

## **Analysis: Events show water's value as policy issue**

By John Hanna

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KICKAPOO INDIAN RESERVATION — Tribal leaders are acutely aware of water's importance, having faced three decades of supply problems here. But in recent years, water hasn't seemed anywhere near the top of most Kansas policymakers' agenda.

That isn't surprising, with legislators entangled in a lawsuit that made funding for public schools a dominant concern for a few years and with the Kansas State Board of Education bringing the state international attention by renewing a debate over evolution. This year, the biggest event of the legislative session was approval of a bill to expand gambling.

Still, two events within the past week showed the importance of water as an issue.

The first was the news that David Pope plans to leave his job as director and chief engineer of the Kansas Department of Agriculture's Division of Water Resources after 24 years. He is sometimes called the state's "water czar," a description he dislikes, and he is the official with the most say in who uses how much water in Kansas.

The second event involved the Kickapoo, whose reservation is 45 miles northeast of Topeka. Flooding in May weakened its dam on the Delaware River. If the dam is lost, the tribe can't draw from the river, its only source of water.

The tribe called a meeting last week with officials from six federal agencies to deal with the problem and to vent frustration over the longstanding problems with their water supply. Without water, the tribe said, the members' self-governing community will die.

"We will continue to fight for our inherent right to practice genuine self-determination with water as our ally," tribal chairman Steve Cadue said.

Fueling the tribe's frustration is a belief that it has a permanent solution. Tribal leaders want to dam Plum Creek, which flows into the Delaware, creating a new reservoir. Congress has appropriated money for the project since 1998, yet work hasn't moved forward because of conflicts with area residents over how much they would be paid for the land they would lose.

But the Kickapoo reservation isn't the only place where there has been conflict over water, something Pope knows all too well.

In the 1990s, he developed rules for slowing the depletion of the High Plains Aquifer in western Kansas and for determining how to make room for new demands for water in areas where water rights are already appropriated. His rules made him unpopular in some quarters, and a 1999 law — backed by his own boss, then-Agriculture Secretary Allie Devine — was designed to rein in his power.

But Pope still didn't lose his ability to inspire a legislative backlash.

As he prepares to depart next week for a new job leading a Missouri River group, he hasn't yet decided whether he will follow through on a plan to expand an Intensive Groundwater Use Control Area in Pawnee County into Ness and Hodgeman counties. Inside such an area, the chief engineer can cut water consumption. A bill to block the plan failed this year but could resurface next year.

At least a few legislators still question whether the chief engineer, who is a part of the civil service system, is accountable enough to the people, a question Devine raised as she supported the 1999 law.

In more than two decades on the job, he became Kansas' leading water policy expert. The state's clash with Colorado over the Arkansas River has lasted long enough to involve four attorneys general — but until now, not long enough to outlast Pope.

Pope leaves with a sense that the division has made significant contributions to improving water policy. But his successors well into the future probably will have to consider new steps to conserve water, particularly in western Kansas.

"Probably the biggest challenge would relate to the long-term management of the High Plains Aquifer," he said in an interview. "We know there has to be some form of transition to less water use over time, because the water is just physically not going to be there forever."

Whether it is the new chief engineer inspiring anger over attempts to conserve water or the Kickapoo tribe's efforts to ensure an adequate supply for its reservation, water will remain an important issue in Kansas, no matter what other policy debates obscure it.

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# Kickapoo dam has new water crisis after heavy rains

By John Hanna - Associated Press Writer

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KICKAPOO RESERVATION — Already in federal court over water issues, the Kickapoo tribe faces a new threat to its water supply, and its leaders vented their frustration Thursday during a meeting with federal officials.



Recent rains caused erosion underneath portions of the dam at the Kickapoo Indian Reservation northeast of Topeka. Tribal officials met with federal officials Thursday to consider solutions for repairing the dam.

Kickapoo leaders said they fear the tribe's dam on the Delaware River will fail after being weakened last month by flooding. Without the dam, the tribe couldn't use the river for its water supply — and would have no other source other than hauling it to the reservation 45 miles northeast of Topeka.

The U.S. Army Corps of Engineers estimated repairing the dam and stabilizing eroded river banks could cost \$1.5 million. Flood damage represents a "direct and imminent threat" to the dam, the Corps said in a report last month.

The tribe believes the ultimate solution to its ongoing water problems is damming Plum Creek, which flows into the Delaware, creating a new reservoir. The project has been authorized by Congress since 1998 but hasn't moved forward, and last year the tribe sued 14 federal, state and local officials.

The tribe called Thursday's meeting to see what federal funds are available for repairing the dam and stabilizing the river banks. A U.S. Indian Health Service official promised that his agency will coordinate the effort at first, and representatives from several agencies said they're seeking money.

But the meeting also gave tribal leaders a chance to express their frustration over nearly three decades of ongoing water supply problems. Damon Williams, the tribe's general counsel, noted the Delaware River dam was considered a temporary solution when the tribe built it in 1978.

"Without water, no society can move forward," Williams told the federal officials. "By consistently just Band-Aiding the problem, you are as guilty as Mother Nature itself in inflicting harm on this tribe."

Williams said later that he thinks the tribe and federal officials made a good start toward solving the tribe's immediate problem.

But tribal Chairman Steve Cadue said the Plum Creek project is the long-term solution and, "This immediate situation just points that out."

Officials from the Environmental Protection Agency, the Bureau of Indian Affairs, the Indian Health Service and the Corps of Engineers said they're looking for funds to help. Steven Tillman, a public assistance officer for the Federal Emergency Management Agency, said dollars could be available from FEMA if the Kickapoo reservation is included in a federal disaster declaration.

The tribe could ask Gov. Kathleen Sebelius to add it to a state declaration, or go to the federal government itself. Following storms in May — including a tornado that leveled more than 90 percent of Greensburg in Kiowa County — legislators authorized up to \$25 million in disaster relief funds.

"Really, the federal government has a responsibility here," Williams said. "We always go to the federal agencies first to find assistance."

In recent years, drought has been the source of the Kickapoos' water woes. A little more than half of the tribe's 1,500 members live on the reservation.

In 2001, the tribe, with federal help, added wooden planks to the top of its concrete dam to block an additional 2 feet of the river, so more water would go through an intake pipe. In 2004, the river was so low that the tribe was forced to truck in water from the Missouri River for three months.

Last year, the tribe filed its lawsuit over the Plum Creek project. It accuses local officials of not living up to a 1994 agreement to help the tribe acquire property from 12 area landowners and the state and federal officials of funding other projects that have decreased the Delaware's flow as it goes across the reservation before emptying into Perry Lake.

Local officials contend the holdup has been the tribe's refusal to grant the landowners a reasonable, higher-than-market value price for their property. The Plum Creek project would cost \$5.3 million, with the tribe providing \$3.2 million, or 61 percent, using revenues generated by a tribal casino.