

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 7:30 a.m. on March 17, 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:

Steven Hurst, Director, Kansas Water Office  
David Pope, Chief Engineer, Division of Water, State Board of Agriculture  
Donald P. Schnacke, K I O G A  
Bill Fuller, Kansas Farm Bureau  
Richard Pelton, Superintendant, City of Topeka, Water Division  
Joyce Wolf, Kansas Audubon Council  
Bob Hooper, Private Citizen, Hill City, KS  
Hugh J. Taylor, Board of Public Utilities  
Written Testimony, Hannas Zacharias, City Manager, Hays, Kansas

Others attending: See attached list

**HB 2070** - concerning water; relating to certain transfers

Stephen A. Hurst, Director, Kansas Water Office, appeared in support of HB-2070 noting a need for changes in the present Water Transfer Act. Mr. Hurst set forth these changes in his written testimony and told the members that, to a great extent, these changes were addressed in HB-2070. He further commented that several amendments offered vary from the Kansas Water Authority's recommendations and he took a neutral position on them. Attachment 1

David L. Pope, Chief Engineer-Director, Division of Water Resources, Kansas State Board of Agriculture, appeared as a conferee on HB-2070 stating he appeared as neither a proponent or opponent. Mr. Pope provided a background concerning the differences between the Kansas Water Appropriation Act, the State Water Plan Marketing Act, which have both water allocation acts, and the Water Transfer Act. Mr. Pope suggested an amendment to page 10, lines 9-14 as shown in his testimony. He further stated this bill with the above change would improve the Water Transfer Act to a position where it was at least reasonable. Attachment 2

Donald P. Schnacke, KIOGA, appeared concerning HB-2070 noting concern about the possible establishment of water wells and water works in areas where extensive oil production is located. These concerns could be addressed by adding "Community agencies" on page 2, beginning on line 30. Attachment 3

Bill Fuller, Assistant Director, Public Affairs Division, Kansas Farm Bureau, appeared concerning HB-2070 stating his organization believe HB-2070 is much improved and more focused than the previous SB 555 from 1992. Recommendations were made in Mr. Fuller's testimony to strengthen the water conservation provisions and maintain a meaningful reserve of water in the basin for future growth which would make the bill more acceptable. Attachment 4

Richard Pelton, City of Topeka and Chairman of the Kansas Lower Republican Basin Advisory Committee, appeared in support of HB-2070 but asked removal of the "4,000 acre feet 10 to 50 miles trigger and mandatory increasing block rates. Attachment 5

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on March 17, 1993.

Joyce Wolf, Kansas Audubon Council, appeared in support of HB-2070, noting the Water Transfers Act's primary purpose is to set up a procedure to review and assess the merits and impacts of a request to move a quantity of water a certain distance. Other amendments were suggested and are contained in Attachment 6.

Hugh Taylor, Manager of Rates and Regulations, Board of Public Utilities of Kansas City, Kansas, appeared in opposition to HB-2070 noting two reasons. The legislation as written would require the utility to obtain a permit to serve customers in its own territory. Secondly, the bill was opposed because of the apparent authority it endows to the Commission over rates by virtue of transfer permitting. These rates may or may not be justified by circumstances. Attachment 7

Bob Hooper, Member of Solomon Basin Advisory Committee, Bogue, Kansas, appeared in opposition to HB-2070 noting this bill would allow the transfer only of "surplus water" without carefully defining what that means. It also promises to look after the interests of rural areas and the environment, however, it does not provide any power to protect those interests. Mr. Hooper told the committee that the task of this State is to implement a sustainable use of water which respects and protects our natural environment, thus our own future. Mr. Hooper noted HB-2070 is not progress but politics as usual. Attachment 8

Hannes Zacharias, City Manager, Hays, Kansas, provided written testimony to the committee in strong support for HB-2070. The testimony noted Hays has been battling severe water shortage problems for the past several years and due to tremendous conservation effort by the public they have reduced daily per capita consumption by about 50 percent. Attachment 9

The minutes for March 9, 10, 11, 12 and 15 were presented for approval or correction. Senator Vancrum made the motion to approve the minutes as presented. Senator Emert seconded the motion and the motion carried.

The meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for March 18, 1993.

## SENATE COMMITTEE ON ENERGY &amp; NATURAL RESOURCES

DATE

NAME AND ADDRESS

## ORGANIZATION

Richard E Pelton

Leland E. Rolfs

Steve Hurst

Jerry Duvall

Larry D Shannon

ROB HOOPER

June 2nd

Shelley Wells

Hugh Taylor

Alan Steppat Topeka

David P. Schuler Tapsen

Bill Anderson

Byron Johnson

David R Warren

Bill Fuller

Woody Wares

Tom Reader

City of Turkey

DWR-KS B A

KWO

KWD

City of Topeka

SOLOMON RR BAC - BOGUE KS

Hs. Audition Council

## Legis Intern

BZu - K.C. Ks

Pete McGill & Associates

16106-12

Walt P157 #1 of J & Co.

Water Dist No 1 of T. Co

City of Wichita

Kansas Farm Bureau

Ks Agg Producers Assn

Lexia Chamber MC

Testimony of  
Stephen A. Hurst, Director  
Kansas Water Office

Before the  
Senate Energy and Natural Resources Committee  
March 16, 1993

Re: House Bill No. 2070

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

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

H.B. 2070, before you today, implements the "Modifications of the Water Transfer Act" Sub-Section of the *Kansas Water Plan* which was approved by the Kansas Water Authority, and would implement to a great extent the draft legislation introduced by the Kansas Water Authority to the House Energy and Natural Resources Committee.

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

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

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Attachment 1

*Water Plan* sub-section and to a great extent addressed in the bill now before you.

The Kansas Water Authority identified the following as needed amendments to the current Water Transfers Act:

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

5. Establish the three person panel (Director of Kansas Water Office, Chief Engineer of Division of Water Resources; Secretary of Kansas Department of Health and Environment or Director of the Division of Environment) as the final decision maker in lieu of the Kansas Water Authority. (This more accurately reflects original legislative intent as it keeps Kansas Water Authority, a voluntary group, from becoming entangled in law suits.)
6. Do not include a provision for legislative oversight. (Formal Attorney General opinion says the current law's legislative review provision violates separation of powers and is unconstitutional.)

It appears that the bill before you has addressed all six of the Kansas Water Authority's areas of concern with no fiscal impact. Where this bill is consistent with the Kansas Water Authority's recommendations, I, on behalf of the Kansas Water Authority, wholeheartedly support it. This bill does, however, contain several amendments that vary from the Kansas Water Authority's recommendations. On these amendments, I must take a neutral position on behalf of the Kansas Water Authority as they have not had the opportunity to meet and formulate a position on these amendments.

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

I would be pleased to stand for questions.

PRESENTATION TO THE SENATE COMMITTEE  
ON ENERGY & NATURAL RESOURCES  
RE: HOUSE BILL NO. 2070  
MARCH 17, 1993  
BY DAVID L. POPE, CHIEF ENGINEER-DIRECTOR  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE

Thank you, Chairman Sallee and members of the Committee, for this opportunity to appear before you here today. I am not here either as a proponent or opponent of HB2070. I would like to briefly discuss the difference between the Kansas Water Appropriation Act and the State Water Plan Marketing Act, which are water allocation acts, and the Water Transfer Act, which is an entirely different type of procedure. From the Division of Water Resources' perspective, we are attempting to have a bill which we can administer. The bill should be clear and provide for an adequate, fair process to allow good decisions to be made on a factual basis concerning water transfers.

Availability of Water for Transfer

By way of background, I might note that the Kansas Water Appropriation Act is the basic legal framework under which water is allocated in Kansas and individuals or entities may develop a right to the use of water under certain terms and conditions. The Division of Water Resources processes, approves, modifies or rejects applications for permits or for changes to existing water rights, regulates the use of water during shortages and otherwise administers the Act and other related statutes dealing with the use of water.

All uses of water, except for domestic use, must be authorized by either:  
(1) a vested or appropriation right established pursuant to the terms of the Kansas Water Appropriation Act or (2) a water reservation right held by the

Kansas Water Office, for use of water from state controlled storage in federal reservoirs. In other words, a water transfer can not occur without being authorized by a water right or a contract to purchase water from storage. These rights can not be exercised, if the proposed use of water is subject to the Water Transfer Act, until approval is granted by that Act.

Consequently, water is available within the State of Kansas in one of three ways. First, water is available if a new application for permit to appropriate water has been approved by my office. In other words, the source of water from which the application proposes to divert water has not yet been fully appropriated. In order to determine whether water is available for appropriation in areas where no specific safe yield or allowable appropriation standard has been set by regulation, the Chief Engineer evaluates new applications on a "safe yield" basis. At the present time, there are many areas of the state which are fully appropriated because water is not available in excess of the needs of existing water rights and further use would not be in the public interest. In those cases, no new permits to appropriate water are available in those areas.

Second, if no new permits to appropriate water can be approved, then the only way water can be acquired by appropriation is through obtaining a water right from someone who already has one. In other words, a user desiring a new water supply or an additional water supply, in a closed area, must go out and acquire an existing water right. This may be done anywhere in the state by purchase, lease or possibly condemnation. If a water right is acquired in such a manner, and any changes are desired to be made to either the point of diversion, the place of use and/or the type of beneficial use, a change approval



must be obtained from the Division of Water Resources prior to that change being implemented. At this time, this is basically the only way a water right may be acquired in a majority of the state.

In processing an application for change, adequate safeguards are provided for in the Kansas Water Appropriation Act and its regulations, to safeguard water users in the area of the point of diversion to protect them from adverse impacts because of the change. A change to an existing water right can not increase the authorized quantity or rate of diversion, increase the consumptive use or relate to a different source of supply. It does allow the user to maintain the same priority date as the original water right.

The third way to acquire water is through the State Water Marketing Program where water may be purchased under contract from the Kansas Water Office with the approval of the Kansas Water Authority. This is water stored under a water reservation right that would be available to be purchased from state controlled storage in large federal reservoirs.

In summary, water must be acquired through one of these methods or a proposed water transfer is a moot issue, because it can not occur without compliance with the other statutes.

#### "Water Transfer"

In the original HB2070, it was proposed to change the definition of "water transfer" from moving 1,000 acre-feet of water per year more than 10 miles to moving more than 2,000 acre-feet per year more than 50 miles.

The House Energy and Natural Resources Committee added that movement of 4,000 acre-feet of water or more per year more than 10 miles and less than 50 miles would also trigger the Water Transfer Act.

Yesterday during the hearing there was discussion concerning the distances necessary to trigger a water transfer. In analyzing what distance is appropriate, it would be well to note that the House Energy and Natural Resources Committee made one change which affects the calculation of those distances. This was the adoption and definition of the phrase "point of use" found on page 2, lines 7-9. Under the current version of HB2070, the distance of the transfer is calculated from the geographical center of the point or points of diversion to the geographical center of the water user's place of use.

For example, it was mentioned yesterday that Johnson County Water District No. 1 is approximately 20 x 24 miles in area. Under the language currently in HB2070, if Johnson County Water District No. 1 desired to obtain more than 4,000 acre feet of water, not only could it not go outside its borders without triggering a water transfer, but there are even locations within its borders that would trigger a water transfer if they were attempting to obtain more than 4,000 acre feet of water per year. This definition change should be taken into account when determining the appropriate distance to trigger a water transfer. Obviously, this issue is more important in evaluating metropolitan areas or rural water districts that have large geographical areas.

The important question though is to determine the point at which the extraordinary consideration process of the Water Transfer Act should apply.

There are many safeguards built into both the new application procedure, the change application procedure and the water contracting procedure to protect the public interest and other water right holders in the State of Kansas. The Water Transfer Act hearing process is an extraordinary process that is meant to be invoked only when it was felt that a transfer would reach such a magnitude the economic, environmental or other impacts to the state as a whole would justify invocation of such a process. It is a policy decision of when the Water Transfer Act should be invoked.

#### Groundwater Management Districts' Involvement in the Water Transfer Process

Three amendments were added to HB2070 on the floor of the House relating to consideration of Groundwater Management Districts in the water transfer hearing process. On page 2, lines 30 and 31, Groundwater Management Districts were made "commenting agencies". On page 4, lines 40 and 41, the list of factors to be considered in making a water transfer decision was amended to include "any applicable management program, standards, policies and rules and regulations of a Groundwater Management District." The third amendment occurs on page 10, lines 10 through 12, which specifies that "any applicable management program adopted by a Groundwater Management District ... must first be complied with prior to compliance with the Water Transfer Act."

While this third amendment may not be objectionable, I feel compelled to point out the possible consequences of the inclusion of such sweeping language.

Currently the Groundwater Management Districts have authority to adopt revised management plans. The only check on that broad grant of authority is that found in K.S.A. 82a-1029, which provides that the Chief Engineer must find that the plan is compatible with the Kansas Water Appropriation Act "and any other state laws or policies." While I doubt that a Groundwater Management District could adopt a policy which would prohibit water transfers out of the district outright, it may be able to make them extremely complicated or difficult, irrespective of their merits. Taking an extreme case, a Groundwater Management District could be formed in an area with the express purpose of passing policies to prohibit water transfers out of that district.

I would suggest that this committee carefully consider whether the Groundwater Management Districts should be granted such a broad range of powers with respect to water transfer. This is really adding a third level of administrative process to an already complex one. Input from Groundwater Management Districts should be considered. HB2070 already makes that mandatory based on the first two amendments mentioned above. Groundwater Management District Management Programs and rules and regulations are automatically considered when any new application to appropriate water is processed or a change application is reviewed. They provide important criteria upon which such applications are reviewed. The decision of the Chief Engineer to approve, modify or deny an application for permit or a change to an existing water right includes both the recommendations of the Groundwater Management District and the provisions of the Water Appropriation Act.

One possible solution to recognizing the Groundwater Management District's concerns without perhaps opening the barn door, would be to amend page 10, lines 9-14, to read as follows:

(b) The act shall not be construed to exempt the applicant from first complying with either: (1) the Kansas Water Appropriation Act, including any applicable rules and regulations of a groundwater management district, or (2) the State Water Plan Storage Act, whichever is applicable.

#### CONCLUSION

With the exceptions noted above, I believe the procedural aspects of the Water Transfer Act have been greatly improved and are at least reasonable.

Both the Kansas Water Appropriation Act and the State Water Plan Storage Act have very adequate procedures to safeguard the processing of new applications, new water uses and changes in water use in most situations. The Water Transfer Act is an extraordinary process which needs to be invoked whenever there are likely to be substantial impacts on the factors set forth in subsection (c), on page 4, line 9, et seq. Only when there are large transfers of water over long distances, which might involve the shifting of significant economic, environmental and other impacts on a statewide basis, should this extraordinary process of the Water Transfer Act be invoked. It is a policy decision as to when those impacts get so great as to invoke the water transfer process. There are adequate safeguards in place to review the smaller transfers of water.

At the appropriate time, I would be happy to answer any questions you might have. Thank you very much for this opportunity to appear.



## KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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March 17, 1993

**TO: Senate Committee on Energy & Natural Resources**

**RE: HB 2070 - Kansas Water Transfer Act**

We have been monitoring HB 2070 as it has moved through House Committee and the House floor. It appears to be a good definition of enlarging the authority contemplating the transfer of water.

We are impressed with the criteria of determining benefits related to the applications requesting the transfers as set forth on *page 4*, beginning on *line 9*.

In addition, we believe the conduct of formal public hearings and allowing intervention and participation is commendable.

We have had several calls arising from a recent meeting held in Wakenny (Trego County) where the concern raised about this legislation centered around potential water transfers from Trego County to Ellis County. There is concern about the possible establishment of water wells and water works in areas where extensive oil production is located.

We believe the concerns that have been brought to our attention would be satisfied if the State Corporation Commission could be added to the "*Community agencies*" listed on *page 2*, beginning on *line 30*.

This would be in the spirit of communicating between these very same agencies to eliminate issues and potential controversy in much the same way as this is accomplished by the Oil and Gas Advisory Committee which was created by the legislature and advises the KCC. Adding the State Corporation Commission as a communicating agency in HB 2070 would allow comment on the concerns of the existing oil and gas producing industry to be considered when reviewing an application for the transfer of water.

**Donald P. Schnacke**

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DPS:pp



# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON ENERGY and NATURAL RESOURCES

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

March 16, 1993  
Topeka, Kansas

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

**Chairman Sallee and members of the Committee:**

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

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

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

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

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

We support increasing the threshold for triggering the Water Transfer Act. Increasing the quantity from 1,000 acre feet to 2,000 acre feet and the distance from 10 miles to 50 miles will provide more efficient use of time and resources by focusing on large amounts of water over long distances. The House amendment that causes 4,000 acre feet of water being transported more than 10 miles and less than 50 miles to trigger the transfer act addresses the concern about transferring large quantities of water over short distances. Perhaps there is no magic to 4,000 acre feet, however we support the concept.

We believe the make-up of the proposed hearing panel to be the decision maker for granting transfers represents broad interests and include the appropriate agencies ... KWO for water planning, KDHE for water quality and DWR for water appropriation (pg. 2, lines 36-37).

Another important proposal in the bill requires formal public hearings be held in the basin of origin and a public comment hearing be held in the basin of use (pg. 7, lines 3-5). We believe public

involvement, understanding and support is essential to any acceptable water transfer plan.

We proposed two recommendations to the House Committee to improve H.B. 2070. First, we believe the water conservation provisions should be strengthened. We insist strong and effective water conservation programs must be implemented by any water user before any water transfer is approved. We support the House amendment requiring a rate structure that encourages conservation. We further suggest that the conservation practices implemented by an entity requesting a water transfer should have reduced per capita consumption over a period of time. Second, we do not believe all available water stored in any reservoir should be transferred out of that basin. It is essential that a reserve be maintained for potential growth in the basin supplying the water. The future of agriculture, industry and municipalities in the basin of origin must not be destroyed.

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

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

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

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

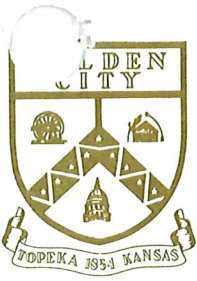
We support continuation of 12 River Basin Advisory Committees and their participation in examination of all proposals for change in the State Water Plan. Any modification of the Kansas Water Transfer Act that would permit water transfers between basins should assure the water transfer would not be detrimental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

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

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

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

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



# CITY OF TOPEKA

Water Division  
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HOUSE BILL 2070  
TESTIMONY - SENATE ENERGY AND NATURAL RESOURCES COMMITTEE  
March 16, 1993

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

I am Richard Pelton, representing the City of Topeka and Chairman of the Kansas Lower Republican Basin Advisory Committee (KLRBAC). The City of Topeka and the KLRBAC support passage of House Bill 2070 as amended with two exceptions. We feel the implementation of House Bill 2070 would greatly improve the administration and hearings on water transfers.

The exceptions we mentioned above are found on Page 1, Lines 22 through 24 and Page 4, Lines 3 through 8, as amended by the House Committee of the Whole.

The amendment on Page 1, Lines 22 through 24, of 4,000 acre feet 10 to 50 miles, would adversely affect Topeka's ability to obtain an additional water source directly or through a regional system from Perry Reservoir.

The original intent of the bill was to exclude transfers involving short distances or small amounts of water from the Act, by adopting a definition of "transfer" as only including water movement over 50 miles and involving more than 2,000 acre feet of water. The amendments to House Bill 2070 has altered the definition to include any transfer of water more than 10 but less than 50 miles which involves more than 4,000 acre feet of water.<sup>1</sup> In effect, this would bring the strict review process of the revised Transfer Act upon any future water appropriation that the City of Topeka might request in developing an alternate water source.

Transferring water from Perry Reservoir for Topeka would exceed the 4,000 acre feet and 10 mile trigger in amended House Bill 2070. A transfer of this nature would have little or no

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<sup>1</sup> 4,000 acre feet = 1.3 billion gallons annually or 3.5 million gallons a day. This represents the water supply for a 15,000 to 19,000 population community.

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affect on the basin of origin, the Kansas River, while providing Topeka, like other Kansas communities, with an additional source of supply for reliability and water quality.

The second exception on Page 4, Lines 3 through 8, would require an increasing block rate. The City of Topeka has invested a great deal of time and money into a rate study to develop a rate structure which would be fair and equitable to the City water customers. Other large utilities and cities have engaged in similar rate studies to be equitable to their customer class. In effect, these amendments would negate the merits of these studies and impose an arbitrary rate structure on all utilities regardless of the individual utility situation.

In summary, the City of Topeka and KLRBAC generally supports the revision as contained in Amended House Bill 2070. We encourage your favorable consideration of passage of this bill with the removal of the 4,000 acre feet 10 to 50 miles trigger and mandatory increasing block rates.

Thank You

# KANSAS AUDUBON COUNCIL

March 16, 1993

Testimony on HB 2070

Senate Energy and Natural Resources Committee

Thank you Chairman Sallee and committee members for the opportunity to appear before you today on HB 2070. For the record, my name is Joyce Wolf and I am here on behalf of the Kansas Audubon Council members who support the conservation and responsible use of our natural resources.

## General Comments:

When this bill was introduced on the House side, we appeared as opponents because we objected to many parts of it. We are here this morning to support HB 2070 and to offer the following comments:

1) We believe one of the most important things to remember about the Water Transfers Act is that its primary purpose is to set up a procedure to review and assess the merits and impacts of a request to move a quantity of water a certain distance.

2) We believe the new triggering mechanisms are not only reasonable but they could even be considered generous. The current version, as approved by the House, changes the triggering mechanism from a request to transfer 1000 Acre Feet (AF) or more 10 miles or more to one that is triggered by a request to transfer 4000 AF or more greater than 10 but less than 50 miles or 2000 AF 50 miles or more.

Representative Gene Shore has calculated that each 1000 AF is adequate to meet the daily needs of approximately 10,000 people. In other words, the new triggering mechanism would accommodate the needs of up to nearly 40,000 additional people living more than 10 but less than 50 miles from the point of diversion or nearly an additional 20,000 persons using the water 50 miles or more from the point of diversion. In that context the Audubon Council believes the House Energy and Natural Resources Committee was very generous in increasing the amount of water available for use before the Act is triggered.

3) One of the main reasons that we can now endorse this version of the Act is the inclusion in Section 3. (b) that stipulates that an applicant for a water transfer must have in effect, 12 months prior to the filing of the application, adopted and implemented conservation plans and practices, and if applicable an increasing block rate structure. The City of Hays has demonstrated that by using water-saving fixtures, xeriscaping, and minimizing outdoor use for lawns and cars etc. they were able to dramatically reduce the gallons per capita per day demand for water in the city. They have demonstrated that water conservation can be a significant source of water. Potentially, if current available supplies are utilized in the most efficient and responsible manner possible, the transfer procedure might be avoided.

## Specific Comments:

1) In Section 3, the Council has some concerns that by deleting lines 20-24 on page 3 and inserting similar language on page 4 lines 13-17, protection to the basin of origin is weakened. The new version changes this from a statement of absolute prohibition of action to one factor among several that must be looked at in determining where the water would be of most benefit to the state as a whole.

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Attachment 6

2) On page 7, lines 4 and 5 which refer to basin of origin and basin of use: it might be well to clarify that the basin being referred to here is one of the 12 major basins currently enumerated in the Kansas Water Plan rather than the large basins of the Missouri and Arkansas Rivers.

3) Although we recognize that there was an attempt to alleviate the concerns of many public-interest groups and several legislators on the House committee in regard to how the costs of the hearings will be apportioned, we are still uncomfortable with the language in Section 4 (e), pp. 7-8.

Therefore we would like to offer the following amendment: Page 8 line 4 strike the period at the end of the sentence and insert:

**if the legal bases upon which the other party or parties proceeded is deemed frivolous.**

The applicant(s) will be the only beneficiary of a water transfer; therefore, we believe it is entirely appropriate for the applicant to pay the cost of the hearing procedure. Furthermore, we believe that additional language should be added to this section to make it perfectly clear that no state agency which participates in a hearing as a commenting agency should be responsible for any of the costs of the hearing.

4) On page 9, Section 5(d) at the end of line 38 the following sentence should be added:

**The record of the hearing and findings of fact shall be public records and open for inspection at the office of the chief engineer.** ( From language that was originally struck on p. 7, lines 33-35.)

We believe this addition will ensure the public's accessibility to the information and clarify that the record of the proceedings are to be available for public inspection.

5) Finally, on pp. 9-10, Section 6 (b), we believe the sentence should be restored with the following change:

**(b) The attorney general of the state of Kansas shall represent the panel in any appellate procedure.**

The panel is the ultimate authority to approve or reject the initial order and is comprised of state employees. It is our belief that these individuals should not be subject to personal financial hardship in the event the final order is appealed.

We appreciate this opportunity to share our comments with the committee. I will be happy to try to answer questions.



TESTIMONY OF HUGH J. TAYLOR  
OF THE BOARD OF PUBLIC UTILITIES  
IN OPPOSITION TO  
HOUSE BILL NO. 2070

My name is Hugh J. Taylor. I am Manager of Rates and Regulations for the Board of Public Utilities of Kansas City, Kansas. The Board of Public Utilities is the largest municipally-owned utility in the State and serves electricity and water to the City of Kansas City, Kansas.

I am here on behalf of the Board of Public Utilities in opposition to House Bill No. 2070. The Board opposes this legislation for two reasons. This legislation, as it is written, would require the Utility to obtain a permit to serve customers within its own territory. This is unreasonable and, as I understand it, contrary to the intent of the Act. To require utilities to request a permit to provide water service to customers within their service areas would be unnecessarily burdensome and costly to the customers of their water systems.

The second reason the Board of Public Utilities opposes this Act is because of the apparent authority it endows to the Commission over



rates by virtue of transfer permitting. This legislation could allow the Commission to impose conservation rates which may or may not be justified by circumstances. It is certainly not a practice which should be adopted generally without due consideration of many factors beyond water transfer.

Testimony re HB 2070 Senate Energy and Natural Resources  
Committee / Topeka KS / 17 March 1993

by  
Bob Hooper  
Box 3  
Bogue Kansas 67625 (913) 674-5489/-2722 bus.  
Member Solomon Basin Advisory Committee

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An ancient Chinese proverb says: "No raindrop ever considers itself responsible for the flood." I am here today to see that history holds you accountable.

House Bill 2070 was conceived and has been promoted to encourage urban development. It perpetuates the myth, as Secretary of the Interior Bruce Babbitt, called it, that "there is always more water over the hill."

After many years of persuading agriculture to put limits on the use of water, it is now time to ask for limits on metropolitan areas which have exceeded their natural resource base.

I note with some suspicion that your counterpart committee in the House amended the bill to require a conservation plan to be in effect for one year prior to application for a water transfer. The amendment does not say how rigorous the conservation plan must be, nor does it ask for the continued implementation of such a conservation plan after the fact of a transfer. Also, an amendment calls for an ascending rate scale, but offers no specifics and guarantees nothing for the future.

It must surely be obvious to you that HB 2070 is not a bill to safeguard against people dying of literal thirst, since the Chief Engineer has the power already under existing law to deal with such emergencies. Until this morning at least, there were no reported deaths from thirst in Hays, Wichita, or Kansas City -- even though their representatives have pleaded before you for more water.

Since I live near Hays, I try to pay more attention to detail in that area where my feet touch the earth. I live within daily view of the dying South Solomon, for which Tom McClain of the KS Geologic Survey, has just completed one more study (not that what he found was a surprise.) He again documents the continued dewatering of the western Solomon River, whose condition has for me become a metaphor for the shortsightedness, insensitivity, and stupidity of Kansas water policy.

Years ago, when I first began my crusade, I considered you legislators to be leaders. When you are it is rare. You are more often mirrors. And here is the kind of electorate

and the kind of bureaucrat you are reflecting today. I speak primarily about Hays, but the sad example fits elsewhere.

A Hays Daily News story [2-12-1993] says Hays City Commissioner Bob Albers, who was "the prime preacher of conservation...during the water crunch last year, has already begun to advocate loosening conservation measures. Albers said, "We are not Phoenix, Arizona." He then added that being able to maintain a yard in [Hays] was part of the "quality" of life in living here.

Whether or not Commissioner Albers is aware, Phoenix pipes the lion's share of its water down a vast pipeline established by the Central Arizona Project to transfer water from rural Colorado...and make the desert bloom. And Phoenix too has plans to grow and offer its citizens what Mr. Albers calls "quality" of life. In spite of what Mr. Albers may think, there are many grass lawns in Phoenix, too. And lots and lots of swimming pools. I have been there.

In a later issue of the local newspaper [2-15-93] Hays Daily News editor Kent Steward took Albers to task. Steward wrote, "Such conclusions [as Albers drew] would be dangerously mistaken. Hays continues to face serious limitations on the availability of water." Steward continued: "Because of its geographic location, Hays likely will always need to handle water as a precious commodity." And "...water remains a limited resource." That is admirable rhetoric.

All the while, let us understand, the Hays economic development folks whom one Lavern Squires is hired to represent, has been trying to entice new industry, and have recently argued for an additional entry/exit ramp on I-70.

On a dual front, Hays [with the support of the Kansas Water Office] has been encouraging the formation of a water supply district which would acquire water from afar, dribble a few gallons off at isolated farmsteads for good public relations, and pipe the preponderance downhill to Hays.

As it develops, Hays has succeeded in interesting a Russell Stover's candy plant, which would require an annual 43 million gallons of water directly, and surely additional millions more for the influx of workers and administrators.

An effort to utilize water from the locally available Dakota aquifer was rejected because it did not compare to the superior quality of Ogallala water, and might involve the cost of desalinization plants, and the problem of blending it with existing wells. That is, it would have involved a sacrifice for the city where water is to be viewed as a precious commodity.

It was no surprise then to read in the Hays Daily this past week [3-12-93] that the smell of money had prompted a fresh look at water use philosophy: "We are at last" the editor writes, "surmounting our reputation that the 'town doesn't have enough water' and getting businesses to take a second look. Economic development workers have been making the argument that we are solving that past water problem in innovative and enlightened ways."

The "innovation and enlightenment" rest in refusing to live within their own natural resource base, and looking over the hill for a little more water, so like Phoenix, they can make the desert bloom, have their lawns, and grow...

The latest tack in self-justification, in which the newspaper and Mr. Albers now steer alike, is to suggest that Hays should go far beyond its boundaries to tap the Ogallala aquifer, which in western Kansas has been exploited to the extent we will probably exhaust a 25 million year old resource within the lifetime of a few men. We have already detwatered hundreds of miles of streams, and turned recreational reservoirs into mudholes.

Although it will take centuries to undo the damage, if indeed it is undo-able, Hays (as a typical city on the grow, swears it will not add to the problem by appropriating water beyond the rate of recharge. At least, that is what some are saying now...until there's the promise of another Russell Stover on the horizon, which can be lured in with a little more water. Which can be found...over the next hill.

And already Hays is thinking ahead: their editor reports "Because of the underground reserves, though, Hays could draw out more in a particular dry year than was actually recharged by precipitation in that year." The idea is being sown that the recharge rate is as high as two inches per year, rather than the 1/4 or 1/2" which is accord with professional literature, and more likely.

HB 2070 supposedly would allow the transfer only of "surplus water" without carefully defining what that means, and it would promise to look after the interests of rural areas and the environment. It does not, however, provide any power but the power of the jawbone to protect those interests. Under HB 2070 the final decision as to whether water available for transfer "would be necessary to meet the present or any reasonable foreseeable future beneficial need by present or future users in the natural area" would be left not to people living in and representing the interests of the resource area, but by three bureaucrats who undoubtedly will live outside that area -- in metropolitan areas which are always looking over the next hill for more water, and which are over-impressed with their own importance upon this earth.

p 4

Ladies and gentlemen, you are not political neophytes nor Pollyannas who do not understand the role power-politics plays in such decisions. You can hardly think it coincidence then, that one of the latest appointees of Governor Finney to the Kansas Water Authority, under whose aegis this legislation was drafted ... is the mayor of Hays.

You and especially your colleagues who truly represent the earth and rural areas would do well to speak to Orville Tomky, of Crowley County, Colorado, where water rights have been sold away by local individuals to the mushrooming cities of Denver and Aurora, some one hundred miles distant. Tomky who has lived and farmed in Crowley County for 40 years, says the cities have bought up nearly all the rights in the county. Water rights quickly soared to over \$700 per acre foot, within the pocketbook of a metropolis but not of small towns. [Time Magazine/July 22, 1993]. It is important to see here that any sort of modest development in Crowley County, in harmony with its own natural resource base, has been betrayed forever to support the continued growth of Denver and Aurora. The water won't be coming back to Crowley County.

A recent story in the Hays Daily [2-26-93] reported that Hays City Commissioners had learned that two families near Rush Center were interested in selling annual rights to an estimated 1250 acre feet, or 400 million gallons of water. In Crowley county, that's about \$900 thousand worth at 1990 prices, which is a seductive figure indeed. Given human nature, one might suppose that concerns about the future economic or environmental viability of the area might waver in front of such a bribe.

Last night I received a phone call from a concerned landowner 25 miles from Hays who told me that a concentrated effort was ongoing to acquire water rights near WaKeeney, and that neighbors were pitted against neighbors and told, in effect: "Someone's going to sell water rights and make some money. Don't get left out."

This past Monday [3-15-1993], I spoke to Mr. Tomky by telephone, who told me the water buyers just keep upping the price to debt-ridden farmers in Crowley County, until ninety percent of the local water rights has been sold to Pueblo, Colorado Springs, Aurora and Denver, in spite of local efforts to resist. The going price per acre foot has doubled since the \$700 figure. Many troubled farmers, he said, paid off their debts and relocated. The local economy, stripped forever of a vital resource and the chance to develop harmoniously with the water supply, is becoming ever more grim. Businesses have been cut in half, land values have plummeted, and Orville thinks the loss of the local tax base will mean the death of Crowley County government, whose dwindling population will be absorbed into another county.

"It all happened quick," he said.

Tomky, now 69 and still farming, was one of the few who hadn't sold his water rights. But he told me, "One of these days, I might...and retire. Relocate, I guess."

In closing, I must note that the water rights in Crowley County come from the Arkansas River, in whose behalf Kansas is righteously suing the State of Colorado.

Ladies and gentlemen, the task of this State is to implement a sustainable use of water which respects and protects our natural environment, and thus our own future.

HB 2070 is not progress. It is politics as usual. And it is sad.

Thank you for the opportunity to address the committee.

END



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HAYS, KANSAS 67601-0490

March 16, 1993

Senator Don Sallee, Chairperson  
Senate Energy and Natural Resources Committee  
State Capitol, Room 128-S  
Topeka, KS 66612

RE: Support for House Bill 2070, Water Transfer Act

Dear Senator Sallee:

On behalf of the Hays City Commission, I want to register our strong support for House Bill 2070 dealing with changes in the Water Transfer Act. Due to weather problems we were unable to attend today's hearing involving proponents of the bill. It is our hope, however, that you will add our testimony to those in support of this bill.

As you know doubt have heard, Hays has been battling severe water shortage problems for the last several years. Due to a tremendous effort by the public we have been able to reduce our daily per capita consumption by about 50% to 72 gallons per person per day (see attached). This resulted in a total of 1,800 acre feet of water being used by the City of Hays in 1992 compared to 3,500 acre feet used in 1985. In spite of these conservation efforts, however, we still find ourselves in need of new sources of water supply. Since all sources of water supply are beyond a ten mile radius of Hays, changes in the Water Transfer Act are being pursued.

It is our feeling that House Bill 2070 as currently drafted will aid the City in its development of additional sources of water in a prudent and measured fashion. We feel that we are good stewards of this precious resource, but find ourselves needing additional water to support existing and expanding industries and improve the quality of life for Hays residents.

Again, we urge your support of House Bill 2070 and apologize for our absence at the scheduled hearings.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Hannes Zacharias'.

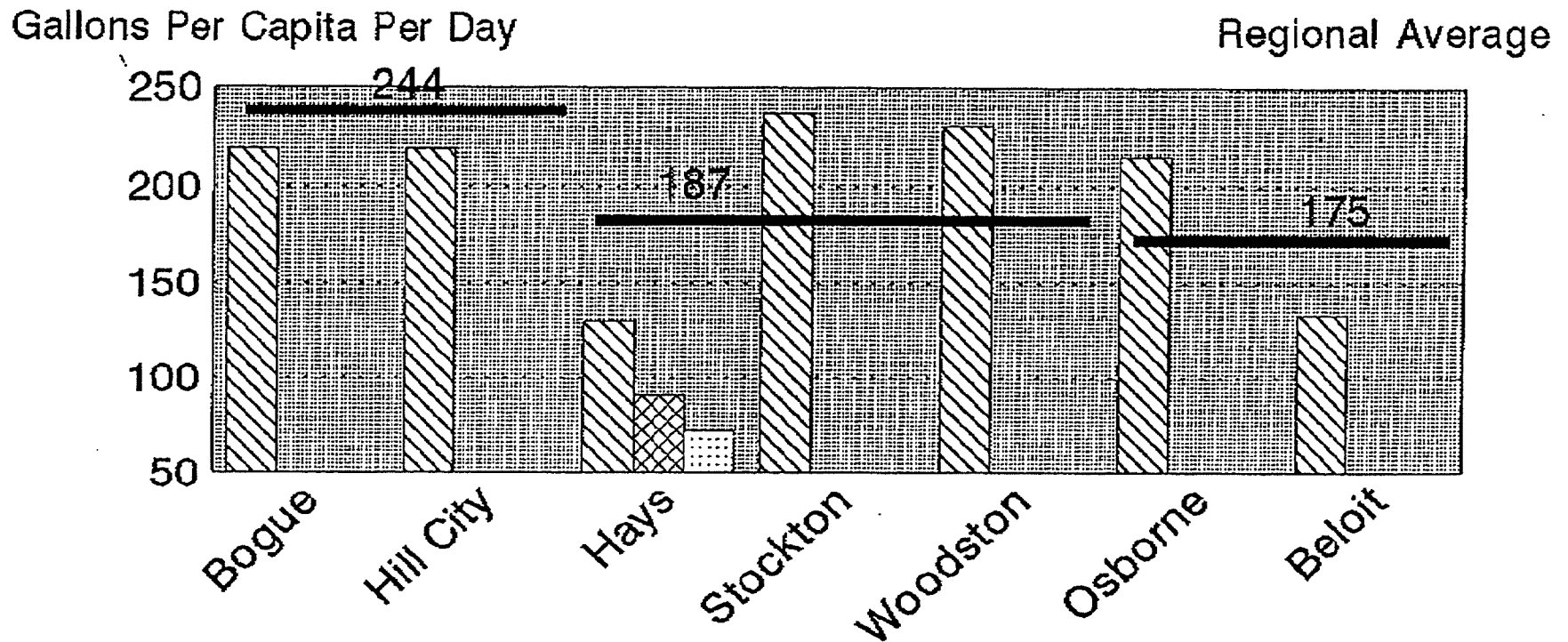
Hannes Zacharias  
City Manager




sd

Senate Energy & Natural Resc.  
March 17, 1993  
Attachment 9

# Per Capita Water Consumption

## compared to regional average 1991



1991		219	219	130	237	231	215	133
1992*				91				
1992**				72				

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

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



Ellis County Coalition  
for Economic Development