

**Report of the Kansas Commissioners
to the
BIG BLUE RIVER COMPACT ADMINISTRATION
at the
2010 Annual Meeting
Beatrice, Nebraska
May 19, 2010**

1. Administration Changes

In July 2009, Governor Mark Parkinson appointed Joshua Svaty to serve as Kansas Secretary of Agriculture replacing former Secretary Adrian Polansky, who is serving as State Executive Director of the USDA Farm Service Agency in Kansas. Secretary Svaty is a fifth-generation Kansas farmer and previously served three terms as a state representative in the Kansas Legislature. He is a strong advocate for prudent management of water resources.

2. State Budget

Kansas state government revenue shortfalls continued this year totaling nearly \$1 billion, necessitating substantial budget reductions and enactment of a one-cent increase in the sales tax through 2013. The Kansas Department of Agriculture, Division of Water Resources is operating with about one-quarter of its positions vacant and over \$1.5 million in reduced funding compared to the beginning of fiscal year 2009. DWR has had to discontinue or reduce some services, substantially limit travel, and defer replacement of old equipment.

3. Legislation

A number of water resources bills were introduced in the 2010 legislative session including:

- a) SB 316 (nonuse in closed areas) was enacted. It specifies that a groundwater right supplied by an aquifer closed to new appropriations by regulation or order of the chief engineer, and where means of diversion are available to put water to beneficial use within a reasonable time, shall be deemed to have due and sufficient cause for nonuse and shall not be deemed abandoned.
- b) SB 510 (conservation as a beneficial use of water) was not worked. It would have established “conservation use” as a new and distinct beneficial use of water. The owner of a vested or certified water right in good standing would have the option of changing his water right to conservation use – and the option of changing back to the original use or another use. Water rights in conservation use would be protected from abandonment.
- c) SB 558 (securing the interstate water litigation fund) was not worked. It would have prohibited transfers from or use of the interstate water litigation fund for other purposes.
- d) SB 574 (replenishing the interstate water litigation fund) was not passed. It would have established a schedule to transfer general funds into the interstate water litigation fund from 2012 through 2017 for use in monitoring and enforcing interstate water compacts, settlements, judgments and decrees. However, a proviso in the fiscal year 2011 appropriations bill authorizes the Attorney General to use state general funds and bond proceeds for interstate water litigation expenditures.

- e) HB 2283 (rural water district annexation) was enacted. It adds requirements governing the process of rural water district annexation by a city.
- f) HB 2428 (reservoir sustainability) was not passed. It would have authorized increased levels of state funding for stream bank stabilization projects, simplified procedures for securing state-controlled storage for water supplies in federal reservoirs, and facilitated renovation of multipurpose lakes for flood control, public water supply, and/or recreation.
- g) HB 2493 (dam hazard classifications and inspections) was not worked. The initial language of the bill would have repealed a law requiring owners of high-hazard or significant-hazard dams to retain a professional engineer to inspect the dams on a three-year or five-year cycle, respectively. An alternate version of the bill would have exempted from regulation dams impounding less than 100 acre-feet at the spillway and any watershed district dam regardless of the volume impounded.

4. Regulations

- a) Water resources rule changes in the past year included:
 - i. Water Rights Conservation Program: Amended to cease accepting applications after December 31, 2009. The agency is proposing a better long-term solution (see SB 510 under Legislation, above).
 - ii. Due and sufficient causes for nonuse of water rights: Amended to clarify the existing adequate moisture criteria, add new criteria for nonuse in closed areas, and add requirement for maintaining functional diversion works for most due and sufficient causes.
 - iii. Water flowmeters: Amended to require meter seals that prevent altering totalizer readings unless parallel water records are kept (simplifies requirements for public water suppliers).
 - iv. Fifteen acre-feet exemptions: Amended in GMD 2 to prevent granting exemptions in combination with other water rights if the combined total would exceed 15 acre-feet. Amended in GMD 5 to require offsets in designated stream basins and 1-mile spacing throughout the district.
- b) Water resources rule changes in process include:
 - i. Impairment investigations: Proposed amendments will require groundwater complainants to demonstrate that their well and pump system are adequate; establish a formal process for GMDs to provide input and assistance for impairment investigations within their boundaries; more specifically detail the steps involved in impairment claims and investigations; and establish procedures for instances when impairment is found to result from regional lowering of the water table.
 - ii. Stream obstructions and channel changes: Draft amendments will update, clarify and streamline the criteria for approval of stream alterations.

5. Compact Litigation

- a) Arkansas River Compact
 - i. Colorado Use Rules: After months of negotiations, last summer Kansas and Colorado reached agreement on Colorado's use rules that dictate required replacements for river depletions due to pumping high-capacity irrigation wells

along the Arkansas River from near Pueblo, Colorado to the Colorado-Kansas state line. This agreement provides for a continuing process to set the level of replacement of these wells annually.

- ii. Litigation concluded: In August 2009, after reaching the Use Rules agreement, Kansas and Colorado made a joint filing with the U.S. Supreme Court to officially conclude Ark River litigation against Colorado. This litigation spanned more than two decades, starting when Kansas filed suit against Colorado in 1985 to enforce the terms of the compact. The case resulted in four opinions of the U.S. Supreme Court. Among other things, the Court approved a final decree which specifies how future compliance by Colorado will be determined and required Colorado to pay \$34 million in damages to Kansas for past overuse of water, plus \$1.1 million in legal costs.
 - iii. Updated operating plan: At a special meeting this February, the Arkansas River Compact Administration adopted updates to the 1980 operating plan for John Martin Reservoir operations and accounting.
- b) Republican River Compact
- i. Arbitration over Nebraska's noncompliance in 2005-2006: The arbitrator issued his final decision on June 30, 2009. The states each accepted and rejected parts of his decision. This concluded the nonbinding arbitration required under the 2003 final settlement stipulation.
 - ii. Arbitration over Colorado's proposed compliance pipeline and augmentation plan: Arbitration is ongoing regarding Colorado's proposal to pump groundwater and deliver it to the North Fork Republican River for credit against its excessive augmentation plan depletions.
 - iii. Arbitration over Nebraska's crediting issue: Arbitration is ongoing regarding Nebraska's concept involving water credits for damage payments.
 - iv. Kansas petitioned U.S. Supreme Court to enforce settlement terms: On May 3, 2010, Kansas filed suit in the U.S. Supreme Court to enforce the final settlement stipulation with regard to Nebraska's noncompliance in 2005-2006.

6. News from the Big Blue River Compact Area in Kansas

- a) Disaster declarations: During the past year there were five federal disaster declarations in Kansas related to severe weather, three of which included all or part of the Big Blue River basin in Kansas:
 - i. June 25, 2009: Severe storms, flooding, straight-line winds, and tornadoes
 - ii. December 23, 2009: Severe winter storm
 - iii. March 9, 2010: Severe winter storms and snowstorm
- b) Watershed restoration project: An ongoing project funded through the Kansas Watershed Restoration and Protection Strategy (WRAPS) program is designed to improve water quality in the Lower Little Blue River and Lower Big Blue River through implementation of best management practices including livestock waste management systems, water retention and sediment control structures, and riparian buffers. These stream reaches are currently impaired by fecal coliform bacteria.
- c) Washington County RWD well field project: For several years the state has been considering a project to upgrade the low-head dam in the Big Blue River at Marysville to improve the intake works for Washington County Rural Water District

No. 1. However, a less expensive alternative has been found. The 2010 appropriations bill approved by the Legislature includes a proviso for enhancing the RWD's well field instead of upgrading the dam.

7. Assignments

If it pleases the Chairman, Kansas' committee assignments remain the same as in 2009 except Katherine (Katie) Howard replaces Lindsey Douglas on the Water Quality Committee. Ms. Douglas no longer works for the Kansas Department of Agriculture; she currently works for the Kansas Department of Transportation. Ms. Howard is KDA's Environmental-Lab Issues Director.

8. 2011 Annual Meeting

Kansas looks forward to hosting the 2011 and 2012 annual meetings of the Big Blue River Compact Administration. We propose to hold the 2011 annual meeting on Wednesday, May 18, 2011 in Marysville, Kansas. We will provide advance written notice of the meeting including the specific location, start time, and proposed agenda.