

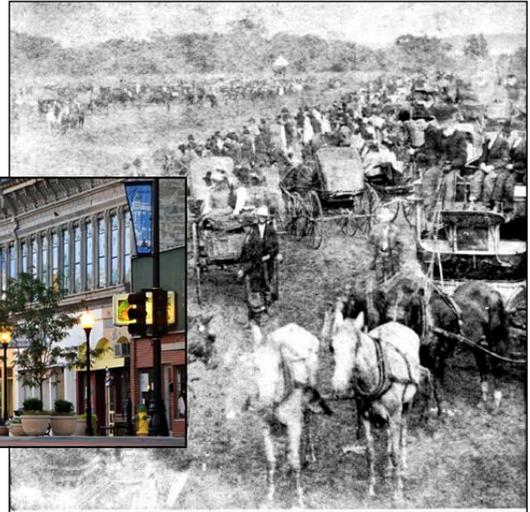
**Report of the Kansas Commissioners  
to the  
KANSAS-OKLAHOMA ARKANSAS RIVER COMMISSION  
Annual Meeting – Arkansas City, Kansas  
July 28, 2010**

**Welcome**

The Kansas commissioners welcome our guests from Oklahoma and hope you enjoy the visit to Winfield and Arkansas City (pronounced “ar-kan-zus”, not like the state of Arkansas). Ark City was incorporated in 1872 and is situated four miles north of the Oklahoma border at the

confluence of the “wide” Arkansas River and “swift” Walnut River in Cowley County. A key event in the city’s early history was the Cherokee Strip Land

Run of 1893, when 8 million acres of fertile ranch and farm lands were claimed in a single afternoon by some of the estimated 50,000 to 150,000 eager settlers who had gathered. Robert Docking, Governor of Kansas from 1967 to 1975, was from Ark City. Today, Ark City has an estimated population around 11,000 and is home to Cowley College, as well as several manufacturing companies and other enterprises.



Chaplin Nature Center, site of the 2010 Kansas-Oklahoma Arkansas River Commission’s annual meeting, is a 230-acre preserve along the Arkansas River run by the Wichita Audubon Society providing walking trails through woods, prairie and riparian landscapes.



### **Kansas Commissioners**

Commissioner **David Barfield**, Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources, continues to serve by virtue of his office. Mr. Barfield was unavailable to attend the 2010 annual meeting and has delegated Paul Graves, Assistant Chief Engineer, to serve on his behalf.

Commissioner **Kent Ott** is currently serving an appointed term from January 1, 2007 through January 1, 2011. Mr. Ott resides in Mulvane, Kansas. He is a farmer and served three terms in the Kansas House of Representatives from 1981 through 1986.

Commissioner **Peggy Blackman** is currently serving an appointed four-year term beginning June 17, 2009. Ms. Blackman resides in Marion, Kansas. She is vice chair of the Neosho Basin Advisory Committee and coordinator of the Marion Reservoir Watershed Restoration and Protection Strategies (WRAPS) Implementation & Assessment Workgroup. She was mayor of the City of Marion from 1977-1986.

### **Federal Commissioners**

At the 2009 annual meeting, the commission received a letter of resignation from former federal commissioner **William Franklin** of Prairie Village, Kansas, due to health issues. The Kansas delegation is proposing a resolution to thank Mr. Franklin for his years of service to this commission.

Also at the 2009 annual meeting, the commission decided to seek federal appointment of the sitting alternate commissioner, **Earnie Gilder** of Muskogee, Oklahoma, to serve as commissioner, and proposed appointment of a candidate recommended by Kansas to serve as alternate commissioner. Kansas subsequently recommended Michael Mayberry of Kiowa, Kansas for alternate federal commissioner. The ex officio commissioners from Kansas and Oklahoma, David Barfield and JD Strong, issued a letter on KOARC letterhead dated March 17, 2010 to President Barack Obama requesting these appointments. Staff from the White House Office of Personnel subsequently confirmed receipt of the letter and indicated they are working to address the request.

However, on July 19, 2010, Mr. Mayberry unexpectedly withdrew his name from consideration for the appointment. Kansas has notified White House staff about this change and proposes a new candidate for appointment to alternate federal commissioner – Chuck Shively, DPW Director for the City of Coffeyville and a member of the Verdigris Basin Advisory Committee. Pending receipt of Mr. Shively's resume, Kansas proposes to prepare a revised letter requesting federal appointments and to jointly submit the letter with Oklahoma on KOARC letterhead.

### **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 state 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 less 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.

### **Legislation**

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

1. 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.
2. 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.
3. 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.
4. 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.
5. HB 2283 (rural water district annexation) was enacted. It adds requirements governing the process of rural water district annexation by a city.
6. 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.
7. 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.

### **Regulations**

Water resources rule changes in the past year included:

1. 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).
2. 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.
3. Water flowmeters: Amended to require meter seals that prevent altering totalizer readings unless parallel water records are kept (simplifies requirements for public water suppliers).
4. 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.

Water resources rule changes in process include:

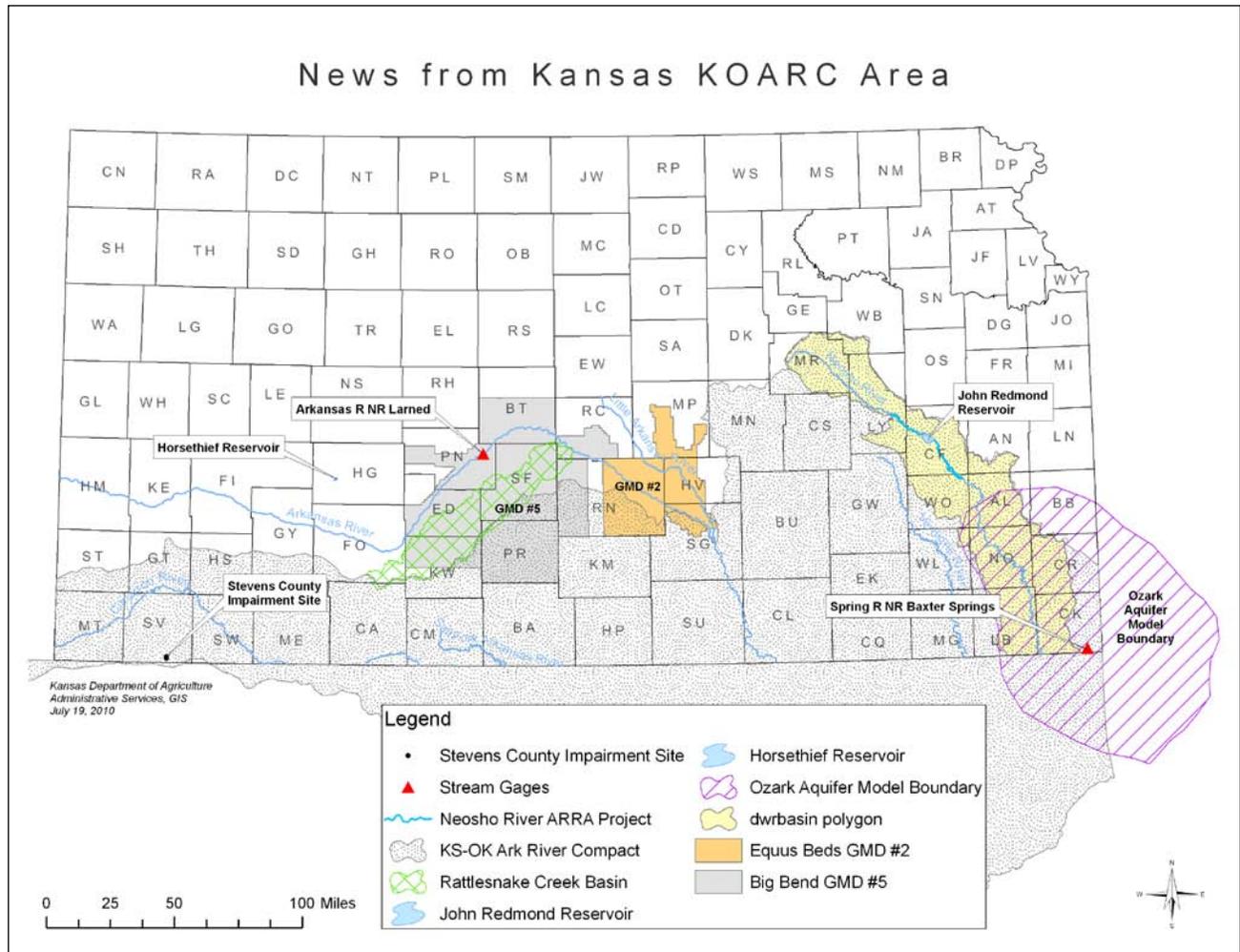
1. Impairment investigations: Proposed amendments will require groundwater complainants to demonstrate that their well and pump system are adequate; establish a formal process for GMDs to provide input and assistance for impairment investigations within their boundaries; more specifically detail the 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.
2. Stream obstructions and channel changes: Draft amendments will update, clarify and streamline the criteria for approval of stream alterations.

### **Compact Litigation**

1. Arkansas River Compact
  - a. 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.
  - b. 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.
  - c. Updated operating plan: At a special meeting in February 2010, the Arkansas River Compact Administration adopted updates to the 1980 operating plan for John Martin Reservoir operations and accounting.
2. Republican River Compact
  - a. 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.
  - b. 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.
  - c. 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 depletions.
  - d. Arbitration over Nebraska's crediting issue: Arbitration is ongoing regarding Nebraska's concept involving water credits for damage payments.



3. GMDs awarded conservation grants: Earlier this month, two groundwater management districts partially within the KOARC area were awarded Agriculture Water Enhancement Program (AWEP) grants from U.S. Department of Agriculture, Natural Resource Conservation Service. \$1,135,000 is available this year for irrigation efficiency improvements in Equus Beds GMD No. 2, and \$574,844 is allocated this year for end gun removals from center-pivot irrigation systems within the Rattlesnake Creek basin in Big Bend GMD No. 5.



4. Restrictions at Stevens County impairment site: The chief engineer has ordered an irrigator in Stevens County to reduce or cease his pumping if water levels drop to specified elevations at a neighboring irrigation well with an earlier (senior) water right. The chief engineer also ordered the irrigator with the later (junior) water right to use real-time irrigation scheduling to conserve water. DWR has been gathering data at this site since an impairment complaint was filed several years ago. Restrictions affecting the use of the junior water right have been in place since 2008. The restrictions have changed each year in response to requests from the water right owner and based on new information. Both wells pump from a thin, confined zone of the Ogallala aquifer. The response (drawdown) at the senior well from pumping at the junior well is rapid and pronounced. It appears that conditions at this site are not typical for the Ogallala aquifer, where most wells are sourced from thicker, unconfined zones. DWR has outfitted the senior irrigation

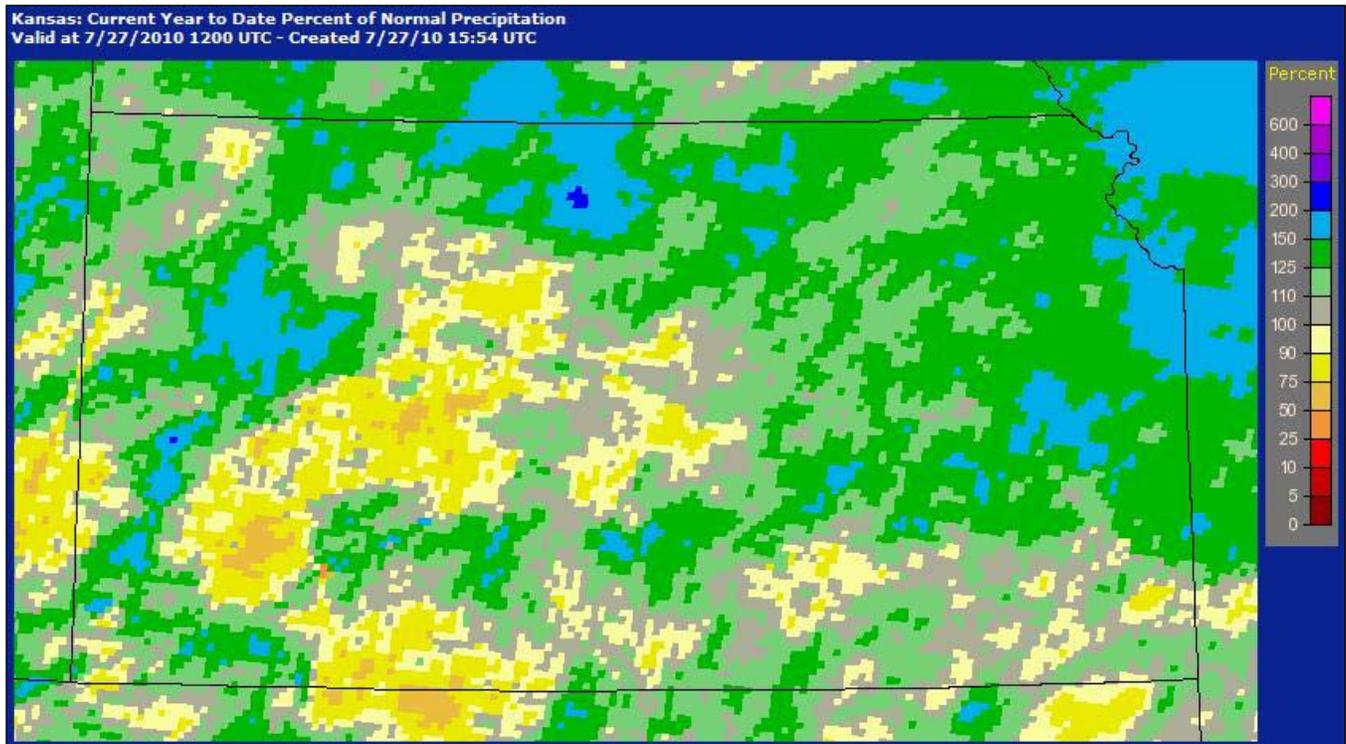
well with instruments to monitor the water level and transmit the data to a third-party website. This real-time data is continuously available to the agency and the water right owners for monitoring and decision-support purposes.

5. Stream gages saved: Several USGS stream gages previously cost-shared by DWR had to be discontinued in FY 2011 due to state budget cuts. The loss of these stream gages impacts the state's ability to monitor and apportion Kansas-Colorado Arkansas River Compact flows, to predict and monitor floods and droughts, to calibrate hydrologic models for accuracy, and to protect water quality and ecosystems. Some good news is that USGS and Kansas Water Office were able to use some increased federal funding to maintain six other stream gages formerly funded in part by DWR, including two within the KOARC area: Arkansas River near Larned and Spring River near Baxter Springs.
6. John Redmond Reservoir dam repairs: The Corps of Engineers performed maintenance and repair work on Tainter gates at John Redmond Reservoir, which is located on the Neosho River above Burlington, in Coffey County. The concrete spillway is equipped with fourteen 40-foot wide by 35-foot high Tainter gates. The spillway capacity is 578,000 cubic feet per second at top of flood pool elevation with the gates fully open. In addition to providing flood protection, public water supplies and recreation, John Redmond is a source of cooling water for Kansas' only nuclear reactor, Wolf Creek Generating Station, near Burlington. Along with Council Grove Lake and Marion Lake, John Redmond is one of three reservoirs providing storage for the Cottonwood/Neosho River Water Assurance District that serves a number of municipal and industrial customers.
7. Stream and Riparian Restoration: Kansas received American Reinvestment and Recovery Act (ARRA) funding to address bank erosion in the Upper Neosho River Basin. Twelve sites within an 8.3 mile reach of the river were identified as a high priority area. It is estimated 51,800 tons of sediment are entering the river, annually, from hot spots within in a 3.5 mile area of the 8.3 mile stretch. The ARRA and matching state funds will be used to stabilize stream banks and restore riparian areas at the selected sites. Construction on the sites was delayed because of winter weather, the June 1 to July 15 critical spawning period for the Neosho Madtom and high flows due to heavy rainfall during the spring and early summer.
8. Watershed Restoration and Protection Strategy (WRAPS) Projects: The Kansas WRAPS program offers a framework that engages citizens and other stakeholders in a process aimed at protecting and restoring Kansas watersheds. The WRAPS framework consists of identifying the watershed restoration and protection needs; establishing watershed goals; creating plans to achieve the established goals; and implementing the plans. Within the Arkansas River Basin in Kansas there are currently 14 WRAPS projects in progress. Funds for the WRAPS program are derived through EPA 319 Nonpoint Source and Kansas State Water Plan Funds and managed by the Watershed Management Section of the Kansas Department of Health and Environment.

### **Climate Conditions**

As of July 27, precipitation in Kansas has ranged from 50% of normal, primarily in portions of central and southern Kansas, to 200% of normal, primarily in northern Kansas. Year-to-date total precipitation ranges from 5 inches in portions of the west to 40 inches in portions of the east. Streamflows and

reservoir levels are currently normal or above-normal throughout most of the state. June 30 soil moisture readings ranged from normal in southwest and parts of central Kansas to 80 mm above normal in north central Kansas. The July 20 drought monitor shows Kansas un-impacted by drought. The National Weather Service's long-range outlooks predict normal summer temperatures and above-normal fall temperatures for Kansas; and normal precipitation for Kansas except for above-normal precipitation in northwest Kansas during early fall.



Since July 2009, there has been one federally-declared disaster affecting portions of the KOARC area in Kansas: severe winter storms and snowstorm during December 2009 through January 2010 in 50 counties in parts of northwest Kansas and the eastern third of the state, including more than a dozen counties within the KOARC area.

### **Compact Statistics**

The Kansas-Oklahoma Arkansas River Compact in Kansas encompasses...

- Square Miles: 25,993 (32% of state)
- Population: 880,000 estimated in 2006 (32% of state total)
- Number of water rights: 8,554 (25% of state total)
- Water use (2008): 1.3 million acre-feet (33% of state total)

Reservoir storage volumes and water quality data are presented in the Engineering Committee's report.

--- End of report ---