

Kansas Water Authority Meeting
Manhattan, KS
9:00 a.m. – August 17, 2022
Agenda

<i>Time</i>	<i>Agenda Item</i>	<i>Presenter</i>	<i>KWA Advice</i>	<i>KWA Decision</i>	<i>Page No.</i>
9:00 am	Call to Order/Roll Call	Dawn Buehler	--	--	--
9:05 am	Approval of Meeting Minutes				--
	June 22, 2022 Meeting	Dawn Buehler		X	2
9:10 am	KWA Public Water Supply Committee Update	John Bailey			6
	Water Purchase Contract No. 22-1, City of Independence	Nathan Westrup		X	7
	Water Marketing Program Discussion	Nathan Westrup	X		--
9:30 am	Kansas Water Plan Update				24
	Review and Approval Discussion	Connie Owen		X	--
10:30 am	BREAK				--
10:50 am	KWA Budget Committee Update	Mike Armstrong			--
	FY 2024 SWPF Budget Discussion <i>Additional information to be provided at meeting</i>	Matt Unruh Debra Jones		X	--
12:00 pm	LUNCH				--
1:00 pm	Kansas Water Authority Policy Discussion				--
	August 10 Follow Up	Dawn Buehler	X		--
	Kansas Water Authority Employee Salary Support Letter	Matt Unruh		X	25
2:15 pm	Kansas Water Success Stories: KDWP	Chris Steffen			--
2:35 pm	Kansas WRAPS Update	Leo Henning Travis Sieve			--
3:00 pm	KWA Ex Officio Agency Updates	Dawn Buehler			--
3:20 pm	Director's Report	Connie Owen	X		--
3:25 pm	New Business	Dawn Buehler			--
3:30 pm	Adjourn	Dawn Buehler			--

Upcoming Meetings:

- October 19, 2022 - Kansas Water Authority, TBD
- November 16-17, 2022 - Governor's Conference on the Future of Water in Kansas, Manhattan
- December 14, 2022 - Kansas Water Authority, TBD
- January 2023 - Kansas Water Authority, TBD

Minutes

KANSAS WATER AUTHORITY

June 22, 2022

Hybrid Meeting

Pittsburg, KS

- CALL TO ORDER:** Chair Dawn Buehler called the **June 22, 2022**, Kansas Water Authority (KWA) meeting held in-person and Via Zoom webinar/call to order at **09:30 a.m.**
- MEMBERS PRESENT:** Dawn Buehler, Mike Armstrong, John Bailey, Lynn Goossen, Randy Hayzlett, Alan King, Carolyn McGinn, Allan Soetaert, Jean Steiner, David Stroberg
- MEMBERS ABSENT:** Jeremiah Hobbs and Allen Roth
- EX-OFFICIO MEMBERS PRESENT:** Earl Lewis, Rolfe Mandel, Susan Metzger, Brad Loveless, Steve Adams, Jude Kastens, Leo Henning, Mike Beam, Andrew Lyon, Kayla Savage, Connie Owen,
- EX-OFFICIO MEMBERS ABSENT:** Dwight Keen
- OPENING REMARKS:** Jay Beyers, Deputy City Manager of the City of Pittsburg, gave Welcome to Pittsburg opening remarks and a brief update on the city of Pittsburg Water Update.
- APPROVAL OF MINUTES:**
Motion No. 06-22-01 It was moved by John Bailey and seconded by Jean Steiner to approve the April 20, 2022, Minutes for the Regular Meeting of the Kansas Water Authority. **Motion carried with no dissenting votes.** Information found in meeting materials.
- KWA PWS COMMITTEE:**
John Bailey & Nathan Westrup gave a presentation for the Public Water Supply (PWS) Committee. Nate spoke about unfunded liability, current debt, and gave an update on the 2022 legislative session in regards to debt paydown and the John Redmond Bond. He then presented on the Water Marketing Variable Rate process. Dawn Buehler congratulated the Kansas Water Office and the Kansas Legislature on being able to secure monies to pay down debt, she then opened the floor for discussion and vote.
- Set CY 23 Water Marketing Variable Rates*
Motion No. 06-22-02 It was moved by Lynn Goossen and seconded by David Stroberg to set the CY23 Water Marketing Variable Rate at \$0.473/1000 gallons. **Motion carried with no dissenting votes.** Information found in meeting materials.
- KWA RAC OPERATIONS COMMITTEE:**
Angela Anderson gave an update on the KWA RAC Operations Committee. She went through an application for the Solomon-Republican RAC and went through the RAC Operations Committee's recommendations.
- RAC Member Applications*
Motion No. 06-22-03 It was moved by Jean Steiner and seconded by Mike Armstrong to approve the following for the Solomon-Republican RAC. Shift positions for Stanley Kats to be moved from At-Large Public 3 to the vacant Irrigation, West

position, change the At- Large Public 4 position to be changed to Conservation/Environment 2 and that all the At-Large Public numbers be changed accordingly except At Large Public(cc), and to approve the RAC application for Amanda Johnson for Conservation/Environment 2. **Motion carried with no dissenting votes.** Information found in meeting materials.

LEGISLATIVE:

Matt Unruh gave an update on 2022 Legislative session. He started with an update on HB 2686. He opened it to the floor for discussion. Rep. Lindsay Vaughn of the Kansas House of Representatives spoke up and gave an update on where HB 2686 stands post audit.

Mike Armstrong then suggested KWA should vote to send a letter of recommendation to continue the Water Committee for the 2023 Legislative session. Discussion happened about when exactly the letter should be sent. **Sen. Carolyn McGinn** requested a copy of the letter.

Send a recommendation letter from the KWA to the Legislative Policy Committee

Motion No. 06-22-04

It was moved by **Mike Armstrong** and seconded by **John Bailey** to send a letter of support for a Water Committee from the KWA to the legislative policy committee. **Motion carried with no dissenting votes.** Information found in meeting materials.

WATER POLICY DISCUSSION:

Dawn Buehler asked everyone to Save the Date for a Water Policy Discussion on August 10, 2022 in Salina, Kansas. This will be an in-person only meeting.

FEDERAL CONTRACT UPDATE:

Josh Olson presented on 5 potential agreements between the Kansas Water Office and United States Geological Survey (USGS). They were agreements for the Streamgaging Network, Kansas River Water Quality Monitoring, Neosho River Sediment Monitoring, Continuous and Discrete Water-Quality Monitoring on Republican River at Clay Center, HABS in Rivers Study. Josh mentioned that for the Kansas River Water Quality Monitoring contract the final scope and agreement for this year's monitoring will be determined after further discussions with the overall group and USGS. The expected KWO contribution to the project in SFY 2023 is \$30,000. **Mike Armstrong** amended the KWA motion to include that the KWO provide up to a \$50,000.00 contribution for this agreement.

*2023 USGS Contracts
Motion No. 06-22-05*

It was moved by **Mike Armstrong** and seconded by **Allan Soetaert** for the KWA to authorize the Director of the Kansas Water Office to enter into agreement with the USGS for the Stream Gaging Network, Kansas River Water Quality Monitoring, Neosho River Sediment Monitoring, Monitoring on the Republican River at Clay Center Above Milford, and HABS in Rivers. **Motion carried with no dissenting votes.** Information found in meeting materials.

WATER INJECTION DREDGING:

Josh Olson presented on Water Injection Dredging. He spoke about the history, how it works, where they are in the process of a demonstration at Tuttle Creek Lake, and where current funding stands. KWA discussed the issue. Suggested making sure that the local citizens were aware of this.

KANSAS RIVER WATER QUALITY SUMMIT:

Tom Stiles gave a presentation on the Kansas River Water Quality Summit that took place in April in both Kansas and Colorado.

BREAK FOR LUNCH

Upon returning from lunch and due to time constraints **Rolfe Mandel** gave an update for the Kansas Geological Survey.

NITRATES IN KANSAS:

Tom Stiles gave presentation on Nitrates in Kansas. He spoke about the challenges and obstacles that are involved with this issue. He then turned the presentation over to **Travis Seive** to discussion solutions. KWA discussed the issue.

Lindsay Vaughn mentioned potential legislative attempt(s) to secure a grant to help with this issue.

KANSAS WATER SUCCESS STORY:

Earl Lewis presented on DWR's Water Success story: data sharing of the water use report.

KANSAS DAM SAFETY UPDATE:

Earl Lewis presented on the current status of dams in the Kansas. He also spoke about an emergency fund set up in case of dam disaster.

KWA OPEN DISCUSSION:

Dawn Buehler wanted to speak about the hiring concern she has been hearing about from several State Agencies. It was brought up that there is both an issue of hiring employees and retaining the employees they can hire.

Letter to Legislature about concern with the State's hiring process.

Motion No. 06-22-06

It was moved by **John Bailey** and seconded by **Jean Steiner** for the KWA to come up with a letter to send to the Kansas Legislative Body to express their concern for this matter. **Motion carried with no dissenting votes. Carolyn McGinn abstained from the vote.** Information found in meeting materials. Letter will be reviewed at the August 2022 KWA meeting.

NEW BUSINESS:

Andrew Lyon gave an update from the Department of Conservation.

Earl Lewis gave an update from the Division of Water Resources.

Leo Henning gave an update from Kansas Department of Health and Environment.

Brad Loveless gave an update for the Kansas Department of Wildlife and Parks.

Jude Kastens gave an update for the Kansas Biological Survey

Mike Beam gave an update for the Kansas Department of Agriculture

DIRECTORS REPORT:

Connie Owen gave Director's Report from the Kansas Water Office.

ADJOURNMENT:

Dawn Buehler adjourned the meeting at **4:12 pm**

Dawn Buehler, Chair

Connie Owen, Secretary

MEMO



DATE: July 27, 2022
TO: Kansas Water Authority
FROM: John Bailey, Chair, Public Water Supply Committee
Nathan Westrup
RE: Public Water Supply Committee Update

900 SW Jackson Suite 404
Topeka, KS 66612
Phone: (785) 296-3185
Fax: (785) 296-0878
www.kwo.ks.gov

Items Proposed for Action:

- Consider approval of Water Purchase Contract No. 22-1 with the City of Independence

City of Independence, Water Marketing Contract No. 22-1

- Water supply yield of Elk City Lake is sufficient to support the negotiated contract quantity
- Contract terms:
 - Single, 40-year contract
 - 60 MGY
 - The city's source of water is the Verdigris River and the water rights that authorize a water supply intake has access to the natural flows of the Verdigris River. The proposed contract quantity is for supplemental purposes only and will be released from Elk City Lake, to be re-diverted at the city's existing water supply intake. There has been a long history of drought vulnerability when natural flows are limited and flows are being supported by reservoir releases.

The Public Water Supply Committee recommends the Kansas Water Authority approve Water Purchase Contract No. 22-1 with the City of Independence, as negotiated.

Other discussion:

The committee also reviewed the Water Marketing Program financial forecasts and some initial thoughts on developing parameters of fiscal policy related to revenue generation in excess of basic expenses. The committee will be providing guidance and advice with the update of the Water Marketing Program Capital Development and Storage Maintenance Plan over the next six to eight months, ideally completing the update before setting the CY2024 water marketing rate. Some of the critical fiscal policies to be developed will require additional information, such as estimates of future expenses related to reservoir sediment management.

The committee suggested that the KWO outsource the development of a multi-year Capital Improvement Plan (CIP) – a plan that would identify appropriate sediment management projects, cost estimates, and schedules for water marketing storage in need of protection and/or restoration. The KWO has been pursuing identification of sediment management technologies (such as WID) but has not been able to develop the protection and restoration Master Plan, referenced in the 2017 Public Water Supply Comprehensive Capital Development Plan due to the cumbersome process of funding and implementing innovative technologies (methods that are more cost effective than traditional dredging). Generally, the committee is supportive of generating revenue to re-invest in the water marketing reservoirs but more concrete justification is needed before building up a large amount of reserve funds. The committee, however, was in full support of continuing the policy of collecting the statutory authorized - up to 1 cent per 1,000 gallons – for deposit into the O&M set aside fund. Building a reserve balance of O&M funds will allow the program to adapt to dramatic fluctuations in O&M bills received from the Corps. The KWA PWS Committee will be included in ongoing discussions to address these topics.

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 22-1

This contract is executed and entered into this _____ day of _____, 2022, by and between the State of Kansas, as represented by the Kansas Water Office (hereinafter referred to as the “State”), an authorized agency to enter such contracts for the State of Kansas and the City of Independence, Montgomery County, Kansas, (hereinafter referred to as the “Purchaser”).

RECITALS

WHEREAS, the Purchaser desires to purchase a supply of Raw Water for a municipal and industrial use to supplement its existing Water Rights during times of short supply; and

WHEREAS, the State has signed Agreements (Contract Nos. DACW56-76-C-0132 and DACW56-96-WS-0005) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), for water supply storage space in the Reservoir; and

WHEREAS, the State has filed appropriate water reservation rights with priority dates of March 27, 1974 and December 15, 1994, authorizing it to divert and store water in the conservation storage water supply capacity in the Reservoir; and

WHEREAS, the Director is authorized by K.S.A. 74-2615, and by K.S.A. 82a-1305, to negotiate contracts for the sale of water from the conservation storage water supply capacity in the Reservoir committed to the State; and

WHEREAS, the Purchaser filed an appropriate application on June 3, 2021, with the State to negotiate the purchase of Raw Water from the Reservoir, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.*; and

WHEREAS, on June 3, 2021, the Purchaser provided a written notice requesting to enter into negotiations for a contract with the Director; and

WHEREAS, on June 23, 2021, the Authority granted permission to the Director to enter into negotiations with the Purchaser; and

WHEREAS, some of the Purchaser's immediate and projected water supply needs can be provided from the Reservoir; and

WHEREAS, the withdrawal of up to 60 million gallons of Raw Water annually from the Reservoir for use by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, the quantity of Raw Water from the Reservoir being negotiated does not exceed the yield capability from the conservation storage water supply capacity in the Reservoir that is available to the State for use under the water marketing program through a drought having a two percent chance of occurrence in any one year.

NOW, THEREFORE, in consideration of the foregoing, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- a. "Authority" means the Kansas Water Authority, per K.S.A. 74-2622, or its successor.
- b. "Contract Quantity" means the quantity of Raw Water from the State's conservation storage water supply capacity in the Reservoir as set out in Article 6, paragraph (a).
- c. "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- d. "Minimum Charge" means the annual payment set out in Article 7 paragraph (b).
- e. "Party" or "Parties" means the State of Kansas, as represented by the Kansas Water Office, and the Purchaser.

f. "Point of withdrawal from the reservoir" means the point at which water is taken from the Reservoir by pump, siphon, canal, or any other device or released through the dam by gates, conduits, or any other means.

g. "Point of redirection" means the point where released water is taken for beneficial use from the watercourse by which it is transported.

h. "Raw Water" refers to untreated water from the Reservoir.

i. "Reservoir" means Elk City Lake in Montgomery County, Kansas.

j. "Water Right" and "Water Rights" means vested and appropriation water rights established pursuant to the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of forty (40) years beginning on _____, 2022.

The Purchaser may begin withdrawing Raw Water under this contract on _____, 2022.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, and all amendments and renewals, are subject to disapproval and revocation by the Kansas Legislature as provided in K.S.A. 82a-1307.

ARTICLE 4. UNITED STATES APPROVAL

a. Except when the Point of withdrawal from the reservoir is a release through the dam by gates or conduits owned and operated by the United States, the Purchaser shall secure the right from the United States to construct, modify, alter, or maintain installations and facilities at the Point of Withdrawal from the Reservoir as the Purchaser shall deem necessary to effectuate the terms of this contract when any such installations and facilities are on federal lands.

b. The Purchaser shall bear any and all costs of construction, modification, operation, and maintenance of Purchaser-owned, leased, or constructed installations and facilities.

c. The Purchaser shall provide the Director, upon written request, with proof of any easement granted by the United States for rights-of-way across, in, and upon federal land required for intake, transmission of Raw Water, and necessary appurtenances by and for the benefit of the Purchaser.

ARTICLE 5. COMPLIANCE WITH KANSAS STATUTES AND REGULATIONS

a. This contract is subject to all applicable federal and state statutes and regulations including specifically, but not by way of limitation, the Kansas Water Appropriation Act, K.S.A. 82a-701, *et seq.*; the State Water Resource Planning Act, K.S.A. 82a-901, *et seq.*; the State Water Plan, K.S.A. 82a-927, *et seq.*; and the State Water Plan Storage Act, K.S.A. 82a-1301, *et seq.* All references to statutes, rules, and regulations in this contract include any applicable amendments enacted after the execution of this contract.

b. The Parties agree to comply with all applicable statutes and regulations.

ARTICLE 6. QUANTITY OF WATER

a. Contract Quantity. During the term of this contract, defined in Article 2, and subject its conditions, the Purchaser is entitled to withdraw not more than 60 million gallons of Raw Water from the State's conservation storage water supply in the Reservoir during any one (1) calendar year. If the Purchaser does not withdraw the entire Contract Quantity in any calendar year, the unused amount of water shall not add to the Purchaser's entitlement during any subsequent year.

b. Review and Adjustment. The Director shall review the quantity and purposes for which water is used on the sixth anniversary of the execution of this contract and on each annual anniversary during the remaining portion of the term of this contract. Unless the Purchaser begins payment for the total Contract Quantity, the Director may reduce the Contract Quantity on the sixth anniversary of the execution of the contract and on each annual anniversary thereafter, if (1) another water user is ready, willing, and able to contract for Raw Water from the conservation storage water supply in the Reservoir and (2) there is an insufficient supply in the conservation storage water supply in the Reservoir to supply (a) the Contract Quantity plus (b) the quantity of Raw Water for which another water user is ready willing and able to

purchase. The Contract Quantity cannot be reduced if the Purchaser begins payment for the full Contract Quantity.

c. Water Rights. Any Water Rights acquired by the Purchaser after, and having priority dates later than the date of execution of this contract, and any water diverted pursuant to such rights, shall not be used by the Purchaser to offset or reduce the Contract Quantity or the Purchaser's payment obligations, as provided in Article 9.

d. The Purchaser may redivert Raw Water withdrawn from the Reservoir in accordance with the terms of this contract without obtaining a permit or Water Right under the Kansas Water Appropriation Act. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest including vested water rights, water appropriation rights, and approved applications for permit to appropriate water.

e. At least 180 days before any proposed reduction of the Contract Quantity, the State must provide the Purchaser with written notice that another water user is ready, willing, and able to contract and pay for Raw Water in the conservation storage water supply in the Reservoir, the Director's intent to enter into a water supply contract with the prospective user, and the Director's intent to reduce the Contract Quantity.

ARTICLE 7. PRICE OF WATER

a. Price. The Purchaser agrees to pay the State, at the rate set in accordance with K.S.A. 82a-1306, for each one thousand (1,000) gallons of Raw Water withdrawn or Raw Water which must be paid for under terms of this contract; provided, however, that the Purchaser is obligated and agrees to pay the Minimum Charge in accordance with this Article regardless of the quantity of Raw Water actually withdrawn, except as provided in Article 13. The rate for Raw Water which must be paid for under terms of this contract shall be \$0.454 for each one thousand (1,000) gallons during calendar year 2022.

b. Minimum Charge. The Purchaser agrees to pay to the State a Minimum Charge whether or not water is withdrawn during any calendar year during the term of this contract. The Minimum Charge for each calendar year shall be determined as provided in K.S.A. 82a-1306. The Minimum Charge for calendar year 2022 and each succeeding calendar year shall be the sum of the following two components:

(1) fifty (50) percent of the Contract Quantity multiplied by the rate established in accordance with paragraph (a) of this Article or as adjusted in accordance with paragraph (c) of this Article; and

(2) a charge on the remaining fifty (50) percent of the Contracted Quantity computed by multiplying the net amount of moneys advanced from state funds for costs incurred and associated with that portion of the conservation storage water supply under the State Water Marketing Program by the average rate of interest earned during the past calendar year by the Pooled Money Investment Board on thirty (30) day repurchase agreements.

c. Review and Adjustment of Rates. The Director shall review the rate stated in this Article by July 15 of each year during the term of this contract and, as provided in K.S.A. 82a-1306, may adjust the rate effective January 1 of the following year. Such adjusted rate shall be charged for all Raw Water withdrawn by the Purchaser or all Raw Water which must be paid for under terms of this contract. The Director shall notify the Purchaser in writing by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year. Failure to furnish such notification by July 31 shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE

a. Purpose. Water purchased under this contract shall be used for purposes which are stated in the recitals.

b. Place of Use. The place of use for water purchased under this contract shall be within and in the immediate vicinity, as defined at K.A.R. 5-1-1(mm), of the City of Independence, Montgomery County,

Kansas and within and in the immediate vicinity of each of the Purchaser's current water supply customers, which are Montgomery County Rural Water District Nos. 1 – 5 and 8.

c. Approval of Change in Place of Use. The Purchaser shall inform the Director of any intention to sell any Raw Water under this contract to any person or entity located outside the place of use defined in paragraph (b) of this Article. Whenever the Purchaser shall propose to enter into a contract to sell Raw Water purchased under this contract to any such person or entity outside the defined place of use, the Purchaser shall, before execution thereof, submit a copy of such contract to the Director for review by the Authority. The Purchaser agrees not to execute and enter into any such contracts unless approved by the Authority.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

a. Payments. Remittance of the Minimum Charge, as provided in Article 7 (b) and this Article shall be paid to the State in either one annual payment on or before the due date established in Article 9, or in equal monthly installments during the calendar year in which the Minimum Charge is due, whether or not water is withdrawn during the calendar year.

b. Determination of Charges. Charges for Raw Water for which payment is required shall be determined by the State in accordance with K.S.A. 82a-1308a. The Purchaser acknowledges and agrees that rate computations are subject to change, based on subsequent amendments to State statutes that may affect the terms of this contract.

c. Water Subject to Payment. The Purchaser shall pay as specified in this contract for all Raw Water withdrawn under terms of this contract up to the maximum quantity obligated by this contract (60 million gallons per year). In no event shall the Purchaser be permitted to withdraw more than the maximum of 60 million gallons in any one calendar year.

d. Initial Minimum Charge. The initial Minimum Charge shall become due within 30 days after the execution of this contract. Remittance of the initial Minimum Charge shall be in accordance with

paragraph (a) of this Article. Payment of the initial Minimum Charge shall entitle the Purchaser to receive up to one-half (1/2) of the maximum annual quantity of Raw Water in 2022 as set forth in Article 6, without additional charge.

e. Subsequent Minimum Charges. On each subsequent January 1st, the Minimum Charge shall be in accordance with paragraph (a) of this Article. Payment of the Minimum Charge shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half (1/2) of the maximum annual quantity obligated under terms of this contract.

f. Water in Excess of Minimum. Within thirty (30) days after the end of each calendar year during the term of this contract, the State shall bill the Purchaser for any Raw Water withdrawn during the calendar year in excess of the amount of Raw Water used to compute the Minimum Charge. The Purchaser shall be given credit for the proportionate share of the payment which was made as an interest charge on the net amount of monies advanced from the State General Fund for the costs incurred and associated with providing fifty (50) percent of the total annual amount of water contracted for purchase during that calendar year. Remittance for payments for Raw Water withdrawn in excess of the quantity used to calculate the Minimum Charge shall be paid to the State in full within thirty (30) days after receipt of a bill from the State.

g. Overpayment or Underpayment. If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges required by this contract, such overpayment shall be reimbursed or underpayment shall be billed, as the case may be. The State shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

h. Adjustment for Apportionment. In the event the Purchaser is unable in any year to withdraw the quantity used to calculate the Minimum Charge due to an apportionment under paragraph (c) of Article 13, the amount of the Minimum Charge actually paid in excess of the charge for the amount of Raw Water

actually withdrawn by Purchaser shall be credited to reduce the Minimum Charge obligation of the Purchaser for the subsequent calendar year.

i. Overdue Payments. If the Purchaser fails to make any of the payments when due, then the overdue payments shall bear interest, compounded annually at the rate prescribed in K.S.A. 82a-1317. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the State that might result from such default by the Purchaser.

j. Payments. Any payments due and payable to the Kansas Water Office under the terms of this contract shall be transferred electronically under such arrangements as the Purchaser and the State determine or shall be sent to:

Kansas Water Office
Attention: Accounts Payable/Water Marketing
900 SW Jackson Street, Suite 404
Topeka, KS 66612

ARTICLE 10. POINT OF WITHDRAWAL AND REDIVERSION

- a) The Point of withdrawal from the reservoir shall be at the release gates of Elk City Lake.
- b) The Purchaser's Point of rediversion shall be the point or points of diversion in the Verdigris River authorized by the Purchaser's Water Rights located in the SE ¼ of the NW ¼ of the NE ¼ of Section 30, Township 32 South, Range 16 East, 4,310 feet North and 1,400 feet East of the Southeast Corner of said Section, in Montgomery County, Kansas.

ARTICLE 11. METERING OF WATER

- a) The Purchaser shall, at its own expense, furnish, install, operate, and maintain a commercial measuring device at the Point of rediversion that complies with the Kansas Water Appropriation Act and the rules and regulations adopted by the Kansas Department of Agriculture, Division of Water Resources ("DWR").

b) The Purchaser shall test and calibrate all measuring devices upon installation and thereafter as necessary or whenever requested by the Director, but not more frequently than once every twelve (12) months. A measuring device that meets the standards set forth in DWR regulations shall be deemed to be accurate. Testing and calibration of measuring devices must comply with DWR regulations.

c) The previous readings of any measuring device disclosed by a test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half (1/2) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

d) If any measuring device fails to register for any period, the amount of Raw Water furnished during such period shall be determined by the Director, in consultation with the Purchaser.

e) During the withdrawal of Raw Water the Purchaser shall, upon the Director's request, read the measuring device and send such readings to the Director on a weekly basis.

f) The Purchaser shall provide to the State monthly reports of all water diverted from any sources under authority of Water Rights acquired and subject to Article 6 paragraph (c).

g) Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

h) The State may measure withdrawals by other suitable means to verify the accuracy of the Purchaser's measuring device or to measure the amount of rediverted Raw Water when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL

The Purchaser shall notify the Director prior to any withdrawal of Raw Water. At that time, the Purchaser shall provide such notification, in writing, of the estimated amounts, dates, and rates of withdrawal. In no event, during the term of this contract, shall the Purchaser withdraw Raw Water in excess of the maximum daily rate of 3.0 million gallons.

ARTICLE 13. CONTINUITY OF WATER SERVICE

a. The Director shall make all reasonable efforts to perfect and protect the water reservation rights necessary for the satisfaction of the State's water supply commitment. In the event it becomes necessary for any reason to apportion the water among all of the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir, or to temporarily discontinue the furnishing of water to such persons, the Director will give each person oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable.

b. The Director, Kansas Water Office, and the Authority shall not be responsible for, or have any legal liability for any insufficiency of water, or for the apportionment thereof, and the duty of the Director, Kansas Water Office, and the Authority to furnish water is specifically subject to the following conditions:

(1) If the total amount of water contracted for withdrawal by all purchasers from the Reservoir in any year is greater than the supply available from the conservation storage water supply in the Reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor, as may best provide for the health, safety, and general welfare of the people of Kansas as determined by the Authority.

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir and, if such evaluation indicates that the sediment deposits have reduced the yield from the State's conservation storage water supply space, the Director will apportion available water among the persons having contracts to purchase water from the conservation storage water supply capacity in the Reservoir in relation to the annual volume of water contracted. If a reduction has been made and future calculations and/or experience proves an increased yield from the Reservoir, the Purchaser's Contract Quantity shall be increased proportionally up to the Contract Quantity.

(3) If the United States temporarily discontinues or reduces water storage available to the State in the Reservoir under the State's agreement with the United States of America for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the Reservoir or for other reasons deemed necessary by the United States of America, the Director will apportion the available water among the persons having contracts for water from the conservation storage water supply in the Reservoir as determined by the Director.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the Reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts to purchase water from the conservation storage water supply in the Reservoir as may best provide for the health, safety, and general welfare of the people of Kansas.

c. In the event the Director finds it necessary to apportion the available water from the conservation storage water supply in the Reservoir among the persons having contracts therefore, and such apportionment results in the Purchaser being unable, during any year, to receive the amount of water that has been purchased by payment of the Minimum Charge, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

a. The Parties acknowledge that this contract is for Raw Water from the conservation storage water supply in the Reservoir. The State, the Director, the Authority, or any employee, agent, or agency of the State of Kansas, makes no guarantee for, nor assumes any liability for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the Point of withdrawal from the reservoir except as provided in the Kansas Tort Claims Act, K.S.A. 75-6101, *et seq.*, and the Purchaser shall hold the State harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or

distribution of Raw Water beyond the Point of withdrawal from the reservoir. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 6.

b. In addition, neither the Director nor the Authority shall be liable for any claim by Purchaser arising out of the quality of the Raw Water in the Reservoir or at the Point of redirection. The Purchaser shall hold the State, its agencies, employees, and agents harmless from or on account of any and all damage to Purchaser of any nature whatsoever arising out of or connected with the quality of the Raw Water in the Reservoir, at the Point of withdrawal from the reservoir or at the Point of redirection.

ARTICLE 15. AMENDMENT

The contract may be amended or nullified by written agreement of the Parties, as provided in K.S.A. 82a-1316.

ARTICLE 16. ASSIGNMENT OF CONTRACT

a. The Purchaser may not assign, sell, convey, or transfer all or any part of this contract, or any interest therein, unless and until the same is approved by the Director and the Authority pursuant to K.S.A. 82a-1316 and K.A.R. 98-5-5.

b. Whenever the assignment, sale, conveyance, or transfer of all or any part of this contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*

ARTICLE 17. RIGHT OF FIRST REFUSAL

As required by the provisions of K.S.A. 82a-1305(a), upon expiration of this contract, the Director shall give the Purchaser the first right of refusal to purchase any offering of the water previously purchased before offering the same to any other applicant under the provisions of K.S.A. 82a-1310a, *et seq.*

ARTICLE 19. WATER CONSERVATION PLAN

The Purchaser shall adopt and implement a water conservation plan, prepared in accordance with the guidelines developed and maintained by the Kansas Water Office.

ARTICLE 21. MISCELLANEOUS PROVISIONS

a. Severability. In the event any provisions of this contract, or any part of any provision of this contract, are held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms that can be given effect without the invalid provision or portion of such provision, and to that end the terms of this contract are intended to be severable.

b. Choice of Law, Jurisdiction, and Venue. Disputes arising out of this contract shall be determined under the laws of the State of Kansas, in the district courts of that state, sitting in Shawnee County, Kansas.

c. Kansas Contract Provisions Attachment. The provisions of Form DA-146a, which is attached, are hereby incorporated in this contract and made a part thereof by reference.

d. Headings. Headings used in this contract are informational and not to be considered persuasive or determinative of any clause or matter in dispute.

e. Merger. This contract contains the full understanding of the Parties with respect to the matters hereto and supersedes all prior agreements and understandings, whether written or oral, pertaining thereto, and may not be amended or modified except by a writing signed by both Parties.

IN WITNESS WHEREOF, the Parties affirm and acknowledge the terms and conditions agreed to above, and further affirm that they have the authority to bind the Parties by their signatures and have executed this contract as of the day and year first above written.

THE STATE OF KANSAS, BY:

Connie Owen
Director, Kansas Water Office

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,
BY:

Dawn Buehler
Chair, Kansas Water Authority

PURCHASER, BY:



Dean A. Hayse, Mayor
City of Independence, Montgomery County, Kansas

ATTEST:



David Schwenker, City Clerk/Treasurer
City of Independence, Montgomery County, Kansas

CONTRACTUAL PROVISIONS ATTACHMENT A

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

MEMO



DATE: August 12, 2022
TO: Kansas Water Authority
FROM: Connie Owen
RE: Kansas Water Plan Update

900 SW Jackson Suite 404
Topeka, KS 66612
Phone: (785) 296-3185
Fax: (785) 296-0878
www.kwo.ks.gov

Following a public input process which included a formal public comment phase as well as public hearings to provide additional formal opportunity for interested stakeholders to comment on the draft September 2021 version of the Kansas Water Plan, the Kansas Water Office (KWO) has prepared a final draft version of the Kansas Water Plan. This document represents a major effort, relentless dedication and subject matter expertise from all sectors, including RAC members and stakeholders from across the state, state agencies, local and regional entities, nonprofit entities, individual citizens, and each of you. This final draft also reflects numerous and comprehensive comments submitted subsequent to the KWA's approval of the final draft version of the Kansas Water Plan.

The document is accessible from the Kansas Water Plan page on the KWO website at <https://kwo.ks.gov/water-plan/water-plan>. A direct link to the document is accessible by selecting or going to the following link:

https://kwo.ks.gov/docs/default-source/water-vision-water-plan/water-plan/finaldraft_kansaswaterplan_080522.pdf?sfvrsn=ecfb8114_2

The Kansas Water Office recommends the Kansas Water Authority approve the 2022 Final Draft Kansas Water Plan with final editorial discretion based on feedback provided by the Kansas Water Authority during the August 17 meeting.

MEMO



DATE: August 12, 2022
TO: Kansas Water Authority
FROM: Matt Unruh
RE: Draft State Employee Salary Support Letter

900 SW Jackson Suite 404
Topeka, KS 66612
Phone: (785) 296-3185
Fax: (785) 296-0878
www.kwo.ks.gov

Please see the below narrative for consideration by the full Kansas Water Authority as a follow up to discussion on the stated topic at the June 2022 Kansas Water Authority meeting in Pittsburg. Discussion and potential final action on this letter of support is scheduled for the August 17 KWA meeting.

RE: Support for the Salary Increases for Professional State Employees

Dear Governor Kelly and Kansas Legislators,

On behalf of the Kansas Water Authority (KWA), I write today to transmit the KWA's support for increased salaries for professional state employees, particularly those whose expertise is needed for the management of our water resources.

The Kansas Water Authority (KWA), established in 1981, within and as part of the Kansas Water Office, consists of eleven voting members who are appointed by the Governor and two voting members chosen by Legislative leadership along with thirteen ex officio members from water-related state agencies and research institutions. Pursuant to K.S.A. 74-2622, flagship duties of the KWA include advising the Governor, Legislature and Director of the Kansas Water Office on water policy issues and approving the Kansas Water Plan. The KWA is also charged with advising the Governor and Legislature on necessary and/or advisable legislation relating to the conservation, management and development of the state's water resources. The KWA provides leadership to ensure water policies and programs address the needs of all Kansans.

At the June 22, 2022, meeting of the Kansas Water Authority in Pittsburg, KWA members expressed concern for the increasing difficulty state agencies are experiencing in recruiting and retaining qualified professional staff. The KWA entertained a motion, which was seconded and approved unanimously, to provide an official letter to Legislative leadership and Governor Kelly, in support of increasing salaries for professional state employees to levels commensurate with the private sector. In order to provide the high quality of service that Kansans need and deserve, to recruit and retain the best and brightest talent, and to compete meaningfully with the private sector, Kansas must increase the compensation levels offered to its professional staff. The KWA urges the Kansas Legislature, with the recommendation of Governor Kelly, to do so, in acknowledgement of the critical importance of a safe and secure water supply for all Kansans.

Thank you for your consideration and please feel free to contact me at Dawn.BuehlerKWA@kwo.ks.gov or Kansas Water Office Director Connie Owen at Connie.Owen@kwo.ks.gov should you or others have any follow up questions or informational needs.

*Sincerely,
Dawn Buehler
Chair, Kansas Water Authority*

The Kansas Water Office recommends the KWA take action to approve the KWA Professional State Employees Salary Support Letter, pending incorporation of any additional input from KWA members.