

Southwest Kansas Groundwater Management District No. 3
Minutes of the Regular Meeting of the Board of Directors
September 9th, 2015

MEETING CALLED TO ORDER

The September 9th, 2015 Board of Directors meeting of the Southwest Kansas Groundwater Management District was called to order by President Dunn at 9:01 a.m. The meeting was held in the Board Room of Southwest Kansas Groundwater Management District NO. 3.

Directors Present

Kent Dunn, President, Seward County Representative
Kirk Heger, Vice President, Stevens County Representative
Mike O'Brate, Treasurer, Gray County Representative
Mike McNiece, Board Secretary, Industrial Representative
Hal Scheuerman, Kearny County Representative
Randy Hayzlett, Surface Water Representative
Zachary Gale, Hamilton County Representative
Steve Stone, Finney County Representative
Seth Nelson, Stanton County Representative
Fred Claassen, Morton County Representative
Clay Scott, Grant County Representative

Directors Absent with Notice

Douglass Fox, Meade County Representative
Alan Schweitzer, Municipal Representative
Jeff Reinert, Ford County Representative
Bret Rooney, Haskell 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

Mike Meyer, Water Commissioner, KDA/DWR, Garden City.
Jonathan Aguilar, KSU Research Extension Engineer
Susan Metzger, Assistant Secretary, Kansas Department of Agriculture
Chris Beightel, KDA/DWR
David Barfield, Chief Engineer KDA/DWR
Greg Foley, KDA, Division of Conservation
Jackie McClaskey, Secretary of Agriculture, KDA
Steve Hines, Frontier Ditch
Greg Graff, Water Authority representative
Frank Mercurio, KLA Environmental Services
Clayton Huseman, Feedlot Division, KLA
Phillip Woods, Producer
Jacob Dumler, Producer
Diane Knowles, Kansas Water Office

President Dunn welcomed attendees to the board meeting and asked that all take note of the plaque made in recognition of service to the District board of directors. President Dunn conducted a moment of silence held in gratitude and memory of the passing of recent board member and friend, Wayne Breeding.

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APPROVE AGENDA

President Dunn asked for consideration of the meeting Agenda. After some discussion, Clay Scott made a motion to approve the agenda as presented. Fred Claassen seconded. The motion was approved with all in favor.

APPROVAL OF MINUTES & MONTHLY FINANCIAL REPORT

President Dunn drew the attention of the Board to consider August 12th, 2015 draft minutes. Mike McNiece made a motion to approve the August 12th, 2015 Board Meeting minutes. Hal Scheuerman seconded the motion. The motion was approved with all in favor.

President Dunn next drew the attention of the Board to review the August 2015 financial report documents. Consensus of the board was to fund the Kansas Water Congress conference for 100% reimbursement to GMD3. Randy Hayzlett made a motion as follows: Approve the financial reports and payments for the month of August as presented at this meeting, and to submit them for the annual audit. Kirk Heger seconded the motion. The motion was approved with all in favor.

President Dunn signed and submitted the financial document

President's Report, President Kent Dunn

Committee Reports

Policy and Legal, Kirk Heger

Kirk Heger stated that Policy and Legal met September 3rd (last Thursday). There was good attendance along with good discussion. A synopsis was handed out for review. Project Term Permits from the livestock facilities were a major topic of discussion. The committee had concerns with the project term permit requests of moving authority of rate and quantity within the irrigation project portion of the proposals. Two main questions in the discussion was 1) how do the facilities themselves manage flexibility within the facility, so overpumping on stockwater rights does not occur 2) irrigation component: how do we get the livestock facilities what they need to manage nutrients and the facilities without putting extra stress on the aquifer.

Mark Rude stated the term permits that have been filed under the concept of Project Term Permits is listed under new business on the agenda. Mark stated that Powerline Dairy is the biggest review in terms of wells, mostly because it covers the largest area. He turned the boards' attention to a reference map of the Dairy project area that was on the table for their review. The map is an aerial view of neighbors irrigated area along with the project fields and dairy yards. The areas of concern are the flexibility within the facility itself. Along with the water supply challenges they face; such as keeping the facility pressurized without overpumping, the next area of concern is the affluent that is created from the facility that must be disposed of properly

Clay added that working on a permanent solution instead of a temporary fix would be beneficial. With a permanent fix the GMD3 Board won't have to review every allocation, or work on retroactive term permits to address overpumping concerns. Discussion interest of the Policy and Legal committee was for a way to give some resolution to fix these problems the best way without supporting chasing water to the bottom and creating impairment claim concerns. Moving stockwater authority flexibility around inside the feeding facility was recommended.

Mark questioned how due process is going to work in the neighborhood for other project owners with rights. How are the neighbors going to be notified? It is better to be proactive in notifying the neighbors up front allowing them to state their concerns instead of after-the-fact action heading to court.

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Mike McNiece reiterated that the outcome of the committee meeting was that a final solution is needed. Whether it be a dairy or a feedyard, they are an integral part of Southwest Kansas and an acceptable solution needs to be found.

Frank...stated that the most complicated is PowerLine Dairy. Their biggest concern is overpumping and might need to look at changing their cropping routine. A solution is needed and dual use permits would be a good start.

A big map was reviewed and Mark discussed the top yellow numbers is the appropriation for the well. The next yellow number is the well share of the 40/25 depletion calculation and the white number is 15 year average reported use. The map demonstrates the data that can be completed by GMD3 to assist in the discussion for a decision and recommendation.

Mike McNiece stated that the three issues previously discussed by committee:

- 1) having to satisfy the need of the stockwater within the facility
- 2) the goal of trying to use dual purpose wells authorized in the vicinity of the feedyard to supply water to animals at a critical period for the facility
- 3) A nutrient management plan for waste disposal could be a third issue.

Clay Scott stressed his concerns. Understanding inside the feedlot facility we can't tell them the only spot they can drill is in the middle of a lagoon or under their silage pile. Which in reality we don't want them drilling in the lagoon. When the irrigation side is discussed it is simply farming 101, everyone wants more water on their best ground. There is not a single farmer in the Southwest Kansas District that would not want more allocation on their big wells. A multi-million dollar management program can be put in place to pressurize the system and pump water as they want. We have been doing that for decades. Producers know that when the well gets close to overpumping you shut it down and if 100% overlap they can pump water from the smaller weaker wells or come to the point where they have to shut down, that is just the nature of where the aquifer is. We don't have the water to be judicious with "we know you need more water and want to grow 300 bushel corn". Everybody wants this, however, the aquifer will not support this anymore.

If we allow people to start moving water from the big water rights, like a new appropriation, the only thing we are doing is encouraging the depletion of the aquifer faster, and sending invites for more impairment claims. The guy across the road has felt protected for years and years and years, they knew where they stood, and now the state came in and gave this guy (the neighbor) more authority to pump more water from his big well and now he is suffering from his well going down as a result. Eventually, these higher value uses, such as the cities, feed yards and dairy's we can get them the water they need because we see that is not new net water. But when it comes to wanting to grow better crops on their better ground that is where we are chasing the water with paper water rights. The well over here won't pump it, it has the authority and moving it over onto the big well that is almost every waiver that GMD3 Board of Directors review is. Instead of preserving and extending the aquifer we are draining and depleting it even faster by waiver after waiver. Don't understand why the state wants to do a temporary term permit ad nauseam and especially come back here on December 31st with a bunch of retroactive term permits we need to permit because they are going to be illegal and overpumped for the umpteenth year. Let's get it right. Let's get it fair. Let's move forward. We all know the value of the livestock in southwest Kansas but we can't have special rules for special events and then in five years later the applicants who applied for the Temporary Term Permit is in court because the applicant is facing impairment lawsuits, because the neighbor across the road who was happy with how it was for years is watching their well go to hell. We need to get real on what we are looking for and what the state is asking for with these special Temporary Term Permits, because it's not going to work. The southern third of the district where there is big water, what is stopping them from putting in 30 head of dairy cattle and follow suit on the Temporary Term Permits? Let's make something work that the Dairy guys can come in and get set up on the conditions they need on the water right, it would be a property right. Good solid and permanent water changes and make this work. Where in three years if they come back wanting to add 300 more head, they know what to expect, the process is the same as it initially was. Special names of term permits is getting out of hand, they are all the same. Let's get it permanent, let's get it legal and let's start feeding cattle and milking cows and quit this crap of chasing water. Because that is exactly what everyone will do in the GMD3 if they have the chance to pump more water.

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Discussion continued amongst the directors with questions to guests. Mike Meyer stated that a recommendation is needed today for most of the application sites.

The committee stated the recommendation to this board was to stay away from movement of quantity and rate for irrigation and move towards authorization of dual use permits and project flexibility of stockwater P/D and allocation limits within the footprint of an animal feeding project. The first priority being inside the footprint of the facility to get to do what they need to get the stockwater authority useable. The second priority, is the dual use to cover unusual climate years.

Clay Scott asked if a resolution is to be proposed...a waiver / allowance from this day forward to pump a blanket quantity inside this facility. Mark stated a recommendation letter could convey guidance, but that specific guidance could be drafted up for the board to look at.

Old Business

There is no old business to bring to the table.

New Business

Powerline Dairy, LLC:

Mike Meyer stated that Powerline has made a complete overlap with all irrigation water rights. The big issue is there are two stock wells that will be over appropriated by end of year, with the rest of the stock wells being within the appropriation. The issue has been with two wells over pumping in recent years; it has never been all of them. The applicant would like a decision to move forward or not. A term permit is needed no matter whether it be for approving the current term permit or a new term permit because the first one is denied, or revising the current term permit. There is enough wet water to support the cattle, just an imbalance on well authority.

Clay Scott moved to approve the permit as requested by applicant. Zachary Gale seconded.

Mike Meyer stated that 6106 AF, with stockwater being limited to 825 AF, spacing issue with some wells, piped water will be meter.

President Dunn called the vote, Motion failed unanimously.

Steve Stone moved to support a term permit within the facility and to amend the recent permit to stock water permitted today is 750AF. After much discussion, Steve Stone withdrew his motion.

Mike Meyer reminded this is for one year for support of a proposal of a blanket authority. Discussion continued regarding Powerline Dairy.

Mike O'Brate moved to recommend support of the blanket term permit for the four stockwater wells for 2015 only, if so amended. Mike McNiece seconded. Motion passed.

Deseret Cattle Feeders LLC

Mike Meyer provided a synopsis of the review for Deseret Cattle Feeders LLC. They are in the middle of an expansion, moving irrigation to another tract of ground. They do have a complex affluent system allowing them to move water and giving them the ability for dual use at wellheads.

Mark Rude provided a bit of history regarding a change request from neighbor Mr. Alexander about a year ago. Mr. Alexander had asked to stack water rights. The board moved to request approval of the change pending official document of no concern from Deseret Cattle Feeders. Deseret did not provide a no concern document, they stated the rules are there for a reason.

After discussion occurred, Mike McNiece moved to approve the permit as requested by the applicant for five year Temporary Term Permit. Zachary Gale seconded. Motion failed.

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Mike McNiece moved to recommend approval of term permit for 2015 only for blanket stockwater in the total amount currently permitted for such use, subject to a revision of the permit for one year. Mike O'Brate seconded. Motion passed.

Tuls Hermann Enterprises LLC

Mike Meyer explained they are wanting to combine irrigation to stock with the Temporary Term Permit. And, that applicant Brian Hemman requests that the board greatly considers the application as proposed.

- 1) Five years Temporary Term Permit
- 2) Flexibility from irrigation well to use as stock well

Due to his nutrient management plan he may not be able to afford to make the change immediately, at this time he is weighing his options. 50AF is needed from the irrigation well to stock to get through each year. There are no wells w/in 1/2 mile. Re-drilling of stock well has not been reviewed. However producer would like to stick with proposal stated today, for five years.

Clay Scott moved to approve the term permit as originally presented. Zachary Gale seconded. Zachary Gale and Fred Claassen moved in favor. Motion failed.

Clay Scott moved to recommend approval of term permit for 2015 only, moving 50 AF from irrigation to stockwater on the facility. A permanent plan is needed for the future need of the project. Mike O'Brate seconded. Motion passed.

Cimarron Feeders of KS LLC

Mike Meyer explained Cimarron Feeders of KS, LLC. Extensive modification to base water rights to get the base water rights cleaned up, and a division agreement to the neighbor to the south of the feedlot has been completed, along with a separation of the south and north track. They have issues exceeding their overall limitations. A division of interest was completed to separate the ownership of the stated wells. The applicant stated that they likely will not overpump, but will be close. This application is asking allowance of irrigation well to supply the stock facility.

Mike McNiece moved to approve as presented by the applicant. Zachary Gale seconded. Motion failed.

Mike McNiece moved to recommend approval of the term perm with the amendment to application for a blanket of stockwater on the three stock wells for 2015 only. Zachary Gale seconded. Motion passed.

Noble Dairy, LLC

Mike Meyer stated significant changes to the water right was completed. Several divisions, reductions, overlapping place of use for irrigation rights and also corrected the dairy footprint due to the expansion. The proposal today is regarding the south two quarters which is irrigation as well as the circle, the block of ground in the middle is the actual dairy. They are requesting full flexibility of the irrigation wells to help supply water as needed to the Dairy along with flexibility between the present dairy wells. The applicant is in need of this proposal to get thru this year due to the expansion and possible overpumping. An additional 30 to 45 AF is needed.

Zachary Gale moved to approve as presented. Clay Scott seconded. Zachary Gale moved in favor. Remaining directors opposed. Motion failed.

Mike O'Brate moved to recommend approval with the amendment to application for 2015 only and with 40 AF from irrigation well for stockwater. Randy Hayzlett seconded. Motion passed.

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Executive Director Report, Mark Rude

NRCS Programs in GMD3, approval of \$30,000 to KSU for RCPP Reimbursement

Mark turned the board's attention to the RCPP Map in board book. The map shows locations of existing weather stations where data is collected by KSU and the three that will be installed in GMD3 under the RCPP grant from NRCS. The three weather stations will be going into GMD3 counties and included into the network managed by K.S.U. GMD3 must pay for them and then seek reimbursement for NRCS.

Kirk Heger moved to approve the \$30,000 to KSU for the three weather stations and submit for reimbursement from NRCS. Fred Claassen seconded. Motion passed with all in favor.

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, Hal Scheuerman moved to accept the July financial report and payments as presented and submit them for annual audit. Steve Stone seconded. Motion passed with all in favor.

Mark stated to the committee that in the October meeting he will bring to the table the USGS contract for the coop cost share down of groundwater gages close to the Oklahoma line in Seward and Stevens Counties.

A reporter from Desert Sun in Palm Springs will be in the office for an interview, some Board of Directors may be contacted also. Desert Sun is studying the Ogallala and management program as it relates to the sustainable groundwater issues in the Palm Springs groundwater basin.

Water Vision action items and Changes to DWR Rules and Regulations

Susan Metzger passed around two papers regarding Water Vision implementation. The first one reviewed the new administrative tool of Water Conservation Areas and the most common questions that have been asked. A website at the bottom of the page will lead you to additional answers one may have.

The second handout reviewed the top four questions / comments regarding Water Rules and Regulations change identified from the state Visioning process:

- 1) **Limiting Movement of a Point of Division:** KDA receives approximately 500 applications annually for the movement of Point of Division of a well. Approximately 100 applications are for changes greater than 300 feet. In the areas of declining groundwater, the department and many Kansans who participated in the development of the 50-year Vision for Kansas Water are concerned that a rise in change applications may lead to a greater risk of aquifer declines and impairments of nearby wells, including domestic. *KDA is seeking feedback from water right owners and industry partners on the impacts and feasibility of limiting the ability to move a point of diversion.*
- 2) **Civil Penalties for Exceeding Authorized Quantity of Water:** Kansas water rights have established legal limits for the quantity of water authorized, diversion rate, place of use, type of use, and other conditions and limitations. Using more water than is authorized, or overpumping, is a serious violation of Kansas Water Law and should not be considered as a "business" decision. Through multi-year flex accounts and Water Conservation Areas, KDA has provided water users with tools to flexible manage their water rights to avoid situations of overpumping. *KDA is seeking feedback from water right owners and industry partners on the civil penalty structure for exceeding the authorized quantity of water to further conserve water resources.*
- 3) **Civil Fines for Lack of Water Use Report:** Better managing Kansas groundwater resources and extending the useful life of the Ogallala High Plains Aquifer depends on accurate data related to the annual use of water in the state. To help obtain this critical information, Kansas water right owners are required to complete an accurate water use report annually and submit that report to KDA. Failing to submit a water use report is a violation of the law. There is concern that some water users decide to pay the annual penalty fee rather than submit the water use report. *KDA is seeking feedback from water right owners and industry partners on the penalty structure for failing to submit annual water use reports.*

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- 4) Authority to Seal Meters: Accurate measurements of water use are important for determining compliance with water rights. There is concern that water meters have been tampered with in a new way that results in lower recorded water use than actual use. KDA staff conduct checks of flowmeters, but those checks cannot prevent all tampering, which impacts of states overall water resources. *KDA is committed to maintaining the integrity of water use records and seeks feedback from water right owners and industry partners about the authority and feasibility of sealing flowmeters to prevent tampering.*

Susan stressed these are concepts and will be looking for input from all GMDs and others. The second day of the Governors Water Conference a breakout session will be held to discuss the four topic areas and further develop the water rules and regulations wording.

The question was asked "Would some movements be approved if over 300 feet....if they improved the situation?" Jackie McClaskey stated yes, just no good wording to put it into writing as of today.

Susan reviewed the process of the development procedure; today is introduction of the concepts, and then drafting will then occur with feedback being taken once again. Since this is a new procedure, suggestions are requested and welcomed. Language suggestions can be sent by email to Secretary of Ag, Jackie McClaskey or any staffer of KDA.

Chief Engineer's letter of August 20th, 2015, GMD3 Closure

Review of a letter from Chief Engineer Barfield letter to close the district to new appropriations. Another year of moratorium due to the long rules promulgation process is necessary and needing to send out draft rule concept to start the process.

Mark spoke to the board about the revision of Groundwater Management Program document timeline and rules needed to implement the revised program SWKS. Mark reminded everyone the Groundwater Act was set to implement the plan then request the rules needed Burns and McDonald resources may be used for facilitating public input.

Chief Engineer asked if the Board was still wanting to close the district. Rules would be easy to write. Secretary of Ag, Jackie McClaskey stated the internal process could be completed within 30 days. Mark Rude stressed there were other rules that did need revised. For example, the criteria for closing the townships for criteria to determine aquifer areas in need of restoration.

Randy Hayzlett moved to approve proceeding with the closure of the remaining opened townships. Mike O'Brate seconded. Motion passed with all in favor.

Board Member Report

There were no member reports announced.

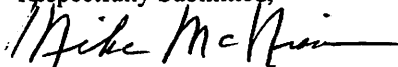
Public Forum

There were no public forums announced.

ADJOURNMENT

Seth Nelson made a motion to adjourn the meeting. Fred Claassen seconded. The meeting was adjourned at 12:40 p.m.

Respectfully Submitted,



Mike McNiece
GMD3 Board Secretary