

MINUTES OF THE House COMMITTEE ON Energy and Natural ResourcesThe meeting was called to order by Representative David J. Heinemann at
Chairperson3:30 ~~xx~~ a.m./p.m. on March 21, 1983 in room 519-S of the Capitol.

All members were present except:

Representatives Ginger Barr and Anita Niles (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:

Mary Alice Horsch, Sedgwick County Soil Conservation District.
Richard Basore, Sedgwick County Soil Conservation District.
Marsha Marshall, Kansas Natural Resource Council.
Chris McKenzie, League of Kansas Municipalities.
Louis Stroup, Kansas Municipal Utilities.SB 62 - An act concerning water; relating to water transfers; providing for a procedure for approval of such transfers.

Mary Alice Horsch, Sedgwick County Soil Conservation District, testified in support of SB 62. She said they desired to have the conservation language in the bill strengthened since they think conservation should be considered a management practice of source. She asked that consideration be given to: if two entities are applying for water, and one has a very active conservation plan implemented and is practicing conservation, that type of conservation effort should have more merit than an entity which has a "paper one". She said it would be additional incentive if greater concern was given to the entity having an applied conservation plan.

Richard Basore, Sedgwick County Soil Conservation District, testified in support of SB 62. He said water conservation language in the bill should be strengthened so it is a criteria for water transfer. He thought that language in the bill should reflect the need for mandated water conservation by anyone wanting to transfer water. He distributed to Subcommittee members a copy of testimony regarding SB 62 which he had presented to the Senate Committee on Energy and Natural Resources (see attachment 1).

Marsha Marshall, Kansas Natural Resource Council, testified in support of SB 62. She said they supported the revisions in terminology that make groundwater and surface water subject to the approval process, and the conservation language in the bill which makes it a point of consideration for the approval panel. She noted that they were suggesting a minor amendment on line 126, striking the word "nature" and inserting the word "impacts" (see attachment 2).

Chris McKenzie, League of Kansas Municipalities, testified regarding SB 62. He noted that water supply is a basic responsibility and one of the highest priorities of the over-500 city governments his organization represents. He said the League's Special Committee on Water Policy had met to review SB 62 and had concluded it raised several concerns; concerns which he elaborated on in his testimony (see attachment 3). He also drew Committee members' attention to a schematic of the stages of the SB 62 review process included in his testimony. In conclusion, he asked that the proposed legislation be given another year of study before the Legislature considered it for enactment.

Louis Stroup Jr., Kansas Municipal Utilities, Inc., testified regarding SB 62. He said he sought clarification of the specific intent of this bill, since he was getting mixed signals from parties involved with it, as well as from the bill. He noted that one concern they had was that neither SB 62 nor the proposed House Substitute for SB 62 limits itself to large or major transfers, and could conceivably subject a very small

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
room 519-S, Statehouse, at 3:30 ~~xx~~/p.m. on March 21, 1983

transfer to the provisions of the bill. He referred to a graph included in his testimony which illustrates the amount of acre-feet of water used by certain Kansas cities. He proposed an amendment on line 31, changing the definition of water transfer from 1,000 to 20,000 or 30,000, and on line 81, after the word "transfer", striking the rest of that subsection (see attachment 4).

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

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 23, 1983.

Rep. David J. Heinemann, Chairman

Date March 21, 1983

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Bobbie Keltner	437 Westfield Ct.	Wichita 67277
Margorie A. White	Belvue, Ks. 66407	Vermillion Valley Assn. United Farm Wives
Barbara Rezac	R.R.1 Onaga	Vermillion Valley Assn.
Ed Reinert		Sierra Club

(No in attendance)

TESTIMONY BEFORE THE SENATE ENERGY AND NATURAL RESOURCE COMMITTEE
February 11, 1983
BY RICHARD BASORE

SB 62

I am a farmer and irrigator in Northwest Sedgwick County. I have a life-long concern and interest in water. I have been active in Farm Bureau and soil conservation.

I am here today not because I oppose inter-basin transfer of water as a concept or policy. It makes eminent good sense to me to utilize unappropriated water from an already existing reservoir in lieu of constructing new and costly lakes with their accompanied displacement of people and property.

However, if inter-basin transfer is an idea whose time has come, then certainly water conservation must be an idea whose time is now. Anyone wishing to appropriate water from people in another basin should at least be expected to utilize that water in a manner consistent with good stewardship. They should expect to have to prove real need for that water and a plan to insure that it is used efficiently and not wasted. To waste it is to stab in the back the people in the source area who have forfeited their need and rights to that water for their own beneficial uses.

Any consideration of inter-basin transfer legislation must recognize the fact that the prime mover of the idea at this time is the City of Wichita, and it is a perfect example, although not the only one, of why I am concerned.

Since its inception in 1975, I have watched the Equus Beds Groundwater Management District #2 adopt rules and regulations and plans and policies---all having the effect of putting the burden of controlling water use and water conservation squarely on agriculture. The District has never even discussed water conservation in a plan as it would apply to Wichita, even though Wichita is the single largest water user in the District and consumes 32% of the water pumped in the District.

On March 6, 1979, the Wichita Water Department responded to a Wichita City Commission request for proposals on water conservation. Several conservation techniques were presented. No action was ever taken to implement the report, and it has not been mentioned since.

Attachment 1
3-21-83

February 11, 1983

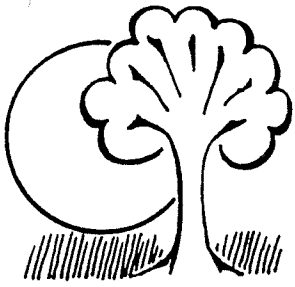
After the heavy drought and heat wave of the summer of 1980, the City rewarded its water customers for their massive increased use of water by rolling back a scheduled 12% increase in their water rates. This rewarded consumption and thus sent a clear message throughout the city not to conserve.

Wichita sits over available groundwater of sufficient quality for many industrial and commercial uses. They, also, generate millions of gallons of recoverable effluent daily. Required use of low water use plumbing fixtures can save a household of four over 36,000 gallons, of water a year, and Wichita has 100,000 households.

I believe it would be a disservice to the citizens of this State to allow the inter-basin transfer of water to begin while waiting for a Statewide water conservation plan to emerge. To do so would be to allow many chronic wasters of water to continue their malpractice, not only until a State water conservation plan becomes a reality, if and when, but with the real probabilities of "Grandfather clauses" they might never be made to comply and conserve water at all.

This is why I am concerned. Any inter-basin transfer legislation passed without the addition of a clause mandating conservation will only serve to rubber stamp the current practices of those who are misusing what in the very near future will prove to be our most valuable natural resource---water.

Thank you, Mr. Chairman.



Kansas Natural Resource Council

5130 Mission Road
Shawnee Mission, Ks 66205
913 362-5933

March 21, 1983

Hearing before House Energy
and Natural Resources

Subject: SB 62, pertaining to
procedure for water transfer
approval

My name is Marsha Marshall, and I represent Kansas Natural Resource Council, a small, non-profit citizen's group.

We support the amended version of SB 62 and congratulate the Senate Energy and Natural Resources committee and this committee for your considerable attention and work on this piece of legislation. This bill particularly stands out as an example of a far-sighted, responsible procedure for the management of major water transfers in this state. We support the revisions in terminology that consequently include groundwater along with surface water as being subject to the approval process. We particularly commend the conservation language in section 3, making conservation a point of consideration for the approval panel.

For your consideration, I want to offer one small amendment. In section 3, line 126, in the substitute language quoted below:

"from the point of diversion in sufficient detail to enable all interested parties to understand the nature [impacts] of the proposed water transfer"

"Water transfer" as defined in this bill pertains only to amounts of 1,000 acre feet or more per year, which is roughly the amount currently used to sustain 10,000 residents for one year. Diversion or transportation of water less than this amount would only be subject to the approval of the chief engineer. In future years, the legislature might want to consider establishing guidelines for these smaller amounts of water.

Thank you for your attention.

Attachment 2
3-21-83

**Testimony of League of Kansas
Municipalities Regarding
SB 62**

**House Committee on Energy and Natural Resources
March 21, 1983**

Mr. Chairman and members of the Committee, I'm Chris McKenzie, Attorney and Director of Research for the League of Kansas Municipalities. I'm appearing today to share with you the League's views regarding 1982 Senate Bill 62. Before doing that, however, I want to let you know something about the League and myself so you can appreciate better our particular point of view. I've been employed by the League of Kansas Municipalities for over three years now and I'm here today to represent the collective interests of its over 500 member cities of all sizes, types and needs. When it comes to water, its availability and the laws that govern it, the views of Kansas elected city officials are understandably similar; with over 500 municipal water supply systems in Kansas, water supply is a basic responsibility and one of the highest priorities of city governments.

Prior to my employment by the League, I worked in Kansas state government for four years. During that time I had the honor and pleasure of helping provide staff assistance to the Governor's Task Force on Water Resources. In addition to my government work experience, I've also been fortunate to study urban planning and law at the University of Kansas. While at the K.U. law school, I had the chance to study water law under Professor John Peck, the only legal authority I'm aware of who has actually written in the area of Kansas interbasin water transfers.

When this bill was considered by the Senate Committee I didn't appear before the committee to offer the League's views because, quite frankly, a formal position could not be agreed upon by the members of the League's Special Committee on Water Policy who represent interests in both the Kansas and Arkansas river basins. The Committee members, who come from cities of various sizes all over our state, viewed the original version of SB

*Attachment 3
3-21-83*

62 as an effort to provide a special review procedure for the Milford - Wichita pipeline project and projects of similar magnitude. Consequently, the Committee members felt it was appropriate to avoid adopting an official position.

Last Friday, our Committee met again to reconsider SB 62 in light of the Senate Committee's extensive amendments. After reviewing the bill thoroughly, the Committee concluded the bill had undergone such fundamental change that it raised the following concerns:

- (1) The change in focus from regulation of the transfer of water between river basins to regulation of all water transfer of over 1,000 acre feet or over 10 miles or more clearly expanded the bill's regulatory scope.
- (2) The 1,000 acre feet and 10 mile thresholds are not designed to address major transfers on the order of the Milford - Wichita pipeline. Rather, they could impose substantial additional regulatory burdens on many average-sized cities and cooperatives of small cities that are forced to turn to either water supplies under the purview of the Kansas Water Authority or subject to the Kansas Water Appropriation Act and administration by the Division of Water Resources. In the instance of water purchased under contract from the state that meets these thresholds, a city or group of cities would have to go through review by the Kansas Water Authority at least twice -- once through the SB 61 contract process and once through the SB 62 process. Successful completion of one process does not assure successful completion of the other. As you know, they are designed to function independently.
- (3) Not only have relatively small movements of water been defined in SB 62 as water transfers, but Section 3 of the bill grants the Chief Engineer unlimited discretion in requiring that transfers of less than 1,000 acre feet or 10 miles be approved through the SB 62 process. In addition to the possible constitutional problems

posed by this standardless grant of discretionary authority, this provision potentially limits municipal flexibility in developing new water supplies of any magnitude. For instance, any plans to purchase land and water rights outside a city will always be potentially contingent on the possible exercise of this discretion. I would submit to you that it is possible that a city could purchase land and water rights that are considerably under the thresholds contained in this bill and later be forced to sell them at a loss because the SB 62 review process was triggered and the right to transfer the water was denied.

- (4) Underlying the three points just mentioned is our grave concern that this "add on" regulatory review process is very complicated and will significantly increase the price of developing water supplies. As you can see from the attached flow chart, the SB 62 process can be broken down into at least four stages. The cost of this process to the state and local governments is potentially staggering. The lawyer in me finds the process you are considering intriguing because the opportunities for litigation will be so great. As a representative of Kansas cities, however, I'm seriously concerned about the possibility of soaring legal costs as a result of this legislation.

In the discussions that have taken place in recent weeks about this bill, I've heard little, if any, acknowledgement of the major departure from the water appropriation doctrine that this legislation represents. In the states east of Kansas, the use of water is governed by what is commonly known as the riparian doctrine of water law. That doctrine provides that a person whose land is located nearby a surface water source -- such as a river or stream --has the right to that water to the exclusion of landowners far from the watercourse. In other words, the rights of the owners of land adjacent to streams or rivers in the basin of origin are paramount to all others. In states like Kansas in which water is less plentiful, and the prior appropriation doctrine of water law has developed, the rule is

just the opposite. The geographic location of the use of the water is irrelevant to the legal right to its use. In Kansas, a water right is appurtenant to but severable from the land. With the permission of the Chief Engineer, an owner of a water right may change the place of use, point of use, and type of use of water covered by a water right. SB 62 would fundamentally alter that concept, a legal concept that has been the rule of law in Kansas since the enactment of the Kansas Water Appropriation Act in 1945.

I appear today as neither a proponent nor opponent of SB 62. Rather, my purpose is to respectfully request that you give this proposal that would fundamentally alter the water laws of this state another year to develop and be refined. In his remarks to you last week, Mr. Eugene Shore of the Kansas Water Authority reminded you of the irreversible nature of a major water transfer of the magnitude of the proposed Milford - Wichita pipeline. I submit to you that legislation of this nature is just as irreversible in a different way. Those of us who have had the honor of participating in the legislative process for a number of years are well aware of the deference accorded recent legislation by both succeeding legislatures and the courts. Once a measure is enacted and codified as a law of this state, it is rarely repealed in total unless ruled unconstitutional by the U.S. or Kansas Supreme Court. We rightfully accord our laws great respect, and we hesitate to tamper with them lest we also tamper with the lives and property of citizens who have relied on them. No one knows better than each of you just how fundamentally your actions in your representative capacity affect the lives and destiny of all Kansans.

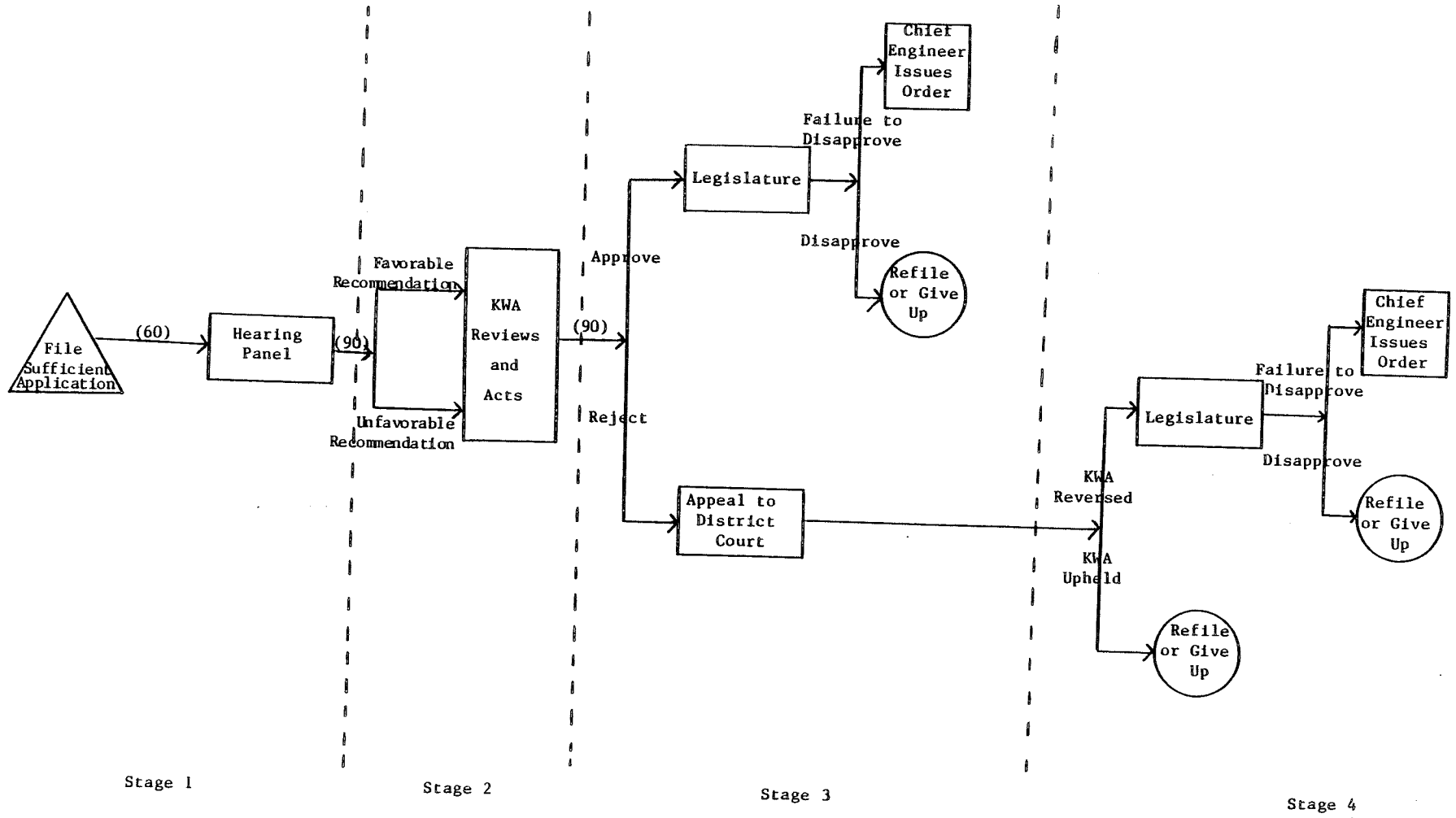
I fully realize the high level of interest that exists in legislation that would control large scale transfers of water in this state. Many city officials share that interest since they see such transfers as potential threats to their cities' precious water supplies. For these reasons I can assure you of the continued commitment of the League of Kansas Municipalities to carefully studying SB 62 over the next year if you agree that my recommendation to defer action on the bill until next session would be prudent and in the

state's interest. We stand committed to analyzing this measure under the leadership of the Kansas Water Authority and in partnership with the many groups that are represented on that body. Given the advanced stage of SB 62, I do not recommend that you request an interim study of the measure. The concerns I mentioned earlier, the concerns of others, and the approach taken to address this question in other states can be studied ably under the sponsorship of the Authority.

The legislation of a few years ago that established the Kansas Water Authority was based on a view of a partnership between the water interests of the state. That partnership, consisting of rural, urban, conservation, industrial and other interests has functioned effectively in my estimation - far better, in fact, than I originally believed it would. My message to you today, however, and it's a message I hope is heard by Chairman Reagan, for whom I hold the deepest respect, is that one member of the partnership is deeply and gravely troubled by the evolution of SB 62. Our concerns are not based simply on a kneejerk reaction to this proposal which has taken on a radically different form. The cities of Kansas and, we firmly believe, the legislature, agencies and people of Kansas would be better served if this proposal were given a longer gestation period. A year is a relatively short period of time. No large water transfers are planned to take place in that year based on information available to us. Therefore, nothing would be lost but time, valuable time during which we can cooperatively and carefully assess the wisdom of moving in this direction. We're ready to go to work, but we desperately need time that only you can provide.

Thank you.

Stages of the SB 62
Review Process



KMU

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McPherson, Kansas 67460
316-241-1423

Comments by Louis Stroup, Jr., Executive Director
Senate Bill 62 or Proposed House Substitute
House Energy & Natural Resources Committee
March 21, 1983

Mr. Chairman, members of the committee. I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, a state-wide association of municipally-owned water, gas and electric systems.

I'm not here this afternoon to oppose this bill, but rather to get some clarification of the intent of the measure. At present, I'm getting mixed signals from the parties involved as well as from the bill.

There is a very major policy question involved that this committee has yet to deal with -- what is the specific intent of this bill?

As originally introduced, the bill was requested so as to provide a tool to handle large or major transfers of water from one basin to another and involved only reservoir water. In its present form, SB 62 covers both reservoir water and groundwater. We have no problems with that, nor the fact that the bill covers intra-basin as well as inter-basin transfers.

Our problem is that it not only covers large or major transfers of water, but conceivably could subject the transfer of a bucket of water across the street to the provisions of the bill.

*Attachment 4
3-21-83*

Let's put this measure into a proper perspective. As now written, the bill defines a water transfer as being 1,000 acre feet annually over a distance of 10 miles.

Not only that, but it also has an escape clause that would allow the chief engineer to subject any transfer, regardless of size or distance, to the provisions of the bill.

It is our contention that no purpose would be served in forcing small transfers to be subjected to the provisions of the bill. And that the arbitrary figure of 1,000 acre feet annually does not meet the intent of the original bill, nor the request of the Kansas Water Authority -- which was to have a tool to handle large or major transfers of water.

Just last week, Eugene Shore, a member of the Kansas Water Authority, testified before you that the authority's original bill spoke to "...major water transfers..." and that "...the authority believes that the approach the Senate proposed -- special consideration for ANY large acquisitions of water moved 10 miles or more is meritorius." Again, we have no arguments with those statements.

BUT, neither SB 62 nor the proposed House Substitute limits themselves to large or major transfers.

Also last week, during subcommittee discussions on this bill, it was decided not to place a time limit on the hearings by the 3-member panel and one of the major arguments was that there would not be very many transfers subjected to review -- but the bill doesn't say that. It forces all transfers of 1,000 acre feet (or even those less than that can be) to come under the provisions of the bill.

Attached is a graph which I hope conveys to you our concern over the 1,000 acre foot definition. Even the small city of McPherson used nearly triple that amount of water in 1982.

We submit that 1,000 acre feet per year is not a large or major transfer of water and strongly urge the committee to limit the bill to such transfers by:

(1) Amending the definition of water transfer on line 31 from 1,000 to 20,000 or 30,000; and

(2) After the word "transfer" on line 81, by striking the rest of that subsection

This indeed would allow the bill then to deal with large or major water transfers and not subject small projects to the potential long hearing delays and the large expenses foreseen in complying with SB 62.

Let's don't over legislate now. If 20,000 or 30,000 acre feet prove to be too high (and I doubt it), then you can always change the law later.

Thank you for considering our views on the major policy question facing the committee.

(26 acre feet used annually by Windom - population 160)

(2,776 acre feet used in 1982 by McPherson - population 11,753)

(105,500 acre feet - allocation of 5 entities in Milford (Wichita, McPherson, Salina, Abilene and EBGMD#2)

10,000 20,000 30,000 40,000 50,000 60,000 70,000 80,000 90,000 100,000

ACRE FEET OF WATER