

**Southwest Kansas**  
**Groundwater Management District No. 3**  
**2009 E. Spruce Street**  
**Garden City, Kansas 67846**  
(620) 275-7147 phone (620) 275-1431 fax  
www.gmd3.org

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**Testimony as a Proponent Party of HB2665**  
**Provided To**  
**The House Water and Environment Committee**  
**From the Southwest Kansas Groundwater Management District No. 3 (GMD3)**  
**February 13, 2018**

Chairman Sloan and members of the committee, I am Mark Rude, Executive Director of GMD3 here to provide supporting testimony for HB 2665, but with several practical concerns for organizing priority commission work, the untouchable policy for local groundwater management, and the overly limiting qualifications for employment as a commissioner.

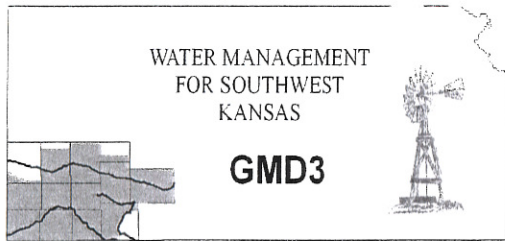
Independent legal review and study is overdue for state laws and their interplay to achieve better management of water lost to other states and other priorities for improving renewable water supply as identified by GMD3 and the Kansas Water Vision. Strategic study and supply development are now on the state business table in the elements of the Water Vision implementation. With depleting groundwater supplies, GMD3 is compelled to be active partner in this work. Attached to this testimony is a January 22, 2018 email letter from GMD3 to the Water Office and Water Authority on Vision action priorities for renewable supplies, including study items of the commission project of HB 2665.

The open list of laws for the HB 2665 commission may be too massive for one commission enterprise without some focus on priorities of the most used laws, such as the Water Appropriation Act. We recommend a phased local and state budget friendly approach be included in this important evaluation and recommendation process for Kansas.

We believe the right to local control in the GMD Act is basic Kansas water policy and should be considered untouchable by such a commission. Not only does GMD3 strive to act on a shared commitment to develop and conserve water supply to grow the social, economic and natural resources well-being for current and future generations in the public interest, it does so as the groundwater management entity of the legislature that is self-organized and self-funded to self-determine the destiny of the district water use and management. The right to do so was promised and accepted by Kansans in the formation of GMD3 and affirmed in the Water Vision as the best policy model. The HB2665 commissioning process should only provide recommendations that strengthen this right in the public interest. Attached to this testimony is a letter of the basic history and the role of GMD3 responding to a joint request by state officials to not act prematurely to develop additional sources of water; the outcome of which likely influenced the drafting of HB2665.

Finally, the overly restricted qualifications in the bill for employment as a commissioner may deny Kansas the benefits of outside assistance in providing impartial expert legal review and opinion. Thank you for allowing GMD3 to participate in today's hearing. I will stand for questions at the appropriate time.





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January 22, 2018  
(Via Email)

Dr. Daniel Devlin, Kansas State University, Kansas Water Resources Institute  
Tracy Streeter, Director, Kansas Water Office  
Gary Harshberger, Chairman, Kansas Water Authority

RE: Vision action priorities for renewable supplies

Dear Dr. Devlin, Director Streeter and Chairman Harshberger;

This letter is to highlight to the Kansas Water Authority, the Water Research Coordination Work Group and to others some of the Water Vision priority action items addressing renewable water supplies for consideration as Kansans work to coordinate, plan and fund priority next steps implementing the Kansas Water Vision. All three focus areas of the Water Research Coordination Work Group are included within the action items, addressing Ogallala-High Plains/Groundwater Depletion, Reservoir Sedimentation/Loss of Storage and Water Quality.

At the last Water Authority meeting, Dr. Devlin presented recent work of the Water Research Coordination Work Group to set priority research projects implementing the Kansas Water Vision. The purpose of the workgroup is to promote communication; support university research studies that also benefit Kansas water issue knowledge; and provide opportunities for university researchers and participating agencies to collaborate in research efforts. The work group includes federal, state, university and non-government organizations (NGO) advisors. Groundwater Management Districts (GMDs) have demonstrated their historical participation, but were not included. In the Water Authority discussion that followed, Dan invited feedback on the draft lists before any priority list is adopted or presented to the Legislature.

At its January board meeting, the GMD3 Board of directors adopted the recommendations of the GMD3 Renewable Supplies (RS) committee for action on priority steps to secure existing sources of water and to add additional renewable sources for use, including groundwater replenishment. With the exception of Arkansas River flow recharge benefits from Colorado, groundwater supplies in Southwest Kansas are considered non-renewable.

Accordingly, please include the attached Water Vision action priorities with GMD3 adopted steps listed in boxed red font with your Water Vision related study priorities and water planning activities. Also, please include GMD3 representation in the studies working group as a full participant in the Kansas water supply Vision planning and actions to do what must be done with fellow Kansans across our home state.

Sincerely,

Kirk Heger  
President

Copy; Kansas Water Authority  
Water Research Coordination Work Group



# Renewable Supplies Action Items of the Water Vision GMD3 - 2018

The GMD3 draft revised Management Program Document for southwest Kansas identifies activities to further manage Kansas water resources for the District and for the state and other partners. These include further securing interstate waters into the state, determining existing water rights authorizing export of water out of the state and a project governance development commitment to a process of seeking feasible projects under future dollar considerations to secure under-developed supply for Kansas and the District (Draft Revised GMD3 Management Program document, pages 44 – 45 awaiting approval of Chief Engineer).

The Kansas Water Vision document and Water Plan process assists Kansas in equitably apportioning the public costs and benefits of securing renewable water supplies and other planning needs to favorably influence the destiny of water users and economic benefits for all Kansans. This includes recommending the study and staffing resources necessary to secure what Kansas already has under the Arkansas River basin compacts with Colorado and with Oklahoma and for planning future opportunities.

The Vision document identifies the Kansas Water Plan as the implementation plan for the Water Vision (Vision page 8) and identifies the “Goals Action Plan” with a list of Priority Goals grouped as: Statewide; Reservoirs; Ogallala-High Plains Aquifer; and for each of the 14 planning regions. The Upper Arkansas planning region has existing renewable supply Planning Goals on page 125 of the Water Vision document that include: “*FIND ADDITIONAL SOURCES OF WATER AND A PLACE TO STORE WATER FOR IRRIGATION AND RECHARGE.*” The RAC action steps for this Priority Goal 1 include to “Support the exploration and investigation of surface water transportation for Kansas (Vision, page 127).

Accordingly, the GMD3 Board adopted and requests consideration of the Vision priorities relating to Kansas renewable supplies as listed below with board input boxed in red font.

GMD3 Board recommends viewing the collaborative 45 minute Documentary of 2016 - *Feast And Famine: Securing Kansas Water Needs*. See [www.KansasAqueductCoalition.com](http://www.KansasAqueductCoalition.com)

The GMD3 Board requests priority be placed on protecting existing renewable supplies while other renewable sources of supply are identified and considered for development and distribution across Kansas and GMD3.

## **Water Vision document (pages 23 and 24)**

### **IMPROVE INTERSTATE COOPERATION SO THAT KANSANS’ WATER NEEDS ARE MET AND PROTECTED**

#### **A. STATEWIDE ACTION ITEMS – PHASE I - Management**

1. *Develop a long term strategy for representing Kansas in interstate water issues that best serves Kansas and its citizens*



- Improve opportunities for local stakeholders to engage in and provide input on interstate water issues
- Host regularly scheduled public meetings to connect stakeholders with policy makers and those involved with advising and making interstate decisions

GMD3 Board will host a river resource meeting in each of the two basins in 2018 involving interstate compacts that cover portions of the District to further implement this Vision action item and will request attendance of state policy makers and those involved with advising and making interstate supply decisions.

2. *Ensure Kansas interstate water compacts are monitored and enforced and build upon existing working relationships with other compact states.*

GMD3 Board requests added state staff and study funding resources to address this Vision priority action item.

River flow at the Garden City river gage is a point of contention with Colorado given that all major surface water diversions occur above Garden City. The Colorado allegation that when river flow occurs at Garden City, water deliveries into Kansas exceed Colorado compact delivery obligations. The GMD3 Board will work with Kansas partners to provide a Kansas compact supply position statement establishing criteria for such conditions to avoid unnecessary confusion (e.g. Kansas practice of continuous flow to the Dodge City gage and at least 200 CFS at the Garden City gage and an added AF/A of diversion by the Kansas Associated Ditches system in the District).

3. *Host a Governor's Summit among the Ogallala Aquifer states to develop a regional vision with a focus on cooperative efforts and common goals across the states (Planning initiated in Phase I, to be held in Phase II)*

A summit is scheduled for April, 2018 in Garden City.

4. *Work with other states to address federal water related policy proposals that have negative impacts on the region.*

GMD3 Board will address this Vision goal with continued participation in existing and proposed federal related issues through collaborative activities of water management districts in Kansas and in other states, working through partner organizations like the Groundwater Management Districts Association and the National Water Resources Association.

#### Management - PHASE II

1. *Develop additional agreements with other states to support interstate cooperation on water Management*

GMD3 recognizes the role of both state staff and local stakeholders in the development of enduring equitable benefits from interstate agreements and requests that GMD3 be fully briefed prior to the conclusion of such negotiated agreements where applicable.

## OTHER REGIONS ACTION ITEMS - PHASE II

1. *Consider hosting a Governor's level discussion with neighboring states targeted at developing viable solutions to interstate debates and common issues if needed*

GMD3 Board requests that the ongoing issues of the floodplain above Garden City filling with sand and the pollution of the Ogallala/High Plains Aquifer from poor quality Arkansas River water from Colorado be considered priority action items. As the largest reservoir in the state, the Ogallala/High Plains Aquifer receives many tons of Uranium and other harmful dissolved solids carried in with river flow from Colorado into Kansas. This daily occurrence is reducing District groundwater usability and is an issue of common concern with Colorado that requires as much attention as algal blooms in other Kansas Reservoirs. A significantly higher priority of study is needed under Vision implementation and state water planning.

2. *Consider the options for identifying existing funds to be earmarked for interstate litigation*

GMD3 Board requests that significant support be provided for the Kansas Legislature to restore seed funds to the Interstate Water Litigation Fund created by law and funded under K.S.A. 82a-1801 prior to past legislative sweeps. Public funding "as needed" to resolve interstate issues in a timely fashion does not work. History has demonstrated this creates significant impediments to completing critical interstate investigations and research. Consider creating legislative match from a funded Interstate Water Litigation Fund to be applied with local match funds as a grant available for interstate work as modeled by the operations of the GMD3 Western Water Conservation Projects Fund and stakeholder advisory committee.

**STATEWIDE ACTION ITEMS Theme - ADDITIONAL SOURCES OF SUPPLY.**  
**Vision Strategy - ALLOW FOR THE TRANSFER OF WATER SUPPLIES BETWEEN BASINS WHERE FEASIBLE AND COST EFFECTIVE (pages 35 – 36).**

### **Vision Actions –**

#### **A. STATEWIDE ACTION ITEMS - PHASE I**

1. *Eliminate statutory prohibition to use drinking water State Revolving Loan Fund (SRF) funds for water transfers and identify other state policies which unnecessarily limit transfers.*

Note: the following recommendation focuses on the second half for identifying policy impediments.



GMD3 Board requests adding these three Priority Action steps to the statewide Water Plan Priority Projects list:

- (a) Study to identify existing incentives and disincentives for water transportation across Kansas as a future source of supply, and provide suggested solutions to enhance incentives that overcome the disincentives.
- (b) Identify policies that unnecessarily limit transfers, including water appropriation rules and procedures and the use of unreasonable application process deadlines.
  - (i.) Transfer project requirements must include time and water appropriation assurances in order to develop and fund efficient and beneficial new transfers. A process path is not provided in present appropriation policies as implemented by KDA. Sen Sub HB 2059 from 2016 session was proposed to make a path for transfer project appropriation of water otherwise leaving the state annually.
  - (ii) Proposed Study. See Water Office FY18-19 budget testimony - Waters Leaving the State funding project. The Board recommends the project lead be a water law expert that is independent and outside of state institutions.
- (c) Study and Develop water transport infrastructure financing options, public/private partnerships and other tools needed to facilitate future project feasibility as is occurring in other states.

2. *Review opportunities to increase utilization of the Missouri River to meet Kansas' needs while recognizing and protecting the existing users.*

GMD3 Board requests that all river basins in Kansas be included in an ongoing collaborative evaluation and development process.

- (i) Note that roughly 10 times the annual Kansas water use is water that leaves the state annually as river flow (KWO).
- (ii) Note that there is existing federal Authority - Arkansas River Basin Compact with Oklahoma already authorizes 2.6 million acre feet per year for new conservation storage or water transfers that is not used.
- (iii) Note the Water Office FY18-19 budget testimony - Waters Leaving the State funding project. The Board recommends the project lead be a water law expert that is independent and outside of state institutions.

3. *Communicate and collaborate with neighboring states on potential water transfers.*



GMD3 Board requests support for ongoing interstate meetings with potential water transfer partners seeking interstate water management and transfer benefits.

- (i) Action Option 1 - Local Government Organizations (LGOs) in Kansas communicating to sister state LGOs may be one avenue to develop partnerships for discussion, study and feasibility funding.
- (ii) Action Option 2 - Water management associations, farm organizations, commodity cooperatives and other NGOs may support meetings and efforts to provide a path for joint cooperative funding and study to develop possible projects.
- (iii) Action Option 3- Project feasibility may benefit from combining energy storage and water transportation benefits, ecological and aquifer replenishment benefits and added supply to multiple interstate partner interests.

## **B. VISION - STATEWIDE ACTION ITEMS - PHASE II**

1. *Complete evaluation of large water transfers including legal, environmental, economic and technical issues.*

GMD3 Board requests the development of a project governance model with input from multiple local government representatives to facilitate a multi-jurisdictional Kansas transfer project authority tool for developing large water transfer and distribution projects.

2. *Review use of right-of-ways (ROW) for use by water transfer infrastructure*

GMD3 Board requests these Priority Action Plan Projects of the Vision:

- (a) Investigate use of Railroad ROW as used in a California water transfer case.
- (b) Investigate partnerships and/or use of utility pipelines and/or ROWs.

## **C. VISION - STATEWIDE ACTION ITEMS - PHASE III**

1. *Identify suitable areas and ability to transfer water to areas of need.*

GMD3 Board requests this study work be conducted and that the District (Upper Arkansas and Cimarron Regional Planning Areas) be considered suitable areas of need for transfer water based on big projected future water deficits and projected economic crisis in meeting existing and future demands from a depleting groundwater supply.

**D. VISION - RESERVOIR ACTION ITEMS - PHASE I**

1. *Develop interconnected water storage computer model for all eastern Kansas basins with federal water supply reservoirs.*

GMD3 Board requests the development of an interconnected water storage computer model that includes aquifer storage to benefit statewide planning priorities as an additional source of supply for water deficit planning regions, including southwest Kansas.

**E. VISION - RESERVOIR ACTION ITEMS - PHASE III**

1. *Update mid 1980s Kansas Water Office plan to interconnect reservoirs across multiple basins to move water to higher demand and increase overall yield.*

GMD3 Board requests this priority project to increase overall potential yield of rivers, reservoirs and aquifers and assist in evaluating feasibility of transfers to water deficit planning regions, including the southwest Kansas.

2. *Evaluate opportunities to connect reservoirs to improve overall management and serve as a hydrologic conduit and where appropriate implement system to transfer high flows to increase system yield.*

GMD3 Board requests this Vision action to increase overall potential yield of surface water and groundwater reservoirs, and to increase supply and feasibility of transfers to water deficit planning regions, including southwest Kansas.

**F. VISION - OGALLALA-HIGH PLAINS AQUIFER ACTION ITEMS - PHASE I**

1. *Encourage research on the rate and volume of water moving from playas to the Ogallala- High Plains Aquifer; quantify the levels of restoration needed and enumerate the average amount of water deposited annually in playas.*

GMD3 Board requests these Action Plan Projects of the Vision:  
(a) Research potential enhancements to playas and other land structures to increase water recharge amounts into the Ogallala-High Plains Aquifer.  
(b) Seek Farm Bill provisions to allow research and demonstrations to occur with safeguards for cooperating Kansas landowner protection against losing federal farm program payments. See present Farm Bill reference language below.

Useful Farm Bill language in the 2008 Law is included below for reference. This section was referenced in the subsequent Farm Bill and can be recommended for revision to add Kansas or simply reference "...in a High Plains state." Consider dropping "1-time."

Subtitle J, Miscellaneous Conservation Provisions of the 2008 law:

**SEC. 2901. HIGH PLAINS WATER STUDY.**

Notwithstanding any other provision of this Act, no person shall become ineligible for any program benefits under this Act or an amendment made by this Act solely as a result of participating in a 1-time study of recharge potential for the Ogallala Aquifer in the High Plains of the State of Texas.

**Vision Strategy** - SECURE ALL AVAILABLE STORAGE AT FEDERAL RESERVOIRS INCLUDING REALLOCATING STORAGE WHERE SUCH ACTIONS ARE POSSIBLE (page 37).

**VISION - RESERVOIR ACTION ITEMS - PHASE I**

5. Reallocate future use water supply storage to water quality storage at Milford and Perry Reservoirs and initiate calling remaining portion of future use storage into service.

GMD3 Board requests as a Priority Goal that the Water Office not conduct any reservoir reallocation activities that give away state control and Kansas water management opportunity from storage easements in federal reservoirs to federal agencies as a state office cost savings measure until such time the completion of Vision reservoir system linking and yield modeling studies and Vision water transfer priority goal projects statewide are evaluated by both state staff and local managers.





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June 21, 2013

Gary Harshberger, Chairman, Kansas Water Authority  
Tracy Streeter, Director, Kansas Water Office  
Dale Rodman, Secretary, Kansas Department of Agriculture

RE: The Kansas Aqueduct Project

Gentlemen:

Thank you for the letter indicating support for the Kansas Aqueduct Project (KAP) study. KAP can solve the long-standing problem of the vast gap between the renewable part of the groundwater supply and the rate of consumption of the groundwater supply existing for many areas of Kansas, particularly within the Southwest Kansas Groundwater Management District.

Many years ago good, creative, local problem-solving folks saw that unregulated groundwater use was hastening the decline of local groundwater supplies. They insisted on the adoption of mandatory standards for water rights, use limits and IGUCA's in their interest for protecting the health and welfare of Kansans. And, good state and local action followed. Even with the significant progress realized in water conservation and efficient use, individual well yields and the number of irrigated fields have declined dramatically in many areas. Reduced pumping rates and unproductive wells are no longer topics of futuristic, academic discussion; these conditions are real and current events in an increasing area of western Kansas. Reduced pumping rates also indiscriminately and adversely impact livestock feeding operations, dairies, ethanol plants, and municipal and industrial users, making it more difficult for them to meet demands for water. The exodus of investment capital has already begun from similar depleting areas in the southern high plains of Texas and New Mexico.

Recently, other good, creative, local problem-solving folks concluded the time is ripe to pursue the KAP. Their reasoning flows from groundwater modeling of southwest Kansas aquifers, the result of which indicates a grim water supply future unless southwest Kansas gains access to a sustainable water supply. Very low natural aquifer recharge rates are a given fact. Modeling indicates only nine percent of the two million acre feet used annually in southwest Kansas is sustainable from natural recharge.

The same local folks see no useful purpose in delaying action until either the unyielding laws of hydrology naturally reduce water use, or the legal principles of priority and administrative water regulation artificially reduce water use, to achieve a balance in supply. In the end, the wait will seem relatively short, and the inevitable result will be reduced water use that will wither the numbers of farms and substantially reduce the production of farm commodities. Consequent decimation of local western Kansas economies and communities will follow, which in turn will have a similar adverse impact on the Kansas economy, and beyond. The significant value of water will have its cost effect on Kansas, whether as a lost economic

opportunity cost or as an investment cost to secure a sustainable supply. The KAP must be pursued while production income, property values and the economic system are in place to support the project. The challenge of bringing the KAP to fruition may be daunting, but the project is no more economically, hydrologically, legally or politically speculative at this initial application stage than the initial challenge that confronted others elsewhere prior to construction of existing water transfer projects that now transfer water for agricultural, municipal, industrial, waterpower and aquifer recharge uses.

Southwest Kansas is not alone in its concern. Other local areas across Kansas have recently experienced water supply warnings; adding to the current need for the project. Water users across this state see the need to make every drop of Kansas water count. As local water use limits are being discussed, it only makes sense that significant steps to reduce groundwater use will be viewed more favorably when the purpose for reduced use is bridging the time needed to establish a sustainable transfer of available water across Kansas. Our Kansas farm families and communities need the KAP to conserve and make good use of that fraction of the waters of Kansas flowing in the Missouri River that are unused or have negative value. Developing an infinitely renewable water supply is as important for Kansas as it is a factor in sustaining our nation's ability to feed and fuel its people, especially during times of widespread national drought.

Kansas grows where water flows. The work of the KAP is simply doing what must be done to grow and sustain future generations of Kansans. It should "cotton well" that good, creative, local problem-solving folks are willing to pursue a system to move Kansas water from low value to high value in their interest for protecting the health and welfare of Kansans. Formal action to establish a priority of appropriation while unappropriated Kansas water is available should not be considered pre-mature, given the imminent need for the project. Kansas water law dedicates Kansas water to Kansans, and dictates that first in time is first in right. We encourage you to view an act by Kansans to formally seek available Kansas water to meet existing Kansas needs as an appropriate and necessary action under Kansas law.

The thoughtful work of the Kansas Water Authority, the Kansas Water Office and the Kansas Department of Agriculture to update the 1982 transfer study and to form an expanded stakeholder advisory committee for that work is good action for Kansas. Please consider us as a full participant in the Kansas water supply planning process to do what must be done with fellow Kansans across our home state.

For the Board,

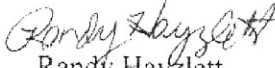


Kent Dunn  
President

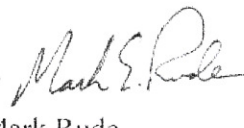
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