

# Be involved, stay involved – legislative issues have impact

Over my years of work with KRWA and other organizations, I have become very aware of how legislative issues are formed. The process begins with “awareness” by those affected, or the stakeholders. Cities and rural water districts certainly are and should be active “stakeholders” in legislative processes. As Rep. Tiaht commented at the 2008 KRWA conference and which he writes about in this issue (see page 14), local citizens are challenged to make a difference by becoming or staying involved. How does “awareness” happen? Well, there are a number of ways, including discussions, complaints, or in extreme circumstances, litigation that forces an action. In this article, I want to recap both national and state legislative issues. I am reminded that while all parties may not agree on all issues, too often there seems to be too little concern about how others might be affected by the proposed ‘fix.’ That is certainly the case with several pieces of legislation that were proposed in the 2008 Kansas Legislative Session.



*Dennis Schwartz  
KRWA President*

The KRWA Board of Directors meets in the fall each year to conduct long range planning and develop a legislative plan for the upcoming session. Sometimes this may include new initiatives and establishment or evaluation of

current policy positions on anticipated issues that may be included in proposals that may come forth in the Kansas Legislature. Whether or not we intend to propose any new legislation, we try to be prepared for whatever may come up during the session. This year we only proposed one initiative regarding the mapping of water systems. Nonetheless, we still were busy with a number of bills that were proposed that had potential to affect water systems.

#### **Bills tracked by KRWA during the 2008 Kansas Session:**

**HB 2635:** Establishment and implementation of the water sustainability review process. House Energy and Utilities. No hearing was held.

**HB 2636:** Expanding the duties of the Kansas biological survey to include the potential treatment of non-potable waters in Kansas. House Energy and Utilities. No hearing was held.

**HB 2638:** Location and mapping requirements for underground water and wastewater facilities. House Energy and Utilities. Hearing was held on Monday, 2/11/08. The bill was supported by KRWA; the League of Municipalities opposed the bill. The bill was tabled.

**HB 2658:** Kansas reservoir sustainability fund created; purposes for which money may be expended from fund. House Agriculture and Natural Resources Budget. No hearing was held.

**Senate Sub for HB 2127:** By the Committee on Utilities in the



*The Kansas Capitol's copper clad dome at left is quite a contrast to the US Capitol building cast iron dome at right. Legislation affecting Kansas water systems originates under these two structures.*

2007 Session. This bill remained alive in conference committee; regarding Kansas underground utility prevention act amendments. The Substitute was passed by Senate Utilities 03/27/07.

**SB 559:** Concerned acquisition of grounds by Water One and restricts condemnation authority of Public Wholesale Water Supply Districts; Committee on Agriculture; hearings held 2/24/08 and 3/5/08; substitute bill offered by Committee. KRWA opposed the bill.

**HB 2807:** Requires RWDs to accept payment for outstanding debt held by USDA if offered by city or others; redefines 'participating members'; House Energy and Utilities; hearing was held Thursday, 2/21/08. KRWA opposed this bill. KRWA believes that this bill would not achieve the desired result because: 1) the borrower could not be required to pay off the loan; and, 2) USDA Rural Development likely could not be forced to accept the payment if offered.

**HB 2808:** Use of eminent domain for public wholesale water supply districts; House Energy and Utilities; hearing was held on Thursday, 2/21/08. KRWA opposed this bill. The bill was tabled.

**Sub HB 2860:** Restriction on the approval of an application submitted by any municipality for a permit to appropriate water. Hearing held in Senate Agriculture Committee on 3/12/08. Passed 3/13/08; Senate voted on 3/14; KRWA opposed the bill. The bill was not passed: Yeas: 19; Nays: 21. Adverse action was reconsidered. Re-referred to Senate Agriculture Committee.

**Sub HB 2860:** A Substitute bill was restricted to Public Wholesale Water Supply District No. 25. Senate Sub. for HB 2860 would prevent the Chief Engineer of the Division of Water

## Legislature makes important changes to Open Meetings Act

**T**he 2007 Legislature made some important changes to the Open Meetings Act that covers local units of government in Kansas. KRWA legal counsel Gary Hanson has summarized these changes.

First, the changes were prompted by perceived abuses of "serial" meetings in which two officials would meet to discuss an upcoming vote, then one of those members would meet with a third person, and so on until sufficient votes have been lined up for an item at an upcoming meeting. The result of this practice was that outside of any open meeting of the body, a particular business item could be discussed and the necessary votes for its passage secured without the public ever knowing what happened or why, and without technically violating the Open Meetings Act. As a result of the changes, that will no longer be possible.

Senate Substitute for House Bill No. 2947 (amending K.S.A. 75-4318) creates a new prohibition against such serial meetings. New Section (f) provides that "meetings in a series shall be open if they collectively involve a majority of the membership of the body", share a common topic, and are intended to reach agreement on a matter that will require future action by the body.

For example, Council Member A wants to buy a new backhoe for the water and sewer department, but does not want to have to convince her fellow council members at a public meeting why the city needs to spend so much money on that unbudgeted item (particularly since she knows that Council Member E will adamantly oppose the purchase and will make it difficult for her to defend her proposal). As a result of the amendment, it is now clear that she cannot contact Council Members B, C and D in sequence before the next council meeting in an effort to convince them to join her in voting for her motion to buy the new backhoe as to do so would be to participate in a series of closed meetings involving a majority of the membership of the seven person council, on a topic of the business of the city requiring binding action. Where this practice may have been legal in the past, that loophole, even if infrequently used, has now been closed.

There is another important change made in this bill, which may have much broader application to small cities and rural water districts across the state. That change concerns the definition of a meeting, which formerly involved the participation of a majority of a quorum of the members of the governing body discussing the business or affairs of the body. This was an especially annoying rule to apply in small communities where it is very common for board or council members to run into each other, with the temptation to discuss some facet of city or water district business after church, in the grocery store or at a basketball game. With a five-member city council or rural water district board, even two members talking constituted a meeting (a quorum of a group of five is three; a majority of three is two). The Legislature has solved this problem by redefining meeting as a communication by "a majority of the membership" of the body. As a result, two members of a five-member board will be able to discuss water district business outside of regular meetings, and up to three members of a seven member board will be able to do the same without violating the law. Most of these discussions have been innocent, yet technical violations of the Open Meetings Act committed by the unwary, and in some instances out of emergency if circumstances dictated. These innocent violations are eliminated as a result of this amendment (but be cautious not to carry them on as a series of meetings intending to reach agreement on a matter that will need to come before the body for binding action, thus creating a violation of the new serial meetings provision described above).

Resources, Kansas Department of Agriculture, from approving a permit to appropriate water to a beneficial use submitted by Public Wholesale Water Supply District Number 25 or by any public agency that has entered into an agreement with that public wholesale water supply district, unless the public wholesale water supply district or any public agency referred to above acquired legal access to the proposed point of diversion: 1) Prior to January 1, 2008; 2) By voluntary means including, but not limited to, purchase or gift; or 3) By means other than voluntary not less than 10 years prior to the date of application.

The Senate Committee of the Whole amended the bill to require that a special committee be appointed to study the use of eminent domain in condemnation of water rights during the interims of the 2008 and 2009 sessions. In addition, the Senate Committee of the Whole amended the bill to provide that the provisions of the bill would expire on June 30, 2010. The bill was not passed on Final Action in the Senate and subsequently was re-referred to the Senate Committee on Agriculture. The Senate Committee on Agriculture further amended the bill to limit the restriction on granting a water permit to Public Wholesale Water Supply District Number 25 or any public agency that has entered into an agreement for the purpose of organizing the referenced public wholesale water supply district AFTER JANUARY 1, 2008. The bill was passed. There seems to be one thing that was not taken into account during committee hearings. Public Wholesale District 25 applied for water rights PRIOR TO January 1, 2008! Therefore it appears that this bill may have no effect on the District's present effort to develop

the new water source that the landowners opposed. PWWSA 25 is also attempting to develop a water supply closer to the Kansas River, avoiding the original landowners. This would allow the District to acquire water rights through the state's Water Marketing Program. But unless the District can obtain access to land closer to the River voluntarily, the bill will prohibit the District from developing access to water rights other than under the original landowners.

#### National issues

At the national level, KRWA's General Manager Elmer Ronnebaum and Director Darrell Schlabach made a trip to Washington in mid-February to meet with Members from Kansas and to ask for support for funding for USDA's Water and Wastewater Loan and Grant Program and also for funding through USEPA to fund the National Rural Water Association training and technical assistance program. That program enables Kansas Rural Water Association to nearly cover the expenses associated with one staff member. In late April, KRWA Director Sharon Dwyer, Elmer and I participated in the National Rural Water Rally, again meeting with all Kansas' Congressional offices. We had an excellent visit with Rep. Tiahrt and his staff. Kansas Rural Water Association is especially appreciative of the support received from Senators Roberts and Brownback, and Representative Tiahrt, Representative Moran and Representative Boyda.

Every five years, there's a reauthorization of a Farm Bill. Many of the programs that are operated by National Rural Water Association and which provide funding to Kansas Rural Water as an affiliate of NRWA are contained

within the Farm Bill. The sidebar on the next page details issues contained in the legislation.

#### Meeting with EPA in D.C.

In early April, KRWA General Manager Elmer Ronnebaum joined chief staff members from five other state rural water associations and National Rural Water Association staff in a symposium with EPA headquarters staff. EPA Administrator Steve Johnson also attended that meeting for nearly one hour. The outcome was what I



*In a lighter moment, KRWA General Manager Elmer Ronnebaum, President Dennis Schwartz and Vice-President Sharon Dwyer were surprised to see themselves on the Jumbotron in the recently opened Newseum in Washington D.C. Dennis captures the moment with his digital Nikon camera. The three represented KRWA at the National Rural Water Rally, April 19-22.*

believe will be a new beginning to improved partnerships between EPA and National Rural Water. That goal is not for the benefit of the organization – but for the end user – your system as a member of KRWA and National Rural Water.

KRWA exists to serve the legislative needs of its membership and all of the users of public water supply systems. We invite everyone's comments and suggestions for items to be included in KRWA's legislative goals or policy positions.

Initiative	House Version	Senate Version	Estimated Outcome on Final Bill
Circuit Rider Reauthorization	Included	Included	Included
Circuit Rider Reauthorization Increase	Included	Included	Included at the level of \$25 million annually
USDA Source Water Reauthorization	Included	Included	Included
USDA Source Water Authorization Increase	Included	Included	Included at the level of \$20 million annually
USDA Source Water Mandatory funding Increase	Included at a level of \$10 million	Not Included	Not included in final version- Amendment was offered in Conference Committee and was passed by House Conferees but rejected because of prior commitments to overall funding framework for the bill.
Inclusion of Backlog Funding for USDA Water and Wastewater Grant	Not Included	Included at a level of \$135 million	Included in the Bill at a level of \$120 million
Maintain the Current Water and Wastewater grant and loan program	Continued	Continued	Included for the life of the Farm Bill
Preservation of 1926(b) Protection for Water Systems	Continued	Continued	Included for the life of the Farm Bill
Inclusion in the Regional Watershed Enhancement Program (RWEF)	Not Included	Included	Included and renamed the Agricultural Water Enhancement Program. NRWA may have the opportunity to participate in the program which utilizes the current Environmental Quality Incentives Program (EQIP)
Water and Wastewater Interest Rate Proposal	Not Included	Included	Included in final version for loan applications that have not yet been approved.