

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Representative David J. Heinemann at  
Chairperson

3:30 ~~xxx~~/p.m. on January 18, 1983 in room 519-S of the Capitol.

All members were present except:

Representative Ben Foster (excused)

Committee staff present:

Ramon Powers, Research Department  
Theresa Kiernan, Revisor of Statutes' Office  
La Nelle Frey, Secretary to the Committee

Conferees appearing before the committee:

Patrick Regan, Chairman, Kansas Water Authority.

Patrick Regan discussed the Kansas Water Authority's recommendations for legislative consideration during the 1983 session (see attachment 1). He stated that Kansas no longer has an abundance of water and all of the state's planning, and supply and demand projection efforts regarding water issues must consider the equitable distribution of remaining supplies of water among all of the state's water users. He said the state must also face up to its responsibilities in new water development since the federal government will no longer provide funds for projects as it has in the past.

Mr. Regan emphasized that key among the Authority's recommendations was that the Legislature and the Governor allocate manpower and financial resources to develop a statewide master implementation and development plan and a related statewide master research plan to address water resources needs and problems facing the state. He also stressed the need for establishment of a computerized data bank that would pull together all of the water resources data that is now scattered throughout state agencies.

Mr. Regan discussed the proposed Interbasin Transfer legislation. He said existing statutes are too vague or inadequate to rely upon when massive amounts of water are at stake and the interests of so many water users are involved.

Mr. Regan stated that the Authority has proposed extensive revisions in the state's water supply storage act--the statute that provides guidelines for selling water from the major federal reservoirs. He said amendments have been proposed to current statute to further implement the proposed Groundwater Quality Management Plan. The Authority also recommends statutory changes to enable the state to begin achieving minimum desirable streamflows.

Mr. Regan distributed to each committee member a copy of the Kansas Water Authority Recommendations to the 1983 Kansas Legislature, which details the Authority's recommendations outlined in his report to the committee. A brief question and answer period followed the presentation.

There being no further business to come before the committee, the meeting adjourned at 4:45 p.m.

The next meeting of the committee will be held at 3:30 p.m., January 19, 1983.

Rep. David J. Heinemann, Chairman

Date January 18, 1983

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

| NAME               | ADDRESS                     | ORGANIZATION                       |
|--------------------|-----------------------------|------------------------------------|
| David Koh          | 715 Western                 | Gov. office                        |
| Barry Swanson      | 1434 Westbrook, Lawrence    | Gov. office                        |
| Jane C. McLaughlin | 8654 Woodson, Overland Park |                                    |
| Beth Wilkie        | Gov. Topeka                 | Gov. Sec'y                         |
| Ed W. Bulley       | Home, Ka                    | Kansas Coun. Women                 |
| Larry Panning      | Ellenwood, Ka               | Kans. Water Auth.                  |
| Mary Fund          | Box 133                     | Kan. Rural Center<br>Whiting, Ko.  |
| Kenny Wedel        | Topeka                      | Kansas Natural Resource<br>Council |
| Helen Smith        | Wichita                     | Swanson                            |
| Jack Alexander     | Topeka                      | Ks. Water Authority                |
| Mike Withrow       | Wichita                     | Ks. Water Authority                |
| Clark Duffy        | Topeka                      | Ks. Water Office                   |
| Martha Walker      | Topeka                      | Ks. Water Authority                |
| Bob Binder         | Topeka                      | Ks. Water Authority                |

1-18-83

House Energy and  
Natural Resources

REMARKS OF PATRICK J. REGAN  
KANSAS WATER AUTHORITY CHAIRMAN  
TO THE COMMITTEES ON  
ENERGY AND NATURAL RESOURCES

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

ON BEHALF OF THE KANSAS WATER AUTHORITY, IT IS MY PRIVILEGE  
TO PRESENT TO YOU THE AUTHORITY'S RECOMMENDATIONS FOR  
LEGISLATIVE CONSIDERATION DURING THE 1983 SESSION.

I HOPE THAT THIS REPORT MEASURES UP TO THE EXPECTATIONS YOU  
HAD FOR THE AUTHORITY WHEN YOU CREATED IT IN 1981 TO ADVISE  
YOU AND TO MAKE RECOMMENDATIONS DIRECTLY TO YOU. WE NOW  
HAVE A SMALL UNDERSTANDING OF THE EFFORT THAT MUST GO INTO  
THE PROCESS OF DEVELOPING LEGISLATION WORTHY OF BECOMING  
A STATUTE OF THE STATE OF KANSAS. WE HAVE MADE ONLY THE  
BEGINNING AND WE APPRECIATE THAT YOU WILL INVEST MANY MORE  
HOURS IN ANALYZING OUR RECOMMENDATIONS. WE BELIEVE THE  
AUTHORITY WAS CREATED SPECIFICALLY TO ASSIST THE LEGISLATURE  
AND WE WILL CONTINUE TO DO THAT.

REGAN-2

THE AUTHORITY'S RECOMMENDATIONS ARE UNDERPINNED WITH A VERY BASIC PHILOSOPHY: WE MUST DRAMATICALLY CHANGE OUR THINKING AND OUR WATER POLICIES IN KANSAS TO RESPOND TO REALITY.

IT APPEARS CLEAR THERE IS NO LONGER AN ABUNDANCE OF WATER IN THIS STATE. THERE ARE NO LONGER SUPPLIES OF GROUNDWATER, OR STREAM WATER OR RESERVOIR WATER THAT ARE SIGNIFICANTLY SURPLUS TO OUR ANTICIPATED WATER SUPPLY NEEDS. THERE SIMPLY ARE NOT SUFFICIENT SUPPLIES OF WATER ON LINE IN THIS STATE TO MEET THE PREDICTABLE DEMANDS, PARTICULARLY OF OUR MUNICIPAL AND INDUSTRIAL USERS THE NEXT 30 TO 50 YEARS.

WE CAN NO LONGER RELY ON THE FEDERAL GOVERNMENT TO SUBSIDIZE, AT A VERY LOW COST, OUR LARGE RESERVOIR WATER SUPPLY PROJECTS THAT WILL BECOME INCREASINGLY INVALUABLE SOURCES OF SUPPLY AS STREAMFLOW AND GROUNDWATER ALTERNATIVES ARE EXHAUSTED. IT IS URGENT THE STATE FACE UP TO ITS NEW WATER DEVELOPMENT RESPONSIBILITIES BECAUSE THE FEDERAL GOVERNMENT WILL NO LONGER BANKROLL PROJECTS AS IT HAS IN THE PAST. THE FEDERAL GOVERNMENT NOW PROPOSES THAT THE TENS OF MILLIONS OF DOLLARS ONCE REPAID OVER 40 OR 50 YEARS TO DEVELOP A RESERVOIR SUPPLY BE PUT UP FRONT IN CASH FOR NEW PROJECTS. STORAGE SPACE AT RESERVOIRS THAT COULD NOW BE REALLOCATED TO THE STATE FOR



REGAN-3

WATER SUPPLY STORAGE WILL BE PRICED AT CURRENT CONSTRUCTION COSTS. ALTERNATIVES TO BORROWING FROM THE GENERAL FUND TO ASSURE WATER SUPPLIES INTO THE FUTURE MUST BE DEVELOPED NOW.

MANY OF OUR WATER ALLOCATION AND DISTRIBUTION DECISIONS ARE NEARLY IRREVERSIBLE. SELLING OUT AN ENTIRE RESERVOIR TO ONE USER OR CONSORTIUM OF USERS CANNOT EASILY BE REVERSED WHEN THE TREMENDOUS CAPITAL COSTS OF PERMANENT TREATMENT AND DISTRIBUTION FACILITIES ARE CONSIDERED. OUR DECISIONS MUST BE MADE WITH A FULL UNDERSTANDING OF THE NEEDS OF OTHER USERS NOW AND IN THE FUTURE FOR THE SAME SUPPLY.

OUR STATE PLANNING AND SUPPLY AND DEMAND PROJECTION EFFORTS WILL BE EVEN MORE CRITICAL TO THE EQUITABLE DISTRIBUTION OF REMAINING SUPPLIES OF WATER AMONG ALL OF THE STATE'S WATER USERS. PLANNING FOCUSED ON SMALL AREAS OF THE STATE WILL JEOPARDIZE THE FUTURES OF MANY CITIES AND THE FUTURE OF SOME INDUSTRIAL DEVELOPMENT WHICH VERY PREDICTABLY WILL TURN TO SCHEMES OF IMPORTING WATER FROM ANOTHER PART OF THE STATE TO THEIR WATER-SHORT AREA. THE STATEWIDE INTERESTS IN ANY MAJOR UNTAPPED WATER SUPPLIES MUST BE WEIGHED JUDICIOUSLY IN ORDER TO MAKE ALLOCATION DECISIONS IN THE BEST INTEREST OF THE ENTIRE STATE.

REGAN-4

WE ARE NOW AS A STATE, FACING AND SHARING THE SAME WATER PROBLEMS. WE ARE ALL IN THIS TOGETHER. AND WE DO NOT HAVE AT HAND, SUFFICIENT MONEY, OR STATUTORY TOOLS OR THE ADEQUATE BLUEPRINTS FOR TAKING ACTION TO ADDRESS THESE PROBLEMS.

IT IS THIS CONCERN -- THAT THE STATE BE EQUIPPED TO BETTER DEAL WITH THE NEW PROBLEMS CONFRONTING IT -- THAT HAS GUIDED THE WORK OF THE AUTHORITY THIS PAST YEAR AND RESULTED IN THE RECOMMENDATIONS WE BRING BEFORE YOU TODAY. THIS CONCERN AND THIS PHILOSOPHY CUTS ACROSS EACH OF THE PACKAGES OF PROPOSED LEGISLATION.

PERHAPS KEY AMONG THE RECOMMENDATIONS REQUIRING LEGISLATIVE ENDORSEMENT AND ACTION IS THE REQUEST THAT THE LEGISLATURE AND THE GOVERNOR ALLOCATE THE MANPOWER AND THE FINANCIAL RESOURCES TO ENABLE KANSAS TO DEVELOP A STATEWIDE MASTER IMPLEMENTATION AND DEVELOPMENT PLAN AND A RELATED STATEWIDE MASTER RESEARCH PLAN TO ADDRESS WATER RESOURCES NEEDS AND PROBLEMS FACING THE STATE AS A WHOLE.

THE AUTHORITY BELIEVES THIS INVESTMENT IS URGENT. IT STRONGLY URGES THAT THE COMMITMENT BE SUFFICIENT TO PROVIDE THE STATE THE ABILITY TO DEVELOP THE FINEST PLAN POSSIBLE WITH THE ASSISTANCE OF THE MOST CAPABLE PEOPLE THAT CAN BE RECRUITED FOR THIS EFFORT.

REGAN-5

THE NEED FOR THIS INVESTMENT WAS UNDERSCORED TIME AND AGAIN AS THE AUTHORITY WORKED TO COLLECT INFORMATION NECESSARY TO MEET THE REQUESTS FROM THE GOVERNOR AND THE LEGISLATURE FOR POLICY RECOMMENDATIONS.

OUR WATER RESOURCES DATA IS NOW SCATTERED THROUGHOUT THE STATE AGENCIES. SOME STATISTICS ARE IN REPORTS SHELVED AND GATHERING DUST. OTHER STATISTICS ARE LOCKED IN INSTITUTIONAL MEMORY. SOME IS STORED ON VARIOUS DIFFERENT COMPUTERS -- NONE OF WHICH TALK TO EACH OTHER IN THE SAME LANGUAGE. PAST STUDIES HAVE TRADITIONALLY FOCUSED ON A SINGLE AREA OF THE STATE OR A SINGLE GROUP OF COUNTIES. AS FAST AS THEY ARE OUTDATED, A STUDY IS BEGUN IN ANOTHER AREA OF THE STATE. THE INFORMATION IS RARELY GATHERED CONCURRENT ON A TIMELY BASIS.

THE DATA GATHERING, INVENTORYING, STORING AND EVENTUALLY, THE COMPUTER RETRIEVAL CAPABILITIES IMPLICIT IN CONSTRUCTING THE BASIS OF A WATER DEVELOPMENT AND IMPLEMENTATION PLAN AND A MASTER RESEARCH PLAN SHOULD ASSIST EVERY AGENCY RESPONSIBLE FOR WATER MANAGEMENT, PLANNING AND ADMINISTRATION AND ENFORCEMENT IN THIS STATE. MORE IMPORTANTLY, IT SHOULD PROVIDE PLANNING AND BUDGETING CAPABILITIES THAT NEITHER THE POLICYMAKERS NOR THE LAWMAKERS HAVE HAD BEFORE.

REGAN- 6

A DATA BANK WILL BE BUILT THAT FINALLY HOLDS A TRUE PICTURE OF THE WATER SUPPLY AND DEMAND SITUATION FACING THIS STATE. IT WILL BE ACCESSIBLE AT ALL TIMES, EVENTUALLY THROUGH COMPUTER TERMINALS, TO FACILITATE DAY-TO-DAY ADMINISTRATIVE DECISIONS AND TO ANSWER ALL QUESTIONS PLANNERS, RESEARCHERS AND POLICYMAKERS PUT TO IT.

IT WILL PROVIDE A UNIFORM AND OBJECTIVE METHOD OF EVALUATING OPTIONS TO FUND AND PURSUE RESEARCH AND TO DEVELOP WATER RESOURCES. IT SHOULD PROVIDE A CLEAR DIRECTION FOR RESEARCH TO BE CONDUCTED FOR PRIORITY WATER MANAGEMENT DECISIONS AND SOLUTIONS.

IT SHOULD PROVIDE THE BACKUP NECESSARY TO MAKE ASSESSMENTS CRITICAL FOR DECISIONS ON EVERY WATER PROJECT OF ANY KIND WHETHER IT'S A QUESTION OF APPROVING DRILLING ANOTHER WELL, OR OF APPROPRIATING MORE FROM A STREAM OR TO APPROVE A WATERSHED PROJECT OR A DECISION TO BUILD A LAKE OR A RESERVOIR.

IT SHOULD PROVIDE A QUICK SEARCH OF STORED INFORMATION TO ALERT DECISIONMAKERS TO THE TRADE-OFFS INHERENT IN A PROJECT. THE SYSTEM, WHICH WILL BE ABLE TO IDENTIFY SUPPLY AND DEMAND, THE SIZE OF PROJECTED DEMANDS AND THE ORDER THEY WILL MATERIALIZE, WILL NEVER BE A SUBSTITUTE FOR THE HUMAN POLICY RECOMMENDATIONS

REGAN- 7

OR FOR THE DEBATE AND FOR THE FINAL DECISIONS THAT MUST BE MADE BY PEOPLE INVOLVED IN WATER MANAGEMENT IN KANSAS. IT WILL BE A PARTNER, A TOOL IN MOVING THE STATE FORWARD IN THE AREA OF ASSESSING STATEWIDE NEEDS AND DEVELOPING STATEWIDE STRATEGIES TO MEET THOSE NEEDS.

A COMPUTER, WITH THE PROPER DATA THAT IS CONSTANTLY UPDATED FOR THE STATE AS A WHOLE, CAN INVENTORY THOUSANDS OF FACTS IN STORAGE A MINUTE AND CROSS-CHECK ALL INFORMATION AND PICK A SERIES OF DEVELOPMENT PRIORITIES OR RESEARCH PRIORITIES THAT SHOULD BE ADDRESSED WITH A SPECIFIC INVESTMENT SCHEDULE.

THE POLICYMAKERS AND LAWMAKERS CAN THEN SIT DOWN, AND FOR THE STATE AS A WHOLE AND WITH A CONFIDENCE THEY HAVE NOT BE ABLE TO HAVE BEFORE, LINE OUT A TRUE MASTER PLAN TO IMPLEMENT WATER RESOURCES MANAGEMENT AND DEVELOPMENT STRATEGIES THAT RESPOND TO THE NEEDS OF THE STATE AS A WHOLE.

WE HAVE OUTLINED THIS PROPOSAL IN MORE DETAIL IN OUR REPORT. I COMMEND THAT SECTION TO YOU. THAT RECOMMENDATION IS OF UTMOST IMPORTANCE TO THE AUTHORITY, AND I BELIEVE, TO ALL OF THE WATER USE INTERESTS OF THIS STATE.

IN THE INTERIM, AS THIS PLANNING CAPABILITY IS DEVELOPED, THE

REGAN-8

KANSAS WATER AUTHORITY RECOMMENDS FAVORABLE ACTION ON TWO LEGISLATIVE PROPOSALS -- BOTH AIMED AT ENHANCING THE STATE'S REAL ABILITIES TO MANAGE WATER RESOURCES. BOTH ARE NEEDED IF THIS STATE IS TO MEET ITS EXISTING STATUTORY RESPONSIBILITIES TO PROVIDE SUFFICIENT SUPPLIES OF WATER FOR THE ANTICIPATED FUTURE NEEDS OF ALL THE PEOPLE OF THE STATE AND IF IT IS TO MEET ITS STATUTORY RESPONSIBILITIES TO ALLOCATE AND DISTRIBUTE WATER IN THE BEST INTERESTS OF ALL ITS PEOPLE.

THE KANSAS WATER AUTHORITY URGES THE 1983 LEGISLATURE TO ADOPT A NEW STATUTE TO PROVIDE THE MACHINERY NECESSARY FOR THOROUGH CONSIDERATION OF ALL INTERESTS IN THE STATE WHEN A PROPOSAL IS MADE TO TRANSFER WATER ACROSS MAJOR RIVER BASIN BOUNDARIES.

IT APPEARS THAT PROPOSALS TO MOVE SUBSTANTIAL AMOUNTS OF WATER ACROSS RIVER BASIN BOUNDARIES IN KANSAS ARE PREDICTABLE IN THE NEAR FUTURE. THE AUTHORITY BELIEVES THAT THE STATE DOES HAVE A KEEN INTEREST IN BALANCING THE BENEFITS AND THE DETRIMENTS EXPECTED TO RESULT FROM A PROPOSED DIVERSION. THE PROPOSED INTERBASIN TRANSFER LEGISLATION, ENDORSED BY THE AUTHORITY, PROVIDES DISCRETION TO DETERMINE ON A CASE-BY-CASE BASIS WHAT THE STATE'S BEST INTERESTS ARE.

REGAN-9

THE TASK OF WEIGHING AND MEASURING DETRIMENTS, BENEFITS AND INTERESTS OF THE ENTIRE STATE DEMANDS A CERTAIN FLEXIBILITY IN THE STATUTE. THE AUTHORITY DOES NOT PROPOSE A RESTRICTIVE STATUTE OR A STATUTE WITH ABSOLUTE PROTECTION FOR THE BASIN OF ORIGIN OF THE WATER AS SOME STATES HAVE DONE.

IN DEVELOPING A PICTURE OF FUTURE SUPPLY AND DEMAND PROJECTIONS FOR KANSAS, IT BECAME CLEAR THAT WATER SUPPLIES IN KANSAS ARE UNEVENLY DISTRIBUTED. IF THE BEST INTERESTS OF THE STATE AS A WHOLE ARE SERVED BY ALLOCATING AND SHARING THE STATE'S RESOURCES AMONG ALL ITS WATER USERS, THAN RESTRICTIVE LEGISLATION IS NOT IN THE BEST INTEREST OF THE STATE AS A WHOLE.

NEITHER DOES THE AUTHORITY BELIEVE IT IS IN THE BEST INTEREST OF THE STATE TO TURN ITS BACK TO THE INCREASING PROSPECTS OF TRANSFERS AND EXPECT TO DEAL WITH THEM WITH CURRENT LAWS. CURRENT LAWS DO NOT SPEAK SPECIFICALLY TO THE FINDINGS THAT SHOULD BE MADE OR THE ISSUES THAT SHOULD BE WEIGHED BEFORE AN INTERBASIN TRANSFER OF WATER IS APPROVED BY THE STATE. EXISTING STATUTES ARE TOO VAGUE OR INADEQUATE TO RELY UPON WHEN THIS MUCH WATER IS AT STAKE AND THE INTERESTS OF SO MANY WATER USERS ARE INVOLVED. THE DRAFT BILL PROVIDES THE STATE GUIDELINES AND A MECHANISM FOR CONSIDERING WHETHER TO APPROVE THE TRANSFERS.



REGAN- 10

THE DECISION TURNS ON THE INTERESTS OF THE STATE AS A WHOLE.

THE BILL DESIGNATES SIX MAJOR BASINS ACROSS WHICH THE TRANSFER OF WATER WILL TRIGGER THE ADDITIONAL SCRUTINY. A HEARING WOULD BE HELD WHETHER TO APPROVE THE TRANSFER, SPECIFIC FINDINGS WOULD BE MADE AND A DECISION RENDERED. A PROCESS FOR APPEALING DECISIONS IS PROVIDED.

SPECIAL PROVISIONS ARE MADE FOR TEMPORARY TRANSFERS DURING EMERGENCIES AND PROVISIONS ARE MADE TO SUSPEND A FULL-BLOWN HEARING OF A THREE-MEMBER PANEL IF THE AMOUNT OF WATER PROPOSED TRANSFERRED BY A SMALL USER IS LESS THAN 100 MILLION GALLONS PER YEAR.

DETAILS OF THE BILL ARE OUTLINED IN THE NARRATIVE REPORT AND A COPY OF THE DRAFT BILL IS PROVIDED IN THE APPENDIX TO THE REPORT. THE FULL AUTHORITY, IN RECOMMENDING THIS MANAGEMENT TOOL TO THE LEGISLATURE, CONCLUDES IT WOULD BE PRUDENT FOR THE STATE TO DETERMINE WHAT INTERESTS IT HAS IN THE MANAGEMENT AND DISTRIBUTION OF ITS WATER RESOURCES AND THAT THE STATE SHOULD PUT INTO PLACE NOW, PROCEDURES FOR CONSIDERING INTERBASIN TRANSFERS OF WATER.

REGAN-11

THE AUTHORITY HAS ALSO PROPOSED EXTENSIVE REVISIONS IN THE STATE'S WATER SUPPLY STORAGE ACT -- THE STATUTE THAT PROVIDES GUIDELINES FOR SELLING WATER FROM THE MAJOR FEDERAL RESERVOIRS.

WHILE THE AUTHORITY DELIBERATED AT LENGTH AND DOES MAKE RECOMMENDATIONS ON PRICING WATER AND REVISING CONTRACT PROVISIONS, TWO OTHER ELEMENTS OF THE AUTHORITY'S PROPOSED REVISIONS ARE KEY TO THIS MANAGEMENT QUESTION.

THE AUTHORITY HAS PROVIDED SUBSTANTIAL NEW LANGUAGE IN THE BILL THAT GIVES THE STATE THE SPECIFIC AUTHORITY TO REJECT A PROPOSED SALE, TO DIRECT THE APPLICANT TO ANOTHER SOURCE OF WATER AND TO APPROVE WATER SALES CONTRACTS FOR AMOUNTS OF WATER LESS THAN REQUESTED. NONE OF THIS LANGUAGE EXISTS IN CURRENT LAW.

THE AUTHORITY ALSO PROPOSES NEW LANGUAGE THAT REQUIRES SPECIFIC ASSESSMENTS OF THE APPLICANTS NEEDS AND OTHER USERS NEEDS FOR THAT SUPPLY. THERE ARE NINE SPECIFIC CONSIDERATIONS REQUIRED BEFORE APPROVING AN APPLICATION. THE NEW LANGUAGE PROPOSES THAT A DETERMINATION MUST BE MADE THAT IT IS IN THE PUBLIC INTEREST TO APPROVE THE PROPOSED SALE OF WATER. NO SUCH DETERMINATION APPEARS IN CURRENT LAW. THE NEW LANGUAGE ALSO REJECTS THE NOTION THAT RESERVOIR WATER SALES SHOULD LARGELY BE DECIDED ON THE BASIS OF WHOEVER GETS THERE FIRST

REGAN-12

WITH THE PIPELINE AND THE MONEY GETS THE WATER.

ANOTHER KEY ELEMENT OF THE BILL SPEAKS TO SETTING A PRICE FOR WATER THAT INCLUDES A REPLACEMENT COST FOR THE RESERVOIR WATER SUPPLY THAT IS NOW THE FUTURE OF THE RESERVOIR WATER USER. THE AUTHORITY APPROACHES THIS FROM THE THINKING THAT ONCE A USER BUYS INTO THE RESERVOIR SYSTEM, HIS FUTURE IS THAT RESERVOIR SYSTEM AND THE CONTINUED GROWTH AND VIABILITY OF THAT SYSTEM. IF THAT USER HAD OTHER GROUNDWATER OR SURFACE WATER ALTERNATIVES, HE WOULD MORE THAN LIKELY HAVE DEVELOPED THOSE FIRST.

THE AUTHORITY PROPOSES A 2.5 CENTS PER 1,000 GALLONS REPLACEMENT CHARGE THAT UNLIKE SENATE BILL 95, IS DEDICATED STRICTLY TO AUGMENTING AND ASSURING A FUTURE RESERVOIR SYSTEM WATER SUPPLY TO THE RESERVOIR USERS. IT IS IN THEIR INTEREST TO CONTRIBUTE TO PERPETUATING THE RESERVOIR SUPPLY SYSTEM. AND THE STATE'S ABILITY TO DO THAT AS IT HAS IN THE PAST IS SERIOUSLY UNDERMINED WITH THE NEW UPFRONT MONEY REQUIREMENTS AND CURRENT CONSTRUCTION COST REQUIREMENTS OF THE FEDERAL GOVERNMENT. THE FUTURE VIABILITY OF RESERVOIR WATER SUPPLIES MUST BE ADDRESSED BY THIS STATE. THE AUTHORITY'S RECOMMENDATIONS IN ITS PROPOSAL ARE THE FIRST STEP IN THIS DIRECTION.

THE AUTHORITY ALSO PROPOSES CREATING A SEPARATE CONSERVATION WATER SUPPLY CAPACITY FUND TO RECEIVE ALL USER REVENUES AND

REGAN- 13

TO BE DEDICATED SOLELY TO PAYING RESERVOIR DEBTS ON THE GENERAL FUND AND TO DEVELOPING ADDITIONAL RESERVOIR WATER SUPPLY CAPACITY.

THIS PROPOSAL ALSO IS A STEP TOWARD IDENTIFYING WATER REVENUES AND RETURNING WATER REVENUES TO WATER DEVELOPMENT. THIS FUNDING SEPARATION CAN BE THE BASIS FOR BUILDING ADEQUATE FUNDING RESPONSES IN THE FUTURE TO FINANCE WATER SUPPLY ACQUISITION AND DEVELOPMENT PROJECTS.

OTHER PROPOSALS IN THE RECOMMENDED REVISIONS INCLUDE CHARGING WATER USERS INTEREST ON THAT PORTION OF THEIR CONTRACTED WATER SUPPLY THAT IS CURRENTLY UNUSED, STORED FREE OF CHARGE AND UNAVAILABLE TO OTHER WATER USERS. THE AUTHORITY RECOMMENDS VARIABLE INTEREST RATES BE CHARGED INSTEAD OF LOCKING IN A PRECISE FIGURE AS SENATE BILL 95 PROPOSED. THE INTEREST WOULD BE THE EQUIVALENT OF INTEREST EARNED BY THE POOLED MONEY INVESTMENT BOARD ON OTHER STATE REVENUE INVESTMENTS.

THE AUTHORITY ALSO PROPOSES REVIEWING CONTRACTS ON THE SIXTH ANNIVERSARY AND THAN ANNUALLY TO DETERMINE WHETHER TO REDUCE THE AMOUNT OF WATER IN THE CONTRACT IF ANOTHER WILLING BUYER IS STANDING BY TO PURCHASE AND THE AUTHORITY RECOMMENDS ADJUSTING THE PRICE OF WATER UNDER CONTRACT ANNUALLY.

REGAN- 14

DETAILS OF THE AUTHORITY'S DELIBERATIONS ARE CONTAINED IN THE NARRATIVE AND A WORKING DRAFT OF REVISIONS IS CONTAINED IN THE APPENDIX.

IN ADDITION, THE AUTHORITY PROPOSES A HANDFUL OF AMENDMENTS TO CURRENT STATUTE TO FURTHER IMPLEMENT THE PROPOSED GROUNDWATER QUALITY MANAGEMENT PLAN THAT HAS BEEN PRESENTED IN PREVIOUS SESSIONS BY THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT. UPON A SPECIFIC REQUEST FROM THE GOVERNOR, THE AUTHORITY WORKED TO MEDIATE THE CONCERNS OF ALL OF THE WATER AGENCIES REGARDING THE OUTSTANDING PROPOSALS OF THIS PLAN. THE GOVERNOR ASKED THAT THE AUTHORITY RECOMMEND TO THE LEGISLATURE, AMENDMENTS THAT COULD BE SUPPORTED BY ALL THE AGENCIES. THE AUTHORITY HAS WORKED AT LENGTH WITH ALL THE AGENCIES AND THE GROUNDWATER MANAGEMENT DISTRICTS AND UNDERSTANDS THAT THE PROPOSED AMENDMENTS ARE ACCEPTABLE TO ALL.

THE AUTHORITY ALSO RECOMMENDS STATUTORY CHANGES TO ENABLE THE STATE TO GET ABOUT THE BUSINESS OF ACHIEVING MINIMUM DESIRABLE STREAMFLOWS -- AN ISSUE THAT WAS A PRIORITY FOR THE GOVERNOR'S TASK FORCE IN 1978 AND THE LEGISLATURE IN 1980. VERY LITTLE HAD BEEN ACCOMPLISHED IN IDENTIFYING DESIRABLE STREAMFLOWS AND ACTUALLY FINDING THE WATER TO DEDICATE TO A STREAMFLOW MAINTENANCE UNTIL THE AUTHORITY BEGAN INVESTIGATING WHAT WAS STALLING PROGRESS.

REGAN-15

WE HAVE OUTLINED WHAT HAS OCCURRED OR NOT OCCURRED SINCE 1980 WHEN YOU LAST ADDRESSED THIS ISSUE. WE HAVE ATTEMPTED TO FIND A WAY TO BEGIN IMPLEMENTING MINIMUM DESIRABLE STREAMFLOWS. YOU WILL FIND OUTLINED IN YOUR REPORT A POLICY FOR ACTUALLY ACHIEVING SUCH FLOWS WHERE IT IS NO LONGER POSSIBLE TO WITHHOLD FROM APPROPRIATION SUFFICIENT WATERS TO MEET THE MINIMUM. WE ASKED THAT YOU CONSIDER THAT POLICY, AND IF IT MEETS WITH YOUR APPROVAL, TO SO INDICATE SO THAT THE AUTHORITY WITH YOUR SUPPORT CAN WORK WITH THE AGENCIES TO FOLLOW THROUGH. MINIMAL STATUTORY ADJUSTMENTS WOULD BE NECESSARY TO IMPLEMENT THE POLICY AND WE ASK FOR FAVORABLE ACTION TO PROCEED.

I BELIEVE THIS HIGHLIGHTS THE LEGISLATIVE RECOMMENDATIONS. YOU WILL FIND IN THE REPORT REFERENCES TO UNFINISHED BUSINESS BEFORE THE AUTHORITY WHICH WE PLAN TO PURSUE THIS YEAR.

WITH THE LEGISLATURE'S ENDORSEMENT OR DIRECTION, THE AUTHORITY PROPOSES TO OVERSEE VERY DIRECTLY, PROGRESS TOWARD DEVELOPING THE MASTER WATER RESOURCES IMPLEMENTATION AND DEVELOPMENT PLAN.

THE AUTHORITY, WHILE IT HAS PRESENTED TO YOU ITS WORK TO DATE ON NEW WATER DEVELOPMENT FUNDING OPTIONS, IS NOT SATISFIED WITH THE PROPOSAL AND WILL CONTINUE WORK IN THIS CRUCIAL AREA.

REGAN- 16

WORK WILL ALSO CONTINUE IN THE AREA OF DETERMINING WHETHER MORE WORK CAN BE DONE TO ARRIVE AT A STILL BETTER PRICING POLICY FOR RESERVOIR WATER. SPECIFICALLY, THE AUTHORITY WOULD LIKE TO ANALYZE THE POSSIBILITIES OF BUILDING INTO THAT PRICING POLICY AT A LATER DATE REAL CONSERVATION INCENTIVES. WE'VE TALKED ABOUT, FOR EXAMPLE, DEVELOPING SOMETHING LIKE A CONSERVATION CREDIT THAT WOULD REDUCE THE PRICE FOR REDUCTIONS IN PER CAPITA CONSUMPTION OR PROVIDE A CREDIT FOR RECYCLING WATER AND GLEANING TWO USES FROM IT. TIME SIMPLY WAS NOT SUFFICIENT TO PURSUE THIS FOR THIS SESSION.

THE AUTHORITY ALSO PROPOSES TO CONTINUE STUDYING THE OPTIONS THE STATE HAS FOR PERHAPS EXTENDING THE WATER RESERVATION RIGHT BEYOND THE FEDERAL RESERVOIRS TO OTHER SOURCES OF WATER SUPPLY THAT IT COULD RESERVE FOR FUTURE DEVELOPMENT TO ASSIST, PARTICULARLY CENTRAL AND WESTERN KANSAS. OUR RESERVOIR PROGRAM, BECAUSE OF THE LIMITED SITES SUITABLE FOR RESERVOIRS, IS REALLY MORE OF AN ASSISTANCE TO EASTERN KANSAS AND WATER SUPPLY NEEDS ARE EQUALLY CRITICAL IN OTHER PARTS OF THE STATE.



REGAN- 17

IN CLOSING, I WOULD LEAVE YOU WITH THIS THOUGHT. WHEN YOU HAVE READ THIS REPORT, I BELIEVE THAT YOU WILL FIND THAT EVERY RECOMMENDATION TURNS ON WHAT IS IN THE BEST INTEREST OF THE FUTURE OF THIS STATE AS A WHOLE.

THE MEMBERS OF THE KANSAS WATER AUTHORITY, EACH OF WHOM HAS WILLINGLY DEDICATED LONG HOURS TO THIS JOB, DEMAND THAT THIS BE THE BOTTOM LINE OF THE AUTHORITY'S RECOMMENDATIONS.

EACH MEMBER OF THE AUTHORITY REPRESENTS A SPECIAL INTEREST. THE MEMBERS ARE IRRIGATORS AND DRYLAND FARMERS, ENGINEERS, AND OPERATORS OF LARGE MUNICIPAL WATERWORKS. THEY REPRESENT RURAL WATER DISTRICTS, THE WATERSHED AND THE CONSERVATION DISTRICTS AND THE GROUNDWATER MANAGEMENT DISTRICTS, PLUS THE KANSAS ASSOCIATION OF COMMERCE AND INDUSTRY.

BUT THEY HAVE RISEN ABOVE THEIR SPECIAL INTERESTS TO PRESENT TO YOU THEIR BEST EFFORT TO PROVIDE THIS STATE THE TOOLS IT NEEDS TO ADDRESS THE WATER PROBLEMS WE ALL SHARE. I BELIEVE BY THEIR PERSONAL EXAMPLE, THEY ARE DELIVERING A MESSAGE TO THEIR SPECIAL INTEREST GROUPS TO JOIN WITH THEM AND WITH THIS LEGISLATURE IN MAKING SOME DECISIONS THAT WILL ENHANCE WATER MANAGEMENT IN THE BESTS INTERESTS OF ALL OF US.

Handout  
1-18-83

KANSAS WATER AUTHORITY  
RECOMMENDATIONS TO THE  
1983 KANSAS LEGISLATURE

JANUARY 18, 1983

KANSAS WATER AUTHORITY

*Patrick J. Regan, chairman*



The New England Building Suite 303 · 503 Kansas Avenue · Topeka Kansas 66603 · Telephone (913) 296-3185

January 18, 1983

To Members of the 1983 Kansas Legislature:

On behalf of the Kansas Water Authority, it is my privilege to transmit to you our recommendations for legislative consideration during the 1983 Session.

I believe this report measures up to the responsibilities that you assigned to the Kansas Water Authority when you created it in 1981. It represents an unselfish commitment by every member of the Authority to work to recommend to the Legislature only those proposals that are in the best interest of this state as a whole.

This effort was possible only because of the continued dedication of the members: Mr. Doyle Rahjes of Agra who represents the Senate President and served as chairman of the Committee on Interbasin Transfer Legislation; Mr. F.E. Withrow of Wichita who represents the House Speaker and chaired the Committee on Water Development Funding; Mr. Jack Alexander of Topeka who represents the League of Kansas Municipalities and chaired the Committee on Water Plan Storage Act Revisions; Mr. Hugh Armstrong of Salina who represents the State Association of Kansas Watersheds; Mr. Robert Binder of Hays who represents the Kansas Association of Conservation Districts and chaired Committees on Water Supply and on Minimum Desirable Streamflow Recommendations; Mr. Larry Panning of Ellinwood who represents Groundwater Management Districts #2 and #5; Mr. Eugene Shore of Johnson who represents Groundwater Management Districts #1, #3 and #4; Mr. Marshall Tatum of Fontana who represents the Rural Water District Association and chaired the Committee on Water Needs.

Ex Officio members served with distinction, contributing their expertise. They included Mr. James Aiken, Director of the Division of Environment; Mr. Guy Gibson, Chief Engineer Division of Water Resources; Dr. W.W. Hambleton, Director of the Kansas Geological Survey; Mr. Joseph Harkins, Director of the Kansas Water Office and Dr. John Dunbar, Director of the Kansas State University Agricultural Experiment Station.

Members of the Kansas Water Authority have gained an in-depth appreciation of the effort that must go into the process of developing legislation worthy of becoming Kansas Statutes. We realize that we have taken only the first steps in that process and that Members of the Legislature have far more work ahead this session.

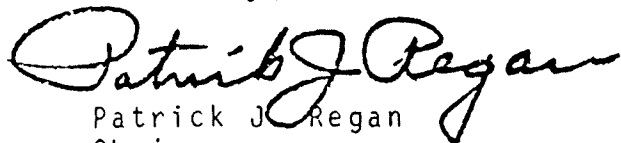
Members of the Authority will be available to assist you in any way possible as you continue this work. The Chairman of the Authority and chairmen of the respective committees which initially developed the proposals will be available to testify to assist you.

Recommendations to the 1983 Session for legislative action if they meet your approval include: 1) Endorsement and funding for the Master Water Resources Implementation and Development Plan; 2) A proposed new statute to provide the state a mechanism for scrutinizing future interbasin transfers of water; 3) amendments to current statutes to better enable the state to achieve minimum desirable streamflows and endorsement of a proposed policy to proceed to meet streamflow needs; 4) amendments to current statutes to enhance implementation of the Groundwater Quality Management Plan; 5) Revisions in the State Water Plan Storage Act.

In addition, the Authority has before it unfinished business that requires additional analyses before it is satisfied that specific proposals are ready to be presented to the Legislature. The Authority, with your approval, anticipates continued work on water development funding options; work on conservation policies and incentives that may conserve the state's water resource; and further exploration of the possibilities of enabling the state to take a reservation right on other than waters in the federal reservoirs.

Members of the Authority encourage the Legislature to make recommendations and to direct the Authority in order that the Authority can meet your needs to the best of its ability.

Sincerely,



Patrick J. Regan  
Chairman  
Kansas Water Authority

PJR:mm

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## Statewide Picture Of Water Supplies and Needs

Proper control and use of Kansas' water resources is best achieved through comprehensive planning, management and development. Without state participation and oversight, independent planning, management or development of water resources threatens to undermine management and development in the best interests of this state as a whole.

The Legislature, reaching these conclusions in language historically embodied in the State Water Plan Act, thrust upon state planners and lawmakers a tremendous responsibility. The state would work "to assure adequate management of the limited water resources of the state" and to provide sufficient, reliable water supplies for present and future use in Kansas.

The Legislature's intent is clear. Kansas Water Authority committees worked to assess to what extent water resource planning, management and development programs are meeting the state's statutory responsibilities, specifically for "the development of sufficient supplies of water for beneficial purposes" and responsibility to oversee and direct the "efficient and economic distribution of the water supplies of the state."

The committees assessed sources of water supply in the state, options for development of new sources of water supply and anticipated water use needs and demands for the state over the long term. Assessments were aimed at laying a foundation for new recommendations for the Legislature and the Governor to consider to ensure that the state is able to meet its water planning, management and development responsibilities.

This chapter of the Kansas Water Authority Recommendations to the Governor and the Legislature establishes the basis upon which the Authority's recommendations were built. Subsequent chapters outline specific proposals and recommendations.

The picture, developed as a framework within which to make new water management and development decisions, suggests that sufficient, reliable new sources of water supply do not exist in close proximity to the anticipated future needs for this water. The picture also suggests that if the state is going to meet its responsibility to develop sufficient supplies of water for anticipated future needs of this state, serious considerations must be given to new management directions and to financing and acquiring or developing new water supply sources.

The committees simply tried to determine whether, without further state investment or action, this state can provide the quantity of municipal and industrial water supplies for existing unmet needs or future needs with supplies that are reliable enough to produce the needed quantities of water 49 out of every 50 years -- that is supplies dependable except in a two percent chance drought.

The committees concur with the findings of the Kansas City District Corps of Engineers' most recent study and with the findings of consultants recently employed to survey water supplies and demands in Kansas.

"New source development over the 50-year study period is inevitable. Capital expenditures for this development will be high," the Corps reported. The committees can identify what appear to be nearly a half billion dollars worth of water supply acquisition and development projects that may be necessary in a relatively short period of time to begin to meet anticipated future needs.

The committees' assessments suggest that, with the exception of a handful of counties poised along the Kansas River close to two of the state's largest reservoirs, Milford and Tuttle Creek, and except for a handful of counties in extreme north-east Kansas along the Nebraska border, every region of this state will experience shortages of supplies to meet anticipated needs within the next 30 to 50 years. That is an extremely short period of time in the economic history of an area and a short period of time for planning and bringing on line new sources of water supplies.

The committees worked to produce a picture of total water supplies that could be matched against total future water needs. The committees suspect that the picture developed is actually better than what the future holds because the committees were unable to obtain figures enabling them to subtract quantities of water too poor in quality to be used for municipal supplies. They were unable to obtain figures that would indicate where supplies are totally appropriated and no longer available 12 months out of the year to provide municipal or industrial users with a dependable water supply. There were also numerous examples of cities seeking new supplies that were not included in total needs calculations whose new demands would increase the future needs side of the equation.

Therefore, the picture may suggest a scenario of unrealistically high water supplies and future needs on the low side which, if valid, indicates that the future supply and demand picture is worse than the committees are able to establish at this time. It would also indicate that the urgency is much greater than the Authority can even document for the state to step up efforts to provide sufficient supplies of water for the future of this state as a whole.



Streams are increasingly unreliable as a water supply source for existing municipal and industrial and other water users now tapping their flows. Reductions in water running off land to feed the streams, coupled with moderate drought conditions and stress from appropriations at or above maximum limits have resulted in such low flows or no flows at all during summer and fall months that existing water supply systems using them are failing for more extended periods of time and as frequently as every 10 years or less. Kansas' flowing streams simply are no longer a reliable sole source of future water supply except in scattered instances where very small new needs could be covered. They are not a source of new water supply of any significant size.

Because water flowing in streams often feeds into stream bank alluvial reserves, declining streamflows can directly reduce the potential to put new wells down along the banks for new sources of water supply. In many instances, groups of wells would have to be tied together along the banks to combine their production to have enough water to meet the new need. But even this option is diminishing because most wells would have to be spaced such distances apart to protect the yields that the option would be impractical for a supply of any significance.

"The majority of streams and rivers have low flows which would not permit utilization of the flowing water as a sole source of water supply," the Corps concluded in its recent report on 37 counties in the eastern two-thirds of the state.

In a more detailed look at seven counties in extreme east-central Kansas, the Corps said: "Both surface and groundwater sources are generally unable to sustain required safe yields to meet existing needs in a severe 50-year drought and some sources are insufficient for even moderate 10-year droughts. Projected growth will result in more frequent shortages unless sources are developed."

As streamflows are diminished, the supply problem is compounded with water quality problems. The lower water flow can result in higher concentrations of contaminants. The Corps notes that the low flow on the Kansas River, perhaps the best flowing source inside Kansas, is about 100 million gallons per day. But the concentrations of chlorides and sulfates in the Kansas River at this time have exceeded maximum concentrations for a raw water supply on several occasions. Both quantity and quality factors resulted in the populous Johnson County Water District No. 1's recent decision to seek its necessary new 100 million gallons per day of new water supply on the Missouri River instead of on the Kansas River.

The Missouri River in the extreme northeast corner of the state is a source of water supply for a number of municipal and industrial users in counties along its banks. It is an

abundant flowing source of water and even in severe drought, it could more than supply most of the eastern two-thirds of the state of Kansas.

But increased reliance on the Missouri River carries risks. There are no guaranteed rights for Kansas to that water. There is no allocation agreement between the Missouri River Basin states. In a 1969 report attempting to quantify Missouri River flows, the Missouri River Basin Commission estimated that 3,900 million gallons per day would flow in the river 100 percent of the time through 2020 development. But water development that occurred in the 1970s was rarely anticipated anywhere in the Plains States.

In reports representatives of the Missouri Basin states filed this year as they met to discuss state's positions on a Missouri River Compact, Missouri officials said a Congressional Research Services study projects streamflow in many parts of the basin will be insufficient to meet projected water needs. Shortages, they said, will largely result from the growing conflicts between offstream uses of water, including irrigation, and in-stream uses including power, water supply, navigation and others. The report projects that conflicts will occur in all the sub-basins of the Missouri River by the year 2000. Other studies have projected that the average daily discharge of the river at Kansas City could be decreased as much as 40 percent by the year 2020 because of increased consumption and upstream diversions.

Regarding groundwater as a source of supply in eastern Kansas, the Corps concludes: "In summary, the general absence of reliable groundwater sources in the study area has, in part, discouraged its use for municipal and industrial demands of any significant magnitude."

Where water rights applications for water withdrawals total more water than the source yields, additional rights may not be obtained for a new source. Streams potentially constrained as new sources by water rights considerations are the Kansas River, the Blue, the Little Blue the Smoky Hill and the Solomon River, the Corps concluded.

Water rights constraints also apply to groundwater. For example, Wichita and other central Kansas cities are limited in extracting any more water from the Equus Beds.

Other groundwater sources include tributary alluvia, glacial drift, sandstone and other aquifers. But the Corps study concludes "None of these sources has the potential of providing a safe yield of much more than one million gallons per day and most provide much less. Some of these may be adequate for small users not expecting rapid growth." Groundwater yields of much of the area are low and significant new supplies could not be developed except perhaps in the Missouri, Kansas and Republican rivers alluviums.

Although hydrologic charts and maps may indicate what seems to be quantities of groundwater supplies in areas of the state, water planners and managers must consider that not all of the quantities that appear can actually be used for drinking water. Some cannot be recovered economically. Some cannot be taken because of stringent groundwater management district well-spacing and withdrawal limits designed to protect yields for all users in the district. In many cases, the quality of the water is too poor to be depended upon as a drinking water supply.

For example, shallow wells 100 to 150 feet in depth produce acceptable water in the Marais des Cygnes basin in east central Kansas. But the Corps studies indicate that wells put down 200 feet or more yield water too highly mineralized for drinking water.

Wilson Lake which could potentially yield 55 million gallons per day municipal and industrial supply is too mineralized to be counted upon as a source of municipal supply and that amount of water must be subtracted from total water supplies available for municipal users. Except during highest flows, the Saline River is also too salty for drinking water supplies and must be discounted as providing a new source of supply.

And as the Corps and state officials have noted, quality problems may easily translate into quantity problems. In many cases it may become more expedient for an agency with a serious water quality problem to develop a new source rather than provide costly treatment for the contaminated source. That action compounds problems in planning to meet future needs. To illustrate the problem: if a community using 25 million gallons of water per day is approaching the need for a new supply of 15 million gallons of water per day, state planners should be in a position to anticipate the 15 million gallons per day new demand and a source of supply for that demand. But if the community has a water quality problem and chooses to abandon the existing source of 25 million gallons per day and seek a new source totaling 40 million gallons per day, that large a new demand has not been anticipated.

"The size of the area and the lack of good sources of supply in all parts of the region dictate that distribution be given emphasis in planning," the Corps concludes in its study. The Corps has examined options for developing raw water connections between reservoirs such as the underused Pomona and oversubscribed Hillsdale to increase the availability of water. Other connections may be feasible and necessary, for example, to increase water supply options in the Neosho River Basin. This kind of investment may be part of the state's responsibility toward efficient and economic distribution of water supplies.

Another development in water supply problems which may have implications for state action is the recently documented trends that show major reservoirs silting in at rates faster than anticipated which reduces the amount of water supply once thought available to meet future needs.

The major reservoirs were built with 50 to 100 year sediment storage space. Beyond that time, sediment carried into the reservoirs would begin to displace water storage space in the water supply compartment. But in several major reservoirs, sediment is being deposited faster than anticipated or in a pattern that was not anticipated. Potential water supply yields are being reduced at Kanopolis, Tuttle Creek and John Redmond reservoirs. Others have not been analyzed. Without substantial corrective action the potential 55 million gallon per day water supply yield at Kanopolis could be eliminated by 1993. Without a resolution of the problem at John Redmond, sediment may begin encroaching on water supply storage space and reducing water yields by 1995.

Increasingly distant searches for a reliable water supply large enough to meet the average daily demands and peak demands of water users may rapidly force decisions on new policies or on what kind of trade-offs will be tolerated to meet demands. The state's responsibilities to develop sufficient water supplies to meet the anticipated future needs, many of which are already documented, and for the efficient distribution of limited water supplies may require new definitions and new measurements of state performance. While local participation is vital in meeting future water needs in Kansas, the state must take the lead in providing the backbone of the water supply system that will guarantee the future vitality of all cities and rural communities, business, industry and the state's agricultural economy.

No longer are cities, industries and other water users developing a new water supply in their own backyard which affects only their future water supplies and no others. Significant water transfers to move still available supplies to areas of need are becoming a reality to numbers of small and large water users. Under current law, supplies from the state's dwindling pool of developed reservoir water supply held in trust for all the people of the state, is parceled out on a first-come, first-served basis irrespective of the anticipated future needs of the immediate area or region.

A consortium of south central Kansas cities, for example, is prospecting 110 miles to the northeast for a water supply from Milford Lake and 80 miles to the northwest for a possible supply

from Kanopolis Reservoir. Smaller towns find their supply searches reach as far as 80 to 100 miles upstream to a reservoir such as Iola's purchase at Council Grove instead of the much closer John Redmond which had already been sold out.

Besides the prospects for major water transfers, other trends suggest additional stresses on existing water supplies. Increasing percentages of the population are turning to more dependable public water system supplies and more small cities and rural populations are banding together to find one larger, reliable source of water supply. With such influxes of new users, it may become impractical to add one more well to an over-stressed well field or to add one more well in the stream alluvium where wells already play out when stream flows become erratic or cease in dry months. Instead of looking for one more well source, the groups are thrown into competition with larger users seeking one contained, large new source of supply that will cover all existing use and leave room for future growth.

The predictable costs of water supply development in the near future also indicate the probability of increased competition for remaining sources of larger supplies. With the trends toward continued organization of rural water districts and public wholesale water supply districts to achieve economies of scale that spread the development costs, smaller sources of minimal supply are no longer viable alternatives.

Recent professional studies suggest that water needs and development costs will be substantial in Kansas the next 20 years and beyond. Contractors recently estimated that providing necessary, reliable supplies in 22 counties of southeast Kansas would cost at least about \$16 million in 1980 dollars for small reservoirs only and distribution and treatment systems would range in excess of an additional \$87 million in 1980 dollars. In its recent study of seven east central Kansas counties, the Kansas City District Corps estimated it will cost up to \$10 to \$11 million per year to develop necessary reliable supplies for the seven counties to carry them 50 years -- an investment of \$500 million or more figured at an interest rate of 7 3/8 percent. This excludes the costs incurred by the large Johnson County Water District 1 to acquire new supplies and build distribution and treatment facilities to deliver more than 100 million gallons per day from the Missouri River. The proposed central Kansas pipeline to supply a dozen cities from Milford Reservoir is projected to cost \$200 to \$400 million to treat and distribute water the next 30 years.

The cost of building major new reservoirs with water supply storage or of acquiring large new amounts of water for water supply in existing reservoirs pushes the anticipated investment by state and local entities beyond the billion dollar mark over the next 20 to 30 years.

Acquiring maximum remaining water that can be reallocated to water supply in Melvern and Bomona lakes could cost upwards of \$42 million. The cost of constructing water supply storage in the proposed Fort Scott reservoir is estimated at more than \$38 million. Acquiring water supply storage at the existing Tuttle Creek Reservoir would carry a pricetag expected at near \$30 million. Construction costs for water supply storage potential at three small reservoirs that have been in the state water plan a number of years -- Douglass, Towanda and Cedar Point -- would be more than \$54 million and the projected costs for the site on the Chikaskia River, Corbin Reservoir, would be about \$180 to \$200 million. Dam modification and acquisition of potential water supply in Kanopolis could exceed \$30 million.

Another measure of water supply needs and financial needs is the funding requests submitted to the Farmers Home Administration. At the end of the first quarter of 1982, state agencies reported that unfunded requests to FMHA for 96 water projects including new sources and treatment, totalled \$81.3 million.

The Kansas City District Corps of Engineers study for the state, however suggests that even the FmHA statistics underestimate the magnitude of the water supply needs and financing problems building in Kansas. The Corps found that in east central Kansas 5 to 10 years is generally the adopted planning horizon for all but the largest water suppliers and that a 3 to 5 year planning horizon is not uncommon. Few water suppliers, the Corps found, have real long-range planning capabilities and few have developed long-range capital improvements programs. Thus using water supply and financing needs identified only by the water suppliers themselves can result in serious underestimation of the water supply problems.

Nevertheless, one measure of the magnitude of municipal and industrial needs was documented in the report to the Governor's Task Force on Water Resources in 1978. A survey of public water systems in Kansas showed that officials in 156 cities or rural water districts predicted their supplies would fall short of demands by 1988. Sixty-one of those same entities anticipating a water shortage, also said they faced pollution problems. Ninety-four others said they had experienced water quality problems that might require changes in their sources of supply.

Another measure of water supply needs in the eastern two-thirds of the state is the applications cities, utilities and industries have filed to buy new municipal and industrial supplies at the reservoirs indicating that they anticipate future needs for new water supplies.

The state owns storage space for municipal and industrial water supplies at nine reservoirs in Kansas. Applications to

the state for potential water purchases exceed the amount of water available for sale in state storage at seven of the nine reservoirs and at Kanopolis and Wilson where the state has no storage space. Wilson is also considered too salty to provide a municipal water supply now.

Cities and utilities have filed applications of interest to buy more than 30 million gallons of water per day at three reservoirs originally planned for the state system, but that haven't even been built yet. Interest has also officially been expressed in acquiring some 276 million gallons of water per day at seven reservoirs where there is no state-owned municipal and industrial water supply storage. Some of the applicants may have filed duplicate notices of interest. Some may no longer be interested or may have found alternate supplies for the time being. But, even a percentage of this interest translated into real needs for new supplies should command the attention of state water planners.

Briefly, with respect to the regions of the state delineated on the map accompanying this report:

Region 1: Water needs may result in a deficit of supplies to cover needs ranging from 90 to more than 160 million gallons of water per day by the year 2035. The deficits the region is unable to supply are actually much higher, but more than 100 million gallons per day is expected to be drawn off the Missouri River because Kansas cannot supply it now.

Region 2: In southeast Kansas, the potential deficit of water without any additional action may be approaching 30 million gallons per day by the year 2020.

Region 3: The area has a potential surplus of water to the needs of its own area that could be moved to other areas. The surplus in 2035 without new action to augment that surplus would be less than the amount of water needed to cover anticipated deficits of more than 129 million gallons per day directly south in Region 4.

Region 4: Deficits by the year 2020 will likely be in excess of 125 million gallons per day and only a portion of that deficit could be covered with new source development inside the region. Importation of water from other regions appears likely.

Region 11: Extreme northeast Kansas, including Nebraska border counties, will be about breakeven, supplying new water needs with supplies developed in the immediate region.

Regions 9 and 10: These areas are likely to experience deficits of water supply to meet existing needs and to cover any substantial new needs from cities such as Hays or Russell.



Regions 5, 6, 7 & 8: These regions represent the Ogallala Aquifer region and the supply and demand situation there must be calculated very differently. Cities, industries and utilities are already becoming very innovative about recycling and sharing water and that may be their best immediate future.

Options for developing new supplies in the regions are costly and may involve trade-offs or sacrifices the state may not yet want to face. The committees must also note that no additional water demands have been added to account for the amount of water that would be needed to be dedicated to maintaining minimum desirable streamflows.

In Region 1, reallocation of water stored in one compartment to a water supply compartment at Melvern and Pomona reservoirs could net the state something approaching 42 million gallons per day at an acquisition cost of probably at least \$42 million dollars. And the state could consider reallocation of 18 to 20 million gallons per day new supply at John Redmond. No pricetag has been developed. In both instances however, the maximum reallocation of Melvern and Pomona and John Redmond would require sacrifices of all water quality release storage and all water that could be used to augment streamflows to water supply uses. And that would yield a maximum of only 62 million gallons per day which wouldn't make much of a dent in the anticipated shortages.

In Region 2, one option is to sacrifice all water quality and other storage at Elk City and Toronto to gain about 16 million gallons a day and to build Fort Scott Reservoir to yield about 24 million gallons per day. A significant percentage of the proposed Fort Scott supply would be developed for sale to Missouri users under current proposals. The last costs for water supply storage in Fort Scott were running around \$40 million. This deliberate sacrifice through reallocation and new construction with a portion sold to Missouri would just barely begin to cover anticipated 2020 deficits of nearly 30 million gallons per day.

In Region 3, there is the potential to develop additional water supplies to export east, south or west to areas of deficit. Options include reallocating about 100 million gallons per day at a cost of about \$30 million for Tuttle Creek Reservoir or sacrificing as much of a total of 192 million gallons per day of other-use water at Tuttle Creek to acquire a larger supply. The proposed Onaga reservoir, which was taken out of the state water plan when local citizens protested last year, would have yielded about 18 million gallons per day or better and the last cost estimates for that construction were about \$42 million.

In Region 4, options include sacrificing all water quality storage at Council Grove and Marion to net only about 8 million gallons per day to apply against the 125 million gallon per day plus deficit. New construction of the proposed Douglass, Towanda and Cedar Point reservoirs would cost -- at last calculations which are low -- more than \$54 million and yield about 32 million gallons per day to apply against that large deficit. Corbin Reservoir is another option. Water supply storage space yielding 60 to 70 million gallons per day or better could be developed at a cost of about \$180 to \$200 million.

In Region 10, the modification of the dam and acquisition of a yet undetermined water supply storage space at Kanopolis could provide some supplies that would potentially offset the deficits in Regions 9 and 10.

In summary, it appears evident there are not sufficient supplies of water on line now in Kansas to meet the future, documented and anticipated needs of water users in this state the next 30 to 50 years. Thirty to 50 years is not a very long time in the economic life of a region and no time at all to develop or acquire and bring on line substantial new water supplies. To meet its responsibilities, the state is going to have to oversee the movement of substantial amounts of water significant distances. Regions of the state must plan to export, import and share water. Money will be spent as never before for water development. Judicious and equitable management and distribution of the water resources will be increasingly important.

It is from this framework that the Kansas Water Authority has developed the conclusions and recommendations presented in the following chapters of this report.

## Reference Material

The following includes a partial listing of some of the resource and reference material used by the committees to assess the statewide picture of water supply and demands.

Bureau of Reclamation in cooperation with the Kansas Water Resources Board, 1974, Kansas State Water Plan studies; Long range water supply problems -- Phase I.

Corps of Engineers, Kansas City District, March 1982, Stage 2 Report - Kansas and Osage Rivers, Kansas.

Corps of Engineers, Kansas City District, July 1982, Melvern and Pomona Lakes - Report and Environmental Assessment on Reallocation of Multipurpose Storage to Water Supply.

Hess, Larry G. and Sheets, Larry M., 1978, Public water supply problems and solutions -- A report to the Governor's Task Force on Water Resources.

Kansas Water Resources Board, 1979, The 1975 National Water Assessment - Socio-Economic, Land-Use and Water Use Information and Projections.

U.S. Department of Agriculture Soil Conservation Service and Kansas Water Resources Board, 1980: Southeast Kansas Water Supply Study.

## Master Water Resources Implementation & Development Plan

### Master Water Resources Research Plan

Recommendation: The Kansas Water Authority strongly recommends that the Legislature and the Governor allocate the manpower and financial resources to enable Kansas to develop a statewide, master implementation and development plan and a related statewide master research plan to address water resource needs and problems facing the state as a whole.

#### Introduction

The Kansas Water Authority has concluded this investment is urgent. The conclusion was reached as the Authority worked this past year to make its state water resource program budget assessments required by law. The need for this investment was underscored time and again as the Authority worked to collect information necessary to meet requests from the Governor and the Legislature for policy recommendations.

The data gathering, inventorying, storing and retrieval capabilities implicit in constructing the basis of a water development and implementation plan and a master research plan should assist every agency responsible for water management, planning and administration and enforcement in this state.

More importantly, it should provide planning and budgeting capabilities that neither the policymakers nor the lawmakers have had before. It is crucial to the work the agencies and the Authority must do and to the decisions the Legislature and the Governor must finally make to manage Kansas' water resources in the best interests of every region of this state and to meet the water needs of the people of this state as a whole. It should be a new tool, enhancing the ability of the Governor and the Legislature to make an additional check on the work of the agencies and the recommendations of the Authority, and a tool the Governor and the Legislature can use to be satisfied that the state is implementing policy and developing its resource on the proper timetable and the priority basis to avert water management and supply problems the people of this state may otherwise face.

#### Background

Just as there are nearly infinite demands for the use of water, so are there countless approaches to planning to manage and develop water resources unless statewide general guidelines are outlined and implementation strategies adopted.

Kansas statutes, specifically the State Water Plan and Planning Act, provide broad general guidelines and goals for water development and management. But the statutes are silent on any actual implementation plan that orders priorities and sets timetables and specific methods for achieving or accomplishing the goals. Without a specific implementation plan, without development priorities and timetables, without an investment schedule, there is no real framework to direct data collection and research toward assembling the most urgently needed information to make decisions. Without development priorities driven by a system of accurately assessing and anticipating the order of water supply and demand problems, errors can be made that will be costly both in terms of dollars diverted and detriments to the cities, industries and all the people that rely on a sufficient and dependable water supply on line and producing as their current supplies begin to fall short of growing water demands.

Preliminary supply and demand assessments indicate there are not sufficient supplies of water on line now to meet the anticipated needs over the next 20 to 50 years and that virtually every region of the state will face deficits unless new supplies are acquired or developed.

How does the state determine whether it is absolutely necessary to develop the remaining handful of reservoir sites to provide new water supplies? With limited funds for this development, how does the state determine in what order to develop one at a time or whether its limited funds are better spent acquiring water in existing reservoirs that the federal government may offer for sale within the year? How does the state determine whether the best solution to meet anticipated water supply shortages is a combination of small and large projects, large projects serving many or scattered small projects only?

### The Proposal

A data inventory and assessment must be made, the information collected and then stored in a data bank.

Pieces of the data bank have already been built by the U.S. Geological Survey, the Kansas Geological Survey, the Kansas Department of Health and Environment, the Division of Water Resources, the Kansas Water Office, the Groundwater Management Districts, the U.S. Army Corps of Engineers and the Bureau of Reclamation plus the Water Resources Institutes at the universities, the Conservation Commission and Kansas State University.

These pieces of information must be consolidated into a central citator. Currently, information filed into a number of drawers and cabinets is scattered throughout the agencies. It is filed into a number of different computers that cannot speak to each other. It is filed in such a way that it cannot be retrieved by another agency, or in a form usable to outsiders, or retrieved in any way but by hand.

It defies real cross-checking that is essential. For example, a simple answer to the question of the total water supply in Kansas would be assembled by pulling together all research from all sources on total water quantity. Checks would have to be made with every agency outlined above and substantial checks through their files would be necessary.

But to make recommendations that are required of the Authority, and to make decisions required by the Governor and the Legislature, a further determination must be made to get a fix on what kind of total water supply is still available to meet future drinking water needs.

Somehow, a subtraction calculation and cross-checking calculation must be made. This is where the current system and its capabilities begin to falter. The demands that will be placed on this supply by users other than those looking for drinking water must be determined. The amounts of water available in one location or the alternative sources must be delineated. Poor quality water must be subtracted. Water that exists but cannot be captured in sufficient quantity in one location must be discounted. Water that exists but cannot be tapped until a reservoir, for example, is built must be marked with this constraint. All water already appropriated under water rights must be subtracted from total water supply. The amount of land conservation treatment such as terraces and stubble-mulching must be calculated in the watershed where the potential source exists and the amount of water those treatments prevent from running off land to fill a potential municipal lake or reservoir must be subtracted from the total quantity that could be potentially called upon to provide a potential municipal or industrial water supply.

This calculating and cross-checking simply can no longer be accomplished by hand from file folders, index cards, shelves of reports and institutional memory. The information must constantly be up-to-date for the entire basin and adjacent basins and for the state as a whole. Decisions cannot be based on "best guesses" gleaned from a report done in one area in 1970 on one aspect, another report done here in 1975 on another aspect and another report done here on this aspect in 1980.

As water appropriations are processed in the Division, as annual water use reports are made to the Division, as water quality tests are made or research results come in and as water is sold from reservoirs or needs are satisfied in another manner; as terraces are funded and stockwater ponds built or well water measurements made -- this must constantly be plugged into the data bank. No single agency collects and meshes this information on a timely basis.

The data bank must be accessible at all times through computer terminals to facilitate day-to-day administrative decisions and to answer questions all planners and researchers put to it as they need to make decisions in their areas.

It provides a uniform and objective method of evaluating options to fund and pursue research and to develop water resources. It provides a clear direction for research to be conducted for priority water management decisions and solutions.

It provides the backup necessary to make assessments critical for decisions on every water project of any kind whether it's a decision to approve drilling another well, or to appropriate more from a stream or to approve a watershed project or put funding into land conservation-water retention projects, or a decision to build a lake or a reservoir.

It is a tool to predict the effect and the extent of the effect of decisions on water quality, on water quantity and on another needy water users ability to secure a supply after the project in question is approved. It provides a quick search of stored information to alert the decision-makers to the trade-offs inherent in a project.

The maintenance of this system would require constant inputs to the data bank in an orderly fashion. This process alone assists the state in making annual assessments of whether existing data collection and research programs are adequate and which are deficient. It assists the Legislature and the Governor in allocating limited research funds. It provides a constant sifting that shows where data collection and research is lacking or overabundant. In short, research priorities fall into place and research proposals to collect excessive information for the decisions that need to be made can be flagged and rejected.

### The Schedule

The Authority believes this system can be built over the next year to 18 months with the support of the Governor and the Legislature -- with their direction and financial assistance.

The agencies must be directed and must make a commitment to build this. The agencies, the Authority, representatives of the Legislature and the executive branch must participate because it must be usable to answer the questions each will need to put to it.

The state has certain capabilities to respond to drought crisis water supply problems. This system must be built to provide the state its long-range planning capabilities. It must be built to anticipate long-range supply and demand. It must provide the tool needed for the policymakers and decisionmakers to then sit down and, with dispatch, draw a deliberate development and implementation strategy and schedule and funding program.

The distinction must be clear. The state has a statement of goals and objectives in water management. It has the ability to identify many options. But it has been stalled in making all of the policy decisions and it has been unable to formulate a real development and implementation strategy to respond to its options, to meet its objectives, to meet its responsibilities to provide sufficient supplies of water to meet the needs of its people.

The system will never be a substitute for the human policy recommendations, for the debate and for the final decisions. It will be a partner, a tool in moving the state forward in this area.

The system must be able to identify the new water supply demands developing in each water use sector, the size of those demands and it must be able to plot the order in which they will materialize.

The system must be able to identify important supply sources of water, their size and availability over time.

The system must prioritize the importance of sources based on a common denominator for measurement such as minimum cost. It must be able to match supplies against needs, alternatives against needs measured in cost and distance and it must be able to signal roughly what point in time it will be necessary for those in need of new water supplies to move to acquire supply outside their immediate area or to import water from another region to their area and in what increments this can be predicted.

The system must be able to show water users the costs associated with their projected supply demands so that conservation, recycling and double uses become realistic when their costs are compared.

The system must be able to analyze which sources of water must be developed in what order and must be able to analyze which areas of demand these sources should be assigned.

The system must be able to show what kind of an investment schedule the state must anticipate so that lawmakers can be prepared to develop the necessary revenue sources to finance development.

The system must be able to respond to questions in relationship to hydrological boundaries gathered together into areas logically related by economics and population.

Kansas could logically be divided into about 10 areas -- economically and hydrologically. For each sector, project options will be delineated and demand points identified. A computer, making thousands of calculations a minute and inventorying thousands of facts in data storage a minute and cross-checking all information, can go through in response to policymakers and decisionmakers questions and pick a series of projects to meet demands. The policymakers can then sit down, and for the state as a whole and with a confidence they have not been able to have before, line out an implementation strategy.





## Interbasin Transfer Legislation

Recommendation: The Kansas Water Authority recommends to the 1983 Legislature and to Gov. John Carlin that favorable action be taken on the interbasin transfer legislation proposed by the Authority.

### Introduction

The Authority has concluded that no Kansas law speaks sufficiently and specifically to findings that should be made or issues that should be weighed before an interbasin transfer of water is approved by the state. Existing statutes appear too vague and inadequate to rely upon. The state's interests in its water resources would better be served with adoption of the draft bill that provides the state guidelines and a mechanism for considering whether to approve interbasin transfer proposals in the future.

The state of Kansas has statutory obligations to develop sufficient supplies of water to meet the anticipated future needs of all the people of this state. The state further has responsibility, by law, to manage its water resource and oversee its efficient, economic distribution. The state clearly has a deep interest in whether the proposed interbasin water transfers are in the best interests of the state as a whole and whether they are compatible with the state's statutory responsibilities.

It appears that proposals to move substantial amounts of water across river basin boundaries in Kansas are predictable in the near future. The Authority believes that the state does have a keen interest in balancing the benefits and the detriments expected to result from a proposed diversion. The bill, endorsed by the Authority, provides discretion to determine on a case-by-case basis what the state's best interests are.

The task of weighing and measuring detriments, benefits and the interests of the entire state demands a certain flexibility in the statute. What is needed, the Authority concludes, is the machinery which will provide for thorough consideration of interests both inside and outside the basin of origin and set up as a standard for decision, the welfare of the entire state. Claims of benefits or detriments on both sides of an interbasin transfer question must be subjected to searching examination.

In some other states, which early on spoke directly to the question of interbasin water transfers, some extremely restrictive legislation was written with absolute protections for the basin where water originates.

But in developing a picture of future supply and demand projections for Kansas, it became clear that water supplies in Kansas are unevenly distributed. If the best interests of the state as a whole are served by allocating and sharing the state's resource among all its water users, than extremely restrictive legislation or absolute basin protection legislation is not in the best interest of the state as a whole.

The only area of the entire state that appears to have any significant amount of water that might be considered "surplus" to its current and projected needs is northeast Kansas -- the watershed which drains to the lower reaches of the Kansas River Basin and fills the major reservoirs of Milford, Tuttle Creek and Perry on the Kansas River tributaries.

The Authority therefore, proposes legislation that is not absolutely protective of the basin of origin of the water. To propose legislation restrictive and absolutely protective of the basin of origin of the water would be inconsistent with the state's water appropriation doctrine. The appropriation doctrine in no way limits water use to the watershed as some riparian rights states would argue.

The bill, proposed by the Authority, requires a determination that the benefits to the state as a whole that would result from approving a water transfer, outweigh the benefits the state as a whole would accrue if the transfer were disapproved and the water remained in the originating basin.

#### Bill Summary

Section 1: The definition section clarifies what is meant by the terms "basin of origin", "interbasin transfer", "chief engineer" and "river basin". The river basins of the state for purposes of determining whether a water transfer is in the public interest include the upper Kansas, the lower Kansas, the Arkansas, the Neosho, the Verdigris and the Marais des Cygnes including the Marmaton as depicted on the map attached and made a part of the bill at Section 7. All water is subject to provisions of the bill.

Section 2: Provides that there will be no interbasin transfers of water in Kansas:

- 1) Unless it is approved pursuant to the act.
- 2) If the transfer reduces the amount of water the basin of origin needs to meet current or reasonably foreseeable future beneficial uses of water within the basin unless the Kansas Water Authority determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer.
- 3) Unless the chief engineer and the Authority determine an emergency exists.
- 4) Unless the governor declares that an emergency exists.

In the instances of an emergency, a temporary transfer may be approved for a year, the same amount of time allowed under current law for the disposal of surplus waters from reservoir storage to meet emergencies.

The Authority recommends that Section 2(b) in the first Revisor's draft of the bill be deleted as unnecessary and improperly placed in this act.

Section 3: Specifies that applications, accompanied by a fee prescribed by the Authority, shall be filed with the chief engineer who, within 60 days of receipt of a sufficient application, shall commence a factfinding hearing.

The chief engineer may suspend a formal hearing if the application for transfer is for an amount of water of 100 million gallons a year (307 acre feet per year) or less. The chief engineer, however, must still make findings of fact and a recommendation to the Authority as prescribed by the act.

In Section 3 and throughout the bill, the reference to the interbasin transfer "approval" panel should be changed to interbasin transfer "hearing" panel to more properly reflect its responsibility. Interbasin transfer approvals rest with the Authority under the proposed bill.

Section 3(c) specifies that the hearing panel shall consist of three persons -- the Kansas Water Office director, the director of KDHE's Division of Environment and the chief engineer or their designees. The chief engineer or his designee from the division of water resources shall chair the panel. The first Revisor's draft of the bill should reflect the proposed stipulation that a hearing officer designated to sit for the chief engineer should be from the Division of Water Resources. A recommendation approved by any two of the three panel members constitutes the recommendation to the Authority whether to approve the transfer. The Authority fully expects to consider a panelists dissent from the majority opinion and requires in Section 4 that any dissenting opinion specifically be transmitted to the Authority.

Section 3(d) specifies that to determine whether a proposed transfer will impair the water needs of the basin of origin and whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the panel shall consider all pertinent matters including specifically six factors:

- 1) Any current beneficial uses being made of the water proposed to be diverted, including minimum desirable streamflow requirements;
- 2) Any reasonably foreseeable future beneficial uses of water in the basin of origin;
- 3) Any adverse impacts of the proposed interbasin transfer;

- 4) The economic, environmental, public health and welfare and other benefits of leaving the water in the basin of origin for current or future beneficial uses and the economic, environmental, public health and welfare and other impacts of denying the transfer of the water for beneficial use in the applicant's basin;
- 5) Alternative sources of water available to the basin of origin and the applicant for future beneficial uses; and
- 6) The detailed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water out of the basin of origin.

Notice of the hearing shall be published in the Kansas Register. The chief engineer shall determine who may intervene and upon what equitable and just terms and conditions they may intervene. It would be possible to appeal the chief engineer's discretion on this decision.

Section 3(g) provides that the hearing record and findings of fact shall be public records; that the applicant for a transfer will be assessed the costs of the hearing and the transcript and that the Authority chairman shall receive a copy of the transcript.

Section 4: Specifies that within 90 days upon the conclusion of a hearing, the panel will make a recommendation, along with any dissenting recommendations, to the Authority. The recommendation shall specify the reasons for such recommendation, including findings of fact relating to each of the factors set forth in Section 3(d). The panel has the discretion to recommend approval of an application upon such terms and conditions and limitations as necessary to protect the public interest of the state as a whole.

The Kansas Water Authority will make the final determination whether to approve the transfer. Upon Authority approval, the chief engineer or the director of the Kansas Water Office shall issue an order to appropriate water to implement the Authority's decision or to write a contract for purchase of water from the state's reservoir storage. Aggrieved parties may appeal the Authority's decision to Shawnee County District Court. The Attorney General is required to defend the Authority's decision in any appeal.

Section 5: Spells out the appeal procedure, a procedure modeled after current state law providing for appeals from decisions of the Kansas Board of Tax Appeals. Such an appeal shall not be heard as a trial de novo, but shall be limited to the review of the hearing record certified by the Authority. The district court shall review the record for the sole purpose of determining whether the final decision of the Authority was based upon insufficient evidence or the final decision was capricious, arbitrary or fraudulent.

Section 6: Provides that the chief engineer shall adopt rules and regulations to effectuate and administer the provisions of the act.

Section 7: Adopts an official map delineating the river basins for purposes of the interbasin transfer act.

Section 8: Provides that the act take effect upon publication in the statute book.

### Background

Upon request from the Senate Committee on Energy and Natural Resources, the Kansas Water Authority examined the issues and merits of Senate Bill 771 introduced in the 1982 Legislature. The bill, a proposal to guide the state in making decisions regarding the proposed interbasin transfers of water, was reviewed in depth.

Authority Chairman Patrick Regan appointed a committee to examine the issue in detail and report to the Authority. The panel, chaired by Authority Member Doyle Rahjes of Agra, studied statutes other states have adopted to speak to proposed diversions of water from one river basin for beneficial uses in another river basin. It considered the issues raised in Senate Bill 771. Background information was solicited from the chief engineer of the Kansas Division of Water Resources; from the director of the Kansas Water Office; the Kansas Groundwater Management District managers; a Kansas law professor who has researched the issue for the High Plains Study and some major water users in Kansas who may be directly affected by interbasin transfer legislation. In addition, working drafts of the legislation were circulated to some of the special interest organizations.

Currently in Kansas, several small transfers of water now occur between small creeks or tributaries within a larger river basin. Several proposals have been explored recently that would divert millions of gallons of water per day. For example, a consortium of central Kansas cities proposes to move by pipeline more than 100 million gallons of water per day more than 100 miles from Milford or Tuttle Creek reservoirs in the Kansas River Basin to supply about a dozen cities, some of them in the Arkansas River Basin located as far south as Wichita and perhaps Hutchinson. Initial engineering studies have examined the prospects of moving Missouri River Water from a point near Atchison southwest to points in the Arkansas River Basin near Dodge City. Figures have also been developed to analyze the costs of the possibility of transporting water from the proposed Corbin Reservoir site in the Arkansas River Basin on the Chikaskia River to southeast Kansas communities lying in the Neosho Basin.

Increasing competition in Kansas for more limited major sources of new water supply would seem to promise that more and more schemes will be developed proposing significant movements of substantial amounts of water across the state. It would appear that at a point within our current planning horizons, options for cities, industries, utilities, rural water districts and agricultural producers to develop new sources of ground-

water and surface water in their immediate areas will be foreclosed by maximum appropriation and development of water supplies. It would appear that major water users in areas of south central Kansas, southeast Kansas, east central and north central Kansas may be especially vulnerable to the necessity to move increasingly long distances away to acquire and develop new sources of water supply to sustain their economies and quality of life.

The Authority concludes that it would be prudent for the state to determine what interests it has in the management and distribution of its water resources and that the state should put into place now, procedures for considering interbasin transfers of water.

The proposed interbasin transfer legislation emphasized in its original preamble (now deleted in the draft) and in other specific sections that the state does have an interest in determining, where the use of its water resources are concerned, what is truly in the best interest of the people of this state as a whole.

The proposed bill is consistent with the basic principles of Kansas water law. It was developed with a deep respect for the principles that underpin our water law including:

- All water in the state of Kansas is dedicated to the people of the state subject to control and regulation by the state;
- The state shall coordinate the management, conservation and development of the state's water resources to meet the anticipated future needs of the people of the state of sufficient supplies of water for beneficial purposes;
- The state shall coordinate the management and development of its water resources to efficiently and economically distribute the state's water supplies and coordinate the development of water resources with the development of other resources of the state.

In addition, the bill respects the portion of the Kansas Water Appropriation Act which requires the chief engineer to reject or modify the water appropriation applications "to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water."

The development of a bill recognizes that interbasin transfers of water may have impacts on the general economy and on the water and other resources in the basin of origin and that those impacts may differ from the impacts caused by using the water in that basin of origin. The adoption of such a statute in Kansas would recognize the need to delineate factors for consideration when a proposal is made for an interbasin transfer of water in order to determine whether denial of such a proposal is demanded by the public interest.

Many of the comments on the bill drafts received by the Authority speak directly to concerns about the economic impacts of interbasin diversions of substantial amounts of water.

## Other States

New Mexico simply prohibits interbasin transfers if the transfer would impair existing rights.

Oklahoma, by legislative resolution outlining basic principles of state water policy, states that "limitations should be placed on the transportation of water resources from any watershed or other source of supply until the reasonable present and future beneficial needs of equal rank within the immediate area have been supplied." Oklahoma's water board must, in considering whether to grant rights for water use outside the basin of origin, determine that the users in the basin of origin have all of the water required to adequately supply the beneficial needs of their water users in the basin.

Oklahoma statute states clearly that water users in the basin of origin shall "have a right to all of the water required to supply their beneficial needs." In essence, only water surplus to the needs of the basin of origin appears to be subject to transfer outside the basin of origin.

Texas law appears to prohibit expenditures from the Texas Water Development Fund or expenditures of any other state funds for water projects that would transfer any water needed to supply the reasonably foreseeable future water requirements of the basin of origin the next 50 years. Despite the reference to a 50-year planning horizon, the board still retains an amount of discretion. Judgments may reasonably differ as to the water needs of a region in the foreseeable future. Texas water policy further states that the Texas Water Development Board shall be governed in preparations of state plans by a regard for the public interest of the entire state and shall direct its efforts to plan for the orderly development and management of water resources in order that sufficient water will be available at reasonable cost to further the economic development of the entire state.

Colorado prohibits transfer of water from the Colorado River and its tributaries if it will impair existing rights or prospective uses in that basin or if it will increase the cost of water to water users in that basin of origin. Any proposal to export water from the Colorado River Basin must be accompanied by a plan for providing compensating water at the same price to water users in the basin of origin. Constitutional questions have arisen as to whether restrictions on transfers are incompatible with the state's appropriation doctrine. In a decision on the question of whether Denver should be allowed to divert water needed for the future development of the originating basin across the continental divide, the Colorado Supreme Court said: "We find nothing in the Constitution which even intimates that waters should be retained for use in the watershed where originating. The waters here involved are the property of the public, not any segment thereof, nor are they dedicated to any geographical portion of the state. The right to appropriate water and put the same to beneficial use at any place in the state is no longer open to question." Colorado is an appropriation state.



Florida and Indiana are among states that have, over the course of development of their water law, attempted to distinguish between average minimum or normal flows of water and flood or storm waters, allowing only that which is designated flood or storm waters to be transferred.

California attempts to prohibit transfers that would deprive the county of origin of the water necessary for the development of the county. Additional language provides that the Central Valley Project will not be involved in projects to transfer water between watersheds unless the water requirements of the watershed where the water originates are met first or the water is purchased. More recent law, appears to attempt to give priority consideration to the area of origin of the water and areas immediately adjacent to areas of origin of water that could be supplied conveniently. State policy requires that whenever the Legislature authorizes construction or acquisition by the state of any project to develop water for use outside the watershed in which it originates, the Legislature shall at the same time, consider authorization, construction or acquisition of other works necessary to develop water to satisfy the reasonable ultimate requirements of such watershed as may be needed at the time the export project is authorized or will be needed within a reasonable time thereafter.

Nebraska law is similar, in part, to the proposed Kansas legislation. Nebraska allows interbasin transfers that are not contrary to the public interest. The statute requires that certain factors be explicitly considered in determining whether denial of such application is demanded by the public interest. The factors are similar to those in the draft Kansas law. Nebraska law provides that the application shall be denied if the benefits to the state from granting the application do not outweigh the benefits to the state from denying the application.

North Carolina water policy stipulates that projects must be consistent with the maximum beneficial use of the water resources in the state and shall give paramount consideration to the statewide effect of the proposed project rather than its purely local or regional effect.

#### Issues Considered

During deliberations in developing the proposed legislation, the committee received testimony and comments and considered a number of issues and alternatives. The Authority would like to summarize some of the considerations to assist the Legislature and the Governor in their deliberations.

Mr. Jack Alexander, a member of the Authority and Water Commissioner for the city of Topeka, submitted some concerns that may also reflect some of the concerns of other water users in the Kansas River Basin, a likely basin of origin for water transfers.

Mr. Alexander outlined six particular points that should be considered in reviewing the proposed transfer of water from one basin to another. Mr. Alexander said total economic impact and feasibility of a project should be analyzed for both the basin of origin of the water and for the receiving basin. He said a transfer could have significant adverse impacts to the area of origin by increasing costs for that area to obtain additional supplies when it needs them, and a transfer could adversely affect growth potential in the area of origin.

Mr. Alexander also expressed concerns that a major transfer could reduce water quality in the basin of origin and the reliability of existing sources for users in the basin of origin. This could be caused both by substantial diversion which could reduce dilution potential and by additional development by users in the basin of water supplies in what would then be a shrunken pool of water. Mr. Alexander also noted that approval of water transfers could defer development of water resources in the receiving basin and that analysis of a specific proposal should include consideration of whether denial of a transfer is deferring development of resources even in the basin of origin.

Regarding water rights issues, Mr. Alexander raised questions as to whether a transfer could possibly diminish the perfection of applications for water rights from the area of origin and whether transfers could result in questions concerning the priority of water rights between the area of origin and the area of receipt.

Mr. Alexander noted that economic growth could be adversely affected in the area of origin if that area was forced to invest time and expense in developing additional water supplies to offset loss of water supplies transferred to another area.

Regarding legislation, Mr. Alexander suggested that certain requirements should be established for economic growth, reliability of sources and water rights and reviewed prior to approval of any transfer. The legislation should also contain provisions to satisfy the concerns with the potential impacts outlined above before transfers are authorized.

Mr. Alexander suggested finally that there should be a provision in the legislation to sunset the authorization of a transfer that causes adverse effects at a later date.

Section 3(d) of the bill speaks to the impacts on both basins and the state as a whole that must be assessed before a transfer is approved. The Authority believes that these assessments, at a minimum, must be made. The bill, however, directs that the hearing panel which includes the state's chief water enforcement officer, its chief environmental officer and the state's chief water planning officer, shall consider all matters pertaining to a transfer question. With that representation and direction, plus the assistance of issues raised at a public hearing, the Authority believes the best possible analysis is required in the legislation in order to determine the state's best interests.

The Authority did not include a revocation or sunset provision in the bill. It is anticipated that many, if not all, of the transfers will include substantial capital improvements and investments. It is therefore critical that guidelines be established to assist the state in making the best decision possible because of the nearly necessary permanence of the decision.

M. F. E. Withrow, Jr., a member of the Authority and chief engineer for production and pumping for the City of Wichita Water Department, submitted some concerns that may also reflect some of the concerns of other water users in the Arkansas River Basin, a basin that is currently investigating importation and transfer of water from outside its region.

Mr. Withrow joined some others in raising serious questions about a portion of an early draft bill that required analysis of any reasonably foreseeable future beneficial uses of water in the basin of origin in the next ensuing fifty years. Initially, the committee considered the 50-year proposal because that is within the bounds of current planning capabilities and because it would put a burden upon both proponents and opponents to make some planning predictions for a period of time that is not all that lengthy in terms of water allocation and development and the ability to bring new supply projects on line.

Mr. Withrow and others raised questions about the validity of data projected for 50 years. The Authority approved a draft bill that deletes the 50-year requirement. Again, the panel and the Authority, in making their recommendations and decisions must retain a certain amount of discretion to consider each project on a case-by-case basis.

Mr. Withrow raised a second concern regarding the philosophy that underpins the state's water supply marketing act, the statute which guides the sale of water from reservoir supplies. Mr. Withrow argues that current philosophy considers all reservoirs where the state owns water supply storage to be a single reservoir for pricing and other marketing purposes. He further notes that the water supply in storage is financed, in part, by general fund contributions collected from all taxpayers in Kansas. Mr. Withrow therefore believes that if the panel finds alternative sources of water available to the interbasin transfer applicant in his own basin, presumably undeveloped sources, and the Authority rejects the transfer, that the state has an obligation to place the alternative sources in the State Water Plan and to develop those sources to be marketed under the same terms and conditions as other state water supply and the water initially sought for transfer.

The committee did consider whether the state has an obligation, in rejecting a transfer applicant and attempting to force development in the applicant's own basin, to assist in developing that water supply to the same extent it has elsewhere in the state. The development could be of a supply source other than a major reservoir.

The committee did discuss the fact that this issue deserves additional consideration and that this issue very well might constitute an obligation that the state should assume. However, the committee concluded that legislation speaking to this obligation would be more properly placed in the State Water Plan or the State Water Plan Water Storage Act.

Mr. Withrow raised a third question as to whether the interbasin transfer legislation is compatible with the state's appropriation doctrine providing basically that the first in time to appropriate water is the first in right to use water. The question stems from the prospect that under the proposal, an applicant could propose to transfer water that is not currently appropriated and being put to beneficial use but there would still be the possibility that the application would be denied on the basis of analysis of the points in Section 3 and other considerations and the final test as to whether the transfer is in the best interest of the state as a whole.

Regarding the third concern Mr. Withrow raised, the Authority recognizes that the state's appropriation doctrine dedicates all water in the state of Kansas to the people of the state subject to control and regulation by the state. A bill that would prohibit or absolutely restrict interbasin transfers would not appear compatible with the appropriation doctrine. The proposed bill, however, is not a basin of origin protection bill. It simply proposes that the state, under its responsibility to manage, control and regulate water use has, as its highest responsibility, the best interest of the state as a whole. The bill proposes simply triggering a hearing process when interbasin transfers are proposed to enable the state to take a hard look at whether it is in the state's best interest. The statute and the hearing record would, in addition, limit the discretion of a court to decide water issues. It would appear to be in the state's best interests not to totally abdicate the decision-making powers to courts that are not specialists in water issues.

The Authority further notes that the proposed bill does appear compatible with the portion of the Kansas Water Appropriation Act which requires the chief engineer now to reject or modify the water appropriation applications "to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water."

The Authority would also reiterate that interbasin transfers of substantial amounts of water can have effects that are different from the effects of using water within its basin of origin, effects potentially significant enough to at least demand the additional scrutiny and the test of whether the transfer is in the best interest of the state as a whole.

Mr. John Wynkoop, Director of Water and Water Pollution Control for the City of Wichita, also raised some questions following a review of early drafts of the legislation.

Mr. Wynkoop argued that if Kansas law is to make a distinction regarding different river basins then the reservoirs in the basins should be financed by the people in the basins. Mr. Wynkoop suggested that all Kansans, through taxes, are paying for the reservoirs, therefore all Kansans should be able to use them under existing laws.

Authority deliberations on the interbasin transfer question and other issues have embraced this question. Regarding the contention that all taxpayers pay for the reservoirs, the Authority would note that the tax money invested in them is on loan from the general fund and that the general fund must be repaid by the actual water supply users. At this point, best estimates suggest that revenues from actual water users will equal annual bills incurred by the reservoirs' water supply storage about the year 1990. After that, revenues from water supply users or purchasers will gradually exceed the annual bills and the excess revenues will be used to repay the general fund advances.

The Authority would also note that in raising these arguments, additional consideration should properly be given to the tradeoffs incurred initially when the reservoirs took land out of production or off the tax rolls in the basin of origin in exchange for developing a water supply storage space and preventing floods and enhancing recreation. Again, this would seem to suggest that, at a minimum, legislation that simply provides a procedure for weighing and analyzing benefits and detriments of something as valuable as a water supply project is in order.

Mr. Wynkoop made an additional point to the Authority. "I feel," he stated in an August 5, 1982 memorandum, "that vested rights should be honored and a minimum streamflow guaranteed. After that, it's a matter of marketing water within the state to those in need and to those who are willing to pay for it."

The Authority concurs that the task ahead is the equitable marketing of the state's water to those in need and to those willing to pay. The Authority believes that enhancing the state's ability to manage its supplies and to determine the full scope of needs and competing needs in order to allocate the remaining supplies in the best interests of all the water users will be an advantage to all. To that end, the Authority strongly recommends the interbasin transfer legislation for the 1983 Legislature's consideration.

Mr. Don Gerard, general manager of the Board of Public Utilities of the City of McPherson and chairman of the steering committee for the proposed Central Kansas Public Wholesale Water District now considering a pipeline transfer from Milford Reservoir south into the Arkansas River Basin, submitted comments to the Authority.

Mr. Gerard raised questions as to the possibility that the proposed legislation could prove encumbering and regressive. For reasons outlined above, the Authority does not consider the legislation regressive. Every effort was made at each point in the bill to prevent the process from becoming inordinately cumbersome. The Authority would note that under current law, both the chief engineer and the director of the Kansas Water Office conduct public hearings and take public comments when there is a proposed appropriation or purchase of water. It is anticipated that the interbasin transfer hearing would simply replace those hearings that now exist.

In addition, the Authority approved provisions in the proposed legislation aimed at diminishing possible burdens for extremely small users. At Section 3(b), the Authority's proposal provides that whenever the applicant proposes an interbasin transfer in an amount not to exceed 100 million gallons of water per year (307 acre feet per year), the chief engineer may suspend a formal hearing of the panel. However, the chief engineer is required to make the same findings of fact and put the transfer proposal to the same scrutiny and test that the full panel would have done before making a recommendation to the Authority.

There is precedent in the manner in which appropriation applications are handled to forego a full hearing on the question when the application is for a relatively insignificant amount and does not generate controversy. In addition, an examination of the history of 16 water purchase contracts approved by the Legislature for sale of water from state-owned water supply storage at reservoirs shows a reasonable division in amounts of water sought under contract. Five contracts are for a maximum quantity of less than 100 million gallons per year. Six contracts are for a maximum quantity of from 110 million gallons per year to 720 million gallons per year. Five contracts are for maximum quantities ranging from 1 billion to 9.67 billion gallons per year.

Mr. Gerard also questions whether the proposed legislation is consistent with the appropriation doctrine's first in time, first in right provisions. The Authority believes the legislation is compatible for the reasons outlined above. The Authority would also note that Mr. Wynkoop and Mr. Gerard have a particular interest in a reservoir water supply. The state itself holds the appropriation right, more exactly an equivalent reservation right secured under the appropriation act from the chief engineer. The reservoir water is not "up for grabs" as though it were unappropriated water. The state is merely in a position to sublease or subcontract use of that reservoir water and is free to do so under whatever terms and conditions it determines necessary and in the public interest. The state's water storage act currently does not guarantee that the reservoir water will be sold on a first come, first served basis. It states only that to the extent consistent with efficient management, shall the director of the water office negotiate contracts in the chronological order that applications are received for each reservoir.

Mr. Gerard further notes that the proposed legislation would subject applications to appropriate water from other than reservoir storage to this review if an interbasin transfer is involved. The committee deliberated at length on this question. The committee recommended, and the full Authority unanimously approved, subjecting all interbasin water transfer proposals to this act regardless of the source of water supply. This recommendation was made after considering whether current laws are adequate to address the questions involved in interbasin transfers. The Authority concluded that current laws are either silent or extremely inadequate. The proposed legislation embodies the philosophy that when an interbasin transfer is proposed that process should be followed regardless of the source of water. The Authority endorses the concept that all transfers should be subjected to the same treatment and that it is ill-advised to treat transfer questions differently simply because one applicant may propose appropriating water and another may propose purchasing water.

Mr. Gerard raises a final point. He suggests that interbasin transfers will be costly, and cities will avoid extensive transmission of water unless absolutely necessary. While the argument has some merit, it must also be considered that some cities or groups of cities may also have an aversion to developing a new reservoir supply, for example. They may determine it is less costly to lay a pipeline from another region than to develop water supplies and pipe in their own region. While cost is and must be a consideration, the Authority believes that it behooves the state to make other detailed considerations including the best means of allocating water between all users. That consideration may not always turn on the question of costs.

The Kansas Engineering Society also reviewed a working draft of the proposed legislation. In a November 16, 1982 letter to Chairman Patrick Regan, Mr. Forrest E. Kirkpatrick, president of the Kansas Engineering Society raised some questions about the legislation.

Mr. Kirkpatrick also questioned the wisdom of including a "basin of origin" concept into the state's marketing program, questioning whether users within the basin of origin should have any more right to water than other citizens in the state outside the basin of origin. The Authority, as outline above, gave this question a good deal of consideration. The Authority believes that an absolute basin protection statute is inadvisable in Kansas. The Legislation simply triggers a process for the state to determine what is in the best interest of the entire state. The state already has this responsibility, but is lacking in the real management and assessment tools it should have to meet this responsibility without the legislation.

Mr. Kirkpatrick also notes that "movement of water downstream, be it within the basin, by a very large pipeline conveying considerable distances, could be as upsetting to the economics and environment of the state of Kansas as would the moving of large quantities of water out of the basin. We are not certain that utilization of the review process only for interbasin transfers will adequately protect the users or protect the citizens of Kansas. Therefore, if review of large transfers of water is done on an interbasin proposal, the same should be conducted for an intrabasin transfer."

Members of the Authority also raised this question when Senate Bill 771 was initially brought before the Authority in February, 1982. It was a part of the reasoning behind the Authority's request that action be deferred at that time and a thorough study be conducted by the Authority and an interim committee of the Legislature.

The Authority concurs that similar assessments should be made regarding substantial sales and movements of water within the basins. The Authority determined that those kind of assessments should be incorporated into revisions of the State Water Plan Storage Act and has taken steps to do that. Again, the reasoning is that this kind of clearly required assessment enhances the state's ability to manage and allocate its waters in the best interests of all of its water users.

Mr. Kirkpatrick raises a final question as to the reasoning behind the division of the Kansas River Basin into the upper Kansas basin and the lower Kansas basin.

A number of alternative basin division proposals were considered. There are references to divisions of what some would consider the Kansas River Basin stretching from nearly the Missouri to nearly the Colorado border. State Water Resources planning maps have divided that drainage into some six units including a Kansas unit and then a Missouri, Smoky Hill, Solomon and Saline and upper and lower Republican units. The same planning map also divides the Arkansas River drainage into the upper and lower unit and the Cimarron unit.

The Authority approached a determination on the division of basins for purposes of this transfer act from the point of view of what is to be accomplished by the act and from the standpoint of realistic water supplies developed or to be developed in Kansas. The division of the Kansas Basin into an upper and lower unit provides the ability for entities in the western part of the state to share resources between rivers located in close proximity to each other - The North and South forks of the Solomon, the Smoky Hill and the Saline. That division also places the reservoirs of Norton, Webster, Cedar Bluff, Waconda, Wilson and Kanopolis in the same upper Kansas basin. If one remembers that the underlying principle of basin of origin examination is that it



looks at water in terms of the fact that it has naturally run off or drained from the adjacent watershed to a point of capture, then clearly those related watersheds have that much interest in the disposition of that water. It is the stockponds, land conservation treatment practices, and other water developments within those watersheds or basins of origin of the water that determine the extent to which water will flow to the capture points and be available for any other disposal.

The real purpose of an interbasin transfer hearing process and the kind of scrutiny of the issues provided in the legislation is to give the state a say in allocating water from the capture points -- to give the state the real ability to distribute water from the capture points in the best interests of all users. The Authority concluded that the major reservoirs and reservoir sites of the lower Kansas river, primarily those on the Republican, the Blue and the Delaware Rivers, are invaluable to this state's total water supply. The Authority concludes it would not be in the best interest of this state to draw a basin division map for purposes of this act that would allow a major transfer from Milford or Tuttle Creek west as much as 200 to 300 miles to near the Colorado line that would totally escape the scrutiny and assessments required if the Kansas Basin were one basin stretching from eastern to western border.

It was that kind of concern, that the state have the tools to make some assessments where the major water supplies are developed or likely to develop, that resulted in the divisions. Other considerations include regional population and economic relationships that tend to support water-sharing plans within certain areas.

The division of the Verdigris, Neosho and Marais des Cygnes including the Marmaton required specific considerations. The division was arrived at based upon the following line of reasoning. The projected water supply needs in those basins are significant. Population centers are smaller and scattered. The availability of extremely good, large sites for water development projects is less than desirable. Existing reservoirs have experienced some supply viability problems. Because of the size of many of the towns, and even of the water districts, stream delivery is still far and away the best alternative for many. Even though a number of the water supply purchases may seem small in comparison, proper allocation and distribution of water supplies is critical in that area. The Authority concluded it would be in the best interest of this state through this act and amendments to the marketing act to provide very clear guidelines for determining what is in the best interest of all users in southeast Kansas. To lump those basins together would prevent the state from assisting all of the water users in the area in assessing where each must logically and economically turn for new supplies and to assist in planning, where the local entities lack long-range planning, in sorting out competing interests.

Mr. Allyn Lockner, former director of the Kansas Water Office, also submitted some questions regarding the bill. Mr. Lockner questioned whether the legislation is structured to enable the Authority, at its decision-making point, to hold additional hearings. The Authority, in structuring both the hearing process and the review process, believes that applicants and opponents of a transfer must be encouraged in every way possible to deal with the state at the hearing process level and that options for circumventing that to get to the Authority or the courts should be closed to the extent possible. All information must be laid out at the hearing to facilitate the best decision possible. The Authority will have the expertise of the three main water agencies, the hearing record and all related documents and their best judgment on a recommendation. Nothing precludes the Authority from asking additional questions of the agencies or primary participants, but the Authority does not intend that the legislation suggest a second, full-blown hearing be conducted by the Authority. The Authority, by virtue of its structure and statutory responsibility is really not the body to be charged with conducting the kind of hearings contemplated in this bill.

Mr. Lockner further questioned how the proposed interbasin transfer statute would mesh with K.S.A. 82a-908. K.S.A. 82a-908 is the portion of the State Water Plan which provides that state agencies and other entities may protest a water project or related action that may conflict with the goals and objectives of the state water plan. Mr. Lockner concludes that it appears essential that interbasin transfers should not conflict with the State Water Plan.

The Authority would concur that there should not be conflicts. The Authority does not believe that the proposed legislation would result in conflicts. The Authority, by its enacting statute, is responsible for final approval of water purchase contracts and for final approval of amendments to the state water plan. With this responsibility and responsibility under the interbasin transfer act, it would seem that they are well-meshed with a continuity in final decision-making authority.

Mr. Lockner, in addition, forwarded early drafts of the proposal to Mr. John Peck, a professor of law at the University of Kansas School of Law.

Mr. Peck questions whether the Water Authority, the voting members of which are all appointed and are not on the state payroll fulltime, is the proper entity to answer the question of the propriety of a proposed interbasin transfer. Should that decision, Mr. Peck questions, rest instead with one administrative agency, or combination of them, whose fulltime function is to deal with water questions? Perhaps the panel suggested in the proposal would be the proper entity, Mr. Peck suggests.

The Authority received numerous comments regarding the makeup of hearing and decisionmaking bodies. On the other side of the question Mr. Peck raises, the Sedgwick County Conservation District submitted these comments:

"We have a concern with limiting the panel to the three bureaucratic positions, and would encourage that at least two other persons from the Kansas Water Authority be included on this panel, representing the private sector of society. Many times preconceived attitudes are reflected in recommendations because of bureaucratic prejudices."

The Conservation District added: "Earlier, we recommended that the panel be expanded, however, we even more strongly encourage that the Kansas Water Authority, or any board that makes important decisions in the public interest, not be shielded from direct testimony by the public who have to live with the decisions made by that board. Therefore, we urge that the panel mentioned earlier be dramatically expanded or that a public hearing be available before the full Kansas Water Authority."

The Authority considered a number of options for conducting the hearing and constructing a record, plus options for decision-making authority.

The bill represents the Authority's best recommendation to the Legislature. Because of the structure of the Authority, which is far different from a hearing and decision-making body such as the fulltime, fully-staffed Kansas Corporation Commission, the ability to conduct hearings of the import and magnitude contemplated in this bill is limited. The Authority considered whether the chairman of the Authority or a member of the Authority should sit on the hearing panel.

It was determined that the three state officials, representing water law enforcement and administration; state water planning and public health and environment would be the best hearing officers to extract every detail and consequence necessary to consider for a decision. They would be responsible for interjecting the best information their agencies can produce relative to the question and they would be responsible for directing questioning of all parties testifying toward comment on their particular areas of expertise. It was felt that with this composition, the best possible hearing record could be built for Authority scrutiny and in the event it had to be delivered for scrutiny by the courts. It was determined that their expertise in extracting facts should not be overlooked by replacing one of the experts with an Authority member. It was further considered that if the Authority is charged with the final decision on a transfer, the hearing record should be built with no question raised as to its objectivity should a member of the decision-making body be part of the hearing panel raising questions.

The Authority believes that this structure embodies the philosophy used to establish the Authority -- a body that could provide a check and balance to fulltime state agency officials where water policy decisions are concerned. The Authority would be bound to review and accept the record and should not be shielded from public input because of this necessary review and because of the representative makeup of the Authority by law.

The Authority also considered whether the panel of the decision-making body should include hearing officers. It was determined that hearing officers, unfamiliar with water law and water issues, would not add enough in objectivity to outweigh a detrimental lack of background on such crucial issues.

Mr. Peck raises another question as to whether publication in the Kansas Register is sufficient. The Authority considered this and determined that because there could be interests in any area of the state in water sought to be transferred that this was the best means of notification. No newspapers or other general circulation publications reach every corner of the state.

The Authority would also bring to the attention of the Legislature and the Governor an area of comment received from several sources and represented specifically by the Sedgwick County Conservation District: "The Sedgwick County Conservation District encourages the Kansas Water Authority to include in the proposed legislation (1) strong language to guarantee that the applicant is using its present source of water efficiently and that it has a viable, implemented residential and industrial water conservation plan; (2) sufficient proof by the applicant that it has made every effort to extend its existing water source through technical practices such as recycling of wastewater; and (3) language to insure that water transferred from one basin to another will also be used efficiently by the applicant."

The Conservation District concludes: "Transferring water from one basin to another carries with it far reaching and more cohesive stewardship responsibilities than our society ever dreamed necessary."

The Authority believes that every effort must be made to develop a more comprehensive, enforceable state conservation policy. This legislation does not speak directly to this issue, however, it is anticipated that conservation would not escape consideration by the panel in its charge to consider all matters relating to a transfer.

The Authority believes that conservation policies must embrace all aspects of water law and water use and that it would be improper to try to marry a state water conservation policy into this legislation only. This issue deserves much further consideration in terms of state policy and state implementation and consideration of whether such a policy should be implemented through the State Water Plan, as an amendment to all water laws, as an incentive and requirement for funding projects or pricing water sales or in another manner.

## Minimum Desirable Streamflow

Recommendation: The Kansas Water Authority recommends the Legislature and the Governor endorse the policy and procedure recommended by the Authority for identifying and actually achieving minimum desirable streamflows for Kansas streams. In order to implement the policy, and in order to find water to be dedicated to minimum desirable streamflows, the Authority requests the Legislature and the Governor act favorably on four statutory amendments.

### Introduction

The Governor's Task Force on Water, in 1978, identified the acquisition and the protection of water for minimum streamflows as an issue that should be addressed immediately. The Legislature followed up in 1980 with Legislation recognizing that where we can identify a minimum streamflow need and the water to fulfill that need, it shall be protected from future appropriation.

Under its statutory directive from the Legislature to review state water laws and determine the necessity or advisability of the enactment of new or amendatory legislation, the Authority began last spring to investigate what had stalled the implementation of minimum desirable streamflow designations and to determine what must be done and what issues must be decided in order to move ahead with implementation as the task force urged in 1978 and the Legislature directed in 1980.

The Authority, at that time, was also trying to develop a statewide picture of water supplies and demands for now and in the future in order to have a basis from which to make recommendations. The amount of water needed to meet minimum desirable streamflows was a major factor in determining future demands and impacts of streamflow maintenance on water supplies.

The Authority was further concerned that, unless steps are taken now to begin to dedicate some water to streamflow maintenance, the state will rapidly see the option to achieve streamflows precluded in the continued appropriation of water.

The Authority was confident that the information is available to make some general assessments of how much water should be set aside for this purpose and that the state water-related agencies would be able to fine-tune the estimates and the details as the state moves forward.

The Authority believed the initiative needed to be taken now to create a minimum streamflow account in the state's water bank, fully realizing that it may be necessary in the future to transfer this savings to a checking account because there will likely come a time that there will be a more important use for this water and no other water to meet the needs.

### Background

In March, 1982, the Kansas Water Authority chairman asked the Kansas Water Office director for an explanation of the status of recommendations or options that could be pursued to establish minimum streamflows.

The director advised that an inter-agency committee had been formed, about five meetings were held in eight months from August 1980 following the 1980 Legislature's action to March of 1981. But the committee had not met for a year from March 1981 to March 1982. KWO had taken the responsibility for the committee of drafting a report that would have apparently outlined procedures and future work plans for accomplishing the Legislative mandate. However, KWO had done nothing. The director advised that he did not have the manpower to do the streamflow work.

The lack of progress in this program prompted the Authority chairman to seek assistance from another agency. The chief engineer of the Division of Water Resources, an ex officio member of the Authority, agreed to assist.

Within two months, the Division of Water Resources assessed available options for minimum streamflow recommendations for the entire length of the Marais des Cygnes River and its tributaries. No new data was created or developed to make the assessment. The assessment was made using existing water data from published reports and data gleaned from stream gage records. Kansas Fish and Game Commission streamflow needs were obtained as well as water quality and stream pollution abatement needs estimated from the Department of Health and Environment. Simple tabulations were made to estimate what kind of streamflows can be anticipated and options, including in-house management and reservoir releases to augment streamflows, were provided.

The Kansas Water Office reactivated the Minimum Desirable Streamflow Advisory Committee in October, 1982. The Authority received reports from the agencies working on the Advisory Committee and has requested the agencies provide for the Authority and the Legislature, by specific example on the Marais des Cygnes and Neosho rivers, how streamflow designations can be determined and achieved under the policy proposal.

The Authority has further requested, on remaining streams, that the inter-agency committee provide some interim estimates of water requirements to meet minimum flows on other streams until specific identifications can be made.

Following its study of the minimum desirable streamflow issue, the Kansas Water Authority Committee on Minimum Desirable Streamflows, which was chaired by Mr. Robert Binder of Hays, concluded that amendments to current law are desirable for several reasons:

- 1) It appears impractical to try to identify or set by statute the exact cubic feet per second of flow necessary on every segment of every stream in Kansas to maintain a minimum desirable streamflow. Further, it appears that from time to time, adjustments in targeted flows may be necessary and frequent amendments to law may not be the best approach.
- 2) It appears that it is no longer practical to expect to achieve the minimum desirable streamflows solely by withholding from appropriation the water needed to achieve streamflows. It appears that there are insufficient base flows or unappropriated water during certain months of the year in nearly all streams to meet minimum desirable streamflow water requirements in many areas.
- 3) Alternative statutory language could deal more realistically with the current difficulties faced in trying to achieve minimum desirable streamflows.
- 4) Amendatory language would be necessary to the State Water Plan Storage Act and to the statute speaking to the duties of the chief engineer.
- 5) A specific policy, endorsed by the Authority and the Legislature with specific implementation direction to the agencies may be more successful in actually achieving minimum desirable streamflows than current statutes. The amendatory language the Authority proposes would be necessary to implement the proposed policy.

Under current law, the State Water Plan sets as one of the state goals the identification of minimum desirable flows to be maintained in streams. Then, under the state's Water Appropriation Act, it is provided that when the Legislature amends the water plan to actually identify a minimum desirable streamflow, the chief engineer shall withhold that amount of water from further appropriation.



The identification of a minimum desirable streamflow involves establishing the amount of water in cubic feet per second that is desirable to be flowing between certain points or segments of a stream. The actual cfs varies for each segment, making it difficult to establish all of those in statute for every stream in the state. The streamflow needs of fish and wildlife and the streamflow needs for public health recommended by the Department of Health and Environment must be assessed to arrive at a recommended cubic feet per second of flow.

The Authority sought alternatives to setting the desired minimum flows by statute, which appears to be contributing to part of the difficulties stalling progress in this area. The proposed legislation suggests that the Authority approve designations so the chief engineer can begin dedicating water to that purpose. There may be an alternative to the Authority approving such designations, but the Authority believes that approval could not rest with one agency because each is involved in a special aspect of arriving at the proposed streamflows.

The Division of Water Resources must withhold from appropriation and enforce maintenance of flows. The Fish and Game Commission must recommend an amount of water to be withheld or released to augment streams for their needs and the Department of Health and Environment also must recommend amounts of water to be withheld or released to augment flows. The Kansas Water Office has taken the role of meshing the different needs into the final recommendation. Another party, such as the Authority, seems to be needed to approve the recommendations.

Part of the legislative recommendations also speak to authority to make releases from state water supply storage for streamflows. While the agencies have been primarily concerned with the process and the procedures and mechanics of arriving at a method of establishing the recommended cubic feet per second flows, the Kansas Water Authority has also been further concerned with developing a policy to actually achieve those flows once established. Simply establishing the desired cfs per segment of stream still does not necessarily result in actually having streamflow. The Authority has therefore drafted a policy for actually going about the business of meeting the streamflows and believes that endorsement of that policy by the Legislature and Governor would be the necessary impetus to assist the Authority in prompting the agencies to move more rapidly toward accomplishing this goal.

Recommended Legislation

Existing Law

**82a-703a.** Minimum streamflows; duties of chief engineer. Whenever the legislature enacts any section or amendment of the state water plan which identifies a minimum desirable streamflow for any watercourse in this state, the chief engineer shall withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow.

History: L. 1980, ch. 332, § 2; July 1.

**82a-1305.** Same; withdrawal and use of waters; contracts for withdrawal; disposal of certain water. Whenever the board finds that a proposed withdrawal and use of water will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated, it may enter into written contracts with any persons for withdrawal and use of waters from conservation water supply capacity committed to the state. Every such contract shall comply with the provisions of this act. The board shall not contract for withdrawals of water from a particular reservoir which in the board's opinion are in excess of the yield capability from such reservoir of conservation water supply committed to the state computed to provide water through a drought having a two percent (2%) chance of occurrence in any one year with the reservoir in operation. All contracts under this section shall have terms of not less than ten (10) years and not more than forty (40) years. Whenever a contract expires the board shall give the persons with whom it contracted therein, the opportunity to first refuse any new offering of substantially the same contractual terms before offering to applicants under the provisions of K.S.A. 82a-1311. Whenever the board finds that it will advance the purposes set forth in this act and in article 9 of chapter 82a of Kansas Statutes Annotated, the board may dispose of waters from the conservation water supply capacity committed to the state not required to meet contract requirements under this section if the board has found such waters to be surplus waters. Any arrangement for the disposition of any such surplus waters shall not be subject to the provisions of K.S.A. 82a-1306 to 82a-1308,

Recommended Change

82a-703a. Whenever the Kansas Water Authority approves the identification of a minimum desirable streamflow for any water course in this state in accordance with the state water plan, the chief engineer shall withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified water course the desired minimum streamflow. Whenever unappropriated waters are insufficient to maintain minimum desirable streamflows, the chief engineer shall withhold from further appropriation any waters reverted to the state through abandonment of rights until sufficient waters are available to maintain desirable streamflows.



Existing Law

Recommended Change

inclusive, relating to long-term contracts, but no such arrangement may be made for a period of time in excess of one year nor may any such arrangement dispose of water from the conservation water supply capacity in excess of ten percent (10%) of the yield capability as computed pursuant to this section unless the governor has declared that an emergency exists which affects the public health, safety or welfare.

History: L. 1974, ch. 452, § 5; L. 1976, ch. 441, § 2; L. 1977, ch. 358, § 1; July 1.

When surplus water is disposed for other than streamflow maintenance, the Authority shall charge a price for the water as prescribed in rules and regulations adopted pursuant to this act.

**32a-1310.** Same; application for withdrawal and use of water; information required. Any person who wishes to contract under K.S.A. 82a-1305 shall file an application therefor with the executive director in such form as he or she requires. Each such application shall include the following:

- (a) The name and address of the applicant;
- (b) the reservoir from which the applicant proposes to withdraw water;
- (c) the rate at which the applicant proposes to withdraw water, and the total annual quantity of withdrawal;
- (d) the use proposed to be made of waters withdrawn;
- (e) the location of that part of any watercourse proposed for transportation of any of the waters so withdrawn;
- (f) the location and legal description of all works, ditches and conduits proposed to be constructed or used for the transportation of waters withdrawn to and including the point of redirection; and
- (g) additional information as specified by the executive director.

History: L. 1974, ch. 452, § 10; March 22.

The chairman of the authority shall request the director to transmit information necessary for a determination whether to approve a contract to purchase water from the state's conservation water supply capacity or a specific request for a decision by the authority to use waters available in the state's conservation water supply capacity to meet minimum streamflow needs unless an emergency exists.

Existing Law

Recommended Change

82a-1314. Same; request for withdrawal of water; release of water; conduct and withdrawal of water. Whenever a person, who has a contract under K.S.A. 82a-1305, wishes to make a withdrawal of water, he or she shall so advise the executive director. Whenever the bed of a watercourse is to be used to carry waters so released, the executive director shall inform the chief engineer. In accordance with such advice, and at a time agreed upon by the executive director and the chief engineer within two (2) days of such request, the executive director shall request the authorities in charge of the operation of the reservoir to make an appropriate release of water. The person for whom waters are released may conduct such waters into and along any watercourse and may withdraw or redivert the same at points specified in his or her contract, without regard to holders of water rights to the waters of the watercourse, due allowance being made for seepage and evaporation. The provisions of K.S.A. 82a-706b to 82a-706e, inclusive, shall apply to water so released.

History: L. 1974, ch. 452, § 14; March 22.

The chief engineer shall protect and shall have all authority to enter into agreements to protect any releases of water from the state's conservation water supply capacity into Kansas streams.

## The Policy

The Kansas Water Authority will work with the Legislature, federal agencies and others to try to obtain water necessary to be used to meet streamflow needs until it becomes necessary to rededicate that minimum desirable streamflow water to other beneficial uses.

Where the state cannot acquire stored water supplies to be released to maintain streamflows, the Authority should direct the Division of Water Resources and the Groundwater Management Districts to try to devise management plans such as alluvial well-spacing and other regulations to enhance streamflows. The interagency, Minimum Desirable Streamflow Advisory Committee should recommend to the Authority areas where management plans may be necessary.

Where there is potential to augment minimum flows with stored water releases, the flows should be met:

- 1) After withholding as much water as possible from appropriation and after reverting any abandoned rights to baseflow to be withheld from appropriation, if the streamflow is still below the minimum desirable, then
- 2) Secondly, minimum desirable streamflow shall be met using water from the sediment pool from reservoirs that have a sediment pool wherever and whenever available.
- 3) Thirdly, minimum desirable streamflows shall be met through operating agreements with the Corps of Engineers and the Bureau of Reclamation to release flood flows from reservoirs on a timely schedule to augment minimum desirable streamflows to the extent possible without jeopardizing flood protection.
- 4) Fourthly, additional water still necessary to meet minimum desirable streamflows shall be released to the extent possible from reservoir water quality storage without jeopardizing public health.
5. Lastly, water still needed to meet streamflows after exhausting the above options would be released from conservation water supply capacity in the reservoirs if it is surplus to water supply contracts on hand and no other beneficial use requests have been made for that surplus water.

## Summary of Legislative Recommendations

### To Implement the Groundwater Quality Management Plan

1. The Kansas Water Authority recommends favorable action on a proposed new statute (K.S.A. 82a-1216) which would require all governmental agencies to advise the Department of Health and Environment that a basic data or research well has been drilled and to verify, when it has been abandoned, that it has been abandoned in accordance with rules and regulations adopted for abandoned wells.

2. The Kansas Water Authority recommends favorable action on the Department of Health and Environment's proposal to amend current law to increase the ceiling on the Pollutant Discharge Fund to \$500,000. The current ceiling is \$50,000 under K.S.A. 65-171w.

3. The Kansas Water Authority recommends favorable action on a proposed amendment to K.S.A. 65-170d that would enable the Department of Health and Environment to assess penalties for liability for damages and pollution clean-up to any person who causes pollution and who is not subject to such penalties under the authority of another state agency.

4. The Kansas Water Authority recommends favorable action on proposed amendments to K.S.A. 82a-1036 to:

- a. allow for the continuation of current procedures for designating intensive groundwater use control areas within groundwater management district boundaries;
- b. require the Department of Health and Environment to notify a groundwater management district and the Chief Engineer in writing when unreasonable deterioration or contamination of the quality of groundwater is occurring within the boundaries of a groundwater management district;
- c. authorize the Department of Health and Environment to recommend an intensive groundwater use control area for water quality purposes to the Chief Engineer in all areas outside the boundaries of existing groundwater management districts;
- d. require the Chief Engineer to initiate proceedings for such designation within 90 days; and
- e. require the Chief Engineer to issue a report after the completion of the investigation which would contain a statement of the basic fact which persuaded the Chief Engineer in arriving at his decision.

KANSAS WATER AUTHORITY'S RECOMMENDATIONS ON THE  
LEGISLATION TO IMPLEMENT THE  
GROUNDWATER QUALITY MANAGEMENT PLAN

The Kansas water quality management studies were developed under Section 208 of the Federal Clean Water Act. This plan was approved by the Governor and the Legislature in 1979. The Kansas Legislature, in adopting the plan, directed the Kansas Department of Health and Environment to continue its work on development of a statewide Groundwater Quality Management Plan and report to the Legislature in 1981. This plan was submitted to the 1982 Session of the Legislature. During this session, the Legislature spent considerable time and effort dealing with that portion of the plan which provided methods to control and regulate the oil and gas field pollution problems in Kansas. The result of this work was the passage of 1982 Senate Bill 498. This bill provided statutory authority (Chapter 228 of the 1982 Session Laws of Kansas) to implement that portion of the Groundwater Quality Management Plan.

The remaining elements of the Groundwater Quality Management Plan were deferred until the 1983 Session of the Legislature. As a result, Governor John Carlin requested that the Kansas Water Authority review and make recommendations on the remaining items of the Groundwater Quality Management Plan which were submitted to the 1982 Legislature by the Department of Health and Environment. The Governor specifically requested that the Authority consult with the state's water-related agencies as he was particularly concerned about the direction of the state's water policy and the appropriate role of the state's water agencies as it related to the Groundwater Quality Management Plan. In response to this request, the Kansas Water Authority asked the water-related entities of the state to work with the Authority to refine the direction of the state's water policy and to determine the appropriate role of the various water-related entities involved in this process. In order to formulate recommendations for consideration by the Kansas Water Authority, the Department of Health and Environment held a meeting in July, 1982, with representatives of the various governmental agencies interested in the proposed Groundwater Quality Management Plan and certain members of the Authority. The purpose of this meeting was to review the legislative package and to make recommendations on the plan to the Authority. These recommendations were based upon a consensus to the concept of the 11 remaining "items" of the 14 "items" which were proposed by the Department of Health and Environment.

The Kansas Water Authority has reviewed the comments and recommendations of the various water-related agencies and studied the Groundwater Quality Management Plan proposed by the Department of Health and Environment. As a result of this effort, the Authority has developed recommendations on the 11 items which were proposed to implement the Groundwater Quality Management Plan. Although the Kansas Water Authority made a number of substantive changes in the conceptual recommendations made by the agencies at their July meeting, the Authority believes its recommendations reflect a consensus of the water-related governmental agencies of Kansas. It should be noted that of the recommendations on the 11 items only items 1, 2, 6, 7 and 11 would require legislative consideration.

The Kansas Water Authority is pleased with the approach taken by the Department of Health and Environment to address groundwater quality problems in Kansas. The Groundwater Quality Management Plan originally proposed by the agency clearly identifies groundwater quality problems of the state which need to be addressed and further provides recommended solutions to these problems. The Kansas Water Authority further believes that upon passage of legislation to address these issues that the Department of Health and Environment should coordinate the implementation of the Groundwater Quality Management Plan. With the implementation of the plan the appropriate role of the water-related governmental agencies, as it relates to groundwater quality, would be established.

The following information provides a brief discussion of the issues and the Kansas Water Authority's recommendations for the 11 items proposed by the Department of Health and Environment for implementation of the Groundwater Quality Management Plan.

ITEM 1 - PLANNING (This item is located in Section 1-9 and 12 of the State Environmental Plan originally proposed by KDHE.)

Issue: The Department of Health and Environment originally proposed legislation for a State Environmental Plan as part of the Groundwater Quality Management Plan. This proposed legislation maintains the groundwater quality protection planning function within the Department of Health and Environment with all recommendations emanating from such planning being transmitted directly to the Governor and the Legislature. It was the consensus of the state water-related agencies that this action would imply that groundwater quality issues are separate and distinct from groundwater quantity issues. As a result, the state water-related agencies, including the Department of Health and Environment, have concurred that this planning function should originate at the Department of Health and Environment, be coordinated by the Kansas Water Office and then submitted to the Kansas Water Authority for approval as part of a comprehensive state water plan which would be recommended to the Governor and the Legislature.

Recommendation: It is the recommendation of the Kansas Water Authority that this legislative proposal be incorporated as part of the comprehensive state water plan as agreed to by the water-related agencies. It would be the intent of this action to provide a policy statement that water quality and water quantity management are integrally related. The Authority would propose amendments to K.S.A. 82a-903, 82a-927 and 82a-928 as the most essential elements of this planning function which should be included in the state water plan. It should be noted however that the Authority has not specifically rejected the other elements of this planning function proposed by the Department of Health and Environment. The Authority believes the recommendations for this item should be considered in conjunction with its review and recommendations for a comprehensive state water plan during the next year. This would allow for public hearings, as required by K.S.A. 82a-905, prior to submitting changes to the state water plan to the Governor and the Legislature.



ITEM 2 - BASIC DATA/RESEARCH ELEMENT (New Statute)

Issue: The Department of Health and Environment has proposed legislation which would require all governmental agencies to advise the Department of Health and Environment that a well has been drilled and to verify when the agency abandons the basic data or research well that it is in accordance with rules and regulations adopted by the agency. The other water-related agencies have agreed to the concept of this item, however, some are concerned that rules and regulations might be written which would require prior approval before drilling could begin.

Recommendation: The Kansas Water Authority recommends this item, however, it believes that the proposed legislation should be modified to clarify that such notification does not require prior approval.

ITEMS 3, 4 and 5

Issue: Items 3, 4 and 5 have been included in Senate Bill 498 which was enacted by the 1982 Session of the Legislature (Chapter 228 of the 1982 Session Laws of Kansas).

ITEM 6 - INCREASED LIMIT OF POLLUTANT DISCHARGE FUND (Amendment to K.S.A. 65-171w)

Issue: The Department of Health and Environment has proposed that the current law be amended to increase the maximum on the Pollutant Discharge Clean-Up Fund from \$50,000 to \$500,000. This fund was established so clean-up operations can be conducted before liability for damages are determined. Once liability has been determined, this fund is reimbursed. It should be noted that the amount of money deposited in this fund is subject to an appropriation act of the Legislature. The other water-related agencies have concurred in this proposal.

Recommendation: The Kansas Water Authority recommends this item as proposed.

ITEM 7 - TO COVER ANY POLLUTION TO THE ENVIRONMENT, NO MATTER WHAT THE SOURCE (Amendment to K.S.A. Chapter 65, Article 1)

Issue: The Kansas Department of Health and Environment proposes to amend current law to provide a policy statement which includes the definition of pollution irregardless of the source and to authorize the agency to assess penalties and identify liability for pollution clean-up even though a person may be subject to regulation by another state agency. All agencies have agreed to the concept of this proposal, however, some agencies were concerned that the proposed language might usurp the authority of other agencies.

Recommendation: The Kansas Water Authority agrees that the Department of Health and Environment should be authorized to assess penalties for liability for damage and clean-up to any person who causes pollution and who is not subject to penalties under the authority of another state agency. However, the Authority would question the section of current

law which the Department of Health and Environment proposed to amend to accomplish this purpose. K.S.A. 65-171d authorizes the Secretary of Health and Environment to make rules and regulations necessary to protect the waters of the state from pollution. However, the Authority believes, and the Department of Health and Environment agrees, all specifically defined regulatory functions of other state agencies should remain with such agencies and that these activities should not be subject to rules and regulations by the Department of Health and Environment. As a result, the Kansas Water Authority believes it would be more appropriate to amend K.S.A. 65-170d to authorize the Department of Health and Environment to assess civil penalties to any person who causes the unreasonable deterioration of the waters of the state and who is not subject to civil penalties prescribed under the authority of any other governmental entity. It should be noted that the amendments proposed by the Department of Health and Environment would also expand the definition of pollution; provide for assessment of liability for damages; or liability for clean-up of environmental damage. These issues have not been addressed by the Kansas Water Authority. If further statutory amendments are required then the Department of Health and Environment should make such recommendations to the Governor and the Legislature.

ITEM 8 - SPECIAL GROUNDWATER QUALITY MANAGEMENT AREAS (This item is located in Section 11 of the proposed State Environmental Plan.)

ITEM 9 - COORDINATION PROCEDURES IN SPECIALLY DESIGNATED AREAS (This item is located in Section 10 of the proposed State Environmental Plan.)

Issue: Although natural pollution problems may cover large areas, most serious groundwater pollution problems related to man-made sources are confined to restricted geographic areas--often less than a square mile, but may extend to five to ten square miles. To address this issue the Department of Health and Environment originally proposed legislation which would authorize the agency to designate special groundwater quality management areas and authorize the agency to adopt rules and regulations describing procedures to designate, administer and coordinate such an area. The water-related agencies and the Department of Health and Environment were concerned that without notice control, containment and clean-up would be negated. As a result, the state water-related agencies agreed to the concept that the Department of Health and Environment would notify state agencies and other governmental entities when it identifies a groundwater contamination area. However, the agencies believed such a management program could be accomplished without legislative action. If such a management program still cannot control, contain or clean-up contaminants within a reasonable period of time, the next step would be to initiate an intensive groundwater use area, if public health or water supplies are threatened.

Recommendation: The Kansas Water Authority reviewed this issue in conjunction with Item 11 which proposes certain amendments to existing law related to the designation of intensive groundwater use control areas. The Authority does recognize the potential value of different classifications of management areas for control, containment and clean-up of groundwater pollution. Further, the Authority recognizes the need for close coordination and cooperation of all governmental entities to avoid public health and water supply problems. However, the Authority concurs with the water-related agencies that the intent of designating

special groundwater quality management areas could be effectively accomplished within the framework of the proposed amendments to the existing law for designating intensive groundwater use control areas. As a result, the Authority has no objections to such designations which would be a part of the proposed process for designating intensive groundwater use control areas.

ITEM 10 - WATER WELL CONSTRUCTION AND ABANDONMENT (Amendment to K.S.A. 82a-711a.)

Issue: The Department of Health and Environment proposed this amendment to assure that when the Chief Engineer, Division of Water Resources, State Board of Agriculture, approves an application to appropriate groundwater, the person would be advised of other state law requirements pertaining to well construction and abandonment. The affected state agencies have agreed to prepare a memorandum of understanding to resolve this issue rather than seek legislative amendments.

Recommendation: Since the Chief Engineer has agreed to incorporate such information on all letters pertaining to an application to appropriate groundwater, including temporary permits, this section no longer appears necessary.

ITEM 11 - INTENSIVE GROUNDWATER USE CONTROL AREAS (Amendment to K.S.A. 82a-1036.)

Issue: The Department of Health and Environment has proposed an amendment to existing law which would authorize the agency to recommend an intensive groundwater use control area to the Chief Engineer, Division of Water Resources, State Board of Agriculture. In addition, these amendments would set forth the conditions under which the Department of Health and Environment must act in making such recommendations. The water-related agencies had no objections to the proposed conditions for such a recommendation but they did not resolve the issue of how this process would be coordinated.

Recommendation: To clarify the process for designating intensive groundwater use control areas in Kansas, the Kansas Water Authority recommends amendments to K.S.A. 82a-1036 to: 1. allow for the continuation of the current procedure for designating intensive groundwater use control areas within groundwater management district boundaries, 2. require the Department of Health and Environment to notify a groundwater management district and the Chief Engineer in writing when unreasonable deterioration or contamination of the quality of groundwater is occurring within the boundaries of a groundwater management district, 3. authorize the Department of Health and Environment to recommend an intensive groundwater use control area for water quality purposes to the Chief Engineer in all areas outside the boundaries of existing groundwater management districts, 4. require the Chief Engineer to initiate proceedings for such designation within 90 days, and 5. require the Chief Engineer to issue a report after the completion of the investigation which would contain a statement of the basic fact which persuaded the Chief Engineer in arriving at his decision.

ITEM 12 - REGULATION ON INDUSTRIAL DISPOSAL WELLS (Adoption of KDHE Regulations.)

Issue: The Department of Health and Environment has proposed the adoption of additional regulations pertaining to industrial disposal wells. To date, these new and revised regulations have not been drafted by the agency.

Recommendation: The Kansas Water Authority believes the Department of Health and Environment should proceed with the drafting of these proposed new and revised regulations. The Kansas Water Authority would reserve comment on these regulations until such time as they are proposed.

ITEM 13 - ARTIFICIAL RECHARGE PROJECTS (Amendment to K.S.A. 82a-707 and new statute 82a-1217.)

Issue: The Department of Health and Environment proposed an amendment to current law which would require the agency to approve any applications for artificial recharge projects before they are submitted to the Chief Engineer for consideration as an application to appropriate water. The water-related agencies have indicated that this proposed legislation should be delayed for two years and pending determination of need to permit injection wells under the Environmental Protection Agency Underground Injection Control Program.

Recommendation: The Chief Engineer currently approves all applications for artificial recharge projects. Therefore, the Kansas Water Authority would agree that this proposed legislation is not necessary.

ITEM 14 - REVISED REGULATIONS ON CONDUCTOR OR TUBING FOR SALT SOLUTION MINING WELLS (Revised KDHE regulations.)

Issue: The Department of Health and Environment has proposed that it revise its current regulations concerning such activities.

Recommendation: The Kansas Water Authority believes the Department of Health and Environment should proceed with the drafting of these revisions. The Authority would reserve comment on these revisions until such time as they are proposed.

ITEM 1

**82a-902.** Definitions. The following words when used in this act, shall have the meaning ascribed in this section, except where the context clearly indicates a different meaning:

(a) "Person" means and includes a natural person, partnership, organization, association, private corporation, public corporation, any taxing district or political subdivision of the state, and any department or agency of the state government.

(b) "Public corporation" means a body that has for its object the government of a political subdivision of this state and includes any county, township, city, district, authority, or other municipal corporation or political subdivision of this state.

(c) "Federal government" means the United States of America or any department or agency thereof.

(d) "Board" means the Kansas water resources board.

History: L. 1963, ch. 514, § 2; L. 1981, ch. 398, § 2; July 1.

**82a-903.** State water plan; formulation; ~~cooperation of state water agencies.~~ The board shall formulate on a continuing basis a comprehensive state water plan for the management, conservation and development of the water resources of the state. ~~Such state water plan shall include sections corresponding with water planning areas as determined by the board. All state water agencies, as defined in K.S.A. 74-2610a, and~~ all other interested state agencies shall cooperate with the board in formulation of such plan.

The Kansas Water Office

Delete

The Kansas Water Office shall forward the completed state water plan to the Kansas Water Authority for approval. The Kansas Water Authority, after causing such changes to be made as it deems appropriate, shall forward the plan to the Governor and the Legislature for final approval.

A  
KWO

ITEM 1 (Continued)

**82a-927.** State water plan; long-range goals. The long-range goals and objectives of the state of Kansas for management, conservation and development of the waters of the state, are hereby declared to be:

(1) The development, to meet the anticipated future needs of the people of the state, of sufficient supplies of water for beneficial purposes;

(2) the reduction of damaging floods and of losses resulting from floods;

(3) the protection and the improvement of the quality of the water supplies of the state;

(4) the sound management, both public and private, of the atmospheric, surface, and groundwater supplies of the state;

(5) the prevention of the waste of the water supplies of the state;

(6) the prevention of the pollution of the water supplies of the state;

(7) the efficient, economic distribution of the water supplies of the state; and

(8) the sound coordination of the development of the water resources of the state with the development of the other resources of the state.

(8)

(9)

(7) the research and collection of data pertaining to the geological and hydrological characteristics of the water supplies of the state;

**82a-928.** Same; policies to achieve long-range goals listed. The policies of the state of Kansas that are deemed desirable for the achievement of the long-range goals and objectives as set forth in K.S.A. 82a-927, as amended, and that shall serve as guides for public corporations and all agencies of the state relative to their responsibilities with respect to the water resources of the state whenever physical and economic conditions permit, are hereby declared to be:

- (2) ~~1)~~ The utilization of non-structural methods, including floodplain regulation, and structural measures for the reduction of flood damage;
- (3) ~~2)~~ the design of proposed levees and dikes so as to reduce flood risks in agricultural areas to a chance of occurrence in any one year of 10% or less;
- (4) ~~3)~~ the design of proposed levees and dikes so as to reduce flood risks in urban areas to a chance of occurrence in any one year of 1% or less;
- (5) ~~4)~~ the design of proposed storage structures for the protection of agricultural areas so as to provide sufficient capacity to control the volume of a flood having a chance of occurrence in any one year of 4% or less;
- (6) ~~5)~~ the design of proposed storage structures for the protection of urban areas to provide sufficient capacity to control the volume of a flood having a chance of occurrence in any one year of 2% or less;
- (7) ~~6)~~ the development of adequate water storage to meet, as nearly as practicable, present and anticipated water uses through planning and construction of multi-purpose reservoirs;
- (8) ~~7)~~ the inclusion in publicly financed structures for the conservation, management and development of the water resources of the state of reasonable amounts of storage capacity for the regulation of the low flows of the watercourses of the state;
- (9) ~~8)~~ the achievement of the primary drinking water standards promulgated by the secretary of health and environment pursuant to K.S.A. 1981 Supp. 65-171m, and amendments thereto;
- (10) ~~9)~~ the identification of minimum desirable streamflows to preserve, maintain or enhance in-stream water uses relative to water quality, fish, wildlife, aquatic life, recreation and general aesthetics;
- (11) ~~10)~~ the maintenance of the surface waters of the state within the water quality standards adopted by the secretary of health and environment as provided by K.S.A. 65-164 to 65-171t, inclusive, and amendments thereto;

(1) The prevention of ground-water pollution through coordinated management control programs with private and governmental entities to regulate potential sources of pollution.

ITEM 1 (Continued)

82a-928 (Cont)

- (12) ] ~~11~~ the protection of the quality of the groundwaters of the state as provided by the Kansas groundwater exploration and protection act and other acts relating thereto;
  - (13) ] ~~12~~ the management of the groundwaters of the state as provided by the Kansas water appropriation act and the provisions of K.S.A. 82a-1020 to 82a-1040, inclusive, and amendments thereto;
  - (14) ] ~~13~~ the provision of financial and technical assistance to public corporations concerned with management, conservation and development of water resources;
  - (15) ] ~~14~~ the review and coordination of financial assistance for research that may be provided by federal or state agencies to public corporations concerned with management, conservation and development of water resources to prevent duplication of effort;
  - (16) ] ~~15~~ the development of groundwater recharge projects;
  - (17) ] ~~16~~ the encouragement of local initiative in the planning, implementation, funding and operation of local water programs to the extent that the same are supportive of state water programs; and
  - (18) ] ~~17~~ the design of municipal water systems to provide an adequate water supply to meet the needs during a drought having a 2% chance of occurrence.
- (16) the identification of significant groundwater recharge areas and the protection of groundwater resources in those areas.



ITEM 2

New Statute: 82a-1216

Whenever any governmental agency drills a well for basic data or research purposes, the agency shall file a notice of completion within sixty (60) days after drilling with the Kansas Department of Health and Environment, setting forth (1) the purpose of the well, (2) the depth of the well, (3) the location of the well, (4) the amounts and types of surface casing and cement used, and (5) the geologic formation or formations screened and such other information as may be required by the Secretary. The drilling agency shall certify within sixty (60) days after abandonment of any well that the well was constructed and abandoned in accordance with rules and regulations adopted by the Kansas Department of Health and Environment. Nothing in this act shall be construed to mandate prior approval by the Kansas Department of Health and Environment.

ITEM 6

**65-171w.** Same; establishment of pollutant discharge cleanup fund. There is hereby established in the state treasury a special fund designated the pollutant discharge cleanup fund for the use of the department of health and environment in paying for cleanup work undertaken in accordance with the provisions of K.S.A. 65-171v. The state treasurer shall maintain a balance in such fund not to exceed  ~~fifty thousand dollars (\$50,000)~~

five hundred thousand dollars  
(\$500,000)

65-170d. Same; violations; civil penalty; appeal; hearing; notice; modification of order. (a) Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165; (2) any effluent standard or limitation or any water quality standard or other rule or regulation promulgated pursuant to K.S.A. 65-171d; (3) any filing requirement made pursuant to K.S.A. 65-164 or 65-166; (4) any reporting, inspection or monitoring requirement made pursuant to this act or K.S.A. 65-166; ~~or~~ (5) any lawful order or requirement of the secretary of health and environment shall incur, in addition to any other penalty as provided by law, a civil penalty in an amount of up to ten thousand dollars (\$10,000) for every such violation and, in the case of a continuing violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation.

;OR(6) the public health, safety or welfare by causing the unreasonable deterioration of the waters of the state and who is not subject to civil penalties prescribed under the authority of any other state agency

the secretary of health and environment shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance at any hearing of formal rules of pleading or evidence.

(d) Any person aggrieved by an order of the secretary of health and environment may apply within thirty (30) days after the rendition of the order, to the district court of the county in which the order of the secretary of health and environment is to become effective for a review of such order or decision. If the order of the secretary of health and environment is to become effective in more than one county, the application must be to the district court of one of such counties. Any party to any such review proceedings in a district court may appeal from the final decision rendered by such court in such proceedings to the supreme court as provided by K.S.A. 60-2103, or any amendments thereto.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) of this section, may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No such penalty shall be imposed except upon the written order of the director of the division of environment to such person stating the violation, the penalty to be imposed and the right of such person to appeal to the secretary of health and environment. Any such person may, within thirty (30) days after notification make written request to the secretary of health and environment for a hearing thereon. The secretary of health and environment shall hear such person or persons within thirty (30) days after receipt of such request and shall give not less than ten (10) days written notice of such hearing.

**82a-1036.** Initiation of proceedings for designation of intensive groundwater use control areas; duties of chief engineer; findings. Whenever a groundwater management district recommends the same or whenever a petition signed by not less than three hundred (300) or by not less than five percent (5%) of the eligible voters of a groundwater management district, whichever is less, is submitted to the chief engineer, the chief engineer shall initiate, ~~as soon as practicable thereafter,~~ proceedings for the designation of a specifically defined area within such district as an intensive groundwater use control area. The chief engineer upon his or her own investigation may initiate such proceedings whenever said chief engineer has reason to believe that any one or more of the following conditions exist in a groundwater use area which is located outside the boundaries of an existing groundwater management district: (a) Groundwater levels in the area in question are declining or have declined excessively; or (b) the rate of withdrawal of groundwater within the area in question equals or exceeds the rate of recharge in such area; or (c) preventable waste of water is occurring or may occur within the area in question; (d) unreasonable deterioration of the quality of water is occurring or may occur within the area in question; or (e) other conditions exist within the area in question which require regulation in the public interest.

History: L. 1978, ch. 437, § 2; July 1.

(2)

within ninety (90) days,

In areas included in a groundwater management district the Department of Health and Environment shall notify the groundwater management district and the chief engineer in writing that unreasonable deterioration or contamination of the quality of groundwater is occurring or may occur within the area in question.

(1)

or (3) in areas not included in a groundwater management district, whenever unreasonable deterioration or contamination of the quality of the water is occurring or may occur in the area in question and the Department of Health and Environment recommends the same,

The chief engineer shall issue a report after the completion of an investigation of an intensive groundwater use control area which shall contain a concise and specific statement of the basic facts which persuade the chief engineer in arriving at a decision.



## State Water Plan Storage Act

Recommendation: The Kansas Water Authority recommends to the 1983 Legislature and to Gov. John Carlin that favorable action be taken on the revisions to the State Water Plan Storage Act proposed by the Authority.

### Background

Senate Bill 95, an act amending the State Water Plan Storage Act was passed by both houses of the Legislature in 1981, but vetoed by Gov. John Carlin. The Governor, in his veto message, said he wanted the Kansas Water Authority, which was created that same year to take a hard look at the revisions and return its recommendations.

The Authority's work on the State Water Plan Storage Act began after the Authority assessed the water supply and demand picture for the state. The picture suggests that there are not sufficient supplies of water on line in Kansas now to meet the anticipated water supply demands, particularly of municipal and industrial users, the next 20 to 30 years. The state's reservoir water supply storage will become an increasingly valuable asset as options to develop new groundwater and surface water supplies are foreclosed. It is imperative that the state have in place the best tools possible for the proper management and preservation of this water supply system.

A major revision in existing law, proposed by the Authority, would enhance the state's ability to truly manage the reservoir supplies in the best interest of providing sufficient supplies of water to meet the needs of the state as a whole and all its water users. The new language specifically enables the state to direct applicants or users to another source of water, enables the state to reject an application or enables the state to contract to sell less water than the applicant requests and to sell it under terms and conditions that best meet the interests of the entire state.

At 82a-1311, specific new language provides some framework for determining whether a sale should proceed. It provides that only when it is in the public interest shall water be sold. Existing law has provided no real guidelines or measurements for determining whether it is in the best interest of all the state's water users to contract to sell a reservoir supply. Existing law would appear to operate from the premise that there is plenty of water in the state and in the reservoir system, and that all that is needed are some steps to take to sell water. Current

law provides no standard for measurement to determine whether a sale is truly in the public interest. The proposed amendments enable the state to recover actual investments in acquiring the water supply in reservoirs; enable the state to begin to address the question of how to maintain, replace and enhance the integrity of the reservoir system for the water purchasers whose futures depend upon its longevity; and enable the state to adjust actual amounts of water contracted for sale if the buyer declines to pay the full price for it when another applicant needs to buy the same water and is willing to pay.

In addition, provisions of the bill speak directly to potential out-of-state purchases of water to add to the reservoir pool or proposed sales to out-of-state customers from the reservoir pool. Current state law is silent on out-of-state purchases or sales of surface water.

#### Bill Summary

82a-1301 is the definition section. The revisions change the definition of "executive director" to director of the Kansas Water Office and the definition of "board" to Kansas Water Authority to reflect changes the Legislature made in 1981. The revisions also add a new definition, as did S.B. 95, for "capital cost" which means the total cost incurred to the state in the construction or acquisition of the conservation water supply portion of the reservoir system from which water is contracted.

82a-1302. Specifies waters subject to the act. No change is proposed in current law.

82a-1303. Revisions propose that the Kansas Water Authority authorize the Kansas Water Office to acquire water reservation rights to the conservation storage water supply capacity on behalf of the state. Authority approval is an additional check.

The Authority also proposes a new section (b) which specifies that whenever the Authority finds it would be in the public interest of the state of Kansas to obtain water out-of-state to add to the reservoir water supply capacity, the Authority shall authorize the director to enter into contract negotiations to obtain that water subject to final contract approval by the Authority.

82a-1304. Provides the procedure for filing the reservation right with the chief engineer, Division of Water Resources. The only proposed change in 1304 strikes "board" and specifies that the KWO director shall acquire the reservation right. Thereafter, the references to "board" are deleted and "director" is substituted.

82a-1305. Specifies that whenever the Authority finds that a proposed use of water advances the purposes of the State Water Plan and that it is in the public interest, the Authority may enter into contracts for such water use. The section also says that negotiations with persons for the withdrawal and use of Kansas' reservoir water supply outside the state shall first be authorized by the Authority and it shall determine whether such withdrawal and use would be detrimental to the public interest of the state of Kansas. The Authority also proposes retaining the 10-year minimum term of a contract which had been struck in S.B. 95. The section also provides to the person contracting, the first right of refusal to contract again for the same water if his contract expires.

Also in this section, current law provides the KWO director unilateral authority to dispose of water supply water that is surplus to contract requirements. The Authority proposes that such disposal be approved by the Authority which shall determine that it is in the public interest to dispose of the water. New language requires that a price be charged for the water released for other than streamflow maintenance. Currently, the Authority understands that no charges are levied against beneficiaries of the surplus water released. Existing language provides that in an emergency affecting the public health, safety or welfare which precludes convening the Authority, the governor can make a declaration to enable the emergency release.

82a-1306. Provides that every contract made for the purchase of reservoir water shall include:

- 1) Provisions for charges which shall be set by the Authority at a rate which the Authority shall fix per 1,000 gallons but not less than 7.5 cents per 1,000 gallons of water at the point of withdrawal from the reservoir.
- 2) Provisions for a minimum charge to be paid either in equal annual or monthly installments whether or not water is withdrawn in the calendar year. This minimum charge will be the sum of the rate per 1,000 gallons multiplied by 50 percent of the water plus, on the remaining 50 percent of water reserved under contract, an amount as interest computed as a rate per annum equal to the average interest earnings of the Pooled Money Investment Board the past 12 months, on the total amount of moneys advanced from state funds for costs incurred and associated with that portion of the state's conservation water supply capacity.
- 3) Provisions that the Authority shall adjust the price per 1,000 gallons of water annually to reflect any change in experience.
- 4) Provisions that the amount of water under contract may be reduced on the sixth anniversary of the execution of the contract and then on each annual anniversary thereafter if the contractor does not begin full payment for the water under contract and another water user is ready, willing and able to contract for the water.



- (5) Provisions that the contractor can withdraw any amount of water up to the minimum in a calendar year without additional charge as provided in current law.
- (6) Provisions that any amount of water above the minimum and below the maximum can be withdrawn in a calendar year. If, for example, it were 63 percent, then the contractor would pay the rate per 1,000 gallons on the 63 percent and interest on the remaining, unused 37 percent for the benefit of being able to lock in that future supply potential.
- (7) Provisions that the Authority will apportion waters available from a reservoir if the reservoir supply cannot cover all contracts.
- (8) Provisions the Authority finds reasonable to protect the public health and achieve the purposes of the State Water Plan.
- (9) Additional provisions reasonable to protect health, safety and general welfare.

82a-1306(b) Provides that if the parties desire, the beginning of the payment period may be deferred a maximum of three years if the use of such water requires the issuance of bonds or the construction of transmission or treatment facilities.

82a-1307. Revisions propose enabling the Authority to transmit water supply contracts to the Legislature any time during the first 60 days of the regular session instead of on the first day. The Legislature would have 30 days instead of the current 60 to revoke a contract. It provides that upon the effective date of the new revisions published in the Kansas Register, the Authority would have 5 days to submit any contracts the first year only and the Legislature would have up to 30 days to revoke. Contracts for the interbasin transfer of conservation water supply capacity water would be subject to the proposed inter-basin transfer Legislation and would be exempted from being sent to the Legislature under the proposed Interbasin Transfer statute.

82a-1308. The Authority shall fix every year on July 1, effective January 1 of the following year, the rate per 1,000 gallons of water. The rate shall be equal to the sum of the following components:

- (1) The amount necessary to repay the amortized capital costs associated with the state's conservation storage water supply capacity and a replacement cost of 2.5 cents.
- (2) An amount as interest equal to the average interest earnings of the Pooled Money Investment Board the past 12 months on all monies advanced from the general fund for the water supply capacity.

- (3) The amount necessary to reimburse the state for enforcement costs.
- (4) The amount necessary to repay operation, maintenance and repair costs.

This section further provides that no water supply will be considered part of the system for computing costs until the year the state incurs contract obligations on the supply.

82a-1309. Revisions provide no substantial change in authority to meter purchasers.

82a-1310. The section had specified all information required on a contract application. Revisions remove all details from statute, anticipating that applications will be filed in such form as the director requires pursuant to rules and regulations which must currently be approved by the Authority. New language proposes that the KWD director make the requests to the Authority to make minimum streamflow releases from the water supply capacity unless an emergency exists in which case the governor's declaration is sufficient to make a release.

82a-1311. Provides revised language relating to application for water purchase, notice to negotiate a contract and transmittal of a proposed contract to the Authority. Revised language also spells out nine considerations the Authority should make in determining whether to approve a contract. The new language requires the test that the proposed sale is in the public interest and the benefits to the state for approving the sale outweigh benefits to the state for rejecting the sale. Newly proposed language also gives the Authority specific ability to approve or reject the contract, to recommend purchase of water from an alternative source and approve of a contract for less water than requested and under terms and conditions necessary to protect the public interest of the state as a whole.

82a-1312. Revisions delete the requirement copies of contracts be filed with the register of deeds of certain counties.

82a-1313. No proposed revisions in the section on protection of contract rights.

82a-1314. New language proposes giving the chief engineer clear authority to protect and enter into agreements to protect releases from the water supply capacity.

82a-1315. Provides that all revenue generated from the water supply contracts shall be deposited in the Conservation Storage Water Supply Capacity fund which is specifically earmarked for paying general fund debts and developing additional reservoir water supply capacity.

82a-1316. There are no substantive revisions in the section relating to assignment, sale or transfer of a contract interest.

82a-1317. Revisions propose that interest equal to that earned by the Pooled Money Investment Board for the past 12 months be charged on overdue payments.

82a-1318. There are no substantive revisions in the section dealing with the enforcement of claims or rights and responsibility of the attorney general.

82a-1319. No substantive change in procedure for adopting rules and regulations.

82a-1320. No proposed revisions in the title of the act.

82a-1321. Provides that the act take effect upon publication in the Kansas Register.

#### Issues Considered

During deliberations in developing the proposed revisions in the State Water Plan Storage Act, the Authority received numerous comments and considered many alternatives. The Authority would like to summarize some of the major issues addressed in the deliberations.

Mr. Christopher McKenzie, attorney and director of research for the League of Kansas Municipalities, raised concerns regarding the removal of a 10-year minimum and a 40-year maximum term of contract proposed in S.B. 95 and originally in draft revisions developed by the Authority's Committee on Water Marketing chaired by Mr. Jack Alexander of Topeka.

Mr. McKenzie questioned whether the discretion to set contract terms of less than 10 years could cause undue uncertainty for city water supplies and additional bonding difficulties to finance water supply projects. The Authority restored a 10-year minimum contract provision, unless the applicant requests a shorter-term contract. Flexibility to adjust price and the amount of water contracted during the life of a 10-year contract is provided in other sections of the bill. In addition, regarding concerns for a longer-term contract, the bill provides the first right of refusal to renew a contract for the water supply to the person initially contracting for it.

Mr. McKenzie also argued that cities would prefer provisions for rate adjustments only every five years, even though the adjustment to reflect actual cost experience might be higher at five-year intervals than it would be with annual adjustments. The Authority considered a number of arguments regarding the timing of rate adjustments. A con-

sulting engineer with experience in developing Kansas water supply systems advised the Authority that in current economic times, bonding companies analyzing the ability of a water user to repay obligations often lean toward annual customer rate increases in the utility system, preferring them to the much more significant jumps in rates incurred when users delay increasing rates for a period of time.

The Authority concluded, based on discussions with water utility officials representing some of Kansas major cities and others, that the state should have the ability to adjust price annually with sufficient lead-time notice to enable the purchasers to increase their water rates to cover the increases in actual cost experience. The Authority further concluded that it is in the state's interest to be able to adjust prices to reflect experience and increase its revenue flow to offset its expenses annually. Additionally, a factor included in the price of water is an interest rate and with the recent experience in significant interest variables, it is further in the state's interest to keep its revenue flows current with that variable. Annual price adjustments also assist in reducing the inequities in different price rates paid by different customers who initially contracted for water supply at different times.

Several persons raised questions about the proposal to charge an interest rate equivalent to the interest earned the past 12 months on investments of the Pooled Money Investment Board which invests the state's funds. The Authority received arguments that the interest computed for the water supply capacity should directly reflect the interest rate at which the state must repay the federal government for the construction of the water supply storage space. While that interest rate was originally very low on the early reservoir projects, interest rates charged by the federal government on water supply storage construction are now much more reflective of higher interest rate experience and are now approaching 10 percent. The Authority concluded the interest rate computed in the pricing structure must respond not only to the amount of interest the state must repay on the construction, but that it must also respond to the very real situation that exists now in which the state's general fund must advance money to meet repayment obligations until user revenues can cover the annual bills on the system. The state is losing a certain amount of investment earnings potential in supporting this water supply system.

Objections were raised to maintaining a provision proposed in Senate Bill 95 enabling the state to review the amount of water tied up in contracts on the fifth anniversary of the execution of a contract except for the deferred payment contracts. The review requires that a willing buyer be standing by to purchase the water if the person who has it under contract declines to pay for all of it. City interests argue that those contracting for reservoir supplies are projecting to cover anticipated increases in municipal demands and population and that undue pressure to use or pay for all the water tied up under

contract is inequitable. The Authority, however, concluded that the cities and other entities contracting for reservoir water supplies must be encouraged to more precisely estimate future water supply needs. Under current law, there is very little pressure to store more minimal or realistic amounts when 50 percent of the amount of water contracted can be held at no cost to the entity if it is not used. The Authority also raises concerns regarding the state's responsibility to equitably distribute its water supplies without marketplace pressures adequate to discourage storing excess water under contract that cannot be used to meet more pressing immediate needs until additional water supply can be developed. Both the proposal to begin charging entities at least the interest rate related to the investment tied up in the water stored and unused, and provisions to adjust the amount of water in contracts when other buyers need it should encourage entities to assess more carefully their future water needs. The Authority concludes that it is reasonable to allow six years from the execution of a contract for the contracting entity to continue to assess its projected development schedule and determine whether it has contracted for a realistic amount of water to meet its needs. After the first six years, needy buyers standing by with the ability to pay should have an opportunity to acquire water that is not being utilized and paid for. The entity that holds the contract does not jeopardize his ability to hold onto the full amount of water under contract because it has the option of paying the full costs of that privilege. Under that option, the state is at least receiving revenues on that unused water that can be used to assist the willing new buyer in obtaining water supply. In addition, the entity holding the contract and forced to pay in full on all the water in the contract, does have the ability to subcontract the water for short periods of time to defray his costs if the Authority approves of the subcontracting.

The Authority did reject proposals to eliminate the pressure of water amount reviews and potential full payment demands by requiring that contractors' minimum payment requirements increase from 50 percent by 10 percent every five years thereafter. That option would delay full payment on the water supply under contract for 25 years, an amount of time determined to be too lengthy to develop a supply when there is competition for that supply and the full amount of revenues are not being generated nor is the water available for others to develop.

The Authority also rejected proposals to give those who elect to defer the beginning of payments three years during construction of a project additional time beyond six years to develop the supply free of increased payment pressures. If the projections for the amount of water supply necessary to lock into a contract can be assessed for their validity in six years in other cases, they should be assessed regardless of the initial deferment of payments.

The Authority considered the provision of Senate Bill 95 enabling contractors to pay one lump sum payment for that amount of their obli-

gation that is capital costs of the water supply system. The Authority is not proposing retention of this provision. The way the option is structured in Senate Bill 95 appears to preclude that entity paying an initial lump sum for sharing the additional capital costs of the system if new water supply storage capacity is acquired or built. If the Legislature elects to restore that option, the Authority strongly urges that provisions be added guaranteeing that the entity which elects to pay a lump sum must be charged its share of new capital cost debts incurred by the system after that lump sum payment was made.

Regarding other major issues raised in the proposed revisions: At 82a-1303 and 82a-1305, the Authority proposes new language that provides that a public interest determination be made for the state of Kansas' interests in proceeding to sell surface water from the reservoir water supply capacity out-of-state or in acquiring water out-of-state to augment supplies in the system. Current law speaks only to determinations that must be made in the proposed out-of-state sale or transportation of groundwaters. The surface water question arises because of the interest expressed by some Missouri cities in acquiring water from the proposed Fort Scott Reservoir. The Authority strongly recommends that this issue receive consideration by the Legislature so that some guidelines are available to make planning decisions if this issue continues to develop.

The Authority proposes in 82a-1311 that specific language be adopted to provide the state the guidelines it needs to determine whether it is in the best interest of the state as a whole and its often competing water users to proceed with a reservoir water supply sale. A decision to sell water supply from a reservoir must turn on whether the benefits to the state for approving that sale prevail over any detriments that might occur. The language outlines, for the first time in this act, some considerations that should be included in a decision. It also gives the Authority some statutory support for a decision other than to approve a contract. Current law almost appears to ignore those possibilities and provides no real option to try to equitably allocate and distribute water by offering to contract from an alternative source. The Authority did not receive any major objections to this new language from those who communicated concerns.

The method for computing the price of water set out in 82a-1308 closely parallels the proposal in Senate Bill 95. The Authority is not entirely satisfied that this approach sufficiently meets its concerns with water supply pricing. It would offer this proposal in the interest of developing a bill that does embrace many of the other concerns with the current law and would advise the Legislature that it will continue examining alternatives in pricing that may better respond to some new directions that may be necessary.

Unlike S.B. 95, the Authority proposes that a 2.5 cents "replacement" cost be computed into the price. The Authority strongly believes that

this marks the beginning of a new approach to developing prices. When the reservoir storage system was initiated, the federal government financed the projects at extremely low costs. That day is over. The costs of new acquisition or development reflect steep increases in construction costs or prices the equivalent of new construction costs.

The Authority has serious reservations about pursuing a policy of borrowing from the general fund until water user revenues can pay the bills on the reservoir system. That is perhaps adequate when the only debt is very long-term and the original investments were extremely low.

But the Authority is concerned that once water users come into the reservoir system, they have likely exhausted all other options for developing an independent surface or groundwater supply. Their futures are in the future viability of the state's reservoir system and the ability of that system to grow to meet their anticipated growth and future water supply needs. To an extent, these reservoir water supply users have entrusted their futures to the state to maintain and augment this system. The state is not really able to respond to orderly development and augmentation of this system without substantial millions of dollars in up-front monies contributed by the general fund or substantial additional annual allocations from the general fund to cover increased revenues needed to repay annual costs if additional water supply storage space is offered to the state and can be acquired at current construction costs from existing reservoirs.

Some of our reservoirs were built with only 50-year water supply storage lives and others with 100-year lives. Some will be yielding water supply beyond their projected life. But others are facing siltation problems that threaten the capacity to store water supplies and threaten to reduce yields from that supply.

The Authority did pose a question to state water supply economists. The question was, what kind of money must be set aside annually so that in 50 years there will exist a sufficient fund to develop a reservoir to increase the total system yield to meet increased demands or to replace yields lost to the system. The computation suggested that to be in a position to develop a reservoir that could be built today for about \$170 million to yield between 60 and 70 million gallons per day would require positioning the state to put up an estimated \$200 million in an estimated 50 years. If an annual contribution to this development goal were spread over current water users in the marketing system, it would require an increase in the price of about 1.3 cents per 1,000 gallons invested at 10 percent interest, an amount compatible with the proposed 1.5 cents of S.B. 95. As the amount of water use in the reservoir system increases, the amount of money generated toward this goal would increase if the investment were held at the proposed 2.5 cents.

The Authority has investigated options for creating bonding authority for the state to generate the water supply development revenues the Authority believes the state must develop. If that bonding option could be developed, the revenues from the replacement assessment could be used to collateralize the bonds.

The Authority proposes moving in the direction of developing funding that can be devoted to developing water supplies. It believes its proposals are the first step in that direction.

The proposed revisions in the storage act also propose earmarking all revenues generated by water users in the reservoir system for paying the bills the system accrues and for reinvesting in the future of that system. The Authority therefore proposes taking steps now to separate these water supply revenues from the general fund toward the day that the water supply development system is self-sustaining.

In continuing to examine pricing options for future Legislatures to consider, the Authority would advise lawmakers that it plans to study options for building conservation incentives into the pricing system -- particularly the options for building conservation credits into the system to effectively encourage water conservation.

Regarding pressures that might develop opposing provisions of this bill that would increase revenues being generated in this reservoir system, the Authority believes that the current price of water is extremely cheap in relationship to other prices.

In examining what the current pricing structure would do if the state acquired and developed additional supplies to add to the system and average into the costs, the Authority learned that the state could invest about \$315 million in supplies yielding about 376 million gallons per day and drive the price per 1,000 gallons of water up to only 33 cents at a 10 percent interest factor. Specifically, estimates are that the state could acquire substantial reallocated storage space at Tuttle Creek, Melvern, Pomona and Kanopolis reservoirs and build three other new reservoirs, increasing sources of supply by seven reservoirs and increase the price per 1,000 gallons to just over 30 cents under this pricing structure.

Another indicator of whether the current price or slight increases in that price is reasonable, the Authority would note that in another calculation provided for the Authority it was estimated that the first costs for the total of nine existing reservoirs in the current water supply system was about \$69,071,000. The estimated value of that investment today is about \$134.55 million. The price being paid for water today is substantially less than the real value of that water supply storage capacity.

During the final deliberation of the full Authority on the proposed bill, Mr. Mike Withrow of Wichita strongly objected to including a



7.5-cent minimum price per 1,000 gallons of water in the bill. He said he opposed what appeared to be an arbitrary floor. Mr. Withrow argued that Section 82a-1308 provides concepts for pricing and establishes a basis for earning a return on state expenditures. Mr. Withrow strongly urged that this formula be allowed to establish a price and free to allow the price to fluctuate. Other Authority members supported establishing a 7.5-cent floor on price to insure a minimum revenue return to the state. Supporters argued that if the proposal prevailed to earmark all monies generated by reservoir users to pay reservoir debts and to reinvest in the reservoir system, then the actual users would reap all benefits from a charge of this amount. Mr. David Darling, economist for the Kansas Water Office, advised the authority that under the current pricing formula, only a 5 percent interest rate is figured in the price to set the price per 1,000 gallons. With 5 percent interest the current price would be 5.6 cents per 1,000 gallons. An interest rate of 9 percent, which would be closer to what the Pooled Money Investment Board is earning as proposed in the bill, that would add 2 cents per 1,000 gallons to the price for a total of 7.6 cents. At 8.25 percent interest, the unit price would increase by about 1.5 cents the current 5.6 cents per 1,000 gallons to 7.1 cents and with the one-half cent administrative charge the unit price per 1,000 gallons would be 7.6 cents. Mr. Darling's calculations suggested that the minimum price proposed in the bill would likely be exceeded under the proposed calculations required at 82a-1308.

Mr. Withrow put to a vote a proposal to remove the 7.5-cent floor. The motion failed.

Mr. Robert Binder of Hays then moved that the Authority vote whether to raise the initial proposal for a 1.5-cent replacement cost to 2.5 cents. Mr. Binder argued that the projected costs are tremendous for augmenting the reservoir systems supplies either by acquiring water supply storage at existing reservoirs or by constructing new reservoirs. Mr. Binder argued that the reservoir system users futures depends upon whether the financial ability exists to continue to develop the system, providing for their growing new needs and making room for new users. Mr. Binder argued that 2.5 cents per 1,000 gallons, spread over all the users of a water utility, is a small price to pay for future water supply assurances. Mr. Binder said that if the state determines in the future that this revenue does not need to be raised or if the state finds alternative funds for this revenue, it can reduce or remove the charge. Mr. Binder called for a vote and the proposal to raise the replacement cost from 1.5 cents to 2.5 cents passed. Mr. Withrow asked to be recorded as voting "no."

Mr. Hugh Armstrong proposed the Authority consider building into the pricing mechanism a requirement for paying the equivalent of amortized replacement costs for the system. Mr. Armstrong said an amortized replacement cost would be sensitive to values increasing each year.

Mr. Armstrong argued that the water supply users are not really buying water supply storage space at the reservoirs, but renting that space and that a cost factor for amortizing replacement costs would be more appropriate. Mr. Armstrong did not call for a vote on the proposal, but did request and the Authority concurred, that his proposal should be noted in the Report to the Legislature.

Mr. Marshal Tatum also urged that further consideration be given to requiring an application fee when entities file notice of interest in purchasing in the future from the water supply storage capacity. Mr. Tatum suggested a one-time fee based on an amount per 1,000 gallons requested in the application as good faith money to be deposited in the fund. Mr. Tatum argued the fee would encourage only serious applicants to apply, assist the state in maintaining a more current and realistic list of interested purchasers, and would also assist in raising money. Mr. Tatum did not request a vote but asked, and the Authority concurred, that the proposal be raised in the Report to the Legislature.

The Authority also plans to pursue this year further study on the merits of extending the state's ability to take a water reservation right on waters other than those in federal reservoirs.

The reservation right, which exists in the current law, applies only to the federal reservoir storage. The reservation right enables the state to store the water and reserve it for future needs. Under a reservation right, the water does not immediately have to be put to beneficial use. It can be put into a savings account for the future.

The Authority, during its water supply and demand assessments this past year, has become increasingly concerned about how the state can assist communities, industries and others in the western two-thirds of the state in developing or acquiring sufficient supplies of water for their anticipated future needs.

The major federal reservoirs are virtually all located in the eastern third of the state and the handful of future reservoir development sites are largely in the east. By extending the ability to reserve other surface waters or groundwaters for future needs, the state may be able to assist in other areas of the state.

One option might be to consider whether the state could facilitate the development of two uses or more for the same supply if the state could reserve that supply. The state would have no inordinate privileges and would have to pay for water rights that went on the auction block. If it then turned around and sold the water it could perhaps insist that a city, an industry, a power company and an irrigator get together and devise a plan for recycling the water through several uses.

Such a reservation right might be used to reserve waters for future reservoir development at a site that might be needed in the future.

A vast number of possibilities have been discussed, but the full ramifications of the proposal could not be sufficiently analyzed.

The Authority does note that entities such as groundwater management districts have statutory options to purchase water rights and acquire land interests presumably necessary to develop the water. Such options are not confined to their districts. In fact one groundwater management district has filed an application expressing an interest in acquiring water at Milford Reservoir sometime in the future.

Initial comments the Authority received were mixed on this issue, but they do suggest merits in pursuing this study. The Authority would invite the Legislature to begin considering this issue also, either during the session or in the interim.

Mr. Les Lampe, chairman of the Kansas Section-American Water Works Association commented to Chairman Alexander:

"We believe that there is a need for reserved water rights and we commend your foresight in addressing this issue. As a result of the planning effort proposed over the next few years, specific recommendations on the extent of reservation rights needed in various regions of the state should be formulated. These recommendations must be developed on the basis of the best factual basis available, so that they are not later viewed as being arbitrary and unreliable."

Mr. McKenzie indicated to Mr. Alexander that the extension of the reservation right is intriguing and should be considered further. "While the concept of state participation as a broker or middleman in the management of groundwater and other surface water supplies has its attractions, we are concerned that it represents a much broader response to the Legislature's directive than was actually contemplated (in this bill.)"

## Water Resources Development Funding

Recommendation: The Kansas Water Authority recommends that the 1983 Legislature review the progress the Authority has made to date in coming to grips with alternative ways of funding increasingly costly water supply development projects. The Authority believes that, for the state particularly, new ways must be developed to finance the large, state-owned reservoir water supply developments. It would appear that continued reliance on State General Fund loans will not be adequate, especially if the federal government pursues its proposed new policy of requiring upfront cash for the total cost of new reservoir water supply development instead of the current policy of repayment over several decades.

The Authority plans to make water resource development funding a top priority for continued study and urges the Legislature to direct the Authority to examine alternatives the Legislature considers to have potential.

### Background

During the last 18 months, the Kansas Water Authority spent considerable time assessing the current and future water supplies and demands of Kansas. As a result of this effort, it has become increasingly apparent that there will not be sufficient water supplies to meet critical demands in certain areas of the state unless the state's water resources are wisely managed.

As various water resources management strategies are developed and implemented, additional funds will be required for water distribution systems from points of storage or points of diversion, and for the improvement or construction of dams, reservoirs or other water storage projects. This increased demand for funds also comes at a time when the federal government is reducing its funding for large scale water projects and the probable requirement for 100% "front money" for non-federal participation in such projects. As a result, the State of Kansas and local units of government must, in a cooperative effort, pursue alternative and innovative methods of financing water resources projects which will be vital for the implementation of effective water resource management strategies.

At the time the Authority had to make final recommendations to the 1983 Legislature, its Committee on Water Resources Development Funding had arrived at a point of presenting the attached draft legislation to the full authority for consideration.

The committee began its study of possible alternatives to finance water resources projects by reviewing the different methods used by seven states (California, Colorado, Idaho, Nebraska, New York, Oklahoma and Texas) which have developed mechanisms to finance such projects. These states have generated monies by implementing a sales tax, authorizing the issuance of revenue bonds, appropriations from the state's general fund and a combination of revenue bonds and general fund appropriations. The most often used method is the issuance of revenue bonds while only Nebraska utilizes a sales tax. These funds are under the control of some type of the various state's water department, board or commission. Funds by the different states have been established for such purposes as development of statewide water management strategies; planning, design and construction of state and local water projects; the planning, design and construction of water distribution systems; the rehabilitation of old water systems; and the building of new facilities which would permit the consolidation of antiquated facilities.

The Water Resources Development Funding Committee deliberated the various methods of financing water projects used by other states in conjunction with the anticipated needs in Kansas for funding of water resources projects. The committee determined that the needs in Kansas for water resources funds fall into two classifications: 1. planning funds for the development and implementation of statewide water resources management strategies and 2. project funds for the acquisition, improvement, extension or construction of water resources projects.

The committee concluded that water resources planning should be a statewide effort which benefits all citizens of Kansas. Therefore, they took the position that state planning activities should continue to be financed from the State General Fund. In its deliberations on possible methods of financing water resources projects, the committee considered such options as appropriations from the State General Fund, increased sales taxes to be designated for water resources projects, assessments on various types of water uses and the issuance of revenue bonds. After consideration of these options, the committee concluded that the most equitable method of financing water resources projects would be for the users of the water who benefit from such projects to ultimately bear the costs for such development. As a result, the committee proposed legislation which would authorize the Kansas Water Office, with approval of the Kansas Water Authority, to issue revenue bonds for the development of water resources projects. The issuance of revenue bonds under this act would be for the purpose of providing

any eligible entity sufficient funds for the acquisition, improvement, extension or construction of water resources project which is consistent with the guidelines of the State Water Plan.

This proposed legislation would also authorize the Kansas Water Office, with approval of the Kansas Water Authority, to administer loans from any monies which may be available from the water resources loan fund, which would be established by this act. Loans from this fund would be authorized for the development of multi-purpose reservoirs within the state, to provide for and pay that portion of the cost the state shall pay for state approved federally funded water projects in the state, to fulfill state contractual obligations pursuant to approve repayment agreements with the federal government, and to administer loans, not to exceed 75% of the total costs of project, for costs for furtherance of the purposes of the act to eligible entities.

#### Summary of Proposed Legislation

Section 1. This section provides the definition of "projects" and "entities" which would be eligible to receive loans funded through the issuance of revenue bonds by the Kansas Water Office. These definitions are purposefully broad so as not to exclude any project which could potentially enhance the implementation of effective management strategies. It should be noted that most eligible entities under this act already have sources of generating local funds for water resource development. However, the intent of this act is to provide local entities with options to consider the best methods of financing projects and to choose the one or a combination which might be appropriate to local conditions.

Section 2. This section authorized the Director of the Kansas Water Office with the approval of the Kansas Water Authority to issue revenue bonds, prescribe the terms and conditions of such bonds and the duties of the Director of the Water Office related to such activities. This section states that any revenue bonds issued under this act shall not be deemed to constitute a debt of the state, and that all approved projects must be consistent with the guidelines of the State Water Plan. This section also provides for the deferral of the principal on an installment for up to two years, establishes the maximum interest rate and loan term on bond issues and authorizes the Director to issue interim financing receipts or temporary bonds.

Section 3. This section requires the Attorney General of Kansas to examine and certify all revenue bonds.

Section 4. This section establishes the Water Resources Fund, authorizes the Water Office with the approval of the Kansas Water

Authority to make project loans to any eligible entity subject to the provisions of the act, and requires the Kansas Water Office to adopt a repayment rate schedule to be levied against users of the project or the entity receiving such loans to ensure such loans are repaid.

Section 5. This section establishes a Debt Service Resource Fund for all monies which are not required to pay principal and interest on such revenue bonds for any one year following an issuance of such bonds except as provided in Section 6.

Section 6. This section authorizes the Kansas Water Office with approval of the Kansas Water Authority to administer loans from any monies which may be available from the water resources loan fund. Monies placed in this fund shall be derived from interest from investment deposits earned from the Water Resources Fund and the Water Resources Loan Fund and shall be used for such purposes as: 1. the project planning or development of multi-purpose reservoirs in Kansas, 2. to provide for and pay that portion of the costs the state shall pay for any state approved federally funded water project, 3. to fulfill state contractual obligations pursuant to approved repayment agreements with the federal government, and 4. to administer loans, not to exceed 75% of the total cost of the project, for projects for the furtherance of the purposes of this act to eligible entities.

Section 7, 8, 9, 10, 11, and 12. These sections further describe and limit the terms and conditions of activities authorized under this act.

#### Kansas Water Authority Action

In considering the draft legislation, the full Authority was unable to recommend the proposal to the Legislature for favorable action.

Concerns raised by the full Authority during deliberations included whether the parameters of the language are too broad and whether too many details of implementing the bill are left to rules and regulations.

Concerns as to whether providing individual entities this additional funding or bonding alternative might undermine incentives for communities to join together in a rural water district or a public wholesale water supply district could not be satisfied.

Questions as to the magnitude of funding requests the state might be forced to analyze under the bill could not be answered. An overriding concern - particularly how the state itself would collateralize bonds for the major reservoir development projects - was not sufficiently clear in the proposal.

Although the agencies and members of the committee argued that this alternative assistance is definitely needed in some areas, the full authority needed some more detailed assurances that existing local and multi-local resources and alternatives are so inadequate as to necessitate the proposed legislation at this time.

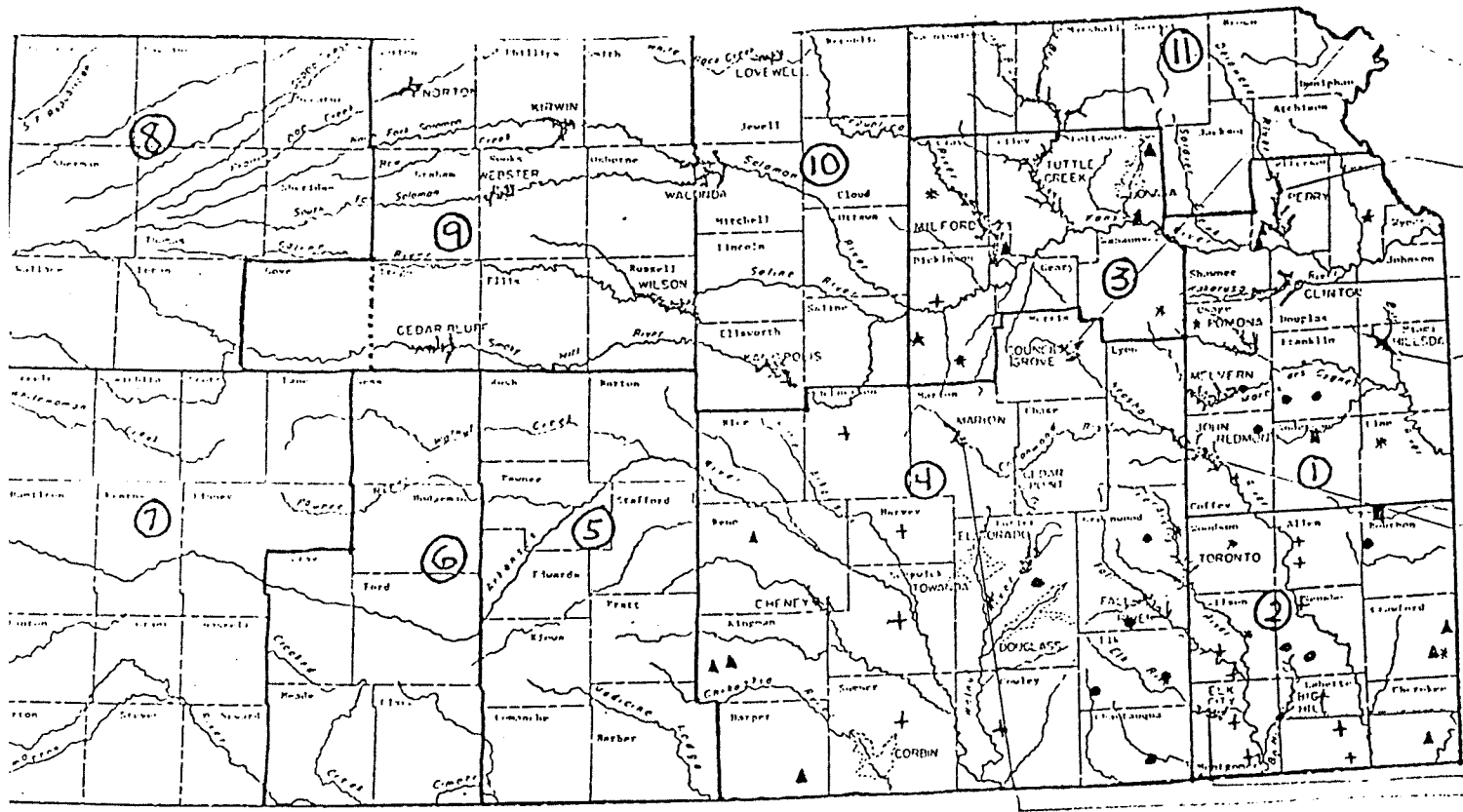
Therefore, the full authority agreed to bring this issue and a report on the status of its work to date to the Legislature, requesting that it join the Authority in investigating methods for developing a completely new means of financing water supply projects - particularly large state water supply projects - other than reliance on the General Fund. Such an alternative may require consideration of an extremely broad base of revenue support for such projects.



APPENDIX TO THE  
KANSAS WATER AUTHORITY  
RECOMMENDATIONS TO THE  
1983 KANSAS LEGISLATURE

State Water Supply

Summary of Water Supply-Demand Picture



- Milford = 128.6 mgd water supply  
20 mgd is sold  
(central Kansas Pipeline Applications exceed remaining yield)
- Council Grove = 5.62 mgd water supply  
3 mgd is sold
- Perry = 79.5 mgd water supply  
none is sold
- Clinton = 18.8 mgd water supply  
13.5 is sold
- Hillsdale = 17.38 mgd water supply  
.65 is sold  
(There are applications for 47 mgd some of them are duplicates, but the applications still may exceed supply)
- John Redmond = 26.5 mgd water supply  
All of it is sold
- Big Hill = 7.11 mgd water supply  
It is not sold
- Elk City = 16.35 mgd water supply  
5.21 is sold
- Marion = 5.69 mgd water supply  
1.71 mgd is sold

Legend: \* + dots, etc. = identified new municipal needs or rural water district supply needs in the short term.

Blackened Lakes=Major Reservoirs  
Dot-line Lakes =Proposed Reservoirs

MGD = Million Gallons Per Day

Summary of Supply-Demand Deficits & Options Eastern Kansas Regions

- Region I; Deficits are 90-167 mgd by 2035  
Options: Reallocate Melvern-Pomona to acquire 42 mgd at \$42 million  
Reallocate John Redmond to acquire 18-20 mgd - no cost est.
- Region II: Deficits are 24-30 mgd by 2020  
Options: Reallocate Elk City, Toronto = 16mgd  
Construct Fort Scott For 24 mgd at a cost of about \$40 million

- Region III: Surplus = 129 mgd to 2035  
Options: Reallocate 100-192 mgd at Tuttle Creek at \$30 million +  
Build Onaga for 18 mgd & \$42 mil
- Region IV. Deficits = 125 mgd +  
Options: Reallocate Council Grove & Marion for 8 mgd - no cost est.  
Build Douglass, Cedar Point & Towanda for 32 mgd at \$54 mil.  
Build Corbin for 60-70 mgd at \$180-\$200 million

AN ACT concerning water; relating to interbasin transfers of water.

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

Section 1. As used in this act:

(a) "Basin of origin" means the river basin in which the point or proposed point of diversion of water is located.

(b) "Interbasin transfer" means the diversion of water in one river basin and the transportation of such water to another river basin for beneficial use, including water diverted and used under the authority of the provisions of the Kansas water appropriation act and the state water plan storage act.

(c) "River basin" means the natural hydrological river basins of the state, as depicted on the map adopted and enacted by the legislature as section 7 of this act.

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

Sec. 2. (a) No person shall make an interbasin transfer of water in this state unless and until approved pursuant to the provisions of this act. No interbasin transfer of water shall be approved which would reduce the amount of water required to meet the present or reasonably foreseeable future beneficial uses of water within the basin of origin unless the Kansas water authority determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer or, when the chief engineer recommends to the Kansas water authority and the authority concurs that an emergency exists which affects the public health, safety or welfare or, when the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever the

Kansas water authority has determined, or the governor has declared that an emergency exists, an interbasin transfer of water may be approved on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the chief engineer.

~~(b) Where uses of water for different purposes conflict following the final decision of the Kansas water authority, the chief engineer shall effect a resolution prescribed in subsection (b) of K.S.A. 82a-707 and the laws of this state.~~

Sec. 3. (a) Any person desiring to make an interbasin transfer of water shall file an application with the chief engineer. If the application is found to be insufficient to enable the interbasin transfer ~~approval~~<sup>hearing</sup> panel to determine the source, nature and amount of the proposed transfer, it shall be returned for correction or completion or for any other necessary information. All such applications shall be accompanied with a fee in such amount as the Kansas water authority shall prescribe.

(b) Within 60 days of receipt of a sufficient application, the chief engineer shall commence a hearing at which the interbasin transfer ~~approval~~<sup>hearing</sup> panel shall consider the application and make findings of fact, except that whenever the applicant proposes an interbasin transfer in an amount not to exceed 100 million gallons of water per year (307 acre feet per year), the chief engineer may suspend a formal hearing of the panel. shall make findings of fact set forth in subsection (c) and shall make a recommendation to the Kansas water authority whether to approve the proposed interbasin transfer of water.

(c) The interbasin transfer ~~approval~~<sup>hearing</sup> panel shall consist of the chief engineer, the director of the Kansas water office and the director of the division of environment of the department of health and environment or their respective designees. The chief engineer or the chief engineer's <sup>designee from the division of water resources</sup> shall serve as the chairperson of the panel. A recommendation concurred in by any

two of the three panel members shall constitute the recommendation of the panel in all matters. The panel shall have all power and authority necessary to conduct the hearings and make findings and recommendations required by this act.

(d) To determine whether a proposed interbasin transfer will impair the water needs of the basin of origin and whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the panel shall consider all matters pertaining to such questions, including specifically:

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

(2) any reasonably foreseeable future beneficial uses of the water in the basin of origin;

(3) any adverse impacts of the proposed interbasin transfer;

(4) the economic, environmental, public health and welfare and other benefits of leaving the water in the basin of origin for current or future beneficial uses and the economic, environmental, public health and welfare and other impacts of denying the transfer of the water for beneficial use in the applicant's basin;

(5) alternative sources of water available to the basin of origin and the applicant for future beneficial uses; and

(6) the detailed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water out of the basin of origin.

(e) Notice of any such hearing shall be published in the Kansas register.

(f) Upon timely application made therefor, any interested person shall be permitted to intervene as a party in any such hearing and, in granting the privilege to intervene, the chief engineer may do so upon such terms and conditions as the chief engineer may deem equitable and just.

(g) The record of the hearing and findings of fact shall be public records and open for inspection at the office of the chief engineer. The interbasin transfer ~~approval~~<sup>hearing</sup> panel shall assess the applicant with all of the costs of obtaining a court reporter for the hearing and transcribing the transcript of the hearing. Certified transcripts of the hearing shall be provided at the expense of those requesting same. A transcript shall be provided to the chairman of the Kansas water authority.

Sec. 4. (a) Within 90 days following the conclusion of the hearing the interbasin transfer ~~approval~~<sup>hearing</sup> panel shall make its recommendation of approval or disapproval of the proposed interbasin transfer, along with any dissenting recommendation, to the Kansas water authority. The panel's recommendation shall specify the reasons for such recommendation, including findings of fact relating to each of the factors set forth in subsection (d) of section 3. The findings shall be documented by reference to specific portions of the hearing record and to any other sources used in making the recommendation. The panel may recommend approval of an application for a smaller amount of water than requested and may recommend approval of an application upon such terms, conditions and limitations as it deems necessary for the protection of the public interest of the state as a whole. The Kansas water authority shall then determine whether to approve the proposed transfer and shall render its decision in writing to all interested parties.

(b) The chief engineer, upon approval by the Kansas water authority, shall issue an order to appropriate water to implement the decision of the authority, or the director of the Kansas water office, upon approval by the Kansas water authority, shall execute a contract for the purchase of water supply conservation storage to implement the decision of the Kansas water authority.

(c) Any party aggrieved by the decision of the Kansas water authority may appeal to the district court of Shawnee county. The attorney general of the state of Kansas shall defend the Kansas water authority's final decision in any appeal proceeding.

in district court.

Sec. 5. (a) The provisions of this section shall be exclusive in determining appeals from all decisions of the Kansas water authority under this act after the effective date of this act and shall exclusively govern the procedure to be followed in taking an appeal from the Kansas water authority from and after such date.

(b) An appeal shall be taken by filing with the clerk of the district court of Shawnee county within 30 days following the date of the Kansas water authority's final decision a written notice stating that the party appeals to the district court and alleging the pertinent facts upon which the appeal is grounded. Upon filing of the notice of appeal, the clerk of the district court of Shawnee county shall docket the cause as a civil action, and shall forthwith and without praecipe, issue summons and cause the same to be served upon all parties involved in the proceedings before the hearing panel and the Kansas water authority, in the manner now provided by law in civil cases. The appellant shall also, within 10 days of the filing of the notice of appeal, serve a written request upon the Kansas water authority to certify the complete record of the proceedings before the hearing panel, the panel's findings of fact and the Kansas water authority's final decision. The Kansas water authority shall certify the record and deliver same to the Shawnee county district court within 30 days following the appellant's request therefor.

(c) Jurisdiction to hear and determine such appeals is hereby conferred upon the district court of Shawnee county. Such an appeal shall not be heard as a trial de novo but shall be limited to the review of the record certified by the Kansas water authority. In such appeal, the Shawnee county district court shall review the certified record for the sole purpose of determining whether:

(1) The final decision of the Kansas water authority is based upon insufficient evidence, or

(2) the final decision of the Kansas water authority is capricious, arbitrary or fraudulent.

(d) Findings of fact within the authority of the Kansas water authority shall be conclusive unless it is made to appear to the court that the findings of fact are not supported by substantial evidence after consideration of the record as a whole.

(e) The final decision of the Shawnee county district court in such appeals shall be entered as a judgment as in other civil cases. Appeals may be taken from the district court to the Kansas appellate court as in civil cases.

Sec. 6. The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this act.

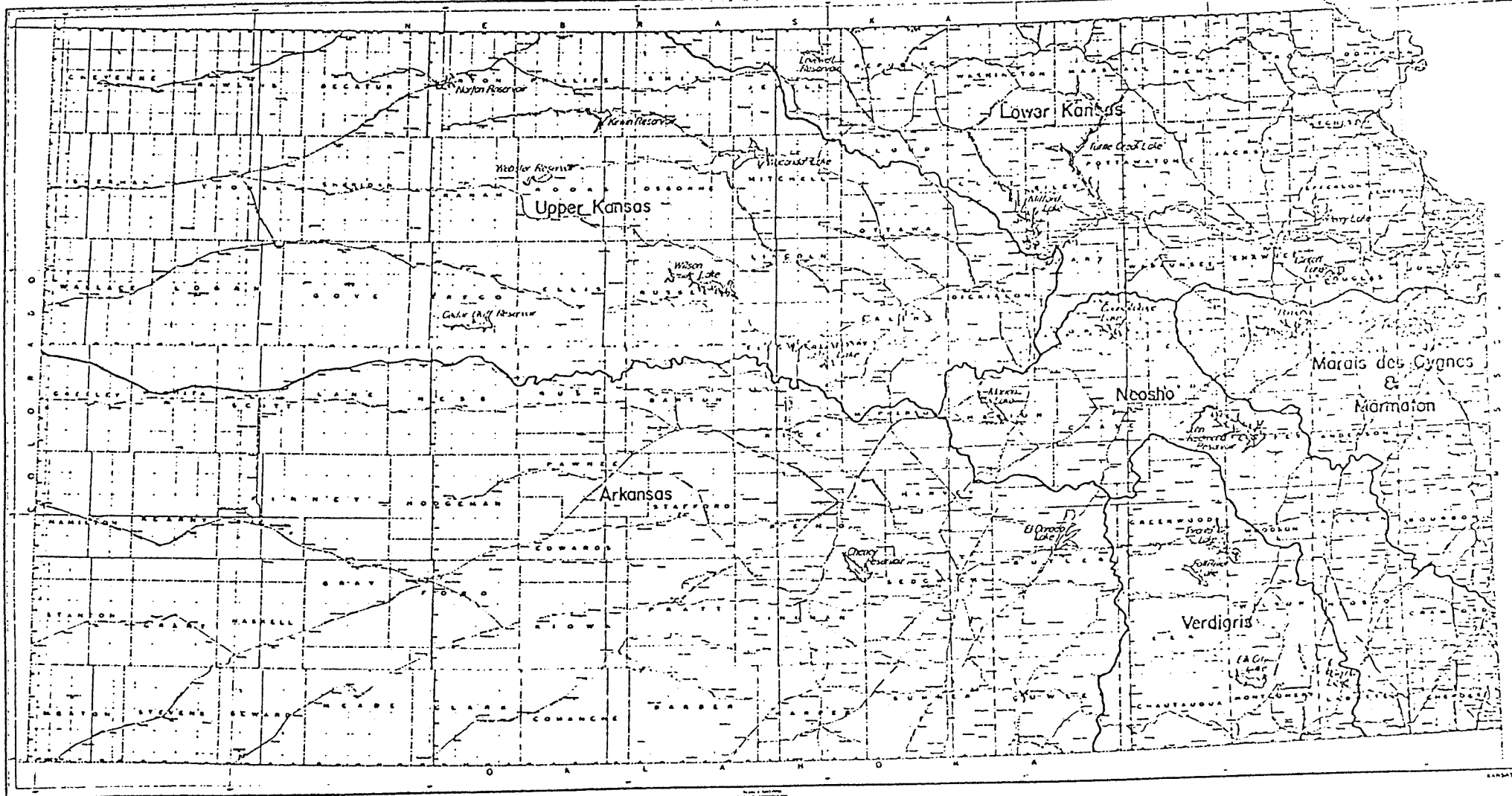
Sec. 7. The legislature adopts the following as the official map depicting the river basins in this state:

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.



Inter-basin Transfer in Kansas

— Drainage Basin Boundaries



Scale  
1:50,000

SENATE BILL, No. 95

AN ACT amending the state water plan storage act, concerning rates, charges and contract provisions; prescribing duties for the state board of water resources, amending K.S.A. 82a-1301, 82a-1305, 82a-1306, 82a-1308 and 82a-1315 and repealing the existing sections.

Article 13.—STATE WATER PLAN STORAGE ACT

82a-1301. State water plan storage act; definitions. As used in this act, unless the context otherwise requires:

(a) ~~"Executive Director" means the executive director of the state water resources board~~

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

(c) ~~"Board" means the state water resources board or any successor thereto.~~

(d) "Person" means and includes a natural person, partnership, organization, association, private corporation, public corporation, any taxing district or political subdivision of the state, and any department or agency of the state government.

(e) "Public corporation" means a body that has for its object the government of a political subdivision of this state and includes any county, township, city, district, authority, or other municipal corporation or political subdivision of this state.

(f) "Federal government" means the United States of America or any department or agency thereof.

(g) "Point of diversion for a reservoir" means the point where the longitudinal axis of the dam of a reservoir crosses the center of the streambed.

(h) "Point of rediversion" means the point where released water is taken for beneficial use from the watercourse by which it is transported.

(i) "Point of withdrawal from the reservoir" means the point at which water is taken from the reservoir by pump, siphon, canal or any other device or released through a dam by gates, conduits, or any other means.

History: L. 1974, ch. 452, § 1; L. 1976, ch. 411, § 1; March 12.

Kansas Water Authority Recommendations

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

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

Senate Bill 95 changed no definitions. It, however, added one: No. J which is a definition of capital costs.



(j) "Capital cost" means the total cost incurred to the state in the construction or acquisition of the conservation water supply portion of the reservoir system from which water is contracted.

(j) "Capital cost" means the total cost incurred to the state in the construction of the conservation water supply portion of the reservoir system from which water is contracted.

Current Law

Senate Bill 95

82a-1302. Same; waters subject to act. Notwithstanding any other provision in the statutes of this state, water in conservation storage water supply capacity in any reservoir named in the state water plan on the effective date of this act on which the state has given a commitment are hereby recognized as waters belonging to the state subject to the provisions of this act.

History: L. 1974, ch. 452, § 2; March 22.

No changes were made in this Section in Senate Bill 95.

Current Law

Senate Bill 95

82a-1303. Same; state "water reservation rights"; acquisition by board; rights authorized to be acquired. Notwithstanding any other provisions in the statutes of this state, the board, in the manner provided in K.S.A. 82a-1304, shall be authorized to acquire on behalf of the state the right to divert and store the waters of all streams flowing into the conservation storage water supply capacity of the reservoirs named in the state water plan sufficient to insure a yield of water from the reservoir for beneficial use through a drought having a two percent (2%) chance of occurrence in any one year with the reservoir in operation. The rights of the state under this section and which are acquired under K.S.A. 82a-1304, known as "water reservation rights," shall be subject to all vested rights, appropriation rights, approved applications for permits to appropriate water and other vested property interests acquired prior to the state's acquisition, but not to those acquired thereafter.

History: L. 1974, ch. 452, § 3; March 22.

No changes were made in this Section in Senate Bill 95.

Kansas Water Authority Recommendations

(a)

the Kansas water office

with approval of the Kansas water authority

(b) Whenever the authority finds it would be in the public interest of the state of Kansas to acquire, reserve or purchase water located in another state for the state of Kansas' conservation storage water supply capacity, the authority shall authorize the director to enter into contract negotiations to acquire, reserve or purchase water subject to final contract approval by the authority.

Current Law

Senate Bill 95

Kansas Water Authority  
Recommendations

§2n-1304. Same; "water reservation rights"; procedure for acquiring; notice, content; acceptance; filing, perfection of rights. The board, on behalf of the state, shall acquire a water reservation right by filing with the chief engineer a written notice which shall include the following:

director

No changes were made in this  
Section in Senate Bill 95

- (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.

Upon receiving any such filing, the chief engineer shall transmit to the ~~board~~ his or her written acceptance thereof, or inform the ~~board~~ in writing that the notice does not comply with the above requirements in one or more ways, all of which shall be specified. Thereupon, the ~~board~~ shall modify the written notice as may be appropriate and return the notice to the chief engineer. When the written notice complies with the requirements of this section the chief engineer shall transmit to the ~~board~~ his or her written acceptance thereof. Upon receipt of the written acceptance of the chief engineer as provided in this section, the ~~board~~ shall file, as other instruments affecting real estate, copies of the accepted written notice in the office of the register of deeds of the county or counties wherein the point of diversion for the reservoir is located; and such water reservation right shall thereby be perfected as of the date of original filing.

Nothing in this section shall require the ~~board~~ to acquire an appropriation right, or approval of the chief engineer, under article 7 of chapter 82a of Kansas Statutes Annotated.

- [ the director and the chairman of the authority  
~~hereafter substitute director~~
- [ director
- [ director

Current Law

Senate Bill 95

82a-1305. Same; withdrawal and use of waters; contracts for withdrawal; disposal of certain water. Whenever the board finds that a proposed withdrawal and use of water will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Anno-

tated, it may enter into written contracts with any persons for withdrawal and use of waters from conservation water supply capacity committed to the state. Every such contract shall comply with the provisions of this act. The board shall not contract for withdrawals of water from a particular reservoir which in the board's opinion are in excess of the yield capability from such reservoir of conservation water supply committed to the state computed to provide water through a drought having a two percent (2%) chance of occurrence in any one year with the reservoir in operation. All contracts under this section shall have terms of not less than ten (10) years and not more than forty (40) years.

Sec. 2. K.S.A. 82a-1305 is hereby amended to read as follows: 82a-1305. Whenever the board finds that a proposed withdrawal and use of water will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated, it may enter into written contracts with any persons for withdrawal and use of waters from conservation water supply capacity committed to the state. Every such contract shall comply with the provisions of this act. The board shall not contract for withdrawals of water from a particular reservoir which in the board's opinion are in excess of the yield capability from such reservoir of conservation water supply committed to the state computed to provide water through a drought having a two percent (2%) chance of occurrence in any one year with the reservoir in operation. All contracts under this section shall have terms of not less than ten (10) years and not more than forty (40) years.

Kansas Water Authority Recommendations

authority

is in the public interest and

however, contract negotiations with persons for the withdrawal and use of water outside the state shall first be authorized by the authority which shall determine whether such withdrawal and use is not contrary to the conservation and use of such waters and not otherwise detrimental to the public interest of the state of Kansas.

authority

authority's

unless the applicant so desires.

Current law  
82a-1305 continued

Senate Bill 95

Kansas Water Authority  
Recommendations

Whenever a contract expires the board shall give the persons with whom it contracted therein, the opportunity to first refuse any new offering of substantially the same contractual terms before offering to applicants under the provisions of K.S.A. 82a-1311. Whenever the board finds that it will advance the purposes set forth in this act and in article 9 of chapter 82a of Kansas Statutes Annotated, the board may dispose of waters from the conservation water supply capacity committed to the state not required to meet contract requirements under this section if the board has found such waters to be surplus waters. Any arrangement for the disposition of any such surplus waters shall not be subject to the provisions of K.S.A. 82a-1306 to 82a-1308, inclusive, relating to long-term contracts, but no such arrangement may be made for a period of time in excess of one year nor may any such arrangement dispose of water from the conservation water supply capacity in excess of ten percent (10%) of the yield capability as computed pursuant to this section unless the governor has declared that an emergency exists which affects the public health, safety or welfare.

Note deletion

Whenever a contract expires the board shall give the persons with whom it contracted therein the opportunity to first refuse any new offering of substantially the same contractual terms before offering to applicants under the provisions of K.S.A. 82a-1311. Whenever the board finds that it will advance the purposes set forth in this act and in article 9 of chapter 82a of Kansas Statutes Annotated, the board may dispose of waters from the conservation water supply capacity committed to the state not required to meet contract requirements under this section if the board has found such waters to be surplus waters. Any arrangement for the disposition of any such surplus waters shall not be subject to the provisions of K.S.A. 82a-1306 to 82a-1308, inclusive, and amendments thereto, relating to long-term contracts, but no such arrangement may be made for a period of time in excess of one year nor may any such arrangement dispose of water from the conservation water supply capacity in excess of ten percent (10%) of the yield capability as computed pursuant to this section unless the governor has

declared that an emergency exists which affects the public health, safety or welfare.

- [ authority
- [ of the water
- [ authority
- [ is in the public interest and
- [ authority
- [ authority
- [ When surplus water is disposed for other than streamflow maintenance, the Authority shall charge a price for the water as prescribed in rules and regulations adopted pursuant to this act. ~~No water shall be disposed of to maintain streamflows if another request is made for beneficial use of the same water.~~

History: L. 1974, ch. 452, § 5; L. 1976, ch. 441, § 2; L. 1977, ch. 358, § 1; July 1.

Kansas Water Authority  
Recommendations

(a)

and amendments thereto

authority  
authority

as provided in K.S.A. 82a-1303 and  
amendments thereto;

(2) except as provided in subsection (b),  
provisions for a minimum charge to be  
paid in either equal annual or monthly  
installments during the term of the  
contract, whether or not water is  
withdrawn during the calendar year.  
The minimum charge shall be the sum  
of 50% of the total amount of water  
contracted for during the term of the  
contract multiplied by the rate fixed  
under paragraph (1), plus on the remaining  
50% of the water reserved under contract,  
an amount as interest computed as a rate per  
annum equal to the average of interest earned  
the past 12 months on investments by the  
Pooled Money Investment Board on the total  
amount of moneys advanced from state funds  
for costs incurred and associated with  
that portion of the state's conservation  
water supply capacity.

82a-1306. Same; contracts for with-  
drawal and use; provisions required; rate of  
charges for water. Every contract made  
under authority of K.S.A. 82a-1305 shall in-  
clude the following:

(a) Provision for charges, which shall be  
set by the board, at a rate which the board  
shall fix of not less than five cents (5¢) per  
one thousand (1,000) gallons of water at the  
point of withdrawal from the reservoir and  
not greater than ten cents (10¢) per one  
thousand (1,000) gallons of water at the  
point of withdrawal from the reservoir;

(b) provisions for a minimum charge to  
be paid in equal annual installments during  
the term of the contract, the sum of which  
shall be fifty percent (50%) of the total  
amount of water contracted for during the  
term of the contract multiplied by the rate  
fixed under paragraph (a), and that such  
minimum charge is to be paid each calendar  
year whether or not such amount of water is  
withdrawn during the calendar year;

Sec. 3. K.S.A. 82a-1306 is hereby amended to read as follows:

82a-1306. (a) Every contract made under authority of K.S.A.  
82a-1305, and amendments thereto, shall include the following:

(a) (1) Provision for charges, which shall be set by the board,  
at a rate which the board shall fix of not less than five cents (5¢) per  
one thousand (1,000) 1,000 gallons of water at the point of  
withdrawal from the reservoir and not greater than ten cents (10¢)  
per one thousand (1,000) gallons of water at the point of with-  
drawal from the reservoir as provided in K.S.A. 82a-1303, and  
amendments thereto;

(b) (2) except as provided in subsection (b), provisions for a  
minimum charge to be paid in either equal annual or monthly  
installments during the term of the contract, the sum of which  
shall be fifty percent (50%) 50% of the total amount of water  
contracted for during the term of the contract multiplied by the  
rate fixed under paragraph (a) (1), and that such minimum charge  
is to be paid each calendar year or each month, as the case may be,  
whether or not such amount of water is withdrawn during the  
calendar year.



Current Law  
82a-1306 continued

Senate Bill 95

Kansas Water Authority  
Recommendations

2

*Becomes (3)*  
~~(c) provisions that the board shall adjust the rate provided under paragraph (a) on the tenth anniversary of the execution of the contract and each tenth anniversary thereafter, to reflect any change in experience by substituting the adjusted rate for the rate then stated in the contract;~~  
~~(d) provisions that water may be withdrawn in any calendar year up to the quantity used to compute the minimum annual charge under paragraph (b) without additional charge;~~ (2)

~~(c) (3) provisions that the board shall adjust the rate provided under paragraph (a) (1) on the tenth fifth anniversary of the execution of the contract and each tenth fifth anniversary thereafter, to reflect any change in experience by substituting the adjusted rate for the rate then stated in the contract;~~  
~~(d) provisions that the board may adjust the total amount of water contracted for as provided under paragraph (2) on the fifth anniversary of the execution of the contract and each fifth anniversary thereafter, if the total amount of water contracted for has not been utilized or paid for and another water user is ready, willing and able to contract for such water; except that for deferred payment contracts as provided in subsection (b) of K.S.A. 82a-1308, and amendments thereto, the board may adjust the total amount of water contracted for on the 10th anniversary of the execution of the contract, and on each fifth anniversary thereafter, if the total amount of water contracted for has not been utilized or paid for and another water user is ready, willing and able to contract for such water;~~  
(d) (5) provisions that water may be withdrawn in any calendar year up to the quantity used to compute the minimum annual charge under paragraph (b) (2) without additional charge;

(3) provisions that the authority shall adjust the rate provided in paragraph (1) on July 1 of each year effective January 1 of the following year to reflect any change in experience by substituting the adjusted rate for the rate then stated in the contract.

(4) New Section.  
Provisions that the authority may adjust the total amount of water contracted for as provided under paragraph (2) on the sixth anniversary of the execution of the contract and each annual anniversary thereafter, if the contractor does not begin full payment for the water under contract and another water user is ready, willing and able to contract for such water.

(5) (No substantive change)  
Provisions that water may be withdrawn in any calendar year up to the quantity used to compute the minimum annual charge under paragraph (2) without additional charge;

Kansas Water Authority  
Recommendations

(new c)

(6) provisions that water may be withdrawn in any calendar year in excess of the quantity used to compute the minimum annual charge under paragraph (2) but not to exceed the full amount specified in the contract for each year, upon payment of a charge therefor which shall be computed as the rate fixed under paragraph (1) for all water actually withdrawn. In addition, an amount shall be paid, on the unused balance of the water reserved under contract, as interest computed as a rate per annum equal to the average of interest earned the past 12 months on investments by the Pooled Money Investment Board on the total amount of moneys advanced from state funds for costs incurred and associated with that portion of the state's conservation water supply capacity.

(f)(7)

authority

authority

authority

(g)(8)

authority

to protect the public interest and

(h)(9)

authority

<sup>6</sup> (c) provisions that water may be withdrawn in any calendar year in excess of the quantity used to compute the minimum annual charge under paragraph (b), but not to exceed the full amount specified in the contract for such year, upon payment of a charge therefor which shall be computed at the rate fixed under paragraph (a);

(c) (6) provisions that water may be withdrawn in any calendar year in excess of the quantity used to compute the minimum annual charge under paragraph (b) (2), but not to exceed the full amount specified in the contract for such year, upon payment of a charge therefor which shall be computed at the rate fixed under paragraph (a) (1) or at the rate adjusted under paragraph (3), as the case may be;

<sup>7</sup> (d) provisions that if the total amount of waters contracted for withdrawal from any reservoir in any year is greater than the supply available from that reservoir, the board will apportion the available waters among the persons having contracts therefor as may best provide for the health, safety and general welfare of the people of this state as determined by the board, and neither the state nor the board shall be responsible or have any legal liability for any insufficiency of water or apportionment thereof;

(f) (7) provisions that if the total amount of waters contracted for withdrawal from any reservoir in any year is greater than the supply available from that reservoir, the board will apportion the available waters among the persons having contracts therefor as

may best provide for the health, safety and general welfare of the people of this state as determined by the board, and neither the state nor the board shall be responsible or have any legal liability for any insufficiency of water or apportionment thereof;

(e) additional provisions that the board finds reasonable and necessary to achieve the purpose set forth in article 9 of chapter 82a of Kansas Statutes Annotated; and

(g) (8) additional provisions that the board finds reasonable and necessary to achieve the purpose set forth in article 9 of chapter 82a of Kansas Statutes Annotated; and

(h) (9) additional provisions, within the purview of this act, that the board finds reasonable and necessary to protect the health, safety and general welfare of the people of this state.

(f) additional provisions, within the purview of this act, that the board finds

reasonable and necessary to protect the health, safety and general welfare of the people of this state.

History: L. 1974, ch. 452, § 6; L. 1976, ch. 441, § 3; March 12.

Current Law  
82a-1306 continued

Senate Bill 95

(b) Every contract made under the authority of K.S.A. 82a-1305, and amendments thereto, may provide, if the parties so desire:

(1) That the total capital ~~costs~~ be paid in a single lump sum; and

(2) that the beginning of the payment period be deferred, for a maximum of ~~five~~ years, or until actual use of the water, whichever occurs first, if the use of such water requires the issuance of bonds and the construction of transmission or treatment facilities.

(b) Every contract made under the authority of K.S.A. 82a-1305 and amendments thereto, may provide, if the parties so desire, that the beginning of the payment period be deferred for a maximum of ~~five~~ three years, or until actual use of the water, whichever occurs first, if the use of such water requires the issuance of bonds and the construction of transmission or treatment facilities.

82a-1307. Same; contracts for withdrawal and use; effective date; filing of contract with secretary of state and legislature; disapproval and revocation by legislature. (a) The term of any contract under K.S.A. 82a-1305 may begin on the date of execution of the contract or upon any date not later than two years after the date of execution as agreed upon by the parties and stated in the contract document. Except as provided in paragraph (b), on the first day of each regular legislative session, the board shall transmit to the house of representatives and the senate of this state, and to the secretary of state, copies of each contract made and executed under K.S.A. 82a-1305 since the day preceding the first day of the regular legislative session occurring most recently prior to such transmission. Such contract copies transmitted to the secretary of state shall be and remain filed in the office of the secretary of state from the date transmitted until the end of the fifth year following the end of the term thereof, and during such time shall be available for public inspection during regular business hours. At any time during the first sixty (60) calendar days of the regular legislative session when a contract is transmitted as provided in this section, the legislature may disapprove and revoke such contract by adoption of a concurrent resolution so providing. No con-

- or before the sixtieth calendar day
- authority
- sixtieth day
- after the sixtieth calendar day

tract under K.S.A. 82a-1305 shall be subject to revocation by the legislature after the sixtieth calendar day of such regular legislative session, except as provided in paragraph (b). Any annual installment or other amount due prior to the January 1 immediately preceding the legislative session when a contract is revoked shall be a valid obligation and shall be paid, but no annual installment or other amount due on or after such January 1 shall be valid.

(b) At any time not later than five days after the effective date of this act, the board shall transmit to the house of representatives and to the senate, and to the secretary of state, copies of each contract made and executed after the effective date of this act.

Notwithstanding any provisions to the contrary in paragraph (a), the 1976 regular session of the legislature may within twenty days after the effective date of this act disapprove and revoke any contract filed by the board after the effective date of this act by adoption of a concurrent resolution so providing. Except as provided in this paragraph (b) the provisions of paragraph (a) and the act of which it is a part shall apply to any contract filed under this paragraph.

History: L. 1974, ch. 452, § 7; L. 1976, ch. 441, § 4; March 12.

ninetieth

legislative revocation

after legislative revocation shall be valid

authority

1983

thirty

K.S.A. (Interbasin transfer statute)

**82a-1303.** Same; charges for water; rate fixed for each calendar year; no change in rate specified in contract No. 76-1, exception. For each calendar year, the board shall fix the rate provided for in paragraph (a) of K.S.A. 82a-1306 within the limits there provided. The rate so fixed for each year shall be the same for each contract under K.S.A. 82a-1305 for withdrawal from every reservoir. The rate so fixed for each year shall be the same for every contract under K.S.A. 82a-1305 executed in that calendar year. The rate in effect at the time of execution of any contract under K.S.A. 82a-1305, as adjusted under paragraph (c) of K.S.A. 82a-1306, shall be the rate applicable for such contract during the entire term thereof. Notwithstanding the foregoing, no change shall be made in the rate heretofore specified in contract No. 76-1, except as provided by subsection (c) of K.S.A. 82a-1306, if the parties thereto agree to a forty (40) year term therein and if said contract is determined to be valid, or if a new contract in lieu thereof is submitted with such a provision in accordance with subsection (b) of K.S.A. 82a-1307. In determining such rates, the board shall treat the waters available for withdrawal from all of the separate reservoirs as though impounded in a single reservoir.

History: L. 1974, ch. 452, § 8; L. 1976, ch. 441, § 5; March 12.

Sec. 4. K.S.A. 82a-1308 is hereby amended to read as follows: 82a-1308. For each calendar year, the board shall fix the rate provided for in paragraph (a) (1) of K.S.A. 82a-1306 within the limits there provided, and amendments thereto. The rate fixed shall be equal to the sum of the following components computed as provided in this section: (1) The amount necessary to repay the amortized capital costs associated with the state's conservation storage water supply capacity; (2) an amount as interest computed at the rate of 8.25% per annum on the total amount of moneys advanced from the state general fund for payment of the amortized capital costs associated with the state's conservation storage water supply capacity; (3) the amount necessary to reimburse the state for the administration and enforcement of this act. Such amount shall be based upon the actual costs of administration and enforcement in the preceding year; (4) the amount necessary to repay the operation, maintenance and repair costs associated with the state's conservation storage water supply capacity; and (5) an amount equal to 5.01% to be dedicated for the purposes provided for in section 5. In computing such rates, the board shall consider the state's conservation storage water supply capacity in all separate reservoirs as though impounded in a single reservoir. No water supply capacity of a reservoir shall be considered to be in such capacity until the year in which the actual acquisition of land is commenced for the reservoir site. The rate so fixed for each year shall be the same for each contract under K.S.A. 82a-1305, as amended, for withdrawal from every reservoir. The rate so fixed for each year shall be the same for every contract under K.S.A. 82a-1305, as amended; executed in that calendar year. The rate in effect at the time of execution of any contract under K.S.A. 82a-1305, as amended, as adjusted under paragraph (c) (3) of K.S.A. 82a-1306, as amended, shall be the rate applicable for such contract during the entire term thereof. Notwithstanding the foregoing, no change shall be made in the rate heretofore specified in contract No. 76-1, except as provided by subsection (c) of K.S.A. 82a-1306, if the parties thereto agree to a forty (40) year term therein and if said contract is determined to be valid; or if a new contract in lieu thereof is submitted with such a provision in accordance with subsection (b) of K.S.A. 82a-1307. In determining such rates, the board shall treat the waters available for withdrawal from all of the separate reservoirs as though impounded in a single reservoir.

82a-1308 is hereby amended to read as follows: On July 1 of each year, effective January 1 of the following year, the authority shall fix the rate provided for in paragraph (1) of K.S.A. 82a-1306, and amendments thereto. The rate fixed shall be equal to the sum of the following components computed as provided in this section:

(1) an amount necessary to repay the amortized capital costs associated with the state's conservation water supply capacity and a replacement cost of 2.5 cents.

(2) an amount as interest computed as a rate per annum equal to the average of interest earned the past 12 months on investments by the Pooled Money Investment Board on the total amount of monies advanced from state funds for costs incurred and associated with the state's conservation water supply capacity.

(3) the amount necessary to reimburse the state for the enforcement of this act. Such amount shall be based on the actual costs of administration and enforcement in the preceding year;

(4) The amount necessary to repay the operation, maintenance and repair costs associated with the state's conservation water supply capacity;

In computing such rates, the authority shall consider the state's conservation water supply capacity from all sources as though impounded in one single reservoir. No water supply capacity of a reservoir shall be considered to be in such capacity until the year in which the state incurs contract obligations for the project. The rate so fixed for each year shall be the same for each contract under K.S.A. 82a-1305, as amended, for withdrawal from every reservoir. The rate so fixed for each 12-month period from January 1 to December 31 shall be the same for every contract under K.S.A. 82a-1305, as amended.

Senate Bill 95

Current Law

82a-1309. Same; meters, gauges or other measuring devices; executive director, authority. The executive director may require any person withdrawing water pursuant to a contract under K.S.A. 82a-1305 to install meters, gauges or other measuring devices in accordance with specifications of the executive director. The executive director or his or her agents may read any such

device at any time, and he or she may require any such person to report the readings of any such device at reasonable intervals. The executive director may test any such device at any time or require any such person to test his or her device as such director specifies and make report thereof to the executive director. All such devices shall be maintained in good order. The executive director may require any such person to make specified repairs or maintenance to his or her device or replace the same as may be reasonable.

History: L. 1974, ch. 452, § 9; March 22.

Kansas Water Authority  
Recommendations:

82a-1309.

delete executive in  
the third line

twice in the 8th line

line 10 change "he or she" to  
director

delete "executive" in line 13

delete "executive" in line 16

delete "executive" in line 18

82a-1310. Same; application for withdrawal and use of water; information required. Any person who wishes to contract under K.S.A. 82a-1305 shall file an application therefor with the executive director in such form as he or she requires. Each such application shall include the following:

- (a) The name and address of the applicant;
- (b) the reservoir from which the applicant proposes to withdraw water;
- (c) the rate at which the applicant proposes to withdraw water, and the total annual quantity of withdrawal;
- (d) the use proposed to be made of waters withdrawn;
- (e) the location of that part of any watercourse proposed for transportation of any of the waters so withdrawn;
- (f) the location and legal description of all works, ditches and conduits proposed to be constructed or used for the transportation of waters withdrawn to and including the point of redirection; and
- (g) additional information as specified by the executive director.

History: L. 1974, ch. 452, § 10; March 22.

Kansas Water Authority  
Recommendations

82a-1310. Any person who wishes to contract under K.S.A. 82a-1305 shall file an application therefor with the director in such form as the director requires.

The chairman of the authority shall request the director to transmit information necessary for a determination whether to approve a contract to purchase from the state's conservation water supply capacity or a specific request for a decision by the authority to use waters available in the state's conservation water supply capacity to meet minimum streamflow needs unless an emergency exists.

82a-1311. Same; application dated and authenticated; contracts in order of application. The date of receipt of each application shall be stamped thereon and authenticated as directed by the executive director. To the extent consistent with efficient management, the board shall negotiate contracts under K.S.A. 82a-1305 in the chronological order that the executive director receives applications under K.S.A. 82a-1310 for each reservoir.

History: L. 1974, ch. 452, § 11; March 22.

82a-1311. (a) The date of receipt of each application shall be stamped thereon and authenticated as directed by the director. Applicants shall notify the director in writing that they wish to open negotiations for a contract. Within 10 days upon the conclusion of negotiations for a contract, the director shall transmit to the chairman of the authority a copy of the proposed contract.

(b) To determine whether a proposed contract for the sale of water from the state's conservation water supply capacity is in the public interest and whether the benefits to the state for approving the contract outweigh the benefits to the state for not approving the contract, the authority shall consider all matters pertaining to such questions, including:

- (1) the present and future water supply needs of the applicant
- (2) any current beneficial uses being made of the water proposed to be diverted
- (3) any reasonably foreseeable future beneficial uses of the water;
- (4) any adverse impacts of the proposed sale of water
- (5) the economic, environmental, public health and welfare and other benefits of approving the contract;
- (6) alternative sources of water available to the applicant;
- (7) the preliminary plan of design, construction and operation of any works or facilities used in conjunction with carrying the water to its point of use.
- (8) whether the proposed purchase is consistent with the state water plans approved by the legislature;
- (9) The date of receipt of the application of interest to contract for withdrawal and use of water.

The authority may approve or reject the proposed contract and may recommend purchase of water from an alternative source. The authority may approve a contract for a smaller amount of water than requested and may approve a contract upon such terms, conditions and limitations as it deems necessary for the protection of the public interest of the state as a whole.



Current Law

82a-1312. Same; contracts filed with chief engineer and register of deeds. A copy of every contract under K.S.A. 82a-1305 shall be filed with the chief engineer by the person who is to receive water under the contract. ~~A copy of every contract shall be filed by the person, as other instruments affecting real estate, with the register of deeds of the county or counties in which is located the point of diversion for the reservoir.~~

deleted

History: L. 1974, ch. 452, § 12; March 22.

82a-1313. Same; withdrawal of water under contract; exercise and protection of rights. Persons having contracts under K.S.A. 82a-1305 for withdrawal of water may use waters withdrawn thereunder as provided in such contract without obtaining a permit or water right under article 7 of chapter 82a of Kansas Statutes Annotated. Such persons shall be entitled to the same protection of their rights under such contracts 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. No person shall be entitled to any waters withdrawn under this act from the conservation storage water supply of any reservoir except in accordance with a contract under K.S.A. 82a-1305.

History: L. 1974, ch. 452, § 13; March 22.

Kansas Water Authority  
Recommendations

same language but deletes 2nd sentence

82a-1312. A copy of every contract under K.S.A. 82a-1305 shall be filed with the chief engineer by the person who is to receive water under the contract.

delete remainder.

82a-1313. no change

82a-1314. Same; request for withdrawal of water; release of water; conduct and withdrawal of water. Whenever a person, who has a contract under K.S.A. 82a-1305, wishes to make a withdrawal of water, he or she shall so advise the executive director. Whenever the bed of a watercourse is to be used to carry waters so released, the executive director shall inform the chief engineer. In accordance with such advice, and at a time agreed upon by the executive director and the chief engineer within two (2) days of such request, the executive director shall request the authorities in charge of the operation of the reservoir to make an appropriate release of water. The person for whom waters are released may conduct such waters into and along any watercourse and may withdraw or redirect the same at points specified in his or her contract, without re-

82a-1314. delete reference to "executive" throughout.

The chief engineer shall protect and shall have all authority to enter into agreements necessary to protect any releases of water from the state's conservation water supply capacity into Kansas streams.

gard to holders of water rights to the waters of the watercourse, due allowance being made for seepage and evaporation. The provisions of K.S.A. 82a-706b to 82a-706e, inclusive, shall apply to water so released.

History: L. 1974, ch. 452, § 14; March 22.

82a-1315. Same; payment of charges for water; deposit in state treasury. Amounts charged under contracts under K.S.A. 82a-1305 shall be paid to the executive director. The executive director shall remit all such moneys he or she receives to the state treasurer and the state treasurer shall deposit the same in the state treasury to the credit of the state general fund.

History: L. 1974, ch. 452, § 15; March 22.

Sec. 5. K.S.A. 82a-1315 is hereby amended to read as follows: 82a-1315. Amounts charged under contracts under K.S.A. 82a-1305, as amended, shall be paid to the executive director. The executive director shall remit all such moneys he or she receives received to the state treasurer and the state treasurer, except as provided in section 6, shall deposit the same in the state treasury to the credit of the state general fund.

New Sec. 6. (a) The board shall acquire or develop conservation storage water supply capacity in impoundments named in the state water plan other than in federal reservoirs. All such water supply capacity acquired or developed shall be subject to all of the provisions of the state water plan storage act.

(b) That portion of all moneys received by the state treasurer pursuant to K.S.A. 82a-1315, and amendments thereto, which equals that amount dedicated for the purposes of this section by K.S.A. 82a-1308(5), shall be deposited in the state treasury to the credit of the conservation storage water supply capacity fund which is hereby created. Expenditures from the fund shall only be made to carry out the purposes of this section.

New Sec. 7. The provisions of section 6 shall be a part of and supplemental to the state water plan storage act.

82a-1315. Amounts charged under contracts under K.S.A. 82a-1305 shall be paid to the director who shall deposit the same in the State Conservation Storage water Supply Capacity fund which is hereby created. The director, with authority approval, shall acquire or develop conservation storage water supply capacity in impoundments named in the state water plans approved by the Legislature. All such water supply capacity shall be subject to all of the provisions of the state water plan storage act. The director shall pay all bills incurred by the system from revenues generated for that specific purpose. Any shortfalls between user revenues generated to pay bills and actual bills generated shall be the difference from the state general fund to be repaid.

Current Law

Kansas Water Authority  
Recommendations:

82a-1316. Same; approval of assignment, sale or transfer of contract or interest required; amendment or revocation of contract. No assignment, sale, conveyance or transfer of all or any part of a contract under K.S.A. 82a-1305, or of interest thereunder, or of interest therein shall be valid unless and until the same is approved by the board under such reasonable terms and conditions as the board may impose. Any contract under K.S.A. 82a-1305 may be amended or nullified by written agreement of the parties thereto made and recorded as provided in this act for original contracts under K.S.A. 82a-1305, but no such amendment shall change any rate specified in the original contract in accordance with either paragraphs (a) or (b) of K.S.A. 82a-1306.

82a-1316.

authority

authority

(1) or (2)

82a-1317.

interest equal to the average of interest earned the past 12 months, on investments by the Pooled Money Investment Board per annum until paid.

authority

Every such contract amendment shall be transmitted as provided in K.S.A. 82a-1307 for original contracts, and shall be subject to revocation as provided in K.S.A. 82a-1307. Whenever a contract amendment is so revoked, the contract to which the amendment applied shall remain valid and unchanged, as though such amendment had never been agreed upon.

History: L. 1974, ch. 452, § 16; March 22.

82a-1317. Same; failure to make payment for water; interest on overdue payment. If any person financially obligated under a contract made under K.S.A. 82a-1305 should fail to make any of the payments when due, then the overdue payments

shall bear interest compounded annually at the rate of eight percent (8%) per annum until paid. This provision shall not be construed as giving the person an option of either making payments when due or paying interest nor shall it be construed as waiving any of the rights of the board or the state of Kansas that might result from any default by the person.

History: L. 1974, ch. 452, § 17; March 22.

Current law

Senate Bill 95

82a-1318. Same; enforcement of claim or right or provisions of act or rules and regulations; authority of board; attorney general, duties. The board may sue in its own name, or may authorize suit to be brought by an authorized representative in the name of the board, to enforce any claim or right arising out of any contract under K.S.A. 82a-1305, any provision of this act or any rule and regulation adopted under this act. The board may be sued and may defend any action brought against the board arising out of any contract under K.S.A. 82a-1305. Nothing in this section shall be deemed to authorize any suit against the board or any member thereof, or any officer or employee of the state or of the board, on an implied contract, or for negligence or any other tort. The attorney general, or any attorney designated by him or her, shall represent the board in all litigation.

History: L. 1974, ch. 452, § 18; March 22.

82a-1319. Same; rules and regulations. The state water resources board may adopt rules and regulations for the administration of this act.

History: L. 1974, ch. 452, § 19; March 22.

82a-1320. Citation of act. This act shall be known and may be cited as the "state water plan storage act."

History: L. 1974, ch. 452, § 20; March 22.

82a-1321 - effective date

Sec. 8. K.S.A. 82a-1301, 82a-1303, 82a-1306, 82a-1308 and 82a-1315 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the official state paper.

82a-1318.

change all references to "the board" to the authority.

82a-1319. The director may adopt rules and regulations, approved by the authority, for the administration of this act.

82a-1320. no change

82a-1321. This act shall take effect and be in force from and after its publication in the Kansas Register.

DRAFT

AN ACT concerning water; relating to funding for water resources development.

Be in enacted by the Legislature of the State of Kansas:

Section 1. As used by this Act:

(a) "Authority" means the Kansas Water Authority.

(b) "Office" means the Kansas water office.

(c) "Director" means the director of the Kansas water office created by K.S.A. 74-2613; or if such director shall be abolished, the officers, board or body succeeding to the principal functions thereof or to whom the power is given by this act to the director of the Kansas water office shall be given by law.

(d) "Project" means:

(1) In the engineering undertaking or work to conserve or develop surface or subsurface water resources of the state for all useful and lawful purposes by the acquisition, improvement, extension or construction of dams, reservoirs and other water storage projects, including underground storage projects, filtration and water treatment plants,

(2) Any system necessary to distribute water from the ~~point~~ of storage or the point of diversion to points of distribution, or to filtration and treatment plants,

(3) Facilities for the distribution of water from storage of filtration and treatment plants to wholesale or retail purchasers.

(e) "Eligible entity" means any city, county or the state of Kansas, and any rural water district, irrigation district, public trust, watershed district, conservation district, wholesale water district, groundwater management district or other political subdivision or any combination thereof.

Sec. 2. The director of the Kansas water office with the approval of the Kansas water authority is hereby authorized to issue revenue bonds payable solely from revenues arising from contracts between the director of the Kansas water office and any eligible entity as authorized by this act and moneys held to the credit of any debt service reserve fund established by this act authorizing the bonds or any issue or the

trust agreement securing such bonds. Revenue bonds issued under this act shall not be deemed to constitute a debt of the state or of any political subdivision thereof for which ad valorem taxes may be levied or a pledge of the full faith and credit of the state or of any political subdivision thereof, and all such revenue bonds shall be approved in form and content by bond counsel for the director of the Kansas water office. The director of the Kansas water office with the approval of the Kansas water authority may provide for the issuance of revenue bonds under this act for the purpose of providing any eligible entity sufficient funds for the acquisition, improvement, extension or construction of a project which are consistent with the guidelines of the state water plan. The interest rate and loan term shall be determined by the director of the Kansas water office. As security, the director of the Kansas water office may take a mortgage on the entire project, and a pledge of the revenues derived from the operation thereof or such other revenues as may be pledged by the applicant for such purposes. The Kansas water office, in its discretion, may defer the principal or an installment on such loans but the total accumulating time such payment may be deferred shall not exceed two (2) years. The maximum rate of interest which may be fixed on bonds issued shall be determined on the day the bonds are sold and shall not exceed twenty (20) bond index of tax exempt municipal bonds published by the weekly bond buyer in New York, New York on the Monday next preceding the day on which the bonds are sold, plus 2%, shall mature at such time or times not exceeding twenty (20) years from their date or dates as may be determined by the director of the Kansas water office, and may be made redeemable before maturity comes at the option of the director at such price or prices and under such terms and conditions as may be fixed by the director of the Kansas water office prior to the issuance of the bonds. The director of the Kansas water office shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within

or without the state. The bonds shall be signed by the director of the Kansas water office. In case any officer whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery, and also any bond may be signed by such persons as at the actual time of the execution of such bond shall be the proper officers to sign such bond although at the date of such bond such persons may not have been such officers. All bonds issued under the provisions of this act shall have and are hereby declared to have all the qualities and ingredients of negotiable instruments under the uniform commercial code of the state. The bonds may be issued in coupon or in registered form, or both as the director of the Kansas water office may determine, and provision may be made for the registration of any coupon bonds as to principal of loan and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the exchange of registered and coupon bonds. The director of the Kansas water office shall sell such bonds after public advertisement and by competitive bidding on sealed proposals; however any and all bids may be rejected. If no bid acceptable to the director of the Kansas water office is received, the director of the Kansas water office with the approval of the Kansas water authority may sell the bonds without such competitive bidding at private sale in such manner and upon such terms and conditions as the director of the Kansas water office may determine is in the public interest.

(b) The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been issued, and shall be dispersed in such manner and under such restrictions, if any, as the director of the Kansas water office may provide in authorizing the issuance of such bonds or in the trust agreement herein authorized securing the same.

(c) Prior to the preparation of definitive bonds, the director of the Kansas water office may, under like restrictions, issue interim financing receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are

available for delivery. The director of the Kansas water office may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Such replacement bonds may be issued under the provisions of this act without containing the consent of any officer, department, division, commission, board, bureau or agency of the state, without any proceedings or the happening of any such conditions or things, other than those proceedings, conditions or things which are specifically required by this act.

Sec. 3. All bonds issued hereunder shall be submitted to the attorney general of Kansas for examination, and when such bonds have been examined and certified as legal obligations of the Kansas water office by the attorney general in accordance with such requirements as he or she may make, the same shall be incontestable in any court in the state of Kansas unless suit thereon shall be brought in a court having jurisdiction thereof within ninety (90) days from the date of such approval.

Sec. 4. (a) All monies received from the issuance of revenue bonds under the provisions of this act shall be deposited in the water resources fund which is hereby established in the state treasury except that money sufficient to pay interest on such revenue bonds for one year after the issuance thereof and to provide a reserve of not more than the maximum amount required to pay principal and interest on such revenue bonds for any one year following the issuance of such bonds may be deposited in such special funds or accounts as may be provided by the director of the Kansas water office for the issuance of such revenue bonds or in the trust agreement securing the same.

(b) The director of the Kansas water office with approval of the Kansas water authority may make project loans to any eligible entity, subject to the provisions of this act, may accept any such loan when authorized by the governing body. In order to retire bonds issued under the provisions of this act, the director of the Kansas water office after consultation with officials of eligible entity, which receives such loans under this section, shall adopt a repayment rate schedule to be levied against users of the project or the entity receiving such loans. The repayment rate schedule, which may be adjusted from time to time by the director of the Kansas water office after consultation with



officials of the entity, shall remain in effect until the bonds issued for the loan have been paid. The rate repayment schedule shall, in so far as practical, be equitably assessed. The officials of any eligible entity which receives a loan hereunder shall deposit the moneys collected for repayment of the loan with the director of the Kansas water office in accordance with the procedures established by such director of the Kansas water office.

Sec. 5. (a) The director of the Kansas water office may create and establish a special fund to be known as a debt service reserve fund and may pay into such fund (1) any moneys appropriated by the state of Kansas for the purpose of such fund, (2) any proceeds derived from the sale of revenue bonds under this act to the extent provided by the director of the Kansas water office authorizing the issuance of such bonds, or in the trust agreement securing the same and (3) any other moneys transferred to the director of the Kansas water office made available to the director of the Kansas water office for the purpose of such reserve fund from any other source or sources.

(b) The moneys held in or credited to such debt service reserve fund, except as otherwise provided in this section, shall be used solely for (1) the payment of the principal of the revenue bonds issued under this act, as the same mature, (2) the purchase of such revenue bonds, (3) the payment of interest on such revenue bonds or (4) the payment of any redemption premium required to be paid for any such bonds redeemed prior to maturity, except that moneys in such reserve fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount then to the credit of such reserve fund to less than the amount with the director of the Kansas water office shall determine to be reasonably necessary for the purposes of such reserve fund, except for the purpose of paying the principal of and the interest on the revenue bonds issued by the director of the Kansas water office maturing and becoming due for the payment of which other moneys of the Kansas water office are not available.

(c) Moneys in the debt service reserve fund may be invested by the pooled money investment board in obligations of the United States of America or obligations the principal and interest of which are guaranteed by the United States of America or in interest bearing time deposits in

any commercial bank or trust company located in Kansas, or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than thirty (30) days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof. Except as provided in Section 6, any income or interest earned by or increment to the debt service reserve fund shall be credited to such reserve fund. Securities in which any moneys in the reserve fund are invested shall be valued semiannually at the then market value thereof.

(d) The money and securities in the debt service reserve fund shall remain in the custody of the state treasurer, except that the pooled money investment board may arrange for the custody of such money and securities as it considers advisable with a member bank or trust company of the federal reserve system, or with one or more banks in the state of Kansas, or both, to be held in safekeeping by the bank or trust company or banks for the collection of the principal and interest or other income or of the proceeds of sale. The services provided by any such bank or trust company shall be paid for out of the gross receipts from such interest or other income, and the net interest or other income after such payment shall be considered income of the debt service reserve fund.

(e) The director of the Kansas water office shall not issue any revenue bonds under this act at any time if the amount held for the credit of the debt service reserve fund at the time of the issuance of such bonds shall be less than the maximum amount required in any year thereafter to pay the principal, including any mandatory payment to retire bonds prior to their maturity, and the interest on all revenue bonds issued under this act then outstanding and secured by such reserve fund unless the director of the Kansas water office, at the time of the issuance of such bonds, shall deposit in such reserve fund from the proceeds of such bonds or otherwise an amount which, together with the amount then in such fund, is not less than such maximum amount required to pay principal and interest.

Sec. 6. (a) The Kansas water office with the approval of the Kansas water authority shall administer loans from any moneys which may be available from the water resources fund and the water resources loan fund, which is hereby established in the state treasury, for furtherance of the purposes of this act to eligible entities of the state with such conditions as shall in its discretion effectuate these purposes. For purposes of carrying out and implementing the provisions of this section, the Kansas water office with the approval of the Kansas water authority shall prescribe such rules and regulations as may be necessary for determining the eligibility and priority of applicants for loans and devise rules and regulations to insure fair and equitable distribution of said loans and promulgate and adopt such rules and regulations as may be necessary for purposes of expenditures and payments. Provided also priorities for use of loan money for a particular project shall be established consistent with the guidelines of the state water plan.

(b) All moneys placed in the water resources loan fund, exclusive of such amounts of interest derived from investment deposits necessary to maintain the loan account at its maximum amount as provided in subsection (c) of this section, may be used by the director of the Kansas water office with the approval of the Kansas water authority for any and all of the following uses and purposes:

(1) For project planning (not to exceed 10% of total project costs), acquisition of land, construction, operation and maintenance of multipurpose reservoirs within the state of Kansas.

(2) To provide for and pay the share, contribution or portion of the cost the state shall pay for any state-approved, federally funded water project in the state, water supply irrigation, recreation and other beneficial uses.

(3) To fulfill state contractual obligations pursuant to approved repayment agreements with the federal government and incidental to federally funded water supply storage projects; and

(4) To administer loans, not to exceed 75% of the total cost of the project, for projects for furtherance of the purposes of this act to eligible entities.

(c) The principal amount of all moneys placed in the water resources fund and in the water resources loan fund shall be invested by the state treasurer in the manner prescribed by Kansas statutes. Interest income derived from the investment of moneys placed in the water resources fund shall be credited to and placed in the water resources loan fund provided, the total of all moneys held in the account shall not exceed five million dollars (\$5,000,000.00). Whenever the aggregate total of all moneys placed in the account equals five million dollars (\$5,000,000.00), then the principal amount in the account shall be kept and maintained at that amount and all additional interest income not required to maintain the balance of the water resources loan fund at five million dollars (\$5,000,000.00) shall be retained in the debt service reserve fund. The additional interest income not needed to maintain the water resources loan fund as herein provided may be utilized by the director of the Kansas water office with the approval of the Kansas water authority for the purposes and uses enumerated in subsection (a) of this section.

(d) In addition to the purposes outlined in this section, all moneys placed in the water resources loan fund may be used by the director of the Kansas water office for security and collateral for revenue bonds issued by the director of the Kansas water office.

Sec. 7 (a) At the discretion of the director of the Kansas water office any bonds issued under the provisions of this act may be secured by a trust agreement by and between the director of the Kansas water office and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the user fee charge payments from eligible entities and other revenues to be received. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the director of the Kansas water office in relation to loans under this act in connection with which such bonds shall have been authorized, and the custody, safeguarding and application of all moneys.

(b) It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the director of the Kansas water office. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the director may deem reasonable and proper for the security of the bondholders.

Sec. 8. All moneys received pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues or as an appropriation by the state of Kansas, shall be deemed to be trust funds to be held and applied solely as provided in this act. The authorization of bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustees of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations of this act and such resolution or trust agreement may provide.

Sec. 9. Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the director of the Kansas water office.

Sec. 10. The exercise of the powers granted by this act will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and will constitute the performance of essential governmental functions; therefore, director of the Kansas water office shall not be required to pay any taxes or assessments upon

any property acquired or used by the director of the Kansas water office under the provisions of this act or upon the income therefrom, and any bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state.

Sec. 11. Bonds issued by the director of the Kansas water office under the provisions of this act are hereby made securities in which all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.