

Approved April 20, 1983  
Date

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 ~~am~~/p.m. on March 15, 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:

Eugene Shore, Kansas Water Authority.  
Paul Fleener, Kansas Farm Bureau.

SB 62 - An act concerning water; relating to water transfers; providing for a procedure for approval of such transfers.

Eugene Shore, a Johnson farmer and representative of the Western Kansas Groundwater Management Districts to the Kansas Water Authority, testified in support of SB 62. He served on the Authority's committee which drafted legislation dealing with major appropriations or purchases of water and the movement or transfer of that water.

Mr. Shore said SB 62 provides a very clear procedure for scrutinizing a major water acquisition and transfer and for determining whether it is in the state's best interest to approve such a transfer. He discussed some of the reasoning that went into the development of SB 62, and noted three important ideas: (1) the bill is a water management tool; (2) the bill provides that three experts in their water-related fields would make findings; and, (3) does the bill place undue burden on applicants (see attachment 1).

Paul Fleener, Kansas Farm Bureau, testified in support of SB 62. He noted that Kansas farmers and ranchers have a keen interest in water law, and in that regard, Farm Bureau members in the state had adopted water-related resolutions at their December 1982 annual meeting. He said that members, through their voting delegates, suggest that Kansas should contemplate far-sighted, well-conceived and carefully controlled use of international, interstate, and intrastate interbasin transfers of water. In his testimony, he noted, were observations Kansas Farm Bureau had made regarding water issues in the state, and suggestions regarding SB 62, including the suggestion that in Section Three (c), the three water transfer hearing panel members should be unanimous in agreement (see attachment 2).

A brief question and answer period followed each of the presentations of testimony on SB 62.

Ramon Powers, Committee staff member from the Research Department, explained several portions of SB 62 to Committee members. He stated that the bill had been transformed from a water interbasin transfer bill to a water transfer bill. He noted that it still retains the basin of origin concept. He said there are two general concepts in the water transfer bill: (1) water transfer that involves contract for water out of water storage; and (2) acquisition of water through an appropriate getting water out of surface or groundwater--an appropriation right which will be secured from the chief engineer of the Division of Water Resources.

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 March 16, 1983.

Rep. David J. Heinemann, Chairman

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Date March 15, 1983

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Chris McKenzie	Topeka	League of Ks. Municipalities
Pat Regan	Wichita	Ks Water Authority
Ch Duffy	Topeka	" - Staff
King Wadell	Topeka	Ks. Natural Resource Council
BARRY GENTRI	TOPEKA	Ks. ENGINEERING Soc.
Lammy Johnson	"	Intern - Sedg Co. Deleg.
Louis Stroup Jr.	McPherson	K m u
Bill Anderson	Mission	Water Dist #1 of So Co
Roy D. Shenkel	Shawnee	K. C. P. L.
Jan Stanton	Topeka	K P & L
M. E. Amlee	Wichita	City of <del>the</del> Wichita
JERRY COONSOD	TOPEKA	K E & E
Joe HARKINS	TOPEKA	K W O
Martha Mangelsdorf	Wichita	KWA
Leland E. Rolfs	Topeka	KSBA - DWR
F. E. Withrow Jr.	Wichita	KWA & City of Wichita
Larry Panning	Ellinwood	K W A
Paul E. Fleener	Manhattan	Kansas Farm Bureau
Bob Snyder	Bay	K. W. A.
David L. Pope	Topeka	Kansas Bd of Agri - Div of Water Res.

Remarks of Eugene Shore  
To The House Committee On  
Energy and Natural Resources

Mr. Chairman and Members of the Committee:

I am Eugene Shore, a Johnson, Kansas, farmer and representative of the Western Kansas Groundwater Management Districts. I served as a member of the Kansas Water Authority's Committee charged with drafting legislation that would guide the State of Kansas in dealing with major appropriations or purchases of water and the movement or transfer of that water.

I am here to urge you to take favorable action on Senate Bill 62. The Kansas Water Authority met earlier today and I would report to you that the full Authority endorses Senate Bill 62 as amended by the Senate.

The Authority believes this bill still promises to provide one of the best water management tools Kansas has ever developed. It provides a very clear procedure for really scrutinizing a major water acquisition and transfer and for determining whether it is in the state's best interest to approve such a transfer.

The Authority's original bill spoke to major water transfers across river basin boundaries. It is our understanding that the Senate became concerned that this legislation spoke only to INTER -

*Attachment 1*  
*3-15-83*

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basin transfers. It was silent on INTRA - basin transfers or movement of large amounts of water within a basin.

The Authority believes that the approach the Senate proposed -- special considerations for ANY large acquisitions of water moved 10 miles or more is meritorious.

In the Water Authority's report to the Legislature, submitted January 18th, we tried to provide you a detailed discussion of the issues that were brought before the Authority during months of deliberation on this legislation. The report suggests that there is a deep concern, shared by interests throughout this state, about the imminent transfers of large amounts of water.

I commend to you the portions of the report that speak to the issues involved in this legislation. I would also commend to you the report on the water supply and demand picture that appears to be developing in this state. I believe that serves to emphasize the need for this legislation. It would indicate that new sources of water supplies are becoming so tight in some areas that it is imperative that we have tools such as Senate Bill 62 to be absolutely certain we are making the best decisions for this state in allocating water.

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Today, I would like to highlight some of the reasoning that went into the development of Senate Bill 62. I would also like to relate to you the sense of urgency my colleagues and I share regarding action by this Legislature to address major transfers of water.

The Authority's job is to be a proponent of water law and policy that is in the best interest of this state as a whole and all of its water users' interests. Its job is to advise the Legislature of our recommendations for action that are in the best interest of the State of Kansas. I believe this proposed legislation meets those tests.

Frankly, it is no secret. A major water transfer proposal is expected to be presented to the state shortly. It is at once good that we can perceive the magnitude of water supply that transfers can deal with. It is also, at the same time difficult, to think beyond a specific example to try to develop legislation that will stand the test of foresight and time that our water laws must stand to some degree.

The limited potential sites for major new water supply development in Kansas, coupled with the very real potential for water supply deficits in nearly every region of this state, indicate there will

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likely develop more and more proposals to move significant amounts of water substantial distances. We are talking about water that will, for the most part, be piped at great expense.

The decisions to approve water movements may be virtually permanent. There may be no second chance to rectify a mistake. For the sake of all water users in this state, we cannot afford a mistake in allocating water to one area at the expense of another area of the state or several areas of the state.

This bill establishes a factfinding hearing process by a board of three state water experts, representing the state's knowledge and interest in the current water availability and allocation situation; the public health and welfare of the people of this state and the protection of our environment; plus the future plans and abilities of this state to meet water demands with sufficient supplies.

This bill provides guidelines for weighing all water users' interests and most significantly, a decision finally turns on the public interest of the state as a whole -- a decision made by an authority whose members represent virtually all water use interests in this state. The Authority's decision is further checked by the Legislature.

There is a process for an appeal to court from the decision of the Authority. The bill is a water management tool. It is designed to provide guidelines, a mechanism for making the best possible check

before a decision is made. It is not restrictive. It does not prohibit transfers. It provides the state something better than what we have now and we believe it provides something much more effective to make water transfer decisions.

It is important to understand that sharing and allocating water is different from some of our other experiences. For example, this state has worked to share its tax burdens in the best interest of the state as a whole. But if, once in a while, we make a mistake in allocating taxes, it can be rectified with legislation in the next session.

With water however, once you have approved a water allocation and a \$200 million dollar pipeline has been put down for more than 100 miles and a tremendous investment has been made in new treatment plants, a mistake is next to impossible, if not impossible, to rectify in the next session.

We are at a point in time in this state that we will increasingly be faced with the prospects of determining how we are going to allocate and share water among increasingly distant areas of the state.

This bill applies to all waters in Kansas. I believe it is crucial we all play by the same rules in this ballgame -- the groundwater interests and the surface water interests. Water, whether it is taken from the ground or the surface is an equally valuable commodity.

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I do not believe it would be possible, for example, to fully weigh all alternative sources of water for both the applicant or the area where the water originates if we split up the decisions between different officials operating under different agency rules and regulations.

I believe it will be short-sighted and very likely will be a disservice to the people of this state to limit the application of this hearing and decisionmaking process to reservoir storage. There are already major utilities and cities in Kansas now using a combination of groundwater from well fields, reservoir storage and flowing river water to fully supply their needs.

I believe it is possible in the future that proposals will be made to condemn existing groundwater wells and move water. I believe it is possible that proposals will be made to buy up surface rights or groundwater or alluvial well rights and move water. I do not think the movement of significant amounts of water will always be limited to reservoir storage or to municipal or industrial water supplies. I believe it is imperative that any proposed transfer of any water for any purpose come under the close scrutiny that is proposed.

Neither current law, nor Senate Bill 61 involve as deliberately the



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wisdom and expertise of the chief engineer and the Department of Health and Environment in the decisionmaking process. Senate Bill 62, the water transfer legislation, does that very deliberately.

These major water transfer decisions must involve every bit of expertise this state can muster. Major water transfer decisions must involve weighing the interests of the entire state, not just the areas involved.

For example, If there is a proposal to move water from Milford Reservoir on the Kansas River more than 100 miles south to serve a group of central Kansas cities as far south and west as Wichita and Hutchinson, it is more than just a question of whether the water should remain at Milford to serve nearby users such as Topeka or move south on the pipeline.

Where the state as a whole is concerned, it is also a question of whether it is more prudent to plan to make a short connection between the Kansas River and the Neosho river and let that water run to the southeast where deficits are developing that could be relieved by transfers in that direction. It is also a question of whether it is in the state's best interest to allocate some of Milford to the west toward Hays and Russell and the towns interested in developing the Post Rock public wholesale water supply district because groundwater and surface water supplies in parts of that

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area are very tight too.

The water transfer legislation recognizes that the ramifications of moving significant amounts of water some distance from the source can be substantial. The legislation provides a very special hearing process designed to force the interests involved to deal with the state rather than circumventing it by withholding information and trying only to find the fastest route to court.

The bill provides that three people, experts in their water-related fields with a collective depth of knowledge nearly unmatched elsewhere in this state, would make findings. Their findings and recommendation would be reviewed by the Authority whose members represent virtually all of our water user interests. I believe that the hearing process, and a court appeal only to determine whether the Authority's decision was based on insufficient evidence or whether it was arbitrary, capricious or fraudulent, is crucial. The bill is designed to protect the state as best we can from giving up water allocation decisions to the courts.

I would like to highlight another issue of this bill -- the question of whether it places an undue burden upon applicants by this process of scrutiny. The authority considered this very seriously. Currently, both the chief engineer and the Water Office do conduct public

hearings regarding appropriations and sales of water. This bill mandates the hearing process for water acquisitions of more than 1,000 acre feet per year that will also be moved 10 miles or more. We are talking about nearly a million gallons of water per day. That is a lot and I believe without question, it demands a special scrutiny to consider how it affects everyone. The bill provides the flexibility for the chief engineer or the director of the water office to refer transfer applications of lesser amounts to the panel for consideration and factfinding if significant questions have arisen about them.

The bill, in another area, now speaks to the fact that it is important to consider whether persons involved in moving significant amounts of water are good stewards of the water they have and whether they have established conservation plans for the wise use of the water they propose to acquire. The factfinding panel must also take into consideration the efforts entities that are protesting the acquisition have made to conserve and reduce their future demands on the same water. These amendments were added during Senate deliberation.

The Authority is supportive of efforts to give water conservation higher visibility. The Authority, in its report to the Legislature, indicated that part of its unfinished business from last year was the development of a comprehensive conservation policy for the state. We will be continuing work in that area this year with the hopes of bringing additional water conservation policy recommendations before the Legislature.

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I would close by simply noting that the Authority did propose that major water transfer proposals not be brought to the Legislature for revocation. The proposal arose out of our deep concern about whether we really want to strive to develop the best possible guidelines for making tough decisions on allocating water and then, in the end, leave that decision potentially vulnerable to coalitions of numbers of votes.

The Senate did reject the Authority's proposal in this area. I do not want to pursue this. The Authority does yield to your decision on this issue. I would only urge you to give this situation some consideration as you work in water legislation. I believe we may all need to work in the future to come up with some acceptable alternative that would further protect the state's interests in water management and allocation.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

STATEMENT TO THE  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

RE: SB 62 - Water Transfers  
March 15, 1983  
Topeka, Kansas

by  
Paul E. Fleener, Director  
Public Affairs Division  
Kansas Farm Bureau

Mr. Chairman and members of the Committee:

We thank you for the opportunity to appear as proponents of the Water Transfers Legislation you have under consideration . . . SB 62.

Farmers and ranchers throughout Kansas have a keen interest in water law. Farm Bureau members in Kansas, through their voting delegates, expressed themselves in several areas that in some way pertain to water, its use, its management, the maintenance of quality standards, and the administration of water law in this state. Attached to our statement you will find all of the water related resolutions adopted at our most recent (Dec. 5-7, 1982) Annual Meeting. We invite your particular attention to the resolution headed: STATE WATER AGENCIES.

In the resolution concerning State Water Agencies some of the language carries over from prior years. In our December, 1982 Annual Meeting the delegates added new language as follows:

*We believe Kansas needs a Master Plan for water management. We further believe the Kansas Water Authority is the appropriate entity to develop such a plan and should be directed by the Kansas Legislature to do so.*

*Attachment 2  
3-3-83*

*Kansas water planning should promote conservation, and should contemplate far-sighted, well-conceived, and carefully controlled use of international, interstate, and intrastate interbasin transfers of water to benefit agricultural producers and all other Kansans.*

*Legislation for interbasin transfer of water should require that any applicant must have developed and implemented a water conservation plan before the application gets final approval.*

The research paper we prepared for our members in 1982, so that they might examine intrastate interbasin water transfers, told them something you already know: Our Kansas Constitution is silent, as are our statutes when the question of interbasin transfers of water arises. The Kansas Constitution does permit that the state "may be a party to flood control works and works for the conservation or development of water resources." That amendment to the Constitution was proposed by the Legislature in 1957 and adopted by the people of Kansas in 1958. There is a question of constitutionality of intrastate interbasin transfers. Notwithstanding that question, our members through their voting delegates, suggest that Kansas "should contemplate far-sighted, well-conceived, and carefully controlled use of international, interstate, and intrastate interbasin transfers of water."

Farm Bureau in cooperation with five other organizations had a very good discussion on interbasin transfers at a "Kansas Water Policy Conference" held in Hutchinson on November 10-11, 1982. At

that time, Mr. John C. Peck, Associate Professor of Law at the University of Kansas, spoke on "Legal Constraints on Interbasin Transfers in Kansas." Mr. Peck has written, and reprints are available from the Kansas Law Review (Vol. 30, No. 2, Winter, 1982) on Legal Constraints on Diverting Water from Eastern Kansas to Western Kansas.

Knowing many of these "legal problems" to interbasin transfers, our people still. . .to repeat briefly from our resolution. . .suggest that the Legislature should contemplate "far-sighted, well-conceived, and carefully controlled use of" interbasin transfers of water to benefit agricultural producers and all other Kansans.

References to "interbasin transfers" have been deleted from S.B. 62. However, it is still a "transfer" mechanism, and we continue to support it.

We have this further observation to make: In Sec. 3, Subsection (c), this legislation establishes the make-up of a water transfer hearing panel. There are but three members on this panel. We would respectfully suggest that there should be unanimous agreement of the three members of the panel prior to recommending a transfer of water. We suggest that the sentence beginning on line 95 and ending on line 98 should be amended to read: Any recommendation by the panel for a transfer of water shall have the unanimous approval of the three panel members.

Surely, something as important as a major transfer of water, when such has not been contemplated previously in Kansas, the three panel members should all agree after hearing the facts. In trial by jury in major cases we expect nothing less than a unanimous verdict from 12 people. We believe all three members of the water transfer hearing panel should agree on a transfer.

We conclude with just a brief observation of American Farm Bureau policy regarding water diversion. Our policy position in that regard states: "We support an international surfact water transfer program that would insure the interests of American agriculture."

There have been major studies of international interbasin transfers of water. We have examined a number of those at our various water conferences in the past five years. We have, and would be pleased to make available to this committee, a number of papers on the NAWAPA (North American Water and Power Alliance) projects, the ROCKY MOUNTAIN PLAN, and others. Your colleague in the Legislature, Representative Keith Farrar, a Republican, has been working closely with Mr. Nicholas Benton of the National Democratic Policy Committee to bring the international water transfer proposals to the attention of members of Congress. We would submit to you that this committee, indeed, the full Kansas Legislature may want to contemplate a resolution memorializing Congress to act with some dispatch on a project such as NAWAPA that could benefit many millions of Americans.

Mr. Chairman, thank you for this opportunity to appear on SB 62.



## Soil and Water Conservation

We believe the owners and operators of agricultural land can best be served by a voluntary approach to soil conservation using federal and state cost-sharing funds as an incentive for developing and maintaining farm plans, and constructing and maintaining soil and water conservation structures. We ask the Kansas Legislature to adequately fund the state share of cost-sharing programs.

An intensive educational program conducted by the KSU Agricultural Extension Service, in cooperation with the Soil Conservation Service, the Soil Conservation Districts, and county Farm Bureaus, could improve our rangeland and cultural practices on cultivated acres.

## State Water Agencies

Water is one of our most precious and important natural resources. All segments of our population and all component parts of our economy require an adequate supply of water.

We will continue to oppose changes in Kansas water laws that would result in major reorganization of state water agencies. We believe that a separation of powers and a system of checks and balances in the administration of water programs gives Kansans a better result than any further consolidation would produce.

The legislature, after rejecting major reorganization, created the Kansas Water Authority to provide coordination, oversight, and review of the programs and budgets of various state agencies which have responsibility for administering water laws.

We believe Kansas needs a Master Plan for water management. We further believe the Kansas Water Authority is the appropriate entity to develop such a plan and should be directed by the Kansas Legislature to do so. Kansas water planning should promote conservation, and should contemplate far-sighted, well-conceived, and carefully controlled use of international, interstate, and intrastate interbasin transfers of water to benefit agricultural producers and all other Kansans.

Legislation for interbasin transfer of water should require that any applicant must have developed and implemented a water conservation plan before the application gets final approval.

## Water Districts

We recognize the benefits of Rural Water Districts. Those benefits should be assured by legislation and regulations that guarantee and protect water rights for original rural water district patrons.

We will support legislation—both on a national and state level—that will make funds available for grants to be used in the construction of Rural Water Districts.

We will support legislation—both on a national and state level—that will finance, through federal funds (Farmers Home Administration), Rural Water Districts from watershed structures.

## Water Management in Kansas

Kansas farmers and ranchers recognize the importance of securing a Kansas water right as provided by law.

We support the Kansas Ground Water Management District Act, as amended in the 1978 Session of the Kansas Legislature, which gives local water users a voice in determining the use of ground water.

We encourage our members to participate in the organization and management of Ground Water Management Districts. Through participation they will be in a position to have an effective voice in calling for any needed changes, additions or deletions to the Ground Water Management District Act.

## Water Quality Standards

We urge the Legislature to make adequate appropriation of funds, to assure that the agency or agencies responsible for issuance of well drilling permits and the maintenance of water quality are enforcing existing statutes and regulations relating to salt water disposal and proper plugging of dry holes.

The Kansas Corporation Commission and the Department of Health and Environment should, prior to giving approval for disposal of salt brines, determine that the proposed method of disposal will assure that there will be no contamination of any fresh water. No well drilled on leased property should be used for disposal of salt water from wells on other property without consent from and compensation to the landowner. The power of eminent domain should NOT be granted for the purpose of salt brine disposal.

We ask that legislation be enacted to require that surface pipes shall be set to a depth sufficient to protect all fresh water formations from contamination.

## Watershed Programs

The Kansas Governor and Legislature have recognized the vital need for water storage and flood control to the urban and rural economies of the state. To accelerate development of this program they have established a cost-sharing agreement with organized watersheds and local landowners.

Since there are many urgently needed structures yet to be built in Kansas, and because there have been no new watershed projects undertaken since 1978, we request that this funding, furnished by the state and supervised by the State Conservation Commission, be continued and increased to facilitate and encourage this statewide program.

Planning for new watersheds has been taking 10 to 15 years and complete construction 20 years. To expedite planning and construction we urge the Kansas Legislature to consider permissive legislation authorizing the levy of one mill on the acreage of potential watershed areas for a period no longer than two years for the purpose of creating a trust fund, with the annual interest earned from such trust fund to be used for planning expenses involved in new watershed projects.

# Rep. Farrar Has Eyes For Canadian Water

By JOHN PETTERSON

Of Our Topeka Bureau

TOPEKA — Rep. Keith Farrar can foresee the day when western Kansas farmers may irrigate their crops with water from a huge reservoir high in the Canadian Rockies.

The Hugoton Republican and a conservative political action committee based in New York are pressing for congressional authorization of an international water study they hope could result in millions of acre-feet of water for water-starved states with some left over for Mexico.

Farrar and Nicholas Benton of the National Democratic Policy Committee met with U.S. Rep. Pat Roberts, R-Kan., in Dodge City Monday to enlist his aid. They met in Wichita last Tuesday with U.S. Rep. Dan Glickman, D-Kan.

Benton said the major study proposal, estimated to cost in the neighborhood of \$10 million, was developed by the NDPC and a model bill has been readied for introduction in Congress.

ROBERTS SAID it might be time for this country to launch a long-range

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"I'm not saying this is the only way, but we've got to explore the possibilities."

— Rep. Keith Farrar

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water study with some new approaches.

"We just agreed to take a good, hard look at it," Roberts said. "I think it's worth taking a serious look at."

Farrar said Glickman was "well aware that helping the agricultural economy would help Wichita and he agreed it was wishful thinking to take water out of the Missouri (River)."

Benton said the three-country study might have more appeal since it now appears regional studies have failed to come up with cost-effective alternatives.

He said the U.S. Army Corps of Engineers' plan to divert water from the Missouri River to western Kansas would be too expensive and too politically explosive to be feasible.

HE SAID THE Corps' "big ditch" approach for providing water to west-

(See KANSAS, 4B, Col. 1)

From the  
WICHITA EAGLE  
Sept. 1, 1981

## ● From Page 1B

ern Kansas would cost between \$400 and \$1,500 per acre-foot.

An acre-foot is the amount of water needed to cover one acre to the depth of one foot.

Benton said the international proposal called for a study of the possibility of damming a portion of the Canadian Rockies, forming a 200-mile-long reservoir to be fed by both Alaskan and Canadian waters that otherwise would flow to the sea.

Water from the reservoir would be diverted south through a feeder system of canals, rivers and pipelines to dry states and eventually to Mexico.

Roberts said the proposal had a lot of appeal, particularly if it was able to provide cheap hydroelectric power, assure high production in the farm states and help Mexico develop its agricultural potential.

HELP FOR Mexico might provide jobs for Mexican workers who otherwise migrate to the U.S. There also might be some oil trade-off benefits.

"I'm not saying this is the only way," Farrar said, "but we've got to explore the possibilities."

He asked the High Plains Study Council to endorse the idea but action on the proposal was delayed until studies now under way are completed.

The council consists of six states, including Kansas, that have portions of the Ogallala Aquifer within their boundaries.

Farrar, a member of the council, said, "I don't think we're going to do more than just prove it's going to cost too much to import water from adjacent states. There just isn't that much more water available."

THE LEGISLATOR said he became involved with NDPC after he received a package of material from it outlining the study plan.

"I don't agree with the \$10 million figure," he said. "I don't know if it's too much or not enough, but I agree with the concept. We've got to explore the possibility. If it won't work, it won't work."

In the 1960s, an independent study was prepared that projected that 80 million acre-feet of water per year could be diverted into the lower 48 states from Alaskan and Canadian headwaters.