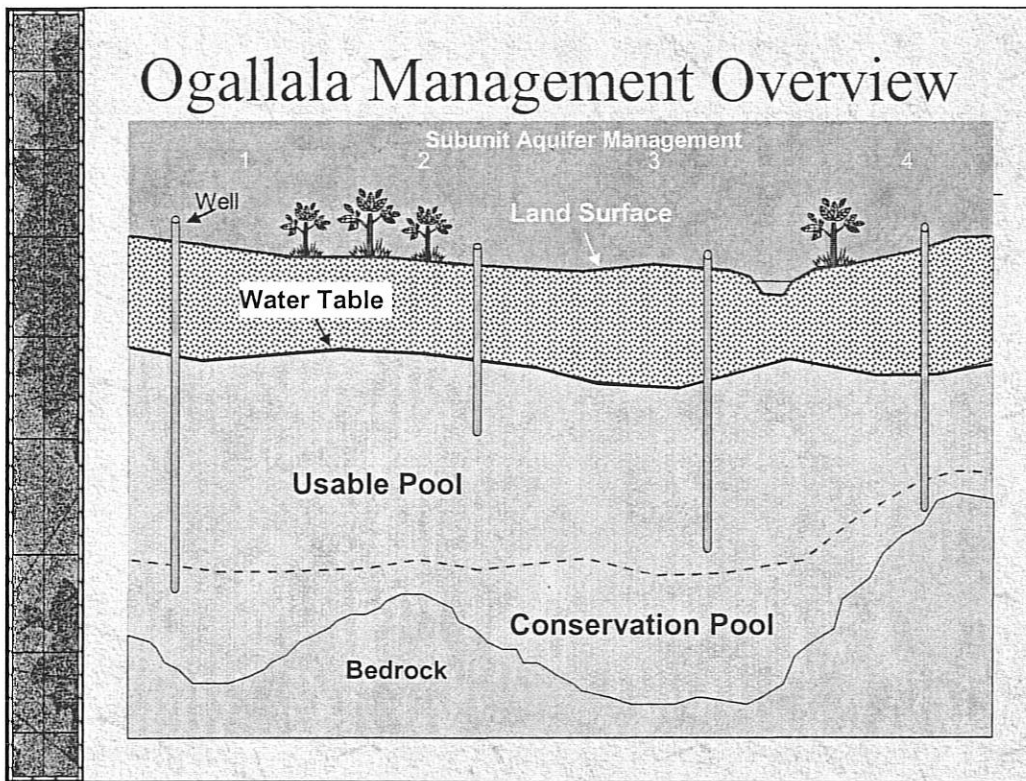


# Ogallala Management Overview

Density Distribution of Groundwater Points of Water Diversion



There has been an awareness for a number of years that the water resources of the High Plains Aquifer are not unlimited. It has been heavily developed – there are over 18,400 wells in the Ogallala aquifer alone – and that level of use can not be supported indefinitely. House Substitute for Senate Bill 287 generated new discussion on how to manage that water resource far into the future to continue to meet the water needs of western Kansas. This is one of the largest water resource challenges we are facing.



One idea that developed out of the studies for the S.B. 287 reports was the “two pools” management approach. This concept was presented to this committee about one year ago – and at over 50 meetings, most of them in western Kansas. The Kansas Water Authority wanted to hear what people thought of this approach. And while the idea generated a lot of discussion, there were mixed reactions.



## Ogallala Management Overview

---

- ✧ April 2001 Kansas Water Authority recommendation
- ✧ Get Local Advice on long term management strategies for the Ogallala Aquifer
- ✧ Management & Technical Advisory Committees
  - ◆ Evaluate the 2 pools concept
  - ◆ Consider other strategies to help areas transition from large scale irrigation

The Kansas Water Authority decided to get advice from those most directly involved and impacted – western Kansans.

## Ogallala Aquifer

### Management Advisory Committee

---

- ✧ 15 western Kansans
  - ◆ Goodland to Hugoton
  - ◆ 3 Kansas Water Authority members
  - ◆ 2 State delegates
  - ◆ 3 Groundwater Management District Board members
  - ◆ 9 Farmers
  - ◆ 1 Banker
- ✧ 2 Ex-Officio members, staff of Federal Delegates
- ✧ 5 State Agency Staff

The Director of the Kansas Water Authority appointed both advisory committees, and worked to get a geographic diversity and variety of backgrounds on the two committees. They met for six months, from May through October, 2001. The Kansas Water Authority reviewed their report, and approved its inclusion into the current draft Kansas Water Plan on January 30, 2002, so it can go out for public review.



## Ogallala Management Overview

---

✧ November 2001 KWA approves Ogallala Report  
for draft of FY 2004 *Kansas Water Plan*

### Water Planning Process

From January – July

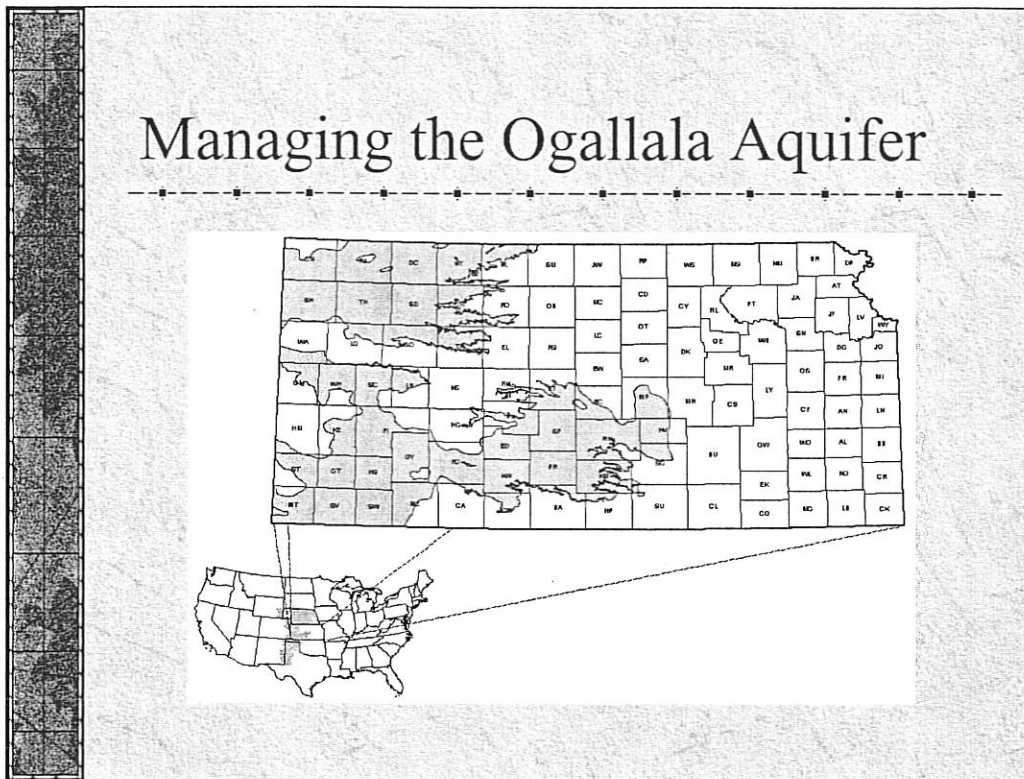
Proposals in the water plan are reviewed by:

- a) 12 basin advisory committees – twice
- b) The public at open meetings and hearings
- c) State agencies
- d) Kansas Water Authority – three times

Plan finalized in July of 2002

The water planning process allows for the input of all Kansans on the use and management of our water resources. Basin advisory committees, conservation districts, groundwater management districts, the general public, state agencies – all have several opportunities to review and comment on the draft plan, before the Authority finalizes it in July. The Ogallala Management recommendations will be given that widespread, thorough review process before the Water Authority determines if to adopt it as submitted, with revisions, or reject it altogether. The public meetings will be held the first 2 weeks in March and the public hearings the first week in June.

# Managing the Ogallala Aquifer



The Ogallala aquifer Management Advisory Committee's report has five primary recommendations, 17 guiding principles, and a number of specific programmatic, technical and time frame recommendations in appendix A & B.



# Ogallala Management Report Recommendations

---

1. Delineate Ogallala aquifer into aquifer subunits.
2. Within each aquifer subunit in decline or suspected decline, define a water use goal.
3. Assign a priority of high, medium or low to each aquifer subunit.
4. Support and expand programs to extend and conserve the life of the Ogallala aquifer.
5. Research and education on the Ogallala aquifer.

## Ogallala Management Implementation

---

- ✘ The three western Groundwater Management Districts are to be the lead on defining these aquifer subunits, water use goals and priorities for their areas.
- ✘ The Division of Water Resources are to define them for areas of the Ogallala aquifer outside of the districts.
- ✘ The KWO, DWR, Kansas Geological Survey and Kansas State University are to cooperate and assist.



If Approved – Next Steps:

- 
- ✧ No new legislation planned
  - ✧ GMDs #1, 3, and 4 submit protocols and time schedules by November 2002 for the FY 2005 *Kansas Water Plan*
  - ✧ Target state program resources to high priority aquifer subunits to achieve water use goals

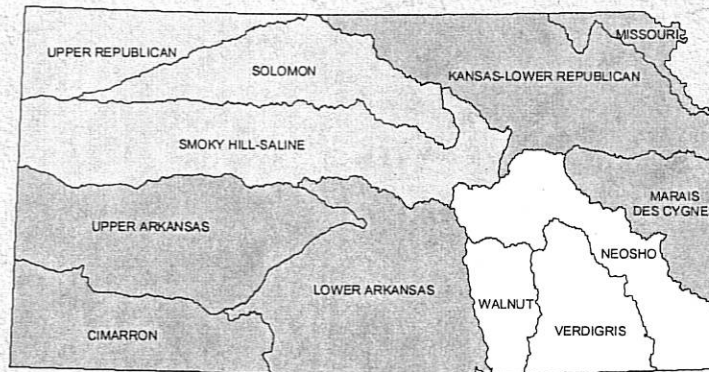
# Status of Federal Action on Conservation of the Ogallala Aquifer

ISSUES CONSIDERED FEDERAL FARM BILL		
Issue	Location in Mayo Report	Comments
1) Conservation Reserve Program Enhancement	Section III B	Will probably be considered
2) Ground Water Conservation Cost Share	Section II B	Will probably be considered
3) Federal Block Grants to States	Section II C	May be considered
4) Commodity Incentive Program	Section III C	Will probably not be considered. The study of the impacts of such programs may be considered
ISSUES COORDINATED THROUGH WESTERN STATES WATER COUNCIL		
1) High Plains Aquifer Coordination Council	Section I C	Will probably not be included. Information coordination can occur through Western States Water Council
2) Modeling, Monitoring & Mapping	Section II A 1	Will probably be included
3) Research	Section II A 2	Will probably be included
4) Education	Section II D	Will probably be included
5) Federal Assistance for Economic Stability	Section IV	May be included



# Status of TMDLs

January 2002



-  Basin with TMDLs Completed
-  Basin with TMDLs Under Development
-  Basin TMDLs completed in 2003

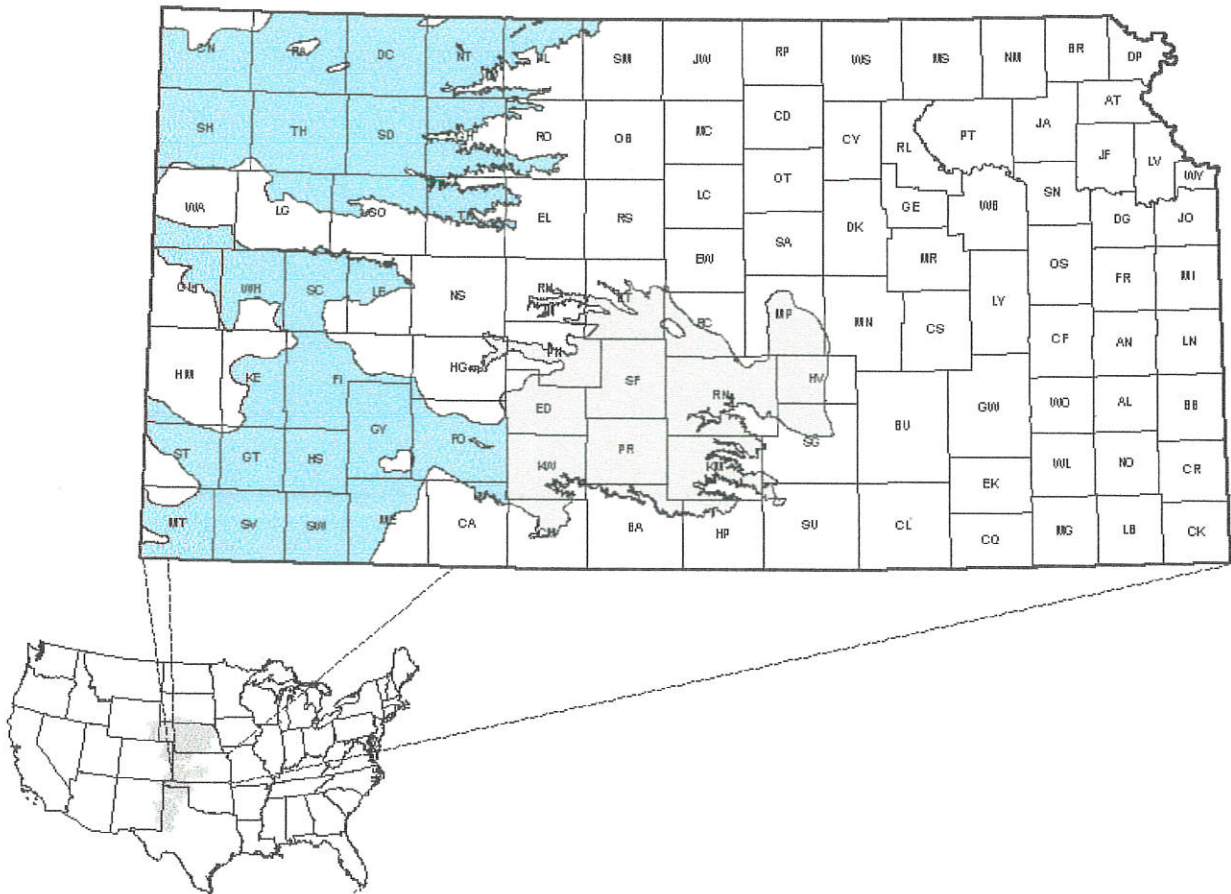
The map intended for planning purposes only  
Kansas Water Office, January 2002

## *Kansas Water Plan: TMDLs*

- ✧ State Water Plan Funds dedicated for FY 2002 almost 2.6 million dollars
- ✧ This does not represent total investment which includes local, federal and other State resources

FY 2002 State Water Plan Funding Total Maximum Daily Loads	
State Conservation Commission	1,752,442
Kansas Department of Health and Environment	777,927
Kansas Department of Wildlife and Parks	50,000
Kansas Water Office (K-State University)	10,000
<b>Total</b>	<b>2,590,369</b>

# Ogallala Aquifer Management Advisory Committee Discussion and Recommendations for long-term management of the Ogallala Aquifer in Kansas



OCTOBER 16, 2001

*House Environment  
1-31-02  
Attachment 6*



T. Bogner Farms  
10055 Eagle Road  
Dodge City, KS 67801

Oct. 16, 2001

Mr. Al LeDoux, Director  
Kansas Water Office  
901 S. Kansas Ave.  
Topeka, KS 66612-1249

Dear Al:

Agriculture is changing faster than the Ogallala Aquifer.

Fully aware of the dynamic nature of water management in the Ogallala, I submit for your consideration the Ogallala Aquifer Management Advisory Committee report. It's the product of six months of deliberation of my committee members and members of the Ogallala Aquifer Management Technical Advisory Committee. Without their dedication and commitment to this valuable resource, this report would not have been possible.

Aquifer usage is based on economics. As with any phase of today's society, volume is the key to survival. This is also true in crop production with our current farm policies. LDP (Loan Deficiency Payments) are based on volume

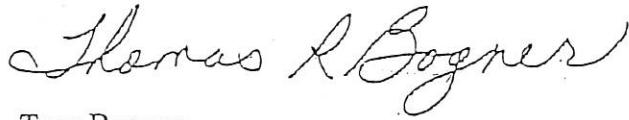
I would ask that everyone acquaint themselves with producers who are and will not only stay in business, but will prosper. You will find that we all are continuing to examine our own operations and seeking the best production practices (and even inventing a few of our own) for our economic viability and that of our great state of Kansas. We all are tenants of our Lord God, accepting the privilege of farming His ground.

We are very fortunate to have in the leadership of Kansas the Kansas Water Office, the Division of Water Resources of the Kansas Department of Agriculture and the Groundwater Management Districts. The scientists and policymakers of these groups, along with the farmers they serve, keep Kansas in the forefront of the High Plains Aquifer management.

Our management committee is backing the Mayo Commission report, "High Plains Aquifer Conservation and Environmental Preservation Act." We felt portions of the report (Water rights retirement program) could initiate federal action to help reduce demand on the Aquifer. We are pleased to be working with Cliff Mayo, chairman of the Mayo Commission, Garden City; Sen. Sam Brownback and Rep. Jerry Moran and their staffs.

I believe our report will begin a unified effort of all parties affected, from irrigators to state agencies and the general public. This will help preserve our precious commodities, agriculture producers, communities, the great State of Kansas and the High Plains Aquifer.

Respectfully,

A handwritten signature in cursive script that reads "Thomas R. Bogner". The signature is written in dark ink and is positioned above the printed name and title.

Tom Bogner  
Chairman, Ogallala Aquifer Management Advisory Committee

# TABLE OF CONTENTS

Letter from Committee Chairman.....	pg. 1
Ogallala Aquifer Committee Members and Staff.....	pg. 4
Ogallala Aquifer Management Advisory Committee Discussion & Recommendations	
I.    Introduction.....	pg. 5
Background.....	pg. 6
II.   Recommendations.....	pg. 7
Guiding Principles .....	pg. 8
Appendix A: Menu of Options	
I.    Conserve and Extend the Life of the Aquifer .....	pg. 12
II.   Management of Aquifer Subunits.....	pg. 13
III.  Research and Education Needs.....	pg. 14
IV.   Future Role of Ogallala Advisory Committee.....	pg. 14
Appendix B: Ogallala Aquifer Technical Advisory Committee Final Report .....	pg. 15
Appendix C: Water Management Programs in the Ogallala Aquifer Region .....	pg. 20
Appendix D: Letters to Federal Delegates.....	pg. 22
Figure:	
Map of Ogallala Area in Kansas.....	pg. 11



## Ogallala Aquifer Advisory Committee Members and Staff

### Management Advisory Committee

Chairman: **Tom Bogner**

Farmer, Dodge City

**Carolyn Armstrong**

Colby City Manager, Colby

**David Brenn**

Kansas Water Authority, Garden City

**Brenda Davis**

Scott City City Clerk, Scott City

**Jay Garetson**

Providence Grain Manager, Copeland

**Greg Graff**

Farmer, GMD #1 Board Mbr, Marienthal

**Carl Dean Holmes**

State Representative, Liberal

**Cliff Mayo**

Kansas Water Authority, Garden City

**Larry McCants**

First National Bank President, Goodland

**Steve Morris**

State Senator, Hugoton

**Don Paxson**

Kansas Water Authority, Penokee

**Steve Rome**

Farmer, Hugoton

**Dick Sterret**

Farmer, Quinter

**Carol Weibert**

Controller Decatur Feedyard, Oberlin

**Wayne West**

Deerfield City Administrator, Deerfield

### Ex-Officio Members:

**Dennis Mesa**

Senator Brownback's Staff, Garden City

**Mike Zamrzla**

Representative Moran's Staff, Hutchinson

### Staff for Committee:

**Susan Stover**

Kansas Water Office, Topeka

**Tom Huntzinger**

KDA/Division of Water Resources, Topeka

**Rex Buchanan**

Kansas Geological Survey, Lawrence

**Larry Meschke**

KS Dept. of Commerce & Housing, Topeka

**Bill Hargrove**, KSU, Manhattan

### Technical Advisory Committee

Chairman: **Al LeDoux**

Kansas Water Office, Topeka

**Fred Askren**

Farmer, Garden City

**Walt Aucott**

U.S. Geological Survey, Lawrence

**Wayne Bossert**

GMD #4 Manager, Colby

**Ben Dickman**

Farmer, Grinnell

**Hank Hansen**

GMD #3 Manager, Garden City

**Bill Harrison**

Kansas Geological Survey, Lawrence

**Kirk Heger**

SW KS Irrigators Association, Hugoton

**Louis Hines**

Irrigator, Colby

**Marc Johnson**, Dean

Kansas State University Ag College, Manhattan

**Keith Karnes**

Crop Manager, Oakley

**Larry Kepley**

Farmer, Ulysses

**Keith Lebbin**

GMD #1 Manager, Scott City

**Melvin Neufeld**

State Representative, Ingalls

**David Pope**, Chief Engineer

KDA/Division of Water Resources, Topeka

**Rolle Stukenholtz**

Crop Quest Consultant, Dodge City

### Staff for Committee:

**Brownie Wilson**,

Kansas Water Office, Topeka

**Gary Clark**

Kansas State University, Manhattan

**Julie Grauer**

KDA/Division of Water Resources, Topeka

**Margaret Townsend**

Kansas Geological Survey, Lawrence

Special Assistance: **Clark Duffy**

Kansas Water Office, Topeka

# Discussion and Recommendations for long-term management of the Ogallala Aquifer in Kansas

## Section I.

### Introduction

On April 12<sup>th</sup>, 2001, the Kansas Water Authority unanimously approved the continued development of a management concept for the Ogallala aquifer through the water planning process. This action included the creation of two advisory committees to further evaluate management ideas for the Ogallala. The Authority directed Al LeDoux, Director, Kansas Water Office, to appoint a citizen-based management advisory committee and a technical advisory committee. The management advisory committee was to evaluate ideas for the long-term management of the Ogallala aquifer to meet water needs as an area transitions to less water availability. The technical advisory committee was to work on methodologies related to technical issues, such as criteria to delineate aquifer subunits. The technical committee would work under the direction of the management committee. The technical committee's report is included as appendix B of this report.

Declines in the Ogallala aquifer continue to be addressed. Activities at the federal, state legislative, administrative, and agency levels directly influenced the creation and charge of the Ogallala Aquifer Management Advisory Committee by the Kansas Water Authority.

State Legislation. The 1999 Legislature, through House Substitute for Senate Bill 287, directed the Kansas Water Authority to study and make recommendations on aquifer resources, long-term prospects related to any necessary transition to dryland farming in areas of the state to maintain sustainable yield and minimum streamflow levels, the potential for competing water needs for at least the next 20 years, and the means to address the competition. The Kansas Water Authority report made the following recommendation specifically for managing the Ogallala aquifer: "Use the water planning process with its integration between local Basin Advisory Committees, the Groundwater Management Districts, the Conservation Districts, local government, and the general public to assist in the development of a) State policy for water usage and management strategies that serve to sustain the replenishable portions of the State's ground water resources to ensure healthy regional communities; b) State policy for water usage and management strategies that serve to efficiently administer and provide transitional guidance when the amount of water in excess of the replenishable portions of the State ground water resources start to become exhausted; and c) Regional aquifer subunit delineations based on aquifer characteristics that quantify the replenishable portion of the aquifer." (KWA, Executive Summary, January 8, 2001, page 42).

Federal Activities. The *Kansas Water Plan* (July, 2000) directed the Kansas Water Office, in coordination with other state agencies, to work with the Kansas federal legislative delegation on changing federal farm policy to reduce irrigation water usage. To accomplish this, the Director of the Kansas Water Office appointed, and the Kansas Water Authority approved, an *ad hoc* committee to make recommendations on possible federal assistance to help conserve the High Plains Aquifer. That committee, chaired by Cliff Mayo, produced the report "Federal Actions Necessary for the Conservation and Environmental Preservation of the High Plains Aquifer" (October 27, 2000). The Mayo Committee strongly urged that the use of incentives to promote conservation be utilized verses a legislative or regulatory approach. Governor Graves endorsed this report, and Kansas Concurrent Resolution #5009 urged the U.S. Congress to take actions

consistent with those recommendations. The Ogallala Aquifer Management Advisory Committee has also supported federal assistance (see appendix D).

Governor's Guidance. Governor Graves, in his 2001 State of the State address, noted he wanted to assure that the people who rely on this resource [the Ogallala aquifer] have access to it for decades to come.

### **Background**

The High Plains Aquifer is the primary source of water for all reported uses in western Kansas. In the 1960's/70's, too many wells were authorized and constructed, and as a result, in many parts of the aquifer in Kansas, mining has occurred. Ongoing technological and management improvements have raised efficiency and decreased pumpage.

The High Plains aquifer is a regional aquifer system composed of several smaller units that are geologically similar and hydrologically connected—that is, water can move from one aquifer to the other. The High Plains aquifer system lies beneath parts of eight states in the Great Plains, including about 33,500 square miles of western and central Kansas. The most important component of the High Plains aquifer is the Ogallala aquifer. The eastern extension of the High Plains aquifer is composed of younger sediments that are similar to the Ogallala. These younger sediments include the “Equus beds” aquifer and the “Great Bend Prairie aquifer.” Also lying above the Ogallala Formation are other Pleistocene deposits and other younger deposits in the valleys of modern streams. Where these stream deposits are connected to the Ogallala or Pleistocene aquifers, the alluvial aquifers are considered part of the High Plains aquifer.

Large-volume pumping (mostly for irrigation) eventually led to declines in the water table, and people realized that the amount of water in the aquifer was finite and could be exhausted. In the 1960's/70's, ground water rights were authorized because Kansas wanted irrigation development.

A considerable amount of water remains in much of the aquifer. For example, declines of 100 feet or more may have occurred in parts of southwestern Kansas, but that represents less than half of the original saturated thickness, and 100 to 200 feet of saturated thickness remains. In other areas, though, the original saturated thickness was much less, often less than 100 feet. (For more information see *An Atlas of the High Plains Aquifer*: Kansas Geological Survey, 2000)

Most of the High Plains Aquifer has been under intense management by the Groundwater Management Districts (GMDs) #1, 3, and 4 for nearly three decades. The Groundwater Management District Act of 1972 (K.S.A. 82a-1020) indicated that effective ground water management could best be carried out by local water users. Each GMD is a political subdivision of the state, and shares authority for managing the ground water resources with the Division of Water Resources, Kansas Department of Agriculture (K.S.A. 82a-730). The GMDs formed in the early 1970's to comprehensively manage the water resources, which had already been heavily developed. To a large extent, the GMDs thus far have focused primarily on conservation issues and education, but their authority is broad enough to support much more specific and sophisticated management approaches. Although all of GMD #1, and most of GMD #3 and #4, are closed to new well development, numerous permitted, legal wells are putting water to beneficial use resulting in a declining aquifer.

The state water planning process is used to prepare the *Kansas Water Plan*. The *Kansas Water Plan*, which the Kansas Water Office is statutorily required to formulate, is the guide for the



state's water policies and programs. The planning process is coordinated, comprehensive, and continuous. All recommendations in a draft plan go through reviews by Basin Advisory Committees, state agencies, district authorities (including GMDs, conservation districts, and watershed districts), and the general public. Revisions are made to the draft water plan and it goes through a second round of comments and revision. The Kansas Water Authority, comprised of thirteen appointed members and ten heads of agencies, has final approval of the plan. The approved plan is submitted to the Governor and Legislature, as are recommendations to implement the *Kansas Water Plan*.

The Ogallala Management and Technical Advisory Committees recommendations will be considered by the Kansas Water Authority for inclusion into a preliminary draft *Kansas Water Plan*. If included, these recommendations will be reviewed through the state water planning process.

## Section II.

### Recommendations

The Ogallala Aquifer Management Advisory Committee recommends setting incremental milestones to extend and conserve the life of the Ogallala aquifer. The committee also decided, after discussion with the Kansas Water Authority Chairman, to abandon the "two pools" proposal. The committee strongly believes that incentive based programs, improvements in technology and education are the best way to conserve and extend the life of the aquifer. The committee makes the following recommendations:

1. **Delineate the Ogallala Aquifer into aquifer subunits to allow management decisions in areas of similar aquifer characteristics.** Each Groundwater Management District, and the Division of Water Resources for areas outside of GMD's, should delineate these subunits. The Kansas Geological Survey, Division of Water Resources, Kansas State University, and Kansas Water Office should cooperate and assist through the water planning process.
2. **The GMDs and DWR should identify each aquifer subunit in decline or suspected decline and establish water-use goals to extend and conserve the life of the Ogallala Aquifer.** Setting water-use goals in aquifer subunits helps define the enormous challenge of managing this large, extremely valuable resource today and into the future. In areas where ample supplies remain either no reductions will be necessary or modest reductions may be recommended to help extend and conserve the life of the aquifer and reduce stress on nearby subunits. In a subunit with a rapid decline and a short estimated usable lifetime, a more aggressive goal should be set. Assistance programs would be targeted to those areas to help reach the water-use goals. Variables to consider in setting the water-use goal include the estimated volume of water available, recharge, amount of annual water use, estimated usable life of the aquifer, public input and others should be determined by the GMD's and DWR.
3. **Identify aquifer subunit priorities to extend the life of the aquifer and sustain the vitality of western Kansas.** Base priority on rate of decline, the estimated time before an area must transition to less water use due to declines and the potential socio-economic impact of the decline and other factors. High priority aquifer subunits should be candidates for acquiring additional information necessary to implement plans, assistance programs and/or other actions deemed necessary by the GMDs and DWR. If incentive

and voluntary plans are unsuccessful, then strict administration of existing water law should be applied.

4. **Support and expand programs and activities to extend and conserve the life of the Ogallala Aquifer.** Provide a menu of options to extend and conserve the life of the aquifer that are consistent with the prior appropriation doctrine, including the guiding principles that are listed in Appendices A and C. In subunits where irrigation is no longer economically feasible GMDs and DWR should identify and implement management strategies to sustain the life of the aquifer in that subunit.
5. **Support and expand research and education on the Ogallala to extend and conserve the life of the aquifer.** Enhance understanding of effectiveness of various options and promote voluntary actions for less water use. Develop tools needed to better manage Ogallala, especially for areas that must transition to less water use. Identify innovative management strategies to be tested in pilot studies that are consistent with the following guiding principles. (See appendices A & B).

### Section III.

#### Guiding Principles

The following principles are to be used in guiding development of future management of the Ogallala aquifer.

1. **Actively use the current legal framework to manage and administer aquifer decline:**
  - a. **Kansas Water Appropriation Act (K.S.A. 82a-730)**

The Kansas water appropriation act, passed in 1945, provides the tool to determine who gets water when there isn't enough to meet all water rights. Priority is based upon the prior appropriation doctrine "first in time, first in right".
  - b. **Groundwater Management Act (K.S.A. 82a-1020)**

The Groundwater Management Act establishes the right of local water users to determine their destiny with respect to the use of the ground water insofar as it does not conflict with the basic laws of the state of Kansas. The districts were created, in part, to address the need to conserve the ground water resources and prevent economic deterioration. There are numerous management opportunities available as a result of the statutorily granted authorities of the districts.
2. **IGUCAs (K.S.A. 82a-1036) provide water management tools.**

Although administration of existing rights is based on priority, there may be cases, as determined by the GMDs and/or DWR, where some flexibility is merited. For example, through statutorily authorized corrective control procedures, an Intensive Groundwater Use Control Area (IGUCA) allows more flexibility in possible solutions to managing water shortages than strict water right administration. The management requirements within an IGUCA, once approved by the Chief Engineer, have the effect and force of law and as such, are strictly enforced. An enhanced management plan outside an IGUCA relies on current regulations, programs, and voluntary, incentive-based approaches.
3. **Use the current organizational structure to manage ground water:**
  - a. **Groundwater Management Districts**
  - b. **Kansas Department of Agriculture, Division of Water Resources**

Retain the current governmental structure with responsibility for managing the ground water resource shared between the GMDs and DWR. Allow GMDs the opportunity for first response in addressing ground water-decline transition.

4. **Use the State Water Planning Process to obtain public input on new proposed management strategies for the Ogallala Aquifer.**

The State Water Resource Planning Act (K.S.A. 82a-901a) provides the authority and mechanism for comprehensive planning of the state's water resources. Use this existing planning structure to help evaluate and recommend the actions necessary to carry out the recommendations of this report, consistent with guiding principle #1, above.

5. **Utilize voluntary, incentive-based approach over regulations where possible.**

Voluntary, incentive-based approaches are an important strategy to extend and conserve the life of the aquifer. Voluntary approaches would include education, cost sharing, and retirement of water rights.

6. **Enforce current state law and regulations over new management plans.**

There are many compelling legal, technical and socio-economic reasons for actively managing and administering future Ogallala aquifer pumping in the context of the Kansas Water Appropriation Act and the Kansas Groundwater Management Act as opposed to developing new aquifer management plans.

7. **The federal government has a role in conserving the High Plains Aquifer.**

The High Plains Aquifer, which consists primarily of Ogallala water, underlies eight states and is the source of ground water for about a third of all irrigation in the United States. The problems associated with the decline of the aquifer should be addressed at the federal, state, local, and individual levels. Federal assistance should be for research, education, and voluntary, incentive-based programs only. Federal assistance is not to be tied to federal pre-emption of States, GMDs, and other local authority.

8. **The future economy of western Kansas will remain agriculturally based.**

Agriculture will remain the dominant economy of western Kansas, even in areas where water use must decrease. Supplemental or marginal irrigation will have an increasingly important role in areas that become water short; it could serve as crop insurance for a primarily dryland operation. Shifting from full irrigation to supplemental irrigation or dryland takes time and planning.

9. **Management should be through the use of aquifer subunits.**

GMDs #1, 3 and 4, and DWR should define aquifer subunits (smaller, more homogenous areas of the Ogallala) for water management purposes, and define high priority subunits based on aquifer conditions. Set water-use goals to conserve and extend the life of the aquifer for each subunit in decline. Because there must be a solid technical understanding of each of these subunits before specific water use goals can be established, sufficient time must be provided to gather and interpret the relevant technical data.

10. **Management decisions should be based on hydrologic conditions, with consideration given to socio-economic and related issues.**

Identify management strategies when and if an aquifer subunit becomes depleted beyond an identified, renewable level, and economics or voluntary incentives have not reduced



withdrawals sufficiently to extend the life of the aquifer. These strategies should be based on hydrologic conditions, with consideration given to the socio-economic issues and related factors. Through careful evaluation, the GMDs and/or DWR may determine that an alternative management plan is better suited for a given aquifer subunit, but an explanation (justification) for this decision must be provided to well owners within the subunit.

11. **Provide information so water users have a workable timeframe to adjust to reduced water use.**

Providing information on the status and projected usable life of the aquifer will help water users plan for their future and when they might need to make adjustments to reduced water use. The State and GMDs have a responsibility to share the best available information on aquifer resources in storage, trends, and projections.

12. **Continued research and education on the Ogallala Aquifer are critical.**

Strongly support additional research on the aquifer, the potential economic impacts of declining water supplies, and evaluation of alternative management strategies to extend aquifer life, which are important to making best management decisions. Of particular importance are the specific pilot programs, and the gathering of comprehensive field data, as described in the Technical Advisory Committee Summary Report. Enhanced and continued education on the Ogallala is also essential to help communities and individuals plan their water use into the future.

13. **Maintain Ogallala Advisory Committee for future needs.**

Maintain an Ogallala Aquifer Advisory Committee to be on call to the Kansas Water Office and the Kansas Water Authority to make recommendations that would be pursued through the water planning process.

14. **Establish a timeline for the coordinated development of a policy to extend the life of the Ogallala Aquifer.**

Establish a timeline for development and achievement of policy goals to extend the life of the Ogallala aquifer. The work is to be a coordinated effort between the GMDs #1, 3, and 4, and the State water agencies. The timeline is for planning to meet the five recommendations made in this report. Appendix A, Part II. "Management of Aquifer Subunits" presents key dates regarding subunit assessment, definition and management. For example, by the summer of 2003, the GMDs should have defined the protocols they will follow to establish subunit boundaries.

15. **Support aquifer recharge where local conditions are appropriate.**

16. **Recognize that free market economic forces can be very useful at reducing the rate of aquifer decline, and allow such forces to develop.**

17. **Inquire and document what current and planned action other states are taking to manage the use of the High Plains Aquifer.**

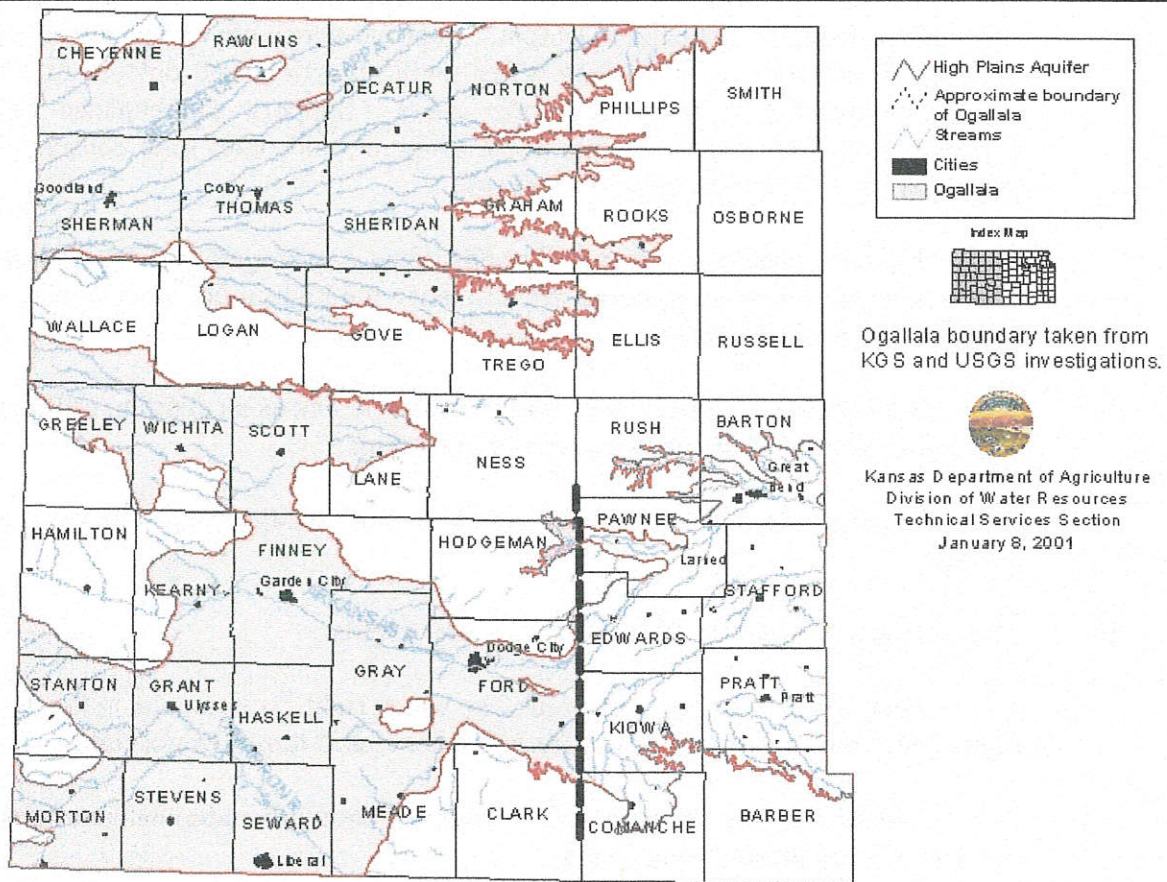


Figure 1: Area of the Ogallala, with connected alluvial aquifer, within the High Plains Aquifer

## Appendix A: Menu of Options

### I. Conserve and Extend the life of the aquifer

#### A. Conservation

1. Increase irrigation efficiencies that result in actual water savings, and maintain or increase agricultural output. Improve water use efficiency through technical assistance and/or funding water saving practices and devices to allow better management by individual water users. Support, and enhance where possible, the Water Resource Cost Share program, and other state conservation programs identified in the *Kansas Water Plan*.
2. Provide financial assistance for subsurface drip irrigation (SDI) and other highly efficient irrigation systems, which justify the high initial capital costs and result in actual water savings.
3. Set criteria for minimum water savings to be met as a condition of the cost share assistance for more efficient irrigation systems.
4. Develop other conservation measures that would contribute to water savings.

#### B. Seek to Reduce number of authorized water rights.

1. Seek federal funding for voluntary water right purchases to retire water rights from the Ogallala aquifer in areas that are closed to new water rights.
2. Federal support for water right retirement should be administered through the State Conservation Commission.
3. The Groundwater Management Districts, as the local sponsor, should identify and recommend areas for possible water right purchase in accordance with K.S.A. 2-1915 and 2-1919, and in cooperation with the Division of Water Resources.
4. Encourage development of state incentives for water right retirements, including but not limited to, state funding of water right purchases.

C. **Support the Groundwater Management Districts' and the Division of Water Resources' capability to enforce current regulations on water usage, including providing adequate staff.** It is unreasonable to expect enforcement to be the sole motivation for compliance. Successful enforcement relies on a general willingness to comply with the rules by most users in response to a strong and consistent enforcement presence that will not allow violations to persist. State and local compliance-monitoring and enforcement entities should be given the resources to ensure a consistent and rapid response to compliance violations.

1. Enforce requirement of accurate water use reports from individual water right owners. This would include monitoring meter compliance.



2. Respond to all reported overpumping, and provide aggressive enforcement against blatant and recurring overpumpers, and all other illegal acts, particularly those that result in excessive water use.

3. Clearly define the authority and responsibilities for compliance monitoring and enforcement of each Groundwater Management District and the Division of Water Resources. Rules and regulations, district management plans, and memorandums of understanding should express the areas of responsibility of each entity.

## **II. Management of Aquifer Subunits**

A. Develop a protocol to define criteria to a) identify preliminary aquifer subunits, b) establish preliminary water use goals for each subunit, and c) classify aquifer subunits as high, medium, or low priority, using existing data and tools recommended by the Technical Advisory Committee. The GMDs and DWR, with assistance and cooperation from the KWO, KGS, and KSU, are to establish the protocols and report them to the Kansas Water Authority by July 2003. The GMDs, and DWR for Ogallala aquifer areas outside the GMDs, are to identify preliminary aquifer subunits and preliminary water use goals.

B. The GMDs and DWR should set timelines to achieve sections C through H of the management proposal by July 2003. The progress made towards the aquifer subunit goals is to be reported to the Kansas Water Authority every 2 years, beginning in 2004.

C. The GMDs and DWR are to establish criteria to identify aquifer subunits as high, medium, or low priority, and then assign priority to each subunit in their areas. Consider factors such as rate of decline, the estimated time before an area must transition to less water use due to declines, legal (water right) criteria in each subunit, the economics, and potential socio-economic impact of the declines. High priority aquifer subunits would be targeted for additional data if needed, assistance, and possibly enhanced management.

D. Identify aquifer subunits based on aquifer characteristics and other key parameters that can be used in water resource management. Each GMD is to identify the aquifer subunits within their district, and DWR is to identify the Ogallala aquifer subunits outside of the districts. The KGS, DWR, KWO and KSU should cooperate and assist. The Technical Advisory Committee has recommended several tools for delineating aquifer subunits. An aquifer subunit can later be redefined, based on new data or management needs.

E. For high priority aquifer subunits, enhanced water management plans should be considered by the GMDs. These enhancements can be developed with input from water users in the subunit about management approaches outside of strict water administration. The Chief Engineer must determine that these approaches are not in conflict with the water appropriation act and are in the public interest. If GMDs choose not to implement enhanced management plans the Chief Engineer may initiate them in response to the public interest to protect the resource.

F. Analyze additional data as needed to verify high priority aquifer subunit conditions, and as needed for proposed management strategies.

G. Further develop and implement an enhanced management plan for high priority aquifer subunits, after additional data verifies conditions. Each enhanced management plan should have a date to indicate a defined level of progress in reducing the rate of Ogallala aquifer decline, and a course of action if that level of progress is not achieved.

H. Transition to Dryland. Develop assistance programs for farmers that transition to dryland farming. Different programs will be needed for farmers who choose to transition before supplies are exhausted, as opposed to those who do so after supplies are exhausted. Provide education on no-till farming that maximizes infiltration of rainfall.

### **III. Research and Education Needs**

A. Determine a basis to prioritize the need for information in the subunits, and develop a monitoring program that is consistent with the level of certainty necessary for the proposed management strategy.

B. Recommend development of a model using coupled hydrologic-economic tool with GIS support.

C. Develop a partnership between Western Kansas Irrigation Research Project and Kansas State University, GMDs #1, 3, and 4, Kansas Water Office, Division of Water Resources, and Kansas Geological Survey. The partnership is to design and test innovative strategies to conserve and extend the life of the Ogallala aquifer in one or more pilot areas.

D. Increase efforts to educate and assist current irrigators on most efficient use of systems in ways that save water and maintain or increase farm profitability. Continue support for hands-on assistance provided by Kansas State University's Mobile Lab.

E. Support development of a website that links various databases, maps, tools, references, reports, and agencies involved with the High Plains Aquifer. Develop "web master" position to keep site current, and to provide educational outreach.

F. Refine estimates of recharge (precipitation and irrigation recharge), examine long-term climatic variation, and the relationship between pumping amounts and change in aquifer storage.

### **IV. Future Role of Ogallala Advisory Committee**

A. Maintain committee on call to continue to advise the Kansas Water Office and Kansas Water Authority, and give recommendations to be pursued through the water planning process.

B. Give recommendations for future actions on managing the Ogallala aquifer that would be considered through the water planning process, approved by the Kansas Water Authority, and identified in the *Kansas Water Plan*.

**Appendix B: Ogallala Aquifer Technical Advisory Committee Final Report**  
**Approved 10/3/2001**

**Recommendations on Issues**

The Ogallala Aquifer Technical Advisory Committee (TAC) of the Kansas Water Authority was charged to review and consider technical issues associated with the development of management concepts focused on the Ogallala aquifer in Kansas. Working under the direction of the Ogallala Aquifer Management Advisory Committee, the TAC provides recommendations on the following issues presented for review and comment.

**Issue 1: *Establish a protocol that will allow parties to agree on data that will or can be used in management strategies prior to the development of the strategy. This may include quality assurances and control measures, recommendations of use and scale for that data.***

- 1) Data are simply a representation of or provide the bases for a model of natural conditions and/or phenomena. As such, data will always have some level of uncertainty and accuracy in their representation.
  - a) Where possible and practical, the quality of existing data should be improved. In some cases, quality control programs from the moment of capture to incorporation into a database can document levels of uncertainty well enough to preclude the need for additional data. In no cases can a quality control program improve the accuracy of data once captured in time, but enhancements to other characteristics of the data may be conducted, (e.g. improved ground elevations for monitoring wells).
  - b) There is sufficient existing information and established water-level networks to obtain future data for planning and monitoring regional trends. Depending on the scope of enhanced management plans, additional data may be necessary to provide a higher level of confidence for a given portion of the aquifer.
  - c) Selection of appropriate data is dependent upon management goals and whether the current levels of uncertainties in existing data sets are low enough to implement those management objectives.
- 2) Any management plan or strategy that involves State programs, activities or funds should be outlined and described in appropriate sections of the Kansas Water Plan.
  - a) Describe analysis methodologies and data sources used in that process and an iteration of the purpose and scope of the management strategy.
  - b) The Kansas Water Plan is not the primary controlling factor in deployment or operation of a management strategy, but is one method to convey and illustrate management activities and goals to a broad range of interested parties.
  - c) The principle advantage of using the Kansas Water Plan is its development process, which is open to review and feedback from other state, local, and public entities.
    - i) All parties are presented with management goals, selected data sources, and chosen analysis procedures to evaluate proposed plans and strategies and implement those accepted.



- ii) This information can then be reviewed by and is open to consideration and comment from the public, including those affected by the management strategy.
  - d) The Kansas Water Plan can be the vehicle to coordinate and partner management objectives with other entities for project development, analysis needs, and data collection. Establishing an expanded consortium of partners would assist in the acceptance of management plans, data collection, and analysis methods.
- 3) Where appropriate and practical, all data that is used in any management policy or strategy should have complete and appropriate "Metadata" developed. Metadata is often described as "data about data." Metadata provides additional information about databases, spatial GIS files, and other sources that are normally not contained within the data files themselves. For example, information within metadata files would list who created the data set, how it was captured, what are the limitations, who do you contact for more information, and how often will be updated.
- a) It is recommended that all data files used in management considerations have fully developed metadata files that are modeled after the Federal Geographic Data Committee (FGDC) Standards. This is not to imply that data will be limited to those sources that have fully developed FGDC standard metadata files, rather a recommendation to have the files developed when possible in order to provide background information.
  - b) The metadata files should include, but is not limited to the following parameters; documentation and methodology on capture procedures, listings of appropriate scales of use, access or use constraints, data or attribute quality, data structure, field definitions, and contact and originator information.
- 4) Management plans or strategies should be supplemented with additional data sources if needed and when practical.
- a) The need for additional data is dependant upon the current accuracy of existing data and what is considered an acceptable level of uncertainty in relation to the management scope and what it is trying to address.
  - b) Consideration of how much detail is necessary to manage the aquifer and the costs/benefit ratio of that additional information.
- 5) Establish smaller, more homogenous aquifer subunits and create a basis for prioritizing need for information (such as estimates in the usable life of the aquifer). Then move towards a monitoring program for high priority subunits that combines the existing observation network with other statistically based measurement designs.
- a) Monitoring by subarea would permit more efficient use of information and resources in achieving desired objectives. In most cases, existing data and networks are probably adequate to develop a cost-effective and process-based monitoring strategy with the addition of new wells, as information is needed.

- b) By prioritizing aquifer subunits, resources can be better targeted without over or under management. A second advantage of using aquifer subunits for management purposes is the facilitation of adding data sources as needed.

**Issue 2: *Develop procedures to conduct a literature and data search on all existing information from databases and aquifer studies. Establish a procedure for this information to be made available to interested parties and a recommendation on the appropriate federal, state, or local organizations that should conduct this exercise.***

- 1) Establish and maintain an electronic data warehouse / internet site focused solely towards knowledge and information about the Ogallala aquifer. This site would contain a variety of data that is available to a broad group of users ranging from the general public, to GMD and agency personnel, to system modelers and researchers.
  - a) The data warehouse would contain information related to:
    - i) Hydrogeologic conditions (water level information, bedrock elevations)
    - ii) General water uses (crop production, municipal demands)
    - iii) Economic and social issues (jobs, supported industries)
    - iv) Energy issues (sources and availability, energy uses in crop production)
    - v) Interested agencies and contact information (GMDs, KDA-DWR, KWO)
    - vi) Water rights (legal and enforcement issues, technical assistance)
    - vii) Others.
  - b) In order for this data warehouse to be viable and a current source of information, a “web master” position should be designated.
    - i) In addition to creating and maintaining the site, this work would also be focused to general data support for recognized management entities and researchers.
    - ii) This work would also be involved in educational outreach programs throughout the state.
    - iii) This work would also work with the eight state, High Plains Aquifer coalition of geologic surveys in disseminating information about the Ogallala.
    - iv) It is recommended that funding for this work be made available to provide these services. Funding sources could include the State Water Plan Fund, GMD Support, Kansas Water Research Institute, or federal sources or grants. The exact number of positions and amount of funding would be controlled by the level of responsibility and work load.
    - v) This site and program should be evaluated after a set number of years to evaluate its use and future expansion or continuation.

- 2) The Ogallala data warehouse would work in conjunction with the newly formed Ogallala Aquifer Institute at Garden City, Kansas.
  - a) Where the data warehouse provides electronic media and access, the Ogallala Institute would serve as an educational and demonstration site for work products and other material related to the Ogallala aquifer in Kansas and its extent in the country.
  - b) The Institute could contain display cases, interactive and informative CDs, and simple fact sheets and pamphlets about the Ogallala. Computer terminals could be setup to provide real time access to data from the data warehouse plus other interactive and analysis software programs orientated to water issues in the Ogallala.

**Issue 3: *Establish a protocol to identify aquifer subunits that can be used for any management concept. This may include identification of key parameters and political considerations.***

- 1) It is recommended that the Ogallala aquifer be managed at a subunit or sub-regional level to be designated by local Groundwater Management Districts where represented. Given the heterogeneity of the aquifer across the state, aquifer subunits are appropriate for both targeting management policies and decision-making.
- 2) Subdividing the aquifer into management units does not necessarily require that every unit have a special management policy. Many areas of the Ogallala appear to have reduced their rate of decline and managing the aquifer by subunits should be viewed as a process of prioritizing resources and management efforts.
- 3) Initially delineate preliminary aquifer subunits by focusing on the current conditions of the aquifer rather than on past, historical trends. The complexity and method of determination of the aquifer subunits can change based on scope and purpose of the management plan or if additional data sources are acquired.
- 4) There are several methods to determine aquifer subunits and management entities are encouraged to choose one that best fits its needs. The delineation of aquifer subunits should be based on a variety of methods and the different results should be compared. Some of possible methodologies for aquifer subunit delineations are as follows:
  - a) Geo-statistical clustering routines (example provided in attachment). A minimal number of aquifer characteristics are suggested for use in assisting the determination of subunits so that the relationships between the parameters can be better understood.
  - b) Hydrogeologic analysis.
  - c) Local knowledge and experience.
  - d) Results from past studies and research activities.
  - e) Resource trends and current conditions.
  - f) Other techniques.



- 5) It is further recommended that all results be presented for public review and comment. Within the boundaries of the Groundwater Management Districts, this shall specifically include the appropriate GMD management plan process as defined in the GMD Act and the State Water Plan.

***Issue 4: Review, report, and develop where necessary technology tools that would be available to planners and decision makers in developing and implementing management concepts. Ensure that these tools are capable of the flexibility to be used across the aquifer region.***

- 1) Expand or develop software, and in particular, internet tools that would provide local entities and other agencies the ability to process and analyze particular data sets relevant to the State of Kansas. Many of these types of tools exist in some fashion but often require specific knowledge about the data and software and how it is modeled or the use of specific software tools. Migrating these capabilities to internet-based tools would greatly increase their use and facilitate the decision making process without the limitations of capital and staffing. An example of tool development would be an internet-based mapping program that allows users to select a point in the state and then extract data and graphs showing the ground water trends from the three closest monitoring wells. Other type of tools could include:
  - a) The ability to process water right summaries of past reported usage and current authorized amounts,
  - b) Display of regional ground water trends and saturated thickness maps
  - c) Review of water quality and its relationship to different use standards
  - d) Run farm level cost/benefit evaluations on water use, energy costs, and crop production.
- 2) It is recommended that a regional hydrologic/economic model be developed that integrates water usage, aquifer response, agricultural production and economics.
  - a) The focus of this model is to answer “what if” questions based on a variety of water use scenarios and the resulting economic factors.
  - b) The model would be used to generate regional economic forecasts in response to various water use options and water availability.
  - c) The model would allow exploration of the regional economic impacts resulting from any changes in agricultural production, changes in water use, changes in saturated thickness, well yield, water quality, and crop yield.
  - d) Ideally, this model would contain the flexibility for operation across the aquifer and provide for a range of data selection or input parameters at differing levels of resolution.

***Issue 5: Recommendations on Future Research Needs***

- a) A continued commitment to research and analysis of the High Plains Aquifer should be recognized. There are many characteristics of the aquifer that are generally unknown or roughly estimated. In this light, future research should have continued commitment to hydrogeology, irrigation, cropping systems, policy, and economics.

### Appendix C: Water Management Programs in the Ogallala Aquifer Region

Programs	GMD #1	GMD #3	GMD #4	KDA/DWR
Number of Irrigation Wells	2,586 wells	9,883 wells	3,473 wells	799 wells
Number of Municipal wells	37 wells	235 wells	76 wells	115 wells
Number of other water wells	178 wells	751 wells	139 wells	242 wells
Population Base <sup>1</sup>	9,431	133,572	26,141	18,742
1. # Irrigation acres in district or Ogallala area outside district	246,789 acres	1,593,329 acres	378,577 acres	33,241 acres
2. Wells metered (%) Based on water use meter reading reports	45% flow meters; 41% hour meters	95%	20%; all new and redrilled wells since 1980	All wells in IGUCA, and all new or changed point of diversion wells
3. Township Closure	All GMD Closed	Yes, majority closed. All 250 townships re-evaluated yearly	Majority of GMD Closed	Prairie Dog Creek basin, Hodgeman & Ness Co., Bluff Creek basin (Clark Co.)
4. Contracts w/ KWO	Yes; to correct water use reports	Not currently, but have past 10+ years.	No, but does water use editing	No, but old MOU on water use program, and cooperate on blatant and recurring over-pumpers.
5. Cooperate w/ KGS on various projects	Yes; on data maps	Yes; data maps, evaluation of sat. thickness, and other.	Yes	Yes. Annual well measurements, monitoring well installations, review of research activities.
6. Data Collection	Yes	Yes; water quality & level.	Yes	Yes, well measurements.
7. Education	Yes	Yes; water rt. & water use rept assist, website	Yes	Water use reports, subbasin working groups, websites, conferences.
8. Irrigation Efficiency Plans	Yes	Yes; provided assistance over 10 years	Yes; require on new wells, changes, and isolated cases	Upper Ark basin irrigation survey
9. Metering Policy	Yes, all	Yes, all	Yes, on new and redrilled wells since May 1980	Yes, all new or changed wells and those in an IGUCA.
10. Pilot Recharge Program	Yes- earth dam pilot project	Studies ongoing. Past pilot project.	No; cost shared in past	No; proposed Upper Ark basin working group project
11. Plugging of Abandoned Wells	Yes; inventory and assistance	Yes, technical assistance	Yes- require owner to address	No
12. Rainfall Observation Network	Yes	No; weather stations in past	Yes	No
13. Safe Yield	Yes, new wells.	No; planned depletion	Yes; new wells only	Yes, safe yield analysis using USGS recharge values in 2 mile circles.
14. Soil Moisture	Yes; provides	No; in past was	No	No

<sup>1</sup> Kansas Census Population data, April 1, 2000, certified to Secretary of State by Division of Budget on July 1, 2001, and revised on August 16, 2001.

<b>Programs</b>	<b>GMD #1</b>	<b>GMD #3</b>	<b>GMD #4</b>	<b>KDA/DWR</b>
Measurements	equipment	not used much		
15. Tailwater Control	Yes; prevent waste	Yes, waste of water policy & regulation	Yes, forbid loss off land; require reuse if sufficient quantity.	Addressed through no waste of water and must be kept on authorized place of use.
16. Water Conservation Plan	Yes	Yes; provide assistance	Yes	Requirement on some water rights, and Water Right Conservation Program
17. Water Level Measurements	Yes special request	Yes, by special request, and a monitoring system & database	No	Yes, wells >100 g.p.m. must have water level measurement tube. KGS/DWR measure 1,000+ wells annually. DWR measures 300+ quarterly, 100+ monthly in focus areas.
18. Water Quality Program	supply kits and	Yes, provide kits, info & tech assistance; have sampling network of >500 wells for monitoring & by special request	Inactive, rely on Local Environmental Protection Group efforts now	Yes, when contamination effects quantity or use made of water.
19. Water Right Administration	Yes; assist district members	Yes, assist district members, monitor MOUs, Board Reviews on request 2 mile radius studies	Yes; track 5 year allocations, assist district members	Yes, in response to calls of impairment.
20. Water Use Reporting	Yes	Yes, provides assistance to public on filling out state WUR	Yes	Yes, annual on all water rights.
21. Weather Modification	Yes	No, but supports w/ \$2,500 per participating co. in the district	No, not since 2000	No
22. Well Battery Policy	Yes	Yes	Yes	Yes, limit of 4 wells in a 300 ft radius not to exceed 800 g.p.m. to a common distribution system.
23. Well Construction Requirements	Adopted Article 30: Water well construction & abandonment	Defer to Article 30; also have K.A.R. 5-23-5	Yes	Yes; complete in < 24 months, water flowmeter and measurement tube may be required.
24. Well Spacing	Yes; 2640 feet	Yes	Yes, 1400' – 2800'; distance varies with acre feet	Yes; spacing sufficient to prevent direct impairment between wells.
25. Work with DWR	Yes; compliance checks	Yes, monitor wells, have M.O.U.	Yes	



## Appendix D: Letters to Federal Delegates

Thomas R. Bogner  
10055 Eagle Road  
Dodge City, KS 67801-6592  
July 16, 2001

Senator Sam Brownback  
303 Hart Senate Office Building  
Washington, D.C. 20510

Subject: 2002 Water Rights Retirement Program and US Farm Bill

The Honorable Senator Sam Brownback:

I am the chairman of the Ogallala Aquifer Management Advisory Committee that was established on April 30, 2001 by the Kansas Water Authority to develop a comprehensive aquifer management strategy. This committee consists of approximately 15 local stakeholders and 5 pertinent agency personnel. On behalf of this committee, as well as the three Western Kansas groundwater management districts, I respectfully request that you consider the following proposal. We propose a voluntary farm program initiative aimed at retiring a portion of the existing water rights currently depleting the High Plains Aquifer. Such a program would pay farmers an annual cash incentive for each irrigated acre voluntarily converted into dryland for ten years. Only land that has been irrigated 3 out of the last 5 years will qualify. As an option, the land may continue to be dryland farmed, or returned to native grass. However, at the end of ten years the water right would be permanently retired. The benefits include, but are not limited to the following:

- Less demand on the High Plains Aquifer (only source of fresh water);
- Less crops produced means fewer crop subsidy payments;
- Crop disaster payments will decrease due to the reduced plant population;
- Protects water quality by decreasing number of irrigation wells;
- Economic benefits for rural Kansas communities;
- Encourages early retirement among older irrigation farmers;
- Supports young irrigation farmers conversion to dryland and
- "Safe yield" from an aquifer previously planned to be depleted.

For your information, this is in support of the High Plains Aquifer Conservation and Environmental Preservation Act, as presented to the Kansas Water Office on October 27, 2000, also known as the "Mayo Report." Please allow me to emphasize this as an investment that could reduce future crop payments by reducing the amount of crops produced on irrigated farmland. Thank you for considering this suggestion! Please contact me if I can be of any further assistance at (620) 225-4085.

Sincerely,



Thomas R. Bogner, Chairman

STATE OF KANSAS

KANSAS WATER OFFICE

Al LeDoux  
Director



Bill Graves, Governor

901 S. Kansas Avenue  
Topeka, Kansas 66612-1249

785-296-3185  
FAX 785-296-0878

September 11, 2001

The Honorable Sam Brownback  
United States Senate  
303 Hart Senate O.B.  
Washington, D.C. 20510

Dear Senator Brownback:

Since Congress has just reconvened we wanted to write you to reaffirm our commitment and support for federal actions to conserve the High Plains Aquifer. We appreciate the efforts of you and your staff on this issue to date. We now request your continued leadership by co-sponsoring legislation that would implement the recommendations in the report "Federal Actions Necessary for the Conservation and Environmental Preservation of the High Plains Aquifer".

Since Governor Graves first requested your consideration of the "Mayo Committee" report, support for those ideas has continued to grow among Kansans. The 2001 Legislature adopted House Concurrent Resolution 5009 in support of the recommendations contained in the report. This summer the Ogallala Management Committee indicated its support of the report and suggested further refinements of the proposed legislation in the letter they sent to you in July.

We know you are intimately familiar with Ogallala Aquifer water issues in Kansas. For that reason we believe you can provide the strong leadership that will be necessary for this proposed legislation to become law. We are convinced that this legislation can receive strong bi-partisan support among the high plains states congressional delegations. We again ask for your support and your help in obtaining co-sponsors for this legislation among high plains state senators.

If we can provide additional information, or if there is anything we can do to assist, please contact us or Al LeDoux at the Kansas Water Office.

Sincerely,

Handwritten signature of Cliff Mayo.

Cliff Mayo, Chair  
Committee on Federal Actions Necessary  
For the Conservation & Environmental  
Preservation of the High Plains Aquifer

Handwritten signature of Thomas R. Bogner.

Tom Bogner, Chair  
Ogallala Management Committee

CM:TB:cb

Enclosures

Cc: Governor Bill Graves  
Ogallala Management Committee

STATE OF KANSAS

COMMITTEE ASSIGNMENTS  
VICE-CHAIR: UTILITIES  
MEMBER: ENVIRONMENT  
HIGHER EDUCATION  
KANSAS FUTURES

TOM SLOAN  
REPRESENTATIVE, 45TH DISTRICT  
DOUGLAS COUNTY



TOPEKA

HOUSE OF  
REPRESENTATIVES

STATE CAPITOL BUILDING  
ROOM 446-N  
TOPEKA, KANSAS 66612-1504  
(785) 296-7677  
1-800-432-3924  
772 HWY 40  
LAWRENCE, KANSAS 66049-4174  
(785) 841-1526

TESTIMONY  
HOUSE BILL 2607  
HOUSE ENVIRONMENT COMMITTEE  
January 31, 2002

Madam Chairman and Committee Members:

Rural Water Districts are quasi-governmental units developed by the citizens who desire safe drinking water, approved by the appropriate county commissions, and regulated by the Department of Health and Environment. They do not have taxing authority, but rely on the sale of water and other services for operating funds.

Under current law, members of a Rural Water District's Board of Directors are elected at their annual meeting and generally serve without pay. As many of you know, I have served as Chairman of Douglas County Rural Water District #1 for many years. During the almost 20 years that I have been a board member, the largest number of patrons to attend an annual meeting was 40. The average number to attend (excluding board members, district staff, and our spouses) is six. For the past few years, only two persons have attended. District #1 has more than 400 meters (roughly 800 adult patron customers).

*House Environment  
1-31-02  
Attachment 7*



(RWD #1 generally has less than 1 percent of its eligible members participate in board elections. The 40 persons who attended a meeting were concerned about the impact of KDOT actions on district operations. Once they were assured that the district was not adversely impacted, most left.)

Low attendance at Rural Water District annual meetings is not confined to my district. Unless there is a major problem, patrons do not attend. The reality is that with so few persons attending annual meetings, board members can largely re-elect themselves or their successors.

HB 2607 was suggested to me by a constituent as a means of increasing patron participation in Rural Water District board elections. I checked with several other water district board representatives and they concurred. A copy of a letter from the RWD serving my constituent reports that they had previously sought an Attorney General's opinion regarding their ability to conduct such an election without legislative approval. The General concluded that such elections would not be legal without legislative authorization.

This is a simple bill that will permit, but not require, Rural Water Districts to conduct their annual director elections by mail ballot. The expectation is that additional persons will participate and that the resulting boards will be more representative of their patrons.

I appreciate your attention and consideration of HB 2607; and will be pleased to respond to any questions.

Tom Sloan, 45<sup>th</sup> District Representative

**Rural Water District #5-Douglas County  
295 E 550 Rd  
Overbrook, KS 66524**

11-28-2001

Alvin Fishburn  
977 E 650 Rd  
Lawrence, KS 66047

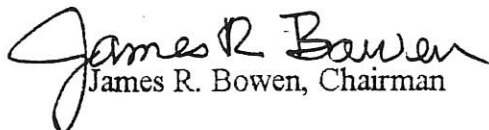
Dear Alvin,

Earlier this year, the Board of Directors of Rural Water District #5, Douglas County requested clarification from the Kansas attorney general as to whether rural water districts could use mail-in ballots from qualified patrons to elect directors. The attorney general ruled that Kansas statutes did not allow the use of mail-in ballots for rural water districts.

The board understands that State Representative Thomas Sloan has agreed to initiate hearings on this issue in 2002, and that you are scheduled to testify before the relevant House committee or sub-committee in support of enabling legislation. Members of our board support any changes in state law to allow use of mail-in balloting in electing directors of rural water districts. Anecdotal information from other water districts suggests that many annual meetings, which are when directors are chosen, may be attended by as few as 4-5 qualified voters. The flexibility provided by allowing properly administered mail-in balloting could, in some districts, improve the overall quality and accountability of rural water district boards. The legislation should not, of course, prohibit election of directors by those attending annual meetings for rural water districts wishing to do so.

The board appreciates your interest in and support of this matter, and stands ready to assist you in any way we can.

Sincerely,

  
James R. Bowen, Chairman

cc: Sloan

**Comments on House Bill 2607  
Before The House Environment Committee  
January 31, 2002**

Madam Chairman and Members of the Committee:

I am Alvin Fishburn, who has been chosen to represent Rural Water District #5, Douglas County and appreciate the opportunity to present comments on House Bill 2607. Our District supplies water service to 885 patrons in an area lying south and southwest of the City of Lawrence.

A few years ago it came to our realization that Kansas statutes would not allow mail in ballots for electing board members. For a period of over four years we have had the concern we should be hearing the voice of more of our patron members in regard to voting for the Board of Directors governing the water district. Historically there is low patron turn out at annual meetings of water districts and quite often the only attendees are standing board members.

The potential process would be to send the notice of annual meeting to patrons of the district and include biography of candidates nominated by a nominating committee. Included with the letter will be a ballot listing candidates and a benefit unit holder verification card that would require patron signature and date. Ballots would be returned to the District office or carried to the annual meeting. These would be counted by nominating committee members at the annual meeting.

Rural Water District #5, Douglas County encourages your support of HB 2607.

Respectively submitted,,



Alvin Fishburn

*House Environment  
1-31-02  
Attachment 8*



House Committee on Environment  
January 31, 2002, 3:30 p.m., Room 231-N  
Testimony on HB 2607  
By Clark Duffy, Assistant Director, Kansas Water Office

The Kansas Water Office supports HB 2607.

One of the fundamental principles of the State Water Resources Planning Act is recognition of the importance of public participation in addressing water issues.

Mail ballot elections have proven effective in increasing citizens' participation in other subdivisions of government. Therefore, the passage of HB 2607 should also increase citizens participation in rural water district elections.

*House Environment  
1-31-02  
Attachment 9*



KANSAS  
RURAL  
WATER  
*association*

Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 785/336-3760  
FAX 785/336-2751 • <http://www.krwa.net>

COMMENTS ON  
HOUSE BILL No. 2607  
BEFORE THE HOUSE COMMITTEE ON ENVIRONMENT  
JANUARY 31, 2002

Madam Chairperson and Members of the Committee:

Thank you for the opportunity to present comments on House Bill 2607. I am General Manager of the Kansas Rural Water Association. The Association has 275 rural water districts as members.

The Association supports HB 2607. This bill would provide that rural water districts in Kansas could, if they so chose, to hold elections of directors by mail ballot. Too often, the annual meetings of the rural water districts are held at times which are not convenient for a majority of the customers of the district. Having the advantage mail ballots might allow for broader participation by patrons of the district. If HB 2607 is approved, any rural water district would need to make amendments to their individual bylaws to authorize the ballot by mail procedure.

This same provision is already available to many other types of agencies.

We encourage the Committee to give favorable consideration to HB 2607.

Respectfully submitted,

  
Elmer Ronnebaum  
General Manager

*House Environment  
1-31-02  
Attachment 10*

**FRANKLIN COUNTY  
PLANNING AND BUILDING DEPARTMENT**

LARRY D. WALROD, PLANNING DIRECTOR  
301 S. MAIN, SUITE #5  
OTTAWA, KANSAS 66067-3547  
Office: (785) 229-3570 Fax: (785) 229-3504

BOARD OF COUNTY COMMISSIONERS

Donald E. Waymire, District 1  
John E. Taylor, District 2  
Fred E. Ferguson, District 3  
Raymond R. Carey, District 4  
Donald R. Stottlemire, District 5

COPY

January 28, 2002

Representative Tom Sloan  
45<sup>th</sup> District, Kansas House of Representatives  
State Capitol  
Topeka, KS 66012

**RE: HB-2624**

Honorable Tom Sloan:

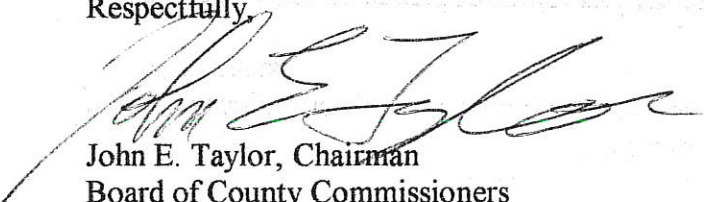
The Franklin County Board of County Commissioners have reviewed House Bill #2624 which you have sponsored and applaud your efforts to include rural water districts on the list of public/quasi-public agencies authorized to operate and maintain public wastewater (sanitation sewer) systems.

The responsibility of operation and/or maintenance of public sewer systems has often been a problem for rural counties since many counties do not have licensed operators certified by the Kansas Department of Health and Environment pursuant to K.A.R. 28-16-30 et seq. However, the provisions in the proposed bill which permits the rural water districts authority to construct, install, operate and maintain wastewater treatment works and other facilities relating to the treatment of wastewater outside the boundaries of the district, (Section 2 (f)), is a potential problem which must be reviewed.

Additionally, the Franklin County Board of County Commissioners have concerns that the current structure of HB-2624 may circumvent and/or be in conflict with the provisions of K.S.A. 82a613 regarding the formation of rural water districts as well as K.S.A. 19-2753 and 19-27a01 et seq., regarding the formation, organization, etc., of improvement districts and sewer districts.

The Franklin County Board of County Commissioners respectfully request that HB-2624 be amended to permit Rural Water Districts to contract with the governing body (County Commissioners or City Council) only for the operation and maintenance of wastewater systems within their respective districts. Thank you for your consideration.

Respectfully,

  
John E. Taylor, Chairman  
Board of County Commissioners

House Environment  
1-31-02  
Attachment II

## MEMORANDUM

To: Members of the House Committee on Environment  
Fm: Kansas Association of County Planning and Zoning Officials  
Re: HB 2624  
Date: January 31, 2002

My name is David Yearout. I am a professional planning consultant from Wichita and an active member of the Kansas Association of County Planning and Zoning Officials. I have previously been an employee of counties in Kansas and have over 29 years of experience in dealing with planning and zoning matters in cities and counties.

The Kansas Association of County Planning and Zoning Officials represents local zoning officials from over 40 counties in Kansas. We are affiliated with the Kansas Association of Counties. Our members are responsible for the administration and enforcement of locally adopted land use regulations in the rural areas of our respective counties. As such, we deal directly with many of the rural development issues facing counties.

HB 2624, as drafts, appears to empower Rural Water Districts with the ability to initiate the establishment of sanitary sewer services within or without the established service territory of that District. It also would enable Rural Water Districts to "contract" for the operation and maintenance of sanitary sewer services. The idea has some merit, but the approach presented within this bill is not the answer to deal with the problems facing counties.

*House Environment  
1-31-02  
Attachment 12*



We recommend the following changes be made to this bill in order to achieve what we believe was the original “intent” of this change to state law.

1. Change Chapter 19, Article 27a, regarding County Sewer Districts, to enable a county sewer district to “contract” for operation and maintenance with Rural Water Districts, provided the county sewer district is within that Rural Water District. Clarify in the statutes that the sewer district will remain the “property” of the County.
2. Change in the same Chapter and Article, that a county sewer district may established a fee within the contract with a Rural Water District to be included in the monthly water billing of that Rural Water District to pay for the operation and maintenance costs of the Rural Water District on behalf of the county sewer district included within the contract. The statutes for Rural Water Districts should also be amended to address this same issue. This allows the monies to be raised on a monthly billing basis rather than through a levy on the property taxes, which is the only option in the statutes for county sewer districts.
3. Since not all of the rural areas of Kansas have Rural Water Districts but the desire may be present for similar “contracted” services, give consideration for Rural Electric Cooperatives to provide the same contract services with a county sewer district, including the ability to include a fee for operation and maintenance costs to the monthly bill for electric service through that Electric Cooperative.

4. Clarify in the statutes that Rural Water Districts and Electric Cooperatives may also provide the same operation and maintenance services for a city under a contract between that city and the Rural Water District or Electric Cooperative.

Please amend HB 2624 to address these concerns. We believe these changes will result in an improved method of providing sanitary sewer services to those areas that need them. And we believe this approach will result in the greater options of providing services on a more practical basis, which should increase the viability of sanitary sewers being installed. These are always better than the traditional on-site sewer systems being installed today.

Thank you for the opportunity to appear before you today.

**House Committee on Environment**  
**January 31, 2002, 3:30 p.m., Room 231-N**  
**Testimony on HB 2624**  
**By Clark Duffy, Assistant Director**  
**Kansas Water Office**

The Kansas Water Office supports the intent of HB 2624 while recognizing that the concepts proposed in this legislation need additional thought, further refinement and study.

This bill is one approach to address the problem with the continued proliferation of onsite septic systems in suburban areas. The importance of addressing the problem of failing onsite systems has been heightened by the need to address high priority TMDLs in many of these same suburban areas.

The Kansas Water Plan first recognized the need to address this problem in 1985 when it adopted water quality subsections on New Subdivision Water and Wastewater Management Plan and County Wide Water/Wastewater Management Plans. This issue was also part of a Non Point Source Pollution subsection of the State Water Plan approved in 1986 and an Environmental Protection Strategy Subsection of the State Water Plan which was approved in 1987. Through the State Water Plan the State of Kansas has enacted a number of programs to work with local units of government to address this continuing problem.

While these state programs have had a positive impact the problem of onsite septic systems in suburban areas is continuing. Part of the reason is the "law of unintended consequences". In at least some instances local developers and local units of government have supported construction of new onsite waste systems because their design has been "approved" by the Kansas Department of Health and Environment and supported by the local health department. In these instances the location of the proposed on-site system is never considered even if it is a high priority TMDL area. This is an issue we need to continue to address administratively.

The concepts in this bill would provide a creative method to address this problem. However, care should be taken to ensure that this is a coordinated approach that will be supported by the Kansas Department of Health and Environment and local units of government. Care should also be taken to ensure enactment of this legislation does not result in even more uncontrolled growth in suburban areas which would continue to deteriorate the quality of the water in those suburban communities.

*House Environment*  
*1-31-02*  
*Attachment 13*

Law Offices  
STUMBO, HANSON & HENDRICKS, LLP  
2887 S.W. MacVicar Avenue  
Topeka, Kansas 66611  
Telephone (785) 267-3410  
Telefax (785) 267-9516

Gary H. Hanson  
Larry D. Hendricks

Walter G. Stumbo  
(1911 - 1998)

Tom R. Barnes II  
Karen T. Poulton  
Todd A. Luckman  
Wesley F. Smith

gary@stumbolaw.com

January 31, 2002

Representative Joann Freeborn, Chairperson  
Committee on Environment  
Room 231 North

**Re: Testimony in Support of House Bill 2624**

Dear Chairperson Freeborn and Members of the Committee:

This firm serves as counsel to the Kansas Rural Water Association (KRWA), and is an associate member of that association.

We are testifying in support of House Bill 2624 because it would allow Rural Water Districts (RWD's) and Public Wholesale Water Districts (PWWSO's) to contract to operate wastewater systems. The law currently does not allow for such contracts.

Some wastewater systems are ill-equipped to carry out their operational responsibilities. Efficiencies could be achieved in some of those instances by contracting with an RWD or PWWSO to provide the necessary operational and maintenance services. House Bill 2624 would give these systems the statutory tool needed in order to realize these efficiencies.

The Bill as introduced would allow PWWSO's to also acquire and then own and hold wastewater facilities. We suggest that the Bill be amended to delete these provisions. We are concerned that PWWSO's lack certain powers necessary to effectively own a wastewater system, such as the ability to assess taxes (for non-payment of sewer fees and assessments), require mandatory connection to a public sewer system where appropriate, and the like.

For the reasons described above, we urge the Committee to give favorable consideration to HB 2624, with the amendments suggested.

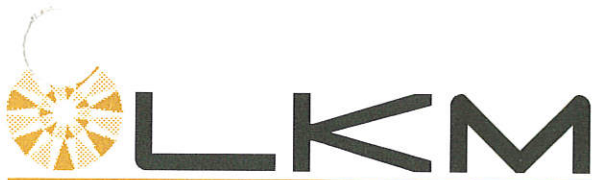
Very truly yours,

GARY H. HANSON

GHH:sp

*House Environment  
1-31-02  
Attachment 14*





League of Kansas Municipalities

300 SW 8th Street  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

To: House Environment Committee  
From: Kim Gulley, Director of Policy Development  
Date: January 31, 2002  
Re: Opposition to HB 2624

Thank you for allowing me to present comments on behalf of the League of Kansas Municipalities. During its meeting on January 23, 2002, the LKM Governing Body specifically considered this piece of legislation which would authorize rural water districts to build and operate wastewater treatment facilities. Our Governing Body took a position in opposition to this legislation for the following reasons:

1. Planning Regulations. A number of members of the LKM Governing Body expressed concern that HB 2624 would serve to undermine subdivision and zoning regulations imposed by cities. Many such regulations include requirements concerning water and wastewater treatment. Authorizing a housing subdivision, for example, to establish its own system just outside of the city limits would serve to undermine the planning rules and the growth of the existing system. And, should that area ever be annexed, there would be no way to insure that the new system would be of the same quality as the existing city system.
2. Revolving Loan Fund. There are a large number of public wastewater treatment facilities in place today. Many of those facilities have aging infrastructures and are struggling to keep up with new environmental regulations. Those facilities currently compete for a limited pot of funding from the KDHE revolving loan fund. Each year, the need for funding exceeds the moneys which are offered and many projects go unfunded. Given that the current system is strained, we believe that it would not be prudent to authorize the creation of additional wastewater treatment facilities at this time.

Again, thank you for allowing me to appear today. I would be happy to answer any questions that the committee might have.