

**Kansas Water Congress  
Winter Conference  
Monday, January 31, 2011  
Hayden – LL Conference Room**

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**Welcome & Introductions:** Sean Miller, Capitol Strategies, LLC

**Sec. Dale Rodman, KS Department of Agriculture**

- We were joined by the new Secretary of Agriculture Mr. Dale Rodman.
  - o Mr. Rodman detailed his background in international agribusiness
  - o Cited his desire to drive people and business back to rural Kansas and the key role that water will play in the ability to accomplish this.

**Is it time to revisit the KS Water Appropriations Act?**

- Prof. John Peck, University of Kansas School of Law
  - o Gave a brief history of water law within the State of Kansas
    - Basic Appropriations philosophy was set in 1945, but think of the technological changes in the past 65 years. Is it time to reconsider our appropriation philosophy?
      - Law was the result of a Governor’s Task Force in 1944
      - Even as early as the 1960s we knew we were using water at a much faster rate than it could recharge in the aquifers.
    - Most major changes to the law have been in reactionary to solve an existing conflict
  - o Hypothetical Options seen in other Jurisdictions
    - Water as a “human right” rather than a personal or property right
    - Maximizing Sustainability: Issue water ‘licenses’ on a temporary basis and re-evaluate/adjust at future intervals
    - Outright rejection of water rights as a property right
  - o Perhaps it is time for a new Governor’s Task Force to determine the future of Kansas Water Law?
    - Many of our provisions are based on legal fictions.
      - Colorado Compact: based on a legal belief that there is 15M a-f of water in the Ark basin every year. Really more like 10-13M af in recent years.
        - o Industry (particularly agriculture) was based on a long term mining of the groundwater resource. This may not be possible anymore.
          - Possible to adjust the law to recognize technology, potential climate change, allow for long term drought consideration?
        - o Should water rights be perpetual, or should they have a “lifespan”?

- If a new study is commissioned it should NOT be based on any preconceived notions that change is needed, because it may not be.

### **Division of Water Resources Update**, David Barfield, Chief Engineer

- Overview of WRCP
  - Ended in 2009 due to budget reductions – existing contracts will be honored
  - Will introduce a reformed fee funded WRCP this legislative session
- Due & Sufficient Cause
  - Sub SB 316 – Adds being in a “closed area” to the due and sufficient causes for non-use.
- Conservation as a Beneficial Use (2010 - SB 510)
  - Feel that the issue has real merit, but the issue was not vetted properly.
    - Will not introduce legislation in 2011, but will continue open discussion with stakeholder groups.
- IGUCA Update: Hearing Provisions
  - New hearings will be two-fold
    - 1) Do circumstances exist that warrant an IGUCA?
    - 2) Is it in the public interest to have an IGUCA?
  - IGUCAs will be reviewed every 7 years.
    - IGUCAs cannot be expanded through the review process but may be relaxed

### **State Conservation Commission Update**, Steve Frost

- WaterTAP
  - Approval of 21 total bids for \$2.56M and 5900a-f of water over the course of the program (in Prairie Dog Creek & Rattlesnake Creek basins)
    - The pilot program ends on 6/30/12
- Conservation Reserve Enhancement Program (in the Upper Ark region)
  - 65 contracts on 84 water rights.
  - Permanently retired 22,162 a-f from 93 wells over 10,750 acres
    - Amount of water retired to date is approximately the amount used by Garden City or Dodge City in a year.
  - State Funding: \$650K – Federal Match: \$19.4M (almost a 30: 1 match)
    - Governors FY’12 recommendations call for remaining funds to lapse in FY ‘12

### **Kansas Water Office Update**, Tracy Streeter & Earl Lewis

- KS Water Authority Legislation: (full description available at [www.kwo.org](http://www.kwo.org))
  - 1) WaterTAP – permanency of the current pilot program
  - 2) Easements under navigable rivers
  - 3) Kanopolis irrigation district – purchase of storage
  - 4) Dam Safety & Rehabilitation
- Growing concern about invasive species
  - Asian carp & zebra mussels in particular

- Surface Water Issues
  - Kanopolis – Irrigation releases
    - Irrigation rights have no access to storage within the reservoirs
    - This would allow, only at Kanopolis, irrigators to purchase access to the storage to maintain necessary flow to satisfy downstream irrigation rights
  - Easements:
    - Would allow KWO to grant limited easements on the 3 navigable rivers.
    - DWR policy requires permit for structure in the river, must show access to property (state property) where structure is to be placed/constructed
      - Requires an easement to place the structure on state property and this can only be granted through legislative action currently

Adjournment & Lunch