

## MINUTES

### SPECIAL COMMITTEE ON ENERGY, NATURAL RESOURCES, AND ENVIRONMENT

October 22-23, 2001  
Room 519-S—Statehouse

#### Members Present

Representative Joann Freeborn, Chair  
Senator Robert Tyson, Vice Chair  
Representative Judy Showalter, Ranking Minority Member  
Senator Christine Downey  
Senator Lana Oleen  
Senator Jean Schodorf  
Representative Garry Boston  
Representative Ruby Gilbert  
Representative Becky Hutchins  
Representative Bill Levinson  
Representative Carlos Mayans  
Representative Ray Merrick

#### Member Absent

Senator Tim Huelskamp

#### Staff Present

Raney Gilliland, Kansas Legislative Research Department  
Deb Hollon, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Ann McMorris, Committee Secretary

#### Conferees

Jamie Clover-Adams, Secretary of Agriculture  
David Pope, Chief Engineer, Division of Water Resources  
Clyde Graeber, Secretary of Health and Environment  
Ron Hammerschmidt, Director, Division of Environment

Maurice Korphage, Director, Conservation Division, Kansas Corporation Commission  
Dr. Lee Allison, Director, Kansas Geological Survey  
Dr. Pat Murphy, Professor and State Leader, Biological and Agricultural Engineering  
Extension Programs, Kansas State University  
Wayne Bossert, Manager, N.W. Kansas Groundwater Management District #4  
Sharon Falk, Manager, Big Bend Groundwater Management District #5  
Hank Hansen, Manager, S.W. Kansas Groundwater Management District #3  
Keith Lebbin, Manager, Western Kansas Groundwater Management District #1  
Dennis Clennan, Director of Public Works, Hutchinson  
Margaret Fast, Kansas Water Office  
Brad Franz, President, Groundwater Management District #2  
Jerry Blain, Superintendent of Water Production, Wichita  
Joe Mies, Secretary, Groundwater Management District #2  
Dennis Bush, Mayor, City of Andover  
Keith DeHaven, Mayor, City of Sedgwick  
Bob Myer, City Attorney, Newton  
Marvin Peters, Executive Director, McPherson Industrial Development Company  
Dr. Edward Flentje, Director, Hugo Wall Center for Urban Studies, Wichita  
Edward R. Moses, Kansas Aggregate Producers Association  
Kerry Ebert, Kansas Dairy Association  
Bob Seilor, Dairyman, Valley Center  
Leslie Kaufman, Kansas Farm Bureau  
Janet Stubbs, Kansas Building Industry Association  
Jolene Grabill, Regional Economic Area Partnership

### **Others Attending**

See attached list.

### **Monday, October 22**

The meeting was called to order by Chair Joann Freeborn at 10:00 a.m. on October 22, 2001 in Room 519-S of the Capitol. She welcomed the Committee and announced the next meeting of this Committee would be on November 16, 2001.

The Chair called on the staff from the Kansas Legislative Research Department who called the attention of the Committee members to the following memoranda which had been placed in their notebooks:

- Financing of Groundwater Management Districts;
- Groundwater Management District History and Background;
- Nebraska Water Litigation conclusions and recommendations (draft Committee report); and

- Potential Options to Address Seismic Risk at Tuttle Creek Reservoir.

## **Nebraska Water Litigation**

Raney Gilliland reviewed the Nebraska Water Litigation memo and the Committee conclusions and recommendations. He said the Attorney General's office had reviewed the language and agreed with the report's content. He noted that the amounts of money appropriated since the start of the litigation (these are not included in the report), are: FY1998—\$173,000; FY1999—\$277,000; FY 2000—\$177,000; FY2001—\$606,000; FY2002—\$1.4 million; and requested in FY 2003—\$1.68 million (Attachment 1).

After discussion on the source of funding and the language of the conclusions and recommendations, it was *moved by Representative Hutchins, seconded by Representative Gilbert, that the Special Committee on Energy, Natural Resources, and Environment accept the conclusions and recommendations as set forth in the Nebraska Water Litigation report as follows: The members of the Special Committee on Energy, Natural Resources, and Environment support the litigation against the State of Nebraska with respect to enforcement of the Republican River Compact. Members also recommend and support full funding of the Attorney General's proposed budget for water lawsuit litigation for FY2003. Motion carried.*

## **Options to Address Seismic Risk at Tuttle Creek Reservoir**

Staff noted that the options list was outlined in the testimony by representatives of the U.S. Army Corps of Engineers and is contained in the October 12 memorandum to the Committee. No action is required at this time but this will be on a future agenda of the Committee (Attachment 2).

## **Groundwater Management Districts**

The Committee staff reviewed the following:

- The legislative declaration at the beginning of the current Groundwater Management District Act;
- The procedure for establishment of a Groundwater Management District (GMD) in Kansas;
- GMD powers;
- Extension, reduction, or dissolution of GMDs;
- Power and authority of the Chief Engineer; and

- Current GMDs in Kansas ([Attachment 3](#)).

### **Financing of Groundwater Management Districts**

The discussion on the Financing of Groundwater Management Districts and the previous and 2001 legislative considerations, and the financing options listed for protection and management of GMD #2 (Equus Beds Aquifer) is scheduled later in the agenda. It was noted that this option list was not necessarily complete, but could serve as a basis for discussion ([Attachment 4](#)).

Questions from the Committee covered:

- Whether quality was inherent in the definition;
- Whether districts have the power to revise water charges;
- If the programs deal with quality and quantity; and
- What the responsibilities and boundaries are for GMD and the Division of Water Office.

### **Role of Kansas Department of Agriculture**

Jamie Clover-Adams, Secretary of the Kansas Department of Agriculture (KDA), provided a brief overview of KDA interaction with GMDs and the role of the KDA's Division of Water Resources in administering the Kansas Groundwater Management District Act. She reviewed the various fees paid by agriculture to KDA and the funding from the State General Fund ([Attachment 5](#)).

David L. Pope, Chief Engineer, Division of Water Resources, KDA, reviewed the responsibilities and duties of this Division in the area of GMDs. He also provided a map showing the locations of the GMDs in Kansas ([Attachment 6](#)).

Questions from the Committee covered:

- Percentage of permits approved and the procedure available if the permit was denied;
- Number and makeup of board members;
- Quality control;
- Any problem with definitions in the Act; and

- Establishment of Intensive Groundwater Use Control Areas (IGUCAs).

### **Review of Water Quality Authority in GMDs**

Clyde E. Graeber, Secretary, Kansas Department of Health and Environment, urged an in-depth discussion of the provisions of SB 264 to ensure that the Legislature is aware of the merits of the proposed language and the concerns held by other interested parties (Attachment 7).

Ron Hammerschmidt, Director, Division of Environment, responded to Committee questions from the August meeting in his written testimony (Attachment 8).

Members of the Committee had questions on the number of livestock facilities in the Equus Beds area; number of statewide applications; the role of the Division of Environment in groundwater sampling; the monitoring and the collection of data collected by GMD used by KDHE; investigations made because of complaints; responsibilities of KDHE with GMDs; and statewide regulations for groundwater quality. These questions were answered by Ron Hammerschmidt and Karl Mueldener, Director, Bureau of Water.

The Committee then recessed for lunch at 12:20 p.m.

The Committee reconvened at 1:30 p.m.

M. L. Korphage, Director, Conservation Division, Kansas Corporation Commission, (KCC) testified on water quality authority in GMDs by the KCC. He cited the statutory authority and the KCC rules and regulations which have statewide application in the three basic areas controlled by KCC. He noted that in addition to the above, the Division has entered into a memorandum of understanding (MOU) with GMD #2 and explained the purpose of the MOU. A copy of the MOU was provided (Attachment 9).

Mr. Korphage presented slides showing the plugging of old wells, rigs used, and some of the GMD areas.

The Committee members asked about budget requirements and lab analysis provisions.

### **Kansas Geological Survey Role with GMDs**

Dr. Lee Allison, State Geologist and Director, Kansas Geological Survey, University of Kansas, provided:

- Maps of the High Plains aquifer;
- Water resource issues by region, by depth of water, and by contamination; and

- Differences between water uses and problems.

He discussed data collection and the ability to interpret it accurately in order to have effective management and preservation of vital water resources (Attachment 10).

There were questions and discussion on:

- the effects of over-pumping;
- time period in which wells were drilled;
- seepage rate;
- surface water runoff;
- rate of decline;
- contamination; and
- fees.

### **KSU Study of Lagoons in the Equus Beds**

Dr. Pat Murphy, Professor and State Leader, Biological and Agricultural Engineering Extension Programs, Kansas State University, reported on the study of five confined animal feeding operation lagoons. The study provided the ammonia concentration and the seepage rates. Some sampling was made below the soil liner to determine distance to the water table and contamination levels (Attachment 11).

The Committee questioned whether hog operations were required to have a lagoon. The answer was, no. Various aspects of hog and cattle operations were covered; namely, location, numbers of animals, water requirements, runoff, and disposal.

### **Representatives of Groundwater Management Districts**

Wayne Bossert, Manager, Northwest Kansas Groundwater Management District No. 4, provided:

- Information on GMD #4 expenditures for the current year, specifically for community education, and how the board justifies such expenditures;
- GMD #4 position on SB 264; and
- GMD #4 authority in water quality issues (Attachment 12).

Committee discussion centered on the MOU between the GMD and state agencies and financial reimbursement for services provided as well as the composition of the board of directors.

Sharon Falk, Manager, Big Bend Groundwater Management District No. 5, addressed the issues of SB 264 and water quality and public education programs in District #5. GMD #5 supports SB 264 as written. She noted their concern for maintaining good water quality and listed some of the activities and continued efforts being made to achieve this goal (Attachment 13).

Hank Hansen, Manager, Southwest Kansas Groundwater Management District #3, provided background and reviewed the historic action trail of GMD #3s regulatory efforts. He also provided budget information and personnel duties. He said the board of GMD #3 supports the pending legislation in SB 264 as long as it does not affect or otherwise change the district's authority granted in the current Groundwater Management District Act. He provided information derived from a study published in March 2001 on "The Value of Ogallala Aquifer Water in Southwest Kansas" (Attachment 14).

Keith Lebbin, Manager, Western Kansas Groundwater Management District No. 1, stated that the Board of GMD #1 supports the current legislation in SB 264. He explained GMD #1's procedure in handling water quality issues and its policy on expenditures, specifically for community education. He provided a list of water management programs conducted by the three western GMDs and the Division of Water Resources (Attachment 15).

There was discussion on the weather modification program and its benefits.

### **Financing Options for Groundwater Management Districts**

Staff reviewed the list of possible options and noted this list was not necessarily complete (Attachment 4). Questions, comments and suggestions from the Committee were:

- Can the board make boundary and governance changes?
- Who defines area of GMDs?
- Could user fee charges be made for MOU services?
- Can a member from out of the district serve on the board?
- What vote is required for board to make changes?

The Chair requested the Committee study this report and pass on any additional option suggestions to staff or the Chair for future consideration of this matter.

### **Testimony Regarding Management of Equus Beds Groundwater Management District**

Joe Pisciotte, Vice Mayor, City of Wichita, provided written testimony which was read to the Committee by Jolene Grabill (Attachment 16).

Dennis M. Clennan, P.E., Director of Public Works and Engineering, City of Hutchinson, presented testimony on the value and need for the continuation of the work of GMD #2 and noted that GMD #2 serves a population of over 500,000 water users. He urged support of SB 264 to provide GMD #2 with the revenue needed to meet current operating conditions and programs. Included with his testimony was an Equus Beds Fact Sheet (Attachment 17).

The Committee asked for further clarification on:

- the Hutchinson position;
- voter representation at board meetings;
- water rights distribution;
- water meters;
- pumping flood water into the aquifer; and
- makeup of the board.

The Chair adjourned the meeting at 4:45 p.m. and announced the meeting would reconvene at 9:00 a.m. on Tuesday, October 23.



**Tuesday, October 23**

The meeting was called to order by Chair Joann Freeborn at 9:00 a.m. on October 23, 2001 in Room 519-S of the Capitol.

### **Committee Report on *Kansas v. Nebraska* Lawsuit**

*It was moved by Senator Schodorf, seconded by Representative Showalter, that the Special Committee on Energy, Natural Resources, and Environment, adopt the background material on the *Kansas v. Nebraska* Lawsuit as prepared by the Kansas Legislative Research Department. Motion carried.*

### **Fault Lines Near Army Corps of Engineers Reservoirs**

The Chair opened discussion on possible action of the Committee on the issue of Seismic Risk at Tuttle Creek Reservoir. After considerable discussion, the Committee did not feel there has been sufficient information provided them to take any action, but there is a need to consider the economic impact on upstream and downstream areas. Earl Lewis of the Kansas Water Office responded to questions on the operation and maintenance expenditures of Tuttle Creek Reservoir. No firm cost estimate has been made to determine the course to take in the repair or removal of the Tuttle Creek Dam.

Representative Showalter noted that the State of Kansas' role, through the Kansas Water Office, is to encourage a solution that will have the least possible impact on water quantity, water quality, and the state's ability to fulfill its water contracts at the least possible cost to water users.

The Chair requested that members of the Committee contact staff with suggestions and comments on this matter. No action was taken.

### **Kansas Water Office**

Margaret Fast, Kansas Water Office, reported on the actions taken by the Kansas Water Authority with respect to the proposed legislation relating to the Equus Beds Groundwater Management District. She also commented on the relationship between the groundwater management districts and the development and implementation of the Kansas Water Plan (Attachment 18).

## **Management of the Equus Beds Groundwater Management District**

Brad Franz, President of GMD #2 Board, had a slide presentation with detailed information, statistics, charts, and graphs on GMD #2. He agreed to provide the Committee with copies of the slides for their further study and consideration. Topics discussed were data collection and research, administration and regulation, and publications (Attachment 19).

The Chair requested that budget information from GMD #2 for the past three years be provided to the Committee. Mr. Franz was accompanied by Jerry Blain, Superintendent of Water Production, Wichita; Joe Mies, Secretary of GMD #2; and Michael T. Dealy, Manager, GMD #2 who responded to Committee questions during the slide presentation.

Dennis Bush, Mayor, City of Andover and Legislative Chairman of Regional Economic Area Partnership, urged the support of SB 264 which provides additional funds to relieve the budget crisis of GMD #2 due to its inability to increase revenues. He noted the differences in GMD #2 and the other GMDs in the State of Kansas

- The Equus Beds aquifer provides public water supplies to over 500,000 Kansans;
- The Equus Beds GMD has the smallest land area of any GMD;
- 40 percent of the groundwater drawn from the Equus Beds aquifer serves municipal and industrial purposes, compared to 2 to 3 percent for these purposes in other GMDs; and
- 65 percent of the Equus Beds GMD has been designated a “sensitive groundwater area” (Attachment 20).

Keith DeHaven, Mayor, City of Sedgwick, urged support of SB 264 for the health and well being of the citizens of Sedgwick and other communities served by GMD #2 (Attachment 21).

Bob Myers, City Attorney, City of Newton, discussed the environmental plan for Newton which was adopted in 1999 to allow local control to make the decisions for the best uses of the resources for this area. Mr. Myers did not have written testimony but agreed to provide it (Attachment 22).

Marvin Peters, Executive Director, McPherson Industrial Development Company, provided information on the impact of the GMD #2 on the maintenance of water quality and quantity for human consumption and for industrial purposes in the McPherson area (Attachment 23).

H. Edward Flentje, Hugo Wall School of Urban and Public Affairs, Wichita State University, presented a historical perspective of the aquifers. He noted SB 264 represents a reasonable approach to making the law work for these water users for at least some period of time into the future (Attachment 24).

The Committee recessed for lunch at 12:15 p.m. and reconvened at 1:30 p.m.

The Chair handed out information from a website on Equus Beds Information Resource and quoted from an article from the website of the Pacific Institute, California (Attachment 25). This website can be accessed through [www.equusinfo.org/prevention.html](http://www.equusinfo.org/prevention.html)

Jerry Blain, Superintendent of Water Production, City of Wichita, spoke in favor of SB 264 and presented his observations regarding the bill (Attachment 26).

Mr. Mies noted as a farmer he is concerned with losing the local office.

Jolene Grabill, Regional Economic Area Partnership (REAP), noted that protecting the public water supply of South Central Kansas was the most important 2001 legislative priority of REAP. She reviewed the background of the GMDs and the various laws enacted over the years. Her written testimony provided charts on Comparison of District Assessment Rates (Attachment 27).

Edward R. Moses, Kansas Aggregate Producers' Association, urged the Committee to consider the following issues in the final report on SB 264:

- Maintenance of Uniformity; and
- Clear Lines of Authority (Attachment 28).

Kerri Ebert, Executive Secretary, Kansas Dairy Association, noted the KDA feels SB 264 will unfairly tax agriculture and it is an attempt to diminish agriculture's voice in the Equus Beds. She stated that Kansas dairymen are highly regulated already without creating more regulation. This association recommended that the GMD #2 Board take a serious look at its budget and exhaust all budget-saving avenues and that an Equus Beds Protection Advisory Committee be established to monitor both quantity and quality issues (Attachment 29).

Bob Seiler, Dairyman, Valley Center, voiced his concerns on SB 264. He felt this legislation would result in more regulations for the dairy industry (Attachment 30).

Leslie Kaufman, Association Director, Public Policy Division, Kansas Farm Bureau, noted the Farm Bureau has strong reservations about pulling one GMD out of the Groundwater Management Act and giving it its own set of statutory references. Her written testimony sets out the concerns of the Kansas Farm Bureau on SB 264 (Attachment 31).

Janet Stubbs, Kansas Building Industry Association, presented testimony setting forth the building industry's concerns with SB 264. M.S. Mitchell responded to several inquiries from the Committee regarding the bill (Attachment 32).

The Chair closed the presentation of further testimony and directed staff to prepare a memorandum of possible proposals for Committee recommendations at the November 16 meeting.

Adjournment was at 4:45 p.m.

Prepared by Ann McMorris  
Edited by Raney Gilliland

Approved by Committee on:

November 16, 2001