

MINUTES

JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY

November 19-20, 2012
Room 152-S—Statehouse

Members Present

Representative Forrest Knox, Chairperson
Senator Carolyn McGinn, Vice-chairperson
Senator Marci Francisco
Senator Ralph Ostmeyer
Senator Mike Petersen
Senator Mark Taddiken
Representative Dennis Hedke
Representative Mitch Holmes
Representative Annie Kuether
Representative Tom Sloan (November 20 only)
Representative Vince Wetta

Staff Present

Cindy Lash, Kansas Legislative Research Department
Heather O'Hara, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Abigail Boudewyns, Kansas Legislative Research Department
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Jan Lunn, Committee Secretary

Conferees

Doug Louis, Kansas Corporation Commission
Ed Cross, Kansas Independent Oil and Gas Association
Chuck Reimer, Office of the Revisor of Statutes
Mike Tate, Kansas Department of Health and Environment
Bill Bider, Kansas Department of Health and Environment
Ron Gaches, Gaches and Braden (Keystone Representative)
Tom Gross, Kansas Department of Health and Environment
Bill Eastman, Westar Energy
Wayne Penrod, Sunflower
Paul Ling, KCP&L
Enbridge (written testimony)
Empire Electric (written testimony)
Leo Haynos, Kansas Corporation Commission

Mark Schreiber, Westar Energy
Angee Morgan, Kansas Division of Emergency Management
Mike Houts, Kansas Biological Survey
The Nature Conservancy of Kansas
Greg Krissek, ICM, Inc.
Bob Jurgens, Kansas Department of Health and Environment
Kimberly Svaty, The Wind Coalition
Brad Estes, BTP Wind Energy (via telephone)
Bob Glass, Kansas Corporation Commission
Michael Head, Beacon Hill Institute (via Skype)
Alan Claus Anderson, Polsinelli Shugart
Britton Gibson, Polsinelli Shugart
Luke Hagedon, Polsinelli Shugart
Scott White, Kansas Energy Information Network
Robin Jennison, Secretary, Kansas Department of Wildlife, Parks and Tourism
Mark Shriwise, Ford County Planning, Zoning and Environmental Health
Bronson Farmer, Salina-Saline County Health Department
Todd Rogers, Johnson County Department of Health and Environment

**Monday, November 19
Morning Session**

The Chairperson called the meeting to order at 10:05 a.m. and welcomed those attending.

Oil and Gas Production Update

Doug Louis, Kansas Corporation Commission (KCC), presented a comprehensive update concerning increases in oil activity in both eastern and western Kansas with approximately 140 active drilling rigs and a recent monthly average of 600 intent-to-drill permits. He referenced the Mississippian Lime Play in western Kansas that has caused increases in both vertical and horizontal drilling. Eastern Kansas has experienced less activity. He presented various graphs and tables representing historical oil and gas production in Kansas, correlation of drilling to the price of crude oil, trends in oil and gas production, and recent levels of exploration, including horizontal drilling activity ([Attachment 1](#)). Mr. Louis noted that gas production in the past five years has experienced a reduction, which is in reaction to lower prices. Hugoton is declining at a seven percent rate and coal bed methane exploration is becoming non-existent in southeast Kansas.

A Committee member inquired how many inspectors are employed within the Conservation Division at the KCC, whether current staffing levels are adequate for the workload, and whether funding is adequate. Mr. Louis stated, within the Conservation Division, there are 86 full-time equivalent (FTE) inspector positions; a budget enhancement in the 2012 Session resulted in approval to hire six additional inspectors for the Mississippian Lime Play. They will be located as follows: one position in western Kansas, two positions in the Wichita office, two positions in Dodge City, and one in the Hays office. Two inspectors of the six have been hired for two-year project positions. The KCC is actively recruiting for the remaining four positions. Mr. Louis stated, with approximately 790 intent-to-drill permits in one month, the Division is extremely busy. However, technological advancements, such as online permit filing,

have contributed to keeping backlogs to a minimum. Other than the previous mention of funding for additional positions, Mr. Louis did not address funding adequacy.

A Committee member referred to a graph in Mr. Louis' testimony, "Combined Graph of Oil Production (left axis) and Horizontal Wells (right axis) in Mississippian Lime Play (2011-2012)" that illustrates that in the month of July 2012, 60 horizontal wells produced over 100,000 barrels of oil. The Committee member commented, given the costs of drilling a horizontal well at approximately \$3.5 million and the cost to drill vertically at approximately \$500,000 to \$600,000, the Legislature may want to re-evaluate the severance tax changes made during the 2012 Legislative Session.

Mr. Louis responded to other questions as follows:

- When asked whether 2012 severance tax statutory revisions have limited any production, Mr. Louis indicated the major companies have informally stated their drilling program has not been limited.
- The Miller Unit in Gray County (see Mr. Louis' testimony), developed by Sanchez Oil and Gas, is an atypical example of advanced drilling technologies. Mr. Louis explained that, in this example, a single vertical tank pad will serve two horizontal "legs" in Sections 5 and 8. Horizontal production in Sections 5 and 8 begins 330 feet within the unit; while a common pad serves both "legs," production is separate. Lateral drilling is scientific and sophisticated; horizontal drill bits are guided in real-time measurements (latitude and longitude). This technology is generally called measurement-while-drilling and allows engineers and geologists to gain up-to-the-minute subsurface information while the well is being drilled.

Ed Cross, President, Kansas Independent Oil and Gas Association, provided the Association's perspective concerning oil and gas activity in Kansas. He indicated the oil and gas renaissance has allayed fear concerning the scarcity of oil and gas reserves; currently, the U.S. has 26 percent of the world's technically recoverable oil reserves and 30 percent of the world's technically recoverable gas reserves. Mr. Cross discussed natural gas and oil production in Kansas and the U.S., North American shale plays, severance and *ad valorem* tax rates in Kansas, conventional as well as unconventional well drilling methods, and the Mississippian Lime Play in Oklahoma and southern Kansas. Mr. Cross presented key challenges for the industry, which included federal tax provisions and regulatory overreach ([Attachment 2](#)).

Mr. Cross responded to Committee members' questions as follows:

- The 2012 statutory revisions to severance taxes, at this time, have not limited operators. The revision related to a 50 barrel per day production limit could impact 50-55 operators out of the state's 2,100 operators. Smaller producers have not been affected.
- A Committee member noted it costs approximately \$700,000 more in Kansas to drill horizontally than in Oklahoma; no reason was provided to explain the cost difference. While Oklahoma and Kansas tax structures are different, there was no speculative or definitive response to account for drilling cost differences.

Severance Tax Changes

Chuck Reimer, Office of the Revisor of Statutes, discussed Severance Tax Law (KSA 79-4216 *et seq.*) changes, which resulted from the 2012 Legislative Session. A tax rate of 8.0 percent is applied to the gross value of each barrel of oil and metered volume of gas severed. The Kansas Department of Revenue is accountable to collect the tax. A credit of 3.67 percent of the gross value of oil or gas severed is applied against the severance tax for each taxpayer who is liable for personal property taxes on oil or gas property. Mr. Reimer discussed various statutory exemptions, discussed other changes included in House Sub. for SB 294 and Senate Sub. for HB 2597, and reported on new consensus revenue estimates ([Attachment 3](#)). As a result of the passage of House Sub. for SB 294, when monthly severance tax revenues are above consensus revenue estimates (April 2012), transfers are to be made to Board of Regents special revenue funds for technical education tuition waivers and technical education incentives. When asked whether any transfers have been made, Mr. Reimer responded he would furnish that information at a later time.

Water for Fracturing Update

Mike Tate, Kansas Department of Health and Environment (KDHE), provided a brief overview of water issues related to hydraulic fracturing, and David Barfield, Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, addressed water quantity issues. (Mr. Tate provided no written testimony.) Mr. Tate stated water needed for fracturing can be either surface or ground water, and approval can be obtained from existing water right holders or from a temporary term-limit permit approved by the Division of Water Resources. KDHE becomes involved when quality issues arise such as the use of city or county lake waters for fracturing, which requires specific KDHE permits. KDHE advises operators on safe practices to protect aquatic life and Kansas' water supplies, reuse issues related to wastewater facilities and lagoons to eliminate bacterial growth, and the appropriate disposal of contaminants and toxins.

Mr. Barfield described the Kansas Water Appropriation Act, which requires permitting from the agency with the exception of water for domestic use, salt water or brine produced incidental to operating an oil or gas well, use of less than 15 acre-feet stored in any reservoir with a total volume of less than 15 acre-feet, and withdrawal of water under contract with the State of Kansas from federal storage (generally municipalities) ([Attachment 4](#)). Mr. Barfield defined the term "water right" and discussed water use for hydraulic fracturing, provided a summary of 2011 Kansas water use, temporary permitting, term permits, water usage from municipalities, and regulatory changes in 2012.

Mr. Barfield answered inquiries as follows:

- Temporary permits are designed for traditional oil or gas field operations and must not impair existing users; if a dispute arises, a form could be completed and an investigation by the Division of Water Resources would occur to determine appropriate action.
- Groundwater Management Districts (GMD) Nos. 2 and 5 have requested regulations to require offsets for temporary permits of more than one million gallons, which means another user could be required to reduce their use. This legislation would facilitate short-term transfers from existing water rights.

Land-spreading of Drilling Muds

Bill Bider, KDHE, discussed oil and gas production wastes eligible for land-spreading. Ineligible waste for land-spreading includes produced salt water, fracking fluids, and petroleum-based drilling waste or produced petroleum products and wastes. Mr. Bider provided information on alternative disposal methods, the collaboration between KCC and KDHE to modify solid waste legislation (HB 2597), land-spreading eligibility criteria, applications required for land-spreading, loading rate calculations, the implementation process of land-spreading, and the benefits of land-spreading ([Attachment 5](#)).

Mr. Bider provided answers to Committee members' questions as follows:

- Two Kansas State University agronomists have worked with the agency to evaluate KDHE's chloride concentration data. Data ranges of chloride concentrations contained in the waste as well as other characteristics were provided to these scientists. Kansas State recommended maximum chloride concentration in waste to be land-spread at 10,000 parts per million (ppm). A Committee member suggested, as deeper drilling is achieved, higher chloride concentrations could exist. Mr. Bider stated the Committee member's point would be evaluated as additional data are generated. A key provision in HB 2597 requires the adoption of new land-spreading regulations by January 1, 2014.
- Mr. Bider could not respond to a question on the waste disposal process after the drilling is completed. However, Mr. Louis, KCC, indicated stored on-site water is used to flush the drilling hole. Water must be recycled or taken to a Class II disposal well and cannot be land-spread.
- A Committee member suggested the possibility that some operators could land-spread in an inaccurate location. While some operators do equip disposal vehicles with GPS (to ensure an accurate location), others do not. He expressed concern that, without appropriate on-site monitoring, environmental repercussions could occur.
- KDHE oversees the state's beneficial waste program; land-spreading was chosen as an option to dispose of this waste, which was outside of the beneficial use program. A Committee member asked that KSA 65-3407c be distributed to all Committee members.

Fracturing Regulations Development Update

Mr. Louis, KCC, updated Committee members on HB 2526, which amended statutory requirements for the purpose of writing regulations for chemical disclosure and supervision on wells where hydraulic fracturing treatment is performed ([Attachment 6](#)). The Oil and Gas Advisory Committee heard testimony at one of its meetings where an industry representative proposed draft regulations requiring disclosure, under limiting conditions, of hydraulic fractured wells.

The Committee could not reach a consensus agreement; however, a motion passed to further discuss the issue at a subsequent meeting.

When asked which states use FracFocus, which is a disclosure system that provides information concerning information about the materials used to fracture the well, Mr. Louis responded eight states use it: Oklahoma, Texas, Pennsylvania, North Dakota, Montana, Colorado, Louisiana, and Mississippi.

A Committee member inquired whether there is bi-lateral communication between the 12-member Oil and Gas Advisory Committee, which meets quarterly, and the subcommittee that considered the proposed recommendation. Mr. Louis assured Committee members that these committees communicate regularly in order to ensure appropriate rules and regulations recommendations.

Chairperson Knox recessed the meeting until 1:40 p.m.

Afternoon Session

The meeting was reconvened at 1:45 p.m.

Chairperson Knox called Committee members' attention to follow-up information from the Kansas Legislative Research Department (KLRD) and the Kansas City Board of Public Utilities. In addition, several Committee members submitted news releases and articles relating to pertinent subjects ([Attachment 7](#)).

Keystone and Enbridge Pipeline Updates

Ron Gaches, representing the Keystone Pipeline System, described TransCanada's business operations, which include various pipelines in the U.S. One such pipeline is the Keystone Pipeline, which has been in service since 2010 and crosses North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, and Illinois, as well as including proposed extensions to the Texas Gulf Coast. Mr. Gaches provided a regulatory historical time line of the pipeline, and he discussed the pipeline's critical link to crude oil supply and demand, benefits to the U.S. economy from creating jobs, and its intense regulatory scrutiny ([Attachment 8](#)).

Mr. Gaches responded to questions as follows:

- The Cushing Extension of the Keystone Pipeline began operation in Kansas in 2011; application for the ten-year tax abatement was filed later that year. In April 2012, the Court of Tax Appeals approved the tax abatement; the state has appealed the Court of Tax Appeals decision. It is anticipated a decision will be rendered in Spring 2013. If the abatement is granted, it is retroactive to 2011, which would begin the first year of abatement. The pipeline is currently operating at near capacity.
- At this time, it is believed the counties are not holding taxpayer funds.
- Optimism exists that the Keystone XL pipeline project, which holds benefits relating to oil transportation, will be approved and constructed.

- The original route proposed for Keystone XL in Nebraska was revised to protect environmental resources and the Ogallala Aquifer.

Since Enbridge was unable to send a representative, Corey Carnahan, KLRD, reviewed the materials submitted by Enbridge. The testimony included a status report on the proposed Flanagan South Pipeline, including a map of the existing and proposed pipeline. Mr. Carnahan indicated the other information included in the testimony is tailored to company background and its existing pipeline transportation. Mr. Carnahan stated Enbridge would welcome an invitation to appear before standing Committees in the 2013 Legislative Session and, if Committee members have questions, the questions will be compiled and forwarded to Enbridge ([Attachment 9](#)).

In response to Committee members' questions, according to the testimony, the Flanagan South Pipeline is proposed to expand its existing pipeline system by constructing nearly 600 miles of new interstate crude oil petroleum pipeline; the 36-inch diameter Flanagan South Pipeline will have an initial capacity of 600,000 barrels per day (bpd).

Cindy Lash, KLRD, stated, within the tax abatement legislation that was passed, a mileage criterion of 190 miles of pipeline in the state exists, which would exclude Enbridge's Flanagan South Pipeline from tax exemption.

EPA Regulations Update

Tom Gross, Bureau of Air, KDHE, updated Committee members on current air quality issues. He stated the federal Clean Air Act (CAA) requires the Environmental Protection Agency (EPA) to set air quality standards for six air pollutants; review those standards every five years; and designate which counties meet those standards. He announced the state is close to re-evaluating the standard for ozone. He discussed Kansas' petition for reconsideration of the Cross-State Air Pollution Rule, which affects power plant emissions contributing to ozone and fine particle pollution in downwind states; a decision has not been finalized. Mr. Gross discussed the State Implementation Plan (SIP) process, which requires specific State-developed plans to ensure National Ambient Air Quality Standards (NAAQS) are met. Additional information was heard concerning sulfur dioxide (SO₂), ozone, mercury, acid gases and other toxins from new and existing coal-fired energy--generating units (EGUs), and a proposed standard for carbon dioxide (CO₂) emissions from new fossil-fuel fired power plants. For ozone, both Kansas City and Wichita do not meet the current air quality standards of 75 ppb (parts per billion) due to recent extreme heat. However, because the EPA is relying on older data, the two cities are able to meet the standard. EPA plans to re-evaluate the standard in 2013, and the county designation process (which determines which counties do meet standards) will occur in 2014. Mr. Gross reviewed a graph, which demonstrated Kansas' particulate matter shows consistent declines over the past ten years. Other New Source Performance Standards (NSPS) discussed were for greenhouse gases, reciprocating internal combustion engines (RICE), and hydraulically fractured natural gas wells ([Attachment 10](#)).

Several questions were asked, and Mr. Gross' responses are detailed as follows:

- With regard to a chart, "Annual 8-Hour Ozone and the Four Highest Levels," the Cedar Bluff monitor is positioned to record the cleanest data. Ozone levels could come from multiple, controllable and uncontrollable sources such as air flows that bring emissions into the state, the oil play in southwest Kansas, and natural

emissions (temperature, photochemical reactions). If a Kansas community were designated to be in violation of EPA standards, KDHE would be accountable to develop an SIP to identify cost-effective, corrective actions to reduce emissions to an acceptable range.

Bill Eastman, Westar Energy, testified concerning the impact in Kansas and to Westar of the following issues: Cross-States Air Pollution Transport Rule, Mercury and Air Toxic Standard, Jeffery Energy Center Water Consent Agreement, Cooling Water Intake Structures, Coal Combustion Residuals, Steam Electric Water Effluent Guidelines, National Ambient Air Quality Standards, and Greenhouse Gases (GHG) (Attachment 11). Mr. Eastman emphasized that the SO₂ NAAQS is of real concern to Westar. This rule sets a one-hour standard of 75 ppb for SO₂, which would be challenging for Westar. Mr. Eastman noted heightened discussion is occurring with stakeholders. The GHG proposed rule, which limits CO₂ emissions at 1,000 pounds per megawatt hour (MWH) on new units, is of concern. He indicated this rule is too restrictive and could be litigated for many years.

Wayne Penrod, Sunflower Electric Power Corporation, testified concerning existing and new rules for coal-fired utility plants. He indicated a permit is in the hands of KDHE for a new reciprocating plant, which would be covered by the RICE and the Maximum Achievable Control Technology (MACT) rules; there are no foreseen issues with complying with any requirements. In addition, Sunflower is one of the developers that appealed the EPA MACT standard for a new coal-fired utility plant, stating these new-unit rules (which would cover Holcomb 2) were not achievable. Mr. Penrod stated the EPA responded to a reconsideration request filed by the vendors. While the entire reconsideration report (104 pages) has not been thoroughly evaluated, he anticipates limitations contained in the rules could be achieved by new coal-fired units if vendors respond to the new requirements. Mr. Penrod expressed concern about a new reconsideration of EPA rules for “quad K,” which is a new source performance standard covering combustion turbines. The EPA is reviewing a potential change to the rule that may impact Sunflower’s maintenance on combustion turbine components. New rules related to greenhouse gases continue to be a focus, as well as RICE MACT rules that apply to municipal utilities in Sunflower’s service area. (No written testimony was provided.)

Mr. Penrod’s response to a Committee member’s question follows:

- In the legislation dealing with improvements on Holcomb 1, which were included as a condition of Holcomb 2 construction, conformance to nitrogen oxide (NOx) emission standards has been achieved and conformance to SO₂ standards has improved. For Holcomb 2, NOx, SO₂, and MACT standards would be met when it is constructed.

Paul Ling, KCP&L, testified that KCP&L is working toward compliance with the Cross-State Air Pollution Rule. Environmental emission control construction has begun at the LaCygne Generating Station, and the facility will be in compliance with rules upon its completion. Mr. Ling highlighted significant air environmental investments in existing units at Iatan, LaCygne, and Hawthorn. The Montrose station is being examined for potential emission controls retrofits that may be required. With regard to elevated ozone levels in Kansas City during the summer heat, he stated the magnitude of the ozone violation in Kansas City is improving. Two significant water issues exist: the “once-through” cooling issue (Clean Water Act 316(b) Rule) will impact the LaCygne station and other coal sites under Kansas’ jurisdiction; and the Effluent Limitation Guidelines. These guidelines provide for stricter requirements for scrubber wastewater, wet

sluicing for all types of ash, and other discharges. It is expected the rule will be finalized in May 2014 ([Attachment 12](#)).

Mr. Ling responded to questions as follows:

- As plants are retrofitted to comply with EPA rules and regulations, KCP&L will attempt to recover the future costs of those enhancements. The KCC will determine whether recovery is allowed.
- At the LaCygne station, costs were approximately \$1.2 billion for emission controls. Following a pre-determination process by the KCC, those costs were considered prudent and reasonable, and the project was approved.

Written testimony was submitted from the Empire District Electric Company ([Attachment 13](#)).

Energy Emergency Management Plans

Leo Haynos, KCC, updated Committee members on actions taken by the KCC to plan for and to respond to energy emergencies (particularly for electric and natural gas). Within the KCC, there are four operating divisions: utilities, the energy office, conservation, and transportation. He indicated the role of the KCC in emergency management is one of preparedness. Following his appearance at last year's Committee meeting, Mr. Haynos noted the KCC had not prepared an emergency management plan (as statutorily required), but had relied on guidelines listed in Emergency Support Function 12 of the Kansas Response Plan developed by the Kansas Division of Emergency Management (KDEM), Adjutant General's Department. Following that meeting, the agency began the development of an emergency plan that not only meets statutory obligations but also provides a detailed road map for the KCC related to gas or electric emergencies. Mr. Haynos' testimony and the KCC's, "Emergency Management Plan for Natural Gas and Electric Energy," ([Attachment 14](#)).

Mark Schreiber, Westar, spoke to the Committee concerning the impact on customers should reduction in generation occur that would require load shedding in the company's territory. He indicated Westar has collaborated with KDEM to coordinate Westar's load shed blocks with the Division's maps, which contain critical infrastructure, to reduce as many conflicts as possible in advance of any crisis situation. Westar also has developed a load shed plan that includes a public appeal to voluntarily reduce load requirements, requiring customers participating in interruptible rate plans to reduce requirements either immediately or within several hours, and finally manual load shed. Planned load shedding would be conducted between 12:00 noon and 8:00 p.m. following public notification. In a crisis situation, public notification would occur if possible. Mr. Schreiber described Westar's seven blocks, and the plan to utilize these blocks rotationally, as needed, to ensure system viability. (No written testimony was provided.)

Mr. Schreiber's responses to Committee questions follow:

- Westar works closely with the Kansas Intelligence Fusion Center and utilizes the North America Electric Reliability Standards for cyber-security. Westar also has internal standards by which they operate. In the event power is lost for long

periods of time, it is believed the Southwest Power Pool could minimize, mitigate, and control impact to the region.

- In the event of a terrorist event in which high-voltage transformers would be damaged, utilities have developed a sharing-agreement concerning major pieces of equipment. Mutual-aid assistance agreements are in place for not only equipment resources but human resources as well.

A Committee member commented that while multiple states are working to create more robust transmission grids and develop interstate mutuality agreements, weather catastrophes and terrorist events have underlined the need for more vigilant monitoring on this issue.

Angee Morgan, KDEM, described the Division's role relating to preparedness, which requires working relationships with private industry, other state agencies, and rural electric cooperatives. A core component within that role includes the identification of critical infrastructures and circuits for restoration services during a disaster. Ms. Morgan commended the KCC for the work conducted on its Emergency Preparedness Plan. (No written testimony was provided.)

GIS Mapping and Remediation Formula

Allan Pollom, Senior Conservation Specialist, The Nature Conservancy, discussed the protection of the State's natural assets while developing necessary energy infrastructure. Mr. Pollom briefed Committee members on the "Development by Design" approach, which is a commitment to designing necessary projects in the smartest way. He cited various projects in which the Conservancy has been involved; Mr. Pollom encouraged Committee members to employ tools such as geographic information systems (GIS) and their applications to energy-related challenges (Attachment 15).

Mike Houts, Kansas Biological Survey, testified concerning the Natural Resource Planner, which was developed approximately three years ago as an on-line mapping tool to identify areas of wildlife habitat and vegetation. This tool was created to serve as a proactive tool to assist developers and planners in knowing the location of natural resources. Mr. Houts commented that his agency is a non-regulatory agency, which was founded to distribute information for purposes of informed decision-making. Mr. Houts demonstrated the available data sets such as roads, wind farms, transmission lines, power stations, oil and gas wells, water bodies, sensitive species locations, and other specific types of data. He explained this information can be used as an internal planning tool to access the impact of a potential development (Attachment 16). Since the on-line tool was introduced, the website has seen approximately 200 uses monthly. Recently, the Kansas Aquatic Planner was introduced that focuses on aquatic species, fishing reservoirs, and waterways. Mr. Pollom commented that the Western Governors Association has been working to create a "west side" (of the United States) map of crucial habitat to assist with cross-state boundary issues such as pipelines, transmission, road corridors, oil and gas siting, and other large-scale developments.

In response to Committee members' questions, Mr. Pollom indicated that all state agencies (appropriate to environmental, construction, or energy issues) could benefit from using the Resource Planner tool. Many companies will use the tool to identify locations of threatened or endangered species; companies found in violation of regulatory standards could face revision of plans, potential litigation and other project costs. In addition, many companies will use the tool to project a "green" image.

Effect of Corn Prices on Ethanol

Greg Krissek, Director, Governmental Affairs, ICM, presented an overview of Kansas and the U.S. ethanol industry. Mr. Krissek provided a map of current ethanol and biodiesel plants in Kansas; he discussed the Renewable Fuels Standard (RFS2) and schedule, the future of ethanol blending, and RFS2 waiver requests. He indicated 2012 was a difficult year for the ethanol industry with 15 percent of the plants non-operational; in Kansas, Colwich, Pratt, and Garnett ethanol plants are non-operational at the current time. At the federal level, Mr. Krissek discussed the Renewable Fuel Standard goal calling for 36 billion gallons of renewable fuel per year by 2022, splitting renewable fuels into four categories, and capping corn starch ethanol at 15 billion gallons per year. Mr. Krissek suggested that with more herbicide- and insecticide-resistant, as well as drought-tolerant, corn varieties being grown, production is increasing. He discussed the sorghum potential, which is cheaper than corn per bushel for ethanol production, as well as EPA recent actions for E15 fuel. Mr. Krissek stated the next generation of ethanol production will involve cellulosic ethanol produced from existing facilities. ICM has a pilot plant in St. Joseph, Missouri, (in partnership with approximately 700 farmers) that is a food plant, a generation one ethanol plant, and a cellulose-to-ethanol production plant ([Attachment 17](#)).

Mr. Krissek responded to questions as follows:

- ICM ethanol plants conduct on-site testing for aflatoxins and, if contaminated, reject. Mr. Krissek was unaware of any issues in south-central Kansas.
- The EPA requires approval of a pathway to use both starch and corn for boosting production. ICM's expectation is that if a corn fiber method is used, there will be a 10 percent boost in yield. The technology can be retro-fitted in existing plants.
- The ICM pilot plant is in the process of evaluating numerous feedstock in the biomass-to-ethanol effort; the goal is to identify the most commercially viable technology. Mr. Krissek noted regional variability and availability of energy crops are integral to the project. The goal is to develop unitary equipment; process differences may be seen.

Treece Update

Bob Jurgens, KDHE, testified concerning the Treece Relocation Assistance Program; Treece is a small community in Cherokee County that was part of the Tar Creek Mining area that produced zinc, lead, and iron ore. Mr. Jurgens provided a historical time line concerning funding, applications, and demolition. It is anticipated that project completion would occur in mid-2013. Statistics were distributed concerning the cost of the relocation effort and the number of applications. Photographs were included in Mr. Jurgens' testimony depicting various stages of the project ([Attachment 18](#)).

The meeting was recessed at 3:20 p.m.

Tuesday, November 20 Morning Session

Chairperson Knox called the meeting to order at 9:00 a.m.

Kansas Wind Energy Update

Kimberly Svaty, The Wind Coalition, testified regarding wind energy in Kansas. She indicated that, in 2012, Kansas led the U.S. in wind development and created a substantial economic impact through jobs creation, and she cited other statistics related to Kansas' wind energy production. Ms. Svaty described various new wind projects and operating wind projects. At the current time, 19 operating wind projects deliver 2,617 megawatts (MW) of installed wind generation, of which 67 percent is dedicated to in-state use and 33 percent targeted for export. She discussed turbine types and manufacturers. Ms. Svaty noted Siemens turbines are manufactured in Hutchinson and, because of federal production tax credit uncertainty, layoffs occurred in September 2012. However, Siemens recently announced that turbines to be installed in California and Chile will be made at the Hutchinson plant. Ms. Svaty outlined planned 2013 projects and reinforced economic impacts to Kansas including donation agreements, road and maintenance agreements, landowner agreements, local suppliers and contractors, lease payments, and jobs creation. Information on Kansas utilities' compliance with the Kansas Renewable Portfolio Standard (RPS) was reviewed, which included contract expiration date, MW capacity, the 10 percent in-state RPS adjustment, and the 2011 benchmark percentage ([Attachment 19](#)).

Karl Pierce, BP Wind Energy, responded to a question regarding the increase in size of wind turbine rotors. He stated the rotors expanded from 87 to 100 meters; the efficiency difference is 53 percent for a 100-meter rotor and 47 percent for an 87-meter rotor.

A Committee member pointed out that the Bowersock Mills hydro-electric plant in Lawrence and has now completed its expansion to the other side of the Kansas River.

Ms. Svaty answered Committee questions as follows:

- During a legislative hearing in 2012, testimony was heard projecting the decline of wind production resulting in turbines, in a declined state, with no funding for removal or demolition. Ms. Svaty indicated 20-year agreements are in place and, at the expiration of those agreements, utilities will determine whether it is in the economic interest of their companies and ratepayers to continue, to market to another buyer, or to take down the turbines. If projects are decommissioned at project end, there is a plan and funding in place to restore land and roads. The majority of funding, should decommission occur, is held in escrow agreements with individual counties. Mr. Pierce, BP Wind Energy, added that decommissioning agreements are in place in Harper and Kingman counties. In Kingman County, the security is in the form of a parent guarantee with BP North America in the amount of \$100,000 per turbine; the Harper County decommissioning agreement is a letter of credit, which is backed by a financial institution. The security must be maintained throughout the life of the project; the county can draw on that and decommission the turbines itself at the end of the 20-year agreement.
- If a large company sells to a smaller operator, an approval process (by county) would occur to transfer the special use permit. The county is accountable to understand the security of any potential buyer because the decommissioning agreements from the large company would terminate. A Committee member expressed concerns regarding rural counties' financial status should large companies' decommissioning agreements fail.

- The federal Production Tax Credit (PTC) was enacted in 1992; the PTC was extended in 2008. The industry preference is a final decision in 2012 rather than perpetuating its uncertainty. Chairperson Knox noted that the current PTC equates to a 42 percent subsidy; Ms. Svaty suggested that, should the PTC be terminated, wind electricity generation is an affordable and inexpensive power source.

Expiration of Renewable Cogeneration Incentive

Ms. Lash, KLRD, reviewed the statute KSA 79-32,245, which contains details on renewable electric cogeneration facilities; credits for certain investments; and definitions. Ms. Lash also indicated Secretary Pat George, Department of Commerce, was unable to attend the meeting, and directed the Committee to his testimony ([Attachment 20](#)). Ms. Lash explained the statute as a 10 percent income tax credit up to \$50 million of investment in a new, renewable, cogeneration facility and an amount equal to 5 percent of the amount of the taxpayer's qualified investment that exceeds \$50 million. The statute passed in 2007 and expired December 31, 2011. Ms. Lash referred to Secretary George's testimony, which indicated 16 agreements were finalized by the end of 2011; many were approved in the third and fourth quarters of 2011 to take advantage of the tax credit prior to the statute's sunset date. Ms. Lash further commented these businesses were approved for the tax credit, but it is unknown whether the businesses claimed the credit. She clarified the statute provides that expenditures made in construction is the qualifier for the tax credit, not expenditures anticipated.

Brad Estes, BTI Wind Energy, (*via* telephone) described his Greensburg, Kansas, company and its background. He also provided an overview of distributed generation (DG) and community wind generation. Mr. Estes described the use of the tax credit following the 2007 tornado that destroyed 95 percent of Greensburg. He explained that the tax credit incentivizes investors to spend taxable private investment dollars in Kansas. Mr. Estes provided examples of recent projects that generated a taxable investment of \$2.3 million, with a total tax credit of \$229,000. He noted, if the credit were to be reinstated, the top ten pipeline projects represent an investment of \$48.3 million, resulting in a cogeneration tax credit of \$4.8 million. The savings from these tax credits allows a company to reinvest into facilities, employee salaries, employee benefits, and other operational activities. He encouraged additional consideration of "net metering" during the 2013 Legislative Session ([Attachment 21](#)).

In response to questions, Mr. Estes indicated, currently, a federal Business Energy Investment Tax Credit (ITC) allows owners of small wind turbines (100 kW or less) to receive investment tax credits worth 30 percent of the value of the facility. The Production Tax Credit (PTC) is tied to the energy produced over a ten-year period and is a 30 percent tax credit. Mr. Estes' projects are wind projects.

A Committee member provided some background information on the tax credit renewal through the Senate Taxation Committee during the 2012 Session.

Cost of Renewable Energy Standards

Michael Head, Beacon Hill Institute, was present *via* teleconference (Skype) to present a study related to 2009 legislation that defined a new Renewable Portfolio Standard (RPS), which transformed a previously voluntary goal into a mandate. The standard requires that at least 10 percent of electricity generation capacity in Kansas will come from renewable sources between

2011 and 2015. Between 2016 and 2019, a 15 percent share of generation capacity and, from 2020 onward, no less than 20 percent of generation capacity must come from renewable sources. The Institute applied its STAMP (State Tax Analysis Modeling Program) to estimate the economic effects of the RPS, which will raise the cost of electricity by \$644 million for consumers through 2020. According to Mr. Head, these increased energy prices would negatively impact the Kansas economy by:

- Lowering employment by an average of 12,110 jobs;
- Reducing real disposable income by \$1.1483 billion;
- Decreasing investments by \$191 million; and
- Increasing the average household electricity bill by \$660 per year.

According to Mr. Head, the cost difference between wind-generated electricity and natural gas is likely to widen further due to the recent slump in natural gas prices. He concluded by stating that firms with high electricity usage will be incentivized to move their production, and emissions, out of Kansas to locations with lower electricity prices, sending jobs and capital outside the state ([Attachment 22](#)).

Mr. Head's responses to questions follow:

- Future estimates of the state's renewable technologies used in the forecast were based on the federal Energy Information Administration (EIA) projections of generation technologies as Kansas' share to meet the mandate.
- If other conventional energy sources were eliminated in the state, Kansas still would have a percentage of emissions coming from other sources, such as neighboring states. Consequently, there would be little impact on healthcare costs that are borne by the state.
- Projections in the study account for reduced energy consumption due to increased costs of electricity.
- Table 3 on page 5 of the study does not contain levelized capital costs of solar, biomass and hydro sources through 2025 and 2035; those costs can be found in the study's appendix.
- The study did not consider policy modifications to reduce or to mitigate the economic damage to Kansas.
- The Beacon Hill Institute has not evaluated the economic effects of repealing the RPS but exporting wind power to other states; the decision to produce and sell would be a private business decision.
- Contact has been made with the EIA to gather additional information concerning the Annual Energy Outlook; should the federal PTC be eliminated and Kansas is operating under its RPS, it is assumed that Kansas would further increase costs.

- Capacity factor for wind power was used throughout the paper; Kansas capacity for wind power is more favorable than the national average. National capacity is 26 to 34 percent; Kansas' capacity is 40 percent.

State Trends in Renewable Energy Standards

Ms. Lash, KLRD, presented testimony concerning trends in RPS policies, which demonstrates that states continue to hone existing policies while enactment of new RPS policies are declining. She reviewed state-specific RPS developments and discussed bills in 13 states that appeared to negatively impact a state's RPS. Information concerning Florida's 2012 repeal of its RPS was provided ([Attachment 23](#)).

Matt Sterling, Office of the Revisor of Statutes, discussed the Renewable Energy Standards Act including definitions, renewable portfolio requirements, cost recovery, annual reporting requirements, and other pertinent sections in the Act ([Attachment 24](#)).

Cost of Renewable Energy Standards (continued)

Bob Glass, Chief of Economics, KCC, discussed the costs and effects to ratepayers of the RPS. He indicated, in Kansas, the best method for meeting an RPS or a renewable energy standard (RES) is with wind generation. According to Mr. Glass, two additional factors in evaluating Kansas wind generation should be considered:

- New wind generation compares favorably with new fossil fuel and nuclear generation; and
- Existing coal generation is experiencing increasing cost pressures from environmental regulations.

Levelized cost of generation is the standard method for comparing costs for different types of generation, which is a weighted average of five cost components. Tables were included in Mr. Glass' testimony showing levelized cost of energy generation by type ([Attachment 25](#)).

Mr. Glass responded to questions as follows:

- When a Purchase Power Agreement (PPA) is in effect, the less production there is the cheaper the wind is, because new wind is slightly more expensive than generation from existing resources.
- The production tax credit is grandfathered for existing producers for ten years; therefore, if the federal PTC is not renewed in 2013, there is no negative impact (for existing producers).
- The rate impact of an RPS is a one-year look at costs. This is due to the legislative request for an incremental effect of new wind. To determine rate effect of all existing wind generation requires a costly and difficult study, which includes simulations using multiple resources.

- A Committee member distributed a handout, “Wind Energy Hype: IEA Study Reveals the Real Cost of Wind Power,” that shows nuclear energy remained cheaper than other sources when the discount rate was moved to 10 percent (Attachment 26). Mr. Glass responded that there are additional costs, particularly when transmission and distribution costs are excluded (as they were in the referenced study).
- Utilities are assessed administrative penalties if they do not meet the RPS requirements. No penalties have been assessed to date. KCP&L had delays in bringing a wind farm online, but the KCC did not assess penalties since KCP&L was making a good-faith effort and was only marginally delayed.
- Rate impact analysis from utilities includes the cost of backup generation capacity that must be available to assure that the intermittent electricity supplied by wind does not negatively impact the grid.

Dave Trabert, President, Kansas Policy Institute, testified concerning the RPS, which mandates the purchase of renewable energy resulting in consumption of a higher-priced product. He referenced the Beacon Hill Institute study, which projected that Kansans will pay an average of 45 percent more for electricity as a result of the RPS. Mr. Trabert stated when the RPS was passed in 2009, the real costs were unknown; he encouraged repeal of the RPS in Kansas (Attachment 27).

In response to questions, Mr. Trabert indicated:

- Kansas ratepayers are unable to choose providers; however, that fact does not need to further restrict choice by the imposition of the higher prices associated with wind energy.
- Tax credits, issued for renewable energy or other industries, are borne by all. No economic benefit is created; it shifts the burden from one group to another.
- Reference was made to the Beacon Hill Institute report, Table 5 on page 8, which discussed high and low costs; a Committee member requested the literature review sources. Mr. Trabert will request the information from Mr. Head.

Alan Anderson, Polsinelli Shughart, provided information on numerous wind energy generation projects in Kansas. He distributed a report, “The Economic Benefits of Kansas Wind Energy,” which contains data about the actual economic impacts generated by these projects and compares this information to non-partisan academic studies of potential economic impacts (Attachment 28). Mr. Anderson highlighted key cost findings of the report: natural gas - \$45.63 per MWH; wind, utility owned - \$44.87 per MWH; and wind, power purchase - \$35 per MWH. Additionally, jobs created by wind generation and other economic benefits of wind generation were discussed. Mr. Anderson stated the Kansas RPS is an important economic development tool for attracting new businesses to the state.

Responses to questions follow:

- There will be future issues related to commodities and the fluctuation of products and costs. Many utilities will purchase wind to ensure a more consistent, lower cost alternative to other fossil fuels and to manage market volatility.
- The RPS is met primarily by wind energy in Kansas, but the energy could come from hydropower, solar, or other sources.
- Utilities who sign purchase power agreements agree to purchase the electricity generated. If it is produced, it is purchased.
- A Committee member commented that the report compares the cost of wind to the cost of natural gas, which is used for peaking. The logic for paying a high price for peaking energy is that it is dispatchable, which wind is not.

Energy from Organic Waste

Mr. Bider, KDHE, discussed the concept of energy generation from organic waste. Organic wastes include mixed municipal solid waste, dairy and feedlot manure, waste tires, food waste, sawdust/wood scraps, agricultural crop residues, and other such sources. Factors that affect project feasibility were presented, and various technologies to generate waste to energy were reviewed ([Attachment 29](#)).

In response to questions, Mr. Bider indicated:

- Other than for the Johnson County project and the Western Plains Facility, Mr. Bider was unaware of governmental (state or federal) stimulus funding for projects.
- Some landfills have produced large amounts of gas, which is marketed in California. These types of gas-recovery systems may qualify for renewable energy incentives.

The meeting was recessed until 1:30 p.m.

Afternoon Session

The meeting was reconvened at 1:40 p.m.

Kansas Department of Wildlife, Parks and Tourism Land Acquisition

Secretary Robin Jennison, Kansas Department of Wildlife, Parks and Tourism (KDWPT), discussed the possibility of acquiring federal parks from the U.S. Army Corps of Engineers. In Kansas, nine federal reservoirs are governed under the Kansas City Corps of Engineers and eight under the Tulsa Corps of Engineers. Bureau of Reclamation lakes in Kansas are located primarily in the western portion of the state. With regard to land acquisition, the State of Kansas has begun discussion with the Corps of Engineers to acquire parks where both entities hold a presence. Kansas has no presence at Big Hill, Council Grove, Marion, and

John Redmond Reservoirs. Secretary Jennison explained the KDWPT funding structure challenges and competitive issues that exist when both the State and the Corps hold a presence in these areas, because the Corps does not charge an admission fee to its parks, but the State does. Secretary Jennison indicated discussions have begun with the Tulsa Corps; to date, there have been no substantive discussions with the Kansas City Corps. He indicated the opportunity exists to evaluate facilities for two specific developments at each facility: one for maintenance and one for recreational activities. Secretary Jennison discussed recent changes related to the potential development of lake resorts. Plans are to continue discussion with the Corps of Engineers for Kansas to acquire (in a phased-in approach) some parks' systems, such as Clinton, Melvern, and Wilson. He noted legislation could be introduced during the 2013 Session to construct parks at Marion, Council Grove, or Big Hill; however, a clear plan for development must be created prior to bringing forward any proposed legislation. (No written testimony was provided.)

Discussion on the Multi-Year Flex Account

Kim Christiansen, Chief Counsel, Division of Water Resources, Department of Agriculture, provided information on the state's Multi-Year Flex Account (MYFA), which is a series of changes to conserve the state's water supply and to extend the life of the Ogallala Aquifer. A MYFA allows a water right holder to obtain a term permit that replaces the holder's water right for five years. This creates a five-year tool for producers to plan production. Ms. Christiansen discussed attributes of MYFAs, described the MYFA 2012 legislative reform, and provided examples. The statute removes annual authorized quantity limitation and is based on a five-year quantity. The producers are provided two options: a five-year average of water use from 2000 to 2009 or a five-year average of the net irrigation requirement (Attachment 30).

A Committee member commended the agency for its efforts and for the job during the extreme summer. Comments were heard concerning producers' interest in the term permit subject to the Minimum Desirable Stream flow (MDS) administration. Additional legislative policy discussions were suggested by a Committee member. Ms. Christiansen added that the agency is working on policy improvements.

Kent Aksren, Kansas Farm Bureau, indicated the Farm Bureau supports MYFA modifications, and considers it a positive program for water users across the state. However, he noted improvements could be made to the term permit subject to stream flow. He stated the Farm Bureau supports MYFA as a condition of the base water right rather than a suspension of the base water right. He suggested evaluation of the data and long-term impacts and consideration to the application of MYFA to the base water right, which would eliminate the issue described. (No written testimony was provided.)

LEPP Update

Abigail Boudewyns, KLRD, provided a memorandum describing the background of the Local Environmental Protection Program (LEPP) that was statutorily created during the 1989 Legislature and began in 1990. Ms. Boudewyns described the program as one in which objectives and plans for implementing the environmental protection strategy of the State Water Plan are included. This program is particularly important to rural communities and contains core components relating to wastewater, solid waste management, hazardous waste management, nonpoint source pollution control, and public water supply protection. KDHE administers the grants. During the FY 2012 budget process, the legislature added \$750,000 for LEPP; for the

FY 2013 budget, the Legislature added \$800,000. The Governor vetoed the FY 2013 budgeted appropriation ([Attachment 31](#)).

Ms. Boudewyns stated, according to the *FY 2012 Governor's Budget Report* (GBR), the program was originally established to assist counties in environmental protection plan development; once those were adopted, the funding was to be discontinued. Considerable discussion was heard and concern was expressed relating to the legislative intent of LEPP funding. Ms. Boudewyns indicated that due diligence had been exercised to locate additional information relating to legislative intent for program funding (*i.e.* Committee meeting minutes, similar wording); other than the language found in the FY 2012 GBR, efforts were unsuccessful. Ms. Boudewyns added that the LEPP legislation passed late in the 1989 Session was included in a Storage Tank Act bill.

A Committee member provided additional background information, which indicated the state intended to fund the program and the LEPP was never intended to be a "study" program. The Quality Section of the FY 1989 Kansas Water Plan stated the intent was to establish environmental policy and decrease pollution particularly in rural counties. Considerable discussion and testimony has been heard in Senate budget hearings and Subcommittee hearings (KDHE – Environment, Water Office, Joint Legislative Budget Committee). The original plan referenced the intent for legislation to establish state funding to counties for the program, and language was included to encourage local counties to develop additional funding sources. A Committee member stated it was important to know that the LEPP has a long history, which was a mandate from the state to local government for creation of an environmental protection strategy that protects the state's natural resources. Currently, no funding is included in the budget for the program; counties must decide whether to continue LEPP.

Aaron Dunkel, KDHE, testified that the first grants from the LEPP were awarded in 1990. Since that time through FY 2012, a total of approximately \$34 million in grant funds have been provided to 49 agencies representing 104 counties. Mr. Dunkel described the program's goals derived from LEPP rules and regulations, KAR 28-66-1 *et seq.* A transition plan was drafted in 2012 in anticipation of the loss of LEPP funding and was mailed to county sanitarians, county LEPP grant signatories, county commissioners, and conservation districts. Mr. Dunkel stated KDHE would continue to provide technical assistance and resources ([Attachment 32](#)).

Mark Shriwise, Ford County Planning, Zoning, and Environmental Health, spoke about his county's LEPP activities and the increase of service fees to continue the program. He indicated that various counties have merged into multi-county groups to better manage funding resources. In Ford County, oil and gas activity has significantly increased; in a county with limited water supplies, it is the county's responsibility to enforce environmental protection strategies. The program is needed to protect the public and the state's water supply by monitoring septic and water wells and by remediating failing septic systems. (No Written Testimony.)

Todd Rogers, Johnson County Department of Health and Environment, spoke concerning LEPP and its importance to Johnson County residents. He indicated there are 10,000 septic systems in that county, most of which are in 60 to 80 home subdivisions built in the 1960s, 1970s, and 1980s on small acre lots. The Johnson County LEPP program includes on-site inspection of septic systems for homes sold/purchased in the county, yearly commercial industrial site inspections, new construction complaint mitigation, and other vital programs to ensure public safety. The program has contributed to environmental health by providing the

funding to assist counties in the enforcement and execution of their sanitary codes. He encouraged re-funding the program. (No written testimony was provided.)

In response to questions, Mr. Rogers answered:

- When an older development experiences a failed septic system on a one-half acre lot, the county sanitarian is accountable to determine what treatment method will produce a positive outcome: treating the wastewater with an aerobic treatment unit prior to discharge, bottomless sand filters, or other treatment types that can be used on a small-acre lot.
- Home values are decreased as a result of failing systems.

Nathan Eberline, Kansas Association of Counties, testified the members of his Association maintain that LEPP funding is an essential, efficient, and economically sound approach to ensure water safeguards are in place. He encouraged restoration of LEPP (Attachment 33).

Written testimony was submitted by Shirley Weber, Northwest Local Environmental Protection Group, supporting restoration of LEPP funding (Attachment 34).

Committee Discussion and Recommendations

Water Issues

LEPP

The Committee noted KLRD staff were unable to find evidence of legislative intent that would support the statement: “The Local Environmental Protection Program (LEPP) was established with State Water Plan funding in 1989 to provide funding to counties to develop environmental protection plans to meet local needs; once those plans were adopted, the funding was to be discontinued.” This statement was contained in *Volume 1 of the FY 2012 Governor’s Budget Report*.

The Committee acknowledges the Legislative Budget Committee’s recommendation as follows: “The [Budget] Committee requested that its report reflect that LEPP was not set up as a study program; it was created as a state-funded program. The [Budget] Committee expressed concern about the state’s water quality without LEPP in place. The [Budget] Committee requested that the Appropriations Committees and Agriculture/Natural Resources Committees evaluate the importance of the program. In addition, the [Budget] Committee introduced legislation to fund the program at \$1 million. The bill will include parameters of the program, as previously contained in the LEPP proviso in appropriation bills.” Following discussion, *Senator McGinn moved that the House Agriculture and Natural Resources Committee and the Senate Natural Resources Committee evaluate the importance of the Local Environmental Protection Program (LEPP) and include recommendations relative to LEPP; the motion was seconded by Representative Hedke, and passed on a voice vote.*

State Water Plan Funding

The Committee discussed numerous issues related to water, such as algae blooms, nutrient management, groundwater rights, sedimentation, the effect of water levels on power production, the impact of the recent drought and heat, water supply needs, and the importance of state programs, such as the Watershed Restoration and Protection Strategy (WRAPS) to mitigate nutrient loading. The Committee recognized the Legislature's responsibility to appropriate adequate funding to the State Water Plan for the preservation and conservation of water resources for Kansas residents. *Upon a motion by Senator Francisco to fund the Kansas Water Plan in the statutorily required amount of \$6 million, all from the State General Fund (SGF) and a second from Representative Kuether, the motion passed.*

Dredging and Stream Bank Stabilization

The Committee recognized concerns related to stream bank erosion and sediment entering the state's federal reservoirs, which reduces water storage capacity and could negatively impact municipal and industrial water supplies. The Committee acknowledged the sedimentation levels at John Redmond Reservoir are at a critical stage, which would require restoration dredging. The Committee discussed other pertinent issues surrounding the state's water plans and funding sources. *Senator Taddiken moved to recommend introduction of a bill that directs the Kansas Water Office in conjunction with the Kansas Water Authority to create a plan to address the following water issues: dredging, stream bank stabilization and sedimentation, identification of a funding source, and future water storage assurances. The plan would be presented in the beginning weeks of the 2014 Legislation Session. Representative Kuether seconded the motion, which passed on a voice vote.*

Senator Francisco moved that a joint meeting be convened with members of the appropriate House and Senate committees dealing with the subject matter of agriculture, utilities, and natural resources, as well as members from the Joint Energy and Environmental Policy Committee. The purpose of the joint meeting would be to hear a presentation from the Kansas Water Office, to review recommendations from the Joint Energy and Environmental Policy Committee, and to address other potential recommendations required for discussion in the legislative session. The meeting would be scheduled during the first two weeks of the 2013 Legislative Session. Representative Kuether seconded the motion, which passed on a voice vote.

Multi-Year Flex Accounts

Committee members acknowledged significant discussion surrounding the MYFA and acknowledged the program is a good option for water users in the state. Testimony also was heard concerning the need to evaluate the long-term data and the program's impact. Following the program evaluation, Committee members expressed interest in reviewing the MYFA program for improvement opportunities such as the term permit interacting with Minimal Desirable Stream flow (MDS).

Oil and Gas Production Issues

The Committee expressed interest in the recommendations from the Oil and Gas Advisory Committee (KCC) concerning disclosure, under limited circumstances, of hydraulic

fractured wells. The Advisory Committee had not scheduled a meeting to follow-up on its recommendations prior to the Committee meeting.

Wind and Renewable Portfolio Standards

The Committee acknowledged hearing divergent views on the cost of wind-generated energy from two reports: “The Economic Benefits of Kansas Wind Energy” and “The Economic Impact of the Kansas Renewable Portfolio Standard.” The Committee requested KLRD conduct additional analysis regarding the assumptions and sources used in each of the two reports. *Senator Francisco moved to recommend appropriate House and Senate standing utility committees review the Renewable Energy Portfolio Standard during the upcoming legislative session, including information from the interim Joint Energy and Environmental Policy Committee meetings and the analysis by KLRD of the reasons for the divergent conclusions of the two studies. Representative Hedke seconded the motion, which carried on a voice vote.*

The Committee acknowledged hearing testimony concerning the elimination of the Cogeneration Tax Credit for commercial operations in 2011. This was a 10 percent tax credit targeted to small- and mid-sized companies that provided an incentive to spend taxable private investment dollars in the state. Additional information was heard concerning the Senate Taxation Committee, which included an extension of this specific tax credit in its 2012 Conference Committee report, which was not accepted. *Senator Francisco moved to recommend the appropriate standing committees review the now-expired Cogeneration Tax Credit; suggest they reconsider reinstatement of the tax credit; and that a comparable tax credit be considered for energy generated from other types of renewables. Senator Taddiken seconded the motion, which passed on a voice vote.*

Chairperson Knox thanked all those attending and staff for their contributions. The meeting was adjourned at 4:05 p.m.

Prepared by Jan Lunn
Edited by Heather O’Hara and Cindy Lash

Approved by the Committee on:

_____ March 25, 2013
(Date)