Interview of David Heinemann by Rex Buchanan, January 18, 2021
Kansas Oral History Project

**Written Introduction [not recorded]**

[I am Rex Buchanan, the former director of the Kansas Geological Survey. The date is January 18, 2021. I am at my home in Lawrence Kansas interviewing former State Representative Dave Heinemann who is at his home in Topeka. We are conducting this interview over Zoom. Dave is a graduate of Garden City High School; Augustana College, with a bachelor's degree in political science and German; and Washburn University School of Law, with a Juris Doctor degree. Dave also attended the University of Kansas as a graduate student in International Relations. Dave worked as an attorney in private practice in Garden City from 1973-1995.

Prior to starting law school, Dave was elected to represent Garden City and most of Finney County in the Kanas House of Representatives where he served from 1968-1995. During his legislative service, Dave progressed from being the youngest member in the chamber to being the longest-serving member in 1993. He chaired numerous legislative committees during his tenure, most notably for today's interview, the House Committee on Energy and Natural Resources. Dave also served as House Speaker pro tem for two terms from 1985-1988. From 1987-1994 Dave served as Commissioner and Alternate Chairman of the Kansas-Oklahoma Arkansas River Commission as an appointee of President Reagan. After leaving the Legislature, Dave continued his public service as General Counsel (1995-1997) and Executive Director (1997-1999) of the Kansas Corporation Commission (KCC); Special Assistant to the Secretary of Revenue (1999-2003); and Due Process Hearing Officer for the Kansas Department of Education (since 2005). Since 2006 Dave has represented before the Kansas Legislature various community service and education clients as a contract lobbyist.

Dave's interview today is part of the Kansas Oral History Project series examining the development of water policy during the 1970s, 80s, and 90s. In these interviews, we explore water policy through the eyes of administrators, legislators, farmers, environmentalists, and others who were involved in development and implementation of that policy. The Kansas Oral History Project is a non-profit corporation created to collect and preserve oral histories of Kansans who were involved in shaping and implementing public policy during the last half of the 20th century. Recordings and transcripts of these oral history interviews are accessible to researchers and educators through the Kansas Historical Society and the State Library of Kansas. The Kansas Oral History Project is supported by donations from individuals and grants from Evergy and Humanities Kansas.]

**[Recording begins here]**

Rex Buchanan: I'm Rex Buchanan, and today is January 18, 2021. I'm at my home in Lawrence, Kansas, and I'll be interviewing Dave Heinemann who is at his home in Topeka. Dave is a former legislator, and I want to start, Dave, with a question about just your background. You're, in my mind and probably in a lot of folks' minds, really associated with Garden City, which you represented for years and years in the [Kansas] Legislature. Are you native of Garden? Is that where you come from originally?

David Heinemann: Well, actually, northeast Nebraska. I was born at West Point. It sounds better if you don't mention the state. I grew up on a farm there, and in the eighth grade, I moved to a small farm outside Garden City, just directly [west] of the Brookover feed yard. In a way, my upbringing probably put me in a good position as far as understanding all the water issues or for my perspective, particularly when I entered the legislature. In Nebraska we raised corn on the farm, no irrigation. I didn't even know what a pump was. Then we moved to Garden City, a small farm outside of town. It had an irrigation well. It got free natural gas because of the pressure of the Hugoton Field at that time. We did flood irrigation from one of the ditches. I'd never experienced that before, to actually see some fish coming down while we were irrigating. But as a kid there, it started giving me a perspective.

And then later when I worked my way through college, an adjoining neighbor was a gentleman who was an area manager for Garst and Thomas Pioneer Seed. So, I would spend the summer traveling about 20,000 miles all over southwest Kansas, parts of Oklahoma, parts of Colorado hauling seed between dealers, and in that process got to really see and experience how irrigation took off at that time. And the time frame is probably where things were speeding up quite a bit because this was in 1963 was when I started doing my running around in southwest Kansas, and at that time, we didn't have any sprinkler irrigation. In fact, Don Williams, the gentleman I worked for, I didn't realize until years later, he used to live at Halstead, and he was the plaintiff in the *Williams v. City of Wichita,* which turned out to be the seminal case in Kansas on the Water Appropriations Act that was enacted by the legislature in 1945, the month I was born, in July.

So, I had that perspective, and I'll never forget one summer, I think it was '64, he said, “Dave, get in the car with me. I've got something to show you.” So, we went south of Garden City through the Sand Hills about ten miles and went to a farm, Clarence Gigot, he's an old senior farmer there, and we turned off right immediately south of his homestead, and there was a huge field of corn growing in the middle of sand. What he had there was his experiment on the first center-pivot sprinkler in southwest Kansas. And it was ironic that almost fifty years to the day [later], I was on a Geological Survey Field Conference, and we were at a field about six miles west of there, watching the dragon system [Dragon-Line Drip Irrigation], or however you pronounce it, the new system, and it just showed how irrigation, the use of it, has changed dramatically through all of these years out in western Kansas.

So, it really helped me. I never intended to end up in the legislature or the KCC [Kansas Corporation Commission], working with issues there. So, my experience, a long story you got out of this, but basically growing up on the farm there, a small one, did give me a background to help understand and work with folks around southwest Kansas.

RB: So, let's go back a little bit. Why did your family move from Nebraska? Why southwestern Kansas?

DH: Well, my uncle had a business there, and he said, “If you [my father] come down here, we've got a farm we could work together in a partnership.” In Nebraska, my dad's father passed away when he was seven. We rented land, moved around a lot, and I think he [dad] saw this as an opportunity, which didn't pan out unfortunately, but that's how it worked.

RB: When you said on that farm, you were involved with flood irrigation, was that based on ditch irrigation out of the—

DH: It was ditch irrigation. I learned how to hate Johnson grass. The manager, Mr. Mangan, he'd show up and say, “Okay, you've got a thirty-six-hour run. Get ready for it.” We had the ditches—we'd get the ditch water, and we did flood irrigation. In hindsight, that's probably a very wasteful way to irrigate because you've got to push the water all the way through from one side to the other. Actually, I remember we had a horse that we only used when we were flood irrigating because in the middle of the night, you could trot that horse out there, and when it would slosh, slosh, slosh, you knew where the water was.

RB: Did you move around gated pipe and all that stuff that I hear stories about?

DH: No, we didn't have the gated pipe. My fond recollection of gated pipe is seeing a bunch of it twisted around a telephone pole by the experiment station when we had that tornado way back when. [Heinemann note: A tornado struck Garden City and also took out most of the KSU Experiment Station located northeast of the city in 1967.] We had the irrigation tubes. That's what we used.

RB: Siphon tubes.

DH: Yes. We did the siphon tubes. That's the same thing we did with our irrigation well. It was also by ditch and pumping it that way. I was very intrigued the first time I saw that center pivot. I'd never seen one before in my life. Ironically, the [Clarence] Gigot family, his son, Jerry formed a business selling those sprinklers, and his family was very much into it. [Heinemann note: Clarence Gigot put the first Valley center pivot sprinkler in Finney County.] At one point it was said that they had in the family operation about three hundred center pivots. It was also something that really developed the land around in the Sand Hills in particular. Land that went for $30 an acre, you didn't see that price anymore because you could put a center pivot on it and grow corn.

It was also the start, too, of the feedlot industry in western Kansas. Earl Brookover was an amazing individual. He had the first commercial feedlot, and he did the first of about everything. It wasn't until his memorial service when they were talking about him, they recounted how he actually drilled the first irrigation wells in Scott County. As a kid he had been in South America or someplace and saw irrigation, went to K-State [Kansas State University] to learn everything you could about it, and then proceeded to go that way. He actually built sort of a great agricultural industry of his own in western Kansas based on irrigation.

Growing up in Nebraska, Cuming County, they used to have a lot of feedlots. They were known at one time as the Beef Capital of the World. I got to watch how it moved to southwest Kansas. There were feedlots everywhere and corn, and with it, we had all the other problems with transportation, highways. That's why as a legislator, I was very much interested in trying to get the highway plan big enough so it would come out [to western Kansas]. Highway 83 was notorious for the truck traffic because even today, southwest Kansas cannot raise all the grain it needs. There's a tremendous amount of truck traffic heading into southwest Kansas.

So, irrigation, really the way it happened was an economic boost to southwest Kansas because the communities there were not decreasing in population like they were in the rest of rural Kansas. If you had feedlots, you'd have to have workers. You had equipment. You had all of these other things that sort of were spun off—fertilizer, etc., etc., in order to make the operations work.

And the population of Garden City, my district as a state representative at one time was basically almost all the county [Finney County], and by the time I left, there were three representatives covering parts of it, and my district shrunk to a very small size, basically the north part of Garden City. [Garden City] went from something a little over 10,000 people to 25,000 or more through that thirty-four-year timeframe because of how things grew, and it had to do with, I believe, the economics of irrigation.

And, of course, being on the Ogallala aquifer, I got to see, too, how that was drawn down. The farm we moved to originally, we had a [domestic] well there. Of course, we took it out of the alluvium from the Arkansas River, and you could go down ten, fifteen feet, and you could get water. A few years later when we left, you had to go down ninety to a hundred feet to find water. I was sort of learning firsthand just how pumping and water causes problems.

RB: So clearly you are in part of a world where irrigation really takes off and has an incredible impact, and you are in that part of the world at the time when that is really taking place. Let's back up a little bit. You go to—where did you go to school and what did you study in college?

DH: I actually have got my Augustana University shirt on, since you asked the question. It used to be Augustana College. It was a small Lutheran college up in Sioux Falls, South Dakota, of all places. But we won't go to the stories about how I got there. That's where I did my four years, and '67 is when I graduated. I then went to the University of Kansas, Political Science. I double majored in German and Political Science in college, and I was actually looking into going into the Foreign Service. But if you will recall, in '67, '68, the Vietnam War, everything that was going on. Bobby Kennedy came to the University of Kansas campus. I remember going to see him at Allen Fieldhouse. Later he was assassinated. We also had Martin Luther King, whose birthday is actually today, and later he was assassinated. I had a close friend, Jim Concannon, who is now a former Dean of the Washburn [University] Law School, and we concocted a plan how a young kid could go out at twenty-two and actually knock doors and run for political office because there was a House seat open.

And that sort of started my political career. It sure was the Foreign Service as far as going into the Kansas Legislature.

RB: So, after you completed law school, did you go out and practice?

DH: Well, I was not a lawyer when I went to the Legislature. That came later. Once I got there, all the old-timers kept saying, “If I was young and single like you, I'd go to law school.” So, I went to law school. Then later, of course, I set up my practice in Garden City in '73, right across from the courthouse. I had to do it as a solo practice because if I wanted to stay in the Legislature, none of the firms in town wanted me in their practice.

RB: So, you went basically from being an undergraduate back out there to run for the Legislature.

DH: Yes.

RB: So, you're twenty-two when you're elected to the Legislature.

DH: Well, actually twenty-three by then, but twenty-two when I filed. You had to be twenty-one to run back then. I made the mistake once of voting for the eighteen-year-old vote, pushing that and I had a nineteen-year-old run against me when I was twenty-eight to get the old guy out.

RB: And you had to be by far one of the youngest people in the legislature at that point. So, you campaigned in Finney County, the entire county at that point?

DH: Pretty much all the County. The Garfield Township was not part of it. The key thing was knocking every door. It's ironic. In later years, Sonny Rundell, former State Board of Education member, reminded me that I had hit the county, too. I actually pulled him off a tractor and asked for his vote. He never forgot that.

RB: Was there any particular issue at that point or was this more a seat came open that you thought it was time that you ran for?

DH: Well, it's hard to say. The seat came open. The school board president was running for office as a Democrat. George Meeker, the former Republican who held it, was running for Congress. And Jim and I thought, “Well, nobody else has filed. Someone is going to get a seat just for filing.”

So, I went to the Secretary of State's office basically an hour before the filing deadline and asked, “Has anybody else filed for Garden City yet?” and they said no. It was a $10 filing fee, and I had ten bucks on me. About fifteen minutes before the deadline, I filed. I called Jim out there the next morning, and he said, “Oh, by the way, the party sent up somebody, so you have

a primary." [Heinemann note: At that time the party could file someone without their personal appearance.]

I hadn't even bothered to talk to the Republican County people before I did that. That was a very, very low day because I had also not told my parents I was doing this. How not to start it out right.

But it was a matter of doing the door knocking, and that was a good process because the people is how everything should work. I think sitting in the catbird seat behind the camera in the other interviews you've done, I got the sense that the people who have been the most successful are those who have learned the communication skills.

For instance, Dave Pope, when he was dealing with the Cheyenne Bottoms problem, and how they were going to control the competing interests. I think his ability to work through that had a lot to do with how he knew how to work with people. I also got to know Dave when he was the GMD Director out in Garden City. That's where I first got to know him, which actually helped later when he took Guy Gibson's place as Chief Engineer, and we often joke about how Dave will give you a long answer. Don't ask another question. But he had an ability, I think, to understand and try and work with people. That's what I've also noticed through the whole legislative process or wherever I've been. It's how you are able to communicate.

Jumping ahead here a little bit, when I was later General Counsel in '95 or '96 at the KCC [Kansas Corporation Commission], I was told, "Well, if you show up at the Legislature, people aren't too happy with you. In particular, the irrigators out in southwest Kansas are very, very unhappy with the KCC." So, I started communicating. We had a court case in Hugoton. So, I flew out there with the legal staff and I was in the courthouse. I said, "Who's on the other side? Where are they? Is there any ethical, legal problem if I go and try to talk to them?" They said no.

So, I started conversations. These were irrigators. In the conversations, since I'd actually been out in that area working my way through college, I knew a lot of their friends. So, we started communicating. We got to the point that when the gas pressures in the Hugoton fields dropped significantly such that their irrigation pumps would not run, they were in trouble. I remember one weekend I got several calls from them. They wanted to come visit with us. They wanted to come visit with me. I said, "Well, if you show up on Monday, I don't know who I can have as staff," but I was fortunate to get the right people, and we spent all morning visiting with these irrigators and trying to figure out options, alternatives. They didn't have the free gas or cheaper gas to use anymore. They needed an energy source, and there were options to look at. They could even set up their own utility. But it was through the process, and they started looking at KCC as a friend trying to help them. I think that has a great deal with how you work with people. It's the same in the legislative process.

RB: One of the things that I've been struck also that you've touched on already as we've gone through this interview is that people very often credit their involvement to a mentor or somebody who was there at the very beginning. And you've already mentioned—is it Don Concannon?

DH: No, not Don. Don Concannon ran for Governor [of Kansas]. Jim Concannon [Heinemann note: Jim is a second cousin to Don.] was a close friend of mine in Garden City High School. We roomed together at KU [University of Kansas]. He was doing his senior year, and I was doing my grad school work. Later on, Jim got his law degree, which is another story and came over and actually clerked for Justice Fromme. I remember talking to Dean Ray Spring one night after class and he was looking for someone to teach conflicts, so I said, "I've got this guy. He was first in his class at KU Law School. There's his phone number," and sight-unseen he hired him. Jim ended up teaching almost fifty years. But for the COVID this year, he probably would have been teaching. But he served as Dean for 13 years, which is outstanding. He's been a great mentor, a great friend. But for him, I would not have been elected. He had a list of everybody when I knocked doors, so I would know more about them than probably they wanted me to when I started a conversation.

RB: So, as you go to the Legislature, do you wind up on water-related committees right out of the chute?

DH: No. Actually, Tax Committee, Local Government, Reapportionment for my first committees, and then when the lawyers started leaving, actually since I was in law school, I became the first lay member for the Judiciary Committee. And then of course I got on the Appropriations Committee. When you deal with budgets, you deal with everything, with water, what have you.

My first really working with water came when Mike Hayden became Speaker [of the House] and appointed me as Chair of the House Energy and Natural Resources Committee. I'd never been on that committee. I was surprised. I don't know the specific reasons why [he made me chair], but we worked very closely together in the Ways and Means Committee [later Appropriations Committee]. That's what it was called back then. He probably knew of my Western Kansas roots. He probably knew that I understood and cared about water. He also knew my work in the Committee and probably it was a year before while he was still Chair of the Ways and Means Committee that I was fortunate one evening to get about $120,000 into the budget of a House bill to start the lawsuit against Colorado on the Arkansas River issue.

The '83-'84 session was a very critical one for the Energy and Natural Resources Committee. We had the Wolf Creek [Nuclear Power Station] hearings. I think I was maybe only one other attorney on the Committee, but we literally had the [Old] Supreme Court Room [in the Statehouse] for one whole week on the hearings because with the Wolf Creek issue, they [electric utility customers] had the significant rate shock [sudden increases in electricity costs] that was appearing. How are you going to handle it? I was lobbied real hard by the utilities, "Well you've just got to put it in the rate base." Politically that was not too cool of an idea. We had been under this "construction work in progress," where you couldn't put anything into the

rate base until it was actually completed [finished and in production]. As you well know, the nuclear power plant costs just skyrocketed. That was one issue.

The other one that we were working on too, was the water plan. Charlie Angell, a senator from Plains, Kansas, who I deeply respected. I think he was one of the big leaders in this. He had been on the Senate Energy Committee, and suddenly we were doing work together. We had done interviews, TV networks and stuff like that, promoting the state water plan, its development.

John Carlin, who I'd had the privilege of working with for many years in the house, particularly when he was Speaker and then later as Governor, I mean we were working together. In our opinion, this was not a partisan issue.

Charlie Angell, you will recall from a prior interview, was very influential in a meeting that Carlin had in his office when he assembled all of the various water-type agencies boards or folks and made it clear that he wanted them to become involved in planning. Charlie there, true to his beliefs, stood up and actually said, “Governor, if they don't start doing this, I'll actually introduce a bill, and we'll get rid of their position earlier.”

Charlie was a unique person. As vice president of the Senate, that's something too that needs to be mentioned, he was in a higher position to help do things. Charlie, ironically a farmer, I think his father or his grandfather invented the Angell plow, which was a sort of a one-way that broke up southwest Kansas. He never irrigated. He just considered water a precious resource, and he wasn't going to get into that. And maybe he had some other reasons.

RB: Dave, let's go back to a lot of the water-related legislation that we've been talking about, particularly in the formation of the groundwater management districts and then eventually the development of the Water Office, Water Authority, that sort of thing. But a lot of that legislation really gets going in the early-mid, some of the late seventies. So, you're in the legislature, but you're not on the water-related committees.

DH: I'm not on the committee itself, but, of course, it's an issue out, and so I sort of follow it because we care. The point is, the thing that always came up is local control You go out to Western Kansas. You talk. It's local control. School finance in '92, after that passed, the counties out there were in a secessionist movement. Here’s where Don Concannon, not the other Concannon [Jim] you're talking about, Don and his son [Heinemann note: Chris, Don’s attorney son took a leading role in the secession movement.]
were instrumental. They had a vote in a county out there: “do you want to secede?”, and it was about 1,100 to 90 for secession.

So local control means a lot, and that's what I remember being the issue. They always did not like people from Topeka, outside of Washington, telling them what to do. So I think the GMDs, they came into existence when they were starting to understand, “You're mining that water. It's not going to be here forever. So how are you doing to control it?” Do you want the State to

control it, or do you want to control it? And I think they saw the GMDs as the better option. Of course, you can get into the specifics about how it was set up, who's in charge, and who does what. But I think they saw that as a way to start to control their own destiny out there because water was being mined.

RB: So as the legislative process generated the GMD Act, and the other legislation that came along and reflected that concern about local control, were you involved in the development of that legislation? Did you just watch it and get involved when your constituents asked you to? How involved were you in that process?

DH: I was really not personally involved in it. I say that because I was not on any committee that was actually [assigned the bill]. Obviously, every legislator's vote counts. You have conversations with people. As a person from Southwest Kansas, Garden City, I'd often have someone say: "Well, you're from out there. What do you think about this?" In that way, it sort of was how you can help the process. I don't recall any severe animosity towards the setting of GMDs. Usually if you're not involved, people tend to not to become interested in stuff, but they definitely were interested in western Kansas and trying to control their destiny.

RB: I'm trying to sort of decide whether to proceed chronologically here. I think one of the things that you really bring of huge value to their conversations, Dave, is that perspective of having grown up and lived and represented southwestern Kansas for as long as you did. Then you moved to Eastern Kansas eventually, but you still, I think in the minds of most of us, are certainly strongly associated with that Southwestern Kansas part of the world. How effective did that idea of local control work? Let's talk about southwestern Kansas. It's such an area that you've touched on already. It is so important. Center pivots really explode down there, and they go into the Sand Hills, places that generally haven't been cultivated until center pivots come along. They suddenly grow all this corn; they develop this monstrously big feedlots, and then they get big [meat] packing plants that you don't see any place else in Kansas other than southwestern Kansas.

So, if you want to talk about water issues and where the heart of the matter is, those counties, Finney is one of them, there's several of them obviously, but southwestern Kansas is where it's at. So, given all that history, did that idea of local control, did it work, did those GMDs, do you think looking back on it now, did those GMDs, did they deliver what people in that part of the world wanted to deliver?

DH: I really can't answer that because I think everybody can look at it and see how they would like to answer it. If GMDs could have set it up so that we could be at sustainability today, which I think is what people want to look at, that would have been great. But just the nature of it, that would not have happened instantly. They were able to start regulating it. I remember often the debate over metering wells. Again, that's my private right. We have Posse Comitatus people out there. Hopefully, they weren't part of our irrigation community.

Again, too, we get into the court cases. Once the GMDs were set up, what authority do they have to regulate and actually try to control and conserve water? There was a key case, F. Arthur Stone, I finally looked at that. I never knew the plaintiff was F. Arthur Stone, [Heinemann note: I personally knew him as Art, not as F. Arthur. His son was doing most of the farming operations at this time.] but he had gone out without a permit or anything put down two wells and put two sprinklers up in the Sand Hills and then later tried to get permission for it.

Well, that was denied. They went to court on it. [After] reading the case, I basically knew all the parties in it. The plaintiff actually, and his attorney, who actually ran against me once for the State House, and most interestingly, Justice Herd, Harold Herd [a former State Senate Minority Leader] from Coldwater, Kansas, that's where he came from, wrote the opinion, which I found interesting, a great opinion. Basically, it reaffirmed the right of the Water Appropriation Act to control, and they have since put in criminal penalties, and the Supreme Court said, "You don't have a right to do that."

I think that started—the GMDs then had some authority that they could clearly do things. You get into the policy problem of what did the boards did. I could argue that they should have gone a lot faster doing something, but then how far do you push that, if they're trying to do it themselves? Then what's the alternative? Do you have the state come in and tell them you can't do it? Then you've got a political firestorm.

Nowadays, the way the politics have changed, I'm not sure just exactly what you could or couldn't do. Back when I was serving in the seventies, eighties, there was a lot of bipartisanship work. I mean, water was not necessarily a Republican or Democrat issue. As a political issue, it was just how it was observed at home. Probably not a clear answer here. I think we could have done more, but how bad does it have to get before you could come in with what could be seen as an extreme answer?

RB: Right. It's a difficult proposition. On the one hand, people want local control. On the other hand, those GMDs are managed by boards of directors that are elected by landowners in the GMD who have a vested interest very often in continuing behavior that's been economically profitable to them in the past. So, to expect them to come in and make massive changes in water use, I think as you look back on it, it almost feels like a prescription for failure, if those are what the goals are.

DH: So, you get into the question then of how do you put into statute or law a magic formula to put people on? At Equus Beds, they had a good mix, a municipal irrigator, and the folks involved in it, with people as I understand that really were wanting to address the situation. You've got the possibility, like you're saying, you've got to maybe be in control by a certain group that really don't want to do those certain things. Local control. Everybody at the State House is for local control unless they see a local doing something they don't like, which is just crazy, but we've seen a lot of that where the legislature passes laws saying you can't do things in farmers markets because it might affect a Pizza Hut somewhere else because they just don't understand local.

Even in the school system, for instance, the State Constitution gives every local board of education local autonomy. During this pandemic, you could see some boards by unanimous votes say, “We are not going to mask in our school.” There were a lot of those out around the state. On the other hand, you had other school districts that said, “We're going to be very safe. We're going to be closed. It's going to be virtual.” What is local control? It doesn't usually always mean what is in the best interest because the perspective of the person making that judgement may be different.

RB: Speaking of different perspectives, the other two Ogallala based groundwater management districts or particularly the one in northwestern Kansas basically have taken more steps towards conservation where if you were going to ask me today what I associated with the GMD in southwestern Kansas, it's the idea of water importation and the aqueduct. There's clearly less of a priority towards conservation and more of a priority towards supply.

Politically, southwestern Kansas feels to me like a very different place than northwestern Kansas in terms of belief in local control, in all sorts of ways. I assume, is that a fair characterization, do you think?

DH: I think it is. Sure.

RB: Why is that? Why is southwestern Kansas so different?

DH: If I was an expert on that, I could probably write a book. I think it's the demographics of how southwest Kansas evolved. It had an unplenishable, a big source of water. It wasn't until years later I learned about how that aquifer out there, while it's being mined, is different in so many different ways. But, as you well know, the deepest portions are in certain areas of southwest Kansas. As you go further north, that's probably where you've seen more of the wells shut down because they effectively used what they could. It may have been because southwest Kansas for so long was able to do so much pumping because you could keep doing that. What was it, we have a twenty-five year or a forty-year idea as far as how we're going to draw it down? I mean, the plan was to mine it. I would suppose once you get into that mantra of mining it, they're used to it. So, if you have been using it, you're going to see the cutbacks in a very significant way if you suddenly flip the switch and go to conserving it. I think even up in northwest Kansas, when they were talking about cutting down the 20 percent, the LEMAS [Local Enhanced Management Area]. They already were in a situation where they knew they were in trouble, and so they were more willing to try it.

I recall being on a field conference several years ago, and we were in Scott City, I think, or close by. Maybe it was Lakin. [Heinemann note: Leoti is the town in Wichita County.] Anyway, and we were in on a meeting with some of the folks out there that were trying to think how they could set up something like that [LEMA], but politically they had problems. Unfortunately, sometimes it's only when you run out of water, so to speak, when the well runs dry that you realized you could have more effectively addressed the situation earlier.

RB: In some respects, southwestern Kansas though has dealt with that issue of declining resources, not only in terms of Ogallala but also in terms of the Hugoton natural gas area, which saw significant declines in productivity over time. The mining economy, while not as visible because it's all in the subsurface and doesn't—nobody can see it taking place, southwestern Kansas is almost a poster child for that boom time mentality based on natural resources that since have been depleted. Is that a fair summation, do you think?

DH: I think you could look at it that way. Actually, I recall when they came in with the infield drilling on the Hugoton field because they weren't extracting it fast enough. I remember the southwest Kansas royalty owners were in favor of that. But, you know, a resource that originally was 436 PSI in a full Hugoton field is now, once touted as the largest gas field in the world, is now basically nonexistent and even the Pomona below it.

I didn't ever think when I was at the KCC that we'd be looking at documents where they were asking [for permission from the KCC] to actually suck the gas out because the pressure wasn't there.

RB: In all the campaigns that you went through, you would have gone through a fair number, did water come up as an issue in that process?

DH: It never really did. I think when you talk about political issues, it usually has to be something that people feel is immediate. Unfortunately, the campaigns we have, what is the hot issue of the day? Is it now getting your COVID shot? There are a lot of other issues that are just sort of on the slow burner, and that's why I appreciated during the legislative process certain individuals, legislators that would actually work diligently on the other issues.

If you talk about energy issues, Carl Holmes, who you've interviewed, comes to mind. Carl was just always wanting everybody to understand it and actually try to get ahead of the curve.

RB: But it may be that the very nature of water level declines as a long-term issue, it's not the sort of issue that unless we have a—if we have a really significant drought, everybody worries about water. But as soon as it rains, they move on to other things. Ogallala was one of the slow-motion crises, if you will, that doesn't lend itself to a politician solution.

DH: And that gets back to why the Water Plan was so important way back when we were discussing it. The efforts of [governors] Carlin and Hayden and Bennett to get it to the forefront to actually initiate a planning procedure, a planning process because it forces you on an annual basis now, to actually look at it. Now you can ignore it, but at least you get some planning, and that's how it sort of ended. When I got the Chair of Energy, we needed a State Water Plan, we needed a State Water Plan, and we were pushing for it, and I think my last year there, which was actually my second year before I became Speaker pro tem, we passed a bill that basically put the Water Office in charge of doing the plan rather than the Water Resources Board, and in that act, we required that biennially they submit a report to the legislature, and we also had an

extensive list of everything that was supposed to be put into the plan, and it was just as I got off the committee in '85, I think in February, it was very quick, the one sentence water plan was passed, which basically was that this will be done annually, rather than just basically a huge enactment of the legislature. The Water Plan would be looked at on an annual basis to see what was presented. The idea that it would be a continuous process rather than, “Okay, we just did it, and it goes on the shelf. We forget about it,” and then you get into the question of how often they look at it.

But one of the key things was, if you put a plan out, it would have had a whole bunch of stuff in it, and a legislator could find fault with this part or different legislators with that part, and so you try to get a critical mass to pass it, it wouldn't happen. That was the reason why when we updated our state constitution in the early seventies, we put [the proposed amendments] out a section at a time because the states that put out a whole brand-new constitution during that era, they couldn't pass them because enough people didn't like parts.

So, this way when it came before the legislature, here's something. Then you also had to respond to it. I remember minimum streamflow. That was a continuous thing, adding those. There were certain programs where the state would have to spend some money. Okay. Then you're looking at that issue. How are you going to get the assistance? It's a continuing thing. We can fault ourselves in how we're not looking at it, but the process I believe was improved through the work of Carlin, Hayden. Those were issues that they worked on together.

And particularly when you get into funding it, the funding of the State Water Plan itself was a laborious process. Everybody remembers Gus Bogina coming in at the last minute to cast the 21st vote, but there was a lot of woodshedding going on behind doors, trying to get the funding for the State Water Plan. The State Water Plan, oh, it's a great plan, everybody loved it, but the other guy had to pay for it. And that’s always been the problem. Who's going to pay for it?

Another thing at the KCC I got involved in that actually dealt with water quality in '96 was unplugged wells, orphan wells. There was no magic source to plug them. So, we spent that session, too, coming up with the well plugging act, which I think they're going to review again this session. I'm not sure of the reasons. But we found a way to put in, I think about $1.6 million back then, but it was a share—the oil industry paying part, the state putting in some general fund money, and ironically, the state's mineral royalties that we get from the federal government was also put into that as a part of it.

I never knew where those mineral royalties came from. There was a big chunk from western Kansas. When I looked, here was Finney County. I said, “We don't have any federal land there.” But I remember doing abstracts. The southern parts of the county, the federal government gave the land to farmers as long as they planted trees because back then there was a theory that if you planted trees, you would have more rain. Apparently on those lands, the federal government had retained the mineral interest so that when oil and gas was developed, Kansas got those royalties. And they were dedicated by law in Congress that they should be spent on areas related to like on oil or gas problems.  So, we got that money.

So, we were able to put something together to start the process of protecting groundwater. At the KCC, they'd get a call from someplace down in Southeast Kansas. Well, they were making a parking lot for a new Walmart someplace, and they just found a whole bunch of unplugged wells. So, the Conservation Division, what they did was important.

RB: You mentioned minimum streamflow. Let's go back and talk a little bit about the Ark River because the Ark River goes right through the heart of Garden City, southwestern Kansas. At what point do people start to become cognizant of lack of streamflow and the river and how much do they care?

DH: You notice it if the river isn't flowing. I was in high school. I graduated in '63, but it was a common event. 3.2 beer was available back in those days. There'd be a keg party at the gate. Where's the gate? The gate's located down at the Sand Hills by the Arkansas River that actually flowed. While it wasn't 100 percent of the time, it was most of the time. I've actually got a picture [taken in the 1880s] a friend of mine gave me that had been taken from the top of the Windsor Hotel looking south, and you see the Arkansas River flowing. Another irony, you don't see any trees around it. They all came later. That's a phreatophyte, if I say that word right, issue that is part of our Ark[ansas] River setting.

Anyway, talking about the Arkansas River, when I was there originally in '58, '59, the river was there. There was streamflow, trees all around it, and that slowly went away, and we've had over ten years go by where there was no flow at all at Garden City, period. That's also when the ditch companies in particular became interested in the fact that Colorado was not releasing water like they should. So, the hot button there came to me when they knocked on my office door and wanted to know what the state could do so that Colorado would start sending the amount that they should.

As you well know the history, think back to about 1907 and then later in 1943, there were two federal cases because the states have to sue each other in the US Supreme Court. That's their only venue. And at the conclusion of the '43 suit, I believe it was 1948, the Kansas-Colorado Arkansas River Compact was put together to more or less try and regulate how much each state gets. It works well so long as you've got water. Apparently, they built a dam or something at Trinidad that had something to do with how much water went into the John Martin Reservoir, which was the key reservoir as far as them dealing with it, but I remember I had Carl Bentrup, Ed DeKeyser, they were on the Ark River Commission as the representatives from Kansas, and they kept complaining about how they weren't getting their fair share. They'd say, in Colorado they'd show up at a meeting and Colorado had about a half-dozen lawyers there, and Kansas would be lucky to have one. Colorado is a notorious state as far as water law. They have water courts. They have law firms that specialize in it. They were also allegedly notorious for moving water around on paper to put in places where some people felt it wouldn't.

Anyway, that's what started my interest in getting the state involved in the Arkansas River lawsuit with Colorado. Well, the first shot of funding didn't go through. I think the next year, we

started getting some funding into the attorney general's office so that we could finally see about initiating the suit, and finally we got the suit going and hired a great lawyer, I think in New Mexico is where he had been involved in the process. By this time, I was now Speaker pro tem, not on the Energy Committee. But when the budget was presented to our Ways and Means Committee, there was a request for $750,000 to continue the lawsuit. Governor Carlin didn't put the money in, which sort of surprised and shocked me. I probably felt like Charlie Angell. He was influential because he was Vice President of the Senate, and I was fortunate enough to be the Speaker pro tem.

So, I immediately set about getting that money back in. We proceeded to set up a big meeting in the old Supreme Court Chamber with the leadership of both Houses with the Attorney General's office with Dave Pope and all of the key players. We even had our attorney come in to make the case that this was a very important lawsuit that we needed to proceed with. If you were thinking about not doing it because there were some ditch companies out there concerned about some water rights, this was one thing else.

The one thing that Attorney General Stephan, who was very supportive of this, made clear is Kansas basically has no strong water law background in the process of our water law. We needed to develop those skills. He also indicated that this is a lawsuit that's going to last a long time, but water is coming to be in more and more states an issue, particularly as it affects other states. He was predicting, which did happen, with the Nebraska lawsuit later, that we are going to have more problems with other states in how we deal with the legal issue of what each state is entitled to.

I had a very conservative Ways and Means Committee to deal with. In the process, I went down and I spoke to Governor Carlin. At the conclusion of it, he agreed that if I could get the money in, he wouldn't veto it. He was seeing that there was a good reason why we needed to continue that lawsuit. So that process continued.

Then another interesting thing happened. Since I'm in Garden City, people seemed to knock on my door. For a couple of years, this real estate agent from Colorado would knock on my door, and he would ask if I could find out if Kansas would be interested in purchasing water rights from Colorado farmers. That idea really intrigued me because if you had a right like that, it would be in perpetuity, and it would obviously be something that would be beyond what the state would have been entitled to. In visiting with Dave Pope and others, we needed to have an idea of whether that could be successful or not.

So, I was able to slip in an appropriation for about $25,000 in that session, and we had a study by some legal experts, and their conclusion was, they were in accord, that you would end up in protracted litigation with Colorado obviously, but at the end of the day, there was a strong likelihood that legally, under the US Constitution, the State of Kansas could own water rights from Colorado.

We never did proceed with that. One of the reasons it was being offered back then was that the farmers along the ditches in Colorado were up in years. We had had bad economic times, and this was one valuable resource. But we didn't pursue it because you would not want to mix this up in the lawsuit. Colorado would have been an expert at just taking this as some tangential issue. So, it never did come to fruition.

I remember on a separate field conference visiting with [Burke] Griggs, an attorney for the Board back then, and he had no knowledge that this study had been done, which we had kept confidential. I gave him my only copy of it. I wish I'd kept a copy. But visiting with him later, I asked, “Was that of any value?” He said, “Yeah.” There was a lot of stuff in there that helped him with his litigation with the State of Nebraska.

So, I'm running this long story here, but the Arkansas River is very important, and the folks did notice that it was disappearing.

RB: But the initial motivation that brought it to people's attention was really the ditch companies that weren't getting their fair share for ditch irrigation as opposed to, say, the environmental community or just people who noticed that there was no longer water in the river.

DH: Well, as far as my perspective and who was knocking on my door. I'm sure the environmental people—as far as the environmental people, I've still got to see if there's a picture anyplace, but Bob Stephan came out one summer, and we had a canoe and we were canoeing in the Arkansas River down by the bridge, except there was no water in the river.

RB: Does it bother you to go out there and still see—there's been the lawsuit, and yet the vast stretches of the river between Garden and basically those ditch diversions and let's say Great Bend remain dry. When I go out and talk about that issue, people sometimes back here in eastern Kansas express surprise because they thought that that lawsuit solved that problem.

DH: Well, the lawsuit didn't solve the problem. There never would have been that much water coming through, I think, to have continuous streamflow because the alluvium right next to the river—I mean, as long as you're doing pumping and irrigating out there, that also causes the problem.

Actually, I remember canoeing for real in that river once with my daughter many, many years ago when we actually had some streamflow, and it was—I wish it was happening all the time. Later when they had sufficient flow up at Syracuse, they'd have their tank races or bathtub races, whatever they were. That's the whole problem. You go up to Lake Scott. That's the closest one. By now they do have the Horse Thief Canyon Reservoir, which is a great place, but it's not like where I live here in Topeka where in minutes, I'm in a big reservoir.

RB: Basically, that river, in order to have sustained streamflow, you would have had to buy out water rights either in Colorado or Kansas basically in order to allow streamflow. Today, that proposition would be so expensive that you don't ever really hear anybody talk about it.

DH: No.

RB: Hey, Dave, I've got a question that I think you're in a position to answer may be better than almost anybody else. What is it about southwestern Kansas that people in eastern Kansas understand the least? Do you understand my question? That's a very different part of the world. I've spent some time out there. Most of the people I've talked to in eastern Kansas, they might have driven through Garden City a few times on the way to Colorado, but they don't know the place. What are their misconceptions about that part of the world? What don't they understand that you wish they did?

DH: Maybe because you've got a lot of great people there, I still consider myself a Garden Citian, and it's been twenty-five years since I've lived there. It is unique. I'm going to point this out in a different way. The Garden City community has always been a community of great diversity, but it's also welcomed more diversity. The Ford Foundation did a study out there. During the Vietnam War, we had two waves of refugees coming from Southeast Asia. One was more or less the poorer ones, and another one, they were better off. Prior to that, we had had Hispanics that settled out, particularly when we had sugar beets. The Garden City High School's newspaper is called The Sugar Beet [Heinemann note: The oldest high school newspaper in Kansas, est 1910], and I don't think the kids today would know where it got that name. Fifty years ago or more, there used to be sugar beet production there, and there used to be migrant workers coming through that worked in those sugar beet fields. We had all sorts of labor issues at certain times there. Then we had the packing plants. Of course, they needed workers. There's a huge trailer parker right on the east side of Garden City. There basically because Holcomb was very effective in keeping development out because of the IBP plant that was close by.

I think the story I'm making here, the Hispanics settled out earlier. Later on, they became the leaders of the town. One of them once was saying, there was this outside organizer in his office saying [he wanted to organize the Hispanic community.]—and he looked at him and he said, "Why would we want to do that? We're already in the School Board. We're here. All you want to do is make money for yourself." So, he kicked him out.

Then we had the wave of the Southeast Asians, and the study showed that there really wasn't any Anglo animosity going on. More of it had to do with the competition between jobs with the Hispanics and [southeast Asians]. Since then, we've had a group of Muslims. In fact, you recall the incident where these white supremacists were going to bomb a bunch of these Muslims. They lived about five blocks from where I lived in Garden City. There's a tennis court there that I was driving by when visiting a couple of years ago. There were about a hundred people there, and they were actually Muslims doing religious practices there.

But the community itself has always tried to work with them. There are certain leaders in the community when they come in—the city manager would oftentimes have monthly meetings with them, the Mayor would. They tried to work to assimilate to help people. It's just ”Strangers in Town” is a video that was done a few years ago that I think speaks strong words. At least the Garden City community is an inclusive community. You're our friend. You're always going to have a few of those who are the white supremacist type, but Garden City has always been to me an example of how to do it differently.

The schools, when we had the huge numbers of kids come in with the beef plant, we all had to have new schools. And the business community in Garden City always supported those bond issues. I've talked to several of them. They said, “Well, of course. We have done well because of that business coming in, but we also have a responsibility to make sure that we give back or take care of them to make them a part of our community. I guess maybe if there's any answer, the vast majority of us feel that we're part of a human community that we really want to experience with others.

RB: It's an incredibly diverse place. I'm not sure that people in eastern Kansas sometimes appreciate just how diverse it is. That might not seem to connect to why we're having this conversation. If it weren't for that water, those packing plants wouldn't be there. If it weren't for the water, the corn wouldn't be grown. If it weren't for the corn, the feedlots wouldn't be there. If it weren't for the feedlots, the packing plants weren't there, and the packing plants are one of the big reasons for that diversity. You put all that together, it really all comes back to why. What do you think the future is for that area, which, you're right, certainly the Ogallala is inequitably distributed? There's more under southwestern Kansas than the other parts of the state. Nonetheless it is a finite resource. There's no question that parts of southwestern Kansas are seeing declines. What's the future for that part of the world?

DH: The future is going to be how they continue to develop management tools for dealing with the depleting aquifer until they can attain what could be called sustainability, however you want to define it. It's not going to disappear overnight like you turn the lights off. People will have time to do some adjustments. The question will be how they might want to control or set up a way of controlling the water usage to help with that. That will be a big political problem.

As far as how and what water is there to use, you're always going to have that water there for the priority use of people, but then where do you go next? Livestock, again the feedlot operations will probably be next on the list. Irrigation because it uses so much water is probably going to be the area where the lack of water is going to have be dealt with in different ways.

I've seen cornfields in southwest Kansas that are non-irrigated. I would never have believed sixty years ago I could see anything like that because southwest Kansas is made with irrigation and corn and the grains. So, it's cheaper to have the feedlots right next to the corn. That's why, if you've got a feedlot, it's a lot cheaper to have the packing plant next to the feedlot, which is why it all developed, and then, of course, you have your ancillary stuff.

I do not see it disappearing quickly, but I think they will have opportunities to try and handle a depletion until they can come up with what the community out there feels is sustainable.

RB: That might be a good place to stop, Dave. I think those challenges are huge and difficult, but you talked about voluntary reductions up in northwestern Kansas, the LEMAs, the local enhanced management areas. There was recently one of those in Wichita County, which is not in southwestern Kansas but it's getting an awful lot closer. That day may come, it seems like. It's going to come one day or another. We're either going to band together and voluntarily reduce, or we're going to run out of water to supply really large irrigation. We're going to get to a similar place, one way or another. It's just a question of how you get there.

DH: And some folks have ideas. It's just the timing of those ideas and how they could be implemented. How bad is the crisis? You could do more extreme things during a crisis if it's actually perceived as a crisis than if you're not seeing any problems. It's just human nature, fortunately or unfortunately.

RB: Well, I appreciate your willingness to talk about this, Dave, because you've had a long history from a part of the world where water—everybody's cognizant about—an awful lot of work goes on out there as a result of water. I was just out there last week, measuring water levels. There's this new yogurt factory there in Garden City. There's a new water park. It's hard not to look around there and not see all the—

DH: Our old world's largest free municipal concrete swimming pool where I swam as a kid. Actually, historically before they built that pool there, it used to be located where there was a cattle-dipping pond.

RB: Really? You do go back a long ways, Dave! Farther than I thought. [laughs]

DH: I wasn't there then.

RB: Well, I appreciate the conversation.

DH: Always.

RB: I like to bring in your perspective. It's really valuable. I think it's good to visit. So, thank you very much.

DH: Thank you, Rex.

[End of File]