

**Southwest Kansas Groundwater Management District No. 3
Minutes of the Regular Meeting of the Board of Directors
October 12th, 2016**

MEETING CALLED TO ORDER

The October 12th, 2016 Board of Directors meeting of the Southwest Kansas Groundwater Management District was called to order by President Kirk Heger at 9:02 a.m. The meeting was held in the Board Room of Southwest Kansas Groundwater Management District NO. 3.

Affirmation of Elected Board

Garden City Mayor Chris Law administered the oath of office to Brett Rooney for compliance with State law. "I do solemnly affirm, that I will support the constitution of the United States and the constitution of the state of Kansas, and faithfully discharge the duties of the board of directors of the Southwest Kansas Groundwater Management District Number 3. So help me God."

Directors Present

Kirk Heger, President, Stevens County Representative

Mike O'Brate, Treasurer, Gray County Representative

Mike McNiece, Board Secretary, Industrial Representative

Bret Rooney, Vice President, Haskell County Representative

Steve Stone, Finney County Representative

Kent Dunn, Seward County Representative

Zachary Gale, Hamilton County Representative

Fred Claassen, Morton County Representative

Hal Scheuerman, Kearny County Representative

Randy Hayzlett, Surface Water Representative

Directors Absent with Notice

Clay Scott, Grant County Representative

Seth Nelson, Stanton County Representative

Jeff Reinert, Ford County Representative

Douglass Fox, Meade County Representative

Alan Schweitzer, Municipal Representative

District Staff Present

Mark Rude, Executive Director

Jason Norquest, Assistant Manager

Patty Stapleton, Office Administrator

Chris Law, Field Services

Trevor Ahring, Engineer

Brandi Sneath, Office Assistant

Others in Attendance

Mike Meyer, Water Commissioner, KDA, Division of Water Resources, Garden City

Armondo Zarco, Garden City KDA/DWR

Fred Jones, City of Garden City

Kyle Spencer, GMD1 Manager

Kelly Warren, Water Engineer and GMD3 seasonal employee

Richard Rockel, Kansas Water Office

Susan Metzger, Assistant Secretary, KDA

Allie Devine, Devine and Donley, Kansas Farm Bureau

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Others in Attendance (continued)

Gregg Graff, GMD 1 Board President and Kansas Water Authority
Clayton Huseman, KLA Executive Director, Feedlot Division
Aaron Popelka, KLA Vice President of Legal and Government Affairs
Frank Mercurio, KLA Environmental Services, LLC
Dave Brenn, Kansas Water Congress
Todd Siek, Fowler Feeders LLC MGR.
Mandy Fox, Consultant for Tuls Hermann Dairy
Brian Hemann, Tuls Hermann Dairy

APPROVE AGENDA

President Heger asked for consideration of the meeting Agenda. After some discussion, Randy Hayzlett made a motion to approve the agenda as presented. Kent Dunn seconded. The motion was approved with all in favor.

APPROVAL OF MINUTES & GENERAL MONTHLY FINANCIAL REPORT

President Heger drew the attention of the Board to consider August 10th, 2016 draft minutes. Kent Dunn moved to approve the August 10th, 2016 minutes, with wording correction under Mike Meyer report. Hal Scheuerman seconded the motion. The motion was approved with all in favor. There was no board meeting in September.

President Heger next drew the attention of the Board to review the August and September, 2016 financial report documents. Mike McNiece made a motion as follows: Approve the financial reports and payments for the months of August and September as presented at this meeting, and to submit them for the annual audit. Brett Rooney seconded the motion. The motion was approved with all in favor.

President Heger signed and submitted the financial documents.

President's Report, President Kirk Heger

KDA Comments, Assistant Secretary Susan Metzger

Assistant Secretary Susan Metzger thanked the directors for providing time for her and others at the October board meeting. She stated that most of what she wanted to talk about was listed further down on the agenda and can be discussed at that appropriate time.

Assistant Secretary Metzger stated that the First Ag Summit that was held in Manhattan, KS was very successful. There were approximately 400 people in attendance. Plans to hold the second Ag Summit are in the works for next August.

Bill Golden and Josh Roe have completed an economic study and will be part of a panel presentation at the Kansas Governor Water Conference confirming there is economic value pushing water down the road and conservation does pay off.

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Water Commissioner's Report. Mike Meyer

Water Commissioner Meyer noted some work with water users on MYFA's is occurring along with some WCA plans going out for water user consideration.

Discussion occurred. Mike O'Brate stated he had a neighbor contact him saying he was told to fix a meter and did so. Then received another letter after the fact that he needed to change from gallons to acre feet reading. Mike Meyer explained the need to have a meter that cannot turn over more than once in a year or that there has been issues with meter units on the meter in the past.

1062 & 8809D1 Fowler Feeder. Spacing to neighboring well waiver

Todd Siek Manager of fowler Feeders was present for any questions regarding the review for water right 1062 & 8809DI, spacing to neighboring well waiver. Jason Norquest provided a briefing:

- Well casing failure in 2015 led to PD change application that was approved April 3rd 2015.
- Current PD location 4772n 2696w
- This application is to partially convert 127 acre feet to stock. With remaining 805 acre feet remaining irrigation.
- Stock portion will move back to original hole, after a new sleeve insert is completed.
- Stock well would not meet spacing to neighboring wells, which is owned by applicant.
- One neighbor provided comment, however, did not oppose and questioned what she could do for her own well.

Well will only be used for summer emergency high demand situations.

After some discussion and answers, Mike McNiece moved to approve recommendation of spacing waiver for Fowler Feeders. Zachary Gale seconded. Motion passed.

Water Right 11.170. Seaboard Foods. Battery and spacing to neighboring well waiver

Jason reviewed the change application for water right file no. 11,170, Seaboard Foods. The applicant has applied to take the primary stock well and the standby well and create a battery of two wells. However, the applicant says that the standby well has already been operated unlawfully as part of a battery for several years. Water right 11,170 stockwater use currently is authorized one primary well and one standby well, with 20.56 acre feet authorized. The new battery request is required by rule to meet safe yield as per K.A.R. 5-2-3(b). Spacing is currently not met to water right 19,548 and it is short by 170feet; needing 2300 feet for compliance. No comments were received from any of the surrounding neighbors. Discussion of the precedence for adding wells in a declining aquifer was had.

Steve Stone moved to table Seaboard Foods until further discussion are held and to bring it back to the table next month (November). Brett Rooney seconded. Motion passed.

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20169016 Term Permit, Tuls Dairy, Spacing to neighboring well

Mandy Fox and Brian Hemann were both in attendance for the review of 20169016 Term Permit for Tuls Dairy. The applicant is requesting a blanket authority over the two water rights for a combined rate and quantity; 298.3 acre feet @ 410gpm.

Brian Hemann spoke with Jason Norquest on September 19, 2016. Mr. Hemann understands GMD3 points for avoiding excessive use of term permits and agrees he would like to see a more permanent solution. However, due to the Dairy being in the process of evaluating a possible project expansion in that facility, they didn't want to file permanent changes and then have to refile everything in a year or two to cover new needs. If it is deemed beneficial they would look at converting more water to stock and then would like to see a possible overlap on their wells for flexibility.

Mike O'Brate moved to recommend a waiver of spacing for 20169016 Term Permit, Tuls Dairy. Zachary Gale seconded. Motion passed with all in favor.

Committee Reports

Policy and Legal Committee 51.19 / 1-07

Mark Rude stated Policy and Legal Committee met twice in the last two weeks and plan on meeting more in the near future.

Mr. Rude turned the attendees' attention to the proposed amendment to K.S.A. 82a-745 along with a document list of notes from the Policy and Legal Committee recommendations to the full board.

- 1) All GMD board members in all five Kansas districts received a letter from Governor Brownback asking for support on WCA's (Water Conservation Areas) and proposed revisions to improve the statute.
- 2) Proposed WCA statute modifications to allow for new Flexible Management Plan liberties are not supported as a concept to be implemented in that way. Mark clarified that the request of animal agriculture for flexible water right management is very much supported and recommended to be implemented either as a new appropriation application with statutory modifications for this type of flex concept water right, or more preferably as a set of change applications and process, given the nature of the contemplated changes to existing authority affecting the water right neighborhoods.

(Note: The committee notes document is made an attached to the minutes for reference.)

Mike McNiece asked for Assistant Secretary Susan Metzger's thoughts on the water right permanent change process vs. the WCA draft legislation approach. Susan Metzger stated that the Brian Hemann term permit application is an example why the permanent change has been avoided for the WCA flexible management concepts. The idea of the WCA statute giving the producer / applicant the flexibility under the enrollee's discretion to determine the length of enrolment that could be five years, 15 years or 50 years. Term permits must be reapplied for at the end of the term. And permanent change applications would lock in the conditions once approved, until another change is filed. Water users want flexibility to make changes to their water use conditions without having to go through a lengthy process, where the WCA enrolment as proposed may make sense. It is an applicant's choice whether to propose permanent changes or enroll in a WCA to get what they need. Permanent does not have the needed flexibility at times. Mike McNiece added that WCA should have a strong conservation sufficiency in declining aquifers. Susan indicated the basic expectation for WCA's is that conservation must exist to gain the flexibilities. Mike emphasized the need for a strong conservation element in the declining aquifer in order to receive the flexibilities. That is what is supposed to be happening.

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Mike McNiece also reported the significant issue of adequate notice to other water right holders of the proposed flexibilities. It is not considered an unreasonable burden to the Department to assure that such notice is made and to give those notified adequate opportunity to reply to that change taking place to the WCA or change application. Susan agreed.

Kirk Heger asked with the KLA and Farm Bureau reps attending, why the concept of water conservation is not described more in the draft legislation. Language mentions total aggregated quantity and rate, but not conservation. Allie Devin suggested the concept of water conservation was already inferred in the section where the amendment was going to be made in the WCA statute.

Mark pointed out the reference in the joint letter from KLA, Farm Bureau and KDA of sufficient corrective controls required to address the problems. The WCA enrolment would only be available in IGUCA type problem water areas and the existing statute contemplates corrective controls to address the problems. It hasn't occurred that way with two of the three WCA's that have been approved, which influenced the Policy Committee discussion of what would be sufficient new conservation activity to be considered a new corrective control that would warrant providing new use flexibility liberties that may add to the depletion rate problems in some areas. Mark described the existing statute is 100% voluntary water conservation and very appropriate in a culture of conservation. But that the new proposed amendments creates a new kind of water right with its own priority and other elements of a right with new terms and conditions of use, which can affect other water rights like any other new application or change application.

A point of clarification was asked by Allie on the reference to a new kind of water right given the concept that the WCA would involve existing water rights. Susan responded the proposed WCA approach involves the same concept as under the present use of term permits in that it would rely on the authorities of the base existing water rights and leaves them untouched when changing the conditions for conservation and flexibility under a WCA Plan. Bret Rooney pointed out where the policy committee was getting the new water right concept and read from the second page of the draft changes ...the authority granted through the management plan shall supersede the authority of the participating water rights during the period of the Plan. So it takes the place of the old water rights and is therefore a new right. Susan said this is in the same way that it has been piloted under term permits. The Multi-year flex accounts statute (KSA 82a-736) is an example of that.

Allie described two basic concerns of Farm Bureau. One is the need to allow flexibilities offered under the draft WCA changes to all corporation projects, including irrigation. The second is the interests to preserve the long term viability of the Water Appropriations Act by allowing flexibility and new future tools to be implemented through the WCA Plan concepts and avoid tangential fixes and special cases that might erode some basic things in the Act.

Aaron Popelka described how the draft legislation evolved from the Kansas Livestock Association standpoint. He said there are some livestock projects struggling to keep their systems pressurized under the current system that got this flexibility discussion started. Under the current term permit system, much of what is needed can be done. Because of term permit use concerns, KLA wanted to work with some partners to meet their needs and still address some of the concerns over term permits. No one really wants temporary rights, but really want flexibility. We were not thinking in terms of just a livestock tool. We modelled the proposed WCA flexibility off of the MYFA statute (KSA 82a-736) that relies on existing water right authority. On the corrective controls, members would rather not give up authority, but are willing to consider it to get flexibility. On the proper notice concern, we view the proposed revisions as adding transparency to the existing WCA statute and are certainly open to that concern.

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Kirk Heger asked about the provision for an aggregated sum of all participating water rights in a WCA as the limit for any well or well combination, and how that might allow authority from dry wells to be used by other wells that may be in an aquifer location that still has water. Aaron thought there are other statutes and regulations such, as safe yield, which would prevent that from happening. Mark pointed out that all of GMD3 is closed to new appropriations and safe yield does not apply because no one can meet it today, which is the crux of the concern for more flexibility in problem, groundwater decline areas. Mark stated the basic question will be how to do this proposed program in an environment where existing rights far exceed the sustainable supply and folks are sharing in the remaining water and in the declines. The GMD goal is to avoid consternation so that members can get on with their projects and we can share the remaining supply. How do we provide for more flexibility without encouraging litigation?

Aaron pointed out the corrective controls would be required to be a part of a WCA Plan to address those concerns. Mark pointed that requirement may need to be strengthened as we go forward given the current use of the word "may" and the absence of any "shall" language. There is some concern that the three existing WCA's did not include added corrective controls. Susan expressed the view that all three do have significant conservation and may exceed their goals. Mark commented on the difference between existing conservation in sufficient corrective controls to warrant more use flexibility in a declining aquifer.

Steve Stone expressed that a key to this whole concept for GMD3 is how the conservation factor would be determined. He asked how it would be arrived at. Susan indicated it would be a personal decision for each person or group submitting a WCA Plan. We have three instead of 100 because it is not an easy decision for water users. We have fifty or more that we have talked to. We go through the analysis that these are the flexibilities they are interested in, we run the Theis analysis on the neighboring wells, we look at the short term and long term impacts might be with that type of proposal, and some of them are not the best proposals. This is why we have three instead of fifty or a hundred. Then there is some negotiating back and forth. So it is a difficult decision.

Kirk Heger described his experience with multi-year flex accounts that he has and the existing conservation he had implemented that was not recognized in that program and an example of the question how we will apply criteria consistently.

Mike Meyer described that the MYFA program is not a conservation program where as the WCA program is. A number of different analyses are used by DWR to determine sufficient corrective controls. That is why we only have three at this point. We went back to producers and informed them their WCA did not fit statute and their corrective control was not enough. So they were going to have to add more to the Plan. And many were not willing to do that. One size analysis does not fit all locations. Comparison to the neighbors, Theis analysis, aquifer properties, use of the GMD3 model tool are all available tools.

Zachary Gale expressed his interest in the proposal for conservation and the necessary review of every case that needs to come before the board. He supports the proposal.

Mark continued the reviewed of notes of the Policy Committee regarding impairment and the ongoing question of when the "yes" becomes "no" regarding no impairment. The review for sufficient corrective controls is as big a deal as the review for impairment.

Kirk asked about the impairment analysis process under a change which occurs up front vs. the proposed revisions to the WCA that contemplates an investigation after the fact. Under our declining aquifer, once the water is gone, it will be gone.

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An after the fact investigation of how new flexible pumping authority may have affected a neighbor won't bring it back. Mark added that even with significant declines, where there is discomfort, there may be litigation. But if we can provide some communication and comfort to the neighborhood, we can avoid litigation.

Aaron offered that if the corrective controls were to be found insufficient under a WCA, the GMD could always consider forming a LEMA to address the issues and address it that way, assuming it would make it through the process.

Kent Dunn expressed his excitement of the WCA program. He has not been able to see the benefit of a LEMA but can get behind the WCA concept.

Consumptive Use Map Proposal:

Susan reviewed the consumptive use factor by County based on area weighted average irrigation return flow. Mark said there was support of the concept expressed by the policy committee members, provided there is a provision that allows more site specific historic consumptive use data to be considered to address the issue. Mark suggested this be put on the map somewhere to help the consideration. Susan said this is a proposed rule and regulation change and more information will be released in the next few months. A suggestion was made to consider changing the title of the map.

Management Program Document Revision was handed out for the directors to review. Mark Rude asked everyone to forward comments to him as soon as possible.

Old Business

There was no old business to take off the table.

New Business

There was no new business to bring to the table.

Executive Director Report, Mark Rude

GMDs Mobile data app development, Phase 1 under way

Executive Director Rude announced that GMD's mobile data application is under way with Phase 1.

GMD3 Website migration

GMD3 is working with Hubris to integrate the new GMD3 website and to make it a friendlier cell phone application. The initial cost is \$3,000 with Hubris Communication and then \$25.00 a month. Brett Rooney moved to approve payment of \$3,000 initial payment with \$25.00 a month cost. Mike O'Brate seconded. Motion passed.

USGS Annual COOP contract approval

Executive Director Rude advised the USGS Annual COOP contract is needing approval. This is the fourth year for the locations and the cost is \$6,900.00. USGS pays 1/3 while the district pays 2/3. Hal Schuerman moved to pay the monitoring well expense of \$6,900. Mike McNiece seconded. Motion passed with all in favor.

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Kansas Agriculture Rural Leadership Support

Mark Rude brought to the table Kansas Agriculture Rural Leadership Support. In the past GMD3 has sponsored with \$300.00. Kent Dunn moved to continue the support of \$300.00. Brett Rooney seconded. Motion passed with all in favor.

Roth Technology Farm Project

A you tube video is available for viewing at <https://www.youtube.com/watch?v=f7WhtPHWkSc> regarding Roth Technology Farm Project.

Blue Ribbon Task Force:

Mark announced that he plans on attending the Blue Ribbon Task Force which will meet October 31, 2016 in Topeka, Kansas.

Kansas Water Authority, October 19, Milford Lake Conference Center

Kansas Water Authority will meet October 19th, 2016 at Milford Lake Conference Center. Mark Rude plans on attending.

GMD Boards Roundtable with KDA

Mark Rude and Susan Metzger provided a couple of potential dates for GMD Boards roundtable with KDA. The potential dates are October 27th, November 3rd or November 7th with a meeting location in Great Bend, KS.

Governor's Water Conference, November 14-15th, 2016 Manhattan, Aqueduct Coalition Video

Aqueduct Coalition will have a table and present a Kansas Water documentary on water transportation at the Governor's Water Conference, November 14-15th, 2016 in Manhattan, Ks.

ARCA Annual Meeting, Lamar, Co

December 9th, 2016 is the date for the Annual ARCA Meeting, which will be held in Lamar, Colorado. A date change for the GMD3 Board Meeting could be considered to allow Chief Engineer, David Barfield to be in attendance. Further discussion will be held in the November meeting.

GMDA Conference, Ft. Worth, Texas, January 9-11th, 2017

Mark Rude stated the GMDA Winter Conference will be held in Ft. Worth, Texas, January 9th – 11th. Consideration to move the January meeting will be considered at a later date. Randy Hayzlett moved to approve out of state travel for board and staff to attend the GMDA Winter Conference in Fort Worth, Texas. Hal Scheuerman seconded. Motion passed with all in favor

Mark reminded the Board of Directors that February is the Annual Legislative Reception in Topeka, KS. Therefore, GMD3 board meeting will be held February 9th in Topeka, KS at the Ramada Inn Convention Center.

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Monthly Western Water Conservation Projects Fund Business

Mark Rude drew the attention of the board to the financial documents of the Western Water Conservation Projects Fund and activity of the advisory committee. After some discussion of the Board, Randy Hayzlett moved to accept the August and September financial report and payments as presented and submit them for annual audit. Mike O'Brate seconded. Motion passed with all in favor.

Hal Scheuerman stated that the final bill for Bridges Inc. has been turned in for payment.

Next Western Water Conservation Projects meeting date has not been set.

Board Member Report

There were no Board Member reports announced.

Public Forum

Dave Brenn announced that the Kansas Water Congress winter meeting will be held in Topeka, KS at the Ramada Inn Conference Center on February 8th, 2017. Mr. Brenn is hoping to transition another person to start taking over the Kansas Water Congress activities and business.

Fred Jones with the City of Garden City reviewed a few water reuse grants and conservation projects Garden City is looking at implementing.

ADJOURNMENT

Fred Claassen made a motion to adjourn the meeting. Zachary Gale seconded.
The meeting was adjourned at 12:05 p.m.

Respectfully Submitted,



Mike McNiece
GMD3 Board Secretary