

Approved: Carl Dan Holmes<sup>®</sup>  
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 26, 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: Bob Hooper, Bogue Kansas  
Joyce Wolf, Kansas Council  
Linda Alyan, Kansas Natural Resource Council  
Bill Craven, Sierra Club  
Mike Fegan, Mayor's Water Committee of Junction City

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.

Bob Hooper, Bogue, Kansas, testified in opposition to HB 2070. He stated that this bill was primarily conceived and written to make it easier to acquire and transfer water to metropolitan areas and to encourage and facilitate growth of the larger cities of Kansas, at the permanent, irrevocable expense of areas which do not have such cities. He further stated that a truly responsible water policy must be built around two moral principles 1.) We will live within our natural resource base; and 2.) We will respect the environmental integrity of the basin where the resource naturally occurs. Mr. Hooper submitted a position statement from The Solomon River Basin to be included with his testimony. (Attachment 1)

Joyce Wolf, Legislative Liaison, Kansas Audubon Council testified in opposition to HB 2070. Ms. Wolf testified of the need to insist that the municipal water conservation guidelines be strengthened and certain water conservation measures be mandated before a water transfer is considered. She said The Audubon Council is concerned that once an order to transfer water is complete, there does not appear to be a mechanism for periodic review of the effects on the transferring area or basin. (Attachment 2)

Linda Alyan, Kansas Natural Resource Council, testified in opposition to HB 2070. She stated that although they support the efforts of this bill to improve the current act, they oppose both the provision for an appointed hearing officer and the change of water quantity and distance before the Act is triggered. She testified that they would like to see more explicit and stringent conservation requirements incorporated into the Water Transfer Act. (Attachment 3)

William Craven, Legislative Coordinator, Kansas Sierra Club, testified in opposition to HB 2070. Mr. Craven stated that although we now have laws which require conservation plans for some new uses or applications for water, we don't require conservation plans for existing water. He further added that there are legitimate concerns that should be included in a re-write of this act and enumerated them as shown on (Attachment 4).

Mike Fegan, Mayor's Water Committee of Junction City, testified in opposition to HB 2070. He stated that although he supports the major portions of HB 2070, he believes that the removal of the Water Authority from the process of review and approval is a major change in policy and is intensified by the proposed removal of the Legislature. He believes this issue should be given serious review before accepting HB 2070. (Attachment 5).

The floor was opened to questions by the committee members. The following questions were asked:

Chairperson Holmes  
To David Pope

1. Under current law with the current Water Transfer Act that is in place, if a group of people or City ask for 4,000 acre feet of water within 8 miles of the usage would that water trigger the Water Transfer Act?

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 26, 1993.

Rep. Hendrix

To Mr. Hooper

1. Are there any circumstances in which you would approve of the transfer?
2. Are you familiar with the Hays water problem?
3. What would you suggest Hays do?

To Mrs. Wolf

1. Would you have a recommendation on what we could do to make the expense bearable?

To Mr. Hurst

1. Is there a in place conservation standard? Would you supply those for each member of our Committee?

To Mary Torrence

1. Could we delegate this authority in terms of oversight or review? Is it because we would be acting in some sort of judicial capacity that the Attorney General's question?

Rep. Grotewiel

To Bill Craven

1. Did you review Wichita's conservation plan?
2. What would your recommendation to Wichita be in the situation they are faced with now?

Rep. McKinney

To Mr. Hurst

1. It is my understanding that part of the problem with the Johnson County issue is that they thought the conservation guidelines were to strict?

Rep. McLure

To Mr. Hooper

1. Would you feel more comfortable with the act if we would stipulate to having a member of the Ground Water Management District approve any transfers?

To Mr. Hurst

2. Are the conservation guidelines updated routinely - by regulation?

Rep. Lloyd

1. Could we get someone to explain the Kansas Administrative Procedures Act?

Rep. Powers

To Mr. Hooper

1. Is the current law better than what we are proposing?
2. Is the current law depleting our water resources?

Rep. Alldritt

To Mr. Hurst

1. How much water is available in this state?
2. Where is the water?
3. Who owns the water?
4. Is there a definition of "need" applied to the applicant?
5. Is there a definition of "surplus" ?

The Committee reviewed the minutes of January 14, 19, 20, and 21, 1993.

A motion was made by Representative Grotewiel, seconded by Representative Long, to approve the January 14, 19, 20, and 21, 1993 minutes. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room  
526-S Statehouse, at 3:30 p.m. on January 26, 1993.

The meeting adjourned at 4:50 p.m.

The next meeting is scheduled for January 28, 1993.

GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES

DATE: Jan 26

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Mike Beam	Topeka	Ks. Luth. Assn.
Jim Lamm	"	WESTERN RESOURCES
Bill Anderson	Mission	Waty DIST Id's Co
Linda Alyan	Lawrence	KS Natural Resource Council K.N.R.C.
Bill Craven	Topeka	Sewer Clubs -
Ch. Duffy	Topeka	Ks. Roten Council
Juan Kenney	Topeka	KWO
Joyce Why	Lawrence	Ks. Audubon Council
Steve Blank	Manhattan	Intern - Rep. Gatliff
Larry D Shannon	Topeka	Topeka Water
Mary Ann Bradford	"	League of Women Voters
RM Shield	"	Star News
Dahnt Suk Jans	Topeka	KWO
Dave Toplikar	Lawrence	Law. Journal-World
David Corliss	Lawrence	City of Lawrence
BILL FULLER	Manhattan	Kansas Farm Bureau
BILL HENRY	TOPEKA	Ks Engineering Society
Jim Stiles	Topeka	KS Water Office
David H. Page	Topeka	DWR - KSBA
Ron Fox	Topeka	KDHE
Larry Brady	Lawrence	Kansas Geological Survey
Alice Wentworth	Mulvane, Ks.	
HOMERINE BODEN	MULVANE, Ks	
Merle Wentworth	Mulvane	
Jack Boden	Mulvane Ks	



Testimony Relative to House Bill 2070 Water Transfers Act  
House Energy & Natural Resources Committee  
Room 526 S 3:30 pm January 26, 1993)

by Bob Hooper / Box 3 / Bogue, KS 67625.

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Introductory Information

My name is Bob Hooper. I live in Bogue, within view of the dying South Solomon. I continue to serve on the Solomon River Basin Advisory Committee, having been appointed to the original steering committee in 1986. Our committee has partially expressed its position regarding water transfers in September 1991. A copy will be available to you through the Kansas Water Office, and I will leave one today for your chairman.

The Kansas Water Office cancelled our Basin Advisory meeting in January of this year, so we did not have an opportunity to meet and confer. However, I personally consider the issue of water transfers so important that I have made a special effort to be here today.

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TESTIMONY

Ladies and gentlemen, my time before you is short. I intend to be plainspoken. I have driven several hundred miles at my own expense. I am not a lobbyist. No one pays me to say what I am going to say.

I am a private citizen who for fifteen years has very publicly advocated real change in Kansas water policy--change leading to sustainable use of the resource and stewardship for the earth. Today I come to challenge you as representatives of the people of Kansas to honor those ideals.

Specifically, I am here to tell you that House Bill 2070 as it stands, is a step backward, not a step forward. It would encourage further irresponsible exploitation of an already threatened aquifer.

House Bill 2070 (let us put the cards on the table) was primarily conceived and written to make it easier to acquire and transfer water to metropolitan areas. It is not at the request of the grassroots basin advisory process. It is the brainchild of places like Wichita and Hays, and its language is the creation of the Kansas Water Office. HB 2070 is a bill to encourage and facilitate growth of the larger cities of Kansas--at the permanent, irrevocable expense of areas which do not have such cities.

[CONTINUED]

Testimony / Bob Hooper / HB 2070 Water Transfer Act  
26 January 1993

House ENR  
Attachment

1/26/93  
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It is a bill which wholesale water district developers support and would use for a grand expansion. Two years ago, I was approached by a water engineering firm, which asked me to help lay the groundwork for a huge water supply system which would market water pumped from Northwest Kansas. When I said any such plan would have to protect the integrity of streams and reservoirs, and fit within a safe-yield philosophy, they were offended.

HB 2070 is a bill whose precedent would allow rural water right holders to enrich themselves--and impoverish the land forever by selling its most vital resource to the highest bidder. In other states like Colorado and California, that's exactly what has happened.

Our new Secretary of the Interior, Bruce Babbitt in an article in Time Magazine (July 22, 1991) called the development of Colorado "an extraordinary achievement" but also said that the very success of Colorado's plan spawned the myth that "there's more water over the next hill." HB 2070 is a bill that looks over the next hill...for ever more water.

In plainer terms, it is a bill for the greedy. Once in awhile, I am accused of making an emotional argument about water, to which I immediately plead guilty. I am speaking from the heart.

However, I want to remind you also that greed is an emotion, too. But an emotion so cold, dark, and humorless that it passes for something less malignant. In fact greed is the present curse of this country. And it threatens to undo us.

Certainly greed is nothing new in the exploitation of water. Everybody who has studied the issue knows that. Where I live, the northwest quadrant of Kansas, the irrigation industry has over-appropriated the water supply since the 1960's. Some areas near Hoxie have lost as much as 45% of the original water-table. North of where Chairman Holmes lives in Southwest Kansas, I believe that water-tables have dropped over 125 feet. In the Central-West area of Kansas, the exploitation of water has been just as irresponsible.

The fate of the Arkansas River is the subject of an ongoing legal battle, as Colorado over-appropriates water to our west. In my own area, streams are becoming ever-more intermittent not from Colorado's lack of stewardship, but from our own. Some stretches of river are now permanently dry. Here and there, they have been bulldozed to create more cropland, sometimes in violation of wetlands protection laws. Yet, we cannot get the state to apply minimum

[CONTINUED]

streamflow standards, because our streams are "intermittent." Yet where is water more precious than where it's rarest?

All the Western reservoirs in Kansas: Kirwin, Webster, Cedar Bluff, and Sebelius are endangered, and a big part of the problem is over-appropriation of water.

Responsible people in the irrigation industry now admit the industry has, with the misguided "help" of State bureaucrats, mismanaged the resource. The State of Kansas, I am saying--and its agents--screwed up in their previous policy and practice. It's an embarrassment.

Now, some hope of change is in the wind. The board of Groundwater Management District 4 in Colby, for example, is struggling with the pain it will certainly take to implement a wiser policy of sustainable use of water, called "safe-yield" or zero depletion. Their actions will take courage and our help. Your help.

I ask that you kill this bill. If you do report it out of committee, I ask that you amend to specify that water in excess of 1000 acre feet annually not be transported out of any of the eleven natural drainage basins where a safe-yield of zero-depletion policy is not in place.

A truly responsible water policy in this state must be built around two moral principles:

(1) We will live within our natural resource base,

and

(2) We will respect the environmental integrity of the basin where the resource naturally occurs.

Unless those two safeguards are written into the language of HB 2070, the floodgate is open. Those with the most money and power will fight to see who will be the biggest hog at the trough--as long as there is the smell of more water over the hill.

And do not tell me laws are already in place to adequately safeguard the resource. I have been intimately involved in the issue for long enough to know that is a lie.

As it stands, HB 2070 would place upon three individuals too much responsibility and far too much power. I ask you to reject the bill or amend it to assure stewardship of the resource. Do something your grandchildren will be proud of.

Thank you for the opportunity to address the committee.

END

Testimony / Bob Hooper / HB 2070 Water Transfer Act  
26 January 1993

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*For the Chair  
From Bob Hooper.*

9/11/1991 Solomon River Basin Advisory Committee

A Position Paper Approved by the Committee

REGARDING THE SALE OR TRANSFER OF WATER FROM THE SOLOMON RIVER BASIN

You are hereby advised that the Solomon Basin Advisory Committee who have been appointed by the Kansas Water Authority to serve the best interests of the Solomon River Basin, its people and its resources in the matter of Kansas water planning, do sincerely and with good reason, oppose any substantial transfer of water from this hydrologic drainage basin to any other, except by natural discharge. We also oppose any substantial marketing of water from this basin to another basin, short of an actual and present threat to human life which cannot be met any other practical way.

We acknowledge exceptions for transfer of water for locations within ten miles of a municipality, as indicated in the original Water Transfers Act of 1983 for the State of Kansas.

The Solomon Basin Advisory Committee has steadfastly and for many years asked that a policy of "zero-depletion," by which use of water does not exceed natural recharge, be implemented in this basin, and by implication, elsewhere in Kansas. We of the Solomon Basin Advisory Committee are firmly opposed to the non-sustainable and irresponsible exploitation of our natural resources by those within our basin, and most certainly we are opposed to exploitation by those who live outside our boundaries.

Any short term benefits to our basin through sale of water are illusory and at the expense of our own natural environment and our own potential for growth in harmony with our water supply.

The wisest guiding philosophy for mankind is to learn to live within the limits of our natural resources. Such a philosophy is good stewardship on behalf of our environment and our fellow creatures, and likewise the most truly practical and far-thinking way to manage the economic benefits of water for people who live in the Solomon River Basin.

Now in our basin the words zero depletion are at long last seriously considered by those with the authority to make it happen. Those who are trying implement a zero depletion policy, such as Groundwater Management District 4, need our support in their efforts. Our basin does not need another demand upon the resource by distant cities seeking to reap the benefits while avoiding the negative consequences for themselves.

(continued, page 2)

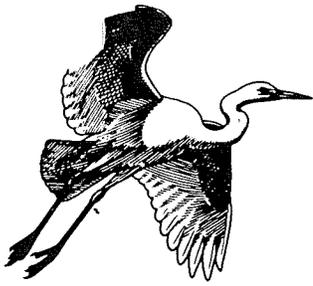
In the present and specific threat to our water resources by the Cities of Hays and Russell and others considering designs whereby they would obtain water from this basin, we wish to suggest to them that they should live within their own natural resource base by reallocating priorities for water use within their own basin and by implementing conservation measures, as we are asking people of this basin to do. In the long view, such a policy will be the wisest, the most practical, and--while it is not a word now in fashion -- the most moral.

We are disappointed to learn then that in June of this year a conservation committee report to the Hays City Commission which advocated an aggressive conservation plan went essentially unheeded. The plan would have reduced water demand by 35 to 40 percent without negatively impacting lifestyle. Expenditures recommended by the Conservation Committee were approximately \$150,000 annually for ten years to maximize efficiency. Despite praising the conservation presentation, the Hays City Commission ultimately reacted by allocating only \$25,000 for conservation efforts in 1992. In contrast, the City Commission is now poised to spend tens of millions to exploit outside water resources,

Moreover, not merely the present instance causes us concern, but the unfortunate and ill-advised precedent which would be set for the future. In the State of Kansas, we have already and admittedly made grave misjudgments in appropriating water in excess of natural recharge. Such misjudgements were frequently made for similar short term political and economic desires, and in the face of better advice.

Today, warned by the mistakes of the past, it is time to change our direction and work toward real and lasting stewardship. We can begin now by preserving the integrity of the natural resources of this basin.

-END -



# Kansas Audubon Council

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January 26, 1993  
House Energy and Natural Resources Committee  
Testimony offered on HB 2070

Mr. Chairman, members of the House Energy and Natural Resources Committee, I am Joyce Wolf, legislative liaison for the Kansas Audubon Council. I thank you for this opportunity today to share our thoughts with you on HB 2070, the Water Transfers Act.

The Kansas Audubon Council appreciates the efforts of the Kansas Water Office and the Division of Water Resources to make the Water Transfers Act more easily understood and streamlined in the process. We support removal of the legislative veto provision and the attempt to clarify the use of the Kansas Administrative Procedures Act. We also are generally pleased with the enumeration of the items that the hearing officer must consider to determine the benefits for approving or not approving a proposed water transfer. [Sec.3, (b), (c)1 through 7].

The Kansas Audubon Council would, however, like to offer the following comments:

1) Definition of water transfer and the need to conserve water:

While the Johnson County Water District #1 application to transfer water has highlighted the deficiencies of the Act, changing the definition to exempt this transfer from the required scrutiny seems to be an over-reaction to the difficulties encountered. Snags in the process should be able to be untangled without abandoning the heart of the definition: the amount and distance that triggers the review process.

At the same time, the Council is sympathetic to the need of the City of Hays. We believe they have taken exemplary actions in implementing meaningful water conservation measures. We would support statewide codification of some of their initiatives like use of low-flow shower heads and toilets in new construction etc. It is our understanding that under the current permissive municipal water conservation guidelines, it would be accurate to say that a conservation plan can be implemented with little significant change in per capita daily water use. In contrast, the fact that Hays has been able to significantly reduce the per capita daily water use (compared to peer cities) speaks eloquently of the need to insist that the municipal water conservation guidelines be strengthened and certain water conservation measures be mandated before a water transfer is considered. Hays has clearly demonstrated that conservation can be a significant source of water and we would like to see a compromise in the definition that would not be punitive to them.

House E & NR 1-26-93

Attachment 2

2.

2) We would like to ask for a clarification on page 3, lines 32, 33: Does this mean an Environmental Impact Statement will be required? If so, I believe there are specific guidelines and timelines that usually must be followed for an EIS. Which set of requirements would apply here, those for an EIS or KAPA?

3) On page 6 sections (c, d, e):

We are concerned about the ramifications of these sections. From experience, we can assure this committee that participating in these sorts of official hearings as an intervenor can be very expensive -- not even including the costs of a salary and travel expenses of the hearing officer. The Council is concerned that these subsections could make full participation in the proceedings (i.e., the right of cross examination, calling witnesses etc.) prohibitively expensive to ordinary citizens and citizen organizations. Additionally, we can think of few other persons who would be more knowledgeable and qualified to conduct a hearing in Kansas than the panel members.

4) The Audubon Council also is concerned that once an order to transfer water is complete, there does not appear to be a mechanism for periodic review of the effects on the transferring area or basin. We believe it is going to be extremely difficult to predict with a great deal of accuracy, because of our limited ability to make long-range weather forecasts, where and how much surplus water exists now and in the future in Kansas.

5) Finally, we would urge great caution to be taken in entering into agreements to transfer water from the Kansas-Missouri River basin to the Arkansas River basin. We have not heard it discussed or mentioned, but wonder whether such an action could trigger a law suit by Missouri against Kansas, similar to the Kansas vs. Colorado lawsuit currently pending before the courts.

I appreciate the opportunity to appear before the committee today and I would be willing to try to answer questions.

# Kansas Natural Resource Council

Testimony presented before the Committee on Energy and Natural Resources

RE: House Bill No. 2070, Proposed amendment to Water Transfer Act

Linda L. Alyan, Kansas Natural Resource Council

January 26, 1993

Mr. Chairman, Members of the Committee, I am Linda Alyan, Acting Director and Board Member of the Kansas Natural Resource Council. KNRC is a private, non-profit membership organization whose 800+ members support and promote sustainable natural resource policies for the state of Kansas.

KNRC has always taken an active interest in water transfer issues in the state of Kansas. We support the efforts of this bill to improve the current act, but although there are aspects of the bill we support, most notably the requirement of following the KS Administrative Procedures Act and the removal of legislative veto power, we find we must oppose the bill due to concerns about the following provisions.

Pg. 1, Line 16 : We oppose the change of water quantity from 1,000 acre feet to 2,000 acre feet and distance from 10 to 50 miles before the Act is triggered. Such an increase would omit transfers such as the Johnson County District #1 transfer which KNRC opposed and won a conservation order for. Under the proposed changes, we would not have had the opportunity for input or the subsequent order.

Pg. 2, Line 19 : We oppose the provision for an appointed hearing officer as we feel the advantages of and need for such an officer have not been demonstrated to outweigh the costs. Additionally, the circumstances of the appointment and qualifications of the individual need to be more clearly defined.

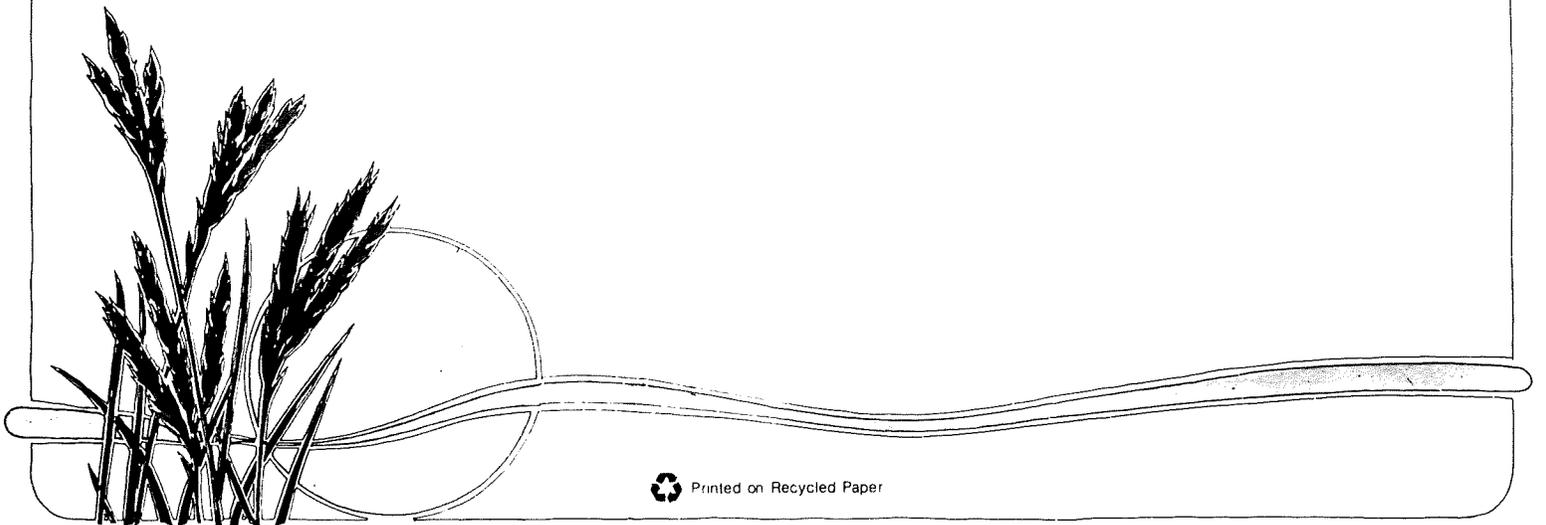
Pg. 3, Lines 15, 41 : We do not feel that the requirements for conservation plans are adequate as developed by the Kansas water office pursuant to K.S.A. 74-2608. We would like to see more explicit and stringent conservation requirements incorporated into the Water Transfer Act.

*House Enr 1-26-93  
Attachment 3*

# Kansas Natural Resource Council

Pg. 2, HB 2070

Pg. 6, Line 25 : We oppose the provision requiring all parties to share in the cost of the hearing. Clearly, individuals with limited resources and non-profit groups such as ours would be discouraged from participating if such a provision were included.



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# SIERRA CLUB

## Kansas Chapter

Kansas Sierra Club  
William J. Craven, Legislative Coordinator  
House Energy and Natural Resources Committee  
Testimony on H.B. 2070, the Water Transfer Act  
Jan. 26, 1993

As someone who has watched water issues in Kansas over the past several years, I have come to the conclusion that for every two forward steps we take, we take one step backward. For example, we now have laws to prevent and remediate water pollution, but there are many cases where that clean-up is not done. We now have laws which require conservation plans for some new uses or applications for water, but we don't require conservation plans for existing water, and needless to say, existing water rights make up the bulk of water rights held in the state. Another problem is that in many areas of the state water is over-appropriated.

Some may say that this helter-skelter movement is the definition of progress. I am more inclined to say that it reflects political power and economic clout as opposed to a strong public commitment to water conservation. This bill, as currently drafted, continues that trend. The Sierra Club is pre-disposed against water transfers, except in a narrow band of circumstances. Water transfers, standing alone, don't fill the need for more comprehensive water conservation, and they don't address the issue that growth—growth of population or of industry—has to be sustainable. Water transfers, once started, are hard to stop.

There are aspects of this bill which are not objectionable to the Sierra Club. I sat through the proponents' testimony yesterday, and agree with the amendments suggested by Steve Hurst of the Kansas Water Office, especially flip-flopping the initial and final order provisions on lines 36-42 on page 7. The procedural improvements in the bill are also important, specifically applying the Kansas Administrative Procedure Act to water transfers and the hearing process. And I am pleased to announce to what may be an astonished world that the Sierra Club is pleased to join with the Kansas Farm Bureau in calling for stricter and mandatory conservation measures which should precede any water transfer.

In addition, the written criticisms of the Kansas Water Office contained in the fiscal year 1994 Executive Summary are not addressed. That office has raised some legitimate concerns that should be included a re-write of this act.

### Other concerns:

1. On page 1, line 16, the word "use" seems to imply that a water transfer can be approved retroactively. That is a mistake. How can a transferee "use" water before a transfer is authorized? Other parts of the amendment prohibit a water transfer unless it is authorized. The word "use" is therefore superfluous and misleading.

2. In the same section, why are the triggering provisions changed? The amendment before you changes the definition of a transfer from 1,000 to 2,000 acre-feet per year and changes the distance from 10 to 50 miles. Yesterday the committee heard from cities and

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Attachment 4

water purveyors that the bill would make it easier to obtain water. That may be true, but that should not be the test. The test is whether it is in the public interest and if so, what procedures should apply. The Sierra Club strongly believes that 1,000 acre-feet per year within 10 miles of the point of diversion—in other words, existing law—is acceptable to trigger the act. If the intent of this bill is speed up the process, then the quid pro quo should be that all but the smallest transfers should be covered.

Yesterday, for example, you were told that the 10 mile trigger is too short for Wichita and that the Johnson County Water District transfer would not have been covered by this new act. The Sierra Club strongly believes that the public should have the opportunity to comment and participate in exactly the sort of transfers contemplated in the future by Wichita and which is now pending in the case of Johnson County.

3. On page 2, line 9, adds language pertaining to "commenting agencies." What is not clarified, however, is how much weight is given to these comments, and are the commenting agencies considered intervenors, parties, or are they in some other category?

The second problem is that there may well be other agencies which should be accorded the status of "commenting agencies." For example, in the Environmental Coordination Act, K.S.A. 82a-325 et seq., environmental review agencies include the following which are not listed in the bill before you: the office of extension forestry, the state biological survey, the state historical society, the the state corporation commission. We strongly recommend that this act be substituted for the list in the amendment before you. Alternatively, we ask that at least the state biological survey be added. This agency can provide an important perspective on water issues to those involved in administering this act.

4. On page 2, line 21, the chief engineer is granted authority to order a hearing either pursuant to the Kansas water appropriation act or when a proposed sale of water from the state's conservation storage water supply capacity is involved, even if that appropriation or sale is not technically a water transfer.

I have no particular problem with the chief engineer except that the committee should be aware of the fact that the chief engineer is a civil service employee of the Kansas State Board of Agriculture. There are bills pending which would abolish that agency and transfer its functions to a Department of Agriculture. There is also a pending court case which may well result in a similar new structure. All I want to do is bring this matter to your attention. There may well be alternative ways to say this which will not result in a re-working of this bill should fundamental changes come to the Kansas State Board of Agriculture.

As another example, p. 4, line 5 requires applications for a water transfer to be filed with the chief engineer. Why couldn't those applications be filed with the Kansas Water Office or another agency which is not facing the possibility of re-organization?

5. This brings me to the issue of conservation. The Sierra Club is pleased that water transfers are prohibited unless the requesting entity has a water conservation plan approved by the Kansas Water Office. However, the more you know about those conservation plans, the less comfortable one gets about the commitment necessary to obtain that approval. The Sierra Club would encourage the committee to learn about these plans and to make the approval process substantially tougher. I have reviewed the plans made available by the Kansas Water Office and find them basic, but not nearly comprehensive enough. The legislation should require the Kansas Water Office to make these plans stricter, and to update them at least every two years, to reflect changing circumstances in the state's water supply.

Second, the bill permits water transfers in the event of an emergency. We all know that there are emergencies, and then there are contrived emergencies. Language should be inserted which makes it clear that only the former qualify. In fact, water conservation measures should be mandated for all sorts of water users in Kansas, and transfers should be denied to those who fail to have mandatory conservation measures in place.

The effort described to the committee yesterday which is ongoing in Hays is a good example of what should be required before any transfer is approved. You should know that the water conservation plans recommended by the Kansas Water Office are far less stringent than what is happening in Hays. It would be appropriate to require conservation plans which cut per capita water usage by one-half, as was done in Hays, as a precondition to a water transfer. Utilities or cities should be required to provide low flow toilets and showerheads.

These measures should also include restrictions on lawn watering, private swimming pools, car washes, and the like, especially in times of drought. There should be requirements for new construction and renovation work to install plumbing and fixtures which conserve water. There should be a requirement for all water rights holders to have a conservation plan, and, I say it again, there should be a prohibition against water transfers when a conservation plan has not been followed.

6. On page 3, line 7, the amendment seems to suggest that any persons protesting a proposed transfer must also have a conservation plan. That is just plain silly. It may make sense to have protesting cities, groundwater management districts, or other governmental units which purvey or store water to have an approved conservation plan, but it certainly makes no sense to require individuals to have an approved conservation plan. Individuals should strive to minimize their water use, but surely the state does not want 2.5 million individual water conservation plans on file.

7. This is a question prompted by the discussion yesterday. Does "basin of origin" on page 5, line 42 refer to the two main basins in the state, the Missouri and the Arkansas, or the 12 hydrologic basins identified by the Kansas Water Office? I've been told the answer is the 12 basins. But I would like this clarified. Obviously, it could make for a substantial difference in where hearings are held.

8. Finally, on line 26 of page 6, the bill seems to permit the assessment of costs against public interest groups. The Sierra Club strongly opposes that provision. For example, the most serious questions about the Johnson County transfer were raised by the Kansas Natural Resource Council, and a provision which imposes costs on public interest groups would have a chilling effect on the ability to raise these sorts of questions.

Thank you for providing an opportunity for the 3,000 members of the Kansas Sierra Club to express an opinion on this important piece of legislation.

**TESTIMONY ON HB 2070**

**Mike Fegan, Mayor's Water Committee of Junction City**

**Mr. Chairman, Members of the Committee, I support the major portions of HB 2070, specifically to raise the limits to 50 miles and 2,000 acre feet and the concept of initiating the use of a hearing officer. There is one major policy issue which I cannot support at this time and believe you should seriously review before accepting the bill in its current form.**

**The removal of the Water Authority from the process of review and approval is a major change in policy and is intensified by the proposed removal of you, the Legislature, in the process. The thirteen member Water Authority was established with statewide representation and includes individuals from the major agencies related to water use. The nine ex-officer member, such as the Chief engineer, Director of the Water officer and others, provides the technical support and background to the Water Authority. The performance of the Water Authority has been exemplary. They have brought organizational structure to the process of addressing statewide water policy issues. Eliminating the Water Authority, as proposed, brings up the policy question of the roles and mission of the Authority; is it intended to be changed to a regulatory function or remain as a policy group representing water on a statewide basis. We have regulatory agencies to address all of the aspects but no other statewide policy group to address such major policy issues as the inter-basin transfer of water.**

**The adoption of the new limits will reduce the cases and applications which would be**

*House E6 WR 1-2693  
Attachment 5*

*addressed by the procedures as they now exist.*

*In summary, I believe the new proposed limits regarding miles and acre feet will provide a more manageable system. I also agree with the use of a hearing officer. However, the removal of the Water Authority in the process is an issue which I would suggest you consider very carefully as you deliberate on this bill. To some degree, the bill intermingles much need changes in procedures and adjustment but also addresses a major policy issue with regards to the role of the Water Authority. Before you proceed, I suggest you have the staff provide you with a detailed flow chart outlining the procedures and steps to be taken under this new proposal as compared to the old system of review and approval. Mr. Chairman, I appreciate the opportunity to appear on this important issue.*

Kansas Water Authority

Name, Address & Telephone	Occupation	Representing	Term
Lowell K. Abeldt 900 NW 2nd Abilene, KS 67410 913/263-2334	Real Estate Broker & Owner of Insurance Agency	Association of Watersheds	5/1/94
Bob Best 6333 Long St, Suite 23 Shawnee, KS 66216 913/268-4222	Pres., Dillon Stores	Governor	Pleasure
Vacant		Kansas League of Municipalities	5/1/93
Theodore D. Ensley, Secretary Kansas Dept. of Wildlife and Parks 5th Flr., Landon St. Off. Bldg. Topeka, KS 66612 913/296-2281	Secretary, Kansas Dept. of Wildlife and Parks	Ex Officio	
Dr. Lee C. Gerhard Director, Kansas Geological Survey 1930 Constant Ave., Campus West, University of Kansas Lawrence, KS 66045 913/864-3965	Director, Kansas Geological Survey	Ex Officio	
Dr. Robert Harder, Secretary Dept. of Health and Environment Rm. 951, Landon State Off. Bldg. Topeka, KS 66612 913/296-1522	Secretary, Dept. of Health & Environment	Ex Officio	
Stephen A. Hurst Director, Kansas Water Office Suite 300, 109 W. 9th Street Topeka, KS 66612 913/296-3185	Director, Kansas Water Office	Ex Officio	
Byron Johnson, General Manager Water Dist. No. 1 of Johnson Co. P.O. Box 2921 Mission, KS 66201 913/722-3000	General Mgr. Water Dist. No.1 of Johnson Co.	President of Senate	7/1/93
Dr. Marc Johnson, Acting Director Agricultural Experiment Station 113 Waters Hall Kansas State University Manhattan, KS 66506 913/532-7137	Director, Ag. Exp. Station	Ex Officio	
Kenneth F. Kem, Exec. Dir. State Conservation Commission 5th Floor, 109 SW 9th St. Topeka, KS 66612 913/296-2600	Exec. Dir., State Conservation Com.	Ex Officio	
Robert Knight Secretary, Dept. of Commerce & Housing 700 SW Harrison Street, Suite 1300 Topeka, KS 66612 913/296-3481	Secretary, Dept. of Commerce & Housing	Ex Officio	
Sheila Leiker-Page Rt. 1, Box 63 Victoria, KS 67671 913/735-9242	Dairy Herd Improv. Assn.	Conservation District	5/1/92

Name, Address & Telephone	Occupation	Representing	Expires
Marsha Marshall 8560 Rik-Mar Drive DeSoto, KS 66018 913/585-3401	Co-Owner, Insurance Marketing Co.	Environmental Interests	10/31/92
James E. Mason 1145 Jackson Wichita, KS 67203 316/263-2811 316/264-8323 (message)	Interpretative Naturalist, City of Wichita	Speaker of the House	6/30/93
Jeffery Mason 206 Spruce Rd. Goodland, KS 67735-1539 913/899-6588	Attorney	Public	5/1/93
Marvin Odgers HCR 1, Box 84 Sublette, KS 67877 316/675-2564	Farmer	GMDs #1, 3, 4	5/1/91
Larry K. Panning 500 W. 4th Ellinwood, KS 67526 316/564-2199	Farmer	GMDs #2 & #5	5/1/94
David L. Pope Chief Engineer, Division of Water Resources State Board of Agriculture 109 SW 9th Street Topeka, KS 66612-1283 913/296-3717	Chief Engineer, Div. of Water Resources	Ex Officio	
Jim Robinson, Chairman Kansas Corporation Commission 1500 SW Arrowhead Rd. Topeka, KS 66604 913/271-3166	Chairman, Kansas Corporation Commission	Ex Officio	
Dennis F. Schwartz 3260 SE Tecumseh Rd. Tecumseh, KS 66542 913/379-5553	Manager, Rural Water District	Rural Water Association	5/1/92
Myron VanGundy Rt. 2, Box 110 Reading, KS 66868 316/342-7063	Farmer	Public	6/30/92
David R. Warren 455 N. Main Wichita, KS 67202 316/268-4515	Dir., Wichita Water & Sewer	Kansas Assoc. of Commerce & Industry	5/1/95
October 1992			

Water Supply Contract Negotiation and Approval Process

