

**Southwest Kansas Groundwater Management District No. 3**  
**DRAFT Minutes of the Regular Meeting of the Board of Directors**  
**September 12th, 2018**

**MEETING CALLED TO ORDER**

President Kirk Heger called to order the September 12, 2018 Board of Directors meeting of the Southwest Kansas Groundwater Management District to order at 9:03 a.m. Which was in the Board Room of Southwest Kansas Groundwater Management District NO. 3.

**Flag Salute**

**Directors Present**

Kirk Heger, President, Stevens County Representative  
Mike O’Brate, Treasurer, Gray County Representative  
Mike McNiece, Board Secretary, Industrial Representative  
Randy Hayzlett, Surface Water Representative  
Fred Jones, Municipal Representative  
Hal Scheuerman, Kearny County Representative  
Dave Casterline, Ford County Representative  
Zachary Gale, Hamilton County Representative  
Seth Nelson, Stanton County Representative  
Douglass Fox, Meade County Representative  
Fred Claassen, Morton County Representative  
Kent Dunn, Seward County Representative

**Directors Absent with Notice**

Bret Rooney, Vice President, Haskell County Representative  
Steve Stone, Finney County Representative  
Clay Scott, Grant County Representative

**District Staff Present**

Mark Rude, Executive Director  
Jason Norquest, Assistant Manager  
Patty Stapleton, Office Administrator  
Chris Law, Director, Field Services  
Trevor Ahring, Engineer  
Brandi Sneath, Office Assistant

**Others in Attendance**

David Barfield, Chief Engineer, Division of Water Resources, KDA Manhattan  
Lane Letourneau, Water Appropriations Program, DWR Manhattan  
Mike Meyer, Water Commissioner, DWR, Garden City  
Lexi Kiniston, DWR, Garden City  
Austin McColloch, DWR, Garden City  
Armando Zarco, Kansas Water Office, Garden City  
Frank Mercurio, Livestock Engineer Consultant  
Ted Boersma, Powerline Dairy  
Alexandra Davis, KWO  
Gregg Graff, Kansas Water Authority  
Dave Brenn, Kansas Water Congress  
Aaron Popelka, Kansas Livestock Association  
Jeff Sternberger, Manager Midwest Feeders  
Matthew Walsh, Midwest  
Frank Littrell, Midwest

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**APPROVE AGENDA**

President Heger asked for consideration of the meeting Agenda. Kent Dunn made a motion to approve the agenda as presented. Mike O'Brate seconded. The motion passed.

**APPROVAL OF MINUTES & GENERAL MONTHLY FINANCIAL REPORT**

President Heger drew the attention of the Board to consider the August 8, 2018 draft minutes. Mike McNiece moved to approve the August 8, 2018 minutes, as presented. Fred Jones seconded the motion. Motion passed.

President Heger next drew the attention of the Board to review the August 2018 financial report documents. Hal Scheuerman made a motion as follows: Approve the financial reports and payments for the month of August as presented at this meeting, and submit them for the annual audit. Zachary Gale seconded the motion. Motion passed

President Heger signed and submitted the financial documents.

**President's Report, President Kirk Heger  
Water Commissioner's Report, Mike Meyer**

Water Commissioner Mike Meyer turned the floor over to Lane Letourneau and Chief Engineer Barfield. Mr. Letourneau addressed the new civil penalties, stating the stricter penalties have been hard for DWR to swallow. A DWR staffer has been working with producers on unstacking water rights, aiding in the redistribution of the authorized quantity and submittal of the proper paper work in response to the penalties. Lane added DWR would like to work with GMD3 staff on each individual civil penalty concern. Chief Engineer Barfield spoke about the LEMA issues in the state and the Hays water transfer process from Edwards County. Initiating rulemaking for LEMA's and WCA's rules is forthcoming and dialog on a draft set will start in the coming months.

Lane Letourneau and Chief Engineer Barfield handed out a summary of slides from the Kansas Ag Growth Summit presented August 23<sup>rd</sup>, 2018, reviewing KDA Division of Water Resources and water conservation initiatives. He highlighting some slides and discussed Sheridan 6 LEMA success of significantly reduced groundwater use between the years 2000-2016 and a new approach being considered to evaluate conservation benefits indexed to climate.

**Powerline Dairy WCA Review**

Jason Norquest provided the review for Powerline Dairy WCA. Frank Mercurio and Ted Boersma attended for questions and comments. The following were points of information on the power point presentation:  
Stock:

- Currently 4 stock water rights/ wells (12932,23398,25265 & 26490)
- Originally irrigated converted to stock, which was considered as past conservation of 316.35af
- Combined authority: 719.65af
- Average use 2012-2016: 643.34af
- 12932 & 25265 can pump up to 400af
- 23398 & 26490 held to current af
- Stock wells cannot exceed authority of 719.65af / year
- Additional 389.25af up to 1108.9af max can be used for stock, as long as irrigated is reduced

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**Irrigation:**

- 15 water rights on 20 wells
- 2893 acres combined
- Combined authority of irrigation wells: 5470af
- Combined average use 4350.51af
- Proposing 10% conservation:3915.46af
- Proposing, Any well can pump up to 130% of annual authority any year as long as it doesn't exceed 5x annual authority for duration of WCA
- All wells held to current authorized pumping rates
- Combined irrigated cannot exceed 5470af / year and also cannot exceed 19577.3af /5years
- Any irrigation well can pump to stock; has to be metered separately and that af amount taken off irrigated total
- 2175.255af "calculated conservation" in WCA

Discussion occurred on confirming they are not looking to add new water. Just adding new flexibility of using allocation under the water rights. The question was asked why this could not be a permanent change. Applicant responded they are seeking to try out the proposed activity first. Spacing and the WCA allows evaluation of how an expansion of the Dairy will work for 5 years was the response. Initial consultation occurred with KDA-DWR began in July 2017, can the WCA be retroactive to start date.

Mark Rude, per the Policy and Legal Committee, noted rule waivers for a Term permit would be needed expressed concern that there is nothing in Law that would allow a permit to be proved for anything in past years. Zachary Gale asked if the start date matters if there were no violations from the start date or anything going forward. After further discussion occurred, Mike McNiece moved to recommend approval of Powerline Dairy WCA. Mike O'Brate seconded. Motion passed.

**Midwest Feeders WCA Review**

Jeff Sternberger and Matthew Walsh from Midwest Feeders were present for the Midwest Feeders WCA review. Jason Norquest presented an overview and advised the location of the WCA is straight north of Ingalls.

**Slide 1:**

- Covers 1145 acres: stock and irrigated
- Stock: 7 water rights = 9 wells (3 batteries)
- Irrigation: 4 water rights = 3 wells
- Conversion from irrigated to stock: considered 951.3af conservation
- 391.74af annual average wastewater use (lagoon water irrigation use and 13% aquifer recharge)
- 50.93af / year recharge due to pivot efficiency
- Average 8.72 gallons per head per day
- Proposed WCA covers 2018-2020 (3 years)
- 95.82af calculated conserved during WCA

**Slide2:**

- Combined stock authority: 746.10af
- Combined stock average use (2012-17): 492.04af
- WCA Stock allocation capped: 746.10af annual or 2238.30af / 3 years
- North battery under 10999 limited to 267af/year (increase)
- South battery under 10999 limited to 241 af/year
- Remaining stock wells can pump up to 746.10af / year as long as overall total 746.10af and the 2238.30af/3 years is not exceeded

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- Combined irrigated authority: 474.10af
- Combined irrigated average use (2012-2017): 319.36af
- WCA irrigated allocation: 287.42af annual (10% conservation) 862.26af / 3 years
- Irrigated water rights held to current annual quantity / rate maximums

Frank Mercurio noted an expansion of approximately 1500 head of cattle would happen near the end of the year. The three year program was requested which would allow the effects of expansion to be tested. A review of the plan success will be made at the end of the period. After discussion, Mike O’Brate moved to recommend approval of the Midwest Feeders, Inc. WCA. Dave Casterline seconded. Motion passed.

**Harshberger Tech Farm WCA Review**

Gary Harshberger was unable to attend as Mark Rude received a prior phone call expressing his regrets for duties that required other out of state business. Jason highlighted the details of the proposed WCA, which is located south of Dodge City on the highway. WCA would consist of 160 acres, which is participating in conservation as a Water Technology Farm (2018-2020).

- Base WR 12709 : 320af @ 1555gpm
- Historic Use 2003-2012: 201af
- WCA for 3 years 2018-2020
- 10% conservation gives a 3 year allocation of 542.7af
- Well cannot exceed current annual allocation / rate in any of the years
- Up to 1 year WCA allocation could be carried over in next WCA (180.9af)
- WCA required to be in Tech Farms (per Tracy Streeter)
- 60.3af calculated conservation in WCA

Three Corrective controls were noted:

- 1) No point of diversion may exceed its annual authorized quantity in any calendar year
- 2) No point of diversion may exceed its annual authorized pumping rate in any calendar year
- 3) Potential carryover of 1 year’s WCA allocation with a subsequent WCA upon review and approval.

Randy Hayzlett moved an approval recommendation of Harshberger Tech Farm WCA. Kent Dunn seconded. Motion passed.

**Frontier Farms WCA**

Zachary Gale was present to answer any question regarding the Frontier Farms WCA. Jason highlighted the details of the 1,684-acre WCA with several slides.

Slide 1

- 3 water rights involved
- 12 wells
- Proposed overlap in PU
- No currently overlapped acres
- Combined authority 2493af
- Historic water use years varied with the years 2008-2017
- Combined average use: 2089.42af
- 10% conservation off average use
- 5 year WCA proposed: 2018-2022
- 9402.395af/5 years (1880.479af avg.)
- 1044.71af calculated conservation in WCA

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Slide 2

- Base WR 27,346
- Covers 3 wells
- 761 af current authorized, combined
- Well in section 19 capped at current 371af annual (stacked original 4<sup>th</sup> well authority)
- Remaining 2 wells can pump up to 300 af / each (increase from current)
- Applicant goal is to balance the usage
- All 3 cannot exceed combined 761af /year
- No well can exceed current authorized rate
- Held to combined 94023.4 af/5 years for all three water rights

Slide 3

- Base WR 27,347
- Covers 5 wells
- 982 af current authorized, combined
- All wells capped at 300af/year
- Increase range of 80 to 110af
- Applicant goal is to balance the usage
- All 5 cannot exceed combined 982af / year
- No well can exceed current authorized rate
- Held to combined 9402.4af /5 years

Slide 4

- Base WR 27,348
- Covers 4 wells
- 750af current authorized, combined
- All wells capped at 300 af/year
- Increase range of 98-124af
- Applicant goal is to balance the usage
- All 4 cannot exceed combined 750af /year
- No well can exceed current authorized rate
- Held to combined 9402.4 af/5years

No wells pumped between the years 1987-2007, due to enrollment in CRP. Zachary stepped out of the room for further discuss amongst the voting board of directors. Hal Scheuerman moved to recommend approval of the Frontier Farms WCA, Seth Nelson seconded. Motion passed.

**Management Program Revision**

Executive Director, Mark Rude stated the Policy and Legal Committee “generally” talked about, the Management Program revision at their last meeting. Discussion of the Management Program in whole has occurred numerous times, however, the committee agreed to concentrate on communication with Chief Engineer Barfield regarding the “stumbling blocks” of the program. Mr. Barfield added that it is the GMD3’s Management Program and DWR cannot dictate what is in it, but DWR wants to make sure it is consistent with State Law and Policies. A suggestion of smaller groups tackling the issues of the Management Program may be advantageous.

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Mark stated one concept that may need clarification is the role of policy statements in the GMD3 Management Program document. What extent is the policy statements binding on any State official regarding State Policy? If better understanding on the interpretation of that law and on that question is given, that may help GMD3. President Heger asked the Board of Directors if they were comfortable for Mark and the Chief Engineer to continue the one on one dialog and take the edited document to the Policy and Legal Committee for review. Mark noted another draft is available with edits on the website.

**Committee Reports**

**Policy and Legal Committee Report:**

Mike McNiece reported that the Committee spent a lot of time reviewing all the WCA's that were presented at the board meeting today. He appreciated the letter that GMD3 received from the Chief Engineer regarding the Bartlett Farms WCA and agreed with the chief engineer that it is not a poster child for a WCA but it will work for now.

On another topic, Mark explained the committee worked on an old issue that is fundamental to the water appropriations act and been tweaked over the past years, the doctrine of beneficial use. This issue has affected the city of Johnson and possibly a dairy or two on the issue of paper water rights that provide a total that exceed well pumping capacity. In some cases, water rights are acquired for the well yield (wet water) supply, but the total authorized amounts on paper exceed the reasonable needs of the project. The rub comes when the developed or purchased property right (paper) is required by DWR under the limits of reasonable need, to be permanently forfeited in order to proceed with what the applicant is seeking. The general recommendation of the Committee and consensus of the board is to recommend not requiring a permanent reduction of the paper water and handle the reasonable need concern with a limitation to what is reasonable; allow the excess paper water right amount to exist and remain unavailable until a future time when, and if, a new change application may be filed.

**Old Business**

**Tabled Bartlett WCA**

Jason Norquest provided a set of summary slides for the proposed 5 year plan:

**Slide 1**

- 2wrs/2wells
- 19,971: 338af @ 1000gpm
- 31853: 320 af (+57af) @ 680gpm
- 333 acres (+19 [to cover unpermitted acres])
- 601 af annual cap
- 2025 af / 5 years cap (2018-2022)
- 8.7% conservation from Historic use
- 192.2af calculated savings over WCA plan period [about the historical used on unpermitted acres]

**SLIDE 2**

- WR 19,971 & 31,853
- MOU FROM 2001-2010
  - 19,971: 338AF (1133.3AF/5YEAR)
  - 31,853: 263AF (905.3AF/5YEAR)
  - 342 ACRES
- CURRENT AUTHORIZED 314 ACRES
- NC LETTER FROM DWR MARCH 1, 2018 (UNAUTHORIZED ACRES)
- DROUGHT TERM PERMIT WAS ISSUED 20118008DT

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**Slide 3**

- 19,971: 338AF (CURRENT)
- 31,853: 320AF (+57AF)
- 601AF CAP ANNUALLY
- 2025AF/5 YEAR TOTAL CAP (2018-2022)
- BOTH WELLS HELD TO CURRENT RATE
- 333 ACRES
- GOAL FOR APPLICANT IS 405AF/YEAR OR 2025AF/5 YEARS (8.7% REDUCE AVG USE)
- HISTORIC USE: 443.433AF (2011-2016)
- WR 21,195 IS ANL MEASURING WELL, SHOWS RISE IN WATER LEVEL LAST 3 YEARS

Policy and Legal Committee discussed the following concerns of the Bartlett Farms WCA: 1) adding acres 2) no new corrective control to address the aquifer decline. Mike McNiece acknowledged the letter from Chief Engineer Barfield helped the committee to evaluate the Bartlett's WCA, realizing it is not a "poster child" for a WCA but it is a WCA and does accomplish some benefit for now. The committee also desires to keep the MOU-like standard in place with monitoring and reporting by DWR and report to GMD3 requested as was done by GMD3 to DWR.

Mike McNiece moved to recommend approval of Bartlett Farms WCA with a contingency it be an MOU like plan where DWR monitors water use and acre-feet for 5 years and supply the reports annually back to GMD3. Seth Nelson seconded. Motion passed.

**New Business**

No new business brought to the table.

**Executive Director Report, Mark Rude**

**Kansas Leadership Center**

Mark brought up the series of articles in the Kansas Leadership Center called the Ogallala Aquifer Plight. Mark had provided an email with links to the Board of Directors for review.

**KSU Western Kansas Groundwater Management Survey**

Mark reviewed a sample survey (by power point) that Associate Professor Nathan Hendrix of KSU would like to mail out to "farmers" and or "water correspondents". Professor Hendrix would like to have a focus group review the survey to improve communications. The study would reveal preferences of farmers as it relates to local groundwater management, with the objective of providing sound policy recommendation. The board was comfortable with Mark communicating with Professor Hendrix to aid in GMD3 getting beneficial information.

**Draft GMD3 WCA Executive Summary**

Research and Development Committee has reviewed a Concept to include *GMD3 WCA Conservation Plan for Southwest Kansas* in the appendix of the Management Plan. Mark asked the board to review and provide feedback.

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**KWA/Ag Summit Summary**

Randy Hayzlett attended the KWA / Ag Summit. He added it was a very good meeting and well attended. Breakout sessions addressed various aspects of Kansas Agriculture.

Last January the GMD3 Board sent a letter to Dan Devlin and Tracy Streeter regarding Kansas Water Vision and related items to renewable supplies. Dan Devlin chairs at K-State the Kansas Water Institute, which is a focus group to research water. His steering committee is meeting Friday and Mark is planning on attending.

**Colorado Hearing**

The 30-day deadline to appeal to the Colorado hearing has passed (couple of days ago) GMD3 opted to not appeal, due to cost. However, GMD3 did commit to S.S. Papadopoulos to complete the study. This study is currently under attorney-client privilege and will be shared with the board when that attorney-client privilege is lifted.

**Monthly Western Water Conservation Projects Fund Business**

Mark Rude drew the attention of the board to the August 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 Financial Report and payments as presented and submit them for annual audit. Fred Jones seconded. Motion passed.

Farmers Headgate construction: back to the drawing board for new bids.

**RAC Committees Reports**

Fred Jones attended the Upper Arkansas RAC meeting, which was at the Garden City Zoo. Fred turned the boards' attention to the draft info-graphics. He added it is a work in progress and will finalized soon. The committee would like to pass along to Kansas Water Authority that water transfer is still a need and requests continual work for the transfer. The two RAC committees are hoping for a joint meeting in the near future.

Cimarron RAC will meet tomorrow, September 13th.

**Board Member Report**

There were no Board Member reports announced.

**Public Forum**

Mike Meyer asked how the Colorado State line well was coming. Mark advised he received the agreement from KU/Kansas Geological Survey along with a bill \$9,005. GMD3 is responsible for buying three stock panels and t-posts to protect the well. The drilling of the well is to happen next Thursday.

Jason Norquest advised needing names of Board members wishing to attend the Governor's Water Conference in November so staff could get rooms and registration taken care of.

**ADJOURNMENT**

Fred Jones made a motion to adjourn the meeting. Doug Fox seconded. The meeting adjourned at 12:18p.m.



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**\*\*\*The meeting reconvened at 12:29\*\*\***

Mark Rude is requesting out of state travel to Colorado. He would like to attend the Joint Legislative meeting on September 26<sup>th</sup>, 2018 in the Denver statehouse. Kent Dunn moved to approve out of state travel for Mark Rude to Colorado on September 26<sup>th</sup>, 2018. Fred Claassen seconded. Motion passed.

Mike O'Brate asked for an update on the GMDA 2019 Summer Conference. The Conference will be in Salt Lake City, Utah at the University Marriott, June 5, 6, 7<sup>th</sup>, 2019.

Dave Casterline made a motion to adjourn the meeting. Doug Fox seconded. Meeting adjourned at 12:40p.m.

Respectfully Submitted,



Mike McNiece  
GMD3 Board Secretary