

Approved: 3-24-93
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 16, 1993 in Room 423-S of the Capitol.

All members were present:

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Don Hayward, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Mark Taddiken, Lower Republican Water Association, Clifton, KS
David R. Warren, Director of Water & Sewer for City of Wichita
Byron Johnson, General Manager of Water District No. 1, Johnson County
George A. Raftelis, Chairman, Rates Committee of the American Water Works Association; partner with Ernst & Young, Director of Ernst & Young's National Environmental Consulting Practice.
Mike Fegan, Chairman of Mayor's Preserve Our Water Resources Committee, Junction City
Written testimony by Gerald H. Holman, Senior Vice President, Wichita Area Chamber of Commerce
Written testimony by John Hier, City Manager, City of Abilene, KS
Written testimony by Arthur T. Woodman, Chairman, Lower Arkansas River Basin Advisory Committee

Others attending: See attached list

The chairman announced that due to the large number of out-of-town conferees wishing to appear concerning HB-2070, he was postponing further hearings on HB-2040 until a time to be determined later.

HB-2070 - concerning water; relating to certain transfers

Staff presented a briefing on HB-2070 to familiarize the committee with the bill as well as changes made by the House Committee and the House Committee of the Whole. House Bill 2070 would make modifications to the Kansas Water Transfer Act and implement a new procedure to be followed in order to have a water transfer request granted. The change in definition of the term "water transfer" was explained, also modification and new procedures were outlined in Attachment 1.

Mark Taddiken, Lower Republican Water Association, Clifton, appeared in support of HB-2070 and presented written testimony noting this bill creates an independent hearing officer which his organization had requested. Secondly, it increases the quantity and distance parameters required to "trigger" the transfer act as well as facilitating the aquisition of water in a user's own back yard. Attachment 2

David R. Warren, Director, City of Wichita, Water and Sewer Department, appeared and presented written testimony in support of HB-2070. Mr. Warren told the committee he was also Vice-Chair of the Policy Committee of the Kansas Water Authority and was directly involved in developing this bill which, prior to changes, was sensitive to protecting the public interest while making waters of the state reasonably accessible to all entities for beneficial use. Mr. Warren suggested several modifications to the House amended version of the bill. Attachment 3

Byron Johnson, General Manager of Water District No. 1 of Johnson County, appeared in support of HB-2070 noting his organization's experience with the existing statute pointed out the need for revision. He noted positive changes made in the original bill as well as mentioning some negative changes. Attachment 4 Mr. Johnson stated that individual utilities should be free to choose from various methods of pricing to achieve conservation.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on March 16, 1993.

George A. Raftelis, Partner and Director of Ernst & Young's National Environmental Consulting Practice, appeared and presented testimony concerning HB-2070. Mr. Raftelis noted the intent of the proposed legislation is appropriate in that communities should consider conservation pricing as a way of preserving water resources in Kansas. However he stated concern that mandating governmental utilities adopt a specific rate structure in water transfer situations would be an inappropriate policy. He further noted customer and customer class usage patterns must be carefully considered before adopting a specific conservation rate structure. Attachment 5

Mike Fegan, Chairman of Mayor's Preserve Our Water Resources Committee, Junction City, appeared and presented written testimony in support of HB-2070 noting his group believed this bill improves the procedures for addressing the issues related to the transfer of water. Attachment 6 Mr. Fegan suggested amending Section 3, b as shown in his written testimony.

Written testimony by Gerald H. Holman, Senior Vice President, Wichita Area Chamber of Commerce, was presented to committee members. Mr. Holman's testimony contains comments and recommendations regarding HB-2070 as amended by the House Committee of the Whole. Attachment 7

John Hier, City Manager, City of Abilene, Kansas, submitted written testimony in support of amendments proposed by the City of Wichita stating in his opinion these amendments would make the Kansas Water Transfer Act more workable and fair. Attachment 8

Written testimony in support of HB-2070 was submitted by Arthur T. Woodman, Chairman, Lower Arkansas River Basin Advisory Committee. Attachment 9

The Chairman announced the committee would convene at 7:30 a.m. March 17, 1993.

The next meeting is scheduled for March 17, 1993.

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE March 16, 1993(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

R. E. Polton	City of Topeka
David R. Warner	City of Wichita
Gerald H. Holman	Wichita Chamber of Commerce
Mark Taddiken	Lower Republican Water Assn
Larry Rosenow	Water Dist No. 1 Jo Co
Larry D Shannon	Topeka Kansas
Steve Hurst	Kansas Water Office
Bill Craven	Sioux Club -
Don Schuack	KIDGR -
Rich McKee	Kansas Livestock Assoc
George RARTHEL	Ernst & Young
Daniel Byrne	Division of Water Resources, Dept of Agric
Leland E. Rolf	KSBA - DWR
MIKE ARMSTRONG	Water District No 1 Jo Co
Deanna Hobelmann	Women Involved in Farm Economics
Marilynn K. Birrell	Women Involved in Farm Economics
Helen M. Amund	WIFE
Shelley Wells	Legislative Intern
Naomi King	WIFE
Rebecca Ost	WIFE
Spurley J. Rae	WIFE
Jenny Heep	WIFE
Bill Anderson	WIFE
Ed M Nelson	WIFE
Hugh Taylor	WIFE
Rick GIARDINO	WIFE
	Ernst & Young

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE March 16, 1993(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Tom StilesBill FullerAlan StepputTopekaT. MICHAEL FEGAN Junction CityHarland PrindleLawrence BradyKansas Water OfficeKansas Farm BureauPete McGill & AssociatesMayor's WATER COMMITTEEJunction City, Geary County, Kan. OfficeKansas Geol Survey, Lawrence

MEMORANDUM

Kansas Legislative Research Department

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Room 545-N - Statehouse
Topeka, Kansas 66612-1504
Telephone (913) 296-3181 FAX (913) 296-3824

March 15, 1993

To: Senate Energy and Natural Resources Committee
From: Raney Gilliland, Principal Analyst
Re: Water Transfers as Proposed in H.B. 2070

Background

This bill was introduced by the House Committee on Energy and Natural Resources at the request of the Kansas Water Authority. The Director of the Kansas Water Office made the request on behalf of the Authority in order to implement recommendations made in the Kansas Water Plan. The current law on water transfers was enacted in 1983 and since that time only one transfer application has been made and reviewed under the law. Final action on this application is currently being appealed in the Shawnee County District Court and resolution of the appeal is still pending. According to the Director of the Kansas Water Office some of the difficulties with this application confirmed that there is a need for changes in the law relating to water transfers and the Kansas Water Authority recognized this as a problem and suggested amendments to the current water transfer legislation. Those problems were addressed in the bill that was introduced.

Summary of H.B. 2070 As Amended by House Committee of the Whole

H.B. 2070 would make modifications to the Kansas Water Transfer Act and implement a new procedure to be followed in order to have a water transfer request granted. The following outlines the proposed modifications and new procedure.

1. The bill would change the definition of the term "water transfer." Changing this term has the effect of changing the entities that may be subject to the provisions of the Act. Under the modification, the term would mean the diversion and transportation of water:
 - a. in a quantity of 4,000 acre feet or more per year for beneficial use at a point of use more than ten miles and less than 50 miles from the point of diversion; or
 - b. 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 water.

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Under current law, the water transfer statutes are applied when the transfer is more than 1,000 acre feet and transported more than ten miles.

In determining the amount of water transferred in the case of a water transfer supplying water to multiple public water supply systems or other water users, the amount of water transferred would be considered to be the aggregate amount of water which will be supplied by the transfer to all public water supply systems and other water users whose points of use are located within the distances prescribed by either of the conditions for determining what constitutes a water transfer. A water transfer would not include a release of water from a reservoir to the water's natural watercourse for use with the natural watercourse or watershed.

These last two stipulations are new and not contained in the current water transfer law.

2. As used in the Act the term "point of use" would mean the geographical center of each water user's proposed or authorized place of use where any water authorized by the proposed transfer will be used.

This is a new term to be added to law and is necessary because of the use of the term in the definition of "water transfer."

3. A new term of "commenting agencies" would be established. Under the bill, the term would mean groundwater management districts and state natural resource and environmental agencies, including, but not limited to, the Department of Health and Environment, the Water Office, the Water Authority, the Department of Wildlife and Parks, and the Division of Water Resources.

This is a new term being added because of the required notice to these parties before a prehearing conference is held.

4. The term "party" would be defined to mean the applicant for a water transfer or any person who successfully intervenes pursuant to the Act and actively participates in the hearing.

Under current law, this term was limited to only those persons who intervened and presented testimony at the public hearing.

5. The bill would authorize the Water Transfer Hearing Panel (made up of the Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture; the Director of the Kansas Water Office; and the Secretary of the Department of Health and Environment (KDHE) or the Director of the Division of Environment of KDHE) to select a hearing officer to conduct a hearing when an application for a transfer is complete or when the Chief Engineer determines it to be in the best interests of the state to conduct a transfer hearing, even if a

sale of water or an appropriation of water does not constitute a water transfer. Under the provisions of the bill, the hearing officer would have to be an independent person knowledgeable in water law, water issues, and hearing procedures. The hearing officer would be a presiding officer for the purposes of the Kansas Administrative Procedure Act. The bill would authorize the hearing officer, subject to approval by the panel, to employ personnel and contract for services and facilities necessary to carry out the Act.

Under current law, the Chief Engineer of the Division of Water Resources convenes and conducts the hearing on the proposed water transfer. The Water Transfer Hearing Panel considers the application and determines whether to approve the water transfer.

6. Under the provisions of the bill, the hearing officer would commence the hearing process by giving notice of the prehearing conference not more than 14 days after the Hearing Panel employs the hearing officer (current law requires that the application for a water transfer be filed with the Chief Engineer and this would not change under the bill). Notice would be given to the applicant by mail, and other parties who have intervened as well as the commenting agencies. The notice would be published in the *Kansas Register* and in at least two newspapers having general circulation in the area where the point of diversion is located.

Under current law, the Chief Engineer is authorized to convene and conduct a hearing on a water transfer within 60 days of receipt of a sufficient application.

7. The hearing officer would hold a prehearing conference not sooner than 90 days and not more than 120 days after the required notice. The prehearing conference would be concluded not later than 45 days after its commencement. The bill would require, not sooner than 90 days and not later than 120 days after the conclusion of the prehearing conference, the hearing officer to commence the formal public hearing.

Under current law, there is no provision for a prehearing conference.

8. The bill would require the formal hearing be held in the basin of origin and, if deemed necessary, a public hearing in the basin of use. The bill also would require that the formal public hearing conclude not later than 120 days after its commencement. The hearing officer would make an initial order approving or disapproving, in whole or in part, the water transfer not later than 90 days after the conclusion of the formal public hearing. The hearing officer would be authorized to order approval of a transfer of a smaller amount of water than requested.

Under current law, the Chief Engineer convenes and conducts the hearing within 60 days of receipt of a sufficient application. The Chief Engineer currently serves as Chair of the Hearing Panel. Under current statute the Hearing Panel makes the determination as to whether or not a water transfer is granted. If the Panel

disapproves the transfer the order is deemed final. If the Panel approves the order it is deemed to be initial. The Kansas Water Authority then reviews initial orders for approval or disapproval.

9. The bill would authorize parties to intervene in the hearing, which would be according to the Kansas Administrative Procedure Act, except that a petition for intervention would have to be submitted and copies mailed to all parties not later than 60 days before the hearing.
10. The hearing officer would render an order approving or disapproving the proposed transfer. An order of the hearing officer disapproving or approving a water transfer, in whole or in part, would be deemed an initial order.
11. The bill would require that the Water Transfer Hearing Panel enter a final order not later than 90 days after entry of the initial order. The review by the Panel would be based on the record of the hearing.
12. Under provisions of the bill, the hearing officer would be authorized to make assessments for any or all anticipated costs of the hearing to the applicant for the water transfer before the hearing, and may order reimbursement of the applicant by other parties for their share of the costs. The assessments would be deposited into the Water Transfer Hearing Fund, which would be created by the bill. In addition, the bill would authorize the hearing officer to make periodic assessments during the hearing process to the applicant and the other parties.
13. The bill would require that before a water transfer could be approved the hearing officer would have to determine that conservation plans of the applicant had been in effect for not less than 12 consecutive months prior to the filing of the application. In addition, if the transfer is for use by a public water supply system, then the public water supply system would have to have an increasing block rate structure designed to encourage the conservation of water implemented prior to the filing of the application.
14. In addition to other considerations in determining whether the benefits for approving the transfer outweigh the benefits for not approving the transfer, the hearing officer would be required to take into account whether the applicant for the water transfer had taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant. An additional consideration that the hearing officer would have to consider would be 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. Further, the hearing officer would have to consider any applicable management program, standards, policies, and rules and regulations of a groundwater management district.
15. The bill would require that any proceedings and notice to be in accordance with the provisions of the Kansas Administrative Procedure Act, except as otherwise

provided. Records of the hearing or other proceedings would be maintained by the Office of the Chief Engineer. The bill would establish a severability clause in the Act.

16. Finally, the Act could not be construed to exempt the application from first complying with the provisions of:
 - a. any applicable management program adopted by a groundwater management district; or
 - b. the Kansas Water Appropriation Act or the State Water Plan Storage Act, whichever is applicable.

TESTIMONY on SENATE BILL 2070

By MARK TADDIKEN

March 16, 1993

LOWER REPUBLICAN WATER ASSOCIATION

Mr. Chairman and members of the committee, I thank you for this opportunity to appear before you today. I am Mark Taddiken a farmer from Clifton, Ks. Today I stand before you not as an individual but rather on behalf of the Lower Republican Water Assn. This association consists of approximately 300 water users located in the Republican River Basin, from Milford Reservoir northwest to the Nebraska state line.

Our association generally supports S.B. 2070 for several reasons. First of all, it creates an independent hearing officer which we have been calling for. Secondly, by increasing the quantity and distance parameters required to "trigger" the transfer act, it should facilitate the aquisition of water in a users own back yard.

Also, the requirement for a water conservation plan having been implemented for 12 months prior to application for a transfer along with the requirement of an increasing block rate structure underscore the wisdom and importance of conserving water. These two items are crucial for our support of this bill. Furthermore, the requirement for the hearing officer to determine if the applicant has taken appropriate measures to preserve the quality and remediate any contamination of water currently available is a wonderful requirement. It serves notice to the citizens of Kansas to be deligent in their caretaking of our precious resource of water.

There is one area of the bill we feel needs to be strenghtened. Section 3,

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(c 9), lines 40 and 41 speak to management programs of groundwater management districts. We feel this needs to be expanded to include water transfer applicants. We would replace the existing language in (9) with:

Section 3 (c) (9) "a management plan regarding the operation and administration of the proposed transfer, including the conditions under which such transfer should occur, limitations imposed on the transfer prior to impacting users in the general area from which the water is taken, including triggers to implement drought contingency portions of the applicant's adopted water conservation plan and use of the applicant's reserved alternative sources of water, conditions required by the management plan developed by any appropriate groundwater management district and any other conditions deemed to protect the public interest of the state. Input for the formulation of this plan would be allowed by potentially affected persons and/or parties in both the receiving and originating basins."

The inclusion of this amendment would provide everyone involved a great advantage in making plans for future water use. Water projects are expensive and time consuming at best. By knowing under what conditions water restrictions would be implemented people could better plan projects involving water use in a more cost-effective manner.

This is a very real concern for the citizens of our region. If the water transfer Wholesale Supply District 10 has applied for is permitted, and the water level of Milford Reservoir falls to a level where KWO cannot meet it's contracted obligations, the consequences would be far reaching. As recently as 1992 the water level fell to this point in Milford Reservoir. Under these conditions 375 upstream waters users, including 7 municipalities and 1 rural water district, would have their existing water rights administered. Someday the drought will return and we will face these conditions again. The inclusion of this amendment will allow everyone in both basins to plan better for the future.

he basic concept for this amendment was arrived at in a meeting between representatives from our association board, the Division of Water Resources, and the Kansas Water Office. Therefore I ask for your favorable consideration of this amendment and with it's inclusion the entire bill.

MARK TADDIKEN

LOWER REPUBLICAN WATER ASSN.

STATEMENT OF DAVID R. WARREN
Before the
Senate Committee on Energy and Natural Resources
Regarding HB 2070
Water Transfers Act Modifications

March 16, 1993

Chairman Saltee and Honorable Senators, I am David Warren. I appear before this committee this morning to seek your favorable consideration of HB 2070, which amends the Kansas Water Transfers Act.

I am Director of Water & Sewer for the City of Wichita. I am also Vice-Chair of the Policy Committee of the Kansas Water Authority. As a member of the policy committee of the KWA, I was directly involved in the development of HB 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 KWA. These interests include agriculture, environmental, municipal, commercial and industrial, regulatory and the public-at-large. The development of this legislative initiative was sensitive to, first and foremost, protecting the public interest, while making waters of the state reasonably accessible to all entities for beneficial use. I believe that HB 2070, as it was initially presented to the House Energy and Natural Resources Committee achieved that goal. Further, the HB 2070 has achieved the difficult task of making water transfers less complicated while at the same time providing the high level of public interest protection that movement of the 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. Some of the options which Wichita is developing/considering include water conservation, additional rights in Cheney Reservoir, additional water rights in the Equus Beds, treated wastewater re-use, storage of flood flows of the Little Arkansas River, and Milford Reservoir.

One of the biggest hurdles Wichita has faced in securing additional rights in the Equus Beds and Cheney Reservoir has been the procedural uncertainties created by the Water Transfers Act as it presently exists. If Wichita, or any other city, is to face unreasonable procedures in developing or acquiring local water resources, then there is no incentive for them to look locally.

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I now wish to dispel some myths.

MYTH 1: This bill would make it easier to move water from Milford Reservoir to Wichita. Whether this bill is passed or not, movement of water from Milford to Wichita would require a transfer hearing and determination, as it should.

MYTH 2: This is a Wichita bill. Wichita supports this legislation, to be sure. However, the bill came out of the Kansas Water Plan as an initiative of the KWA. The KWA is made up of a cross-section of interests and people of Kansas, not just Wichita.

MYTH 3: Wichita is a water wasteful community. Wichita has had a water conservation program since the early 1980's. That program included water rate incentives, public education, and regulations. In 1990/91, Wichita reviewed and updated its conservation plan and adopted a water rate with an even stronger conservation price signal. Wichita spent over \$200,000 in developing an award winning public education campaign on water conservation. Wichita's daily per capita water use in 1991 was 161 gallons. This is about the same as the state-wide average of 156 gallons. Wichita's average daily per capita water consumption has declined every year since 1989 (1988-179, 1989-173, 1990-164, 1991-161). The last two years were record hot, dry years. Wichita's per cent unsold water is the lowest in its region of the state. Wichita continues its commitment to thoughtful water use and will consider a residential landscape ordinance to require low water use landscaping in new developments and amendments to its plumbing code to require lower water use plumbing fixtures in 1993.

MYTH 4: Wichita wants to "steal" water in the Equus Beds at the expense of rural interests. Wichita has been offering to buy water rights from willing sellers in the Equus Beds. Wichita has been working with GMD #2 to find ways to enhance the availability of water in the Equus Beds, to the benefit of all users. Wichita sees itself in partnership with its rural neighbors. Wichita supplies water to the small communities of Bel Aire, Kechi, Benton, Bentley, Andover, Rosehill, and Park City. Wichita also supplies water to Rural Water District #1 of Butler County and RWD 3 and 8 of Sedgwick County.

Wichita does not believe it unreasonable to want a level regulatory playing field in accessing water resources. HB 2070 would create a level playing field if certain amendments added in the House were removed or modified.

Statement of David R. Warren, City of Wichita
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I ask you to please consider making the following modifications to the bill you received from the House:

1. Definition of "transfer". The 4000 acre-feet, more than 10 mile "trigger" unreasonably restricts local options, especially for large municipal utilities. The attached graphic shows Wichita's service area with 10 mile circles extending out from the center of the same. There are essentially no conventional water resource options for Wichita within 10 miles. Wichita's two existing water resources (the Equus Beds aquifer and Cheney Lake) lie 20 and 25 miles respectively from Wichita's center. For Wichita, 4000 acre-feet represents about 6% of the City's present annual water use. At the City's current annual growth rate 4000 acre-feet would provide for about 3 years of growth. Such a water resource acquisition would not represent a prudent, economical, long-range (20 years) water resource. The 2000 acre-feet, 50 miles trigger suggested by the Kansas Water Authority gives Kansas' larger municipal water suppliers reasonable access to local options to meet long range needs. It is suggested that the KWA recommended trigger of 2000 acre-feet moved more than 50 miles be retained as the definition of a water transfer in 82a-1501 (a) (1) and that the added 4000 acre-feet moved more than 10 miles be deleted.

2. Water rate structure to encourage conservation. It is appropriate that this legislation contain requirements that water conservation measures such as plans, practices, programs and rate structures be implemented by applicants for a water transfer. However, to define a single rate structure (inclining block) as the only acceptable pricing methodology to achieve conservation is too narrow. Uniform rates and seasonal rates are but two other rate methodologies with proven water conservation impacts. It is suggested that the language of 82a-1502 (b) (2) (C) be amended to read: "If the transfer is for use by a public water supply system, the applicant must have implemented a rate structure that encourages the efficient use of water prior to the filing of the application on which the hearing is being held." This allows for consideration of numerous conservation pricing options among which one may be more appropriate than another for an individual public water supply system.

C. Compliance with GMD rules/regs/policies as condition precedent to water transfer consideration. The amendment providing that an applicant must first comply with any management program adopted by a groundwater management district (GMD) [82a-1506 (b) (1)] creates an opportunity for arbitrary and discriminatory rulemaking. The act as passed by the House

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contains provisions which include the GMD as a commenting agency on water transfers [82a-1501 (i)] and provides that to determine the benefit to the state the hearing officer shall consider whether the applicant has complied with GMD management programs, standards, policies, rules, regulations [82a-1502 (c) (9)]. It is submitted that the two sections outlined above offer adequate input and protection of GMD interests. It is therefore suggested that 82a-1506 (b) (1) be deleted as it is unnecessary.

With the suggested changes, Wichita encourages your favorable consideration of HB 2070. At the appropriate time, I will be glad to answer any question the committee may have. Thank you.

Review of HB 2070

Water Transfers Act Modifications

1993 Legislative Session

I. Existing Law

A. Provides that water in an amount of 1000 acre-feet or more (about 900,000 gallons per day) moved more than 10 miles will be subjected to an extraordinary [i.e., above the already rigorous requirements of the Water Appropriations Act (KSA 82a-701 et seq) or State Water Plan Storage Act (KSA 82a-1301 et seq)] review process.

B. Provides a review process involving a three member panel consisting of Secretary of KDHE, Director of Kansas Water Office and Chief Engineer of the Division of Water Resources who issue a preliminary finding/order. The Kansas Water Authority or Chief Engineer of the DWR then issue a final finding/order.

C. Provides the Legislature then has an opportunity to disapprove transfer even though the administrative bodies approved it.

D. Creates inconsistency with Kansas Administrative Procedures Act.

II. Modifications as Proposed by Kansas Water Authority

A. Increase the distance and amounts in the definition of a transfer to 2000 acre-feet or more moved more than 50 miles.

B. Have the three member panel select a "special master" to hear the evidence and build the record in a transfer hearing. The three member panel would then act as the authority for issuing a final finding/order. (Kansas Water Authority, a volunteer advisory body, is then removed from what may become a legal challenge.)

C. Legislative disapproval removed from process. The Attorney General issued an opinion that such legislative involvement in an administrative process was unconstitutional. (A.G. Op. No. 91-12, 2/15/91)

D. Eliminates inconsistency with Kansas Administrative Procedures Act.

III. Significant Amendments Made to Bill as It Passed the House of Representatives

A. Added a second definition of a transfer to mean 4000 acre-feet or more moved more than 10 miles but less than 50 miles.

B. Added a definition of point of use to mean the geographic center of each water user's proposed or authorized place of use.

C. Added ground water management districts as a "commenting agency".

D. Added a requirement that applicants for a transfer have an approved conservation plan in effect 12 months prior to filing application for water and, if a public water supply system, have increasing block rate structure in effect prior to filing application for water.

E. Added as a consideration for determining benefit to the state whether an applicant for water take "all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant;".

F. Added as a consideration for determining benefit to the state whether conservation plans and practices are consistent with applicable management program, standards, policies and rules and regulations of a groundwater management district.

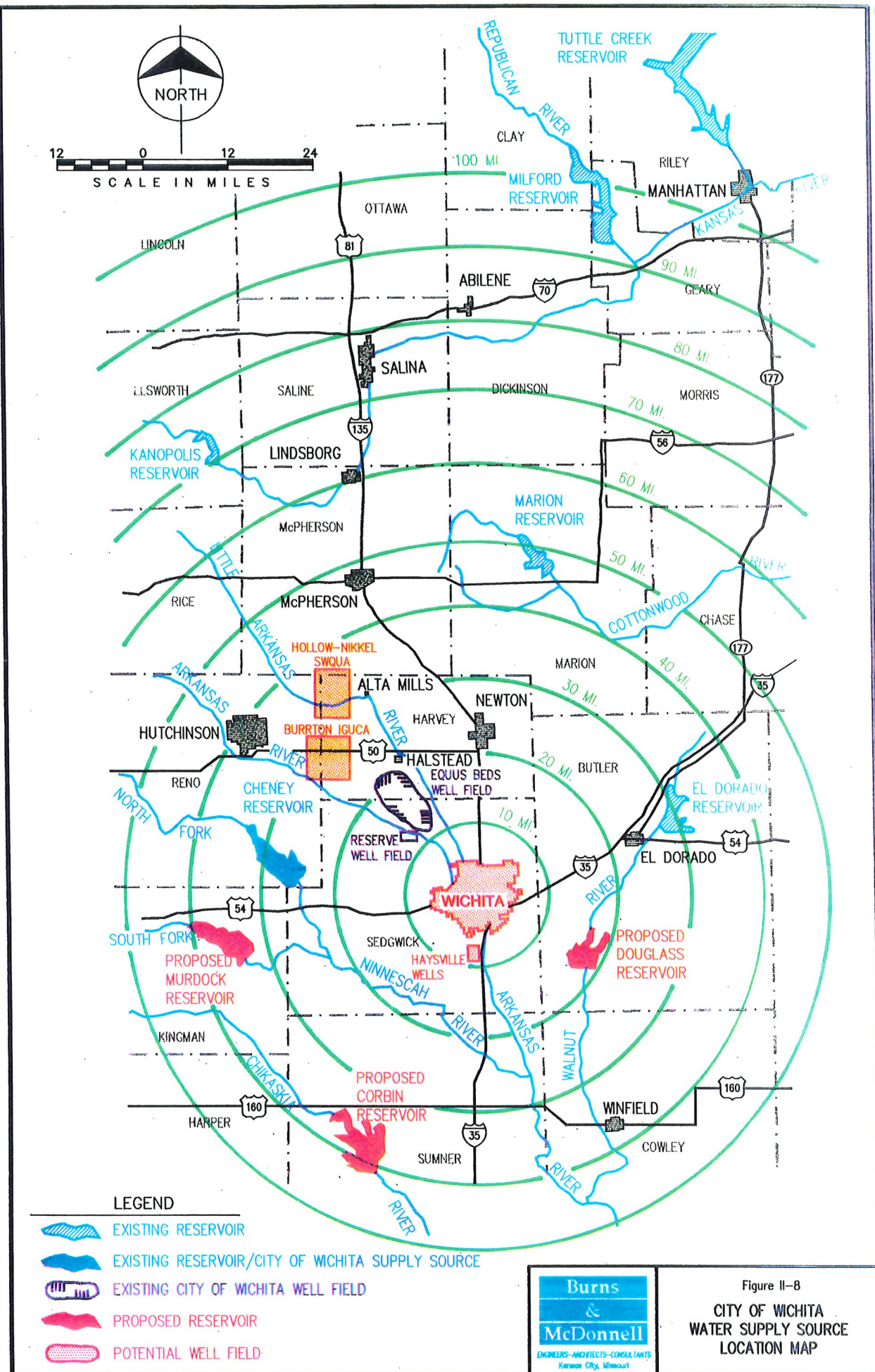
G. Added a statement that nothing in the act shall "....be construed as exempting the applicant from first complying with provisions of: (1) Any applicable management program adopted by a groundwater management district...."

TABLE 25 (Continued)

ANNUAL AND AVERAGE GPCD USAGE FOR PUBLIC WATER SUPPLIERS BY REGION
KANSAS, 1987 - 1991

City/Public Water Supplier	Region	1987 GPCD ^{a/}	1988 GPCD ^{a/}	1989 GPCD ^{a/}	1990 GPCD ^{a/}	1991 GPCD ^{a/}	Avg. GPCD
Vermillion	7	87	88	82	108	111	95
Victoria	5	99	119	118	111	141	118
Village of Byron	7	215	261	271	268	281	259
Virgil	7	115	105	88	95	92	99
Wabaunsee Co. RWD No. 1	7	80	89	86	103	103	92
Wagon Wheel Mobile Home Park I	2	NA	NA	NA	76	57	67
Wagon Wheel Mobile Home Park II	2	NA	NA	NA	37	50	44
Wakeeney	4	176	217	212	197	224	205
Wakefield	7	121	119	134	111	108	119
Waldo	6	NA	79	83	78	NA	80
Wallace	1	228	279	306	226	246	257
Wallace Co. RWD No. 1	1	185	198	228	252	304	233
Walnut Grove Mobile Home Park	7	NA	NA	NA	NA	72	72
Wamego	7	121	143	132	138	156	138
Washington	7	144	173	181	159	195	170
Washington Co. RWD No. 1	7	200	203	181	84	98	153
Washington Co. RWD No. 2	7	142	131	264	220	151	189
Waterville	7	159	167	136	209	198	174
Wathena	8	103	103	106	103	97	102
Waverly	7	81	81	82	92	96	86
Weir	8	75	79	92	103	98	89
Wellington	7	111	108	120	142	127	122
West Hills Water Company	6	NA	237	116	116	149	155
West Mineral	8	81	86	82	82	102	87
Western Acres Mobile Home Park	6	NA	NA	NA	NA	41	41
Westmoreland	7	115	120	78	114	119	109
Wetmore	7	96	102	110	105	116	106
Whatley's Trailer Park	2	NA	NA	94	102	102	99
White City	7	91	106	99	92	97	97
White Cloud	8	NA	NA	NA	120	97	109
Whitewater	7	75	75	74	79	80	77
Whiting	7	74	74	49	60	65	64
Wichita	7	148	179	173	164	161	165
Williamsburg	8	102	68	95	92	85	88
Wilson	6	130	169	151	136	180	153

Reprinted from 1991 Kansas Municipalities
86 Water Use, by Kansas Water Office



TESTIMONY TO THE SENATE COMMITTEE
ON ENERGY & NATURAL RESOURCES

Mr. Chairman and Senators:

I am Byron Johnson, General Manager of Water District No. 1 of Johnson County, which is a publicly owned urban water utility that serves approximately 290,000 people throughout Johnson County, as well as small portions of Wyandotte and Miami Counties. It is authorized and operates pursuant to KSA 19-3501, et. seq. The Water District and its organizing statutes provide for a water supply which encompasses several cities primarily in Johnson County to provide an efficient water supply and distribution system.

The Water District currently holds water rights for 23,830 acre feet from the Missouri River. In 1991 the District used 113% of its permanent water rights on the Missouri River by obtaining a temporary permit. Prior to obtaining the temporary permit, the Water District had applied in March, 1991 for an additional 23,000 acre feet of water rights from the Missouri River to meet expected water demands from the existing customer base, to eliminate the need to buy water on a wholesale surplus basis from the City of Kansas City, Missouri, and to obtain water rights for future needs. This additional withdrawal of 23,000 acre feet was calculated to be less than .16 of one percent of the annual flow of the Missouri River in a drought year.

Since a majority of the District's boundaries lie beyond 10 miles from the Missouri River, this request triggered the current Water Transfer Act. Water District No. 1 is the only applicant to apply for a water transfer under the current Water Transfer Act. This application is still not approved. Based upon our experiences with the existing statute, we are in full agreement with the Kansas Water Authority, the Kansas Water Office and the Legislature that this Act should be revised.

*Senate Energy and Natural Resources
March 16, 1993
Attachment 4*

House Bill 2070 was originally presented to the House of Representatives by the Kansas Water Authority as a comprehensive response to the inadequacies of the current law. Unfortunately several changes have been made to this bill which deviate from the original intent and quality of the bill. Many positive aspects of the original version of HB 2070 remain. These positive changes include:

- the appointment of an independent hearing officer
- the elimination of the Kansas Water Authority oversight
- clarification of the administrative procedures and
- elimination of the unconstitutional legislative veto provision

However, several negative changes were instituted by the House Energy and Natural Resources Committee, which this committee should reverse to restore this bill to its original intent. Specifically, the definition of what constitutes a water transfer should be returned to the original "50 mile radius definition" as proposed by the Kansas Water Authority. The purpose of a radius greater than 10 miles was to recognize the fact that larger utilities in the state distribute water within their own service area, distances further than 10 miles. The 10-mile trigger is totally inappropriate for these utilities. For example, the Water District is 24 miles by 15 miles and its Missouri River Intake is approximately 10 miles beyond the Water District's boundaries. Water utilities such as Water District No. 1 of Johnson County and large municipal utilities would be severely restricted by the definition of a "water transfer" currently provided in HB 2070.

The other negative change involved the imposition of a mandatory increasing block rate structure. Such a state-wide requirement is too rigid for all applications. It prohibits individual utilities from formulating a rate structure which is most beneficial to its individual customers and its overall

situation.

It is commendable and appropriate that water conservation measures should be required of applicants for a water transfer. These measures are currently addressed by the requirement that water transfer applicants adopt conservation practices consistent with 1990 Kansas Water Office Conservation Guidelines. The 1990 guidelines contain specific suggestions regarding rate structures. These guidelines recognize that several rate structures are available to achieve conservation and discourage the waste of water.

Therefore, the local water utility should have the maximum flexibility and freedom to adopt a rate structure best suited for its needs that promotes efficient reduction in use of water. This rate structure can be used with other effective conservation measures, such as:

- Education of the public
- Conservation landscaping
- Low-flow plumbing fixtures
- Water rationing
- Leak detection
- Meter maintenance program

Individual utilities should be free to choose from various methods of pricing to achieve conservation. If the Legislature wants to reinforce the guidelines, you could require adoption of a rate structure which promotes the efficient use of water, but utilities should not be deprived of their local autonomy in adopting their best specific rate structure for their particular situation.

Submitted by Byron Johnson on March 16, 1993

**Testimony Before the State of Kansas Senate Energy
and Natural Resources Committee**

Re: House Bill 2070

**Presented by:
George A. Raftelis, Partner, Ernst & Young**

Senate Energy & Natural Resc.
March 16, 1995
Attachment 5

**Testimony Before the State of Kansas Senate Energy and Natural
Resources Committee Re: House Bill 2070**

**Presented by:
George A. Raftelis, Partner, Ernst & Young**

My name is George Raftelis. I am a partner with Ernst & Young and the Director of Ernst & Young's National Environmental Consulting Practice. A major part of our practice deals with assisting water and wastewater utilities in developing rate structures and financial plans. I have had approximately twenty years of experience in consulting with over 200 governmental water and wastewater utilities across the country. Currently, I chair the Rates Committee of the American Water Works Association, which establishes pricing policies for investor-owned and governmental water utilities across the country. Most recently, our committee prepared a manual entitled Alternative Rates, which discusses conservation rate structures and when they are suitable for implementation by communities across the country. In addition, I have authored a book on water and wastewater finance and pricing, which has a relevant chapter on conservation pricing. As you deliberate over the proposed legislation, I have made both the Alternative Rates manual and my book available as resource documents.

I have had the opportunity to review House Bill No. 2070 requiring mandatory implementation of increasing block rates as a prerequisite to water transfers by government utilities in Kansas. I believe that the intent of the proposed legislation is appropriate in that communities should consider conservation pricing as a way of preserving water resources in Kansas. I am concerned, however, that mandating governmental utilities to adopt a specific rate structure in water transfer situations would be an inappropriate policy. Furthermore, the implementation of an increasing block rate structure in some jurisdictions could result in limited conservation being achieved, and could create undue rate impact on certain classes of customers. My testimony deals with this issue.

First, water conservation pricing is but one measure that communities should consider in adopting a comprehensive conservation program. Effective conservation measures include:

- Low-flow plumbing fixtures
- Education
- Leak detection
- Meter maintenance program
- Conservation landscaping
- Water rationing
- Pricing

All of these methods should be evaluated in determining an effective conservation program. In many cases, a combination of these methods is recommended as the basis for optimizing a community's conservation goals.

Pricing can be a powerful part of an overall conservation program. Many states with scarce water resources have been particularly aggressive in encouraging conservation pricing. Some of these states include Arizona, California, Texas, Florida, New Mexico, and Massachusetts. Furthermore, several water regulatory states and/or agencies have mandated that conservation pricing be implemented by utilities they regulate. Several of these agencies include the state of Massachusetts, the Delaware River Basin Commission, and several of the water management districts in Florida.

Throughout the United States, several pricing methodologies have been developed and implemented to achieve water conservation. These pricing structures include:

- Increasing Block Rates - rates that increase as consumption increases.
- Uniform Rates - rates that are the same for all customers and customer classes, at all levels of consumption.
- Seasonal Rates - rates that vary during different periods of the year.
- Excess Use Rates - rates that assess a conservation surcharge at pre-established consumption thresholds for each individual customer.

Customer and customer class usage patterns must be carefully considered before adopting a specific conservation rate structure.

An increasing block rate structure is most suitable in situations where the customer base is primarily residential and where customers have similar usage patterns. Like most conservation pricing structures, increasing block rates assume that non-essential water use should be priced at a premium. Non-essential water use is usually associated with irrigation and other outside water uses. The premium is assessed above a consumption threshold called a "block cut-off". The increasing block rate structure further assumes that all customers have similar usage characteristics related to essential and non-essential water use. Unfortunately, in locations where there are substantial differences in user characteristics, some users could be penalized inappropriately under an increasing block rate. For example, a residential customer that is a one-person household would have a different "essential use" than a residential customer with a six-person household. The comparison is even more pronounced when comparing residential customer characteristics with those of other large volume customers such as hospitals, schools, office buildings, and manufacturing companies. In such situations, establishing an increasing block structure for all customer classes will likely charge many customers unfairly.

In communities where usage patterns vary substantially, it is likely that an excess use conservation rate structure would be more appropriate than an increasing block structure. Under an excess use approach, each customer is charged a premium for non-essential water use based upon that customer's individual usage characteristics. An average winter water use is determined for each customer, and the conservation surcharge would be assessed for usage above the winter average.

In addition, increasing block rate structures discourage water use year-round, versus only during a peak or seasonal period. This reduced demand objective may be appropriate where water resources need to be preserved year-round. In some situations, however, water use should be encouraged during non-peak periods since this would promote the most efficient use of facilities designed for peak periods. In such situations, a seasonal pricing structure will likely be more appropriate than an increasing block rate structure to achieve optimal conservation and efficiency.

To demonstrate how neighboring communities might adopt two different conservation pricing approaches, let's look at Phoenix and Tucson, Arizona. Both communities are located in the arid southwest where rainfall is limited; both have groundwater supplies and a supply allocation from the Central Arizona Project; and both are subject to the States' Groundwater Management Act, which has established certain water reduction goals for public water providers (it should be noted that the Act did not establish how the individual water providers would achieve the indicated water reduction goals). One might think that the two providers would have similar pricing approaches—this is not the case. Tucson has different pricing approaches for residential and nonresidential customers; a multi-tiered increasing approach for residential and an approach for nonresidential customers which charges increasing unit prices, but each customer establishes his own unique "base" above which the higher unit rates would apply. The city of Phoenix, on the other hand, has a single rate structure for all customers which varies by season. Two apparently similar communities with dramatically different rate approaches. The reasons for such differences relate to the philosophy and objectives of the communities, the expertise and training of staff, and a variety of other factors.

Conservation pricing is becoming an increasingly important vehicle for preserving water resources across the country. As I mentioned, the Water Rates Committee that I chair for the American Water Works Association, establishes policy guidance to government and investor-owned utilities across the country. We have recognized that no one conservation rate structure is universally appropriate in all communities. In our Alternative Rates manual and in my book, we discuss what conservation rate structures would be appropriate for particular community environments.

Conclusion

In summary, increasing block rate structures can be effective in promoting water conservation. This rate structure, however, may not be the most appropriate rate structure to achieve optimal conservation results for all communities in Kansas. In some cases, they can create a totally different demand impact than devised.

In my opinion, the intent of the proposed legislation and the apparent goals of the State, as evidenced by the content of the Kansas Water Office Municipal Water Conservation Plan Guidelines, are that wise water using practices should be adopted by public water providers in the state of Kansas, and when it comes to pricing this should also be part of the program. However, the thrust of any legislation should be not to mandate precise measures to be followed, but rather to establish goals for providers to strive for. The

means by which to achieve these goals should be left to the individual water provider. The local provider is best equipped to identify and evaluate the goals and objectives of his service area and to develop a comprehensive program to best achieve each goal.

I would encourage this Committee to carry forth the spirit of the proposed legislation (i.e., cost effective reductions in water demands) but allow the public water provider the flexibility and authority to determine how to best achieve efficient water use reductions in their community; whether it be through pricing or other programmatic measures or a combination of the two.

As a result, I recommend that the Committee amend the proposed legislation to include the following language at page 4, lines 3 through 7:

"(C) if the transfer is for use by a public water supply system, the applicant must have implemented a rate structure which encourages the efficient use of water,".

This would be in lieu of the current language which mandates use of an increasing block approach. Thank you for this opportunity to share my thoughts on this matter with the Committee.

Resumé

GEORGE A. RAFTELIS**PROFESSIONAL HISTORY:**

- United States Army, August 1969 to June 1973, obtained rank of First Lieutenant
- Ernst & Young (and its predecessor firms), July 1975 to present, Partner since 1984

EDUCATION:

- Fuqua School of Business, Duke University, Durham, North Carolina, 1973 - 1975, MBA
- Eckerd College, St. Petersburg, Florida, 1965-1969, BS--Mathematics and Economics
- Received in excess of 40 hours of accounting, tax, or related business continuing and professional education per year since 1975

PROFESSIONAL REGISTRATIONS:

- Certified Public Accountant

PROFESSIONAL ORGANIZATIONS:

- American Water Works Association (Chair of Rates & Charges Subcommittee)
- American Institute of CPAs
- The National Council for Public/Private Partnerships (Chair of Environmental Task Force)
- EPA's Environmental Financial Advisory Board (Chair of Public Sector Finance Options Workgroup)
- Water Environment Federation

INSTRUCTOR/LECTURER/PANELIST:

Since joining Ernst & Young (and its predecessor firms), Mr. Raftelis has been heavily involved as an instructor and lecturer for numerous professional and industry associations. The technical subject matter of Mr. Raftelis' presentations has dealt with environmental finance, management, and accounting. Organizations for which Mr. Raftelis has presented papers include:

- American Water Works Association
- Water Environment Federation
- American Bar Association
- National Solid Waste Management Association
- U. S. Council for Mayors
- International City Managers Association
- Government Finance Officers Association
- American Public Works Association
- National Association of State Legislators

PUBLICATIONS:

Since 1970, Mr. Raftelis has published a number of technical articles dealing with privatization, environmental finance, accounting, and management. Publications in which Mr. Raftelis has presented his articles include:

- *Environmental Finance*
- *American Water Works Journal*
- *Strategist*
- *American Public Works Journal*
- *American City and County*

In addition, Mr. Raftelis has written a text entitled, *Comprehensive Guide to Water and Wastewater Finance and Pricing*, which has become an authoritative document for establishing utility financing plans and pricing structures. He has also coauthored the AWWA's *Revenue Requirements Manual*.

TECHNICAL SPECIALTIES:

Mr. Raftelis has served in the role of Partner in Charge, Project Manager, Technical Advisor or Lead Consultant on engagements involving a wide range of technical specialties including:

- Cost of Service and Rate Structure Studies
- Privatization Feasibility Studies and Implementation
- Management and Operational Audits
- Waste Minimization
- Environmental Due Diligence
- Hazardous Waste Site Administration & Accounting
- Environmental Finance
- Environmental Accounting
- Litigation Support
- Environmental Valuation and M&A

REPRESENTATIVE PROJECT EXPERIENCE:

Mr. Raftelis has been involved in over 200 environmental projects serving both the private and public sectors. His experience spans numerous technical areas and industries. A representative sample of his project experience is presented below:

- For the City of Ottawa, Ontario, Mr. Raftelis was a technical advisor on a project to develop alternative conservation pricing structures for the City's utility. Specifically evaluated were conservation rate structures to include inverted block rates, marginal cost rates, rates by class, and seasonal rates. The project involved working with executives from the City to determine the most appropriate structure for the City's environment.

- Mr. Raftelis participated as partner-in-charge and technical advisor on a project for the City of Toledo to develop an appropriate replacement and renewal program for its water and wastewater utilities. Involved in the project was evaluating the appropriate contributions to renewal and replacement funds for providing appropriate financial stability to the City's rate structure. The project included several workshops with Chamber of Commerce representatives and other interested leaders in the community.
- For the City of Erie, Pennsylvania, Mr. Raftelis assisted in developing an appropriate water rate structure and financial plan for transitioning the City's water operations into a special purpose authority. After the appropriate rate structure was developed, forecasted information was developed that became a part of the offering statement for the new authority.
- For the Charlotte Mecklenburg Utility Department, Mr. Raftelis assisted in developing an extension policy and tap-in privilege procedures expanding water and wastewater services within this major geographical area. In addition, this assistance included developing capacity charges for the utility's major capital improvement program through the year 2000.
- Project Director to develop a comprehensive sewer cost-of-service and rate structure system for the East Chicago Sanitary District. The District provided service to this heavily industrialized City. The analysis focused on allocating costs among classes of sewer customers and developing a rate structure to recover these costs.
- Project Manager for a comprehensive water and wastewater study for the City of Rock Hill, South Carolina. Included in the study were a review of service charges, development of fire protection charges, connection charges, and inside/outside city rates. In addition, the project was expanded to include a review and update of electric utility rates and charges. The study provided a phase-in schedule because of significant changes in the existing rate structure.
- Project Manager to develop water rates and fire protection charges for the Birmingham Water Works Board (BWVB) in Birmingham, Alabama. The project dealt with: (1) identifying utility costs for three areas serviced by the BWVB; (2) allocating those costs to functional categories (source of supply, treatment, transmission, distribution, administration, and customer service); and (3) calculating rates for classes of BWVB customers. The base-extra capacity demand approach was used for calculating water rates. The project was later expanded to automate the rate-setting methodology.
- Project Manager for a comprehensive cost-of-service and rate structure for Indian River County, Florida. During this study, we developed water and wastewater monthly service charges, specific service charges for miscellaneous services, and fire protection charges.
- For Orange County, Florida, Mr. Raftelis served as Project Director to develop comprehensive tipping fees for the County landfill. Major environment improvements had to be made to the landfill based upon increasingly stringent regulations of the Florida Department of Regulation. Debt service associated with approximately \$28 million in bond indebtedness was recovered through tipping fee revenues.

- For Charlotte County, Florida, Mr. Raftelis served as Project Director on an engagement to review the appropriateness of a rate filing by an investor-owned water utility, General Development Utilities. Charlotte County has regulatory responsibility over all investor-owned water and wastewater rate requests within the County. During this project, we evaluated proposed revenue requirements and requested rate adjustments by GDU. We evaluated the appropriateness of the cost of capital percentage, operating cost, inflationary adjustments to cost, and other adjustments to revenue requirements as seemed appropriate. Our study resulted in a report which ultimately represented our opinion as to the appropriateness of the requested rate increases.
- For the City and County of Honolulu, Hawaii, Mr. Raftelis served as Project Director on a comprehensive water rate study for the State of Hawaii. As a part of the study, he developed several alternative rate methodologies that would address the pricing objectives of the community. A major interest was a conservation pricing structure which would include an increasing unit charge for more water consumed.
- Project Director to develop an automated long-range economic planning model for water operations within the City of Virginia Beach, Virginia.

The model has the following basic capabilities:

- Identifies the water revenue requirement over the model's planning period (approximately twenty years).
- Calculates the proposed percentage increase in water service charges that would be required to recover revenue requirements over the planning period. Percentages were developed in real and inflated dollars and included annual and cumulative rate increases during the forecast period.
- Evaluates the economic impact that a given set of revenue requirements and assumptions would have on existing water customers, new customers, and taxpayers.
- Evaluates a combination of financing techniques for recovering operating and capital revenue requirements during the forecast period. These techniques included monthly service charges, impact fees, ad valorem taxes, and front-end contributions by major bulk customers.

As part of the study, the forecasting model was placed on a microcomputer with appropriate documentation and a user's manual.

- Technical Advisor to conduct an economic study for the Department of Public Works for Howard County, Maryland. The focus on this study was to develop a system to recover both capital and operating costs of water and wastewater services provided by the County. The study outputs included: a cost/benefit analysis of developer agreements relative to water and sewer services; development of a financial model to test alternative rate methods; and development of a User Charge/Industrial Cost Recovery system.

- Special cost-of-service and rate consultant to the North Beach Water Company in Vero Beach, Florida. During this engagement, Mr. Raftelis developed a proposed water rate structure including connection fees, as well as provided general financial consulting assistance. The North Beach Water Company is a newly franchised organization providing water to undeveloped areas within Indian River County.
- For the City of Albuquerque, New Mexico, Mr. Raftelis served as Project Director on an engagement to develop any comprehensive pricing structure for water and wastewater services. A major focus of the study was to develop a comprehensive inside-city and outside-city rate setting methodology, where outside-city customers were charged based upon a return on investment to serve the outside-city customers. In addition, a major part of the study dealt with developing an appropriate financial plan by which water and wastewater revenues were identified to recover projected revenue requirements.
- For the City of Phoenix, Arizona, we were engaged to develop several innovative water rate structures for the City to consider in addressing very important conservation objectives. The City of Phoenix averages approximately 5 inches of rainfall a year, and they must adopt any type of conservation measure to ensure adequate water supply for all water needs. A very aggressive conservation pricing structure was developed for the City which set up special classes of customers with specific inverted block rate structures for each customer class. Based upon aggressive conservation rate structure, it is anticipated that significant conservation will be achieved.
- Mr. Raftelis was the key technical advisor of a comprehensive rate analysis for Cobb County, Georgia. This County is one of the fastest growing counties in the Metro-Atlanta area and wholesales services to a number of communities inside and outside the County. The study focused on developing wholesale rates to these communities as well as retail rates for other County customers.
- For the City of Boulder, Colorado, Mr. Raftelis served as Project Director for this comprehensive water and wastewater pricing study. Major focus was placed on analyzing alternative rate setting methodologies and selecting an approach most in keeping with the pricing goals of the community. Specifically evaluated were marginal cost pricing, peak demand rates, base extra capacity rates, demand commodity charges, customer commodity charges, and innovative conservation pricing structure. In addition, an innovative concept of rate setting dealing with "new water - old water" customers was considered as a possible pricing structure for the community.
- Mr. Raftelis provided technical assistance to the Hammond Sanitary District in structuring multi-jurisdictional bulk rates to customer cities of the District. The District provided bulk services to four customer cities and we were tasked with developing an appropriate methodology for allocating capital and operating costs to these customer cities. The methodology became complicated because a major part of the flow from one of the cities was from a combined sewer.
- Project Director to conduct a comprehensive water and sewer cost-of-service and rate structure study for Orange County, Florida. The study included the following analyses:
 - Evaluation of rate-setting methodologies in promoting pricing objectives of Orange County;

- Determining water and sewer capital and operating revenue requirements;
 - Calculating charges for specific services (water taps, sewer taps, late payment, etc.), general water and sewer service (including a minimum and variable charge component), and fire protection;
 - Evaluating the economic impact of the proposed charges on classes of water and sewer customers;
 - Orange County's existing and proposed rates with other similar and adjacent utilities.
- Mr. Raftelis served as Project Manager on this engagement to develop water and wastewater user charges for the Charlotte Mecklenburg Utility Department in Charlotte, North Carolina. For this utility, serving approximately 100,000 customers, Mr. Raftelis developed a comprehensive user charge system as a requirement of the construction grants program for EPA. CMUD was the major beneficiary of significant funding under the 201 program, with the local share being financed through general obligation bonds. The study also focused on developing an approved industrial cost recovery system.
 - Mr. Raftelis served as Project Director for a comprehensive wastewater pricing study for the Western Carolina Regional Sewer Authority in Greenville, South Carolina. This Authority serves approximately 70,000 customers located in 16 sub-districts in Greenville, Pickens, and Anderson counties. During this project, we developed user charges consisting of a base facility plus a volume entry consumption charge. Special rates were also developed for industrial customers.
 - Project Director on an engagement for the City of Fort Smith, Arkansas. The goal of this study was to develop an equitable water and sewer pricing structure which ensured equitably allocated financial sufficiency for the City's utility and costs among numerous customer communities in the Arkansas - Oklahoma region. Also developed was a water and sewer financial forecast included as part of a proposed bond prospectus.
 - For the City of Jacksonville, Florida, Mr. Raftelis served as Project Manager to develop a comprehensive pricing structure for financing a major capital improvement program. Proposed rates had significant impacts on water and wastewater customers, and Mr. Raftelis conducted several public hearings during which proposed rates were discussed in detail.
 - For the Cape May County Municipal Utilities Authority, Mr. Raftelis served as Project Director for an engagement to develop District rates to numerous communities served by the Authority. Several treatment plants were planned in different parts of the County with construction occurring over a number of years. A comprehensive microcomputer model was developed which dealt with the timing of the construction, the issuance of debt to finance appropriate facilities, and the equitable recovery of cost from users in different communities. Regional charges to each of the communities were calculated, with community "pass on rate" determined for each of the bulk customers of the Authority.

- Mr. Raftelis served as Project Director on a cost equity study for the Washington Council of Governments in Washington, D.C. In order to serve the greater Washington area, a Blue Plains Regional Wastewater Treatment Facility was built and operated by the Washington Suburban Sanitary District. There are numerous communities that benefit from the treatment facility, and a very complex agreement was developed several years ago by which each community would share in the capital and operating cost of the facility. A major part of the agreement deals with verifying the appropriateness of certain fixed assets and related costs to be included in the formula developed during the agreement. We evaluated the appropriateness of the existing fixed assets whose costs were included in the acquisition and calculated an appropriate contribution to be made by each participating community. In addition, we evaluated the use and usefulness of those facilities whose costs were to be recovered by each community.
- For the City of Winnipeg, Canada, Mr. Raftelis served as a technical advisor in evaluating alternative rate structures for water and wastewater pricing. The project consisted of developing a conceptual design report which evaluated how alternative pricing structures address the pricing objectives of the City of Winnipeg. Pricing objectives include such criteria as financial sufficiency, conservation, equity, legality, etc.
- Project Director for water and wastewater cost-of-service and rate setting study for the Gaffney, South Carolina Board of Public Works. This study, which recommended significant rate increases, includes a three-year phase in a rate setting review of operations by the Board. Project Coordinator to develop and present technical workshops to wastewater construction grantees throughout the United States. The workshops were sponsored by six Federal EPA regions (Atlanta, Dallas, Philadelphia, Boston, Kansas City, and Seattle), and dealt with financial management and accounting challenges confronting the wastewater industry.
- Mr. Raftelis assisted the City of Phoenix in evaluating the appropriateness of establishing an environmental fee for water and wastewater operations. During the study, the project team worked with the Phoenix City Council in discussing the rationale for the fee and how the fee would be implemented.

Mr. Raftelis' experience in dealing with issues related to litigation support includes:

- Expert witness in a condemnation proceeding where the condemned water utility was challenging the pro tanto price paid for the utility. Mr. Raftelis was the valuation expert for the Massachusetts community condemning the subsidiary of a large investor-owned water utility.
- Expert witness in a case between a land developer in a large municipality in Missouri and a wastewater sanitary district. Mr. Raftelis provided his opinion as to the appropriateness of wastewater connection fees assessed the developer by the sanitary district.
- Expert witness providing litigation support to an owner of a condominium complex in a contract dispute with an investor-owned utility company in New Hampshire. The dispute related to the type of costs that could be recovered from our client through the utility's wholesale rates.

- Expert witness to a large county in central Florida challenging the right of a major land developer to form a water utility in the county. Mr. Raftelis' testimony to the Florida Public Service Commission (PSC) dealt with evaluating financial sufficiency, rate, and management issues related to the land developer's application to the PSC.
- Expert witness in a court proceeding between a large North Carolina municipality and the local Home Builder's Association (HBA). Mr. Raftelis testified as to the appropriateness of the user charge structure in calculating developer fees charged to HBA members.
- Arbitrator in a wastewater rate dispute between a medium-sized midwestern community and a wholesale customer of the community. At issue was the interpretation of what costs should be recovered by the municipality from the wholesale customer under the service contract.
- Wastewater rate arbiter representing two major manufacturing companies. Mr. Raftelis served as an arbiter in negotiating a wholesale wastewater rate settlement between the two companies and a municipal utility.
- Negotiator for a medium-sized water and wastewater utility in South Carolina. Mr. Raftelis negotiated wholesale wastewater rates (on behalf of the utility) to be charged to a large institutional customer of the utility.
- Expert witness for one of the largest cities in the country. Mr. Raftelis' testimony dealt with establishing an appropriate valuation amount for a large investor-owned water utility that the city condemned.
- Expert witness in a jury trial between a mid-size Colorado community and the outside-city customers of the city's water and wastewater utility. Mr. Raftelis testified as to the appropriateness of the outside-city differential charges by the city.
- Litigation support experience during a water, sewer, and natural gas cost-of-service lawsuit. The client was a large industrial customer in a mid-sized city in Alabama.
- Experience in providing litigation support services to three Colorado counties in a utility pricing suit. During the case, Mr. Raftelis provided technical guidance related to the appropriateness of a government utilities' pricing objectives (financial sufficiency, equity, legality, impact on customers, etc.).
- Expert witness in a rate case whereby Mr. Raftelis testified as to the appropriateness of a water and wastewater rate structure enacted by a government utility in South Carolina. Mr. Raftelis represented a developer who was the plaintiff in the case.
- Expert witness for a large Florida county in a suit against the comptroller of the county. Mr. Raftelis' testimony dealt with the appropriateness of moving the water and wastewater utility billing function from under the comptroller to the organizational control of the utility director.
- Expert witness for a city in western New York in litigation against the Environmental Protection Agency. Mr. Raftelis testified as to the impact certain EPA mandated improvements would have on city wastewater rates and the economic viability of the community.

- Provided litigation support and expert testimony on a contract rate dispute for one of the largest cities in the United States. For this case, the City was in litigation with ten wastewater contracting agencies (wholesale customers) who disagreed with the manner in which their rates were calculated and implemented. Mr. Raftelis assisted this west coast city in evaluating the appropriateness of the wastewater billing system, the appropriateness of the rate setting methodology, and the value provided to the contracting agencies.
- For one of the largest wastewater utilities in the mid-west, Mr. Raftelis provided assistance in evaluating the appropriateness of a charge by a water utility for providing billing information to the wastewater utility. Specifically in dispute was the amount that the wastewater utility should pay for providing water meter readings that were used to bill customers by the wastewater utility. Mr. Raftelis assisted in evaluating the methodology for determining the incremental costs of providing meter reading information. In addition, he assisted the utility in arguing its position with the Pennsylvania Public Utilities Commission.
- Mr. Raftelis assisted this New England water authority in evaluating how a water pipeline should be valued. Specifically, a city utility was mandated by the State to sell its water supply line to this water authority. A methodology of how to value the line was determined by the State Public Utility Commission. Mr. Raftelis reviewed the PUC's implementation of this methodology.

TESTIMONY ON HB 2070
Senate Energy and Natural Resource Committee
March 16, 1993

Mike Fegan, Chairman of Mayor's Preserve Our Water Resources Committee- Junction City

Mr. Chairman, Members of the Committee, we support HB 2070 and believe it improves the procedures for addressing the issues related to the transfer of water. The hearing officer concept provides an efficient system and should expedite the proceedings.

We would, however, like to address two issues which are of concern and would like for you to consider.

~~*First, as emphasized in a recent Wichita Eagle editorial published on March 8, 1993 (copy attached), conservation should be practiced by all communities, particularly those wishing to obtain water from sources requiring the application of the water transfer act procedures. We would respectfully request you consider amending the bill as follows:*~~

~~*Section 3, b(2): Amend to include: " HAVE CONSERVATION PLANS IN EFFECT AT LEAST TWELVE (12) MONTHS PRIOR TO THE FILING OF THE APPLICATION ON WHICH THE HEARING IS BEING HELD."*~~

~~*This stipulation was originally in House Bill 2070 approved by the House Energy and Natural Resources Committee but was removed by floor amendment during House debate.*~~

*Senate Energy & Natural Resources
March 16, 1993
Attachment 6*

Secondly, we believe the applicant receiving the water should be junior in right to all of those currently authorized to use water from the source being considered by the applicant. This change could be amended into the bill by changing Section 3, b to read as follows: "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 permits to appropriate water WITH APPLICATION DATES PRIOR TO THE FILING DATE OF THE TRANSFER APPLICANT." Simply stated, water rights of applicants for transfer would be junior to all water rights previously approved.

We also have been concerned about the policy change of removing the Kansas Water Authority from this process but have been advised this position is supported by the Authority. We would point out to the committee that the removal of the Kansas Water Authority and the Legislature leaves the decision process with a three person panel; the Chief Engineer, Director of the Kansas Water Office and the Secretary of Health and Environment.

Water is our most precious natural resource. Without water, civilizations, communities and economies cannot exist. Our interest is not a selfish interest but one of concern for the future of all Kansans. I appreciate the opportunity to appear today and stand for questions.

Water bill should instill conservation

The city of Wichita's quest to quench its turn-of-the-century thirst has met with initial success. The House this week passed a bill raising from 10 to 50 miles the distance that water may be transferred from one point in Kansas to another. If the bill becomes law, the city will be able to take advantage of water rights that it's purchasing in the Equus Beds aquifer more than 10 miles from the city limits.

But Wichitans need to be aware that there could be a stiff price attached to that water — beyond the cost of the water rights. The House wisely required that all municipalities seeking to import distant water under the provisions of the bill must have water-conservation programs. This is as it should be.

The bill moves now to the Senate, where members need to look it over to ensure that the conservation language adopted by the House is strong enough. The House bill effectively leaves it to the Kansas Water Office, which manages all water transfers in the state, to oversee city water-conservation programs.

Whatever bill eventually flows out of the legislative pipeline should deny Wichita or any other city the ability to transfer water just so that homeowners can continue to ladle it onto their fescue and bluegrass lawns during the hot, dry summer months, at bargain-basement prices. Water is far too precious a resource in this semi-arid state to be squandered on lawns. But for years, Wichitans have been doing just that. The impulse to own a home that looks like a verdant slice of Massachusetts in August is powerful indeed.

But powerful also is the need to stretch existing water supplies and manage new ones wisely. While the Legislature shouldn't micromanage municipal water use, senators now should make certain that the water-transfer bill motivates Wichita and other water-gluttonous cities to use water sparingly.

— Wichita Eagle

THE CHAMBER



COMMENTS REGARDING

HOUSE BILL 2070
As Amended by the
House Committee of the Whole

Presented To:

Senate Energy and Natural Resources Committee

March 16, 1993

Topeka, Kansas

Presented By:

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

*Senate Energy & Natural Resources
March 16, 1993
Attachment 7*

COMMENTS REGARDING HB 2070
AS AMENDED BY HOUSE COMMITTEE OF THE WHOLE
Prepared By
The Wichita Area Chamber of Commerce
March 16, 1993

Needed revisions to the Water Transfers Act were developed by the Kansas Water Authority and the Kansas Water Office following considerable public comment. Both agencies are to be commended for their work and foresight. The Wichita Area Chamber of Commerce agrees with the Kansas Water Authority and Kansas Water Office that change is needed.

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 slightly 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 must be changed.

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 any other similar situation throughout the state.

The 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 extraordinary review required in transfer legislation, 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.

With this abbreviated background, we offer the following comments and recommendations regarding HB2070 as amended by the House Committee of the Whole:

1. We support the 2,000 acre foot 50 mile transfer definition. This is the only definition needed and is the definition as recommended by the Kansas Water Authority.
2. We recommend removal of the 4,000 acre foot between 10 and 50 miles transfer definition. Wichita has no water supply within 10 miles of the city. Also, when applying the point of use definition in the bill, 10 miles from the geographical center of Wichita's water use will most likely remain within the city limits of Wichita. This provision will require Wichita to undergo the extraordinary review for any supply of 4,000 acre feet or greater and will tend to discourage resource development within the immediate area of the city.
3. We support the hearing officer concept.
4. We support the three person hearing panel being the final decision maker in lieu of the Kansas Water Authority combined with legislative oversight.
5. We support applying the Kansas Administrative Procedures Act and eliminating administrative procedures contained in the current law which conflict with KAPA.
6. We recommend removal of provision (1) of new section 7 (b) in order to eliminate any possibility of arbitrary and discriminatory rulemaking. Sufficient and appropriate protections exist for groundwater management districts since the bill as passed by the House includes groundwater management districts as commenting agencies and also requires the hearing officer to consider "any applicable management program, standards, policies and rules and regulations of a groundwater management district" (Section 3.c.9).
7. Legislatively requiring an increasing block rate structure (Section 3.b.2.C) precludes consideration of other conservation pricing options which may be more appropriate for any particular public water supply system. We recommend use of the following: "If the transfer is for use by a public water supply system, the applicant must have implemented a rate structure that encourages the efficient use of water prior to the filing of the application on which the hearing is being held".

The Wichita Chamber supports House Bill 2070 with the changes noted above and for the reasons stated. We encourage your favorable consideration and look forward to your full support.

Thank you very much.



March 15, 1993

CITY BUILDING
ABILENE, KANSAS 67410
PHONE: 913-263-2550
P. O. BOX 519

OFFICE OF THE CITY MANAGER

MAR 15 1993

☐ Please reply _____
☐ Comments _____
☐ File _____

Mr. Paul Steinbrenner
 Assistant City Manager
 City of Wichita

To: Paul Steinbrenner

I have reviewed the provisions of House Bill 2070. I agree that the proposed amendments by the City of Wichita will make the Kansas Water Transfer Act more workable and fair.

As a member of the Public Wholesale Water District #10, I support your efforts to seek amendments to the Bill. Specifically, the 2000 acre-feet, 50 mile trigger, suggested by the Kansas Water Authority is more reasonable than present law, or previous House amendments.

Also, I feel the requirement of imposing an increasing blockrate structure, is very inflexible and that it will not work well in all communities. We are presently working to educate our water customers on the benefit of water conservation and I believe there are other viable options to save water other than to dramatically change the rate structure.

Please pass my comments to Mr. David Warren, so that he can present them at the Senate Natural Resource Committee hearing on this issue.

Sincerely,

John Hier
 City Manager

JH:dt

Senate Energy & Natural Resources
 March 16, 1993
 Attachment 8

VISIT ABILENE - home of the Dwight D. Eisenhower Memorial

TOTAL P.02

15 March 1993

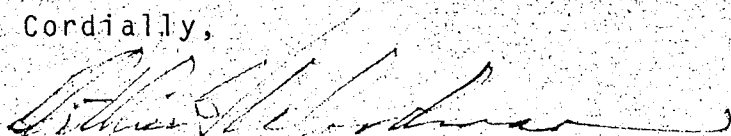
Senate Energy and Natural Resources Committee
State Capitol Building
Topeka, Kansas 66612

To: Senator Don Sallee, Chairman
All Members of the Committee

The Lower Arkansas River Basin Advisory Committee of the state water plan and responsible to the Kansas State Water Authority, is on record as in full support of the Transfer Act Modification House Bill #2070, as approved by the Kansas Water Authority, to apply in excess of 2,000 acre feet of water and 50 miles from point of diversion to point of use, and as passed out of the House of Representatives.

Thank you for your consideration.

Cordially,



Arthur T. Woodman, Chairman
Lower Arkansas River Basin Advisory Committee

ATW/dg

Senate Energy and Natural Resources
March 16, 1993
Attachment 9