

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on February 17, 1993.

Approved: Carl Dean Holmes  
Date 3-9-93

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 February 17, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Ruff, excused  
Representative Hayzlett, excused

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

Conferees appearing before the committee: None

Others attending: See attached list

**HB 2070** - Revision of Water Transfers Law

Chairman Holmes reminded the Committee of the long-range impacts if these permanent changes become a law, and to keep these in mind during the discussion. He stated that the substitute motion rule was suspended.

Mary Torrence, Revisor of Statutes, presented a balloon of **HB 2070** to the Committee. (Attachment I) This balloon was a result of a meeting with Dr. John Peck, and Lee Rolfs; they had noted their suggestions in the margin. Upon motion by Representative Rezac and seconded by Representative Gatlin, the balloon was adopted for reference. She advised the Committee of technical amendments to the Bill and some topics that were not addressed. (Attachment 2) She addressed the balloon page by page explaining the reason for the additions, deletions or word changes.

The Chair then opened the meeting for discussion.

On Page 2. Representative Shore made a motion to change the language in Lines 9 and 10 adding groundwater management districts in Line 9 instead of water districts and striking groundwater management districts in Line 10. This motion was seconded by Representative Grotewiel. Motion passes. New Section (h) reads, "*Commenting agencies" means groundwater management districts and state natural resource and environmental agencies, including but not limited to the Kansas department of health and environment, the Kansas water office, the Kansas water authority, the Kansas department of wildlife and parks and the division of water resources of the Kansas state board of agriculture.*"

On Page 2. Representative McClure made a motion to add "on behalf of the state" in the amended text of Line 33. This motion was seconded by Representative Freeborn. Motion passes. New Line 33 reads, "*Subject to approval by the panel, the hearing officer on behalf of the State may employ such personnel and contract for such services and facilities as necessary to carry out the hearing officer's duties under his act.*"

The time table and various limits were discussed immensely by the committee. It was their concern to try and lessen the time in which a final decision on the water transfer is made. Representative Rezac made a motion that from the time the hearing officer makes their recommendation, the panel has 180 days to make their determination. The motion was seconded by Representative Lloyd. Motion passes.

Representative Hendrix made a motion that the Kansas Water Office file notice in the Kansas Register within 14 days of the receipt of the application; that the pre-hearing conference be no later than 120 days from publication date; that the formal public hearings be no later than 60 days from the end of the pre-hearing; hearings last no later than 180 days leading up to the initial order. The motion was seconded by

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on February 17, 1993.

Representative McKinney. He stated that there will be no exceptions or waivers. Motion passes. All were in favor, except Representative Lynch who wished to be recorded.

Representative Grotewiel made a motion to define point of use in Line 31, Page 1. (Attachment <sup>3</sup>~~11~~) (This was modeled after the point of diversion) The motion was seconded by Powers.

Representative Powers made a motion that on Page 1, Line 17 to strike 50 and insert a more reasonable amount. The motion was seconded by Representative Gatlin. Major concerns of the committee were that cities should be given the opportunity to solve the water problems within their region and limits first before a transfer took place. Discussion indicated the transfer approval was too time consuming and the people cannot address water needs in critical times. Motion failed

Representative Freeborn made a motion that on Page 1, Line 17 strike 50 and insert 30. The motion was seconded by Representative McClure. Division called on verbal vote. On a hand count 7 for, 11 against. Motion failed.

Representative McClure presented 3 amendments to the Committee (Attachment <sup>1</sup>~~11~~) The first motion was to strike the language on Page 3, Lines 13-18 and insert her amendment. The new text reads, "(2) unless the hearing officer determines that the applicant has adopted and implemented conservation plans and practices that (A) are consistent with the guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments thereto, (B) have been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held and (C) include an increasing block rate structure that has been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held". (See Attachment) The motion was seconded by Representative Lloyd. By a hand vote: 11 in favor, 5 opposed. Motion carries.

Representative McClure then made her second motion to add a new (3) to read: (See Attachment) The motion was seconded by Representative Alldritt. Committee opposed; motion failed.

Representative McClure made final motion to add on page 3, after line 35, and renumber. The new text reads, "(6) whether the application has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant". (See Attachment) The motion was seconded by Representative Grotewiel. Motion carries.

Representative Freeborn indicated she had a concern with the language in Section 3, Page 3, Line 13 in regard to the effects that could be expected if water rights in her region were restricted due a water transfer under current and proposed legislation. Representative Freeborn made a motion to insert the following language after the word water: "with application dates prior to the filing date of the transfer applicant". The motion was seconded by Representative Lloyd. Motion failed. (Attachment ~~11~~) 5

Representative McKinney made a motion that no water users receiving water under the Water Transfer Act may cause curtailment in the water usage of junior water rights holders; unless, the curtailment is carried out according to the Intensive Groundwater Use Control Area Act (IGUCA). The motion was seconded by Representative Lloyd. Some felt it was a good process but not necessary in this bill. Motion failed.

Representative McClure made a motion to strike one and insert two on page 5, Line 35, in reference to newspapers. The motion was seconded by Representative Grotewiel. Motion passed.

Representative McClure was concerned as to where the records would be kept in reference to Page 6, Lines 20-24. It was unclear and not specified. She made a motion to make the Chief Engineer the main record keeper of all records of water transfer act procedures. The motion was seconded by Representative Gatlin. Motion carries.

Representative Lawrence was concerned with the unlimited amount of water which can be diverted from less than 50 miles. He made a motion for the language on line 15, page 1 to read (a) "Water transfer" means the diversion and transportation of water: (1) In a quantity of 4,000 acre feet or more per year for beneficial use at a point of use more than 10 miles and less than 50 miles from the point of diversion of the water; or (2) in a quantity of 2,000 acre feet or more per year for beneficial use at a point of use 50 miles or more from the point of diversion of the water. The motion was seconded by Representative McKinney. This would control unlimited access within 50-mile range and promote conservation use. The Chair was in doubt of verbal vote. On a show of hands: 9 in favor and 7 opposed. Motion carries.

Representative Gatlin was concerned with the definition of diversion. He made a motion to clarify the

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room  
526-S Statehouse, at 3:30 p.m. on February 17, 1993.

language. (Attachment <sup>6</sup>~~7~~) There was no second. The motion failed.

Representative Hendrix made a motion concerning the time frame. The motion was seconded  
by Representative Alldritt. Motion carried. 644 days total.

The meeting adjourned at 7:00 p.m.

The next meeting is scheduled for February 18, 1993.



Date: February 17 '93

## GUEST REGISTER

## HOUSE

## \* COMMITTEE ON ENERGY AND NATURAL RESOURCES \*

| NAME                | ORGANIZATION                 | ADDRESS           | PHONE    |
|---------------------|------------------------------|-------------------|----------|
| T. MICHAEL FEGAN    | MAYOR'S WATER RESOURCES      | JUNCTION CITY, KS | 238-8640 |
| Steve Hrust         | KWO                          | Topeka            | 218-3185 |
| Tom Sikes           | KWO                          | Topeka            | 4094     |
| Lee Rolf            | DWR - KSBA                   | Topeka            | 4623     |
| Harland Riddle      | gov. Henry County New Agency | Junction City     | 762      |
| Bill Juller         | Kansas Farm Bureau           | Manhattan         | 1976     |
| Alan Decker         | CURB                         | TOPEKA            | 413      |
| Jim Ludwig          | WESTERN RESOURCES            | "                 | 587-6000 |
| Dave Topelien       | Lawrence Journal World       | Lawrence          | 271-3241 |
| Harry Herington     | League of KS Municipalities  | Topeka            | 575-1915 |
| Catherine Holdeman  | City of Wichita              | Wichita           | 832-7150 |
| Woody Moses         | Ks. Appraisal Board          | Topeka            | 354-9565 |
| Gerry Ray           | Johnson County Parks         | Overland Park     | 268-4351 |
| Bernie Koch         | Wichita Chamber              | Wichita           | 235-1188 |
| TREVA POTTER        | UTILICORP                    | TOPEKA            | 234-5500 |
| Bill Anderson       | Water Dist #1 of So Co       | Mission           | 316      |
| Don Low             | KLL                          |                   | 265-7771 |
| Russ Frey           | Ks Vet Med Assoc             | Topeka            | 235-5996 |
| Joyce Wolf          | Ks Audubon Council           | Topeka            | 722 3000 |
| Daljit Singh Jassar | KWO                          | Topeka            | 271-3199 |
| MARY ANN BRADFORD   | LEAGUE OF WOMEN VOTERS       | Topeka            | 233-4141 |
| JOHN STRICKLER      | SELF                         | MANHATTAN         | 357-7849 |
|                     |                              |                   | 296-0871 |
|                     |                              |                   | 354-1646 |
|                     |                              |                   | 539-4152 |

Date: February 17 '93

pg.-2-

GUEST REGISTER

HOUSE

(cont.)

COMMITTEE ON ENERGY AND NATURAL RESOURCES

[illegible]

## HOUSE BILL No. 2070

By Committee on Energy and Natural Resources

1-20

AN ACT concerning water; relating to certain transfers; amending K.S.A. 82a-1501 through 82a-1505 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 82a-1501 is hereby amended to read as follows:

82a-1501. As used in ~~this the water transfer act~~:

(a) "Water transfer" means the diversion ~~and, transportation or use~~ of water in a quantity of ~~1,000~~ 2,000 acre feet or more per year for beneficial use outside a ~~ten-mile~~ 50-mile radius from the point of diversion of such water. *Water transfer does not include a release of water from a reservoir to the water's natural watercourse for use within the natural watercourse or watershed, made under the authority of the state water plan storage act (K.S.A. 82a-1301 et seq. and amendments thereto) or the water assurance program act (K.S.A. 82a-1330 et seq. and amendments thereto).*

(b) "Point of diversion" means:

(1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir;

(2) the location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse;

(3) the location of a well in the case of groundwater diversion;

(4) the geographical center of the points of diversion in the case of multiple diversion points.

(c) "Chief engineer" means the chief engineer of the division of water resources of the state board of agriculture.

(d) "Secretary" means the secretary of the department of health and environment, *or the director of the division of environment of the department of health and environment if designated by the secretary.*

(e) "Director" means the director of the Kansas water office.

(f) "Authority" means the Kansas water authority.

(g) "Panel" means the water transfer hearing panel.

(h) "Party" means ~~any person who intervened at the public hearing held pursuant to K.S.A. 82a-1503, and who presented testimony of witnesses under oath, conducted cross~~

House Bill  
Attachment 1  
2/11/93

2 of 1

examination, presented oral arguments and filed written briefs:  
 (1) The applicant; or (2) any person who successfully intervenes  
 pursuant to K.S.A. 82a-1503 and amendments thereto and actively  
 participates in the hearing. "Party" does not mean a person who  
 made a limited appearance for the purpose of presenting a statement  
 for or against the water transfer.

makes

(i) "District court" means the district court of Shawnee  
 county.

(h) "Commenting agencies" means ~~the~~ state natural resource and  
 environmental agencies, including, ~~the~~ Kansas department of health  
 and environment, the Kansas water office, the Kansas water au-  
 thority, the Kansas department of wildlife and parks and the division  
 of water resources of the Kansas state board of agriculture.

water districts and

but not limited to groundwater management districts

New Sec. 2. (a) The water transfer hearing panel shall consist of  
 the chief engineer, the director and the secretary. The chief engineer  
 shall serve as chairperson of the panel. All actions of the panel shall  
 be taken by a majority of the members. The panel shall have all  
 powers necessary to implement the provisions of this act.

(b) The panel shall select a hearing officer to conduct a hearing  
 in accordance with this act when: (1) An application for a water  
 transfer is complete; or (2) the chief engineer determines it to be  
 in the best interest of the state to conduct a water transfer hearing  
 on an application to appropriate water pursuant to the Kansas water  
 appropriation act or on a proposed contract for the sale of water  
 from the state's conservation storage water supply capacity, even  
 though the appropriation or sale would not be a water transfer as  
 defined by K.S.A. 82a-1501 and amendments thereto.

(c) The hearing officer shall be an independent person knowl-  
 edgeable in water law, water issues and hearing procedures. The  
 hearing officer shall ~~serve as the presiding officer and, in addition~~  
~~to any other powers granted by this act, shall have the powers of~~  
~~a presiding officer as set forth in the Kansas administrative procedure~~  
 act.

be a presiding officer for the purposes of

Sec. 3. K.S.A. 82a-1502 is hereby amended to read as follows:  
 82a-1502. (a) No person shall make a water transfer in this state  
 unless and until the transfer is approved pursuant to the provisions  
 of this act. No water transfer shall be approved which would reduce  
 the amount of water required to meet the present or any rea-  
 sonably foreseeable future beneficial use of water by present  
 or future users in the area from which the water is to be taken  
 or transfer, unless: (1) The panel determines that the benefits to  
 the state for approving the transfer outweigh the benefits to the  
 state for not approving the transfer: (2) the chief engineer recom-

Subject to approval by the panel, the hearing  
 officer may employ such personnel and contract for  
 such services and facilities as necessary to carry  
 out the hearing officer's duties under this act.

16C  
3071

mends to the ~~authority and the authority~~ panel and the panel concurs that an emergency exists which affects the public health, safety or welfare; or (3) the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever an emergency exists, a water transfer may be approved *by the panel* on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the ~~chief engineer~~ panel.

(b) No water transfer shall be approved under the provisions of this act: (1) If such transfer would impair water reservation rights, vested rights, appropriation rights or prior applications for ~~permit~~ permits to appropriate water; and (2) *unless the hearing officer determines that the applicant has adopted and implemented conservation plans and practices consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments thereto.*

(c) *To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the hearing officer shall consider all matters pertaining thereto, including specifically:*

(1) *Whether the proposed transfer would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the natural watercourse or watershed, aquifer or general area from which the water is to be taken for transfer;*

(2) *any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;*

(3) *any reasonably foreseeable future beneficial use of the water;*

(4) *the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;*

(5) *alternative sources of water available to the applicant and present or future users for any beneficial use;*

(6) *the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion, which plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer; and*

(7) *the conservation plans and practices adopted and implemented by any persons protesting or potentially affected by the proposed transfer, which plans and practices shall be consistent with*



1 the guidelines for conservation plans and practices developed and  
2 maintained by the Kansas water office pursuant to K.S.A. 74-2608  
3 and amendments thereto.

4 Sec. 4. K.S.A. 82a-1503 is hereby amended to read as follows:  
5 82a-1503. (a) Any person desiring to make a water transfer shall file,  
6 with the chief engineer, an application in the form required by rules  
7 and regulations adopted by the chief engineer. If the *chief engineer*  
8 *finds* application is found to be insufficient to enable the panel  
9 *chief engineer* to determine the source, nature and amount of the  
10 proposed transfer, it or if the application is not complete, the ap-  
11 plication shall be returned for correction or completion or for any  
12 other necessary information. This act shall not be construed as  
13 to exempt the applicant from complying with the provisions of  
14 the Kansas water appropriation act or the state water plan stor-  
15 age act, whichever is applicable.

16 (b) No water transfer shall be approved unless the applicant  
17 has adopted and implemented conservation plans and practices.  
18 Such plans and practices shall be consistent with the guidelines  
19 for conservation plans and practices developed and maintained  
20 by the Kansas water office pursuant to subsection (c) of K.S.A.  
21 74-2608, and amendments thereto. Prior to approval of an ap-  
22 plication for a water transfer, the panel shall determine whether  
23 such plans and practices are consistent with the guidelines  
24 adopted by the Kansas water office.

25 (c) Within 60 days of receipt of a sufficient application for  
26 a water transfer pursuant to this act, the chief engineer shall  
27 convene and conduct a hearing thereon. At such hearing, the  
28 panel shall consider the application and determine whether to  
29 approve the proposed water transfer in accordance with the  
30 provisions of the Kansas administrative procedure act.

31 If it is determined to be in the best interest of the state, the  
32 chief engineer may convene and conduct such a hearing within  
33 60 days of receipt of (1) an application to appropriate water  
34 pursuant to the Kansas water appropriation act or (2) a proposed  
35 contract for the sale of water from the state's conservation stor-  
36 age water supply capacity even though such diversion and  
37 transportation of water is not a water transfer as defined by  
38 K.S.A. 82a-1501, and amendments thereto.

39 (d) The panel shall consist of the chief engineer, the di-  
40 rector and the secretary or the director of the division of en-  
41 vironment of the department of health and environment if  
42 designated by the secretary. The chief engineer shall serve as  
43 the chairperson of the panel. All actions of the panel shall be

the

4 of 1

taken by a majority of the members thereof. The panel shall have all powers necessary to conduct the hearings, make its findings and implement the provisions of this act. The hearing shall be conducted in a prudent and timely manner.

(c) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the panel shall consider all matters pertaining thereto, including specifically:

(1) Any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;

(2) any reasonably foreseeable future beneficial use of the water;

(3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;

(4) alternative sources of water available to the applicant and present or future users for any beneficial use;

(5) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion. The plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer; and

(6) conservation plans and practices or the need for such plans and practices of persons protesting or potentially affected by the proposed transfer. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

(b) The hearing officer shall commence the hearing process by giving notice of the prehearing conference to the applicant, and the appropriate commenting agencies ~~by mail~~. Notice of the prehearing conference shall also be published in the Kansas register and in at least one paper of general circulation in the area where the proposed point of diversion is located. The hearing officer shall hold a prehearing conference not later than 120 days after receipt of the complete application and shall commence a formal public hearing not later than 90 days after completing the prehearing conference, except that the time limits may be extended by the hearing officer with the consent of all parties. A formal public hearing shall be held in the basin of origin and, if deemed necessary by the hearing officer, a public comment hearing shall be held in the basin of use. The initial

by mail

, any other parties who have intervened

the chief engineer receives

185

order of the hearing officer approving or disapproving the water transfer shall be issued not later than 90 days after receipt of briefs and oral argument unless the 90-day limit is waived or extended with the written consent of all parties or for good cause shown.

(c) ~~Any person may seek to become a party prior to the hearing at any time after a complete water transfer application is filed and before the deadline set by the hearing officer. Any person seeking to become a party shall petition the hearing officer for intervention. The hearing officer shall allow any person to become a party if the person demonstrates that that person's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding.~~

(d) Any person shall be permitted to appear and testify at any such hearing under this act upon the terms and conditions determined by the chief engineer hearing officer.

(g) In addition to notice to the parties, notice of any such hearing shall be published in the Kansas register. Such notice shall be published at least 15 days prior to the date of the hearing.

(h) The record of the hearing and findings of fact shall be public records and open for inspection at the office of the chief engineer. Certified transcripts of the hearing shall be provided at the expense of those requesting same. A transcript shall be provided to the chairperson of the authority.

(e) ~~The hearing officer shall fairly and equitably assess the following costs of the hearing among the applicant and other parties: The hearing facility, the court reporter, the salary of a hearing officer who is not paid for services as a hearing officer by state funds, the travel expenses of the hearing officer and other reasonable costs associated with the hearing. Amounts assessed pursuant to this subsection shall be paid to the chief engineer. Upon receipt thereof, the chief engineer shall remit the entire amount to the state treasurer. The state treasurer shall deposit the entire amount in the state treasury and credit it to the water transfer hearing fund established by subsection (f).~~

(f) (1) There is hereby established in the state treasury the water transfer hearing fund.

(2) Moneys credited to the water transfer hearing fund shall be used only to pay costs of hearings conducted pursuant to the water transfer act. Expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports, or a person designated by the director of accounts and reports pursuant to K.S.A. 75-3732 and amendments

Intervention in the hearing shall be in accordance with the Kansas administrative procedure act except that the petition for intervention must be submitted and copies mailed to all parties not later than 60 days before the hearing

At intervals during or at the conclusion of the hearing,

The hearing officer may assess any or all anticipated costs to the applicant before the hearing and may order reimbursement of the applicant by other parties for the parties' fair and equitable portion of the costs assessed the applicant.

or refunds of unused moneys assessed as anticipated costs before the hearing

1809

thereto, issued pursuant to vouchers approved by the chief engineer, or a person designated by the chief engineer.

(3) On the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the water transfer hearing fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a, and amendments thereto, that is attributable to money in the water transfer hearing fund. Such amount of money shall be determined by the pooled money investment board based on:

(1) The average daily balance of moneys in the water transfer hearing fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and

(2) the average interest rate on repurchase agreements of less than 30 days duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the water transfer hearing fund for the period of time specified under this subsection.

Sec. 5. K.S.A. 82a-1504 is hereby amended to read as follows: 82a-1504. (a) The panel hearing officer shall render an order either approving or disapproving the proposed water transfer. The panel's hearing officer's order shall include findings of fact relating to each of the factors set forth in subsection (d) of K.S.A. 82a-1503 (c) of K.S.A. 82a-1502 and amendments thereto. The panel hearing officer may order approval of a transfer of a smaller amount of water than requested upon such terms, conditions and limitations as it the hearing officer deems necessary for the protection of the public interest of the state as a whole.

(b) An order of the panel disapproving the transfer hearing officer disapproving or approving a water transfer, in whole or in part, shall be deemed a final order. ~~An order of the panel approving a transfer shall be deemed an initial order. The authority panel shall be deemed the agency head for the purpose of reviewing an initial order of the panel hearing officer and shall review all such initial orders.~~

(c) If the authority approves the water transfer and if there

the Kansas administrative procedure act and shall review all initial orders of the hearing officer. Review by the panel shall be in accordance with the standards provided by this act for the hearing officer's initial order and shall be based on the record of the hearing



1 is no judicial review pending therefrom, the chief engineer  
2 shall submit the same to the legislature for review as provided  
3 for in K.S.A. 82a-1301 *et seq.*, and amendments thereto. Absent  
4 legislative disapproval, the chief engineer shall issue the order  
5 approving the transfer.

6 ~~(c) Any hearings or other proceedings held pursuant to this act~~  
7 ~~shall be held in accordance with the provisions of the Kansas ad-~~  
8 ~~ministrative procedure act except as herein provided.~~

proceedings pursuant to this act and notice of  
such proceedings shall be

9 Sec. 6. K.S.A. 82a-1505 is hereby amended to read as follows:  
10 82a-1505. (a) Any action of the panel or authority is subject to review  
11 in accordance with the act for judicial review and civil enforcement  
of agency actions.

specifically provided by this act

12 (b) The attorney general of the state of Kansas shall rep-  
13 resent the panel or the authority in any appellate procedure.

14 (c) (b) The review proceedings shall have precedence in the  
15 district court. Appellate proceedings shall have precedence in the  
16 court of appeals and in the state supreme court *under such terms*  
17 *and conditions as the supreme court may fix by rule.*

18 New Sec. 7. (a) K.S.A. 82a-1501 through 82a-1506, section 2 and  
19 this section shall be known and may be cited as the water transfer  
20 act.

21 (b) This act shall not be construed as to exempt the applicant  
22 from complying with the provisions of the Kansas water appropriation  
23 act or the state water plan storage act, whichever is applicable.

first

24 Sec. 8. K.S.A. 82a-1501 through 82a-1505 are hereby repealed.

25 Sec. 9. This act shall take effect and be in force from and after  
26 its publication in the statute book.

9 New Sec. 8. If any provision of this act or  
the application thereof to any person or  
circumstances is held invalid, the invalidity does  
not affect other provisions or applications of  
this act which can be given effect without the  
invalid provision or application. To this end the  
provisions of this act are severable.

NORMAN J. FURSE, ATTORNEY  
REVISOR OF STATUTES

ARDEN K. ENSLEY, ATTORNEY  
FIRST ASSISTANT REVISOR

JAMES A. WILSON III, ATTORNEY  
SENIOR ASSISTANT REVISOR

ASSISTANT REVISORS  
AVIS A. SWARTZMAN, ATTORNEY  
DON S. HAYWARD, ATTORNEY  
MARY ANN TORRENCE, ATTORNEY  
WILLIAM L. EDDS, ATTORNEY  
BRUCE W. KINZIE, ATTORNEY  
THERESA M. KIERNAN, ATTORNEY  
GORDON L. SELF, ATTORNEY  
JILL A. WOLTERS, ATTORNEY  
ROBERT A. COLDSNOW, ATTORNEY

COMPUTER INFORMATION STAFF  
MARY O. CHENG, M.S.  
RICHARD M. CHAMPNEY, B.S.



OFFICE OF  
REVISOR OF STATUTES  
STATE HOUSE, THIRD FLOOR  
TOPEKA, KANSAS 66612-1592  
(913) 296-2321

LEGAL CONSULTATION—LEGISLATIVE  
COMMITTEES AND LEGISLATORS  
LEGISLATIVE BILL DRAFTING  
SECRETARY—LEGISLATIVE  
COORDINATING COUNCIL  
SECRETARY—KANSAS COMMISSION  
ON INTERSTATE COOPERATION  
KANSAS STATUTES ANNOTATED  
EDITING AND PUBLICATION  
LEGISLATIVE INFORMATION SYSTEM

To: Representatives Holmes, Hendrix and Grotewiel  
From: Mary Torrence, Assistant Revisor of Statutes  
Date: February 15, 1993  
Re: House Bill No. 2070

Attached is a balloon of technical amendments to House Bill No. 2070. I am sending copies to Dr. John Peck and Lee Rolfs for their comments. The amendments do not address:

- (1) Where records of hearings are kept.
- (2) Grounds for disqualification of hearing officers beyond what's provided by KAPA (see K.S.A. 77-514, attached).
- (3) Grounds for intervention broader than what's provided by KAPA (see K.S.A. 77-521, attached).
- (4) Different diversion points and points of use (may be multiple in time and/or location). One possible approach might be to provide that a transfer takes place whenever an aggregate of \_\_\_\_\_ acre feet is diverted and transported from a single source if any point of diversion is more than \_\_\_\_\_ miles from any point of use.

I have also attached a copy of Dr. Peck's 1990 study of the Water Transfer Act.

House 8-11K  
Attachment 2  
2/11/93

# HOUSE BILL No. 2070

By Committee on Energy and Natural Resources

1-20

8 AN ACT concerning water; relating to certain transfers; amending  
9 K.S.A. 82a-1501 through 82a-1505 and repealing the existing  
10 sections.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 82a-1501 is hereby amended to read as follows:  
82a-1501. As used in this the water transfer act:

15 (a) "Water transfer" means the diversion ~~and, transportation or~~  
16 ~~use~~ of water in a quantity of ~~1,000~~ 2,000 acre feet or more per year  
17 for beneficial use outside a ~~ten-mile~~ 50-mile radius from the point  
18 of diversion of such water. *Water transfer does not include a release*  
19 *of water from a reservoir to the water's natural watercourse for use*  
20 *within the natural watercourse or watershed, made under the au-*  
21 *thority of the state water plan storage act (K.S.A. 82a-1301 et seq.*  
22 *and amendments thereto) or the water assurance program act (K.S.A.*  
23 *82a-1330 et seq. and amendments thereto).*

24 (b) "Point of diversion" means:

- 25 (1) The point where the longitudinal axis of the dam crosses the
- 26 center line of the stream in the case of a reservoir;
- 27 (2) the location of the headgate or intake in the case of a direct
- 28 diversion from a river, stream or other watercourse;
- 29 (3) the location of a well in the case of groundwater diversion;
- 30 (4) the geographical center of the points of diversion in the case
- 31 of multiple diversion points.

32 (c) "Chief engineer" means the chief engineer of the division of  
33 water resources of the state board of agriculture.

34 (d) "Secretary" means the secretary of the department of health  
35 and environment, *or the director of the division of environment of*  
36 *the department of health and environment if designated by the*  
37 *secretary.*

38 (e) "Director" means the director of the Kansas water office.

39 (f) "Authority" means the Kansas water authority.

40 (g) "Panel" means the water transfer hearing panel.

41 (h) (g) "Party" means *any person who intervened at the pub-*  
42 *lic hearing held pursuant to K.S.A. 82a-1503, and who pre-*  
43 *sented testimony of witnesses under oath, conducted cross*

and transportation

→ to the point of use.

"point of use" means the geographical  
center of the applicant's water  
supply system excluding ~~system~~  
water supply systems supplied by  
the applicant.

House Bill 2070  
October 13, 1993

mination, presented oral arguments and filed written briefs:

(1) The applicant; or (2) any person who successfully intervenes pursuant to K.S.A. 82a-1503 and amendments thereto and actively participates in the hearing. "Party" does not mean a person who made a limited appearance for the purpose of presenting a statement for or against the water transfer.

(i) "District court" means the district court of Shawnee county.

(h) "Commenting agencies" means the state natural resource and environmental agencies, including the Kansas department of health and environment, the Kansas water office, the Kansas water authority, the Kansas department of wildlife and parks and the division of water resources of the Kansas state board of agriculture.

New Sec. 2. (a) The water transfer hearing panel shall consist of the chief engineer, the director and the secretary. The chief engineer shall serve as chairperson of the panel. All actions of the panel shall be taken by a majority of the members. The panel shall have all powers necessary to implement the provisions of this act.

(b) The panel shall select a hearing officer to conduct a hearing in accordance with this act when: (1) An application for a water transfer is complete; or (2) the chief engineer determines it to be in the best interest of the state to conduct a water transfer hearing on an application to appropriate water pursuant to the Kansas water appropriation act or on a proposed contract for the sale of water from the state's conservation storage water supply capacity, even though the appropriation or sale would not be a water transfer as defined by K.S.A. 82a-1501 and amendments thereto.

(c) The hearing officer shall be an independent person knowledgeable in water law, water issues and hearing procedures. The hearing officer shall serve as the presiding officer and, in addition to any other powers granted by this act, shall have the powers of a presiding officer as set forth in the Kansas administrative procedure act.

Sec. 3. K.S.A. 82a-1502 is hereby amended to read as follows: 82a-1502. (a) No person shall make a water transfer in this state unless and until the transfer is approved pursuant to the provisions of this act. No water transfer shall be approved which would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken for transfer, unless: (1) The panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer: (2) the chief engineer recom-

makes

water districts and

but not limited to groundwater management districts

be a presiding officer for the purposes of

Subject to approval by the panel, the hearing officer may employ such personnel and contract for such services and facilities as necessary to carry out the hearing officer's duties under this act.

2 of 3



LAURA L. McCLURE  
 REPRESENTATIVE, 119TH DISTRICT  
 202 SOUTH 4TH  
 OSBORNE, KS 67473  
 (913) 346-2715  
 STATE CAPITOL  
 ROOM 278-W  
 TOPEKA, KS 66612-1504  
 (913) 296-7680



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: AGRICULTURE  
 TRANSPORTATION  
 ENERGY AND NATURAL RESOURCES

Proposed Amendments to H.B. 2070

On page 3, amend number (2), in lines 13 through 18, to read:

I  
 "(2) unless the hearing officer determines that the applicant has adopted and implemented conservation plans and practices that (A) are consistent with the guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608 and amendments thereto, (B) have been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held and (C) include an increasing block rate structure that has been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held"

On page 3, in line 18, add a new (3) to read:

II  
 "(3) if the application is for a transfer between two or more of the 12 hydrologic basins designated by the Kansas water office for purposes of management, unless the applicant shows that the applicant has exhausted all other reasonable sources of water"

III  
 On page 3, after line 35, add the following and renumber:

"(6) whether the applicant has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant"

House Bill 2070  
 4

## 9. Institution of Water Rate Structures to Curb Excessive Use of Water

The pricing mechanism has been recognized as a very effective tool for instituting a conservation ethic among water users of all categories. The rate structure, and not necessarily the actual amount charged, is the real key in reducing water use. For example, no matter how high a flat rate may be, there is no incentive for the water user to conserve any water. On the other hand, a water rate structure with a low minimum rate, which increases steeply with the increased use of water (i.e., increasing block rate) may be very effective in bringing down excessive water use. However, in order to attract industries and not place a heavy burden on commercial customers, many cities use a decreasing water rate, which charges a set amount for a certain minimum quantity and then the rate per 1,000 gallons decreases sharply. This kind of water rate structure, although very favorable to the large volume users, has practically no incentive for any water conservation. The uniform unit rate structure, which has the same charge per unit of water used, regardless of amount, although fair to all types of consumers, does not have many incentives for water conservation if the rate is too low to seriously effect the consumers' pocket books. For example, in 1988 one city in Kansas charges \$3 for the first 5,000 gallons and 20 cents per 1,000 gallons for all water used in excess of 5,000 gallons which is likely much too low to cover the costs of providing the water to the consumers.

It is desirable that an increasing block rate structure or a uniform unit rate structure be used to deter excessive use of water. If a decreasing block rate is used, it may be possible to accomplish the same objective by using seasonal rates, which involve excess use surcharges. Surcharges are imposed for water use above a specified amount.

Ref: Municipal Water Conservation Plan Guidelines  
Pages: 20-21  
Kansas Water Office

TO: House Energy & Natural Resources Committee

From: Representative Joann Freeborn

## *Lower-Republican Water Association*

Working Together for the Preservation and Conservation of Water  
RR 1, Box 42 • Courtland, Kansas 66939 • (913) 335-2524

February 14, 1993

Dear Representative Freeborn,

Pursuant to our phone conversation I am writing with further details regarding our proposed amendment to H.B. 2070. (Sec. 3, page 3, line 13, after the word water insert the following words: "with application dates prior to the filing date of the transfer applicant"). Some of the effects that could be expected if water rights in our region were restricted due a water transfer under current and proposed legislation.

- 1) 375 established legal water users would be shut off, including at least partial shut down of 7 municipalities and 1 Rural water District. (Jamestown, Concordia, Clyde, Wakefield, Clifton, Clay Center, Morganville and R.W.D. 1 in Cloud County. It would reduce irrigation by 41,292 acres having a potential impact of at least 18 million dollars a year.
- 2) Property Tax revenue would be reduced drastically. As these acres are taxed at the lower "dryland" rate, local taxing entities would have revenues drastically reduced. This carries on over to our school, road, hospital, fire, and library systems, etc.
- 3) Economic development would be sent into a tailspin. The present "Temporary" moratorium on water development would likely become permanent. At the present time a major problem in turning "possible" new industries into reality is the concern for reliable water supplies. Without legislative protection our economies would be sent backwards in order to pipe water to another basin for their economic development.

House ENR  
Attachment 5  
2/17/93

Kansas Water Office contends our proposed amendment will do what  
ant it to do--- protect established water users in the basin of origin.  
hey also contend it "flies in the face of first in time, first in right" and  
imits their ability to market water and thus is a "takings". Let's take a  
closer look at those issues.

- 1) Our amendment does not affect "first in time, first in right". The  
KWO would still hold their file date of 4-3-1974. This amendment  
would only restrict who could be shut off in the basin of origin  
in times of water shortages. The Division of Water Resources has  
already established a precedent for this in their handling of the  
priority sytem at "Cheyenne Bottoms", where Senior in time right  
holders were restricted to "share" water for Juniors. Another example  
would be an irrigaton right for 2 acre-feet per acre. It is highly  
unlikely DWR would restrict other appropriations in order to provide  
2 acre-feet per acre for a senior-in-time right holder.
- 2) The KWO contends that unless they can market this water without our  
amendment it would "lower the value" and thus be a "takings". We  
feel this argument is questionable.
  - a) Any water sold in the basin of origin would not be affected.
  - b) Water sold out of basin would be affected only in a drought  
situation. Using KWO's criteria this would only happen 2%  
of the time. The receiving basin could build a resevoir  
and store water in times of surplus to see them through  
the dry season, thus everyone benefits.
  - c) The KWO already operates under an unfair advantage. Under  
current appropriation law you must "use it or loose it".  
Water users must perfect their appropriation within <sup>5</sup>/~~2~~ years  
and continue to use it, EXCEPT THE KWO. The Water Reser-  
vation Act allows KWO an unending time period to "perfect  
their right". This is unfair and needs to be rectified,  
which our amendment does to a degree.



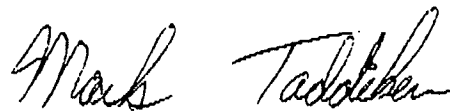
d) When the Water Reservation Act was written in 1974 the KWO did not have the right to sell this water for "water supplies" only for "water quality" needs. Only under the

1985 Memorandum of Understanding with the Corps of Engineers did water become available for "water supply". How can you take something KWO never had?

We feel that the current Water Transfer Act and H.B. 2070 favor shifting resources away from rural regions of Kansas for the benefits of urban regions. Our amendment would bring protection to established economies and social structures in rural Kansas. We feel the resources of Kansas should be shared by all regions and not shifted to those with more "votes and money". Maybe it is time to bring the jobs to the resources.

Thank you for your concern and interest, and we ask that you support our amendment.

Sincerely,  
Mark Taddiken



Lower Republican Water Association

82a-1501. As used in this act:

(a) "Water transfer" means the diversion and transportation of water in a quantity of 1,000 acre feet or more per year for beneficial use outside a ten-mile radius from the point of diversion of such water, and includes situations where one or more water rights aggregate 1,000 acre feet or more per year from the same water source.

(b) "Point of diversion" means:

(1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir;

(2) the location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse;

(3) the location of a well in the case of groundwater diversion;

(4) the geographical center of the points of diversion in the case of multiple diversion points.

(c) "Chief engineer" means the chief engineer of the division of water resources of the state board of agriculture.

(d) "Secretary" means the secretary of the department of health and environment.

(e) "Director" means the director of the Kansas water office.

(f) "Authority" means the Kansas water authority.

(g) "Panel" means the water transfer hearing panel.

House Bill  
Attached 6  
2/10/92