KANSAS WATER DEBATE

by Paul Johnson

Might Kansas at this time be at a turning or tipping point in regard to fundamental changes to water policy? The alarms are blinking red. The drought in Western and South-Central Kansas continues to worsen. The Colorado River is suffering under a mega-drought with Lake Mead and Lake Powell dangerously close to ‘dead pool’. In November the Kansas Water Authority (KWA) voted to redirect groundwater policy from a ‘de-facto policy of depleting’ the Ogallala aquifer to one of sustainable water use in the future. No detailed plans and projected costs were offered to accomplish these goals, but the policy statement has been presented. KWA accepted the updated 2022 Kansas Water Plan in August. This plan has tremendous information on the status of key water issues in Kansas but is short on actual policy and funding next steps. The 2023 Farm Bill will have the greatest impact on cropping patterns in Kansas and associated irrigation patterns. Without fundamental change in federal farm policy, crop irrigation will continue to dictate most of the water use in Kansas.

The 2022 Kansas Water Plan (2022 KWP) is a 261-page document with the first 84 pages detailing water policy fundamentals and 5 guiding principles: (1) Conserve and Extend the High Plains Aquifer, (2) Secure, Protect and Restore Our Kansas Reservoirs, (3) Improve the State’s Water Quality, (4) Reduce Our Vulnerability to Extreme Events, (5) Increase Awareness of Kansas Water Resources. Pages 85 to 222 document the work and specific recommendations of the 14 Regional Planning Areas across Kansas. The Executive Summary (p. 4-5) explains the three state water plan characteristics of comprehensive, coordinated and continuous adaptive planning. ‘Kansas faces water challenges in every corner of the state, many with potentially severe and far-reaching consequences (p. 4)’. ‘The maintenance, preservation and protection of the sovereignty of the state over all waters within the state’ (p. 5). The waters of Kansas are owned by the people of Kansas and should be directed to the most beneficial use. Squaring this concept with over-appropriated groundwater rights is a serious challenge.

Regarding the High Plains Aquifer, ‘it is not an overstatement to say that the future of habitability in much of western Kansas is at stake: water users of all kinds will need to adopt practices using less groundwater if these populations and economies are to remain
viable’ (p.6). In terms of reservoirs, Kansas has 14 federal reservoirs which supply water for two-thirds of the state’s population. Sedimentation has been reducing storage capacity, some to an alarming level. Harmful Algal Blooms have toxicity levels threatening public health. Water quality issues affecting surface waters include nutrients, bacteria contamination and mineral intrusion. 86% of state’s assessed stream miles are impaired and less than 5% of state’s assessed wetlands now support aquatic life and recreational uses. Extreme events include droughts and floods. ‘As already evident from climate change, these events are becoming more intense and less predictable’ (p.7). The water planning process relies heavily on public and stakeholder input. ‘Perhaps the most consistent message received is the need for increased education and outreach’ (p. 7).


What happens now? The Governor has publicly stated that Kansas cannot keep kicking the water depletion issue down the road any longer. The Governor’s State of the State address along with the State budget will be unveiled the first week of the session. Where will water land in the list of priorities and what level of funding is needed to retire water rights and protect the reservoirs? Last session the Kansas House Water committee debated some fundamental changes to water administration, water reporting and additional resources. This legislation was derailed in committee. The Governor did fully fund the State Water Plan Fund (SWPF) and federal dollars were used to buy public water storage in three reservoirs. (For the record, Kansas spends $1 Billion annually on transportation and just $20+ million on the SWPF.) Will water be a serious priority for the Republicans in the 2023 Legislature and what proposals will they bring to the table?

As stated in the opening paragraph, Farm Bills drive cropping patterns (wheat, corn, soybeans, sorghum) on 22 million acres in Kansas to the tune of $1 to 1.5 Billion annually with the vast majority of these farm programs going for commodity payments and heavily subsidized crop insurance policies. A smaller portion does go for conversation programs – primarily the Conservation Reserve Program (CRP), Conservation Stewardship Program (CSP) and the Environmental Quality Incentives Program (EQIP). While CRP is fully funded to cover 27 million acres nationwide, CSP and EQIP have limited budgets with Kansas farmers getting only 20-25% of eligible applications. In 2020, these three programs totaled $200 million. These federal conservation programs need to be fully integrated into water planning in Kansas. These programs could play an integral role in lessening soil going into the reservoirs. These programs need to be fully mapped out in regards to the key watersheds in Kansas. (Average soil loss on cropped ground in Kansas is in the 3-4 tons per acre per year.) As CRP transitions toward more focused environmental benefits and targets more sensitive lands such as buffer strips on streams and more grasslands in the program, this is key to water policy. In the 2017 USDA Ag. Census for Kansas, there were 2.5 million irrigated acres on 5,141
farms consuming 85% of all the water used in Kansas. The challenge is to reign in the over-appropriated groundwater rights issued in the 1950s through the 1970s. Kansas held ‘water law collaborations’ in 1947 and 1955 to pass water policy. The time is now for a 2023 ‘water law collaboration’ given the extensive up to date information Kansas has on water use and depletion.

2021 FEBRUARY FREEZE FIASCO

The conundrum continues – where did the money go for the exorbitant natural gas prices in this 2021 freeze? On February 3, 2021, the cost of natural gas per thousand cubic feet (mcf) was $3.50 in Kansas. On February 17, 2021, the cost was over $600.00. Kansas Gas Service (KGS) – the largest natural gas provider in Kansas – just issued $300 million in ‘ratepayer backed’ bonds that will cost residential customers an extra $5 per month for 10 years ($600 total). A few smaller natural gas companies have also raised the monthly customer charge to cover the price hikes. KGS is an investor-owned natural gas company. Have the stockholders of KGS been required to sacrifice any profits to cover these exorbitant natural gas price spikes?

The Kansas Corporation Commission opened a special docket to solve this rate hike mystery but so far nothing. The Kansas Attorney General intervened in this docket. The AG has greater subpoena power and under the Kansas Consumer Protection Act – price hikes over 25% can be investigated with possible restitution ordered. It took the AG a while to hire the experts to decipher this mess but the public is still waiting for a conclusion. Now that Kansas has a newly elected Attorney General what will be the fate of this investigation? Will this AG have the courage to make public the special proprietary speculative marketing contracts that the natural gas companies so desperately want to hide?

STATE NOXIOUS AND INVASIVE WEED PLAN UPDATE

Since the 1930’s, the Kansas Department of Agriculture (KDA) has had the primary responsibility to control noxious weeds working through County Weed Departments. KDA establishes the parameters of the control program and has the authority to approve county weed eradication reports, management plans and approves the employment of county weed directors. The role played by the Kansas Legislature was to approve a noxious weed list in statue. In 2018, legislation was passed to remove this responsibility by the Legislature and give complete authority to KDA with oversight and assistance from the State Noxious Weed Advisory Committee (see current roster below). This new law gave KDA greater flexibility to respond to newer weeds but oversight by the Kansas Legislature is uncertain. After a couple years of writing rules and regulations for the new law, KDA should publish the updated state weed management plan sometime in January.
There are challenges in accomplishing noxious weed control. Counties submit annual surveys on the location and approximate amount of land infested by noxious weed species. Kansas does not have statewide aerial mapping so this is accomplished by surveying just 10 sections in the county and extrapolating from that. Noxious weeds are divided into three categories. Category A are weeds (such as leafy spurge, kudzu, quackgrass) generally not found in the state or in limited distribution. Category B weeds (such as Canada thistle) have discrete distributions throughout the state and are subject to control. Category C weeds (musk thistle, johnsongrass, field bindweed, sericea lespedeza) are well-established within the state. In the new law, counties can now petition KDA to add a given problematic weed just for their county. Official methods of control include biological, cultural, mechanical and chemical methods. There are few or no non-chemical methods approved for controlling Category C weeds.

Funding is indeed a challenge. State General Funds (SGF) are used by KDA for the Plant Protection and Weed Control program and the State Noxious Weed and Invasive Weed Specialist. Counties are obligated to hire and employ a County Weed director. This funding can come through a special property tax levy or taken from the county’s general fund. Many weed directors have other tasks outside of noxious weeds. Much of the county weed program’s budget is spent on spraying of rights-of-way and the purchase of herbicides to be sold at cost share prices to landowners for noxious weed control. Opportunities for expanded funds are limited and may come from competitive federal grants. With the vast majority of the land in Kansas privately owned, individual landowners contribute most of the actual control of noxious weeds.

KDA has produced a Pesticide Investigation & Enforcement brochure (see attached below) detailing KDA’s response to pesticide misuse claims. This claim needs to filed with KDA’s Pesticide and Fertilizer Program in Manhattan and not the County Weed Director. The Kansas Pesticide Law does not contain any provision for compensation to be made to individuals for a loss due to pesticide misuse. KDA investigations will not characterize crop damage, acres involved, or estimated dollar losses. KDA cannot require someone to pay for a loss due to pesticide use. KDA cannot act as your legal counsel. If you have questions about your legal rights, contact an attorney. In noxious weed or pesticide law, ‘drift’ is not defined to protect public health or safety.

*Pesticide Investigation and Enforcement Brochure*
2023 KANSAS LEGISLATIVE PREVIEW

With the November elections over and the results determined, the successful candidates for the Kansas House will become ‘lawmakers’ - beginning January 9 - directly impacting the lives of almost 3 million Kansans. Of the 125 elected Kansas House members, 34 are new – over 25%. Kansas Legislative sessions run on a two-year cycle starting a new after the elections in an even number year. (Non-partisan elections are in the fall of odd number years.) There are no bills carried over from previous sessions and for now just 3 House and 5 Senate bills have been pre-filed for 2023. The legislative session is technically 90 days long but there is limited policy making bandwidth with Mondays usually very light and most Fridays taken off till the later portions of the session. Most of the legislative work occurs before committees with less time devoted to full floor debates – (that are controlled by the legislative leaders). The one State constitutional mandate is the passage of a balanced State budget comprising a significant portion of legislative work.

Governor Laura Kelly was re-elected and is now term limited. The Governor’s State of the State address will be at 6:30 pm on Wednesday January 11 (available on public radio, some TV stations and Statehouse internet). The Governor’s budget will be presented to the Legislature the next day. What will be the most significant priorities? The Governor has already announced a tax cut package to eliminate the food sales tax by April 1 or July 1, increase from $75,000 to $100,000 state income tax elimination for retirees, and provide certain sales tax-free days for school supplies. The Governor will continue to propose Medicaid expansion for Kansas. After starting the discussions on housing policy after 25 years with some legislation passed, next steps may well be proposed. The Governor now wants to confront groundwater depletion challenges and may provide additional resources. Fully funding public education is a given and expanding early childhood education programs has been a long-standing priority for her. Kansas now has the largest State General Fund ending balance ever and nearly $1 Billion in a rainy-day fund in preparation for that next economic downturn. Economic development proposals seem inevitable.

The Kansas Legislature will then have it’s say. The Republicans have super-majorities in the House at 85 to 40 Democrats (84 needed for veto override) and the Senate - 28 Republicans to 11 Democrats and 1 Independent (27 needed for veto override). The Kansas House has new leadership with the Republican Speaker and Majority leader. The Senate has the same leadership (elections in 2024). There will be two new Senators due to retirements. The Speaker of the House and President of the Senate have complete control over committee assignments and committee chairs which can be changed at any point for any reason. The ‘go along to get along’ reality keeps most lawmakers in lock step. While hundreds of bills will be filed over the next two years, only a small percentage will be given a hearing and any floor debate. While Kansas has substantive policy challenges such as housing, water, energy, and the fate of agriculture, time will tell if lawmakers can address these basic needs and find bi-partisan compromise for the future of the State. Will the Democrats adopt some of these basic issues and educate Kansans on essential next steps? Culture wars seem inevitable on promoting private schools, criticizing public education, sexual orientation threats, and controlling health care decisions. Much of this is nationally written and copied in Kansas. Legislative time is precious and needs to be productively used for all constituents.
During the legislative session, the League of Women Voters of Kansas (LWVK) hold weekly Friday (4 pm) zoom calls with their policy observers. The League has offered to open up these calls for interested Policy Watch readers. Cille King is the policy coordinator for the League. You will need to email Cille <cilleking@gmail.com> to be added to the notice list. Agendas come out a day or so before the call. Here is the link to the LWVK 2023 Legislative Priorities: https://drive.google.com/file/d/1CP5dYfwGxzIwOyYRRGabgD7rkRw2Rw2G/view

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, Audubon of Kansas, and Friends of the Kaw, Jayhawk Audubon Society, 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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For questions about Policy Watch content, contact Paul Johnson at pdjohnson@centurylink.net