WATER RIGHTS/LAW TESTIMONY

By Paul Johnson

Washburn University Law Professor Burke Griggs was invited back to the Kansas House Water Committee to provide further information on water law issues. Professor Griggs provided an eight-page memorandum (See memo HERE) on Kansas water law and how it compares to certain Western states.

In his 54-minute video presentation to the committee he compared Kansas water laws to certain states and how critical water debates are handled. He explained how water rights are enforced in different states by administrative or judicial decisions. He cited the political pressure brought to certain governmental officials when deciding on restricting certain junior water rights to supply ‘first in time and first in right’ senior water rights. States such as New Mexico and Colorado have established ‘water courts’ to provide the expertise to settle hydrological challenges. While demurring to a question of Kansas establishing such a ‘water court’, Professor Griggs supported judicial decisions to bring in the Chief Engineer of KDA’s Division of Water Resources or a ‘special master’ - that is a recognized water law expert - which is often done with ‘water compacts’ signed between states.

In regards to water quality issues, the Arkansas River water compact between Colorado and Kansas was signed in the late 1940’s before any debate on water quality. Colorado may well use Arkansas River water 8 times before it reaches Kansas. Heavy metals in the water have become a problem but there is no mention of water quality in the Compact. If the water is so polluted that it cannot be used for ‘beneficial purposes’ in Kansas, there may be some legal claim.

As Professor Griggs stated in his first testimony on January 26 to the House Water committee, the last extensive state water law review was done in 1955 – so it is now a question of direction and action by this committee and the whole Kansas Legislature.

https://www.youtube.com/watch?v=oBk-X2ZEhKg (3/16/21)
https://www.youtube.com/watch?v=GP2oZNQ9uTs (1/26/21)

January 26 Griggs Presentation Overview of Water Law
March 16 Griggs Presentation

LEGISLATIVE ISSUES

PUBLIC SCHOOLS: The funding of public schools is always challenging in Kansas and debated every year since K-12 funding comprises 50% of the State General Fund. With the passage of the federal Coronavirus...
Rescue Package there is $130 Billion dedicated to public and private schools. The debate now is whether these additional federal revenues can substitute for state spending? Is that constitutional in light of the Kansas Supreme Court ruling on state funding of public education?

This federal assistance is one time funding so if used to fill gaps in school funding, what future budgetary problems may arise? Public schools are requesting that the use of these extra federal funds go for public health measures for students and teachers as well as expanded learning opportunities to catch some students back up.

The Kansas Senate passed legislation forcing some in-school teaching for all school districts by March 26 while the Kansas House voted down that legislation. On the Kansas House calendar is HB 2119 that bundles all basic school funding with a significant expansion of private school tax credits and educational savings account to be used by parents for their school of choice. This bill has not yet been brought above the line to be debated on the House floor.

SECRUITIZATION: Senate Bill 245 (that has been inserted into HB 2072) would allow the Kansas Corporation Commission (KCC) to permit public electric utilities to issue 30 year ‘ratepayer-backed’ bonds to retire unneeded, older coal plants. While 24 states have permitted such bonding, Kansas would be unique in expanding the use to retiring power plants. The KCC would first have a hearing certifying the need for such plant retirements before a hearing on actual issuance of such bonds. The questions remain as to the certainty that ratepayers would be the greatest beneficiary of such bonds and exactly how would these savings be used for future investments (such as renewables or energy efficiency)? Developing a State Energy Plan will be essential for the KCC to determine the best energy investment options going forward.

WIND DEVELOPMENT: SB 279 requires defined turbine setback distances for neighboring properties and longer distances for parks and public facilities such as schools and hospitals. These requirements apply to both zoned and ‘un-zoned’ counties while also limiting the authority of county commissions. The bill restricts turbines siting to only one turbine per square mile. This bill is retroactive to wind developments begun July 1, 2011 if construction has not begun or an interconnection agreement has not been signed.

Proponents for SB 279 will testify on Monday – March 22 – at 1:30 in Room 346 before the Senate Utilities committee. Opponents will testify on Tuesday – March 23.

For additional information on specifics of SB 279, go to Climate and Energy Project: http://climateandenergy.org/take-action/#action. CEP, a Policy Watch sponsor, has requested constituents submit comments or contact their legislators opposing this bill.

STATE WATER ORGANIZATION will be the subject all next week before the House Water Committee starting at 9:00 am each day Room 152-S. On Monday, Kansas Legislative Research Department staff will testify on the existing organizational chart for all Kansas water agencies. On Tuesday, Kansas Water Office Director Connie Owen will testify along with Kansas Water Authority Chair Dawn Buehler and the Association of Kansas Watersheds – Jeremiah Hobbs. Wednesday and Thursday is reserved for committee discussion on State Water Organization.

REDISTRICTING UPDATE: In last week’s Legislative Coordinating Council (LCC) meeting, a Joint Redistricting Advisory Committee was established. This committee will have 6 members – 3 Senators and 3 House members with the Speaker of the House appointing two House members and the President of the Senate appointing two Senators while the Minority Leadership in the House and Senate will each appoint a member. At this point, there have not been any members selected. While the Kansas Senate has established a redistricting
RULES AND REGS

NOXIOUS WEED CONTROL SAGA
The Kansas Department of Agriculture (KDA) is now taking complete control of noxious weeds in Kansas via rule and regulation. The Kansas Legislature has surrendered any immediate control and probably any interest in the concerns over public health or soil quality impacts. The agribusiness chemical & seed monopolies that direct most farming practices in Kansas continue to dominate. At this point - the Kansas Legislature will have to pass separate legislation dealing with ‘drift’ issues and chemical spray incidents. KDA will have to play an advisory role formulating such legislation.

By law, KDA is required to seek public comments on the proposed rules and regulations. There is no statutory requirement that KDA consider the public comments or even respond to concerns from the Joint Legislative Committee on Administrative Rules and Regulations (JCARR). JCARR can raise issues but cannot veto these rules and regulations. JCARR asked for clarification why Counties had to employ the County Weed Supervisor as opposed to using an independent contractor? JCARR wondered about the three classifications of noxious weeds by KDA and why counties cannot use less restrictive measures to control certain weeds?

JCARR did request that the annual weed reports and management plans required of County Commissions and sent to KDA by March 15 be available on KDA’s website and KDA did agree to this request. See JCARR letter HERE

Once the final rules and regulations are posted to the Kansas Register on March 26, KDA is required to write a ‘Summary Statement’ in regards to public comments. The substance of this statement is left to KDA as to whether they will respond to the public comments and were any changes made to the rules and regulations? If the changes are indeed ‘substantial’ then this process would start over and further public input invited. There is no mandate to publicize the ‘Summary Statement’. Policy Watch will post the Summary Statement when available. Once again there is no definition of ‘drift’ in noxious weed or pesticide law. There is no administrative remedy to ‘chemical drift’ and its related damages.

More basic research on mechanical and biological control of weeds outside of chemicals is needed. There needs to be broader public education efforts to promote the full range of non-chemical controls. It is hoped that the Kansas Legislature will consider these options in the 2022 session along with the chemical impact on soil health.

FEDERAL FARM AND FOOD NEWS

TWENTY-EIGHT STATES INTRODUCED OR PASSED HEALTHY SOILS LEGISLATION

Healthy soils legislation has either been passed or has been introduced just this year in 28 states including Kansas HB 2310 this year. Action in Kansas is highly doubtful this year, but the bill will be held over for 2022 session. (KRC is contributing to the discussion of healthy soils policy needs in Kansas with its Soil Health Legislative Report here.) Information below comes from the healthysoilspolicy.org website project.

The Agriculture Resilience Act introduced in Congress in February 2020 by Rep. Pinegree’s has a requirement for a state soil health program. This may have been the impetus for the more recent number of bills establishing or introducing the idea of such programs in several states. Click HERE for pdf summary of act.)

Relating to soil health, the Agriculture Resilience Act states “(1) To be eligible to receive a grant under this section, a State legislature or tribal government shall have enacted and be currently funding a State or tribal...
soil health program for agricultural land. A State department of agriculture or tribal government may then prepare and submit, for approval by the Secretary, an application at such time, and in such a manner, and containing such information as the Secretary shall require, including an assurance that grant funds received under this section shall supplement the expenditure of State or tribal funds in support of soil health in that State, rather than replace State or tribal funds."

Ten states that have passed healthy soils legislation thus far (including six that include creation of a soil health program) are (in chronological order of year passed:
Oklahoma – 2001 — This is a carbon sequestration law, and did not create a soil health program; one was established in the regulations in 2010
Utah – 2015 — This was a resolution, and did not create a soil health program; HB0286 on the docket this year, if passed, will create program
California – 2016 — "Healthy Soils Initiative" is soil health program
Maryland – 2017 — "Healthy Soils Program” is soil health program
New Mexico – 2019 — "Healthy Soil Program" is soil health program
Nebraska – 2019 — Task force gave recommendations, but program not created
Illinois – 2019 — Updates to conservation district laws, but program not created
Washington – 2020 — "Sustainable Farms and Fields Grant Program” has goal of improving soil health, is a soil health program
Vermont – 2020 — “Vermont Environmental Stewardship Program” is soil health program
Massachusetts – 2021 — “Healthy Soils Program” is soil health program.

In 2021 thus far, bills have been filed in eleven states that include creating a soil health program: Arizona, Colorado, Iowa, Kansas, Kentucky, Maine, Minnesota, New York, North Dakota, Texas, and Utah. Seven more states have legislation pending action.

More information on state healthy soil legislation and policy is available at healthysoilspolicy.org, which redirects to https://nerdsforearth.com/state-healthy-soils-policy/
The State Soil Health Policy Map links to state pages that provide relevant decision-supporting information that can be used directly by policymakers, organizations and companies interested in working on soil health or broader agricultural climate change adaptation goals.

The Policy Map is designed to serve as a reference for groups interested in advancing soil health policy. It captures crowd-sourced information and facilitates direct communication and knowledge exchange among farmers, advocacy groups and policymakers within each state, supporting the collective drafting of healthy soil legislation.
The healthysoilspolicy.org website project has been launched with volunteer support and hosting by Nerds for Earth and Soil4Climate, and a start-up grant from Jena King via The People, Food & Land Foundation.

FARM TO SCHOOL ACT OF 2021 WOULD STRENGTHEN SUPPORT FOR LOCAL FOOD SYSTEMS AND CHILD NUTRITION PROGRAMS
(From NSAC March 11, 2021)
On March 10, a bipartisan group of Congressional leaders introduced the Farm to School Act of 2021 (H.R. 1768) which will support our nation’s schools, farmers and communities in building back equitably from the Covid-19 pandemic. The bill, sponsored by Representative Stacey Plaskett (D-VI), Representative Jeff Fortenberry (R-NE) and Representative Alma Adams (D-NC), will expand funding for and programmatic scope of the highly successful USDA Farm to School Grant Program, while also ensuring that more communities – specifically those serving racially diverse and high-need student populations, as well as engaging with beginning, veteran and socially disadvantaged farmers – have a competitive opportunity to benefit from this valuable program. Read more HERE

TOP SUSTAINABLE AG PRIORITIES FOR 2021: CLIMATE CHANGE, COVID-19 PANDEMIC
Earlier this year, members of the National Sustainable Agriculture Coalition (NSAC) convened virtually to debate and finalize key coalition policy and funding priorities for 2021. NSAC adopted two grassroots policy campaigns (issues on which the entire coalition agrees to engage) – **Climate Change** and **COVID-19 Pandemic Response** – and one grassroots appropriations campaign – **Sustainable Agriculture Research and Education**.

A key focus of NSAC’s climate change campaign will be working with champions in Congress to introduce and gain widespread support for the [Agriculture Resilience Act](https://sustainableagriculture.net/blog/top-sustainable-ag-priorities-for-2021/) which provides comprehensive solutions to how farmers can help respond to the climate crisis. NSAC will also be working closely with the new Administration to implement policies and new initiatives that centers climate change across USDA programs and actions.

In addition, NSAC will be mobilizing members to engage with USDA to ensure that relief efforts (such as those [recently passed by Congress](https://sustainableagriculture.net/blog/top-sustainable-ag-priorities-for-2021/)), reach all farmers impacted by the pandemic – including small-scale, BIPOC, beginning, and farmers serving local, regional, and value-added markets like organic and grassfed. They will also continue to work with champions in Congress to push for further reforms to rebuild our food system – such as those included in the [Strengthening Local Processing Act](https://sustainableagriculture.net/blog/top-sustainable-ag-priorities-for-2021/).

See full article here. [https://sustainableagriculture.net/blog/top-sustainable-ag-priorities-for-2021/](https://sustainableagriculture.net/blog/top-sustainable-ag-priorities-for-2021/)
Contributors to KRC are automatically on the Policy Watch e-list, if they provide an e-mail address. KRC provides Updates to the sponsoring organizations including League of Women Voters of Kansas, Kansas Natural Resource Council, Kansas Farmers Union, Climate and Energy Project, and Audubon of Kansas, who make the Updates available to their memberships.

If you are receiving KRC Policy Watch through one of these organizations and have questions, contact the organization directly.

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