

MINUTES

JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS

November 16, 2009
Room 535-N—Statehouse

Members Present

Representative Carl Holmes, Chairperson
Senator Vicki Schmidt, Vice-chairperson
Senator Karin Brownlee
Senator Janis Lee
Senator Ralph Ostmeyer
Senator Chris Steineger
Representative John Faber
Representative Shirley Palmer
Representative Joe Patton
Representative Jan Pauls
Representative Ed Trimmer

Members Absent

Representative Steve Huebert

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Sharon Wenger, Kansas Legislative Research Department
Kenneth Wilke, Office of the Revisor of Statutes
Nobuko Folmsbee, Office of the Revisor of Statutes
Judy Glasgow, Committee Assistant

Others Present

Brenda Kuder, Kansas Health Policy Authority
Hallie Fosdick, Kansas Health Policy Authority
Walter Schoemaker, Kansas Health Policy Authority
Brian Vazquez, Kansas Health Policy Authority
Dustin Moyer, Kansas Health Policy Authority
Ron Smith, Kansas Health Policy Authority

John House, Department of Social and Rehabilitation Services
Chris Tymeson, Department of Wildlife and Parks
Wayne Bollig, Commission on Veterans' Affairs
David Barfield, Department of Agriculture
Josh Svaty, Department of Agriculture
Carol Williams, Governmental Ethics Commission
Dirk Hanson, Kansas Board of Veterinary Examiners
Mark Rude, Groundwater Management District 3
Sharon Falk, Groundwater Management District 5
Tim Boese, Groundwater Management District 2
Dave Brenn, Groundwater Management District 1
Wayne Bossert, Groundwater Management District 4
Tom Day, Corporation Commission
Berend Koops, Hein Law Firm
Kent Askren, Kansas Farm Bureau
Erik Wisner, Department of Agriculture
Dave Starkey, Department of Agriculture
Constantine Cotsoradis, Department of Agriculture
Lane Letourneau, Department of Agriculture
Susan Stover, Kansas Water Office
John Kiefhaber, Kansas Chiropractic Association

Morning Session

Chairperson Carl Holmes called the meeting to order at 9:00 a.m. on November 16, 2009. He asked for action on the minutes from the October 6, 2009, meeting. *Senator Schmidt moved to approve the minutes as presented. Senator Ostmeyer seconded the motion. Motion carried.*

The Chairperson recognized Chris Tymeson to speak to the proposed rule and regulation noticed for hearing by the Wildlife and Parks Commission. KAR 115-4-11, big game and wild turkey permit applications.

Mr. Tymeson stated that the proposed change was intended to maximize the value of the commission permits and would allow individuals to obtain both a commission big game permit and a regular big game permit. The fees obtained from the commission permits go to non-profit, conservation organizations. A Committee member requested that a list be provided to Committee members showing the amount generated by the fees along with the names of projects receiving funds and the amount each received.

Chairperson Holmes welcomed Wayne Bollig, Executive Director, to address the proposed rules and regulations noticed for hearing by the Commission on Veterans' Affairs. KAR 97-7-1, definitions; KAR 97-7-2, veteran status; KAR 97-7-3, legal resident status; KAR 97-7-4, applicants on behalf of deceased veterans; KAR 97-7-5, application procedures; and KAR 97-7-6, reconsideration of denied applications.

Mr. Bollig stated that these proposed rules and regulations cover the Vietnam War Era Medallion Program for service related to the Vietnam War. In KAR 97-7-1, (B), staff stated that it should be clarified to indicate that a person is eligible if service occurred during the period of time specified in the statute. Mr. Bollig stated that it was not the intent to be restrictive. In KAR 97-7-4,

a Committee member noted that there was no mention of eligibility for those missing in action and requested that the Commission consider adding this classification.

Chairperson Holmes recognized Carol Williams, Executive Director, to speak to the proposed rule and regulation noticed for hearing by the Governmental Ethics Commission. KAR 19-6-1, nondisclosure and public record.

The Chairperson noted that the notice of hearing did not include a web site address to view the rule and regulation and it did not state that comments would be accepted by e-mail. A Committee member was concerned that there are different types of complaints filed and there is no distinction made between them when listed. The Committee as a whole expressed concern about how this could affect the election process. After discussion, the Committee requested that staff prepare a letter to be sent to the Chairpersons, Vice-Chairpersons, and Ranking Minority Members of the House Elections Committee and Senate Ethics and Elections Committee, the President of the Senate, Speaker of the House, and House and Senate Minority Leaders requesting that the committees examine this issue during the 2010 Legislative Session.

Chairperson Holmes recognized Acting Secretary Svaty, Department of Agriculture, and David Barfield, Chief Engineer, Division of Water Resources, to address the proposed rule and regulation noticed for hearing by the Division of Water Resources. KAR 5-7-4, water rights conservation program.

Mr. Barfield stated that the proposed amendment discontinues new enrollments in the Water Rights Conservation Program (WRCP) effective January 1, 2010, and specifies that existing contracts terminate upon expiration of their specified term. This is to comply with the Governor's request for agencies to cut their budgets. Mr. Barfield stated that the agency had introduced a bill during the 2009 Legislative Session to establish fees in the program, but no action was taken during the session.

In KAR 5-7-4, staff stated that the first and second sentences are inconsistent and suggested the first sentence be clarified to read "shall not take any new applications after January 1, 2010." Mr. Barfield agreed. A Committee member suggested letting the groundwater management districts (GMDs) operate the program and asked if the agency had considered this. Mr. Barfield stated this could be a consideration. Mr. Barfield responded to questions from the Committee.

Chairperson Holmes stated that there were several interested parties who wished to testify concerning this rule and regulation. The Chairperson recognized Mark Rude, Groundwater Management District 3 (GMD3), Garden City (Attachments 1, 2, and 3). Mr. Rude stated that GMD3 would recommend that the agency consider a different cost savings approach and not move forward with this proposed rule change.

The Chairperson recognized Sharon Falk, Groundwater Management District 5 (GMD5), Stafford, to speak to the proposed rule and regulation (Attachment 4). Ms. Falk stated that GMD5 would be willing to pay a fee dedicated to this program in order for it to continue.

Tim Boese, Groundwater Management District 2 (GMD2), was recognized by the Chairperson (Attachment 5). Mr. Boese stated that GMD2 is opposed to the discontinuance of this program and has discussed possible funding sources with the agency.

The Chairperson recognized Dave Brenn, Groundwater Management District 1 (GMD1), Scott City (Attachment 6). Mr. Brenn stated that GMD1 would recommend that no action be taken on the proposed amendment and the agency work with stakeholders and the Legislature to address the

funding issues and to amend KAR 5-7-4, or to allow a temporary suspension of the program until the funding issues are relieved. Mr. Brenn also provided testimony on behalf of the Kansas Water Congress, Inc. (Attachment 7).

Wayne Bossert, Groundwater Management District 4 (GMD4), Colby, was recognized by the Chairperson (Attachment 8). Mr. Bossert provided several recommendations that the agency could consider before taking action on discontinuing this program. These could include amending KSA 82a-708 to provide for an application filing fee for all WRCP applications, seek legislative support for an increased 2010 agency budget, and assist the GMDs in developing a suitable local regulation to assume as much of the administrative and tracking responsibilities as possible.

Written testimony was received from Robin Jennison of Jennison Government Services, opposing the discontinuance of the water rights conservation program (Attachment 9).

Acting Secretary Svaty and David Barfield responded to questions from the Committee members. A Committee member requested that the Chief Engineer provide additional information to the Committee regarding a map distributed by the GMDs. Mr. Barfield stated that he would provide this to the Committee.

The Chairperson recognized Dirk Hanson to speak to the proposed rule and regulation noticed for hearing by the Kansas Board of Veterinary Examiners. KAR 70-7-1, the practice of veterinary medicine.

Dr. Hanson stated that this rule and regulation is amended to include pain management for companion animals. Staff stated that there should be a minimum standard set in the regulations for veterinarians to follow. Dr. Hanson stated that this was the purpose of this amendment. A Committee member stated that the economic impact statement should reflect the cost upon private business or individuals for pain management medications. Committee members also were concerned about the use of "companion animals" and how this could open the door for legislation to include all animals. Committee members questioned whether or not the statutes allowed the agency to regulate pain management. After a lengthy discussion, the Committee requested that staff prepare a letter to the Attorney General's Office to determine if this amendment is within the scope of the agency's authority. It was the consensus of the Committee to request the agency prepare legislation that would include pain management as part of the statute. The Committee voted in favor of requesting the agency to not move forward with this rule and regulation. Senator Lee requested that the minutes reflect that she voted "no" on the issue of not moving the rule and regulation forward.

Chairperson Holmes recessed the meeting until 1:45 p.m.

Afternoon Session

Chairperson Holmes reconvened the meeting at 1:45 p.m. The Chairperson recognized John Smith to address the proposed rules and regulations noticed for hearing by the Kansas Health Policy Authority. KAR 30-5-118a, revoked; KAR 129-5-118, scope of federally qualified health center services; KAR 129-5-118a, reimbursement for federally qualified health center services; and KAR 129-5-118b, cost reimbursement principles for federally qualified health center services and other ambulatory services.

Mr. Smith stated that these rules and regulations add dental hygienist as a billable health care professional, define the way rates are established, provide when a provider may bill for more than one encounter per day, and require proper documentation for expense items.

Staff noted in KAR 129-5-118, the first paragraph needs to be clarified to include Indian health care centers in the broader definition. A Committee member noted that on page 2, (c)(1), pharmacists and pharmacy students were not included in the list. Mr. Smith stated that they would make this change. On page 2, (2), staff suggested that Section 1861 of the Social Security Act should be adopted by reference with a date certain. This also would apply to KAR 129-5-118a, page 3, concerning the version of the Medicare financial and statistical report form. Staff suggested that on page 6, (F), the first sentence should be reworded to show that the agency is making the determination by changing to "agency shall suspend program payments if it determines that a provider."

Chairperson Holmes welcomed John House, staff attorney, to speak the proposed rules and regulations noticed for hearing by the Department of Social and Rehabilitation Services. KAR 30-63-10, license required; exceptions; KAR 30-63-11, two types of license; display; and KAR 30-63-12, licensing procedure; requirements; duration of license.

In KAR 30-63-10, staff questioned how "substantial change of control" is defined, and suggested that this be clarified. In KAR 30-63-12, the Committee questioned how the agency defined "a field of human services" and suggested the agency define this. On page 2, (4), the words "which is" should be inserted before "hereby adopted by reference." A Committee member had a concern about the agency policy regarding background checks. It was the consensus of the Committee to introduce legislation so that background checks would be completed before certain health care employees can begin working.

Chairperson Holmes recognized Tom Day to speak to the proposed rule and regulation noticed for hearing by the Kansas Corporation Commission (Attachments 10 and 11). KAR 82-3-1117, postclosure determination.

Mr. Day stated that this rule and regulation had previously come before the Committee and the Commission had revised it so that the State of Kansas would not assume long-term liability upon the closure of a CO₂ underground storage facility.

The Chairperson called the Committee's attention to two letters provided to members from the Board of Pharmacy concerning the unused medication program (Attachment 12) and the State Board of Healing Arts concerning procedures regarding the promulgation of rules and regulations (Attachment 13).

Chairperson Holmes stated that the next meeting would be January 4 and 5, 2010, with January 4 being the primary date. The Chairperson adjourned the meeting at 4:15 p.m.

Committee Comments on Proposed Rules and Regulations

Kansas Department of Wildlife and Parks. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning big game and wild turkey permit applications. After discussion, the Committee had the following comment.

Request. Please provide the Joint Committee with information on the total number of commission permits sold by the Department, the total revenue from the sale of commission permits, and a listing of the projects that have utilized funding from the sale of commission permits.

Division of Water Resources, Kansas Department of Agriculture. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning water rights conservation program. After discussion, the Committee had no comment.

Kansas Governmental Ethics Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning nondisclosure and public record.

Reminder. Please remember to include in your notice that comments by the public may be made via e-mail. Also, please remember to provide a website where the public may access the proposed rules and regulations.

Comment. The Committee will correspond with the two "Ethics and Elections" committees asking them to consider the introduction of legislation which would maintain current confidentiality requirements.

Kansas State Board of Veterinary Examiners. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning standards of practice. After discussion, the Committee had the following comment.

KAR 70-7-1. The Joint Committee expresses its desire that the Board not proceed with the adoption of this regulation. The Committee believes that changes made to KAR 70-7-1 are better handled legislatively and not through the rule and regulation process. As such, the Joint Committee advises the Board, if it so desires, to introduce legislation on this issue during the upcoming 2010 Session. If the Board does decide to proceed, the Committee suggests that the Board adopt minimum standards for "pain management."

Kansas Department of Social and Rehabilitation Services. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning license required, exceptions; two types of license, display; and licensing procedure, requirements, duration of license. After discussion, the Committee had the following comments.

KAR 30-63-10. In section (b), consider adding a definition for "substantial change of control or ownership."

KAR 30-63-11. Consider clarification of what constitutes the "principal place of business."

KAR 30-63-12. Please consider defining "human services" as used throughout the regulation. In addition, please add the words "which is" in regard to the language containing the adoption by reference.

Comment. The Committee is pursuing legislation to require the completion of background checks before hiring.

Kansas Health Policy Authority. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning scope of federally qualified health center services; reimbursement for federally qualified health center services; cost reimbursement principles for federally qualified health center services and other ambulatory services and revocation. After discussion, the Committee had the following comments.

KAR 129-5-118. Please consider changing the wording in the first paragraph so it is clear that all entities listed including an Indian organization are federally qualified health centers. In subsection (c)(2), state that section 1861(s) of the Social Security Act has been adopted by reference and by a date certain. In subsection (c)(2)(d), include pharmacists and pharmacy students in the list of individuals authorized to administer immunizations.

KAR 129-5-118a. In section (b), adopt the completed cost report by a date certain. In subsection (d)(2)(F), clarify who determines whether "a provider does not maintain adequate records."

Kansas Corporation Commission. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning postclosure determination (CO2 storage facilities). After discussion, the Committee had no comment.

Kansas Commission on Veterans' Affairs. The Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning definitions; veteran status; legal resident status; applicants on behalf of deceased veterans; application procedures; and reconsideration of denied applications. After discussion, the Committee had the following comments.

Comment. Consider amending the set of regulations to ensure that no individual regulation is more stringent than the provisions found in the related statutes.

Request. Please provide the Joint Committee with an explanation on how families of soldiers assigned a "missing in action" status will apply for the Medallion Program and receive an award.

Prepared by Judy Glasgow
Edited by Raney Gilliland

Approved by Committee on:

January 4, 2010

(Date)

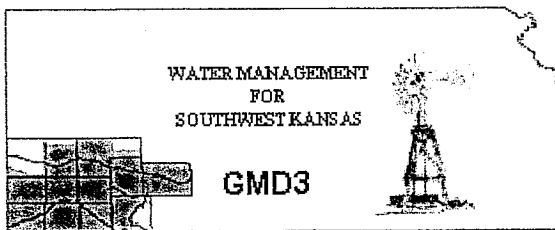
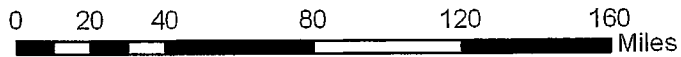
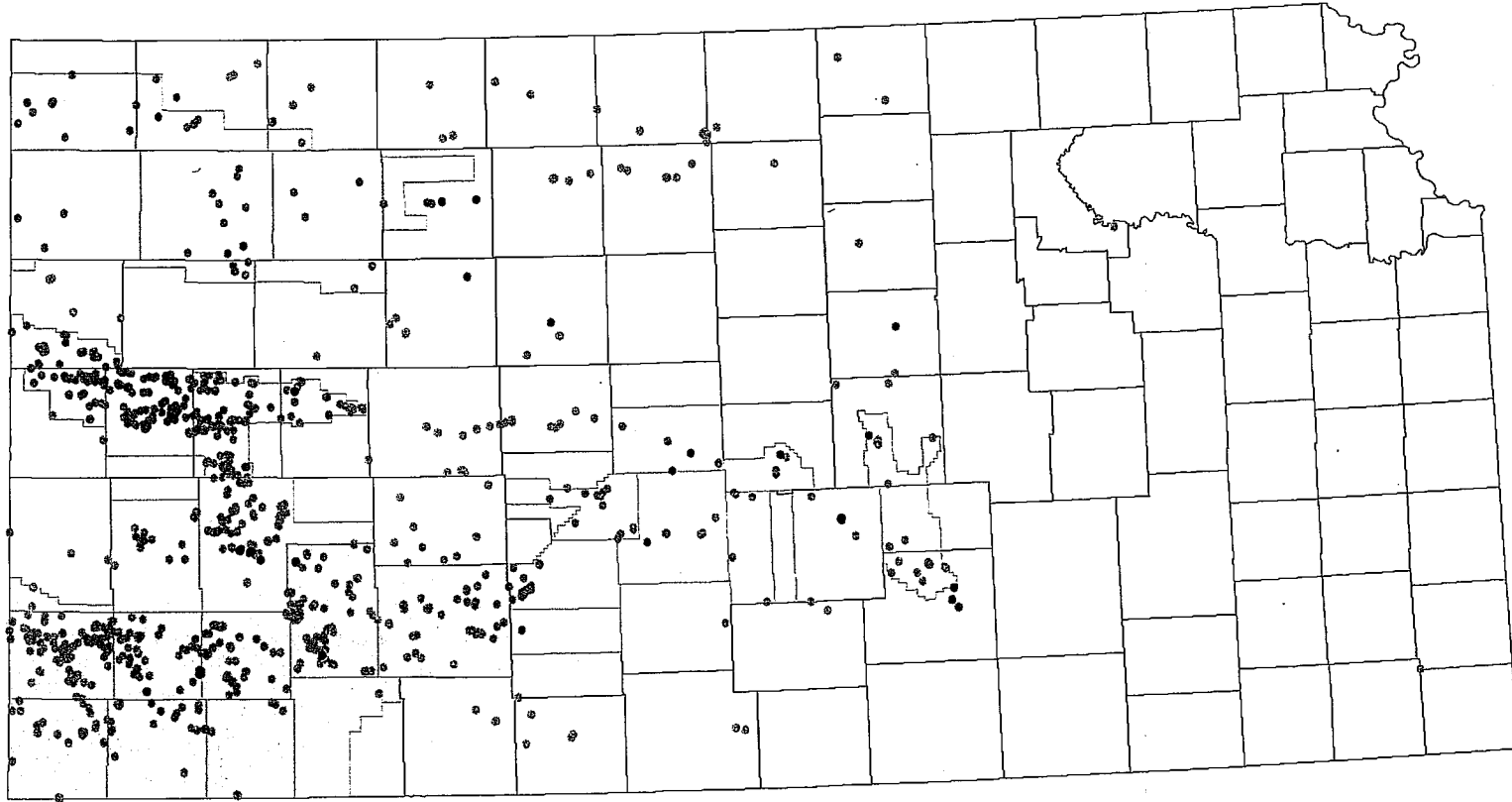
JOINT COMMITTEE ON ADMINISTRATIVE RULES AND REGULATIONS
 COMMITTEE GUEST LIST

DATE: Nov 16, 2009

| NAME | REPRESENTING |
|-----------------|------------------------------------|
| Chris Tymeson | KDWP |
| Berend Koops | Hein Law Firm |
| Kent Astren | Ks Farm Bureau |
| Judy Moler | KGEC |
| Will | KGEC |
| Erik Wisner | KDA |
| Dave Starkey | KDA |
| CV Gotsoradis | " |
| Josh Judy | KDA |
| LANE LETOURNEAU | KDA |
| Susan Stover | KWO |
| Sharon Falk | COMDS |
| WAYNE BOSSERT | NW KS GMD4 - COLBY, KS |
| Tim Boese | GMD2 - Halstead, KS |
| Dave Brenna | GMD#1 |
| John Kiehaber | Ks. Chiropractic Association |
| MARK RUDE | GROUNDWATER MANAGEMENT DIST. No. 3 |
| Don GACHES | KDHA |
| TOM DAY | KCC |

WRCP Water Right Locations

Created By Trevor Ahring, GMD 3



WRCP Wells

- Irrigation
- Municipal
- Other Uses

Groundwater Management Districts

- Western Kansas GMD #1
- Equus Beds GMD #2
- Southwest Kansas GMD #3
- Northwest Kansas GMD #4
- Big Bend GMD #5

Joint Committee on
Administrative Rules & Regulations
11-16-09
Attachment 1

Response to the agency "Fact Sheet" on the "Phasing out the Water Rights Conservation Program" (WRCP)

By The Kansas Groundwater Management Districts
November 3, 2009

The "Fact Sheet" distributed by the Kansas Department of Agriculture on the "Phasing out of the Water Rights Conservation Program" may best be described as a position paper. The following language in black lettering is that of the agency from their "Fact Sheet" interspersed with "Comment" in red lettering from the Kansas Groundwater Management Districts (GMD's). The comments are provided to reflect a broader Kansas perspective on the proposed end to the WRCP. We have attached a map of the distribution of water rights under the WRCP for reference. The GMD's are committed to the proper management and conservation of Kansas groundwater resources. We encourage the agency to support the chief engineer and his statutory responsibilities, which includes working with the GMD's to manage and conserve the water resources of the state.

Kansas Department of Agriculture * 109 SW 9* Street * Topeka, KS 66612 * (785) 296-3556 * www.ksda.gov

September 2009

Phasing Out the Water Rights Conservation Program

Budget cuts and unfunded spending mandates equal to 20 percent of the Kansas Department of Agriculture budget have contributed to a vacancy rate of 29 percent in the Division of Water Resources. As a result, the agency plans to discontinue its Water Rights Conservation Program effective December 31, 2009, so remaining staff can focus on statutorily defined responsibilities like processing new and change applications, and certifying water rights, which are important to the sustained vitality of Kansas' farms, ranches, industries and cities.

Comment: Water conservation and regulatory confidence are important elements of the proper management of the Kansas water supplies. A prior notice of the intent to announce rule revisions to end the program was provided by the chief engineer to the GMD's (August 21, 2009). The GMD's met with the chief engineer with offers to find funding to continue the WRCP and to express significant concerns for the proposed end of the program (September 10, 2009). The agency subsequently initiated the formal rule change proceedings to end WRCP (September 16, 2009). The agency action is not

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Attachment 2*

supported by the GMD's for two reasons: 1) there is no due consideration of the statutorily prescribed stakeholders in the agency action, and 2) the agency is pursuing internal strategies that are inconsistent with the water conservation goals of others in Kansas. The agency action, if carried out, will result in less water conservation and less regulatory surety for Kansans.

Background

The Water Rights Conservation Program was initiated in 1992 primarily to protect water rights from being declared abandoned due to nonuse of water pursuant to K.S.A. 82a-718. The program required that the water right not be used during the five- to 10-year enrollment period.

Comment: The program was conceived by the GMD's working with the prior chief engineer as a way to eliminate needless groundwater pumping in declining aquifer areas simply to preserve water rights under the "use it or lose it" provision of Kansas water law. Property manager's wanted documented surety of their property rights without having to pump groundwater. Owners were frustrated with the risk and confusion of reporting reasons the agency listed as due and sufficient cause only to hear later from the agency the interpretation of the reasons differed between the agency and the water right owner. The inexpensive trade-off incentives of the WRCP are very simple: some years of guaranteed water conservation for some years of guaranteed water right preservation. The elimination of WRCP by the agency appears to favor the consumption of declining groundwater supplies over simple contracts for groundwater conservation.

Owners do not receive incentive payments from the state or federal government for enrolling water rights in the program. However, water rights that are enrolled receive higher priority to participate in USDA's Environmental Quality Incentives Program, which does provide incentive payments for discontinuing water use for a certain number of years in areas with declining water resources.

Comment: Because of the contract nature of the WRCP, the implementation of EQIP in Kansas by the NRCS is able to leverage three years of federal incentive payments for up to ten years of guaranteed water conservation. This is not possible without a WRCP type of state contract program. Much work by federal, state and local agencies and advisors has gone into the harmonious incorporation of the WRCP into the USDA EQIP for added water conservation, including the further targeting of the program benefits to high priority Quick Response Areas (QRA's) of the state. The future of these federal, state and local partnerships for added water conservation under the WRCP is now proposed to end with the agency announcement.

Other due and sufficient causes exist for nonuse of water rights, and they can be applied to many of the water rights currently enrolled in the Water Rights Conservation Program.

Comment: WRCP favors conservation of water over consumption as a benefit to the depleting groundwater areas of Kansas. All other acceptable causes for non-use are

applied at the discretion of the chief engineer and require that the well, pump, motor, pipe, flowmeter and in some cases even the water distribution system remain in place and ready for use. Program participants have recognized their installed equipment exposed to the elements and unused over multiple years will deteriorate rapidly and result in thousands of dollars of lost property value. The contract nature of the WRCP removes the necessity to maintain the diversion works, which further promotes water conservation.

WRCP Administrative Requirements

Since 2004, the Division of Water Resource has approved 650 new Water Rights Conservation Program contracts and processed 330 renewal requests, with an average of 172 water rights enrolled or renewed each year.

Staff spend considerable time and effort to ensure that the water rights meet requirements to enter the Water Rights Conservation Program, including being in good standing. In many cases, an application does not contain sufficient information to determine if the water right is eligible for the program, and it must be returned to the applicant with the deficiencies identified and explained. Staff then work with the applicant to bring the application into proper form.

Comment: Because the application form is so simple to complete, most of the staff time relates to the determination of the status of each water right requesting the WRCP, which is not an issue for the repeat contracts. The demand for water right status determinations is a routine reality of Kansas business, commerce and property management. The determination of the status of a water right is a statutory job of the chief engineer and must remain a part of the DWR core activities with or without the WRCP. It is therefore an unavoidable core activity of the agency. The proposed elimination of the WRCP may even increase this work load for the agency when bankers and appraisers no longer have the WRCP contract to reference and must request the status of the water right from the agency. The public question of status of a water right can only be satisfied under the law in one of three ways: 1) documented water use, 2) the existence of a WRCP contract for which a status determination has already occurred, or 3) the initiation of a status determination by the agency. The WRCP contract provides surety of the status of a water right while making certain that water conservation occurs.

A low estimate of the cost for staff time spent processing Water Rights Conservation Program applications is \$23,000. That is only for staff in the primary office in Topeka. It does not take into account the amount of time field staff contribute to the process. Unlike other water right applications, there is no fee associated with the Water Rights Conservation Program.

Comment: The past concern for a WRCP fee centered on the notion that water right owners would have to pay to conserve water. However, the benefit of the WRCP over other reasons that can be considered due and sufficient cause for non-use of a water right is the documented status from the agency, which may reasonably command a nominal fee. The agency estimate also does not take into account the significant assistance

provided by GMD staff and others at the state and federal level who advocate the program and who provide advice and assistance to water right owners. The time and service provided by GMD's on WRCP matters is considered part of the GMD's core mission to manage and conserve the groundwater resources, and the GMD's are willing to continue providing such assistance to the extent they are allowed.

Program Benefits

The Water Rights Conservation Program's contributions to water conservation are fairly small. Most water rights enrolled in the program are in areas with substantially depleted water supplies and significant decline in well yields. Therefore, rather than conserving water, the main benefit of the program has been to protect unused water rights from forfeiture. In hindsight, the program should have been called the "Water Rights Protection Program."

Comment: What the agency seems to characterize as a small water conserving program is arguably the most efficient and effective water conservation program in Kansas, and one that is most fitting for areas of the state in need of water conservation. The agency position on WRCP as a "water rights preservation program" indicates a sense of purpose that is disconnected from the regulated community. Kansans can't have owner participation in voluntary non-use of water rights without a guaranteed preservation of that personal property right. Both elements are necessary. With the elimination of WRCP as proposed, it appears that the agency wants to abandon practical, low cost water conservation in favor of other internal priorities.

Some people who want the program to continue have cited the total authorized quantity of the water rights enrolled as an indicator of the water saved by the program. This is a gross exaggeration. Actual water use is always considerably less than the authorized quantity. And, in most instances, the wells enrolled in the program are no longer capable of pumping the amount of water they pumped when they were first drilled. Water that can no longer be pumped cannot be equated with water conserved.

Comment: Actual water use is not always less than the authorized quantity, or there would be no reason for the over pumping enforcement activities of the GMD's and DWR. However, some groundwater well owners do favor discontinuing water use, or not replacing their failing well, and even plugging their existing well, if they could be assured of keeping the water right. The agency proposal will force some water right owners to choose between either using water or face loss of their water rights, which will result in needless water use to preserve the property rights. That's water that should be conserved in a WRCP type of program.

A better estimate of the water conserved by this program would be the amount of water used before a water right is initially enrolled. Reported water use the year prior to the first enrollment of 650 water rights in the program totaled 8,700 acre-feet. By comparison, the authorized quantity of these water rights was about 180,000 acre-feet.

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Comment: While the complete amount of water conserved by WRCP is difficult to estimate accurately, it is somewhere between the 266,000 AF of authorized water currently enrolled, and zero. The 8,700 AF stated by the agency is one way to estimate the conserved amount, but could be considered far too low for the simple fact that many enrollees understand the five year grace period of Kansas water law and did not act to address abandoned water right concerns until the second, third or fourth year after they stopped using water for whatever reason. GMD 4 has evaluated all its members 39 WRCP contracts and found they averaged 1,080 AF reported water use every year between 1990 and the year before they went into WRCP. Of the 31 additional water rights that had been in WRCP previously but did not reenroll in the program, 50% have returned to using the water right. Of the remaining 50%, half are still within their 5 year grace period of non-use with or without due and sufficient cause (exited the program less than 5 years ago) and may or may not put their rights back into use again to maintain the right.

Even this measure of water savings is probably overestimated because many of the water rights enrolled in the program could be protected from forfeiture by other due and sufficient causes for nonuse. That means these water rights would probably not be exercised even if the Water Rights Conservation Program did not exist.

Comment: The GMD's recognized 20 years ago that the "use it or lose it" presumption of Kansas water law and the lack of surety of agency discretion over due and sufficient cause for nonuse created a water conservation problem, especially in groundwater depleting areas of the state. The agency is now proposing to eliminate a very successful solution to the dichotomy of mandatory beneficial use and discretionary water conservation in Kansas water law. This agency action will restore old problems that were solved by the WRCP.

Funding

During the 2009 legislative session, the agency requested some minor fee increases including a new, \$20-per-year application fee for each year a water right was to be enrolled in the Water Rights Conservation Program. The fee was to cover personnel costs associated with processing the applications. The fee was opposed by stakeholders and lobbying organizations, so it was not passed by the Legislature.

Comment: the Kansas GMD's did not take a position on the agency fee increases during the 2009 legislative session because we did not anticipate that the WRCP was in jeopardy. We continue to be concerned by the significance of the agency action and emphasize the need for successful voluntary water conservation as a key groundwater management priority for Kansas.

Our unsuccessful attempt to establish an application fee compounded the challenges already presented by the 20 percent funding reduction and 29 percent vacancy rate. We opted to phase out the Water Rights Conservation Program to allow remaining staff to focus on meeting our statutory obligations.

Comment: The agency opting out of the WRCP ignores stakeholders. The agency's action is apparently deemed by the agency to be in the best interest of the agency, but it is not in the best interest of the stakeholders or the resource. The agency apparently took action without adequately considering all stakeholder input. If the basis for the agency action is solely a budget issue, the single attempt to create a filing fee for WRCP is not justification for acting without exploring other funding alternatives from the GMD's or other stakeholder organizations. The GMD's offer to work on the funding issue did not change the agency action. Whether a funding issue or not, the agency is discounting an important groundwater management tool. The elimination of WRCP excludes interests outside of the agency in a manner that unnecessarily undermines stakeholder confidence in the roles and functions of the chief engineer.

Alternatives

The Water Rights Conservation Program provides one of several due and sufficient causes for nonuse of water. At least 10 others are specified in K.A.R. 5-7-1. We are also in the process of amending the regulation to add another due and sufficient cause and to make an existing one simpler to administer.

In many cases, water rights currently enrolled in the Water Rights Conservation Program will be covered by other due and sufficient causes for nonuse.

Comment: Whether each water right currently enrolled in the WRCP can be documented as covered by other reasons considered due and sufficient cause for non-use is unknown and subject to agency work and interpretations case by case. The presumption of "use it or lose it" is not a legal environment that is conducive to water conservation without a WRCP type of management tool.

Most Water Rights Conservation Program contracts are in areas where groundwater resources are no longer sufficient to support the water right's intended use. Even though it is no longer feasible to make use of the water right, owners want to retain their property right.

Comment: The agency proposal appears to intentionally reduce the options available to water right owners who want to maintain their property rights and is counter to the management goal of voluntary and targeted water conservation. In GMD1, the EQIP QRAs (target areas) are defined as 2 mile radii around public water supplies. 17 contracts have been approved and implemented in these areas since 2006. And of these, 8 are enrolled in the WRCP for 10 years. A calculated actual savings of 13,968 AF or 1396 AF/yr will be the result in these target high priority areas near public water supplies as an example of the significance and effectiveness of the WRCP incentive for targeted water conservation in highly depleted areas.

Eliminating the Water Rights Conservation Program will, in most cases, have little impact on areas closed to new water rights, since many of the rights would not be used even if the program did not exist. That is because the water rights are predominantly in areas where the aquifer no longer yields an adequate rate for irrigation.

Comment: These statements are presumptive and extremely confusing. They ignore the real need for a policy of voluntary conservation over consumption in critical areas and disparage the regulatory confidence gained from the WRCP. Highly depleted areas are where the water conservation benefits of the WRCP are most needed.

Under the proposal to phase out the program, existing contracts will terminate when their terms expire. That means some water rights will continue to be in the program until 2019.

There is no requirement that water rights be put back into active service on termination of the program. Many will continue to be covered by other due and sufficient causes for nonuse when their contracts expire, so we do not expect many to be put back into use.

Comment: Without documented assurance protecting the status, property owners will feel compelled to put water rights back into service. The problems that were solved by the creation of the WRCP in 1992 will return if WRCP is eliminated, as there is no replacement program. When property values are tied to the existence of a water right, then significant motivation is there to exercise the right, or have documentation preserving it, or lose it. The answer to the question of status must come from the agency, unless a WRCP document already exists or substantial use within every five year period is a matter of public record. The elimination of the WRCP will result in more water use in water short areas, more discretion of the chief engineer to act against water right non-use in water short areas and an increase in agency workload to respond to the more frequent status determination requests. The GMD's are committed to work with the chief engineer to maintain and improve the program purposes of the WRCP as they are widely recognized as a necessary component in the proper conservation and management of the groundwater resources in Kansas.

The Public Rule and Regulation Process

The department is accepting public comment on its amendments to the Water Rights Conservation Program regulations to end it effective December 31, 2009.

Comment may be made in person at a public hearing at 1:30 p.m. Monday, November 30, 2009, in the fourth floor conference room of the Kansas Department of Agriculture, 109 SW 9th Street, Topeka.

Written comment be may submitted by U.S. mail to the

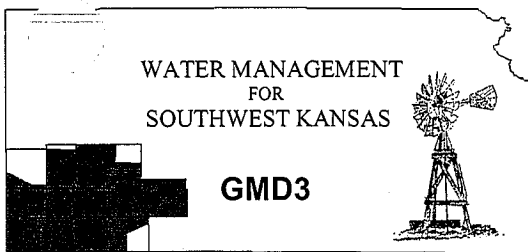
Secretary of Agriculture
109 S.W. 9th, 4th Floor
Topeka, 66612

or by e-mail to

leslie.aarner@kda.ks.gov

The full public notice, including the proposed amendments to K.A.R. 5-7-4 and an economic impact statement, and an online comment form are available online at www.ksda.gov/dwr.

Division of Water Resources
Kansas Department of Agriculture
109 SW 96 Street, 2nd Floor
Topeka, KS 66612
(785) 296-3717



Southwest Kansas
Groundwater Management District No. 3
2009 E. Spruce St.
Garden City, Kansas 67846-6158
(620) 275-7147 phone (620) 275-1431 fax
www.gmd3.org

Testimony before the Joint Committee on Administrative Rules and Regulations
On the
Proposed amendments to K.A.R. 5-7-4
Phasing out the Water Rights Conservation Program (WRCP)

November 16, 2009

Presented By:
Mark Rude
Executive Director

Chairman Holmes and members of the committee, my name is Mark Rude. I am executive director of the Southwest Kansas Groundwater Management District No.3 (GMD3). Thank you for the opportunity to provide some comments on the Department of Agriculture proposed phasing out of the WRCP.

The WRCP fixed a big problem in the application of Kansas water law in declining water areas of Kansas that is now proposed to be restored by the Agency proposed rule change. The GMD's recognized 20 years ago that the "use it or lose it" presumption of Kansas water law and the lack of surety of agency discretion over due and sufficient cause for nonuse created a water conservation problem, especially in groundwater depleting areas of the state. The agency is now proposing to eliminate a very successful solution to the dichotomy of mandatory beneficial use and discretionary water conservation. This agency action will restore old problems that were solved by the WRCP as there is no replacement program.

Kansans can't have owner participation in voluntary non-use of water rights without a guaranteed preservation of that personal property right as documented in the WRCP contract. Both elements are necessary. The past concern for a WRCP fee centered on the notion that water right owners would have to pay to conserve water. However, the benefit of the WRCP over other reasons that can be considered due and sufficient cause for non-use of a water right is the documented status from the agency, which may reasonably command a nominal fee.

We asks that you consider a recommendation that the agency consider a different cost savings approach and not move forward with this proposed rule change. I have attached the Response to the agency "Fact Sheet" on the "Phasing out the Water Rights Conservation Program" (WRCP) from the Kansas GMD's for your reference. Thank you for this opportunity to appear before you today. I would be happy to answer any questions that you may have.

Joint Committee on Administrative
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Attachment 3

**BIG BEND GROUNDWATER MANAGEMENT DISTRICT
NUMBER FIVE
125 SOUTH MAIN – P O BOX 7
STAFFORD KANSAS
TELE: 620-234-5352 FAX: 620-234-5718
www.gmd5.org**

TESTIMONY BEFORE THE
JOINT COMMITTEE ON ADMINISTRATIVE
RULES AND REGULATIONS
REGARDING PROPOSED RULE
K.A.R. 5-7-4
Water Rights Conservation Program
November 16, 2009 - Sharon Falk, Manager

Thank you Chairman Holmes and committee members for the opportunity to appear before you today concerning the WRCP. The Board of Directors, GMD #5 opposes the elimination of the program. GMD #5 is located in South Central Kansas overlying the Great Bend Prairie Aquifer and is part of the High Plains Aquifer system. Water levels in this area fluctuate anywhere from 5' to 20' and there are very few declines and/or water short areas. Because of shallow water levels, a majority of GMD #5 is considered by the state as a "groundwater sensitive area" causing water quality issues in some areas. WRCP can protect those water users who are impacted by the problems associated with these issues. I point this out because the continuance of WRCP is not just about supply issues, but also water quality issues.

The Water Rights Conservation Program is a conservation program where the state of Kansas gets the benefit of water conservation, and in exchange, the water right holder gets a guarantee that their water right is protected. Water users recognize the value of WRCP and have indicated they would be willing to pay a nominal fee dedicated only to the voluntary use of this program. GMD #5 recommends this approach be considered to offset the costs of the program.

Water users also recognize the economic value of water rights in the State of Kansas. The District, supported through our membership, has purchased and now owns several water rights that have been enrolled in this program. The Board, by placing these water rights in this protective program accomplishes two objectives: 1) reduction in consumptive use and 2) protection of the rights that may later provide the potential for higher economic returns using less water.

We understand that K.A.R. 5-7-1 lists numerous reasons that are acceptable for non-use where even water quality issues might be considered. However, Kansas' water law can be very restrictive and is interpreted in many ways. The water users need to know there are programs available that will give them the assurance their water rights are protected. The WRCP contract gives them that assurance.

Thank you for your consideration of this testimony.

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Attachment 4

Equus Beds Groundwater Management District No. 2
Testimony to the
Joint Committee on Administrative Rules and Regulations
Concerning
Elimination of the Water Rights Conservation Program
By Modifying K.A.R. 5-7-4
by
Tim Boese, Manager
November 16, 2009

On behalf of the Board of Directors of the Equus Beds Groundwater Management District No. 2, I wish to thank Chairman Holmes and members of the Committee for the opportunity to provide testimony opposing the elimination of the Water Rights Conservation Program by modifying K.A.R. 5-7-4.

The District Board of Directors opposes the discontinuance of the WRCP as proposed by the modification of K.A.R. 5-7-4 and thoroughly believes that the benefits of the program far outweigh the minimal operating costs. By way of letter, the District Board of Directors on September 9, 2009, conveyed their opposition to the Kansas Department of Agriculture (KDA) and Division of Water Resources (DWR). The five groundwater management district managers also relayed their opposition to DWR in person during a September 10, 2009, meeting. At that meeting, the five district managers discussed possible funding sources and offered assistance to DWR in obtaining funding to maintain the program.

Currently in the District, there are 23 water rights enrolled in the WRCP, totaling almost 7,000 acre-feet. Of these, 18 are in over-appropriated areas and 5 are in the WRCP due to water quality problems. The "Fact Sheet" put forth by KDA/DWR contends that most water rights currently enrolled in the program are incapable of pumping at the capacity they once could due to declining water levels. This is not the case for any of the rights in the District that are enrolled in the program. The contention that real water savings by the program is minimal because the water is not physically present at the previous levels does not hold true in the District. Additionally, several municipalities in the District have obtained existing irrigation and industrial rights and placed the rights into the WRCP either for possible future conversion to municipal rights or simply to reduce the amount of water withdrawn in the area of their existing municipal wells, thus preserving the aquifer for the future.

If the program ends, to protect the water rights currently enrolled in the program from abandonment and dismissal, the rights will either have to be put back into operation or meet the qualifications for due and sufficient causes for nonuse of water as specified in K.A.R. 5-7-1. Only one water right in the District in the WRCP is currently equipped with a pump. Nine wells have been placed into "Inactive Status", nine wells have been plugged, and four wells have been converted to monitoring wells. Without the protection from abandonment guarantee of the WRCP, the water right owners may determine it necessary to re-drill and/or re-equip the wells with pumping equipment and operate the wells.

The District believes that the WRCP is not only a valuable tool for water right owners in the District who wish to temporarily not operate the authorized wells, but that the program allows for conservation of water in the District at a price much lower than any other available program. The District recommends that K.A.R. 5-7-4 is not modified and that the WRCP is maintained. The District further recommends that adequate funding be provided to assist DWR in operating the program.

Thank you Chairman Holmes and Committee members for the opportunity to testify on this important issue.

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Attachment 5



WESTERN KANSAS GROUNDWATER MANAGEMENT DISTRICT NO.1

Testimony

Joint Committee on Rules and Regulations

November 16, 2009

The Water Rights Conservation Program (WRCP) was conceived by the then Manager of GMD #1 Keith Lebbin and Chief Engineer David Pope. The program was implemented in 1992 and has been a successful incentive tool for water conservation in the District. Currently GMD #1 has 289 water rights enrolled in the WRCP.

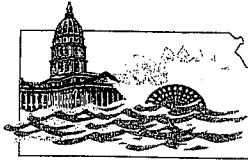
In addition when landowners make application for the NRCS regular EQIP program under the Water Quantity ranking category they get additional points for enrollment in WRCP which adds an incentive for the additional years of conservation attained through WRCP.

Since the inception of the NRCS EQIP/QRA program there have been 17 contracts approved and implemented in GMD#1 and of these 8 are enrolled in the WRCP for 10 years. In GMD#1 the QRAs are defined as 2 mile radiuses around public water supplies. Based on the methodology of computing the average reported use over the most recent, representative 5 year period before enrollment, then multiplying the number of years the water right is retired results in a savings of 13,968 ac/ft over the term of the contracts. This represents an annual savings based on contract term of 1396 ac/ft under these 8 water rights alone. The fact that the target high priority areas for GMD#1 are 2 mile radiuses around public water supplies only exemplifies the significance and importance of the WRCP as an incentive for targeted water conservation in highly depleted areas. The Board of Directors of GMD #1 has gone on record for the continuance of WRCP.

RECOMMENDATIONS:

1. Do not act on the proposed amendments to KAR 5-7-4 and work with stakeholders and the legislature to address the funding/budget issues.
2. Amend KAR 5-7-4 to allow a temporary suspension of the program until the budget/funding issues are relieved.

David A. Brenn, Executive Director



Kansas Water Congress, Inc.
212 SW 8th Ave., Ste. 201
Topeka, KS 66603
www.kswatercongress.org

Initial Directors

David Brenn
Garden City

Ken Frahm
Colby

Robin Jennison
Topeka

Kent Lamb
Macksville

Sen. Janis Lee
Kensington

Ward Loyd
Garden City

Harland Priddle
Burton

Richard Reinhardt
Erie

Paul Tobia
Wichita

Chris Wilson
Wamego

Hannes Zacharias
Olathe

Kansas Water Congress Testimony

to

**Joint Committee on Rules and Regulations
November 16, 2009**

An objective of the Kansas Water Congress is to bring about institution and advancement of programs for the conservation, development and protection of the water resources of the State of Kansas. In furtherance of this objective the Congress cooperates with and supports organizations working for the same general objectives.

The Congress views the WRCP as a successful program that favors conservation of water over consumption as a benefit to the depleting groundwater areas of Kansas and is arguably the most efficient and effective water conservation program in Kansas. In addition the program has been practically utilized by irrigation, municipal and industrial users.

The WRCP program is based on a contract with specific terms between the water right owner and the Chief Engineer instead of interpretation of rules and regulations dealing with due and sufficient cause for non-use issues. This lends itself well for user confidence and is incentive for participation in the program.

Most water right holders place value on their water right(s) and want to protect them. Without the WRCP program, users may be placed in a position to use the right or possibly lose it. This likely will result in actual increase in consumption of the resource and have negative impact particularly in water short areas in the State. The WRCP contract provides surety of the status of the water right while making certain that some level of water conservation occurs.

The Kansas Water Congress is sensitive to agencies budget and funding cuts that they are now facing but recommends the withdrawal of the amendments to KAR 5-7-4 that would eliminate the program and that all possible options for continuance of the program be explored by the agencies and stakeholders of the State.

Respectively Submitted,

David A. Brenn, President

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NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4

STATEMENT OF ISSUE - TESTIMONY

November 16, 2009

PO Box 905; Colby, Kansas 67701-0905; Phone: (913) 462-3915; E-mail: wab@gmd4.org

ISSUE: Sunsetting WRCP

DWR is proposing to amend KAR 5-7-4 to sunset WRCP – thus eliminating one of Kansas' water conservation efforts.

BACKGROUND:

WRCP was conceived and implemented in 1992 to accomplish: 1) providing private, active water right owners in closed areas (formally or by local regulation) a program to set aside (conserve) water use for a specified time; and 2) providing non-private water right owners a place to park water rights they may obtain for future anticipated uses – all the while providing a recognized “due and sufficient cause for non-use” so that the water did not need to be used periodically to maintain the right. Regulations were enacted in 1992 (KAR 5-7-4) which covered all these issues.

CONCERNS & COMMENTS:

1. There are 39 water rights in WRCP currently within GMD 4 that total 4,644 AF of authorized water rights. These rights have reported using an annual average of 1,086 AF between 1990 and the year prior to WRCP enrollment, or, cumulatively 14,749 AF.
2. There are 31 water rights within GMD 4 that had been in WRCP but no longer are. Of these rights: 15 are back in use (WRIS data); 8 have exited WRCP 5 or more years ago and have not been used; 7 have exited WRCP less than 5 years ago and have not been used; and 1 has been dismissed.
3. From the estimated \$133.00 average unit cost of a WRCP contract (KDA/DWR Fact Sheet – Phasing Out the Water Rights Conservation Program), it cost Kansas \$5,187.00 to enroll the 39 current GMD 4 contracts. If these 39 contracts average 15 years in WRCP the cost of this conserved water use will have been about 45 cents per AF.
4. GMD 4 has discussed various options of reducing consumptive water use within its established High Priority Areas (HPAs). Among these ideas has been that of acquiring water rights by the district, conserving these while alternative, higher income uses can be identified, then changing a reduced amount of the controlled water rights to the identified higher economic uses – thus fully conserving the water during the identification phase and reducing consumptive use in trade for higher economic returns in the implementation phase. WRCP is necessary for such an approach.
5. WRCP is far superior to all other alternatives water right owners have to temporarily conserve/not pump their water rights. The pump can be withdrawn and properly stored, the once-every-4-year use of the water right is eliminated, and the unknown state interpretation of the other reasons for non-use for due and sufficient cause are avoided.
6. We recognize the dire fiscal and personnel situation DWR and KDA find themselves in and are concerned that they are not doing more to marshal support for sufficient WRCP funding, or suspending the program pending better fiscal conditions.

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RECOMMENDATIONS:

- 1) KDA/DWR should withdraw the amendments to KAR 5-7-4 and commit to solving the funding issues. Funding solutions could include:
 - a) Amend KSA 82a-708 to provide for an application filing fee for all WRCP applications sufficient to maintain the program;
 - b) Seek Legislative support for increased 2010 agency budget to fund the program; or
 - c) Assist GMD's in developing a suitable local regulation to assume as much of the administrative and tracking responsibilities as possible – significantly lowering DWR costs.

(If any of these fiscal approaches are used, the mandate that the agency use the newly acquired funding to maintain the WRCP program should be clearly stated.)

Alternatively;

- 2) Amend KAR 5-7-4 such that WRCP is temporarily suspended while the budget crisis exists.



Wayne A. Bossert, GMD 4 Manager



Mr. Chairman and members of the Rule and Regulations Committee:

As you review the department's proposed abolition of the WRCP, I would like to provide some written comments for your consideration. As many of you know I am involved in a family farming partnership in Lane County. We have two wells in the WRCP. If it were not for the WRCP we would still be pumping these wells. They are certainly boarder line wells when it comes to economics, but having that water right is like money in the bank waiting for advances in agronomic technology or at the least insurance for an extended draught.

A use it or lose it public policy encourages land owners to make the wrong decision. WRCP allows landowners to make the right short term economic decision without jeopardizing their long term options.

I think the Department should be applauded for the program and encouraged to look at ways to streamline the WRCPs administration, if in fact it is costing them that much in employee time.

Thank you,

Robin Jennison, Partner
Jennison Ranch
Healy, Kansas 67850

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*Mark Parkinson, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner*

Before the
Joint Committee on Administrative Rules and Regulations
November 16, 2009

Long-Term Liability Issues
CO₂ Sequestration and Storage

Mr. Chairman and committee members, I am Tom Day with the Kansas Corporation Commission (KCC). Thank you for the opportunity to speak today about the long-term liability issues of the KCC's draft CO₂ sequestration regulations.

To put this issue into context I will very briefly describe:

- Why the regulations were written.
- How they were written.
- Where they are in the approval (or adoption) process.
- Long-term liability aspects of CO₂ sequestration.

HB 2419 (2007 Session), the "Carbon Dioxide Reduction Act", directed the KCC when developing regulations to cover 8 areas for the underground storage of CO₂:

- Site selection criteria.
- Design and development criteria.
- Operation criteria.
- Casing requirements.
- Monitoring and measurement requirements.
- Safety requirements, including public notifications.
- Closure and abandonment requirements, including the financial requirements.
- Long-term monitoring.

The Conservation Division formed a workgroup composed of KCC staff and staff from KDHE, Kansas Geological Survey, the utility industry and EPA to draft the regulations. The Workgroup used our Natural Gas Underground Storage and Class II regulations as a guide to help develop the proposed administrative regulations. Also, we relied heavily on the Interstate Oil and Gas Compact Commission's (IOGCC) CO₂ sequestration model regulations.

At the time the KCC began drafting our regulations, there was no guidance from the Groundwater Protection Council on long-term liability and the EPA had not yet released their proposed regulations. With respect to the liability issue, the IOGCC's model regulations created the concept of a trust fund (created by a fee per ton of CO₂ injected by the operator) administered by States to use for any remedial actions after the closure of CO₂ projects. The state, not the

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operator, deems when closure begins by determining when the CO₂ stored no longer poses a threat to usable water or public safety.

The IOGCC transferred long-term liability, after closure, to the States because it believed a governmental entity would be the only likely entity which would last the 100 to 500 years (or longer) in the future for the life of a CO₂ plume. Another benefit the IOGCC saw was the trust fund paying for emergency activities the state would have to perform in cases when the operator had gone out of business. Lastly, the IOGCC believed the transfer of liability would be necessary because insurance and bonding companies would not write policies for perpetual liability. The liability section of the regulations presented at the public hearing before the Commissioners on March 26, 2009 was fundamentally the same as IOGCC's.

In three separate open meetings held in July, September and earlier in October, the Commission discussed the long-term liability issue. On October 2, 2009 the Commission directed Staff to delete the state assuming long-term liability in proposed K.A.R. 82-3-1117.

On October 8, the Department of Administration and Attorney General's office approved the changes. The revised K.A.R. 82-3-1117 (attached) will be noticed in the Kansas Register for a public hearing to be scheduled before the Commission on January 6, 2010.

The letter from Chairman Thomas Wright, KCC, to Representative Carl Holmes and this Committee goes over in greater detail, the timeline of the proposed regulations.

Thank you.



*Mark Parkinson, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner*

October 13, 2009

Mr. Carl Holmes, Chairman
Joint Committee on Administrative Rules and Regulations
P.O. Box 2288
Liberal, KS 67901

Dear Chairman Holmes,

In response to the request of the 2007 Legislature in HB2419, the KCC has drafted Rules and Regulations on Carbon Sequestration. The steps taken in developing these guidelines have been thorough. When the final form has received the required administrative approvals and the KCC has conducted appropriate public hearings, KCC Commissioners will make their final review and vote.

The KCC began the process in the summer of 2007 with a group composed of KCC Staff, KDHE Staff, KGS Staff, EPA Region 7 Staff and Industry. The working group met almost every two weeks drafting the CO₂ regulations. At the same time, the group was tracking EPA CO₂ regulation proposals and the concerns in other states regarding CO₂ storage.

On May 9, 2008, the KCC staff made the initial submittal of the regulations to the D of A. That complete draft received final approval from the D of A on August 29, 2008, following approval of parts of the regulations on July 10, August 6 and August 7, 2008. The D of A then submitted all the regulations to the AG's office for review. On January 9, 2009, the AG's office approved the submitted draft of Regulations in its entirety,

On January 22, 2009, the regulations and notice of the public hearing were published in the Kansas Register. The Public Hearing was scheduled for March 26, 2009.

On February 13, 2009, the Joint Committee on Administrative Rules & Regulations held a hearing. The KCC received a letter from the Kansas Legislative Research Department with comments from the Joint Committee on February 20, 2009.

Following the March 26 public hearing, the KCC staff suggested changes and the regulations were submitted to the Commissioners on April 16, 2009. The Commissioners held Open Meetings to discuss the regulations on July 15, September 28 and October 2.

On October 2, 2009, the Commissioners approved staff's changes and, considering that concerns had been expressed in the February 20 letter regarding provisions relating to post-closure

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liability, and in light of our understanding that the interim committee was going to consider legislation addressing this issue, the Commissioners decided to amend K.A.R. 82-3-1117 to eliminate the State assumption of post-closure responsibility. Following the Commission's decision on October 2, Staff submitted the approved changes to the Department of Administration (D of A) for approval on October 7. The KCC anticipates the approval by the D of A and the Attorney General's (AG) office by October 23.

Staff believes the modification regarding post-closure liability is a significant change in the regulation that triggers the need for another public hearing. The KCC can publish notice of the public hearing on October 29 or November 5, 2009 and could hold the public hearing after January 5, 2010. Following the public hearing, the Commissioners can vote on the regulations.

As indicated above, the Commission is also aware that the Committee is considering legislation to address post-closure liability. With respect to the newly proposed legislation, KCC staff has indicated concerns regarding the effect of language in the current draft on the Commission's authority to remedy a post closure emergency in a case in which there is no viable operator. We would welcome the opportunity for them to discuss this matter with you.

The KCC looks forward to working with you as this process is completed.

Sincerely,

/s/

Thomas Wright, Chairman
Kansas Corporation Commission

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K.A.R. 82-3-1117. Postclosure determination. (a) Each CO₂ storage facility operator seeking a postclosure determination shall submit an application to the conservation division.

(b) The CO₂ storage facility operator shall demonstrate that both of the following conditions are met before postclosure status may be granted:

(1) The CO₂ plume has stabilized, is contained within the storage reservoir, and is not a threat to public health and safety and usable water.

(2) The CO₂ storage reservoir pressure is stable.

(c) If the application is denied, the closure period activities shall continue as directed by the director.

(d) Upon written approval of postclosure status, the operator shall plug the remaining monitor wells in accordance with K.A.R. 82-3-1118. After the remaining monitor wells are plugged, the CO₂ storage facility permit shall be revoked. (Authorized by and implementing K.S.A. 2008 Supp. 55-1637; effective P-_____.)

ECONOMIC IMPACT STATEMENT

I. Summary of Proposed Regulation, Including Its Purpose:

K.A.R. 82-3-1117. This regulation requires an application and approval by the Conservation Division for a post closure determination of the CO₂ storage facility. The regulation specifies the content of the application for a post closure determination. Upon approval of post closure status, the operator must plug any remaining monitor wells; the CO₂ storage facility permit will then be revoked. The CO₂ storage facility operator will remain responsible for any future remediation or monitoring activities that become necessary.

II. Reason or Reasons the Proposed Regulation Is Required, Including Whether or Not the Regulation is Mandated by Federal Law:

Federal law does not mandate this proposed regulation. K.S.A. 55-1636 through K.S.A. 55-1640 directs the State Corporation Commission to adopt a comprehensive regulation governing the storage and sequestration of CO₂ in Kansas.

III. Environmental Benefit Statement:

There will be a direct environmental benefit provided by this regulation. The regulation will aid in allowing safe subsurface storage and sequestration of CO₂ produced as a byproduct of energy generation, ethanol production and other manufacturing processes. Currently, the CO₂ produced is released into the atmosphere. The regulation will help protect the fresh and usable water resources, the mineral resources of the State, and the public health and safety while allowing CO₂ to be stored and sequestered underground.

IV. Anticipated Economic Impact:

The amendment shifts post closure responsibility for any remediation or monitoring of the CO₂ storage facility from the State to the operator. The cost to the operator could be significant if any post closure remediation was required but those costs are so variable they cannot be accurately projected.

Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 10:00 a.m., January 6, 2010, at the Kansas Corporation Commission, 130 S. Market, Room 2078, Wichita, Kansas 67202, to consider the adoption of proposed permanent regulation K.A.R. 82-3-1117 for the underground storage and sequestration of CO₂.

The 60-day notice period from the date of this publication to the date of the public hearing constitutes a public comment period for the purpose of receiving written public comments on the proposed regulations. Comments may be submitted to John McCannon, Litigation Counsel, State Corporation Commission, Finney State Office Building, 130 S. Market, Room 2078, Wichita, Kansas, 67202; or to oilandgasregcomments@kcc.ks.gov via electronic mail.

Any person requiring special accommodations under The Americans with Disabilities Act needs to give notice to the Commission at least ten (10) days prior to the scheduled hearing date.

Copies of the **proposed regulation** and the **economic impact statement** may be obtained from the Commission's Office at 130 South Market, Room 2078, Wichita, Kansas 67202; or from the Commission website at <http://kcc.ks.gov>. Persons requesting a copy of the proposed regulation and economic impact statement, in accordance with K.S.A. 45-129, will be required to compensate the Commission for the cost of reproduction. All interested parties will be given a reasonable opportunity at the hearing to present their views orally or in writing in regard to the adoption of the proposed regulation.

All written or oral comments submitted by interested parties on or before January 6, 2010, will be considered by the Commission as a basis for making changes to these proposed permanent regulation.

The following is a brief summary of the proposed regulation and economic impact statement:

K.A.R. 82-3-1117. This regulation requires an application and approval by the Conservation Division for a post closure determination of the CO₂ storage facility. The regulation specifies the content of the application for a post closure determination. Upon approval of post closure status, the operator must plug any remaining monitor wells; the CO₂ storage facility permit will then be revoked. The CO₂ storage facility operator will remain responsible for any future remediation or monitoring activities that become necessary.

Economic Impact Statement: The amendment shifts post closure responsibility for any remediation or monitoring of the CO₂ storage facility from the State to the operator. The cost to the operator could be significant if any post closure remediation was required but those costs are so variable they cannot be accurately projected.

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News Release, Kansas Geological Survey, Oct. 26, 2009

Kansas Geological Survey receives \$5 million grant to study CO₂ storage

LAWRENCE--The Kansas Geological Survey based at the University of Kansas has received a nearly \$5 million grant from the U.S. Department of Energy to study the feasibility of storing carbon dioxide underground.

Awarded as part of the American Recovery and Reinvestment Act, the grant is the largest ever received by the Survey. It will be used to determine whether a largely depleted Kansas oil and gas field in south-central Kansas and an underlying saline aquifer can permanently and safely sequester carbon dioxide (CO₂) from stationary sources such as electric, cement, ethanol, and fertilizer plants.

A collaborative effort between government and industry, the three-year project will include scientists from the Survey, the KU and Kansas State University Departments of Geology, and two Wichita-based firms--BEREXCO, Inc., and Bittersweet Energy, Inc. Survey geologists Lynn Watney and Saibal Bhattacharya are leading the investigation.

"CO₂ sequestration is in the early phase of implementation globally," Watney said. "We will be evaluating the sequestration capacity of depleted oil fields and deep saline aquifers and are aiming to develop an effective carbon-sequestration model that is tailored to the Kansas industry and economy."

Research will be done on the Wellington oil and gas field in Sumner County south of Wichita, which has produced 20 million barrels of oil since 1927.

Subsurface rock units in the Wellington field, which once held the large quantities of oil and gas, will be evaluated through drilling and other geophysical methods to determine their capacity to securely contain CO₂ in the future. The project is a subsurface characterization investigation and will not include any sequestration of CO₂.

"A lot of technical questions associated with the physical process of storing CO₂ underground have yet to be answered, and studies such as this are necessary for us to develop an understanding of the detailed fluid-rock interactions that will occur over long periods of time," said Survey Director William Harrison. "These studies will yield information that could be valuable as rules and regulations are formulated for underground sequestration applications."

In addition to investigating the possibilities for CO₂ sequestration in oil and gas fields, the researchers will model the use of industry-emitted CO₂ to squeeze out trapped oil and gas unreachable by traditional methods.

They will also study the suitability of the Ozark Plateau Aquifer System--mainly composed of Arbuckle Group rocks--for sequestration in a 17-county area. The highly saline water in the aquifer, which is about 4,000 feet beneath the surface in south-central Kansas, is not usable for other purposes and is isolated from shallower freshwater aquifers by impermeable rock units.

"This study will help us understand the different mechanisms that result in subsurface CO₂ sequestration and evaluate risks associated with leakage of injected CO₂," Bhattacharya said.

Second only to China for the highest CO₂ emissions from human activities, the United States generates more than 5.7 billion metric tons annually, or nearly 20% of the 33 billion metric tons emitted worldwide.

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Attachment 11

Besides reducing the amount of CO₂ discharged into the air, successful geologic sequestration of CO₂ could lead to the development of a new industry in the state. The Ozark Plateau Aquifer System and the Wellington field, as well as other oil and gas fields that produce from the same rock units, are centrally located near multiple sources of emissions that could be captured and stored.

"The findings in this study will be used to evaluate the feasibility of a regional infrastructure for carbon capture and storage that would be needed to establish a commercial-scale CO₂-sequestration industry in the Midwest," Watney said. "Potential for enhanced oil recovery also could generate interest in the Kansas oil and gas industry."

The Kansas Geological Survey also will be collaborating on another DOE-funded, Kansas-based CO₂ sequestration project with the Southwest Partnership on Carbon Sequestration (SWP) and the Wichita-based firm, CAP CO₂, LLC.

Links of interest to this article:

[CAP CO₂, LLC.](#)

[Southwest Partnership on Carbon Sequestration \(SWP\)](#)

[Dept. of Geology, Kansas State University](#)

[Dept. of Geology, University of Kansas](#)

[BEREXCO, Inc.](#)

[American Recovery and Reinvestment Act](#)

Story by [Cathy Evans](#), (785) 864-2195.

For more information, contact [Lynn Watney](#), (785) 864-2184.

[Kansas Geological Survey, Public Outreach](#)

URL="http://www.kgs.ku.edu/General/News/2009/co2_storage.html"

11-2

KANSAS

BOARD OF PHARMACY
DEBRA L. BILLINGSLEY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

November 4, 2009

Raney L. Gilliland
Assistant Director for Research
KS Legislative Research Department
State Capitol, 300 SW 10th St.
Room 010-West
Topeka, Kansas 66612-1504

RE: Unused Medication Program

Dear Mr. Gilliland:

The Kansas Board of Pharmacy would like to provide an update to the Joint Committee on Rules and Regulations regarding the Unused Medication Program.

The Unused Medication Program permits Indigent Health Clinics, Federally Qualified Health Centers, or Community Health Centers to participate as recipients of unused medications donated through the program. Kansas currently has 14 Federally Qualified Health Centers (FQHC) and one FQHC look alike center.¹ The Kansas Department of Health and Environment oversees 23 Kansas Community Health Centers and 48 State funded Primary Care Clinics. Some of these clinics qualify as both a Community Health Center and a Primary Care Clinic. The Board has registered 15 drug recipient participants from those eligible clinics. Each participant has filled out a form requesting to participate in the program and they have applied for and received an Indigent Clinic registration with the Board of Pharmacy. Each location has a pharmacist-in charge that has drafted policy and procedures for ordering, storing, and dispensing the medications. A list of participants has been provided and is marked as Exhibit "A".

The statute permits adult care homes, mail service pharmacies, and medical care facilities that elect to participate in the program to donate medications. The Board of Pharmacy

¹The FQHC look alike is federally designated and receives enhanced Medicaid reimbursement but does not receive a federal grant.

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Attachment 12

LANDON STATE OFFICE BUILDING, 900 SW JACKSON STREET,

Phone 785-296-4056

Fax 785-296-8420

www.kansas.gov/pharmacy

pharmacy@pharmacy.ks.gov

Page Two
November 3, 2009
KS Legislative Research Department

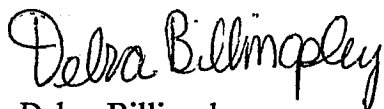
has received written notification from 6 entities requesting authorization to donate drugs into the program. A list of participants has been provided and has been marked as Exhibit "B".

The Board of Pharmacy has registered the Community Health Center of Southeast Kansas as a central repository for the medications. This was accomplished and made possible through funding provided by KDHE. The repository is separate from the pharmacy and has a full-time pharmacist-in-charge as well as additional staff. They are responsible for accepting all of the drugs into the program and maintaining a list of medications that are available to the recipient participants. The facility has been inspected by a Board of Pharmacy Compliance Officer for temperature controls, record keeping, and security. The Board of Pharmacy Compliance Officer, Robert Stiles of the Bureau of Local and Rural Health (KDHE), and myself have planned a trip to Pittsburg before 2010 to review the systems that are in place at the repository.

Robert Stiles has kept in close contact with the Board of Pharmacy to make sure that the program is running efficiently and with integrity. The Board of Pharmacy and KDHE have also discussed our program's status with the U.S. Department of Health and Human Services and with other states that are interested in our model. To date, we have not had any issues of concern and the program appears to be running successfully.

If you have any questions regarding this program do not hesitate to contact me.

Sincerely,

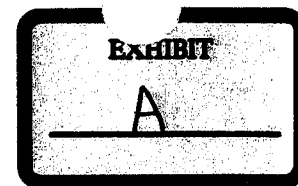


Debra Billingsley
Executive Secretary

Encl.

cc: Board of Pharmacy
Robert Stiles, Bureau of Local and Rural Health

12-2



Medication Recipient Participants

Health Care Access
1920 Moodie Road
Lawrence, Kansas 66046
Phone: 785-841-5760
Attn. Lori Winfrey
Jeffrey Sigler, R.Ph.

Marian Clinic
1001 SW Garfield Avenue
Topeka, Kansas 66604
Phone: 785-233-8153
Attn. Rose Steenhoven
Vicki Schmidt, R.Ph.

Healthy Options for Kansas Communities
3620 Sunnybrook Lane
Wichita, Kansas 67210
Phone: 316-651-0062
Attn. Eugene Peterson
Eugene Peterson, R.Ph.

Kansas Health Partners Silver City Health Center
1428 S. 32nd St. #100
Kansas City, Kansas 66106
Phone: 913-831-1111
Attn. JoAnn Peterson
Tom Finnell, R.Ph.

Montgomery County Community Clinic, Inc
900 W. Myrtle St.
Independence, Kansas 67301
Phone: 620-331-8190
Attn. Emily Runyan
Michelle Blankenship, R.Ph.

Caritas Clinics Inc.
818 N. 7th Street
Leavenworth, KS 66048
Phone: 913-321-2626
Attn. Amber Eastabrooks
JoAnne Gilstrap, R.Ph.

Health Partnership of Johnson Cnty.
7171 W. 95th Street, Suite 100
Overland Park, KS 66212
Phone: 913-648-2266
Attn. Misty Pineda
Nolan Seth Berry, R.Ph.

St. Gianna Health Clinic
638 West D. Avenue
Kingman, KS 67068
Phone: 620-532-5113
Attn. Merlin McFarland
Merlin McFarland, R.Ph.

Community Health Center of SEK
3011 N. Michigan
Pittsburg, Kansas 66762
620-231-9873
Attn. Ken Wood, R.Ph.

Hunter Health Clinic
2318 E. Central
Wichita, KS 67214
Phone: 316-262-2415 Ext. 1134
Attn. Veronica Seberger
Merlin McFarland, R.Ph.

12-3

E.C. Tyree Health & Dental Clinic
1525 N. Lorraine
Wichita, Kansas 67214
Phone: 316-681-2545
Attn. Jennifer Edison
Frank Tejada, R.Ph.

Health Ministries Clinic
209 S. Pine St.
Newton, Kansas 67114
Phone: 316-283-6103
Attn. Sue Stuchlik
Gina Edwards, R.Ph.

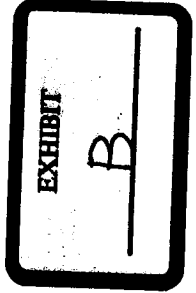
Labette Center for Mental Health
Services, Inc.
1730 Belmont Ave.
Parsons, KS 67357
Phone: 620-421-3770
Att: Jonathan Tower
Brian West, R.Ph.

Riley County Manhattan Health
Department
2030 Tecumseh Road
Manhattan, KS 66502
Phone: 785-776-4779 Ext. 243
Attn. Kathy Dickey-Wilson
Barry Sarvis, R.Ph.

Heart of Kansas Family Health Care
1905 19th Street
Great Bend, Kansas 67530
Phone: 620-792-5700
Attn. Carla Liebl RN
Randal Moyers, R.Ph.

12-4

| <u>Name of Facility</u> | <u>Address</u> | <u>City</u> | <u>State</u> | <u>Zip</u> | <u>Phone</u> | <u>Contact/Pharmacist</u> |
|-------------------------------------|-------------------------------|---------------|--------------|------------|--------------|----------------------------------|
| Coffeyville Regional Medical Center | 1400 W. Fourth | Coffeyville | KS | 67337 | 620-252-1695 | Chad Schlorholtz, PIC |
| Cornerstone Village, Inc | 1502 E. Centennial Ave. | Pittsburg | KS | 66762 | 620-235-0020 | Cecil Nave, Administrator |
| Emerald Pointe Health and Rehab | 109 W. Empire | Galena | KS | 66739 | 620-783-2755 | P. Bart Keener, Administrator |
| Fort Scott Manor | 736 Hegman Street | Fort Scott | KS | 66701 | 620-223-3120 | Lynette Emmerson, Administrator |
| Galena Nursing Center | 1220 E. 8th Street | Galena | KS | 66739 | 620-783-1383 | Jeffrey R. Carter, Administrator |
| Prescription Solutions | 6800 West 115th St., Ste. 600 | Overland Park | KS | 66061 | 913-253-0810 | Frank Whitchurch, PIC |



17-5

KANSAS

MARK PARKINSON
GOVERNOR

STATE BOARD OF HEALING ARTS

Raney Gilliland
Assistant Director for Research
Legislative Research Department
Room 010-W
State Capitol
300 SW 10th Ave.
Topeka, Kansas 66612-1504

October 26, 2009

RE: Procedures Regarding the Promulgation of Rules and Regulations

Dear Raney:

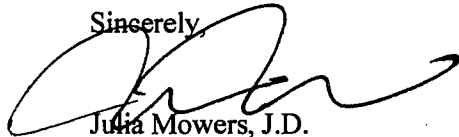
I am writing to inform you of the recent discussion among KSBHA Board Members on the Joint Committee of Administrative Rules and Regulations' request that the Board review the agency's promulgation of rules and regulations.

The Board met on Friday October 16, 2009. At this meeting, I conveyed the Committee's thoughts and comments from their August and October meetings. The Board was receptive and appreciative of the Committee's insights. After a brief discussion, a motion was made and the Board voted to implement the Committee's suggestion that the Board approve all proposed new, revoked, or amended regulations prior to agency staff beginning the regulatory process.

I have enclosed a copy of KSBHA's newly amended procedure for the promulgation of rules and regulations.

Please let me know if you have any further questions or concerns.

Sincerely,



Julia Mowers, J.D.
Legislative Analyst
Kansas Board of Healing Arts
235 S. Topeka Blvd.
Topeka, KS 66603

Enc.

Joint Committee on Administrative
Rules and Regulations
November 16, 2009
Attachment 13

BOARD MEMBERS: MICHAEL J. BEEZLEY, M.D., PRESIDENT, Lenexa - M. MYRON LEINWETTER, D.O., VICE PRESIDENT, Rossville
MYRA J. CHRISTOPHER, Public Member, Fairway - RAY N. CONLEY, D.C., Overland Park - GARY L. COUNSELMAN, D.C., Topeka - FRANK K. GALBRAITH, D.P.M., Wichita
MERLE J. "BOO" HODGES, M.D., Salina - SUE ICE, Public Member, Newton - BETTY McBRIDE, Public Member, Columbus - GAROLD O. MINNS, M.D., Bel Aire
CAROLINA M. SORIA, D.O., Wichita - KIMBERLY J. TEMPLETON, M.D., Leawood - TERRY L. WEBB, D.C., Hutchinson - NANCY J. WELSH, M.D., Topeka - RONALD N. WHITMER, D.O., Ellsworth

235 SW TOPEKA BLVD., TOPEKA, KS 66603
Voice: 785-296-7413 Toll Free: 888-886-7205 Fax: 785-296-0852 Website: www.ksbha.org
Hearing Impaired Callers Dial 711 or 800-766-3777/voice/TTY

KANSAS STATE BOARD OF HEALING ARTS STATUS OF PROPOSED AMENDED OR REVOKED REGULATION

TEMPORARY REGULATION

Regulation K.A.R. _____
 Proposed by: _____
 Drafter: _____

| TASK | DATE COMPLETED |
|--|----------------|
| 1) Receive approval and direction from Board to proceed | _____ |
| 2) Draft completed and sent to the dept. of admin., legal division | _____ |
| 3) Economic impact statement (EIS) completed | _____ |
| 4) Regulation stamped by the dept. of admin. | _____ |
| 5) Regulation sent to the attorney generals office | _____ |
| 6) Regulation stamped by the attorney generals office | _____ |
| 7.) Drafter has commenced PERMANENT regulation process | _____ |
| 8.) Proposed regulation scheduled for special board meeting for adoption | _____ |
| 9.) Stamped regulation, EIS and Notice of Special Board Meeting sent to IT to post on web | _____ |
| 10.) Admin Officer has posted proposed regulation on main "Rules and Regulations" page by regulation number on website | _____ |
| 11.) Public information officer (PIO) is notified of proposed regulation | _____ |
| 12.) Drafter sends out all-agency email to inform staff of proposed changes | _____ |
| 13.) Board adopts/rejects regulation at special board meeting | _____ |
| 14.) Certificate of adoption completed and signed by executive director | _____ |
| 15.) Certificate of adoption, reg, and EIS sent to sec. of state's office | _____ |
| 16. Drafter submits necessary documents to sec. of state for SRRB meeting | _____ |
| 17.) State Rules and Regulations Board (SRRB) meeting schedule for: | _____ |
| 18.) If post-public hearing amendments are needed: | |
| a) Post-meeting amendments completed | _____ |
| b) Amended regulation sent to dept. of admin. | _____ |
| c) Regulation re-stamped by the dept. of admin. | _____ |
| d) Amended regulation sent to attorney general | _____ |
| e) Regulation re-stamped by attorney general | _____ |
| f) Admin Officer has posted proposed regulation on main "Rules and Regulations" page by regulation number on website | _____ |
| 19.) Adopted reg is published in the Kansas Register | _____ |
| 20.) Temporary Regulation goes into effect: | _____ |
| 22.) Temporary Regulation expires (120 days): | _____ |
| 22.) Drafter has informed PIO when adopted reg goes into effect | _____ |
| 23.) Drafter sends out all-agency email alert staff of regulation change | _____ |
| 24.) Admin Officer deletes "proposed" reg link and old reg to with adopted reg | _____ |
| 25.) Admin Officer copies regulation to licensing booklet if applicable | _____ |
| 26.) Admin Officer changes date on booklet cover to reflect date of update | _____ |
| 27.) Admin Officer saves changes to booklet as a Word doc for editing purposes | _____ |
| 28.) Admin Officer saves the booklet as a PDF and uploads in Dreamweaver | _____ |
| 29.) Admin Officer consults with Licensing Administrator to determine if reg change affects online forms | _____ |
| 30.) If form needs to be corrected, Admin Officer saves it over old form on website | _____ |
| 31.) Admin Officer checks to see if licensing FAQs are affected by reg and change if needed | _____ |
| 32.) Admin Officer informs licensing administrator and drafter after making changes | _____ |
| 33.) After Admin Officer completes checklist, return file to drafter to close | _____ |
| 34.) Drafter closes out file | _____ |

KANSAS STATE BOARD OF HEALING ARTS

STATUS OF PROPOSED AMENDED OR REVOKED REGULATION

PERMANENT REGULATION

Regulation K.A.R. _____

Proposed by: _____

Drafter: _____

| TASK | DATE COMPLETED |
|---|----------------|
| 1.) Receive approval and direction from Board to proceed | _____ |
| 2.) Draft completed and sent to the dept. of admin., legal division | _____ |
| 3.) Economic impact statement (EIS) completed | _____ |
| 4.) Regulation stamped by the dept. of admin. | _____ |
| 5.) Regulation sent to the attorney generals office | _____ |
| 6.) Regulation stamped by the attorney generals office | _____ |
| 7.) Public Hearing scheduled | _____ |
| 8.) Drafter notifies, via email, council and association | _____ |
| 9.) Public information officer (PIO) is notified of proposed regulation | _____ |
| a) PIO creates information postcard to send to affected licensees and sends to AO | _____ |
| 10.) Stamped regulation, EIS and notice of hearing (NoH) sent to Admin Officer (AO) to post on web | _____ |
| a) AO posts reg, EIS and NoH on the "Public Information" page on the date of the hearing | _____ |
| b) AO posts proposed regulation on "Rules and Regulations" page on website | _____ |
| 11.) AO issues postcard if necessary (including gathering addresses and placing order with state printer) | _____ |
| 12.) Drafter sends out all-agency email to inform staff of proposed changes | _____ |
| 13.) Notice of hearing is published in the Kansas Register | _____ |
| 14.) Public hearing minutes completed | _____ |
| 15.) Joint committee on rules and regulations hearing schedule for: _____ | _____ |
| 16.) If post-public hearing amendments are needed: | _____ |
| a) Post-hearing amendments completed | _____ |
| b) Amended regulation sent to dept. of admin. | _____ |
| c) Regulation re-stamped by the dept. of admin. | _____ |
| d) Amended regulation sent to attorney general | _____ |
| e) Regulation re-stamped by attorney general | _____ |
| f) AO posts amended reg on "Rules and Regulations" on website | _____ |
| 17.) Proposed regulation scheduled for board adoption | _____ |
| 18.) Board adopts _____ rejects _____ regulation | _____ |
| 19.) Certificate of adoption completed and signed by executive director | _____ |
| 20.) EIS revised to include minutes of public meeting | _____ |
| 21.) Certificate of adoption, reg, and EIS sent to sec. of state's office | _____ |
| 22.) Adopted reg is published in the Kansas Register | _____ |
| 23.) Drafter writes legislative research dept. to inform of post-hearing changes/respond to suggestions | _____ |
| 24.) Regulation goes into effect: _____ | _____ |
| 25.) Drafter has informed PIO when adopted reg goes into effect | _____ |
| a) PIO creates information postcard to send to affected licensees and sends to AO | _____ |
| 26.) AO issues postcard if necessary (including gathering addresses and placing order with state printer) | _____ |
| 27.) Drafter sends out all-agency email alert staff of regulation change and emails council & association | _____ |
| 28.) AO deletes "proposed" reg link and old reg to with adopted reg | _____ |
| 29.) AO copies regulation to licensing booklet if applicable | _____ |
| 30.) AO changes date on booklet cover to reflect date of update | _____ |
| 31.) AO saves changes to booklet as a Word doc for editing purposes | _____ |
| 32.) AO saves the booklet as a PDF and uploads in Dreamweaver | _____ |
| 33.) AO consults with Licensing Admin. to determine if reg change affects online forms | _____ |
| 34.) If a form that is posted on the website needs to be corrected, the AO will meet with the Licensing Admin. The Licensing Admin. will make all changes and e-mail the new form to the AO. The AO will save the new form over the old form on website | _____ |
| 35.) AO checks with Licensing Admin. to see if licensing FAQs are affected by reg and change if needed | _____ |
| 36.) AO informs licensing administrator and drafter after making changes | _____ |
| 37.) After AO completes checklist, return file to drafter to close | _____ |
| 38.) Drafter closes out file | _____ |

13-3