

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 ~~xx~~ p.m. on February 23, 1983 in room 519-S of the Capitol.

All members were present except:

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:

Peggy Blackman, Mayor of the City of Marion.
Senator Charlie Angell, Chairman of the Senate Energy and Natural
Resources Committee.
Ramon Powers, Research Department.
Marsha Marshall, Kansas Natural Resource Council.
Bill Henry, Kansas Engineering Society.
Warren Porter, City of Emporia.
Buford Watson, Lawrence City Manager.
Dennis Schwartz, Tri-District Water Treatment Facility.
Art Worthington, Douglas County Rural Water District No. 3.
Alvin Fishburn, Douglas County Rural Water District No 5.
Merlin Ford, Mayor of the City of Baldwin.

SB 61 - An act amending and supplementing the state water plan storage act; concerning rates, charges and contract provisions for the sale of water; providing authorities and duties for the Kansas water authority and the director of the Kansas water office.

Peggy Blackman, mayor of the City of Marion, presented testimony on SB 61 on behalf of the League of Kansas Municipalities. As a member of the League's Governing Body and Special Committee on Water Policy, Mrs. Blackman offered qualified support for SB 61 as currently amended and passed by the Senate. In her testimony, Mrs. Blackman said the League had several suggested changes in the bill which they would like the committee to consider. She noted that these proposed changes were in Sections Five, Seven, and Fourteen. She outlined the League's concerns regarding these sections and provided suggestions for changes (see attachment 1). She emphasized that the League believed the bill was an improvement on the present way in which the state's water marketing program is administered, but urged the committee to examine the bill carefully regarding their concerns.

Senator Charlie Angell, chairman of the Senate Energy and Natural Resources Committee, spoke to the committee regarding two proposed amendments that the Senate had not put on SB 61. He said the amendments, if added, would improve the flow of the contracts between the Water Authority and the Director of the Water Office (see attachment 2), and would clarify the formula for prices (see attachment 3).

Ramon Powers, committee staff member from the Research Department, provided committee members with an example of a calculation of components of price as outlined in SB 61 based on 1982 figures (see attachment 4).

Marsha Marshall, Kansas Natural Resource Council, testified regarding SB 61. She said there were several problems with the bill that should be addressed. Her concerns related to the structure of present government water agencies that will be implementing this law; the fact that the bill regulated only reservoir storage waters which represents only 10% of the water available in Kansas; and, the pricing structure (see attachment 5).

Bill Henry, Kansas Engineering Society, Inc., testified in opposition to SB 61 as currently written. He said the Society had several concerns with

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
 room 519-S, Statehouse, at 3:30 ~~am~~/p.m. on February 23, 1983

the bill. He asked that the committee recommend this bill not be enacted at this session, but rather that it be returned to the Kansas Water Authority with legislative oversight if necessary, for a more thorough examination of alternative policies for marketing this water. He enumerated the Society's concerns regarding the bill and provided suggestions addressing those concerns (see attachment 6).

Warren Porter, representing the City of Emporia, testified regarding SB 61. He said the City of Emporia had a water supply contract with the state and they were concerned about the validity of existing contracts the State has negotiated regarding water supply agreements. He proposed an amendment to the bill regarding their concern (see attachment 7).

Buford Watson, Lawrence City Manager, testified in opposition to SB 61. He said the City of Lawrence was the first municipality to contract for water under the State Reservoir System and they believe the State should honor present contracts without the new conditions of SB 61. He noted that they had several objections to SB 61 including the bill's provision of an annual review and possible reduction to allocations after six years; the floating interest penalty for unused water; and the two-and-one-half cent surcharge (see attachment 8).

Dennis Schwartz, manager of Shawnee County Rural Water District No. 8, and chairman of the management committee of the Tri-District Facility at Clinton Reservoir, testified in opposition to SB 61. He noted that existing contracts should be honored. He also was concerned that the proposed legislation would cause the plan to be funded by only a small percentage of the state's population (see attachment 9).

C. A. Worthington, manager of Douglas County Rural Water District No. 3, testified in opposition to SB 61. He said the bill's provisions provide for greatly increased costs, and limitations concerning supply that did not exist when their contract was negotiated with the State of Kansas (see attachment 10).

Alvin Fishburn, representing Rural Water District No. 5, testified in opposition to SB 61. He said the bill would add increased costs and other contractual conditions which did not exist when their contract was negotiated with the State (see attachment 11).

Merlin Ford, mayor of Baldwin City, testified in opposition to SB 61. He noted that their existing contract should be exempt from this bill (see attachment 12).

Testimony in opposition to SB 61 was distributed to committee members on behalf of the following people: Michael J. Bronoski, Douglas County Rural Water District No. 1 (see attachment 13); Michael A. Flory, Douglas County Rural Water District No. 2 (see attachment 14); L. L. Kindred, Douglas County Rural Water District No. 4 (see attachment 15); and, Charles B. Taylor Jr. (see attachment 16). They expressed concerns regarding their existing water supply contracts with the State, and the fact that SB 61 could cause their planned water costs to increase.

A brief question and answer period followed several of the presentations of testimony on SB 61.

Representative Ron Fox made a motion that the proposed amendments to SB 61 regarding language changes, as outlined by Senator Charlie Angell, be adopted (see attachment 2). Representative Clint Acheson seconded the motion. The motion was unanimously passed.

Representative Ron Fox made a motion that the proposed amendment to SB 61 regarding clarification of formula for prices, as outlined by Senator Charlie Angell, be adopted (see attachment 3). Representative Thomas Walker seconded the motion. The motion was unanimously passed.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
room 519-S, Statehouse, at 3:30 ~~am~~/p.m. on February 23, 1983

There being no further business to come before the committee, the meeting adjourned at 5:00 p.m.

The next meeting of the committee will be held February 28, 1983. The Subcommittee on Energy and the Subcommittee on Natural Resources will hold meetings on February 24 & 25, 1983.

Rep. David J. Heinemann, Chairman

Date 2-23-83

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Alvin Fickler	Rt 5 Lawrence, Mo	Douglas Co. RW #5
Angie Johnson	Rt 5 Lawrence	" " "
Howard Wachter	1432 Louisiana St. Lawrence	" " "
Wayne Roberts	PO Box 7 Hardnes	Johnson Co. RW #7
Mike Dunnaway	310 W. 33rd St.	Bartlett & West
C.A. Worthington	Rt 1 LeCompton Ks	Douglas Co. RW #3
James Power	Topeka	K DHE
Marshall Tatum	Fontana	K RWA
Dennis Schwartz	Topeka	Tri-Dist Facility
Manny Hall	Olathe	Commission on Human ^{Relation}
John C. Beck	Lawrence	KU LAW School
Earl Miller Jr	LAWRENCE	KU- LEG INTERN
Wood Thibault	Merriam	Wes Co
Paul H. Sarge	OLATHE	WMS PL CO.
David Darling	Topeka	Kansas Water Office
John A. Henderson	"	" " "
Bill Anderson	Jo Co	Water DIST #1 Jo Co
Roy D. Shenkel	Shawnee	K.C.P.C
Louis Stroup Jr.	McPherson	KMU
Peggy B. Lockman	Marion	Leisure
R. Duffy	Topeka	RWA Staff
Ronald H. Pison	Olathe	City of Olathe

Date _____

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Jerry McKanna	PO Box 768, Olathe, Ks.	City of Olathe
Jerry Leonard	Topeka	KGE
R. P. Peltz	Topeka	Water Dept
Jack Alexander	Topeka	K.W.H.
Martha Mangelsdorf	Wichita	K.W.A.
WARREN PORTER	522 MECHANIC, EMPORIA, KS	CITY OF EMPORIA
JOE HARKINS	TOPEKA	KWO
BUFORD WATSON	LAWRENCE	city mgr - Lawrence
Leland E. Rolf's	Topeka	KSBA - DWR
BARRR GENTRY	TOPEKA	K.E.S.
BILL HEWRY	TOPEKA	Kansas Engineering Sec.

Statement Regarding Senate Bill 61 as Amended

To the House Committee on Energy and Natural Resources

By Peggy Blackman, Mayor, City of Marion
On Behalf of the
League of Kansas Municipalities

February 23, 1983

Mr. Chairman, and members of the Committee, I am pleased to appear before you today on behalf of the League of Kansas Municipalities to discuss the position of the League's Special Committee on Water Policy concerning Senate Bill 61, as amended. As the mayor of a city of approximately 2,000 population which only recently entered into a contract for the purchase of water from the state's water supply capacity, I can assure you of my sincere interest in the development of this legislation. I also am appearing today in my representative capacity as a member of the Governing Body and Special Committee on Water Policy of the League of Kansas Municipalities. By state law, the League of Kansas Municipalities is the instrumentality and representative of its over 500 member cities, and the League's Special Committee on Water Policy consists of 13 local governing body members, mayors, city managers and utility superintendents from around the state. Many of the same individuals served on the Special Committee on Water Policy during the 1981 legislative session when Senate Bill 95 was developed. Consequently, they have considerable familiarity with the issues at stake in this particular piece of legislation.

With the exception of some suggested changes in the bill that I am prepared to discuss with you, I am present today to report to you the Committee's qualified support for Senate Bill 61, as amended. We are fully aware of the deliberations of the Kansas Water Authority on this matter, and we sincerely appreciate the efforts of the members of the

Authority to clarify the purpose and policies of the state's water marketing program. Members of the League staff have worked with the Water Authority and its staff for the last few months to develop a well-rounded legislative proposal which the cities of this state could support. While I can't represent to you today that the League received support for every proposal that it made, this bill, if enacted, would represent a step forward in the state's water marketing policy.

Before mentioning our specific concerns and suggestions, let me share with you for a moment the formal policy position of the League of Kansas Municipalities on the state water marketing program since it provides a foundation for my remarks. That statement, which was adopted at the League's annual convention of cities this past October reads:

State water storage pricing should be based on direct costs, for existing reservoirs or reservoirs for which land has been acquired. The state should not attempt to make a profit from the sale of such water. We continue to oppose state-wide assessments on the sale or use of any water until a comprehensive plan has been developed to guide the expenditure of such funds and to assure its commitment to public water supply development.

In light of these preliminary remarks, I would like now to discuss the various provisions of the bill that the League's Special Committee on Water Policy would recommend that you examine. Our first and most important concern deals with the wording of new Section 7 of the bill which prescribes the manner in which water rates shall be fixed. It has been the League's position since its staff became involved in working with the Water Authority on this proposal that the components of the water rate should be as easily understandable as possible. As you may know, considerable confusion has developed concerning the way in which the various components of the water rate would be calculated under new Section 7. We strongly endorse the adoption of specific language which would clarify the basis for computing the various components of the water rate. The current language of this section only perpetuates further misunder-

standings of the purposes of the various components of the rate. I sincerely hope that you give careful attention to this section of the bill.

Our second concern revolves around Section 5 of the bill. Subsections (a)(2), (a)(4), and (a)(6) provide for the imposition of new interest charges on unused water and new authority to adjust the total amount of water contracted for on the 6th anniversary of the execution of the contract and each year thereafter if the contractor does not begin full payment and another water user is ready, willing and able to contract for such water. The latter provision is what has very accurately been referred to in various committee meetings as the "take or pay" provision of this bill. The League and other conferees advised both the Kansas Water Authority and the Senate Committee on Energy and Natural Resources that it was unreasonable to require cities to pay both an interest charge on unused water and require full payment within six years of the signing of the contract or face losing part of the water under contract. We continue to maintain that six years is an unreasonable time within which to utilize all the water under contract, and the potential that subsection (a)(4) provides of requiring full payment at the end of the six year period if another purchaser is ready, willing and able may not result in a wise use of the state's water supply capacity. Furthermore, in all likelihood the "take or pay" provision may require cities to pay for water that simply cannot be put to use either by the city itself or under subcontract. We recommend that you review these particular provisions and consider either eliminating the charge on unused water or extending the time period after which a municipal contractor has to begin full payment.

Our final concern deals with the policy issue raised by new Section 14. That section directs the head of the Kansas Water Office to acquire

or develop conservation storage water supply capacity in impoundments named in the state water plan. It also provides that that portion of all the moneys collected under the state's water contracts that is not needed to pay the annual water storage, operation and maintenance, and enforcement costs of the system shall be deposited in a new fund to finance the acquisition and development of new water supplies. Our sole concern about this portion of the bill, and it's a concern that has been expressed to the Kansas Water Authority and to the Senate Committee, is that this section provides for the raising of a significant amount of money in the absence of an updated state water plan. Simply put, neither you nor I know what water needs will be addressed with the money in the new conservation storage water supply fund. In the opinion of the League's Special Committee on Water Policy, this is still an important policy question which both houses of the legislature should address.

I want to thank you for the opportunity to visit with you today and share our views on Senate Bill 61, as amended. I want to emphasize that we believe this bill is an improvement on the present way in which the state's water marketing program is administered. It represents a largely reasonable and sincere attempt to address the growing water supply problems of this state. I want to thank the Kansas Water Authority for their efforts in this regard, and urge you to examine this bill carefully in light of the concerns I've raised today. Thank you very much.

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend Senate Bill No. 61 (As Amended by Senate Committee) as follows:

On page 6, in line 207, by striking "authority" and inserting "director"; in line 212, by striking "authority" and inserting "director";

On page 7, in line 249, by striking "authority" and inserting "director"; in line 254, by striking "authority" and inserting "director";

On page 8, in line 270, by striking "authority" and inserting "director"

Senator _____

Proposed amendment to SB 61 as amended by Senate Committee

On page 9, in line 324, before the semicolon by inserting "divided by the greater of: (A) Fifty percent of the total amount of water under contract from the state's conservation storage water supply capacity in the preceding year; or (B) the total amount of water withdrawn from the state's conservation storage water supply capacity in the preceding year"; in line 326, by striking all after "act"; in line 328, before the semicolon by inserting "divided by the greater of: (A) Fifty percent of the total amount of water under contract from the state's conservation storage water supply capacity in the preceding year; or (B) the total amount of water withdrawn from the state's conservation storage water supply capacity in the preceding year"; in line 331, by striking ". Such amount shall be"; in line 333, before the semicolon by inserting "divided by the greater of: (A) Fifty percent of the total amount of water under contract from the state's conservation storage water supply capacity in the preceding year; or (B) the total amount of water withdrawn from the state's conservation storage water supply capacity in the preceding year"

S.B. 61 Example Based on 1982

Lines
in Bill

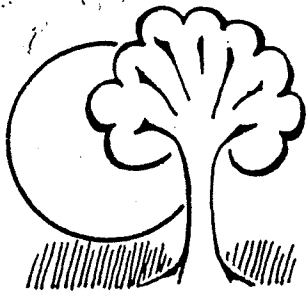
- 315 to 317 1. Determine annual federal bill for system = \$1.6 million
- 2. Calculate total repayment costs for life of system = \$140 million
- 3. Estimate requests for water over life of system = 5.23 trillion
- 4. Divide $\frac{\text{Total Cost}}{\text{Total Requests}} = 2.67\text{¢}/1,000 \text{ gallons}$ (To General Fund to repay Federal Gov't - lines 454-456)

NOTE: This unit price will cover 100 percent of the costs to state for purchase of storage space.

- 334 to 335 5. Add on 2.5¢/1,000 gallons = \$331,947
 (2.5¢/1,000 gallons to conservation storage water supply fund - lines 453-462)
- 319 to 324 6. Add on $\frac{10\% \text{ (Pooled Money Investment Board rate)} \times \text{Gen. Fund Adv.}}{1,000 \text{ gal. sold}} = \$598,914$
 (4.51¢/1,000 to conservation storage water supply fund - lines 453-462)
- 325 to 328 7. Add on $\frac{\text{Administration and Enforcement}}{1,000 \text{ gal. sold}} = \$61,372$
 (0.46¢/1,000 gal. to General Fund lines 458-461)
- 329 to 333 8. Add on $\frac{\text{Operation and Maintenance Costs}}{1,000 \text{ gal. sold}} = \$191,284$
 (1.44¢/1,000 gal. to General Fund to repay Federal Gov't - lines 456-458)

- 9. Penalty 10 percent (Pooled Money Investment Board rate) X General Fund Advance X Percent of System Under Contract Not Used =

Total 11.58¢



Kansas Natural Resource Council

February 24, 1983

Hearing before House Energy and
Natural Resources Committee

Subject: SB 61, relating to water
storage and pricing.

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Shawnee Mission, Ks 66205
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My name is Marsha Marshall, and I represent Kansas Natural Resource Council, a small, non-profit citizen's group. We have been speaking to energy and natural resource issues during our 2 and a half years of existence and through our parent organization, Mid-America Coalition for Energy Alternatives, since 1977. We share with other citizen's groups a growing interest and concern about how this legislature reshapes water law in coming years.

As you may know, the problem with water law in Kansas is that it is based upon the presumption that there is plenty of water for everyone. As a "prior appropriation state", water use is appropriated by permit on a first-come, first-served basis. Laws that served this state in the past do not work today in times when needs are increasing and supplies are diminishing.

You are all aware, after seeing the extensive reports of the Kansas Water Authority, of how pressing the need is to change present laws. SB 61 is a beginning attempt to modify some of the tremendous inadequacies of current statutes. But whether or not SB 61 turns out to be a good law depends upon amendments you might make, and more importantly, legislation you pass in the future that deals with the problems that passing this law will create.

Since you are aware of the hoped-for positive effects that passing this bill will create, I would like to deal with a few problems that passage of this legislation will intensify.

The Most Immediate Problem

I would like you to turn your attention to the structure of present government water agencies that will be responsible for implementing this law. Earlier this session, you heard Mr. Joe Harkins, director of the Kansas Water Office, refer to the awkward relationship between the Water Office and the Kansas Water Authority. If SB 61 is passed, the relationship will be further strained. Under this act, the Kansas Water Authority, (who recommended this bill), will be empowered to approve all purchasing of reservoir waters for the state, approve or restrict contracts, approve and review rates, and sue and be sued. Yet the KWA has no office, restricting public access, no day to day contact with policies and planning which they must judge, and virtually controls the decision making process which the Water Office must implement. This unworkable relationship is further accentuated by the budget structure, which shows that the Water Office, with a budget of roughly \$3 million is virtually controlled by a government entity with a budget of roughly \$75,000. Methods of choosing members of the powerful

Kansas Water Authority are inappropriate, at best, and will certainly lead to charges of special interest favoritism if the selection process is not changed to make the Authority more accountable to the public. I urge that this committee consider these structural problems in an interim committee study.

The Most Far-Reaching Problem

This legislation will only regulate reservoir storage waters, which represent less than 10% of the total water available in Kansas. Sooner or later this legislature is going to have to consider the useage of the other 90 odd%, much of which is not currently available to the state for use because of permits previously granted for its use. Surface reservoir waters simply cannot meet the needs of this state even in the short term.

Amendments

I urge you, when you consider the pricing mechanisms in this bill, to allow for costs of storing water to be included in the pricing structure. The most obvious inequity of water reservoir use is that the people who bear the greatest costs for storing water are rarely the people who enjoy the greatest benefits. Loss of revenues from flooded farmlands should be considered in the water costs of counties where reservoirs occur.

In New Section 10, line 0396, we suggest the word "impacts" be substituted for "benefits." This will assure that the Authority consider environmental costs as well as benefits.

Even in issues as large as state water planning, this legislature must proceed one step at a time. SB 61 is a first step. But in order to maintain an even course, you must pass this law with a clear notion of its effects. In order to avoid bitter, parochial water battles, I urge you to consider legislation addressing these effects before you pass any other legislation relating to water issues.

I thank you for your attention.

Kansas Engineering Society, Inc.

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Testimony re: Senate Bill 61
House Energy and Natural Resources Committee
February 23, 1983

Chairman Heinemann, members of the committee I am Bill Henry, Executive Vice President of the Kansas Engineering Society appearing before you today on behalf of the Society in opposition to Senate Bill 61. When I appeared before the Senate Energy and Natural Resources Committee on January 26 we recommended that Senate Bill 61 be passed if certain reservations we had with the measure were acted upon. At that time, copies of the printed bill had only been available approximately two days and our Environmental Resources Committee had not had the opportunity to completely examine S.B. 61.

The concerns that we had with S.B. 61 at that time remain today. And while we sympathize and respect the goals of the Kansas Water Authority we must respectfully voice our opposition to S.B. 61 in its current form.

The Kansas Engineering Society is composed of 1500 Professional Engineers, many of whom plan and design municipal industrial water works as well as rural water district systems in this state. In addition to designing these systems many of our members also operate these same systems once they have been completed. We would hope, that you would find our views of some import-because they are based upon a factual appraisal and understanding of the water availability in this state and the operating potential of the federal reservoir system as encompassed in S.B. 61.

One of the reasons that we first supported S.B. 61 in the Senate was the obvious need for the lifting of a moratorium on water contract that has been in effect for over a year. S.B. 61 does do that. However, based upon our examination of this measure and the significant surcharges that have been added therein we would recommend that this committee first order the Kansas Water Authority to drop its moratorium against finalizing two small contracts that are now pending and two, that this committee recommend this bill not be enacted at this session, but rather see that it is returned to the Kansas Water Authority, with legislative oversight if necessary, for a more thorough examination of alternative policies for marketing this water.

We are sure there are those among you that will say wait a moment that is what we did last year. But last year the Legislature sent a message to the Kansas Water Authority that it wanted an in-depth analysis of any alternative approach to marketing. You have not received in S.B. 61 a complete picture of the alternatives and approaches to marketing. Agreed our past water policy has not worked but S.B. 61 only compounds the reasons that it has not worked in the past.

(continued on next page)

Indeed, based upon the analysis of our membership in both the private and public sectors that deal on a first hand basis with water in Kansas there is a consensus that the existing policy and the proposed amendments contained in S.B. 61 exhibit either a complete disregard for the surface water hydrological characteristics of Kansas, and/or a misunderstanding of the hydrological and legal consequences associated with the operations of the reservoir system. We hope the latter, not the former, explains the Senate legislative action on this matter.

There is a need to start examination of this matter with the simple question-Why has so little of the water been brought under contract?

The answers to this question are not simple and in fact are severalfold, but they do relate to the following:

1. The water currently allocated in the federal reservoir system is not needed a vast majority of the time. The natural distribution of surface flows in this state, upon which a majority of the state's population are most dependent, are adequate in an unregulated state from 80 to 95 per cent of the time. In fact, there are surplus waters available in much of the eastern 40 per cent of the state a like amount of time. None the less, the other two, five, ten, or twenty per cent of the time, the percentage varies from stream to stream, users do become entirely dependent on reservoir storage. Thus it is quite possible that a community may not need to use storage water for 19 out of 20 years only then to face complete disaster if the storage is not available in the 20th year. Given the later situation one would think that prudent planning would suggest the need to place the necessary reserves in storage under contract. This has not happened because frankly users do not want to (a) buy a "pig in a poke" as it were and (b) they believe the policy the state has tried to impose is arbitrary, capricious and just plain inequitable.

What do we mean by a "pig in a poke"? Simply put, most would be users have no way of determining the water that will be available to them. The state has opted to sell water only at the reservoir rather than adopt a reservoir and stream operating plan that allows users to evaluate how much and where water will be available. The implied alternative of building a pipeline is often prohibitive and often destructive to the stream. Moreover, in S.B. 61 and in past measures, the state has never made clear how much water is legally for sale. The process they now use to calculate yield has not been constrained by the legal claims of down stream users. Perhaps this may be addressed in S.B. 62 which remains in the Senate Energy and Natural Resources Committee. But unless this issue is cleared up the state and some of its subdivisions are headed for terribly expensive legal and engineering studies. In effect would you sign a contract that does not give you assurance water will be where you need it, or for which basic property law prohibits the state from making the same available? Senate bill 61 presents that spectre to users of federal reservoir water.

The equity side of this coin is even more ridiculous. For several years our organization has urged you to abandon the present policy which rewards procrastination and penalizes participation in water planning. S.B. 61 does not do this; instead it compounds an already ridiculous situation. May we give you an illustration:

(continued on next page)

1. The inherent charge component of the rate that is established in S.B. 61 is roughly 6.6 cents per thousand gallons imposed upon current users in only being imposed because the state chose to start paying on the storage from future users. By federal law the state does not have to do this. We agree of course that the people who use federal reservoir water should reimburse the state for its costs. But more than 9 cents of the estimated 14.7 cents charged per thousand goes to the state water impoundment fund and does not represent any repayment to the state general fund for the original purchase of this federal reservoir water.

2. Under the provisions of S.B. 61 the state will be placing significant amounts of money which will come from the current users of federal reservoir water supply into a fund that you today sitting on this committee have yet to hear any details about on how that fund shall be spent. We have heard vague references to the fact that this money will be utilized to supply water, new planning, and develop new water impoundment for Kansas throughout the state.

This sounds very good in theory except that the only people that will be contributing to this fund are those "persons" under this bill who buy water from federal reservoir water supply. They are being charged with subsidizing the entire water planning and development program of the state. Yet there is no guarantee that those who buy federal reservoir water will ever directly or indirectly benefit from these additional surcharges.

3. This leads us to an interesting analogy. Some of you may be familiar with the measure which has been introduced this Legislature which in effect would allow a utility company to include in its current rate basis its "construction work in process" even though the utility has yet to generate one kilowatt of energy. There are many people who have problems with this theory. Yet that is exactly the concept that is embodied in the payment system of S.B. 61.

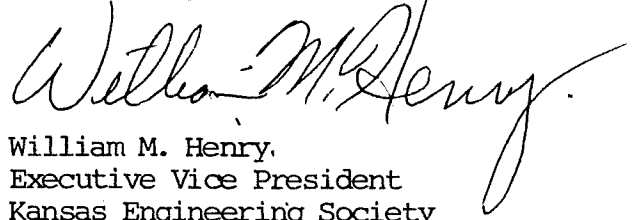
4. If water is a concern of the state it must be handled as a problem by all of the State's citizens. S.B. 61 is the only measure that we have seen anywhere in the Legislature that allows for some funding for future water needs. Yet the resource of that funding is only directed at those cities, rural water districts and other combines who purchase federal reservoir water. If we are to honestly meet the needs of the state then the state as a whole must contribute to meeting those needs.

5. If the state adopts this theory of water marketing it is foreseeable that future large users of water may bypass the state marketing program and go directly to the federal government for water and bypass the state rules and regulations. This would be particularly detrimental to small and medium size users. But the current provisions of S.B. 61 would encourage such action. What is perhaps most discouraging to the professionals of our Society is the unrealistic commentary that we have heard in recent months about Kansas water needs. Today there is unsold water in state-owned storage which exceeds 100 hundred gallons per capita per day for resident of this state. That is, there are sufficient supplies of water in our federal reservoir system to supply every person in the state at this time with 100 gallons per day every day of the year. Agreed some of this water is in locations that tend to discourage its use but it is present in the current state supply system.

(continued on next page)

6. In the current bill there are several sections which require for penalty payments of interest when a purchaser does not take all of the water for which it has contracted. There is also authority given to the director of the Kansas Water Office and the Kansas Water Authority to renegotiate every contract on an annual basis. If there is a concern for conservation and there is a feeling that some buyer has contracted for more than that buyer can use there is authority to renegotiate or simply not to deliver the water. There is no need for a penalty section with this authority. In summary then Mr. Chairman and members of the committee, if you are truly concerned with such principals as conservation of our state waters then you can not simply pass a measure such as S.B. 61 and think that problem has been handled. The water in our federal reservoir water system for which we have contracts represents only one per cent of the water used annually in our state. If you wish to have municipalities, rural water districts, and industry to start planning carefully for water then the Kansas Water Authority must take a broader look at this situation. S.B. 61 as we see it will only award procrastination in this area because there are no benefits only penalties to purchase this water. Secondly, S.B. 61 pays little attention to current state law and requirements therein that are directed to the state water plan. You have been guaranteed by Joe Harkins of the Kansas Water Office that the state water plan will be updated within a period of a year. We can see no great need to push through this year a stop gap water marketing program when you do not even have before you a current and updated picture of the state's water needs. As a result our Society honestly feels that we would lose our professional integrity if we did not speak before you at this time to urge you to report S.B. 61 unfavorable for passage.

Respectfully submitted,

A handwritten signature in cursive script, reading "William M. Henry". The signature is written in dark ink and is positioned above the typed name and title.

William M. Henry,
Executive Vice President
Kansas Engineering Society

STATEMENT ON HB 61
State Water Storage Plan to House Committee
on Energy and Natural Resources
By Warren Porter, Administrative Assistant, City of Emporia

My name is Warren Porter, Administrative Assistant for the City of Emporia, Kansas, appearing to propose an amendment to SB 61. We are concerned about the validity of existing contracts that the State has negotiated with many Kansas cities and water districts regarding water supply agreements.

On March 24, 1982, the State of Kansas Water Office sent notice to the Miami County Rural Water District No. 2, the Public Wholesale Water Supply District No. 5, the City of Marion, the City of Coffeyville, and the City of Emporia, that the 1982 Kansas Legislature did not take action to disapprove or revoke any of the water purchase contracts submitted on the first day of the 1982 session. Thus, the agreements we had negotiated and signed in good faith were assumed to be approved and valid for the duration of the contracts.

Less than one year later, the State began to scrutinize its water policy, including rates and contract provisions for the sale of water. The City of Emporia shall not serve as an obstacle to the State in its internal water policy and personnel reorganization. The City of Emporia does object to the State refusing to acknowledge both the legal and moral obligations the legislature undertook when it approved all water districts, municipalities, and the City of Emporia's water supply contracts.

We offer a compromise that should be palatable to the legislature, to future contractors, and present entities holding legally binding contracts.

On page 10, after line 346, the following should be inserted:

"(c) Notwithstanding the provisions of subsection (a) and (b), with respect to any contract for withdrawal and use of water from conservation storage water supply capacity committed to the State which was entered into and executed prior to the effective date of this act, the rate fixed for charges for such water in effect at the time of execution of any such contract as adjusted under paragraph (c) of K.S.A. 82a-1306, as in effect on January 1, 1983, shall be the rate for charges applicable for such contract during its entire term."

The State must acknowledge previous obligations; they cannot be allowed to evaporate away. Local water rates for thousands of Kansans in our area have been based upon the terms of our negotiated contract with the State, with confidence that the price of raw water taken from the Council Grove reservoir would not exceed ten cents (10¢) per one thousand gallons (K.S.A. 82a-1306). Local residential and industrial rates for water may be dramatically increased if present contracts are not observed. The House Committee on Energy and Natural Resources must carefully consider the ramifications of any proposal that will not allow legally binding contracts to be fulfilled. Broken agreements and promises must not be tolerated at any level of government.



City of Lawrence KANSAS

BUFORD M. WATSON, JR., CITY MANAGER

CITY OFFICES 6 EAST 6th
BOX 708 66044 913-841-7722

CITY COMMISSION

MAYOR

MARCI FRANCISCO

COMMISSIONERS

DONALD BINNS

BARKLEY CLARK

TOM GLEASON

NANCY SHONTZ

February 23, 1983

Chairman David J. Heinemann
House Energy and Natural Resources Committee
Kansas State Capitol
Topeka, Kansas

RE: Opposition to Senate Bill 61

Mr. Chairman:

My name is Buford M. Watson, Jr., and I am City Manager of Lawrence. I appreciate the opportunity to speak to this committee in opposition of Senate Bill 61. I believe the state has two incompatible objectives. One is desiring to repay the Federal government debt from users of the reservoir system and the second is to conserve the water in the reservoirs for future Kansans. To have present reservoir users pay all the Federal obligation, the State needs to aggressively market the water to obtain the revenue. We believe conserving the water for future Kansans is a state-wide goal and should be paid by a general tax on all Kansans.

The Governing Body of the City of Lawrence on January 23, 1983, passed a resolution expressing opposition to Senate Bill 61 which is included with this communication. In brief, the resolution opposes the state changing the rules of the game. The City of Lawrence, who was the first municipality to contract for water under the State Reservoir System, negotiated our 40-year contract under the contractual conditions that existed in 1977. Lawrence has since secured financing and built water lines, a lake intake and a treatment plant based on the feasibility of the contractual conditions of 1977. The following conditions of Senate Bill 61 did not exist in 1977:

1. An annual price adjustment;
2. Floating interest penalty for unused water;
3. Floating interest charge on money advanced by the state to pay the Federal obligation;

Chairman David J. Heinemann
Topeka, Kansas
February 23, 1983
Page 2

4. An annual review and possible reduction to allocations after six years;
5. A two and one-half cent surcharge.

Even though the state attorney general has addressed the issue of existing contracts, we believe the state should honor present contracts without the new conditions of Senate Bill 61.


Since Lawrence is in the forecasted growth area of Kansas, our principal concern is achieving an adequate, secure supply of water. Senate Bill 61's provision, which places our allocation in jeopardy after six years if another user exists, is a totally unacceptable provision. The interest penalty on the unused water would also hinder our planning efforts. We believe that the alternative of step increases in the 50% "take or pay" minimum to achieve 100% utilization over a 25-year period would accomplish the same goal without hindering good planning.

We are opposed to the two and one-half cent surcharge because it has no bearing on the state's cost in providing the water. Contemporary financing of public improvements uses a "pay as you go" philosophy, not a "pay in advance."

Our last objection concerns the floating interest rate charged for monies advanced by the state to pay the Federal government. We do not believe the state should charge its citizens a much higher rate of interest than the fixed rate (less than 4%) charged by the Federal government for all the reservoirs. Why should early participants in the system be responsible for the deficit when they have no control over the state's water marketing activities?

The purpose of the 1958 Federal Water Supply Act is to provide water for future municipal and industrial use. We hope this future orientation prevails in the formulation of Senate Bill 61. I appreciate the opportunity of speaking to your committee on behalf of the City Commission of Lawrence.

Respectfully,


Buford M. Watson, Jr.
City Manager

BMW/ed

RESOLUTION NO. 4646

A RESOLUTION EXPRESSING OPPOSITION TO SENATE BILL 61
PROPOSED BY THE KANSAS WATER AUTHORITY RELATING TO THE
STATE WATER PLAN STORAGE ACT.

WHEREAS, under the 1958 Federal Water Supply Act, the State of Kansas acquired the water supply storage in nine Federal reservoirs for future municipal and industrial water supply, and

WHEREAS, the City of Lawrence has a 40-year contract with the State of Kansas to purchase 10 million gallons of water per day from Clinton Reservoir, and

WHEREAS, the City of Lawrence has spent over 7 million dollars to build water lines, a lake intake and a treatment plant so the Clinton water can be used by Lawrence residents, and

WHEREAS, the City of Lawrence will pay the state over 8 million dollars over the life of our contract, and

WHEREAS, the state legislature is now considering Senate Bill 61 which has several provisions that would adversely effect Lawrence's contract.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

The City of Lawrence is in opposition to Senate Bill 61 for the following reasons:

1. Senate Bill 61 has an additional 2 1/2 cents charge per 1,000 gallons which has no bearing on the cost the state incurs in providing the water nor is the purpose of the 2 1/2 cent charge consistent with contemporary utility or public improvement financing.
2. Increasing the rate of interest from 5% per annum to a floating percentage on the monies advanced by the state to pay the Federal government is inequitable for two reasons. First, why should the existing participants in the system be penalized for the state's lack of securing enough contracts to pay the Federal government? A better approach would be to aggressively market the water at reasonable rates. Second, why should the state charge its citizens a high rate of interest (10% to 15%) when the Federal government is charging the state a fixed rate of interest of less than 4% for all of the reservoirs?
3. Since the purpose of the 1958 Federal Water Supply Act is to provide water for future municipal and industrial use, an interest charge on unused water above the 50% "take or pay" minimum seems contrary to this purpose. An alternative of a periodic percentage increase in the "take or pay" minimum to achieve 100% utilization after 25 or 30 years would allow a participant to plan for their future water needs.
4. Such a periodic "take or pay" increase would also be an alternative to the proposed yearly review and potential loss after the six year anniversary of a participant's allocation. Such an annual review would also hinder a participant from planning for their future water needs.

ADOPTED by the Governing Body of the City of Lawrence, Kansas, this 25th day of January, 1983.

ADOPTED

ATTEST:

Vera Mercer
Vera Mercer, City Clerk

Marci Francisco
Marcia Francisco, Mayor

TRI-DISTRICT WATER TREATMENT FACILITY

Lecompton, Kansas 66050

February 23, 1983

David J. Heinemann, Chairman
House Energy and Natural Resources Committee
State Capitol Building
Topeka, Kansas

RE: OPPOSITION TO SENATE BILL 61

Mr. Chairman,

I wish to thank the committee for allowing us to be heard on this very important issue.

My name is Dennis Schwartz, manager of Shawnee County Rural Water District NO. 8, and also chairman of the management committee of the Tri-District Facility at Clinton Reservoir.

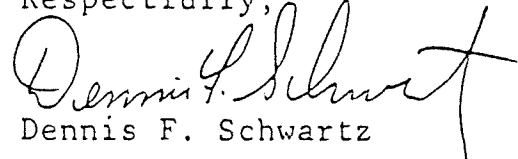
Based on our districts long range projected needs, as well as the needs of two other neighboring rural water districts, the Tri-District effort was formed in 1978. Forty year financing was attained along with a forty year contract for the purchase of raw water.

We entered into the contract with the State of Kansas in good faith, under the provisions of an existing water plan. We feel that it is only fair that we should be able to expect to operate under the provisions of our contract and the policies upon which it was based.

We also feel that this significant piece of legislation is a matter that is important to the entire state. We are concerned that it seems that this plan is, however, going to be funded by only a small percentage of the states' population.

We certainly hope some of these ideas can be considered in the formulation of Senate Bill 61.

Respectfully,


Dennis F. Schwartz

DOUGLAS COUNTY RURAL WATER DISTRICT NO. 3

Route 1
Lecompton, Kansas 66050
Office - 887-6249

I am C. A. Worthington, manager of Douglas County Rural Water District #3, which serves a large area in western Douglas County and southeastern Shawnee County. I represent a Tri-District water treatment facility on Clinton Lake. We have a contract with the State of Kansas to purchase 720 million gallons per year, or 2,000,000 gallons per day, from Clinton Lake. This facility will start operation soon serving a population of over 10,000 people in Douglas, Shawnee and Osage Counties. We object to Senate Bill 61 for 2 reasons. Its provisions provide for greatly increased costs, and limitations concerning supply that did not exist when we negotiated the contract with the State of Kansas.

Our planning was done to plan for the needs of the area for 40 years. We firmly believe this should be done for a commodity such as water. We made these plans to prove our needs to our lending agency, The Farmers Home Administration, on the basis of our contract with the State of Kansas. One provision of this bill would require us to pay a high rate of interest on unused water, and then the next year could take this unused water from us and sell to another customer. We have already made 2 payments to the State of Kansas, each for \$26,647.20, and as yet are not ready to use water from the lake. Water costs are being radically increased by this bill and our assurance of a water supply are being taken away.

We feel that we recognize the value of water, and we believe in providing for future water supplies, but this bill places the burden of costs on a very small percentage of the population of the State of Kansas. It would collect a substantial amount of funds from a group of water users, which could be used to benefit another group of users.

I appreciate the opportunity of speaking to your committee on behalf of this Tri-District Water Facility.

Respectfully,
C. A. Worthington
C. A. Worthington

February 23, 1983

Chairman David J. Heinemann
House Energy and Natural Resources Committee
Kansas State Capitol
Topeka, Kansas

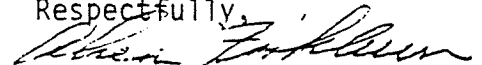
RE: Opposition to Senate Bill 61

Mr. Chairman:

I am Alvin Fishburn, representing Rural Water District No. 5 that has a contract with the state to purchase 0.132 million gallons per day from Clinton Reservoir. Rural Water No. 5 in the southwest portion of Douglas County presently serves 450 customers. We object to Senate Bill 61 because its provisions add increased costs and other contractual conditions which did not exist when we negotiated our contract with the State. If we cannot depend on a contract with our State, how can we believe anything?

We, therefore, believe that existing contracts should be exempted from the new conditions of Senate Bill 61 for the life of our supposed 40-year contract. Rural water districts are serving many rural residents across the state. If the pioneers in this important long-range endeavors have their contracts changed, how can future users depend on future contracts?

Respectfully,



Alvin Fishburn
Chairman of the Board
Rural Water District No. 5



February 23, 1983

Chairman David J. Heinemann
House Energy and Natural Resources Committee
Kansas State Capitol
Topeka, Kansas

RE: Opposition to Senate Bill 61

Mr. Chairman:

I am Merlin Ford, Mayor of Baldwin City, Kansas and we have a contract with the State of Kansas to purchase 340 million gallons of water per year from Clinton Reservoir. Baldwin City serves approximately 1000 customers in Baldwin City plus the City of Wellsville in northern Franklin County, and are presently working on a contract with Edgerton which is in the western part of Johnson County.

We signed a 40 year contract with the State of Kansas for water from Clinton reservoir in good faith and are opposed to Senate Bill 61.

We think the provisions of this bill are wrong morally, politically and financially. We think if a contract with the State of Kansas can be changed at any time in the middle of the contract period then contracts per se are no good. This Senate bill 61 we think could come back to haunt all of us in the future.

We believe existing contracts should be exempt from this bill and would appreciate your serious consideration of this matter.

Respectfully,

Merlin G. Ford
Merlin G. Ford, Mayor

MGF/ac

Douglas County Rural Water District No. 1
Route 4 Box 190
Lawrence, Kansas 66044
February 22, 1983

Chairman David J. Heinemann
House Energy and Natural Resources Committee
Kansas State Capital
Topeka, Kansas

RE: Opposition to Senate Bill 61

Mr. Chairman:

On behalf of the 394 benefit units of Douglas County Rural Water District No. 1, I wish to formally object to Senate Bill 61 as it pertains to entities with existing water withdrawal contracts. Although I object to all provisions of the bill including the interest charge on money advanced by the state, the 2 $\frac{1}{2}$ % surcharge, and the annual review and possible loss of allocation after six years, I am particularly bothered by the provision of the bill which charges an interest penalty for unused water. Douglas County RWD No. 1 currently can take water from two sources--wells located in the floodplain of the Kansas River, and Clinton Lake via the City of Lawrence. Approximately 20 million gallons of our average annual usage of 25 million gallons is taken from the wells; the remainder is taken from the City of Lawrence during times of peak demand. The City of Lawrence connection was secured first to meet future water needs, and secondly, to meet peak demand. As I understand Senate Bill 61, RWD No. 1 will now be penalized for planning for the future irrespective of the fact that the District has a legal, binding contract in which no mention is made of the interest penalty. I invite your committee to present this proposal to the patrons of RWD No. 1 after their elected board of directors went out on a limb to recommend the City of Lawrence connection as a long term water source.

For the patrons of Do. Co. RWD No. 1

Michael J. Bronoski
Michael J. Bronoski, Chairman of the Board

MJB/mb

February 23, 1983

Chairman David J. Heinemann
House Energy and Natural Resources Committee
Kansas State Capitol
Topeka, Kansas

Dear Mr. Chairman:

I am Michael A. Flory, representing Rural Water District No. 2, Douglas County, Kansas.

Our district is currently in a holding position with the State of Kansas, wanting to purchase 197,000 gallons of water per day. Our district presently serves 272 customers and is located south of Lawrence approximately 10 miles.

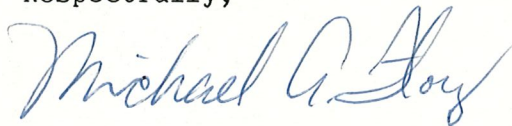
I am concerned and object to Senate Bill 61 because this provision could increase our planned water cost substantially with an annual price adjustment and the floating interest penalty for used/unused water.

I am also concerned that our allocation once received may be reduced. This would greatly hinder our future planning of the district. I also understand that passing of Senate Bill 61 will cancel some prior agreements made in regards to purchase of water rights.

Human nature is to trust mankind, we the people of Kansas want to trust the State of Kansas. I would strongly recommend your study of the fairness and equity of this bill before recommending its passage.

Thanks for giving me the opportunity to present this to your committee on behalf of Rural Water District No. 2.

Respectfully,



Michael A. Flory

February 22, 1983

Chairman David J. Heinemann
House Energy and Natural Resource Committee
Kansas State Capitol
Topeka, Kansas

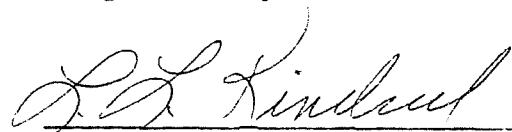
RE: Opposition to Senate Bill 61

Mr. Chairman:

I am L. L. Kindred, representing Rural Water District No. 4, Douglas County Kansas, that has a contract with the state to purchase 0.132 million gallons per day from the Clinton Reservoir. Rural Water District No. 4 presently serves 490 customers in the eastern section of Douglas County. We object to Senate Bill 61 because its provisions adds increased costs and other contractual conditions which did not exist when we negotiated our contract with the state.

We negotiated contracts with the state in good faith and this is in effect jerking the rug out from under us. Rural Water Districts need to be assured that their water allocations will not be lowered in the future and that costs will not be added to already burdened budgets. These conditions contained in Senate Bill 61 can only hinder the growth of rural water districts in their future water needs. Rural Water District No. 4, is not in favor of the passage of Senate Bill 61.

Respectfully,


L. L. Kindred

CHARLES B. TAYLOR JR.

RR #1, Box 275
Lawrence, Kansas 66044
Telephone (913) 843-3727

February 23, 1983

Chairman David J. Heinemann
House Energy and Natural Resources Committee
Kansas State Capitol
Topeka, Kansas

Mr. Chairman:

I am Charles B. Taylor, Jr., representing Rural Water District No. 6, Douglas County, that has a contract with the state to purchase .068 million gallons water per day from Clinton Reservoir. Rural Water District No. 6 presently serves 156 customers in the northwestern section of Douglas County. We are a small geographic district in a growth area and are struggling over rising costs. We object to Senate Bill 61 because its provisions add increased costs and other contractual conditions which did not exist when we negotiated our contract with the state.


We believe that the existing contracts should be exempted from Senate Bill 61 for the life of our 40-year contract. The provisions that we do not like are:

1. Interest penalty for unused water;
2. Interest charged on money advanced by the state;
3. Two and one-half cent surcharge;
4. Annual review with possible loss of allocation after 6 months.

These above provisions greatly effect our rural water district in planning our costs and future needs.

I appreciate your consideration or position on this matter.

Respectfully,


Charles B. Taylor, Jr.
Chairman of the Board