

Approved: Carl Dean Holmes  
Date Feb 3, 1993

## MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on January 25, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Cindy Garland, Committee Secretary

Conferees appearing before the committee:

Steve Hurst - Kansas Water Office  
David Warren - Water and Sewer Department of Wichita  
Gerald Holman - Sr. Vice-President, Wichita Chamber of Commerce  
Charles Wiggins - Public Wholesale Water Supply District #10  
Bill Fuller - Kansas Farm Bureau  
Lavern Squire - Chairman, Hays Water Supply Task Force  
Hannes Zacharias - Hays City Manager  
Bob Totter - Kansas Contractors Association  
Mike Welch - Kansas Coalition on Water Resources  
Mike Armstrong - Johnson County Water District #1  
Bill Henry - Kansas Engineering Society  
Dick Pelton - Chairman, Lower Basin Advisory Committee  
Mark Taddiken - Lower Republican Water Association

Others attending: See attached list

Chairperson Holmes opened the hearing on HB 2070.

HB 2070 - An act concerning water; relating to certain transfers; amending K.S. A. 82a-1501 through 82a-1505 and repealing the existing sections.

Steven Hurst, Director, Kansas Water Office spoke to the Committee in support of HB 2070. He stated that this bill is primarily amendatory in nature and would implement the "Modifications of the Water Transfer Act" Sub-Section of the Kansas Water Plan which was approved by the Kansas Water Authority. Mr. Hurst briefed the Committee on the seven amendments in HB 2070 and requested three additional technical amendments. (Attachment 1)

David Warren, Director of the City of Wichita's Water & Sewer Department, testified in support of HB 2070. He stated that HB 2070 was developed from a consensus of broad range interests including that of agricultural, environmental, municipal, commercial and industrial, regulatory and the public as a whole. He further stated that Wichita has encountered difficulty securing water rights in the Equus Beds due to the procedural uncertainties created by the Water Transfers Act as it presently exists. (Attachment 2)

Gerald Holman, Sr. Vice President, Wichita Area Chamber of Commerce, testified in support of HB 2070. He stated that the bill is intended to require an extraordinary review for extraordinary applications. He testified in support of the 2,000 acre feet, 50-mile transfer definition. He further testified in support of the administrative changes proposed in HB 2070. (Attachment 3)

Charles Wiggins, President, Public Wholesale Water Supply District #10 testified in support of HB 2070. Mr. Wiggins stated that HB 2070 will clear up some of the procedural confusion that currently exists. He further testified that he believes the appointment of an independent hearing officer will allow the three person panel of state administrators to be more objective in their review of the findings, therefore significantly reducing the time required to complete the transfer process. (Attachment 4).

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 25, 1993.

Bill Fuller, Assistant Director of the Public Affairs Division, Kansas Farm Bureau, testified in support of HB 2070. He stated that the State of Kansas must establish an acceptable plan to provide all citizens an adequate supply of water for beneficial uses. Mr. Fuller said that by increasing the quantity from 1,000 acre feet to 2,000 acre feet and the distance from 10 miles to 50 miles will provide more efficient use of time and resources by focusing on large amounts of water over long distances. Mr. Fuller stated that he had two recommendations that would improve HB 2070. 1.) Water conservation provisions should be strengthened by insisting on strong and effective water conservation programs being implemented by any water user before any water transfer be approved. 2.) Not all available water stored in any reservoir should be transferred out of that basin. (Attachment 5)

Lavern Squire, Chairman, Hays Water Supply Task Force, testified in support of HB 2070. He briefed the committee about the water deficiencies in Hays and the difficulty the City of Hays has had in obtaining water within the guidelines of the existing Water Transfer Act. He further stated that HB 2070, and its accompanying provisions for scrutiny, would be reserved for long distance and huge quantity situations. (Attachment 6).

Hannes Zacharias, Hays City Manager, testified in support of HB 2070, stating that the recommended changes to the Water Transfer Act would enable the City of Hays to search for adequate water supplies for the community, yet would still provide a high level of scrutiny for large amounts of water being transferred over long distances. Mr. Zacharias briefed the Committee on the conservation plan implemented in Hays. (Attachment 7)

Bob Totten, Public Affairs Director, Kansas Contractors Association testified in support of HB 2070. He stated that HB 2070 would help our small communities survive and allow Kansas industry to continue to grow and prosper and compete in the global market. (Attachment 8)

Mike Welch, Kansas Coalition on Water Resources, testified in support of HB 2070. Mr. Welch stated that by enacting HB 2070 it would allow our communities to be able to consider the most economical and environmentally sound solution to their water needs and at the same time require applicants for transfer rights to adopt and implement conservation plans and practices. (Attachment 9)

Mike Armstrong, Johnson County Water District #1, testified in support of HB 2070. He stated that the revisions provided in HB 2070 are very positive and he complimented the parties involved in drafting this bill. He further stated that he felt the bill could be improved with some proposed changes and recommended the Committee include such changes in HB 2070. (Attachment 10)

Bill Henry, Executive Vice President, Kansas Engineering Society, testified in support of HB 2070, stating that HB 2070 addresses the revision needed in the Kansas Water Transfer Act. He stated, the act, as it now stands, presents an administrative nightmare because the definition as to what constitutes a transfer is poorly conceived and the implementation process presents a bureaucratic jungle. (Attachment 11)

Dick Pelton, Chairman, Kansas Lower Republic Basin Advisory Committee, testified in support of HB 2070, stating that the provisions contained in this bill would greatly improve the Water Transfer Act. (Attachment 12)

Dick Pelton, Kansas Lower Republic Basin Advisory Committee, submitted a position statement on behalf of the Kansas Section-American Water Works Association and asked that it be made a part of the record. (Attachment 13)

Mark Taddiken, Lower Republican Water Association, testified in support of HB 2070, stating that although they support HB 2070 in general terms they believe the bill does not go far enough in protecting established water rights in the basin of origin and would propose including an amendment as such. (Attachment 14)

Written testimony in support of HB 2070 was provided by:

Judy Sargent, City Manager of Russell (Attachment 15)

The Chair opened the floor for questions addressed to the conferees. Questions and Concerns included the following:

Rep Hendrix:

Directed to Steve Hurst

1. Is there any information source that would identify those areas that would have available water for appropriation that are not already encumbered?
2. If your office contracts with the federal government and has water conserved in the reservoir it would require a transfer permit to obtain that water from the reservoir?

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 25, 1993.

3. Under the transfer act as proposed by you in HB 2070 would you pre-condition an approval in HB 2070 by the implementation of a conservation plan?
4. What if the Department of Agriculture is declared unconstitutional what does it do to the application of this particular act and the relationship of the Chief Engineer to the review panel?
5. What is the conflict between the existing statutory authority and procedure and its inter-relationship to the administrative procedure act that makes the hearing process so terribly cumbersome?
6. Would you for the Committee make available a compilation of surplus water that is available under this act that has not been already appropriated?

Rep. Grotewiel

Directed to Steve Hurst

1. Is there a reason why the Chief Engineer makes the decision whether transfers under 2000 acre feet and 50 miles should be subject to the process versus for example the majority of the hearing panel making that decision?
2. Are you confident that the conflicts between the statutory authority and the administrative procedures act have been ironed out?
3. How broad is "other parties" as far as costs being distributed among the applicant and other parties? Is it anyone who officially intervenes?
4. Where is that covered in the Bill?
5. Under this law if there is a controversial case will judicial remedies still be utilized? Under this streamlined act do you think that all parties will have the ability to get their view into the record in the event that it does end up in Court?

Rep. McClure

Directed to Steve Hurst

1. On page 1 line 18, does that divide the state into two water basis? Could you explain the language used in that passage?
2. On page 2, line 37 through 41, why was that language deleted? It is not the same wording where it has been transferred to page 3 and I would prefer the same wording.
3. Who determines what beneficial use is? Could you find the Statute definition of beneficial use and let me know what that is?
4. On page 3 line 13, does the word "unless" pre-empt the lines 10, 11, 12 and 13? Would you let us know the specific intent of that language?
5. What sort of credentials must the hearing officer have?
6. If this would have been in place would this have been triggered by the Johnson County application?

Rep. Alldritt

Directed to Steve Hurst

1. Under the current Water Transfer Act is the conservation plan required or not of the applicant?
2. Under this new bill an application will not be granted unless a conservation plan is in place? And by being in place does that mean on paper or occurring?
3. Who defines what an acceptable plan is?

Rep. Shore

Directed to Steve Hurst

1. Are you proposing in the new bill that we must have 2,000 acre feet and outside a 50-mile radius, making it a double requirement?
2. Within that 50-mile radius, is that inside or outside the basin?
3. Could we start a water war between cities with this act?
4. You don't foresee the possibility of two competing cities both having a willing seller out there just vying for the bid?

Rep. Gatlin

Directed to Steve Hurst

1. Are you saying that anything a city can negotiate within the 50 mile radius is ok?
2. What are the brown squares and rectangles on the map, do they have any meaning?

Rep. Lloyd

Directed to Steve Hurst

1. What is the Attorney General's opinion in regard to the legislative review process above the 2,000 acre feet and 50 mile radius?
2. Do you serve at the will and pleasure of the Governor? And so does the Secretary of Health and Environment? And if we change the way we select the Secretary of Agriculture, the Chief Engineer

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 25, 1993.

to will probably serve at the pleasure of the Governor?

3. Is there anyway to piggy back these applications so that water could be transferred long distances?
4. Who sets the fees for the process of the hearing officer? Does the panel set the fees?

Rep. Lynch

Directed to Steve Hurst

1. Is there a definition for the term "Surplus Water" ?

Rep. Freeborn

Directed to Steve Hurst

1. Would there be a precedent set by one hearing officer or would each application be totally independent?
2. Would each hearing officer be required to follow decisions set by previous hearing officers?

Rep. Hendrix

Directed to Mr. Taddiken

1. Could you state with some clarity what you intend to accomplish by the wording of your proposed amendment?

Directed to Steve Hurst

1. Would the appropriation process take care of the problem addressed by Mr. Taddiken?
2. Could you give an example of the exception for water courses?

Directed to Mr. Warren

1. Have you done any type of scenario of when the city of Wichita might be in a critical need for water?
2. Does the City of Wichita have a conservation plan implemented?

Chairperson Holmes

Directed to Dave

1. In regards to the Wet Walnut River, you did cut water rights back in both the Jr. and Sr.cs Corporation rights, is that not correct?

The Chair closed the hearing on HB 2070.

The meeting adjourned at 5:25 p.m.

The next meeting is scheduled for January 26, 1993.



# GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES

DATE: Jan 25-1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Alan Steppat	Topeka	Pete Mcbill & Assoc.
Steve Maechten	Pratt	: Water Pack
KENT L. MOORE	Iuka	WATER PACK
Mike Beqm	<del>KSA</del> Topeka	Ks LUSTK Assn.
Nelsie Sweeney	Overland Park	OP Chamber
Bernie Koch	Wichita	Wichita Chamber
Lu Leland	Lawrence	Kansas Geological Survey
Larry Brady	Lawrence	Kansas Geological Survey
Bill Caven	Topeka	Sierra Club
Mary Fand	Whiting, Ks.	Ks. Rural Center
Gay Williams	Beloit	GEID8
Dan Williams	"	"
BB Totten	Topeka	Ks Contractors Association
Kent Weatherby	"	Kansas River Water Assn. Dist
RON FOX	Topeka	KDHE
Wm Lewis	710 Paget Ave. H.	Pa. Co. Comm.
John P. Brunkamp	Br Box 410 Colby, Ks	TH Co. Commissioner
Leland & Rolt	Topeka	DWR-KSBA
Dan Lyon	Topeka	DWR-KSBA
Marb Tashler	Clifton	Lower Republican Water Assn.
Tom Stiles	Topeka	Ks Water Office
Charles Mueggis	Wichita	Public Wholesale Water Supply #10
JOHN WYNKOOP	"	" " "
HAYNES ZACHARIAS	HAYS	CITY OF HAYS
Lavern Squire	Hays	" " "

## GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES

DATE: 1-25

[illegible]

**Testimony of  
Stephen A. Hurst, Director  
Kansas Water Office**

**Before the  
House Energy and Natural Resources Committee  
January 25, 1993**

**Re: House Bill No. 2070**

Thank you, Mr. Chairman, members of the Committee:

I am Stephen A. Hurst, Director of the Kansas Water Office.

The legislative initiative that you have before you today is primarily amendatory in nature and would implement the "Modifications of the Water Transfer Act" Sub-Section of the *Kansas Water Plan* which was approved by the Kansas Water Authority.

The current Water Transfers Act, K.S.A. 82a-1501 *et seq.* was passed by the legislature in 1983 and sets out requirements for the diversion and transportation of water in quantities of 1,000 acre-feet or more per year for beneficial use outside a 10-mile radius from the point of diversion. The concept was to provide an extraordinary public interest review process for the movement of large quantities of water. The Act included administrative review procedures and provisions for legislative and judicial review.

Since 1983, only one water transfer application has been made and reviewed under the Act and that was by Water District No. 1 of Johnson County this past year. Final action on this application is currently being appealed in the Shawnee County District Court and resolution of the appeal is still pending. This one water transfer application, however, has confirmed some of the serious concerns as to the need for changes in the Act that were set out in the *Kansas Water Plan* sub-section and addressed in the bill now before you.

*House Energy + Natural Resources  
Jan 25, 1993  
Attachment 1*

These needed amendments include the following:

1. Set a new distance and amount for the automatic triggering of Act that much more accurately reflects the original legislative intent to provide extraordinary review for large amounts of water to be moved over long distance. (Current: 1000 acre-feet of water outside 10 mile radius; Proposal: 2,000 acre-feet of water outside 50 mile radius) This would increase viable water supply options for several communities, both urban and rural, as well as for agricultural uses.
2. Exempt assurance program and water marketing program releases from reservoirs to a natural watercourse within the drainage basin, as these already are managed programs receiving state scrutiny.
3. Apply the Kansas Administrative Procedures Act to the decision making process, as it eliminates the current confusion that exists due to overlapping authority of the current Transfer Act's administrative procedure and the Kansas Administrative Procedures Act.
4. Allow an independent hearing officer to be appointed by the three person panel to conduct the formal hearing and build a record for panel's review. (Would free-up three agency heads from possibly months of hearings and ex parte' communications restrictions with their staffs.)

5. Establish the three person panel (Director of Kansas Water Office, Chief Engineer of Division of Water Resources; Secretary of Kansas Department of Health and Environment or Director of the Division of Environment) as the final decision maker in lieu of the Kansas Water Authority. (This more accurately reflects original legislative intent as it keeps Kansas Water Authority, a voluntary group, from becoming entangled in law suits.)
6. Does not include a provision for legislative oversight. (Formal Attorney General opinion says the current law's legislative review provision violates separation of powers and is unconstitutional.) 91-12
7. No fiscal impact.

The Kansas Water Office and Kansas Water Authority share concerns on the future viability of Kansas public water supplies. Many communities, both urban and rural, and some agricultural operations are dependant on sole source water supplies that are vulnerable during times of drought. Other communities have water supplies that are poor in quality. The Water Transfers Act should not only serve as a public interest review mechanism for the movement of large quantities of water but should also be available to ensure the efficient beneficial use of surplus waters in the state to meet the people's water supply needs. The Act should not be an obstacle to the legitimate beneficial uses of surplus water by the people of Kansas once the public interest and statutory criteria are met.

While the current Act basically sets out some sound standards for review of water transfers, there are several key issues that are in need of clarification and amendment. These are addressed in H.B. 2070.

I would like to request three technical amendments to address drafting errors. The first is on page one of the bill at the end of line 15, where "or" should be changed to "and." The second technical amendment is on page 4, line 8, where the word "the" should be inserted after the word "finds." The third technical amendment is on page 7, starting at line 38, where "a final order" should be changed to "an initial order." The next sentence beginning with "An order of the panel..." should be struck.

I appreciate the opportunity to testify before you here today and urge your favorable consideration of H.B. 2070.

I would be pleased to stand for questions.

**STATEMENT OF DAVID R. WARREN**

**Before The**

**House Committee on Energy and Natural Resources**

**Regarding**

**House Bill 2070 - Modification of the Water Transfers Act**

**January 25, 1993**

Chairman Holmes and Honorable Members of this House Committee, I am David Warren. I appear before the Energy and Natural Resources Committee this morning to ask your favorable consideration of House Bill 2070, which amends the Water Transfers Act.

I am Director of the City of Wichita's Water & Sewer Department. I am also a member of the Kansas Water Authority (KWA). Within the KWA, I serve on the Policy Committee. I was directly involved in the development of the Section of the Kansas Water Plan which led to the introduction of House Bill 2070.

The Section of the Kansas Water Plan which led to HB 2070 was developed from a consensus of the broad range of interests which are represented on the Kansas Water Authority. These interests included agricultural, environmental, municipal, commercial and industrial, regulatory and the public at large. The development of this initiative was sensitive to, first and foremost, protecting the public interests, while at the same time making waters of the state reasonably accessible for beneficial use. I believe that the KWA in HB 2070 has successfully achieved the difficult task of making water transfers procedurally less complicated and maintaining the high level of public interest protection that movement of waters of the state deserve.

The City of Wichita is in the process of assessing its future water needs and developing plans to secure water resources to meet those needs. As part of that effort the City has been attempting to buy, on a willing buyer/willing seller basis, water rights from irrigators in the Equus Beds. The Equus is a groundwater formation northwest of Wichita where the City already has 55 wells that produce about 50% of the City's current water needs. One of the biggest hurdles the City has encountered in securing water rights in the Equus Beds has been the procedural uncertainties created by the Water Transfers Act as it presently exists. Wichita believes that HB 2070 would greatly improve the process of acquiring water resources in relatively close proximity to the point of use.

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Attachment 2*

Testimony of David R. Warren  
House Committee on Energy & Natural Resources  
Re: HB 2070 - Water Transfers Act Amendment  
January 25, 1993  
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I believe HB 2070 was well thought out and carefully developed by the men and women of the Kansas Water Authority. I believe these men and women were motivated by sincere, unselfish interests in the protection of and reasonable development of the waters of the State of Kansas. I ask you to give HB 2070 your favorable consideration.

I would be glad to respond to any questions regarding HB 2070 which the committee may have. Thank you.



# THE CHAMBER



## COMMENTS REGARDING

HOUSE BILL 2070

Present To:

House Energy and Natural Resources Committee

January 25, 1993

Topeka, Kansas

presented by:

Gerald H. Holman  
Senior Vice President  
Wichita Area Chamber of Commerce

Wichita Area Chamber of Commerce  
350 West Douglas Avenue  
Wichita, Kansas 67202-2970  
316 265-7771 FAX 265-7502

*House Energy & Natural Resources*  
*Jan 25, 1993*  
*Our Product Is Performance. Attachments + 3*  
Partner, Wichita/Sedgwick County  
Partnership for Growth, Inc.

We very much appreciate the Kansas Water Authority and the Kansas Water Office and commend them for their work in developing and recommending needed revisions to the Water Transfers Act. The Wichita Area Chamber of Commerce agrees with the Kansas Water Authority and Kansas Water Office that change is needed and supports House Bill 2070.

A rigorous review of all water applications is required under the Water Appropriation Act and the State Water Plan Storage Act. Compliance with the provisions of these laws, whichever is appropriate for a particular application, is required in House Bill 2070 and is clearly stated in section 7, (b). So, the Water Transfers Act is intended to require an extraordinary review for extraordinary applications.

Today, a water transfer exists when 1,000 acre feet or more per year is diverted for use outside a 10-mile radius from the point of diversion. This volume of water will annually serve about 5,000 to 6,000 people. Since the City of Wichita is a regional supplier of water, extending into the population base of Butler County, 1,000 acre feet is a small amount of water. There are no sources of supply within a 10-mile radius of Wichita and supplemental sources could be in excess of 1,000 acre feet. The City will be required to undergo an extraordinary review, including the delays inherent in the process and added expense for most, if not all, future supplies. This requirement is unsatisfactory for small supplemental supplies and change is needed. Therefore, we support the 2,000 acre feet, 50-mile transfer definition.

About half of Wichita's current water supply comes from the Equus Beds, a groundwater supply 25 to 50 miles from the city. Acquiring additional, supplemental supplies in the Equus Beds from willing sellers will trigger the current Water Transfers Act. Yet, the City of Wichita already has some 40,000 acre feet of certified water rights in the Equus Beds at 55 well sites. The rigorous review required by the Water Appropriation Act should be sufficient in this situation and other similar situations throughout the state.

Review procedures at times when transfer legislation should appropriately be triggered are just as important as the transfer definition. House Bill 2070 contains needed revision in this area as well. Any applicant who must undergo the required extraordinary review, expects the process to be thorough but not cumbersome. Administrative improvements are proposed to the benefit of all Kansans which will make the review process more reasonable while providing needed safeguards in the area of origin. Specifically,

1. We support the hearing officer concept.
2. We support the three person hearing panel being the final decision maker in lieu of the Kansas Water Authority combined with legislative oversight.
3. We support applying the Kansas Administrative Procedures Act and eliminating administrative procedures contained in the current law which conflict with KAPA.

In summary, the Wichita Chamber supports House Bill 2070. We encourage your favorable consideration and look forward to your full support.

Thank you very much.

1/25/93

MR. CHAIRMAN, COMMITTEE MEMBERS, I AM CHARLES WIGGINS, PRESIDENT OF PUBLIC WHOLESALE WATER SUPPLY DISTRICT #10. OUR ORGANIZATION INCLUDES THE CITIES OF ABILENE, BEL AIRE, CHAPMAN, HALSTEAD, HESSTON, HUTCHINSON, LINDSBORG, McPHERSON, MOUNDRIDGE, NEWTON, PARK CITY, SALINA, SEDGWICK, VALLEY CENTER AND WICHITA. WE ARE DEDICATED TO SOLVING OUR LONG TERM WATER NEEDS THROUGH A COLLECTIVE EFFORT. AT THE PRESENT WE ARE SEEKING TO NEGOTIATE WITH THE KANSAS WATER OFFICE FOR THE PURCHASE OF WATER OUT OF MILFORD LAKE.

YOUR APPROVAL OF HOUSE BILL 2070 DOES NOT ALTER THE PRESENT REQUIREMENT THAT DISTRICT #10 MUST GO THROUGH AN EXTENSIVE REVIEW BEFORE THE TRANSFER OF VOLUMES OF WATER TO OUR MEMBER CITIES CAN BE CONSIDERED. WE AGREE THAT THE PROS AND CONS OF SUCH A TRANSFER NEED THOROUGH SCRUTINY BY THE PROPER STATE AGENCIES AND WE WELCOME THE OPPORTUNITY TO BEGIN THE REVIEW.

WHAT THE PROPOSED BILL WILL DO FOR US AND OTHERS WHO SEEK WATER TRANSFERS IS THAT THE INCLUSION OF THE KANSAS ADMINISTRATIVE ACT WILL CLEAR UP SOME OF THE PROCEDURAL CONFUSION THAT NOW EXISTS. WE ALSO BELIEVE THAT THE APPOINTMENT OF AN INDEPENDENT HEARING OFFICER WILL ALLOW THE THREE PERSON PANEL OF STATE ADMINISTRATORS TO BE MORE OBJECTIVE IN THEIR REVIEW OF THE FINDINGS. THESE CHANGES, TOGETHER WITH THE REMOVAL OF THE PROVISION FOR ADMINISTRATIVE OVERSIGHT WILL SIGNIFICANTLY REDUCE THE TIME REQUIRED TO COMPLETE THE TRANSFER PROCESS. WE SOLICIT YOUR APPROVAL. THANK YOU.

*House Energy - Natural Resources*  
*Jan 25 1993*  
*Attachment 41*



# PUBLIC POLICY STATEMENT

## HOUSE COMMITTEE ON ENERGY and NATURAL RESOURCES

### RE: H.B. 2070 - Amending the Water Transfer Act

January 25, 1993

Topeka, Kansas

Presented by:  
Bill Fuller, Assistant Director  
Public Affairs Division  
Kansas Farm Bureau

#### Chairman Holmes and members of the Committee:

My name is Bill Fuller, I am the Assistant Director of the Public Affairs Division at Kansas Farm Bureau. We appreciate this opportunity to testify on H.B. 2070 on behalf of the farm and ranch members of the 105 County Farm Bureaus in Kansas.

Water is our most vital natural resource! The State of Kansas must establish an acceptable plan to provide all citizens an adequate supply of water for beneficial uses. All water users have a stake in this important task ... rural and urban, agriculture and industry and wildlife and recreation.

Confusion and emotion developed during consideration of S.B. 555 in the 1992 Session of the Kansas Legislature. There was confusion whether the plan reduced the 12 Basin Advisory Committees to 2. Emotion developed when some believed passage of S.B. 555 would allow the transfer of water from reservoirs to urban areas in huge pipelines ...

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Attachment 5*

not realizing this could be done under the current Water Transfer Act of 1983. Farm Bureau recommended S.B. 555 not be approved and opportunity for further study and public input be provided. We thank the 1992 Legislature for the delay and commend the Kansas Water Authority for their further study. We believe H.B. 2070 which we are considering today is much improved over S.B. 555 in 1992 ... more focused, recommends fewer changes and is more workable.

Farm Bureau's statement is based upon policy approved by the 437 Voting Delegates representing the 105 County Farm Bureaus at the 74th Annual Meeting of Kansas Farm Bureau in Wichita on November 21, 1992. Attachment "A" provides you the "State Water Policy" resolution.

We support increasing the threshold for triggering the Water Transfer Act. Increasing the quantity from 1,000 acre feet to 2,000 acre feet and the distance from 10 miles to 50 miles (pg. 1, lines 15-18) will provide more efficient use of time and resources by focusing on large amounts of water over long distances.

We believe the make-up of the proposed hearing panel to be the decision maker for granting transfers represents broad interests and the appropriate agencies ... KWO for water planning, KDHE for water quality and DWR for water appropriation (pg. 2, lines 14-18).

Other good proposals in the bill require formal public hearings be held in the basin of origin and a public comment hearing be held in the basin of use (pg. 5, lines 41-43). We believe public involvement, understanding and support is essential to any acceptable water transfer plan.

We have two recommendations to improve H.B. 2070. First, we believe the water conservation provisions should be strengthened. We

insist strong and effective water conservation programs must be implemented by any water user before any water transfer be approved. Second, we do not believe all available water stored in any reservoir should be transferred out of that basin. It is essential that a reserve be maintained for potential growth in the basin supplying the water. The future of agriculture, industry and municipalities in the basin must not be destroyed.

Amendments to H.B. 2070 that strengthen the water conservation provisions and maintain a meaningful reserve of water in the basin for future growth will make the bill more acceptable.

Thank You! We will respond to any questions you may have.

**State Water Policy****CNR-13**

The Kansas Water Authority should be the agency for water management in Kansas. We believe the Authority should be responsible for coordinating development and approval of all changes proposed for the State Water Plan.

We support continuation of 12 River Basin Advisory Committees and their participation in examination of all proposals for change in the State Water Plan. Any modification of the Kansas Water Transfer Act that would permit water transfers between basins should assure the water transfer would not be detrimental to rural Kansas and agriculture.

We oppose any changes to the water appropriation process that would weaken or remove any authority from the Chief Engineer, Division of Water Resources or Kansas State Board of Agriculture. We encourage all farmers and ranchers to actively participate in the review process and recommendations concerning the State Water Plan.

Water shortages in some areas of Kansas have emphasized the need for increased conservation measures. Unfortunately, "conservation" has meant to some people a restriction or elimination on water usage by "junior" water rights holders. We will continue to protect vested and domestic water rights. When water shortages occur in any area of the state, we believe non-vested water users in that geographic location should be the first to reduce water usage. Other water users in that geographic location could then be encouraged to reduce usage rather than shutting off water to a few.

We will strongly oppose any attempts to diminish the use of agricultural soil and water conservation practices and structures in order to make more water flow in our streams and rivers. Minimum stream-flow designations should be limited and should not jeopardize the water rights of existing appropriators.

We encourage negotiations with the State of Missouri for a Kansas City Metropolitan Stormwater Management Compact.





## Ellis County Coalition for Economic Development

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1301 Pine - P.O. Box 220 - Hays, KS 67601

PH: (913) 628-3102 FAX: (913) 628-1471

### TESTIMONY TO

### HOUSE ENERGY & NATURAL RESOURCES COMMITTEE

### Regarding Proposed Water Transfer Act Amendments

(K.S.A. 82a-1501 *et seq.*) (H.B. 2070)

My name is Lavern Squier, Chair of the Water Supply Task Force for the City of Hays, Kansas, and Executive Director of the Ellis County Coalition for Economic Development. The focus of my testimony today is regarding H.B. 2070 referencing changes to the Kansas Water Transfer Act. This testimony, both in written form and that verbalized to the committee, shall be construed as support for the bill as submitted by the Kansas Water Office.

The City of Hays has been subject to water shortages, both perceived and real, for the last thirty-plus years. A variety of factors, both man-made and naturally occurring, have contributed to the very real water deficiencies which have, especially in recent years, taken their toll on our city.

Precipitation pattern declines, the demise of Cedar Bluff Reservoir and the resulting impact on the Smoky Hill River

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Attachment 6*



basin, creation of Intensive Groundwater Use Control Areas (IGUCA's) encompassing both the Smoky Hill River city wellfield location and the Big Creek city wellfield location, are but a few of the events that have had serious impact on the city's ability to deliver water to consumers.

The City of Hays has produced water for the majority of the last fifty years from two aquifers, those being the Big Creek and Smoky Hill River aquifers. Declining ability in each of these aquifers to safely yield water has forced the city to consider a variety of additional alternatives. An examination of water rights versus ability to produce reveals a drastic disparity. What seems to be a reasonable supply from all sources based on water rights falls far short of demand and has necessitated the search and development of additional supplies.

In 1992, the city tested and developed a wellfield in the Dakota aquifer. This wellfield was intended to help stop the backslide in production abilities and was not expected to meet the demand for the long-term future.

With the development of the Dakota aquifer and the prohibition of expansion in the Smoky Hill River and Big Creek areas, the city has exhausted all reasonable sources within a fifteen-twenty mile radius. All remaining supply options now lie over fifteen miles from the city.

The city has utilized all reasonable local production options, begun implementation of an innovative water recycling design/program (water banking), and installed a conservation program that is far ahead of many other communities.

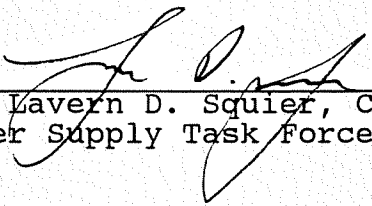
Among the very unique alternatives is a short-term test involving an Electro-Dialysis Reversal (EDR) system. This will be used to treat Dakota water on a trial feasibility basis.

Other potential supply/use possibilities include relationships with neighboring communities in the form of "regional" supply/distribution systems. The cities of Hays and Russell have engaged in discussions regarding a variety of regional possibilities. The proximity of each cities existing infrastructure makes such discussions feasible. Under a cooperative arrangement, water could economically be moved considerable distances.

The City of Hays believes it can serve as an example that a community can have done everything possible to use water wisely and still have needs that necessitate searching for water beyond "local" limits. The proposed changes to the Water Transfer Act would eliminate the temptation to "go for all you can" if the Act is going to be triggered anyway. It would let entities operate more prudently in their locale, yet still be regulated by the act if they reach out significant distances. It is important to remember that stringent

oversight by the Division of Water Resources exists under any circumstances concerning water production/transport ir-regardless of mileage and quantity. This would represent the extreme majority of cases. The Water Transfer Act, and its accompanying provisions for scrutiny, would and should be reserved for long distance/huge quantity situations (over 50 miles and over 2,000 Acre/Feet).

The proposed legislation is fair and equitable. The Water Supply Task Force and the City of Hays support this legislation.



Mr. Lavern D. Squier, Chair  
Water Supply Task Force

# YEARLY RAINFALL

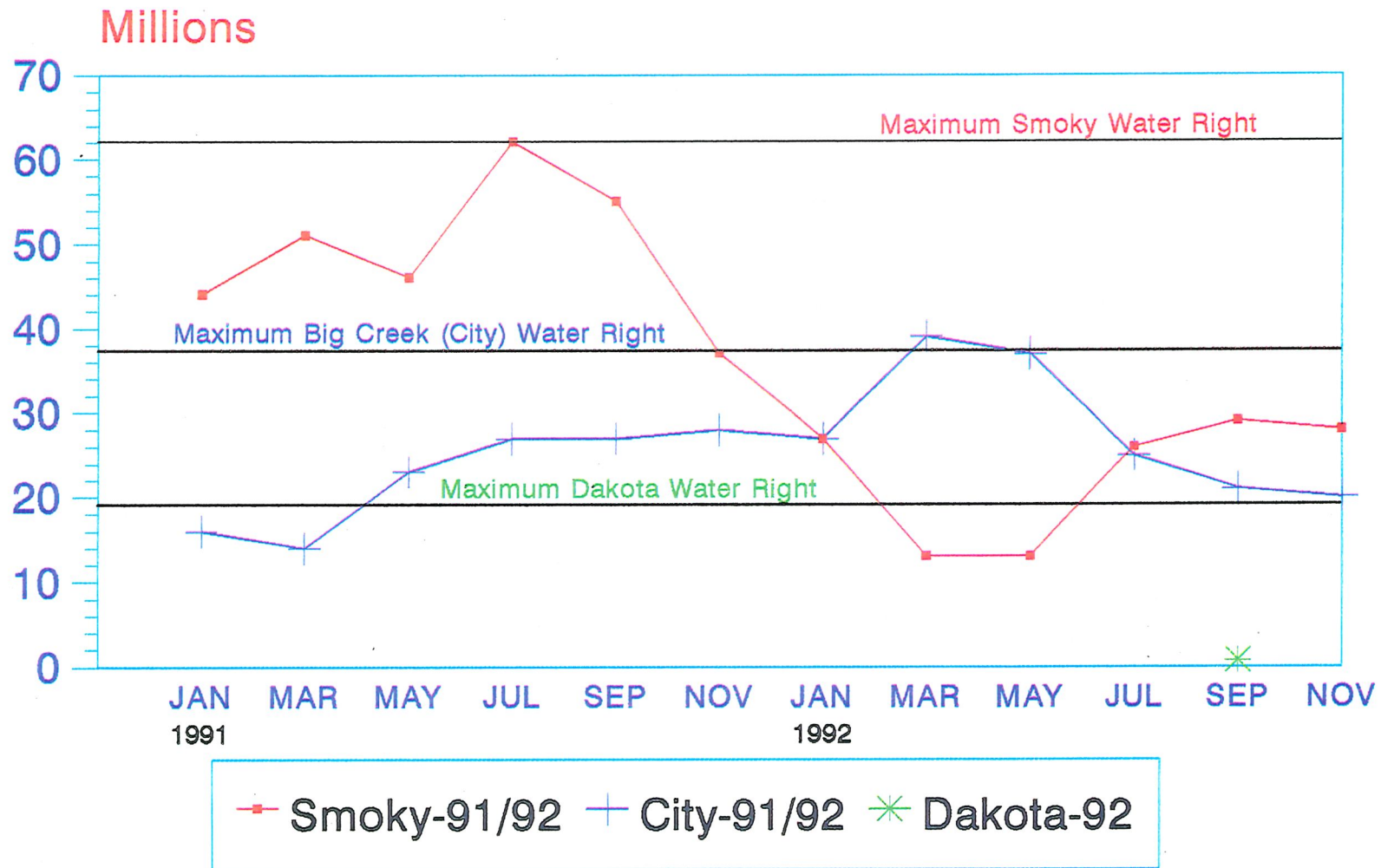
---

- 1988 -- 14.28 inches
  - 1989 -- 17.99 inches
  - 1990 -- 24.22 inches
  - 1991 -- 15.99 inches
  - 1992 -- 28.53 inches
- 
- 124 year long-term average is 22.53 inches
  - 30 year period (1961-1990) average is 21.85 inches

65 Source: FHSU Experiment Station

# Smoky, City, and Dakota Wells

## Gallons Pumped - 1991/1992



The maximum water right level reflects a monthly average of the city's total annual water right.

# Comparison of the Amount of Water Available

## Hays' Water Rights vs. Actual Production and Usage

---

In 1991 and 1992, the City of Hays consumed considerably less than the maximum yearly allotment established by Kansas water rights.

The amount of water available from the three primary water sources for the City of Hays, given by the City's water rights, is given below:

Smoky Wells	744,910,000 gallons (2,285 acre ft.)
Big Creek Wells	450,206,000 gallons (1,381 acre ft.)
Dakota Wells	228,200,000 gallons ( 700 acre ft.)
TOTAL	1,423,316,000 gallons (4,366 acre ft.)

In 1992, the City of Hays produced 591,028,320 gallons. This is approximately 42% of the city's allotted water right.

In 1992, the City of Hays consumed 469,895,096 gallons. This is approximately 33% of the city's allotted water right.

**City of Hays**  
**Well Discharge Capacity Report**

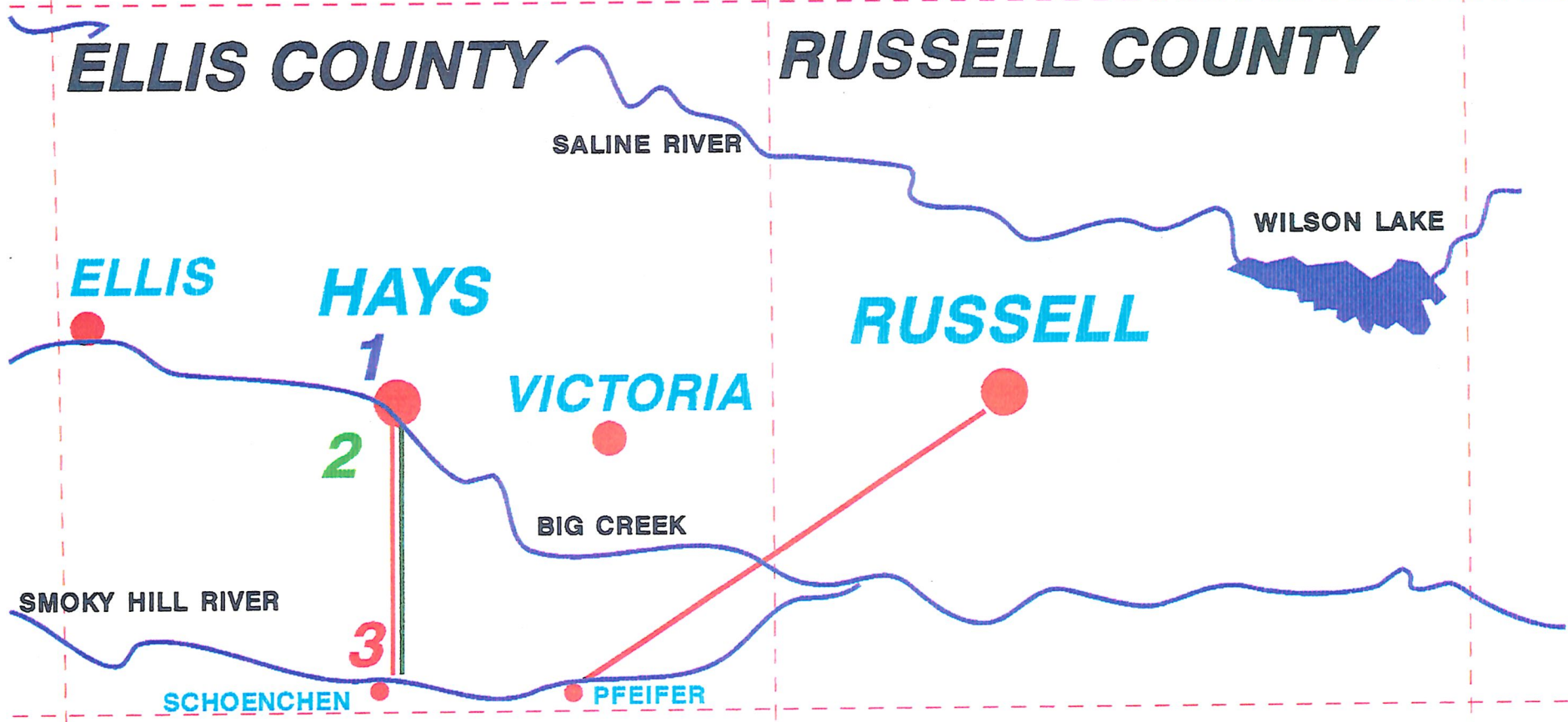
<u>Well</u>	<u>Discharge (gpm)</u>
C-YE1	75
C-YE2	110
C-17	135
C-19	90
C-21	70
C-24	50
C-27	155
C-28A	185
C-29	160
C-30	165
C-31	120
C-32	125
C-33	75
D-1	150
D-2	150
D-3	150
D-4	150
D-5	150
D-6	0
S-6	250
S-7	325
S-8	140
S-10	340
S-11	210
S-12	360
S-13	0
S-14	310
S-15	250
S-16	200
S-17	310
S-18	320

Well designations noted as "C" represent City Wells which are in the Big Creek aquifer.

Well designations noted as "S" represent Smoky Hill River aquifer wells.

Well designations noted as "D" represent Dakota formation wells.





- LEGEND:**
- 1** BIG CREEK WELL SITES
  - 2** DAKOTA WELL SITES
  - 3** SMOKY WELL SITES

6-9



# OGALLALA FORMATION

## XPLANATION

Quality of ground water generally available per well, in gallons per minute

Less than 10

10 to 100

100 to 500

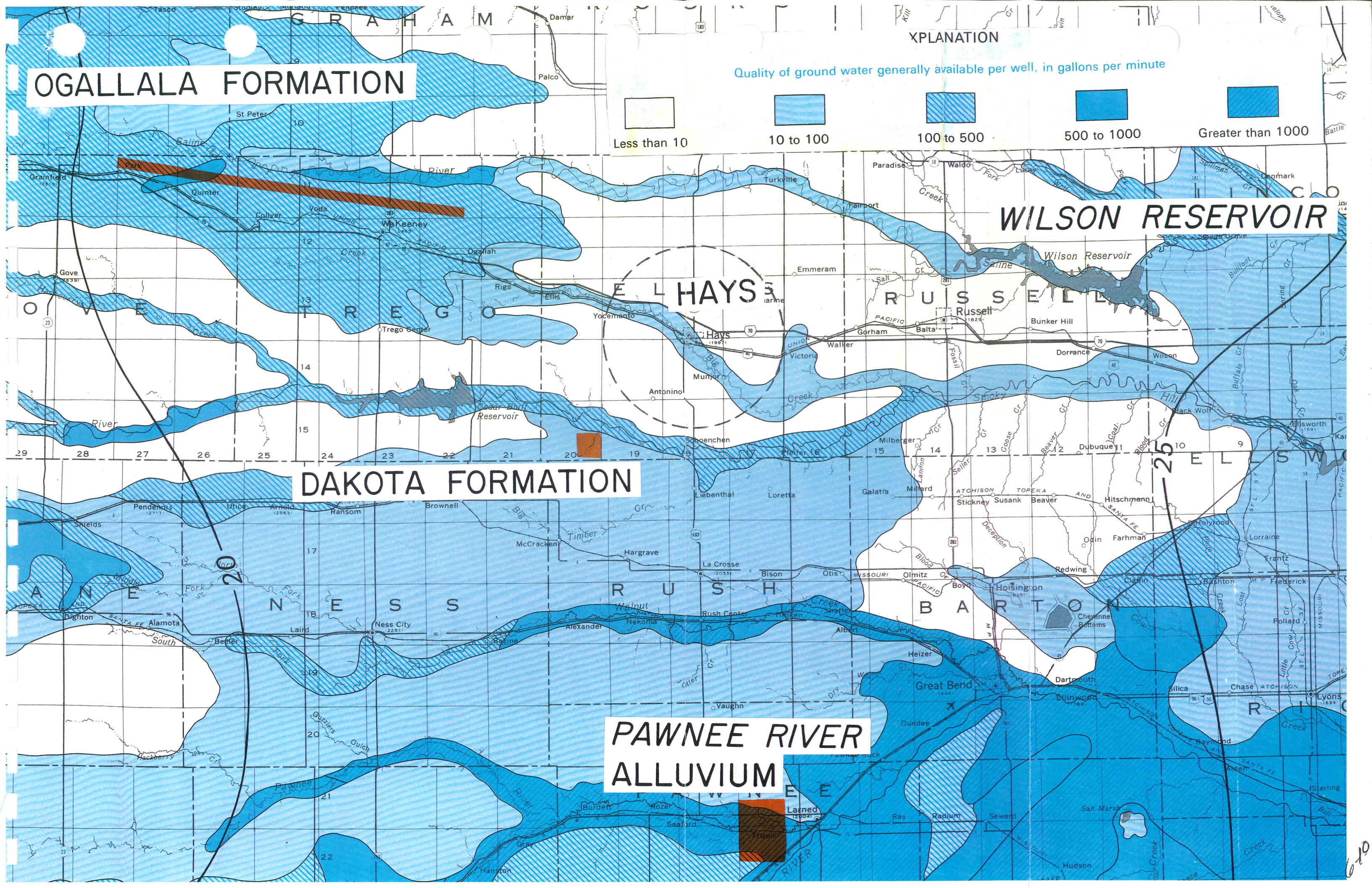
500 to 1000

Greater than 1000

# WILSON RESERVOIR

# DAKOTA FORMATION

# PAWNEE RIVER ALLUVIUM





MISSIONERS  
JOE GLASSMAN, MAYOR  
EBER PHELPS  
ROBERT ALBERS, M.D.  
SHARON LEIKAM  
DAN RUPP

ADMINISTRATIVE OFFICES  
HANNES ZACHARIAS, CITY MANAGER  
CAROL SUE GRABBE, CITY CLERK-DIR. FINANCE  
JOHN T. BIRD, CITY ATTORNEY



TEL. 913/625-3465  
FAX 913/625-8964

P.O. BOX 490  
HAYS, KANSAS 67601-0490

January 25, 1993

TESTIMONY BY  
HANNES ZACHARIAS, CITY MANAGER  
HAYS, KANSAS

TO THE HOUSE ENERGY AND NATURAL RESOURCES  
COMMITTEE IN SUPPORT OF HOUSE BILL 2070  
DEALING WITH CHANGES IN THE  
WATER TRANSFER ACT

Chairman Holmes and other members of the House Energy and Natural  
Resources Committee:

I am Hannes Zacharias, City Manager of Hays, Kansas, representing the community on its support of House Bill 2070, developed by the Kansas Water Authority and the Kansas Water Office dealing with changes in the Water Transfer Act. The present statute places a significant barrier in our search of adequate water supplies for our community. The recommended changes to the Water Transfer Act would aid the City of Hays in its search for these needed supplies yet still provide a high level of scrutiny for large amounts of water being transferred over long distances.

By now everyone has heard of the problems Hays has experienced with its water supply. In 1983 the City of Hays consumed 3,500 acre feet of water. As the attached chart indicates, this water came from two primary sources; in town wells along the Big Creek Aquifer and a series of wells located along the Smoky Hill River, some 13 miles away from the city limits.

*House of Energy & Natural Resources  
Jan 25 - 1993  
Attachment 7*

In 1992 the inability to pump water from our existing wells due to the diminishing water table dramatically reduced this amount by 47% to 1,800 acre feet. The most dramatic reduction in production occurred late in 1991 in the Smoky Hill well field where yields were cut in half and some wells actually ran dry.

In response to this shortage, the community instituted several measures to force the conservation of water. Some of the programs instituted include:

1. **Strict Allocation Program.** This program allocated 50 gallons of water per person per day, or 200 cubic feet per month. An additional 100 cubic feet per month was allowed for each meter. Thus, a family of four was limited to 900 cubic feet on a monthly basis. If any customer exceeded this allocation, strict penalties were applied; \$10/100 cubic feet on the first offense, \$20/100 cubic feet on the second, and \$30/100 cubic feet on the third and all other subsequent offenses. Fines in 1992 totaled \$100,000.
2. **Showerhead Program.** This program issued free ultra low flow showerheads to any Hays customer upon receipt of the previously installed showerhead. All hotel and motel showers were eligible for this program as well as all residential properties (limit 2 per household). This has resulted in the distribution of over 7,000 showerheads since February of 1992.
3. **Toilet Rebate Program.** The City established a program to provide \$110 cash to any resident or commercial facility that would replace an existing toilet with an ultra low flow toilet. The program was limited to

one toilet per household or 50% of those available in a commercial structure (hotel/motel). Since the programs inception in February of 1992 over 2,100 toilets have been replaced totalling \$241,000 in funded rebates.

4. **Strict Usage Ordinances.** The City imposed several ordinances limiting the washing of vehicles outside on residential property and making it illegal to allow water to accumulate and flow down gutters. This prohibits the over watering of lawns and the subsequent wasting of water down street gutters.
5. **Educational Programs.** An intensive educational program was instituted to inform the public on ways to conserve water. This program dealt with a wide range of issues including turning off the facet while brushing teeth, using washing machines with only full loads, and encouraging restaurants to offer water only when asked by customers.
6. **City Half Cent Sales Tax.** As a way to finance future water exploration, the citizens of Hays passed a half cent sales tax in April of 1992, by a two to one margin. This sales tax raises approximately \$1.2 million annually and is already being used to finance the development of the new Dakota Aquifer.

The end result of these conservation measures has been dramatic. Over the last ten months water consumption among Hays residents has been reduced by 30% compared to 1991 and approximately 50% compared to 1983. When compared to other similar cities in Kansas, Hays per capita

consumption is substantially lower. It is estimated that many of these conservation measures are permanent since so many showerheads and toilets have been installed. Arguably, Hays is the model in the state for the effective use of water conservation measures.

Conservation is but one of the many measures Hays has employed to solve its water problems. One of the more innovative approaches is exemplified by the Big Creek Water Banking Plan. This program treats municipal waste water (sewage) to a standard very close to domestic drinking water to be deposited in the aquifer above our Big Creek wells for reuse. The City is in the process of completing a \$5.2 million dollar sewer plant improvement which will allow this recharge to take place. This concept is so new that only a few places in the country have attempted this program to date. Although not yet operational, it is hoped that this will be another component to ease our water problem in Hays.

It is obvious that Hays is doing a great deal to insure that its existing water resource is used wisely. These measures, however, adversely impact our ability to attract new commerce and industry, and has a significant effect on the quality of life in the community. Thus, new sources of water must be obtained.

As noted earlier, in 1983 the City consumed 3,500 acre feet of water to satisfy the existing demand. Currently the City is only able to guarantee between 2,300 and 2,800 acre feet of water in 1993 thus leaving a gap of 1,200 acre feet between the existing supply in the known demand. It is expected that between 3,500 and 4,000 acre feet of water annually will be

required in the next ten years to accommodate existing demand and future commercial, residential, and industrial expansion.

Simply put, Hays has used its resources in a frugal and prudent manner and must now search outside its immediate area to get future water supply. Mr. Squire will point out that all long-term water supplies exist outside the ten mile radius of Hays. Thus, any such long-term source would trigger the water transfer act. Expanding the limits of the Water Transfer Act to 50 miles and 2,000 acre feet would significantly ease the City's efforts to expand its existing water supply.

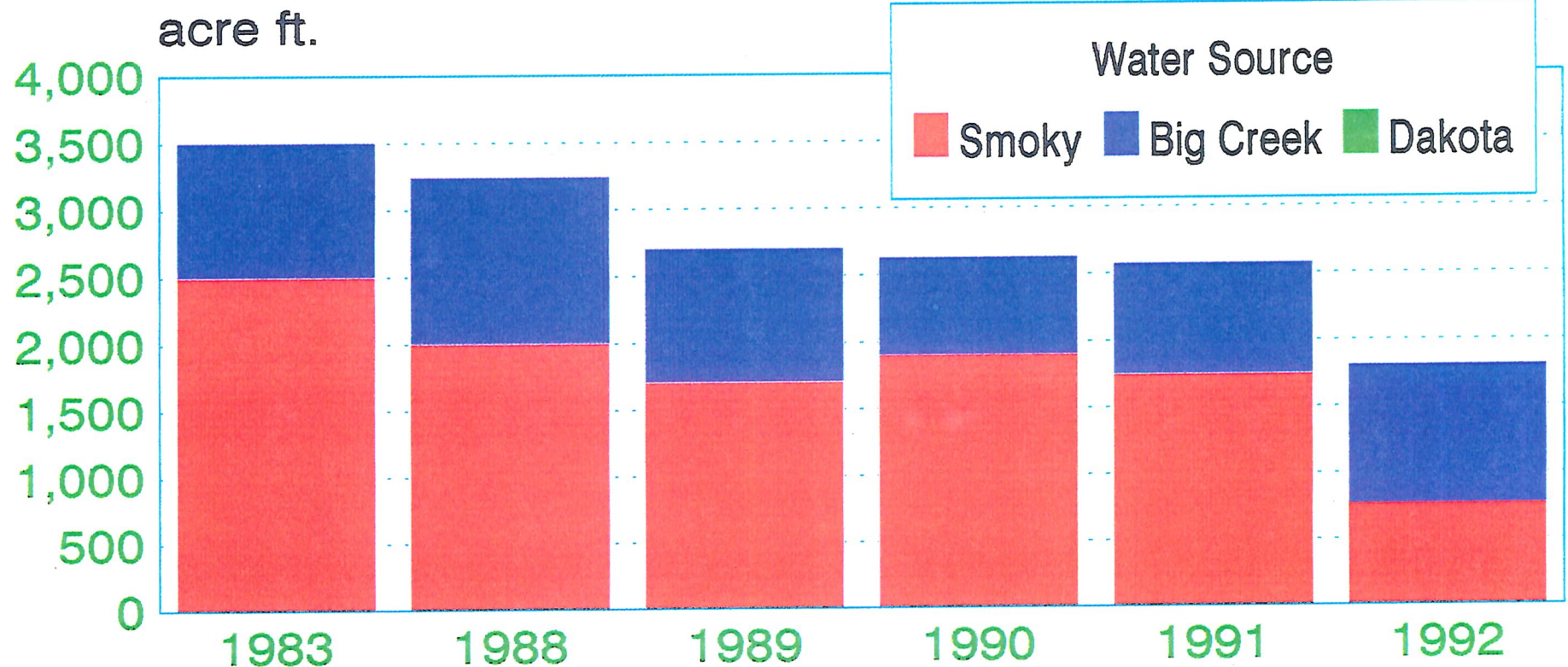
Even if H.B. 2070 passes, significant barriers still exist for Hays to access new water sources. Willing sellers of water rights and land must first be obtained. Where water rights are not presently in place, new water rights must be secured and wells drilled sufficiently apart so as not to affect existing water right holders or affect the ground water tables most of which are governed by a zero depletion program. Finally, the City must find the financial sources to pay for long stretches of pipeline, numerous wells, and long term O & M costs.

In closing, let me restate the City's strong support for the Water Authority's recommended changes to the Water Transfer Act. The changes noted are prudent and do not allow large volumes of water to be transported over long distances. The City of Hays has done a great deal to use its existing water resources wisely. The noted changes as indicated in House Bill 2070 would help remove a barrier which inhibits our ability to secure adequate sources of water for our citizens.

We urge your strong support of House Bill 2070. Thank you.

# Amount of Water Pumped

City of Hays



(acre ft. figures are approximations)

## Note:

Although the population of Hays increased by approximately 9% over the 1980-1990 decade, the amount of water pumped by the city declined by nearly 47% over the 1983-1992 decade.

# COMMUNITY CONSERVATION & SUPPLY MEASURES

- **STRICT ALLOCATION PROGRAM**

- **SHOWERHEAD PROGRAM**

- **TOILET REBATE PROGRAM**

- **STRICT USAGE ORDINANCE**

- **EDUCATIONAL PROGRAMS**

- **CITY HALF CENT SALES TAX**

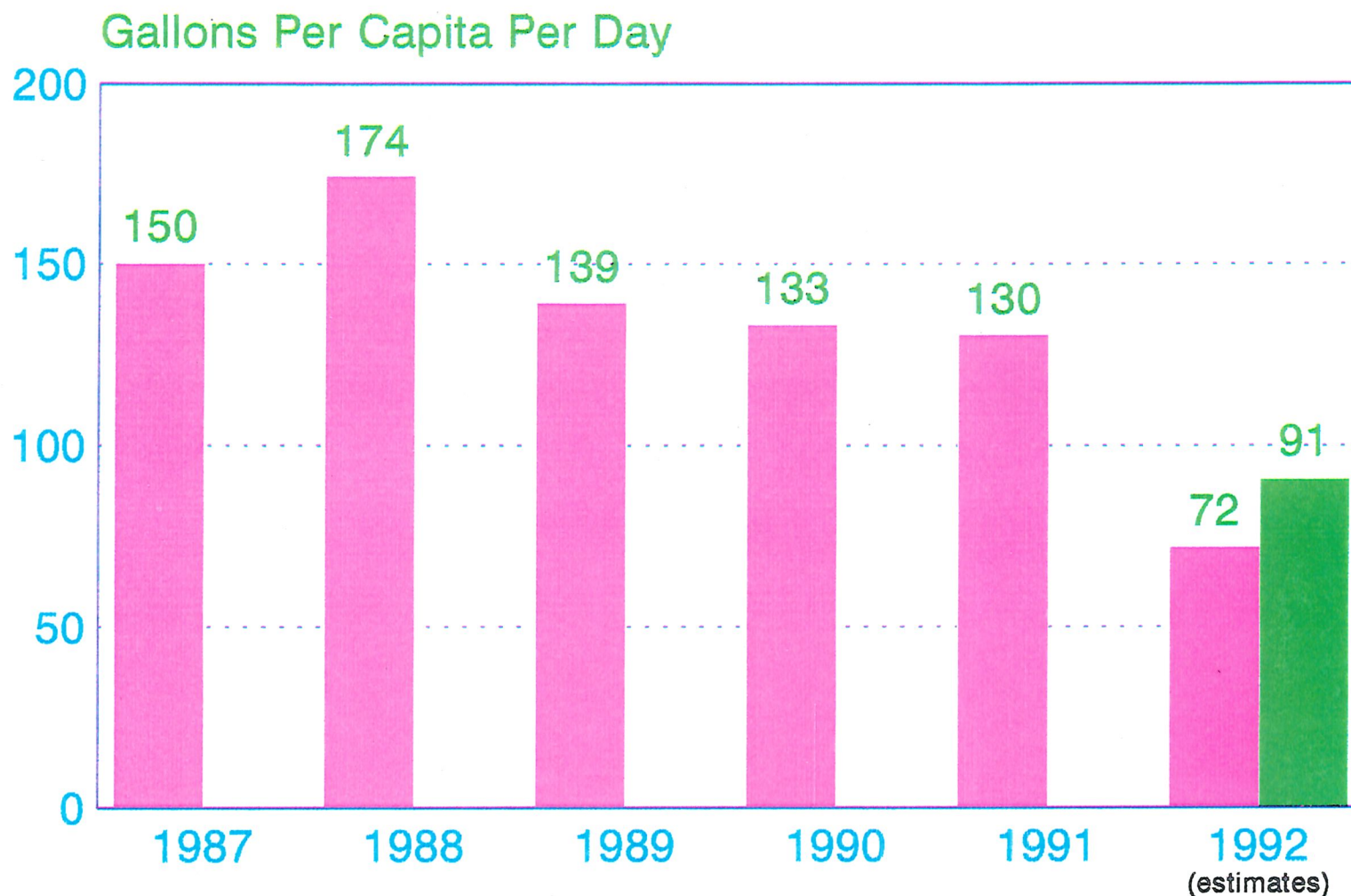
7,000 given  
\$110 toilet replacement  
Can't let water run down curb  
light bulbs -  
\$1.2 M. To seek new water resources

7-7



# City of Hays Per Capita Water Consumption

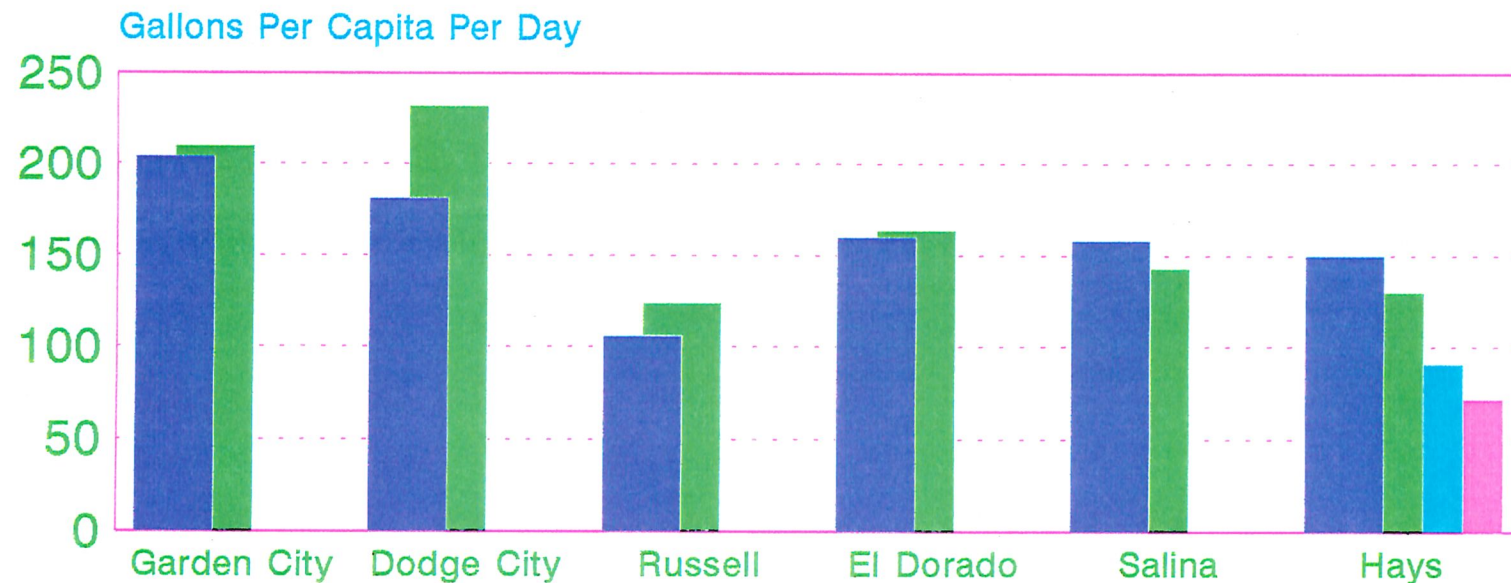
1987 - 1992



The 72 GPCD figure is based on actual 1992 water consumption of 469,895,096 gallons.  
The 91 GPCD figure is based on actual 1992 water production of 591,028,320 gallons.

# Per Capita Water Consumption

1987 vs. 1991



1987		204	181	106	160	158	150
1991		210	232	124	164	143	130
1992*							91
1992**							72

\* The 91 GPCD figure for Hays in 1992 is based on the year's production of 591,028,320 gallons.

\*\* The 72 GPCD figure for Hays in 1992 is based on the year's consumption of 469,895,096 gallons.

THE KANS. CONTRACTORS ASSOCIATION, INC.



1923 - 1993

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TESTIMONY

BY THE KANSAS COALITION ON WATER RESOURCES  
BEFORE THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
REGARDING  
HOUSE BILL 2070

Mr. Chairman, and members of the House Energy and Natural Resources committee, I want to thank you for allowing me the opportunity to appear before you this afternoon to discuss the measure regarding the transfer of water in the state.

My name is Bob Totten, I am the Public Affairs Director for the Kansas Contractors Association. Our association represents more than 330 heavy, highway, and municipal utility contractor and association member firms in the Kansas construction industry.

I am here today to support House Bill 2070. There are several reasons I support this measure which reduces the restriction on the transfer of water in Kansas.

Our organization represents the contractors of the state who build water and sewer lines and would obviously benefit whenever the need arose for building such lines. But in our industry, which also builds water and waste water treatment facilities, we know first hand about the need of water for industry to prosper.

*House Energy & Natural Resources  
January 25-1993  
Attachment 8*

Page Two  
Testimony  
by The Kansas Coalition on Water Resources  
Before the House Committee on Energy and Natural Resources  
Regarding  
House Bill 2070

Without adequate water supplies, our state is going to suffer. We are greatly concerned that our communities do not have sufficient water supplies for their citizens and if the laws are not changed, these communities will lose populations to areas that do have sufficient water.

Our state is stagnant in its population growth and we will see this stagnation or population decrease unless we take steps to provide sufficient support for our citizens. They will move away to "greener pastures" if they have to, to continue in their pursuit of happiness.

The measure before you in House Bill 2070 is a small measure when you consider other states have more gigantic programs such as California which transports water over hundreds of miles for people in the Los Angeles area...most of it from out of state.

We need to continually look at our water situation and consider the economic impact of not having an adequate water supply. We need this measure to help our small communities survive and then at some time, we will need to review the possibility of transferring water into Kansas to allow our industry to continue to grow and prosper and compete in the global market.

I urge you today to support this measure and will be glad to answer any of your questions, if I can. I thank you for your time and attention today.

TESTIMONY  
BY THE KANSAS COALITION ON WATER RESOURCES  
BEFORE THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
REGARDING  
HOUSE BILL 2070

Mr. Chairman and members of the House Energy and Natural Resources Committee, I want to thank you for allowing me to speak in support of the water transfer bill.

My name is Mike Welch and I am representing the Kansas Coalition on Water Resources, a diverse water environmental coalition, including contractors, businesses, engineers, environmentalists, individuals, associations, and agencies interested in protecting, preserving and ensuring the future of water resources for the people of Kansas. I am also President of BRB Contractors here in Topeka, a company that has built water infrastructure in Kansas for over 20 years.

Communities throughout the State are searching for means to address their water needs from a supply aspect, a quality aspect, and a treatment aspect. As Federal mandates become more burdensome, and as our existing resources are threatened by various pollutants, the health, welfare, and safety of our people can only be protected by taking into account all of the State water resources available and sharing them in a responsible manner, remembering that conservation and pollution prevention should be considered.

By enacting House Bill 2070 you will not only allow our communities to be able to consider the most economical and environmentally sound solution to their water needs, but also will require applicants for transfer rights to adopt and implement conservation plans and practices.

House Energy & Natural Resources  
Jan 25 1993  
Attachment 9

87

I thank you for your time this afternoon, and would be happy to answer any of your questions.

TESTIMONY TO THE HOUSE COMMITTEE  
ON ENERGY AND NATURAL RESOURCES

January 25, 1993

Mr. Chairman and Representatives:

I am Mike Armstrong and I am appearing on behalf of Water District No. 1 of Johnson County to speak in support House Bill 2070. Water District No. 1 of Johnson County is a publicly owned urban water utility which serves approximately 290,000 people throughout Johnson County as well as small portions of Wyandotte and Miami Counties.

Water District No. 1 has spent the last year and a half attempting to secure approval for a water transfer for additional water rights from the Missouri River. We are the only applicant that has applied for a transfer under the current Act. Based upon our negative experiences with the existing statute, we believe substantial changes should be made to the Water Transfer Act, and advocate the proposed revisions.

House Bill 2070 seems to streamline the procedures involved in a transfer application and places the initial decision-making power in a disinterested hearing officer. These changes all seem very positive. We are especially encouraged that the Administrative Procedures Act has been relied upon almost extensively in this version of the Transfer Act. Another significant change which we advocate is the removal of the

*House Energy & Natural Resources  
Jan 25, 1993  
Armstrong 10*

legislative veto provision. This oversight is clearly unconstitutional and it needs to be repealed. There has been a cloud on this provision since the Attorney General's office issued Opinion No. 91-12 concluding that such legislative oversight violated both the Kansas and U.S. Constitutions.

In this regard, I would like to call your attention to Water District No. 1's particular situation. If this bill is passed and becomes effective during this session, Water District No. 1's water transfer application is put in a nebulous position. It is not clear whether we would still be required to comply with the legislative oversight provision since our transfer was initiated under the old Act. While we have done some research on this issue and it appears that portion might be retroactive, it would be very desirable for you to specifically make this portion of this bill retroactive to transfer applications which are currently pending. Otherwise, it may be necessary for Water District No. 1 to seek a declaratory judgment as to the constitutionality of this provision.

Finally, I would like to compliment the parties involved in drafting this bill. It is much more concise and well organized than Senate Bill 555 introduced last year. I had an opportunity to review House Bill 2070 in an earlier version, when it was considered and adopted by the Kansas Water Authority policy committee, and I noticed that there may have been some errors or omissions when that bill was reorganized into the session law



format you have before you.

I have attached a list of proposed changes to this bill which outlines the differences between this version and the version which was adopted by the Kansas Water Authority policy committee. I have also included some recommended language to make the removal of the legislative oversight provision retroactive and also a few additional proposed changes for the sake of clarification.

PROPOSED CHANGES TO HOUSE BILL 2070  
SUBMITTED BY WATER DISTRICT NO. 1 OF JOHNSON COUNTY

1. On Line 15, Page 1 I would suggest that "or" be changed to "and," so that it would read: Water transfer means diversion transportation and use of water in a quantity of 20,000 acre feet...
2. On Page 2, Line 3 I would suggest that "K.S.A. 82a-1503" be replaced with "K.S.A. 77-521." This would also allow the removal of 82a-1503(c), located on Page 6, Lines 5-12. If you compare the language of Lines 5-12 on Page 6 to K.S.A. 77-521 you will see it is virtually identical.
3. On Page 3, Line 1 the word "authority" should be omitted.
4. On Page 4, Line 8 the word "the" should be inserted between "finds" and "application." The provision should read: If the chief engineer finds the application to be insufficient...
5. Lines 36-42 on Page 7 is confusing and does not make sense. It should be revised. I would propose the adoption of the language of the proposed bill which the Kansas Water Authority policy committee approved. That provision should read as follows: The order of the hearing officer disapproving or approving a transfer in whole or in part

shall be deemed an initial order. The panel shall be deemed the agency head for the purpose of reviewing an initial order of the hearing officer and shall review the initial order of the hearing officer. The panel's review shall be limited to a review of the record. The panel may approve or disapprove the transfer as set out in the initial order, or remand the matter for further proceedings.

6. I would propose the addition of the following language in Section 1504 to make the repeal of the legislative view retroactive: The provisions of this act shall apply retroactively to any water transfer application which was pending or subject to judicial or legislative review at the time of the effective date of this Act.
7. I would suggest that you replace the term "...consistent with the guidelines for conservation plans and practices..." with the following language: "...shall conform to the guidelines for conservation plans and practices..." This language is located on Line 15, Page 3 and Line 43, Page 3.



# Kansas Engineering Society

*A state society of the National Society of Professional Engineers*

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## TESTIMONY TO THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE January 25, 1993

Chairman Holmes, members of the Committee, I am Bill Henry, Executive Vice President of the Kansas Engineering Society, a professional organization of some 900 licensed engineers who support the passage of H.B. 2070.

The membership of the Kansas Engineering Society consists of licensed engineers who do consulting work and design roads, water treatment facilities and waste treatment facilities for all units of government. Other members of our organization work in state government, city government and county government, and still other members teach engineering at our three Schools of Engineering in Kansas and also are employed in industry by private companies throughout the state.

Last spring, a group of our members from our Environmental Resources Committee began meeting with members of the American Water Works Association, members of the Kansas Water Authority and Rural Water Districts to discuss priorities and issues in water quality and water storage in Kansas. This discussion led to the development of joint and identical policy statements by these organizations. A copy of the Kansas Engineering Society policy statement is attached to our testimony.

We believe the Kansas Water Transfer Act does need revision. And we support all of the changes that are recommended in H.B. 2070. The act, as it now stands, presents an administrative nightmare because the definition as to what constitutes a transfer is poorly conceived and the implementation process presents a bureaucratic jungle. In addition, a Kansas Attorney General's Office opinion found certain provisions of the act to be unconstitutional.

Current law defines a water transfer as any diversion and transportation of water in a quantity of 1,000 acre feet per year for a distance of ten miles. This is a most stringent trigger. The 1,000 acre feet is the equivalent of 0.88 MGD or the approximate irrigation of 500 acres.

*House Energy & Natural Resources  
Jan 25-1993  
Attachment 11*

When small utilities, such as Rural Water Districts and small municipalities start to become regional operations in response to the increasingly stringent requirements of the Safe Drinking Water Act, their service area and size and capacity will face application of this Transfer Act. Similarly, a farmer wishing to retire or otherwise sell his water right to a nearby community will find the community unwilling to confront the costly, time consuming issues associated with the Transfer Act and thus water marketing in the state will be impeded. Indeed, it can even argued as now written river assurance district programs which store excess flood waters for subsequent release down the same stream pattern may violate the act. Clearly, the Legislature did not intend to make unduly complex or costly the resolution of what are very localized community issues. The need for a Transfer Act was triggered by the specter of large capacity transbasin diversions of water which might have regional impacts, if not state wide impacts.

We also believe that the act clearly states that storage water which is subsequently released down it's historic route should not be subject to the Transfer Act provisions. The proposed amendments in H.B. 2070 will in no way diminish or otherwise impair existing rights.

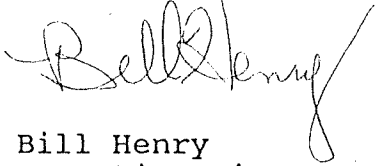
The complexity of the current act is clearly and unduly laborious and expensive. Currently, when the chief engineer of the Division of Water Resources receives an application for water which exceeds the aforementioned trigger dimensions he has to remand it to a three person review panel. That panel includes himself, the Director of the Kansas Water Office and the Director of Environment at the Kansas Department and Environment. This panel is charged to determine if the benefit to the state of approving the diversion outweighs the benefits to the state of not approving the transfer. If the panel finds in favor of the transfer the finding is considered but an initial order. It is then further reviewed by the Kansas Water Authority. The later may approve or remand it back to the three person panel. Even if the Kansas Water Authority approves the order it is not final until it is sent to the Legislature. It then becomes final only when the Legislature approves or presumably decides not to disapprove. Is this final step of approval requiring legislative action (or non-action) which appears to grant executive authority to the Legislative branch. As such it appears to be unconstitutional by many on grounds that it violates the constitutional requirement for the separation of judicial, legislative and executive powers. H.B. 2070 will correct some of the problems in our current Transfer Act and would serve future water development adequately in Kansas, and would disassemble a bureaucratic and administrative pattern that proves costly to those wishing to seek transfers while still protecting regional and local interests in the face of large inter-basin transfers.

The Kansas Engineering Society recommends that this Committee recommend favorable for passage H.B. 2070 which will clearly allow small municipalities and rural water districts to escape

bureaucratic headaches when seeking small water transfers.

I would be pleased to reply to any questions the Committee may have.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Bill Henry". The signature is written in dark ink and is positioned above the typed name and title.

Bill Henry  
Executive Vice President  
Kansas Engineering Society





# Kansas Engineering Society

*A state society of the National Society of Professional Engineers*

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## WATER TRANSFER POSITION STATEMENT

The Kansas Water Authority should recommend the Kansas Water Office submit to the 1993 legislature as a part of the Kansas Water Plan a redraft of SB 555. Further, the following amendments should be made to the redraft:

1. The 10 mile trigger should be increased to add more flexibility.
2. The Kansas Administrative Procedures Act should be used in administering water transfers to minimize court challenges.
3. The three State agency heads in the current act should select and appoint a special master to hear applications for water transfers. The special master would be selected using federal guidelines.
4. The decision of the special master should be reviewed by the panel of three State agency heads for final action. The panel of State agency heads would have the right to accept or reject the decision or remand it to the special master for additional consideration. No amendments or alterations would be allowed.

11-4

HOUSE BILL 2070  
TESTIMONY - HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
January 25, 1993

Chairman Holmes and committee members, thank you for the opportunity to present information on House Bill 2070.

I am Dick Pelton, Chairman of the Kansas Lower Republic Basin Advisory Committee. Our Basin has recommended to the Water Office and Water Authority changes which should be made to improve the Water Transfer Act. House Bill 2070 represents these changes. We strongly support the provisions as contained in this bill. We feel the selection of an independent hearing officer by the three state agency heads would greatly improve the process. Further, we recommend the elements to be considered by the hearing officer as contained in this bill under K.S.A. 82a1502, Section 3 be implemented.

We support the Transfer Act be governed by the Kansas Administration Procedures Act, increasing the mileage from 10 miles to 50 miles, and the quantity from one thousand acre feet to two thousand acre feet.

In summary, the KLRBAC supports the revision as contained in HB 2070. We encourage your favorable consideration of passage of this bill.

12  
w-attachment

House Energy & Natural Resources  
Jan 25-1993  
Attachment 12





Kansas Section-American Water Works Association

January 25, 1993

Representative Carl D. Holmes  
Chairman, Energy and Natural Resources Committee  
State Capitol, Room 115-S  
Topeka, KS 66612

Dear Chairman Holmes:

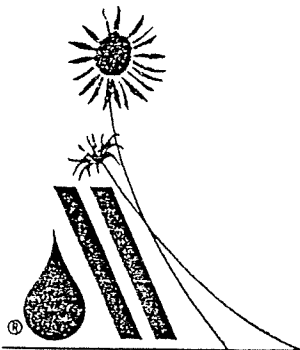
Enclosed is a Position Statement from Kansas Section-American Water Works Association supporting passage of House Bill 2070 on the Water Transfer Act.

R. E. Pelton  
Chairman  
Water Utility Counsel  
Kansas Section - AWWA

dc

Enclosure

House Energy + Natural Resources  
Jan 25-1993  
Attachment 13



## Kansas Section-American Water Works Association

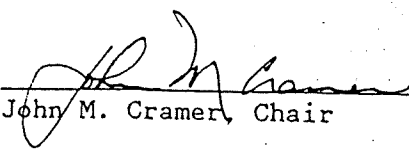
### POSITION STATEMENT

August 4, 1992


On behalf of the membership of the Kansas Section- American Water Works Association, the Board of Trustees has adopted the following position statement concerning revisions to the Water Transfer Act:

The Kansas Water Authority should recommend the Kansas Water Office submit to the 1993 legislature as a part of the Kansas Water Plan a redraft of SB 555. Further, the following amendments should be made to the redraft:

1. The 10 mile trigger should be increased to 50 miles to add more flexibility.
2. The Kansas Administrative Procedures Act should be used in administering water transfers to minimize court challenges.
3. The three State agency heads in the current act should select and appoint a special master to hear applications for water transfers. The special master would be selected using federal guidelines.
4. The decision of the special master should be reviewed by the panel of three State agency heads for final action. The panel of State agency heads would have the right to accept or reject the decision or remand it to the special master for additional consideration. No amendments or alterations would be allowed.

  
John M. Cramer, Chair

Attest:

  
Richard Porter, Secretary-Treasurer

TESTIMONY on HOUSE BILL No. 2070  
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
LOWER REPUBLICAN WATER ASSOCIATION

January 25, 1993

Mr. Chairman, and Honorable Representatives, I appreciate this opportunity to appear before you today in representing the Lower Republican Water Association. I would like to thank the Kansas Water Office for initiating this bill.

House Bill 2070 appears to be a good proposal. By increasing the amount of acre feet and the distance of transfer required to trigger administration of the transfer act it brings efficiency to small transfers of water. Also, this bill does something our association has been asking for, and that is the creation of an independent hearing officer.

In addition, by removing the Water Authority and the Kansas Legislature from the review process it will greatly expedite transfer proceedings. Therefore our association would like to go on record as supporting House Bill 2070 in general terms. I say general terms because we feel this bill does not go far enough.

Transfers between basins not only transfer water but also the economic and social structure that water maintains. The Governor of Kansas has stated that perhaps it is time to share the resources of Kansas. We have no trouble with that concept. However, if transferring water from one basin causes irreparable damage, while the receiving basin has alternative sources, we do not feel that falls under the definition of sharing.

We strongly feel that House Bill 2070 does not go far enough in protecting established water rights in the basin of origin. Therefore we offer an amend-

*House Energy & Natural Resources  
Jan 25-1993 Attachment # 14*

*#12*

ment to this bill to protect the livelihoods of the people of the originating basin.

PROPOSED AMENDMENT TO HOUSE BILL No. 2070                      Sec. 3, page 3, line 13,  
after the word water insert the following words: "with application dates  
prior to the date of the transfer applicant"

This amendent would allow the transfer of water for the good of the receiving basin without destroying the economic and social fabric of the originating basin. With the inclusion of this proposed amendent we urge passage of this bill.

Thank you for this opportunity to appear before you today.

Mark Taddiken  
Lower Republican Water Association

City of

**RUSSELL**

INC. 1872

January 25, 1993

Dear Committe Members:

Water is and always has been a vital issue for Russell. Significant efforts have been made in the past to ensure a viable long-term-water source for our City. Diversification of water sources is a must to protect against losses due to contamination and drought. In order to meet this criteria, there is sometime a need to go outside the ten-mile limit to obtain another source.

We would appreciate your consideration and support of K.S.A. 82a-1501.

Sincerely,

*Judy Sargent*

Judy Sargent  
City Manager

*House Energy & Natural Resources  
Jan. 25 1993  
Attachment 15*

Phone:

012 423-6311

P.O. Box 112  
133 W. 8th

Fax:

012 423-4207