

P R E L I M I N A R Y  
M I N U T E S

SPECIAL COMMITTEE ON ENERGY AND NATURAL RESOURCES

September 28 and 29, 1976

Members Present

Senator Leslie Droge, Chairman  
Representative Bill Southern, Vice-Chairman  
Senator Paul Burke  
Representative Gus Bogina  
Representative Ralph Bussman  
Representative Arden Dierdorff  
Representative Paul Feleciano  
Representative Edgar Moore  
Representative Anita Niles

Staff Present

Emalene Correll, Kansas Legislative Research Department  
Ramon Powers, Kansas Legislative Research Department  
Don Hayward, Revisor of Statutes Office

Conferees

Guy Gibson, Chief Engineer, Division of Water Resources,  
State Board of Agriculture  
James Power, Executive Director, Kansas Water Resources Board  
Meredith Williams, Staff Attorney, Legislative Division of Post Audit  
Keith Lebbin, Executive Director, Western Kansas Groundwater Management  
District No. 1  
David Pope, Manager, Southwest Kansas Groundwater Management District No. 3  
Ralph Walker, President, Kansas Irrigation and Water Resources Association  
Keith Nelson, Kansas Farmers Union  
Howard O'Connor, Kansas Geological Survey

September 28

The Chairman called the Committee to order at 10:00 a.m. After discussion the Committee approved the minutes of the August meeting. The Chairman then announced that the Committee would hear persons who had statements or recommendations relating to Proposal No. 17 -- Review of the Kansas Water Appropriation Act.

Guy Gibson, Chief Engineer, Division of Water Resources, State Board of Agriculture, was the first conferee on Proposal No. 17. A copy of Mr. Gibson's prepared statement is appended to the minutes as Attachment No. 1.

Following Mr. Gibson's prepared presentation he responded to questions from the Committee relating to the administration of water appropriation rights as outlined on pages 1 through 10 of Attachment No. 1. There was also discussion of the definition of "domestic use." Mr. Gibson elaborated on the recommendations for statutory change noted on pages 6 and 13 of Attachment No. 1.

James Power, Executive Director, Kansas Water Resources Board (KWRB), was the second conferee.

As background for the Board's recommendations, Mr. Power noted that in 1966 KWRB had forecast that there would be 2.8 million irrigated acres of land in Kansas by 1980. However, by 1975 there were 3.03 million acres of irrigated land in Kansas indicating that irrigation use had grown considerably in excess of the 1966 forecast. Mr. Power also

noted that groundwater levels are declining from one to three feet per year in areas of intensive irrigation. Declines of one to five feet are occurring in some areas and, in a few isolated areas, depletion of groundwater is in excess of two-thirds of the supply. In a few areas the depletion may be as high as three-fourths.

Mr. Power stated that KWRB recommended that legislation embodying the concept of 1976 Senate Bill No. 875 be enacted, i.e., requiring all water users other than domestic to have a permit to appropriate water prior to diverting or using such water. Mr. Power also indicated that a penalty for violation of the act should be included in any such legislation if it is to be effective.

Mr. Power suggested if extensive changes were to be made in the water appropriation statutes that an advisory committee representing various interests be appointed to study the Kansas law and that of other states. He offered the services of the Board to carry out such a study.

Mr. Power briefed the Committee on recent developments in the groundwater management districts which have been organized. He pointed out that the districts need technical and financial assistance from the state to formulate groundwater management and conservation plans. In summary, he noted that there are serious water problems in southwest Kansas for which there is no simple answer. The Board does, however, recommend that (1) prior approval of the Chief Engineer be mandated for any diversion or use of water other than domestic use; (2) additional studies be carried out; and (3) financial assistance be provided the groundwater management districts.

Following Mr. Power's presentation, the Chairman recognized Bruce Latta, Division of Environment, State Department of Health and Environment. Mr. Latta noted that Secretary Metzler had been present to make a statement but had had to leave. Mr. Latta asked that the Department be allowed to submit a written statement to the Committee. The Chairman indicated that the Committee would receive such a statement. A copy of Mr. Latta's statement is appended to the minutes as Attachment No. 2.

Following a recess from 12:20 to 1:30, the Committee heard comments from Meredith Williams, attorney for the Legislative Division of Post Audit. Mr. Williams summarized the findings and recommendations which appeared in Program Audit -- Regulating the Appropriation and Use of Water, copies of which had been sent to the Committee prior to the meeting. A copy of Mr. Williams' summary appears as Attachment No. 3.

Conferees were asked if there is duplication in data collection and program among the state agencies having water resources responsibility. Mr. Power responded by describing the formal procedure which is followed by the agencies to discuss data collection and program. He also described the coordination between the Division of Water Resources, the Division of Environment, the Kansas Geological Survey, and the Water Resources Board on some projects. On occasion other agencies may also be involved in reviews or planning. Representatives of other agencies concurred with Mr. Power's comments. It was noted that personnel from all the agencies are involved in the annual measurement of observation wells. Mr. Power stated that the Division of Water Resources' annual water use reports were available to KWRB. The Board, however, has had too few personnel to make adequate use of the available data.

Mr. Gibson was asked about the Post Audit recommendation that all nondomestic water users be required to install water meters. He responded that there are some areas where meters are needed. He pointed out, however, that there are difficulties in requiring meters, including the initial cost to the water user, the manpower necessary to monitor meters, and the reliability of the meters themselves. While the Chief Engineer presently has the authority to require meters, Mr. Gibson expressed the opinion that mandatory metering was not feasible unless the requirement was limited in applications to critical areas and unless an entity such as a groundwater management district could assume responsibility for monitoring and enforcement.

Mr. Gibson was asked how annual water use is determined if meters are not used. He responded that Division personnel test well capacity after a well has been developed and before a certificate of appropriation is issued. Power records are then used to compute an average rate of pumping. It was pointed out that power records can be unreliable over a period of time because the pumping capacity of the well may decrease.

Mr. Gibson was asked about the loss of a portion of a water right for nonuse if the holder did not make use of the amount of water authorized by his certificate of appropriation. The Chief Engineer responded that this is an area in which no formal rules have been established. At the present, the Division sends out an annual water use report form to holders of vested rights, water rights, and permits. The returned form usually represents only the water user's estimate of use.

The next conferee was Keith Lebbin, Executive Director, Western Kansas Groundwater Management District No. 1. A copy of Mr. Lebbin's statement is attached to the minutes as Attachment No. 4. Mr. Lebbin also represented the Advisory Committee on Groundwater Management Districts which Mr. Gibson has appointed.

The next conferee, David Pope, represented the Southwest Kansas Groundwater Management District No. 3. Mr. Pope also presented a written statement which is appended to the minutes as Attachment No. 5.

Ralph Walker, president of the Kansas Irrigation and Water Resources Association, was the next conferee. Mr. Walker noted that the Association represents both surface and groundwater irrigators. He indicated that he concurred with the recommendations of those who had previously spoken to the Committee. Mr. Walker indicated that if mandatory prior approval for the diversion or use of water for nondomestic purposes is to be effective, enforcement of the law will be needed. He further noted that without this mandatory feature, groundwater management districts have little control over the location of industry. While cities are included within the districts, an influx of water using industries into western Kansas could create water problems. Mr. Walker stated that farmers need to have their investments in irrigation systems, whether surface or groundwater based, protected.

In response to a question from the Committee, Mr. Walker indicated that the Kansas Irrigation and Water Resources Association is composed of irrigation districts and irrigation associations.

Keith Nelson, representing the Kansas Farmers Union, presented a prepared statement which is appended to the minutes as Attachment No. 6. Mr. Nelson stated that he is chairman of the Farmers Union Water Policy Study Committee.

Following Mr. Nelson's statement, the Committee asked conferees to respond to questions relating to that statement. Answering a question relating to the incidence of large, out-of-state owners developing and operating irrigation systems, Mr. Lebbin and Mr. Pope indicated that the majority of irrigators in their groundwater management districts are largely family-owned farm corporations. There are few out-of-state companies and little out-of-state money involved in irrigation. Asked if the Farmers Union was against irrigation, Mr. Nelson replied that the organization favors irrigation but fears that irrigation use of water may deplete the resource. Mr. Gibson responded to questions about municipal water supply for the City of Belvue.

The last conferee was Howard O'Connor from the Kansas Geological Survey. He stated that he concurred with the outline of problems presented earlier by the Kansas Water Resources Board and the Division of Water Resources. He also concurred with the recommendations of the other agencies. In response to questions, Mr. O'Connor explained that the Survey carries out cooperative federal-state groundwater research and provides assistance to other state agencies. The Survey also keeps well drilling logs pursuant to the Groundwater Protection Act. He observed that drillers are very active, with some having a three-month backlog of work.

Following discussion with the conferees, the meeting was adjourned to meet at 9:00 a.m. at the offices of the Division of Water Resources.

#### September 29

The Committee met in the Division of Water Resources offices at 1720 South Topeka Boulevard. Chairman Droge called the meeting to order. All members were present except Representative Bussman.

Guy Gibson directed the Committee on a tour of the Division's water rights section and explained the processing of water rights. The Committee reviewed how applications are received and how priorities are established. There was an explanation of

the filing systems which are cross-referenced and all done by hand. Mr. Gibson explained how a computer would help with the backlog. There was also a discussion of moneys received from the \$50 filing fee which are turned over to the general fund. He also explained the staffing, part-time and permanent, of his department.

Following the tour of the offices, Mr. Gibson explained some of the problems the Division of Water Resources is having -- funds for computerization of water rights and water use data, the need for other classifications of permits i.e., temporary and term, the need for rules and regulations, Mr. Gibson suggested that Mr. Smrha, the retired Chief Engineer, could be hired to draft rules and regulations.

At the request of the Chairman, Mr. Gibson brought the Committee up to date on developments concerning the City of Belvue and Kansas Power and Light applications for water rights. In the discussion it was noted that Kansas Power and Light had filed an application for permits to develop wells in the Kansas River Valley. The City of Belvue which had never developed a water right became concerned about the effect of the proposed wells on the municipal water supply. In response to questions raised at a hearing held by the Division of Water Resources, the Chief Engineer has asked the utility to consider relocating three wells closer to the river to alleviate the effect of pumping on recharge, and has asked for a report on the economics of developing wells versus transporting water from the proposed Onaga Reservoir. Kansas Power and Light has agreed to install monitoring wells so that the results of pumping can be determined and has indicated it would furnish water to Belvue if the municipal supply is insufficient. The Department of Health and Environment will be monitoring observation wells to determine the effect of the fly ash disposal facility on water quality. It was noted that Belvue had made application for a water right on the day of the hearing.

There was also discussion of the water supply situation at Chetopa. Mr. Latta indicated that the problem was not an inadequate water supply but a taste and odor problem which was correctable by treatment.

Following adjournment for lunch, the Committee reconvened in the Division's conference room to consider recommendations to the staff.

It was moved, seconded, and approved that the Committee recommend the amendments to the water appropriation statutes proposed by the Chief Engineer. (See pages 6 and 13 of Attachment I.) The staff was asked to work with Mr. Gibson and Mr. Power in drafting the proposed amendments.

The Committee also decided to recommend funding for a study relating to computerization of the data and records of the Water Resources Section of the Division of Water Resources.

A further recommendation agreed to was to direct the agency to proceed with developing and adopting rules and regulations relating to the water appropriation statutes.

Mr. Gibson asked the Committee if it had any recommendations concerning the abandonment or transfer of water rights in conjunction with changes in the point of diversion. After discussion, the Committee felt that areas such as this should be covered under the rules and regulations.

The next meeting will be scheduled for October 14-15, 1976. It was requested that the staff reserve four days in November for discussion of recommendations, the first two days being the 4th and 5th of November. The meeting was adjourned.

Prepared by Emalene Correll

Approved by the Committee on:

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Date

STATEMENT  
of

ATTACHMENT NO. 1

Guy E. Gibson, Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, before the 1976 Special Committee on Energy and Natural Resources

September 28, 1976

Mr. Chairman and members of the Committee, I am Guy E. Gibson, Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture. With me are Harris Mackey and Clark I. Stocking of the Division's Water Right Section and Denise Waters, my secretary.

I appreciate the opportunity to appear before this committee to discuss the Water Appropriation Act of 1945, as amended, and my philosophy on the administration of the Act.

This Act established the general principle that all water within the State of Kansas is dedicated to the use of the people of the State subject to the control and regulation of the State as prescribed by the Act. Other basic principles of the Water Appropriation Act provide that, subject to vested rights, all waters within the State may be appropriated for beneficial use and prescribes a procedure by which a lawful right to the use of water may be established and protected. The priority of an appropriation right to use of water for any beneficial purpose except domestic purposes shall date from the time of the filing of the application in the office of the Chief Engineer. The priority of the appropriation right to use of water for domestic purposes shall date from the time of the filing of an application in the office of the Chief Engineer or from the time the user makes actual use of water for domestic purposes, whichever is earlier.

I have referred to the following kinds of water rights: Vested Right, Appropriation Right; and Domestic Right. There is one more kind of a water right and that is a Water Reservation Right.

Vested Right means the right of a person to continue the use of water having actually been applied to any beneficial use, including domestic use, on or before June 28, 1945, to the extent of the maximum quantity and rate of diversion used for beneficial use. Such a right does not include, however, those common law claims under which a person has not applied water to any beneficial use.

The Water Appropriation Act provides that the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, shall make an Order determining the vested rights of all persons making beneficial use of water, other than for domestic use, on or before June 28, 1945, as to the extent of their use at that time, defining the source of supply, location of the point of diversion, quantity, maximum rate of diversion and location of the place of use. A total of 2,176 vested rights to continue the beneficial use of water have been determined. Nothing in this act shall impair the vested right of any person except for nonuse. All vested rights remain superior to any appropriation rights subsequently established.

Appropriation Right is a right, acquired under the provisions of the Water Appropriation Act. Both surface and ground waters of the state may be appropriated.

An appropriation right is acquired by applying the appropriated water to beneficial use. In other words, a water right relates only to the use rather than to the substance of the water. It is nevertheless, a real property right appurtenant to and severable from the land on or in connection with which the water is used.

To acquire an appropriation right, an application to appropriate water must be filed in the office of the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, with a filing fee of \$50.00. The priority of the application is based on the time the application is filed. Each application is assigned a number. The date of priority of an appropriation right, and not the purpose of use, determines the right to divert and use the water at any time when the supply is not sufficient to satisfy all water rights that attach to it.

I like to think of an application for permit to appropriate water as setting forth a plan that the applicant intends to complete within a reasonable time. The application will need to show the legal description of the 10-acre tract of land on which the well will be located, the total quantity of water desired in acre-feet or million gallons per year, the maximum rate of diversion in gallons per minute or cubic feet per second, the place of use, a brief description of the proposed works for diversion of water and the estimated schedule showing estimated dates when works will be completed, and an estimated date of first actual use of water under the proposed appropriation. The place of use by a city is normally within the boundaries of the city and the immediate vicinity; however, in those instances where the city furnishes water to industries not in the immediate vicinity of the city or enters into an agreement to furnish water to rural water districts, this information should accompany the application so the approval may set forth the approved location of the place of use. A copy of the engineer's report or other information must be provided showing past, present and estimated future water requirements and information showing future estimated population growth and expansion of industrial production to the time when the quantity of water to be appropriated will be needed.

The application must be accompanied either by a detailed plat or an aerial photograph showing the location of the well or wells and their distance and direction from a section corner or some such permanent point and the existing water wells of all kinds located within 1/2 mile of the proposed well or wells. Each well must be identified as to its use and the name and mailing address of the property owner or owners must be furnished. If for irrigation use, the application must show the number of acres of irrigable land in each 40-acre tract and the location of this land shown on the plat or photograph. Applications filed without either the plat or aerial photograph showing the information needed will be received and assigned numbers, but the plat or photograph must be furnished before the application can be properly processed.

When the applicant does not know the location of the 10-acre tract of land on which his well will be located, he may file his application and inform the Division as to the tract of land on which he proposes to test drill to determine the location of the well and ask that he be protected under his application for 60 days in which to determine the 10-acre tract on which his well will be located. While there are no provisions in the Water Appropriation Act for this, the Division will protect the applicant on this matter for at least 60 days.

It is not a requirement of the Water Appropriation Act but it is the administrative procedure of the Division to advise all persons who are holders of water rights of record in the Division's office covering a well or wells located within 1/2 mile of the proposed well or wells that this application has been filed and they are given 30 days to submit such comments and other information they may desire to submit to the Chief Engineer for his consideration. A request for a hearing may be made so that they may voice their objections and show cause why the application should not be approved. Again, while there is no provision in the Water Appropriation Act for this, hearings are held in this matter.



Copies of applications are transmitted to the appropriate field office of the Division and to the appropriate Groundwater Management District office and upon receipt of such application, they submit such comments and other information they may desire to the Chief Engineer for his consideration in approving or dismissing the application. When information is received that indicates the need for a full field investigation, the appropriate field office is so advised and their complete report is transmitted to the Chief Engineer.

In order to approve an application, the Chief Engineer must find that:

1. The proposed use will not impair any use under an existing right.  
Impairment is defined in the law as including the unreasonable raising or lowering of the static water level beyond a reasonable economic limit.
2. The proposed use will not prejudicially and unreasonably affect the public interest. To determine the question as to any public interest that may be involved, the law provides that among other things there shall be taken into consideration the area, safe yield and recharge rate of the water supply.
3. The application is made in good faith.
4. The application is in proper form.
5. The application proposes use of water for a beneficial purpose.
6. The application proposes use of water within reasonable limitations.

Approval of the application authorizes the applicant to proceed with construction of the proposed diversion works and to make use of water in accordance with the terms, conditions, and limitations set forth in the approval.

There is a period of time within which the applicant constructs or installs the necessary diversion works or equipment and a period of time in which to apply water to the authorized beneficial use. When this has been done, the applicant notifies the Chief Engineer of the completion of works and submit proof as to his use of the water. In due course of time this is verified by field inspection. If it is found that water has been used in accordance with

the terms of the permit, a certificate of appropriation is issued for such quantity of water, within limits authorized by the permit as has been put to beneficial use during any calendar year. The certificate of appropriation sets forth the extent of the water right, constitutes evidence of a perfected water right, and must be recorded with the Register of Deeds of the county in which the point of diversion is located.

A water right is a real property right appurtenant to and severable from the land on or in connection with which the water is used and such water right passes as an appurtenance with a conveyance of the land by deed, lease, mortgage, will, or other voluntary disposal, or by inheritance.

Domestic Uses means the use of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of one acre in area for the growing of gardens, orchards and lawns.

The State Board of Agriculture has instructed me to convey to you the fact that one acre in area limitation is not compatible with present times and to request that K.S.A. 82a-701(c) be revised to show "...not exceeding a total of two acres in area for the growing of gardens, orchards and lawns."

The use of water for domestic purposes before June 28, 1945, to the extent of the maximum quantity and rate of diversion made thereof shall constitute a vested water right.

The use of water for domestic purposes instituted after June 28, 1945, to the extent that it is beneficial, shall constitute an appropriation right. The Chief Engineer, however, may require any person using water for any purpose to furnish information with regard to such use.

The priority of the appropriation right to use for any beneficial purpose except domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer. The priority of the appropriation right to use water for domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer or from the time the user makes actual use of water for domestic purposes, whichever is earlier.

There is no filing fee for the filing of an application for the appropriation of water for domestic use. When such an application is filed showing that water was used prior to the filing of the application, the Division asks the applicant to furnish three (3) affidavits to support the information furnished by him showing the source of supply, location of the point of diversion, place of use, use made of water, and date that use was first commenced for the quantity and rate of diversion claimed and information to substantiate the rate and quantity shown in the application. For those who have vested rights for the watering of cattle or other domestic use and desire to have that vested right made a matter of record in the office of the Chief Engineer, they may file three (3) affidavits setting forth the extent of that right and if the information appears to be reasonable, the affidavits will be accepted for that purpose.

Any person entitled to use water for beneficial purposes may collect and store the same and all natural flows for use thereafter, so long as such collection, storage, use and times of use thereafter are consistent with reasonable storage and conservation practices; and the failure to apply or use such waters during the period of such collection and storage shall not be deemed or taken to impair his right in that behalf. Such collection and storage of all natural flows shall be subject to vested rights and prior appropriation rights.

It is the administrative procedure of the Chief Engineer that a person storing water in a pond for domestic use is entitled to store a sufficient quantity of water to take care of his needs for one year and the following two years should a drouth occur.

Water Reservation Right

The Federal Water Supply Act of 1958 authorized the inclusion of future water storage capacity in federal reservoirs. The storage capacity for allocation for future municipal and industrial water supply would be provided if a nonfederal entity furnished assurances that future use and repayment of the cost would be made.

In 1961 the Kansas Legislature gave assurances for repayment of water supply storage in five major federal reservoirs. In subsequent legislation, the Water Resources Board was given authority to enter into agreements with the federal government for repayment of future water supply subject to legislative approval through appropriation. Assurances for repayment of water supply storage has been made in 16 federal reservoirs.

The rights of the state to divert and store the waters of all streams flowing into the conservation storage water supply capacity of a federal reservoir not needed to satisfy all vested rights and prior appropriation rights is known as a "Water Reservation Right."

The acquisition of a Water Reservation Right by the Board of Water Resources is acquired by filing with the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture, a written notice which shall include the following:

- (a) The name of the stream on which the reservoir is located
- (b) The reservoir on which a water reservation right is sought
- (c) The legal description of the point of diversion for the reservoir
- (d) The storage space in the reservoir described in terms of elevation and design capacity

- (e) Hydrologic calculations for a drought having a two percent (2%) chance of occurrence in any one year with the reservoir in operation specifying the rate of flow of streams into the reservoir and the volume of waters impounded in the reservoir that will be necessary to insure a yield of water from the reservoir for beneficial use, and
- (f) Such other information which the chief engineer may request in carrying out provisions of this act.

When the notice complies with the requirements of this section of the act, the Chief Engineer transmits to the Board his written acceptance thereof. The Board then files this notice, as other instruments of real estate, in the county or counties wherein the point of diversion for the reservoir is located; and such Water Reservation Right is perfected as of the date of original filing in the office of the Chief Engineer.

Procedural provisions for the storage of flows from the streams entering the reservoir are being required in the Water Reservation Right. The maximum extent that water may be stored or withdrawn under normal or drought conditions are being set forth in each Water Reservation Right.

A copy of every contract between the Board of Water Resources and the person receiving water from the water supply storage capacity shall be filed with the Chief Engineer of the Division of Water Resources. Persons having contracts for withdrawal of water shall be entitled to the same protection of their rights under such contract as the owner of any other vested property interest (including vested rights, appropriation rights and approved applications for permits to appropriate water) is entitled to receive. They are not required to obtain a permit or water right under Article 7 of K.S.A. 82a, the Water Appropriation Act.

Any owner of a water right may change the place of use, the point of diversion, or the use made of the water, without losing his priority of right, provided he shall (1) apply in writing to the Chief Engineer for approval of any proposed change; (2) demonstrate to the Chief Engineer that any proposed change is reasonable and will not impair existing rights; (3) demonstrate to the Chief Engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and (4) receive the approval of the Chief Engineer with respect to any proposed change. The Chief Engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the Chief Engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged.

In order for the Division to process such an application, among other things the Chief Engineer needs to know the extent to which the water right he has before him has been perfected. For example, the application was approved for a maximum diversion of 1,000 gallons per minute. The applicant's well would pump only 600 gallons per minute and therefore a right of only 600 gallons per minute was perfected within the time allowed. The application, if approved, would be on the basis of a maximum rate not to exceed 600 gallons per minute.

#### Groundwater Management Districts

The philosophy throughout the years has been that groundwater management in Kansas is a matter of local concern. The increasing draft on groundwater supplies caused concern in some parts of the state that perhaps the time had come to impose some restrictions or limits on the use of this resource in order to prevent its undue depletion. The 1972 Legislature was responsive to this and enacted K.S.A. 82a-1020 to 82a-1035 commonly referred to as the "Groundwater Management District Act."

This Act states, in part, "it is the policy of this act to preserve basic water use doctrine and to establish the right of local water users to determine their destiny with respect to the use of groundwater insofar as it does not conflict with the basic laws and policies of the state of Kansas".

A groundwater management district organized under the provisions of this act, which became effective on July 1, 1972, has a number of powers to implement and carry out a management program. Any management program must be reviewed by the Chief Engineer and approved if he finds it compatible with the Water Appropriation Act. While people shudder at the thought of "control", any management program to be successful must provide a means to conserve and regulate the groundwater resource.

There are large quantities of ground water in storage. Any extensive development of this valuable resource can result in its depletion. At the same time, however, it is of value only to the extent that it is developed and used for beneficial purposes. Such development should be orderly and should be based on a policy which is understood by and is acceptable to the people in the area who are directly affected.

To date there are five Groundwater Management Districts:

Western Kansas G.W.M.D. #1 covering approximately 1,200,000 acres

Equus Beds G.W.M.D. #2 covering approximately 500,000 acres

Southwest Kansas G.W.M.D. #3 covering approximately 5,722,000 acres

Northwest Kansas G.W.M.D. #4 covering approximately 3,159,000 acres

Big Bend G.W.M.D. #5 covering approximately 2,524,000 acres

This gives a total of approximately 13,105,000 acres in Groundwater Management Districts. In the brochure, you will find a map showing the boundaries of the Districts.

K.S.A. 82a-705 provides "No person shall have the power or authority to acquire an appropriation right to the use of water for other than domestic use without first obtaining the approval of the chief engineer, and no water rights of any kind may be acquired hereafter solely by adverse use, adverse possession, or by estoppel."

K.S.A. 82a-706 provides "The chief engineer shall enforce and administer the laws of this state pertaining to the beneficial use of water and shall control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation.

The Legislative Post Audit Report of December 8, 1975, states "The Chief Engineer's responsibility to 'control, conserve, regulate and allot' the State's water resources cannot be fulfilled if water can be used without his approval. Statutory authorization to construct diversion works prior to the Chief Engineer's approval of the location, quantity, and diversion rate denies the need for such information or the necessity of the appropriation process. Also, although the Chief Engineer can limit the quantity allowed under an appropriation right, it is not unlawful to use water in excess of a right." The Legislative Post Audit Report also recommended "It should be unlawful to construct a diversion works and/or use water for other than domestic purposes without permission from the Chief Engineer."

There is no penalty provided in the Water Appropriation Act for failure of a person to obtain the approval of the Chief Engineer before withdrawing or diverting water.

In order for the Division of Water Resources and the Groundwater Management Districts to effectively regulate the withdrawal of ground water



it will be necessary that before any person withdraws or diverts any waters of \*  
the state for any purpose other than domestic use, and except for those holding  
vested rights or certificates of appropriation, an approval of an application  
for beneficial use must first be obtained from the Chief Engineer. This would  
require a change in the Water Appropriation Act.

Consideration should also be given to the establishment of temporary permits \*  
and term permits. A temporary permit would authorize the appropriation of water  
in an amount and from a source approved by the Chief Engineer, would be valid for  
a time period not to exceed three (3) months, would not vest in the holder any  
permanent right, and may be cancelled by the Chief Engineer in accordance with  
its terms. A term permit would authorize the appropriation of water in an amount \*  
and from a source approved by the Chief Engineer for a term of years which would  
not vest the holder with any permanent right and which would expire upon expiration  
of the term of the permit.

Kansas farmers are continuing to expand irrigation. Information compiled  
by the Cooperative Extension Service of Kansas State University shows that in  
1956 approximately 723,000 acres were being irrigated and by 1966, the acreage  
under irrigation had increased to approximately 1,380,000 acres. Recent information  
compiled by the Extension Service shows that approximately 3,000,000 acres were  
irrigated in 1975. The number of applications for permits to appropriate water  
for beneficial use being received in the office of the Chief Engineer, Division  
of Water Resources, Kansas State Board of Agriculture, reflects the growing interest  
in and continuing expansion of irrigation in Kansas.

For the period January 1, 1976 through September 17, 1976, the Division of  
Water Resources received 2,070 applications for permit to appropriate water. This  
is the greatest number received during any similar period in previous years and,  
in fact, exceeds the 2,056 received during the entire year of 1975 which was the  
previous record year.

The filing fee for an application for permit to appropriate water for beneficial use was increased by the 1973 Legislature from \$10 to \$50 per application. It was understood that this increase would be used for new positions in the Division of Water Resources to assist with the reduction of the large numbers of applications pending approval and to reduce the number of applications pending field inspections and make it possible for those filing applications to have their applications processed within a reasonable period of time.

From July 1, 1973 to June 30, 1976, a total of \$301,800 was received in filing fees, of which \$241,440 was due to the increase from \$10 to \$50 per application. During this same period, a total of \$181,620 was spent for new positions.

For the three fiscal years from July 1, 1973 to June 30, 1976, the difference between the additional filing fees and the cost for new position salaries was \$59,820. It appears this amount should have been used for new positions.

Five new positions are requested in the fiscal year 1978 budget, four of which will be primarily for the water appropriation section of the Division. The fifth position is an Account Clerk III who would be responsible for personnel, purchasing, and budget thus relieving a Civil Engineer III, assigned to the water appropriation section, who now spends 50 per cent of his time on matters pertaining to personnel, purchasing, and budget.

First year cost for these four positions for salaries, OASDI, insurance, etc., office furniture and equipment is estimated to be approximately \$48,000. First year cost for the Account Clerk III position is estimated to be approximately \$9,826.

I feel that the Division of Water Resources is a service agency and in order for the Division to meet its increasing responsibilities, we need these new positions.

*State of Kansas . . .* ROBERT F. BENNETT, Governor

## DEPARTMENT OF HEALTH AND ENVIRONMENT

DWIGHT F. METZLER, Secretary

Topeka, Kansas 66620



September 30, 1976

Senator Leslie A. Droge  
 Chairman  
 Committee on Energy and Natural Resources  
 Statehouse  
 Topeka, Kansas

Re: Possible changes in the  
 State Water Appropriation Act

Dear Senator Droge:

I appreciated the opportunity to be present at the hearings concerning possible changes in the State's Water Appropriation Act. Mel Gray had other commitments and could not attend the hearings and Dwight Metzler was able to attend only a short time. After discussing this matter with Mr. Metzler, the following statements are presented for your consideration.

The Department of Health and Environment is very much in favor of requiring prior approval for the withdrawal of water for any purpose other than domestic with the exception of small short term withdrawals. With respect to this particular item, we favor the amendment to K.S.A. 82a-705 as proposed by the Ground Water Management Districts Advisory Committee, a copy of which is attached.

There are two points relating to municipal wells that we request be taken into consideration. One is the matter of supplemental municipal wells which was discussed by the committee at their hearing in the Division of Water Resources' conference room September 29th. We are concerned that possible spacing requirements established by the Ground Water Management Districts might prevent a municipality from maintaining its appropriated water supply by drilling a new well in the event an existing well declines in capacity.

The other point concerns releases from surface impoundments. It is important and essential that the present law protecting releases from storage, to those downstream who have purchased the water, can be administered under any new version of the water appropriation act.

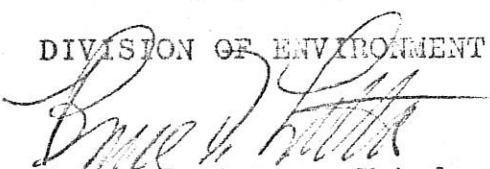
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Page 2  
Senator L.A. Droge  
September 30, 1976

We concur with statements made by James Power that, before any major revisions of the water appropriation act are undertaken, a detailed study be made to determine the benefit of proposed changes and the effect any changes might have on other State statutes or regulations. Such a study should preferably be made by the Water Resources Board.

Sincerely yours,

DIVISION OF ENVIRONMENT

  
Bruce F. Latta, Chief  
Oil Field and Environmental  
Geology Section

BFL:jd

cc: Emalene Correll  
✓ Legislative Research Dept.

W. W. Duitsman, Secretary  
Department of Agriculture

SB. 575

ADVISORY COMMITTEE  
GROUNDWATER MANAGEMENT DISTRICTS



Suggested Amendment to K.S.A. 82a-705

AN ACT concerning water; prescribing certain unlawful acts and providing the same to be misdemeanors; amending K.S.A. 82a-705 and repealing the existing section.

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

2 Section 1. K.S.A. 82a-705 is hereby amended to read as follows:

3 82a-705. (a) No person shall have the power or authority to  
4 acquire *establish* an appropriation right to the use of water for  
5 other than domestic use without first obtaining the approval of  
6 the chief engineer, and no water rights of any kind may be acquired  
7 hereafter solely by adverse use, adverse possession, or by estoppel.

8 (b) It shall be unlawful for any person to willfully divert or  
9 use in excess of three (3) acre-feet of water per calendar year for  
10 any purpose other than domestic without first having made application  
11 and received approval therefor in accordance with the provisions of  
12 K.S.A. 82a-701 to 725, inclusive, and acts amendatory thereof or  
13 supplemental thereto.

14 (c) Any person violating the provisions of this act shall be  
15 deemed guilty of a class C misdemeanor. Each day that any such  
16 violation occurs shall constitute a separate offense.

17 Sec. 2. K.S.A. 82a-705 is hereby repealed.

18 Sec. 3. This act shall take effect and be in force from and after  
19 January 1, 1978.

ATTACHMENT NO. 3

Program Audit Summary  
Regulating the Appropriation and Use of Water

The audit Regulating the Appropriation and Use of Water was authorized by and conducted for the Legislative Post Audit Committee during August - October 1975. The audit had three main objectives:

- To determine whether adequate information is available to and used by decision makers on the safe yield and current use of the State's water resources.
- To examine the process of granting appropriation rights to determine compliance with statutes and regulations.
- To evaluate the State's ability to enforce statutes prohibiting unlawful use, the allocation of water according to priority of right, and the identification and termination of abandoned water rights.

The audit process included the collection and analysis of much data and discussions with personnel of the Board of Agriculture, Division of Water Resources, the Department of Health and Environment, the Kansas Geological Survey, and the Water Resources Board. The audit led to several conclusions, applicable to the situation as it existed in December, 1975. We found that the Chief Engineer of the Division of Water Resources could not adequately protect existing water rights from impairment or, more generally, "conserve, regulate, allot or aid in the distribution of the water resources of the State" because:

- Non-domestic water use can and does legally occur without the knowledge or permission of the Chief Engineer.
- There are no applicable State-wide standards defining and interpreting impairment making it difficult for water users or the Division of Water Resources to judge when impairment is occurring.
- The data collected by several State agencies on the availability and use of water has not been translated into a format useful for making decisions on individual applications for water use or cases of alleged impairment.

We made the following recommendations to improve the Chief Engineer's ability to enforce the Water Appropriation Act:

1. That it be unlawful (a misdemeanor) to construct a diversion works and/or use water for other than domestic purposes without permission from the Chief Engineer. In addition, all persons without a permit using water for other than domestic purposes, should be required to apply for such permission within a specified period.

2. That the Groundwater Protection Act be amended to make it unlawful for a licensed well drilling contractor to construct a well for other than domestic use unless a permit exists and further that he be allowed to proceed only according to that permit.
3. That the Chief Engineer establish rules and regulations clarifying and interpreting all aspects of the Water Appropriations Act. For example, the Division of Water Resources should promulgate rules and regulations clearly defining impairment so that a water user can understand what impairment is and when a right is being impaired.
4. That the Division of Water Resources request, pursuant to K.S.A. 74-510, that the data collected on the availability, use and quality of surface and groundwater be combined by the Board of Water Resources, the Department of Health and Environment and the Kansas Geological Survey, for water resources management and water rights administration.
5. That the Chief Engineer require all nondomestic water users to install water meters in order to provide accurate information on annual water use.
6. That the Chief Engineer develop sufficient information on safe yield and existing use to properly evaluate all applications.

The formal responses of both the Division of Water Resources and the Water Resources Board supported the first recommendation; and, the Board introduced a bill (SB 875) into the 1976 Legislative session which would have accomplished this. The third recommendation, dealing with the establishment of rules and regulations by the Division of Water Resources was agreed to in the Division's response. The Division of Water Resources, Board of Water Resources and Department of Health and Environment also agreed in principle with the fourth recommendation calling for a state-wide data base on water availability and use. The Board of Water Resources indicated that the data was already available but that it needed to be properly used. The Division of Water Resources also agreed in part with the fifth recommendation which called for metering of non-domestic water use, stating that metering would be useful in certain areas if applied in cooperation with groundwater management districts.

REMARKS PREPARED FOR  
COMMITTEE ON ENERGY AND NATURAL RESOURCES

BY

KEITH LEBBIN, EXECUTIVE DIRECTOR  
WESTERN KANSAS GROUNDWATER  
MANAGEMENT DISTRICT #1

Mr. Chairman, and members of this committee. My name is Keith Lebbin, Executive Director of the Western Kansas Groundwater Management District No. 1 in Scott City, Kansas. I would like to take this opportunity to thank you for the chance to discuss with you today some of the problems facing groundwater Districts in Kansas. I am speaking today on behalf of our District, as well as the Advisory Committee to The Division of Water Resources of which I am chairman. This Committee is comprised of members from each Groundwater Management District in Kansas, and several state agencies.

One problem which greatly concerns the management of Districts in Kansas is the construction of new wells. The present law does not require that prior approval be given or that an application be filed before the construction is completed. This makes it very difficult for Districts to manage and regulate the location and number of wells installed. In some areas of the State, there has been more water appropriated for use than there is available. We therefore, feel that if it is necessary to first have approval to construct a well, a better program of conservation and management would follow.

Another item which concerns all Districts and water users as well is the procedure for filing water rights. It creates a great deal of confusion to the applicant, and often times results in the well being completed without a right being issued. It is our feeling that a more simplified procedure could be developed and used in Kansas.

An item which is included in every districts management program is a well spacing regulation. This has been established as a tool to better manage well placement in our Districts. The water law as it is presently written, allows



water users to circumvent this spacing by filing for a change in point of diversion, and establishing supplemental wells. This item, as are several others in the present law, is in direct conflict with many of the objectives of groundwater districts.

The last item I would like to comment on today is that of wastage of water. This is an item of concern to everyone, and one which is not clearly defined. In addition to this, the enforcement of wastage is very difficult and therefore seldom done.

These are but a few of the problems which face Groundwater Management Districts today. Since the recent birth of Districts, we have come a long way, but there is still a great deal of work to do. Districts have for the first time in Kansas begun to face the water problems head on, and work towards equitable solutions. As you look back, there has been very little accomplished over the years in the name of wise use and conservation of our groundwater supplies. We feel that much can and will be done to conserve and prolong our groundwater in Kansas.

I would like to take this opportunity to request that a task force committee be set up to study and develop a more meaningful water law. I would also like to offer the assistance of the Districts in Kansas to totally or partially be assigned the responsibility of developing a law which would in fact be developed around the wise use and conservation of the water supplies in Kansas.

It has been a pleasure to be here today and to discuss with you some of the items facing Districts in Kansas. As one works with and tries to apply the water law as written, it becomes more and more obvious that there are many shortcomings. I feel certain that a more practical solution can be developed for the management of the water of the State of Kansas.

Thank you.

TO: Special Legislative Committee on Energy and Natural Resources.

RE: Proposed changes or amendments to the Kansas Water Appropriation Statutes.

FROM: The Southwest Kansas Groundwater Management District No. 3.

Gentlemen;

My name is David Pope. I am manager of the Southwest Kansas Groundwater Management District No. 3 and represent the district at this hearing. We are pleased to have the opportunity to provide input into your study of the Kansas Water Appropriation Statutes. I would like to relate some of our concerns as a Groundwater Management District, problems we see in the administration of Kansas Water law, and in particular the effect on the districts primary function of conservation and management of Groundwater.

The people of Southwestern Kansas have shown their awareness of a limited water supply by the formation of the Southwest Kansas Groundwater Management District No. 3 earlier this year. The district board of directors adopted our first management program in July, 1976, which includes a well spacing regulation. The regulation has the effect of limiting the appropriation of water which would cause the impairment of prior water rights. However, the Kansas Water Appropriation Law allows the use of water without prior approval for a water appropriation right. Therefore, even though a water appropriation right is denied, a person can proceed with the drilling of a well or completion of diversion work in violation of spacing requirements or other constraints. The districts only recourse to stop this is through court action which is costly, cumbersome and time consuming.

We feel a mandatory system of prior approval for the drilling and construction of new wells and the use of water other than domestic should be required. This would require an amendment to the water Appropriation Act. We feel the amendment should include a penalty clause if it is to be effective. We also feel that the procedure for perfecting a water right should be as simple and as efficient as possible. At present, it is difficult for many people to understand the procedure to perfect a water right and more difficult to protect their rights within the system.

The primary problem of water depletion in Western Kansas is not due to wastage, but rather over appropriation of the supply. However, some wastage does occur. The Kansas Water Appropriation Act does not clearly define wastage and the procedure to prove wastage is difficult and seldom done.

The Southwest Kansas Groundwater Management District No. 3 is vitally concerned with the conservation and proper management of water. We hope you will consider measures to provide us with the tools to make the task easier to accomplish. Thank you for the opportunity to present these comments.

## TESTIMONY

before the

SPECIAL LEGISLATIVE COMMITTEE ON ENERGY AND NATURAL RESOURCES

SEPTEMBER 28, 1976, ROOM 514 OF THE STATE CAPITOL

Presented by Keith Nelson

MEMBER OF THE EXECUTIVE BOARD

KANSAS FARMERS UNION

Mr. Chairman and Members of the Committee:

My name is Keith Nelson. As you may know, I am Chairman of the Kansas Farmers Union's Water Policy Study Committee. We have been taking a hard look at a broad range of water issues in an effort to help inform our members of the critical problems this state faces with its most basic resource: water. Since first coming together last spring, our committee has gathered a wealth of information, and although it has come to no definite conclusions and is not in a position to make concrete recommendations at this time, the committee has a lot of questions to ask. Some of the questions you may already be considering; others, we hope, may broaden your consideration. The committee is of one mind on this: Kansas needs to deal with its water problem now before it grows into a major crisis in the not-too-distant future.

Your hearing can be an important step in this effort, for the Kansas Water Appropriation Act is central to the issue. The statute has largely dictated the direction water use has taken in this state, and it is through amendment of this law that the course of future water development can be altered to avert a tragedy that appears entirely possible in the years ahead.

Kansas may have an ally today -- time. Other states are not so lucky. The State of Texas is already giving consideration to a plan to import water from Arkansas to West Texas, where irrigation promises to run wells dry. Such projects are enormous ventures, and any consideration of them surely should prompt states like Kansas, where water is not yet so critical, to closely examine its present water use practices if it wants to avoid the possibility of someday having to import water.

We would like to pose questions to the committee on three facets of water use and development related to the Water Appropriation Act. These include the (1) General Character of the Law, (2) Procedures to Obtain a Water Right, and (3) Irrigation.

(1) General Character of the Law. The Kansas Water Appropriation Act neither looks back nor ahead; it is a cold-hearted statute, written to serve the present. Those who enforce it have little recourse but to adopt the same posture, and our committee is beginning to see that as water becomes more critical the temptation by state officials to hide behind this stone-faced law grows greater. For we all know there is only so much water available. As long as the present law retains its character, the water will be appropriated on a first-come, first-served basis until there is no more water to appropriate and the books are closed and doors locked at the Division of Water Resources.

A ridiculous assessment? Our committee doesn't think so. Our study of the law shows nothing to prevent such a possibility. We concede that the Chief Engineer has some discretionary powers, but his duty is clear; appropriate the water on a first-come, first served basis. Even the guidelines he is given in the law are shot to pieces later in the statute. For example, in section 82a-707, it states that the following priority is given when appropriating water--domestic, municipal, irrigation, industrial, recreational and water power uses. But in the very next sentence, the law says, "However, the date of priority of an appropriation right, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights that attach to it." What the law is really saying here is this: The six uses of water are all beneficial, but if the water supply is limited, the one who comes along first gets it, even though it might not be put to the most beneficial use. We know of a situation in the state where a community fears its water supply may be jeopardized because of an industrial water request. But because the industrial user has a lower application number the community has little protection under the law. We will speak more on this situation later in our testimony.

We wonder if the present law's should be changed from encouraging the use of water to encouraging the practice of water conservation. The law now gives lip-service to the idea of conservation. In order to protect your water right, for example, you must USE THE WATER. Otherwise, you stand to lose that right. So much of the law seems geared to a

pell-mell rush to use up the water, even though experts tell us the supply is limited.

Our committee also feels the state ought to consider a re-examination of the concept of "beneficial use." Given the limited supplies, isn't conservation the most beneficial use of all? You don't get that idea by reading the present law. Industrial use of groundwater is a good example, we feel. Is it really beneficial to this state to allow power plants to use this source of high-quality water when other sources are available? Shouldn't the law forbid it? We again point to the situation we spoke of earlier. Kansas Power and Light Company wants to sink 16 wells near Belvue, Kansas, to supply its Jeffery Power Plant now under construction near the community. The utility has applied for 16,000 acre feet of water annually. It wants to use groundwater because it is cheaper than using water from the Kansas River, which runs nearby, or the Milford or Tuttle Creek reservoirs, which are designed specifically for industrial use. KP&L has every right, under present law, to seek the groundwater--and, more importantly in this case, it filed its water applications before the town of Belvue did. Thus, the Chief Engineer -- following the law -- has to give KP&L every consideration even though Belvue's water supply could be jeopardized and even though municipal use has a greater priority, supposedly, than industrial.

We ask, then, should such developments be allowed to occur? Shouldn't the law at least be based on the idea that groundwater is too precious to use for large-scale industrial purposes and that it should be conserved for domestic and municipal uses and perhaps irrigation?

In summary, we wonder whether the state should rewrite the present law with the idea that conservation be the goal--not use. Surely, there are many ways to promote water conservation, but as long as the present law retains its character, maximum use will continue to be the goal. We will speak more on this later in our testimony.

(2) Procedures to Obtain a Water Right. Again we have some questions. For example, just what is the official role of the Chief Engineer in the State Division of Water Resources and that of the Director of the Kansas Water Resources Board? It is our understanding that the Division is to administer policy and the Board is to make policy. If that is the case, why, then, did the Water Resources Board negotiate the water contract with Kansas Gas and Electric? Why didn't the Division of Water Resources--the administering agency--do it?

We also have found that the Division of Water Resources in Topeka is flooded with applications for water rights and is far behind in processing those applications. Is the Division understaffed? We're told the Division budgets only \$23,000 to handle the applications. Of some 27,000 applications made since 1945, only 5,200 have ever been perfected with the issuance of a certificate. One Division official told us that if the staff doubled its work output for the next ten years, the Division would catch up with the applications, providing no new ones were filed in the meantime. It seems to us that the application process needs to change if Kansas intends to stick with its water appropriation law.

We also are very concerned about such communities as Belvue, which have not--or only recently--filed for water rights. Many communities don't yet realize they should have applied for water rights years ago. Now many of them find themselves far back in the line for water appropriations. We wonder if such communities ought not to be given a vested right to the water they need, for surely their needs are basically for domestic purposes and in no way should their water supply be jeopardized because of some quirks in the law. It is irony to us that though the law talks so much of "beneficial use" it doesn't necessarily guarantee that water will be put to the most beneficial purpose. We think the Chief Engineer ought to have the power to call domestic users to the head of the line and make sure they get the water they need before any others.

(3) Irrigation. We now come to perhaps the most important consideration we have in our study -- irrigation. Surely, irrigation has been a boon to this state. Its development has helped increase food production and has pumped economic life into the rural areas. Nonetheless, we have many questions to ask.

We note that this committee has told only last Decmeber, that, given the present rate of depletion, the western third of Kansas, where 65 percent of our groundwater is located, has approximately 45 years of groundwater supplies remaining. Make that 44, as a year has almost passed.

When we publicly repeated what you were told, the newspapers tried to assure the public that this was only "speculation" and the "experts" held different opinions. But we have yet to find any "expert" who looks with confidence to the future of irrigation in western Kansas. We quote

Mr. Frank Trotman, Executive Secretary of the Southwest Kansas Irrigation Association in a recent issue of the Kansas Farmer: "The amount of water of course is basic, but before we exhaust our supply, we will abandon irrigation. Pumping costs alone will mandate that irrigation is no longer feasible."

Now, we'd also like to quote from this committee's interim report to the Kansas Legislature, dated December 1, 1975: "The Chief of Water Resources, State Geological Survey, told the Committee that chief among the considerations that should be made by the people directly involved in the irrigation community are the following: 1. Over what time span do the people in the individual irrigation regions want the water to last? 2. How much water should be left in the system to meet emergency needs for the municipal and irrigation purposes in the event of a drought?"

We find the two quotes above very interesting. We point out that both speak under the assumption that the water supply will run out or just become economically unfeasible to use for irrigation.

Now, we ask: If we already know that we are going to experience problems in the future shouldn't we be taking some pretty drastic steps now to assure that we won't jeopardize water supplies for future generations? Don't we have this obligation? We also note that the committee report states that irrigators should determine how long they want the water supply to last. We ask, why should irrigators have such authority? What about the other people in the region? Don't they have a say? What about those who dryland farm and those who live in the small towns that dot the landscape of western Kansas? Don't they have a right to determine how long they want their water supplies to last? They only want water for their domestic use--but they stand to have their water supply jeopardized because of the tremendous growth of irrigation.

And some of these people are experiencing problems right today. We recently visited with a person in western Kansas whose well went dry because of the installation of several pivot irrigation systems. The family has farmed in the area for some 27 years and has made a living without irrigation. But the person's well went dry, and it cost \$4,000 to drill a new one. The person paid for the unwelcomed expense, and when this person complained in a letter to the local newspaper that "suitcase" irrigators were the cause of the problem, the local editor apologized in the next issue for printing the letter. William Allen White must have



turned over in his grave. We are referring to the party as "this person" because the person is frightened that the "suitcase farmers" will create more problems if the farmowner publicly complains again. The person wrote us and asked us to come to visit. In the letter, the person said: "It is disgusting to know that one cannot have a farm home with water because the big fellows must take it all for their big irrigation wells to get a little richer regardless of whether we living on the farms have a drink or not. If they keep this water draining going, the people in towns may find they don't have water either. Perhaps we will have a dust bowl desert again then. I know I would like to have some water in my well to drink which I don't have tonight."

This is happening in Kansas today. We have other examples. We know of a man who lies in his bed at night listening to the pivot irrigation system working near his farm and knowing his own well is going dry. He is helpless to do anything about it. The fact is this: if your domestic well goes dry because irrigation has lowered the water table, you just have to dig your well deeper to keep pace with the irrigation systems. And at your expense. That's the way the Kansas Water Law works.

We plan to publish a story on the situation we discussed above concerning the person whose well went dry and complained to the editor. But this person does not want us to use any names -- the person, as we said, is frightened over what might happen if we do publish a story. We are hopeful we can work something out so this story and others like it can become public information. We welcome further questions on this, although we will not divulge the name.

We have noted that irrigation has expanded greatly in recent years. Over 3 million acres of Kansas farmland is under irrigation. But, again, we have questions. Just how much of the increase in irrigation is due to the efforts of tax-loss farming outfits which rush in with lots of money aiming to make lots more. This has become a big problem in Nebraska, for example. These companies mostly install pivot irrigators, often on marginal land not really suitable for irrigation. These pivot systems cost over \$50,000 -- few bona fied farmers can afford such costs, particularly the expense of putting in a dozen or more of the systems at one time, which we know is happening in western Kansas. We are attempting to pinpoint the location and ownership of these developments, and in the future we hope to provide such committees as yours with useful information about them.

For now, we want to ask questions. We wonder, for example, what will be the real impact of pivot irrigation on the communities of western Kansas? Surely, it is a short-term thing. It will, as the irrigation official said, become economically unfeasible to irrigate once the water table is lowered to a certain level. What happens then? Will the corporation farming outfits pull out of the area? What will the land be like afterward, especially if it was marginal to begin with? What is the social, economic, political and environmental impact of pivot irrigation? Does such irrigation bring more people to western Kansas? Or is money the real reason why communities welcome such developments? Will pivot irrigation increase the number of small family farmers in western Kansas, or will it spell the demise of many of them? If pivot irrigation systems are financed by outsiders, how much of the benefits stay in Kansas?

We have some other questions about irrigation. Could Kansas for example, require that all irrigators be regulated in the public interest? We note that the General Accounting Office recently reported that more than half of the water delivered to farms for irrigation is being wasted through overwatering. The use of water by irrigators also affects the public welfare so is it not reasonable to have some assurance that conservation of water is being practiced on irrigation farms?

We would like to leave the committee with one other question. Given the problems it causes now and may cause in the future, is irrigation necessarily a beneficial use of water in this state in every case where it is done? We know that it deserves an answer after consideration by the people of the state of Kansas.

KEITH NELSON, chairman