

Approved April 20, 1983
Date

MINUTES OF THE House SUB COMMITTEE ON Natural Resources

The meeting was called to order by Representative Ron Fox at
Vice-Chairperson

4:00 ~~am~~/p.m. on March 17, 1983 in room 519-S of the Capitol.

All members were present except:

Representatives Kent Ott, Keith Roe, and Judy Runnels (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:

Discussion on SB 62

Vice-chairman Ron Fox distributed to Subcommittee members a copy of a balloon version of SB 62 (see attachment 1) and a copy of a proposed House Substitute for SB 62 (see attachment 2). He said he had been working on SB 62 since the Senate passed it, and was concerned not with policy questions involved, since these will be addressed later, but with the clarity of SB 62. He noted that he had discussed SB 62 with several of the people involved in its drafting, and had received their input in formulating the proposed House Substitute draft.

Vice-chairman Fox said that Ramon Powers, Committee staff member from the Research Department, would provide explanation of the balloon version of SB 62, then explain the proposed House Substitute for SB 62. He said that policy questions would be addressed later.

Mr. Powers noted that the balloon version was the intermediary product between SB 62 and the House Substitute for SB 62. He then provided Subcommittee members with a detailed, line-by-line explanation of the two versions of proposed water transfer legislation through line 197 on the balloon version.

Throughout the meeting, Vice-chairman Fox encouraged input and discussion from Subcommittee members and persons in attendance at the meeting. In addition to Subcommittee members' participation, active participation was received from: Joe Harkins, Kansas Water Office; David Pope and Leland Rolfs, Kansas Board of Agriculture, Division of Water Resources; and, Paul Fleener, Kansas Farm Bureau.

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

The next meeting of the Subcommittee will be held March 18, 1983.

Rep. Ron Fox, Vice-chairman

SENATE BILL No. 62

By Committee on Energy and Natural Resources

1-20

0018 AN ACT concerning water; relating to interbasin water transfers
0019 of water; providing for a procedure for approval of such
0020 transfers.

0021 Be it enacted by the Legislature of the State of Kansas:

0022 Section 1. As used in this act:

0023 (a) "Basin of origin" means the river basin in which the point
0024 or proposed point of diversion of water is located.

0025 (b) "Interbasin transfer" means the diversion of water in one
0026 river basin and the transportation of such water to another river
0027 basin for beneficial use, including water diverted and used
0028 under the authority of the provisions of the Kansas water appro-
0029 priation act and the state water plan storage act. "Water transfer"
0030 means the diversion and transportation of water in a quantity of
0031 1,000 acre feet or more per year for beneficial use at a point 10
0032 miles or more from the point of diversion of such water. [Such
0033 term shall include the diversion and transportation of water in a
0034 total quantity of 1,000 acre feet or more per year from multiple
0035 diversion points for the same beneficial use at a point 10 miles or
0036 more from any diversion point of such multiple diversion point].
0037 (c) "River basin" means the natural hydrological river basins
0038 of the state, as depicted on the map adopted and enacted by the
0039 legislature as section 7 of this act.

0040 (d) "Chief engineer" means the chief engineer of the divi-
0041 sion of water resources of the state board of agriculture.

0042 Sec. 2. No person shall make an interbasin transfer of water
0043 a water transfer in this state unless and until approved pursuant
0044 to the provisions of this act. No interbasin transfer of water
0045 transfer shall be approved which would reduce the amount of

outside a 10 mile radius

(b) "Point of diversion" means:

- (1) For a reservoir; the point where the longitudinal axis of of the dam crosses the center line of the stream;
- (2) for a direct diversion from a river, stream or other watercourse; the location of the headgate or pump intake;
- (3) for groundwater diversion; the location of the well;
- (4) for multiple points of diversion; the geographical center of those points of diversion.

(d) "Secretary" means the secretary of the department of health and environment.

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

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

* Deleted language in brackets indicates deletions made in this balloon.

3-17-83

Attachment 1 3-17-83

0046 water required to meet the present or reasonably foreseeable
 0047 future beneficial uses of water ~~within the basin of origin or area~~
 0048 ~~of origin, with respect to groundwater,~~ unless the ~~[Kansas water]~~
 0049 authority determines that the benefits to the state for approving
 0050 the transfer outweigh the benefits to the state for not approving
 0051 the transfer or, when the chief engineer recommends to the
 0052 ~~[Kansas water]~~ authority and the authority concurs that an emer-
 0053 gency exists which affects the public health, safety or welfare or,
 0054 when the governor has declared that an emergency exists which
 0055 affects the public health, safety or welfare. Whenever the ~~[Kansas~~
 0056 ~~water]~~ authority has determined, or the governor has declared
 0057 that an emergency exists, an interbasin transfer of water a water
 0058 transfer may be approved on a temporary basis for a period of
 0059 time not to exceed one year under rules and regulations adopted
 0060 by the chief engineer. The emergency approval shall be subject
 0061 to the terms, conditions and limitations specified by the chief
 0062 engineer.

0063 Sec. 3. (a) Any person desiring to make an interbasin transfer
 0064 of water a water transfer shall file an application with the chief
 0065 engineer. If the application is found to be insufficient to enable
 0066 the interbasin water transfer hearing panel to determine the
 0067 source, nature and amount of the proposed transfer, it shall be
 0068 returned for correction or completion or for any other necessary
 0069 information. ~~[All such applications shall be accompanied with a~~
 0070 ~~fee in such amount as the Kansas water authority shall prescribe.]~~

0071 (b) Within 60 days of after receipt of a sufficient application,
 0072 the chief engineer shall commence a hearing at which the
 0073 interbasin water transfer hearing panel shall consider the appli-
 0074 cation and, make findings of fact, except that whenever the
 0075 applicant proposes an interbasin transfer in an amount not to
 0076 exceed 100 million gallons of water per year (307 acre feet per
 0077 year), the chief engineer may suspend a formal hearing of the
 0078 panel, shall make findings of fact set forth in subsection (e) and
 0079 shall make a recommendation to the ~~[Kansas water]~~ authority
 0080 whether to approve the proposed interbasin transfer of water
 0081 transfer. The chief engineer may commence such a hearing upon
 0082 receipt of an application to appropriate water pursuant to the

by present or other potential users

This act does not exempt the applicant from complying with the provisions of the Kansas water appropriation act or the state water plan storage act, whichever is applicable.

0083 Kansas water appropriation act or upon receipt from the director
0084 ~~of the Kansas water office~~ of a proposal to contract for the sale
0085 of water from the state's conservation storage water supply
0086 capacity which application or proposal relates to the diversion
0087 and transportation of water which is not defined as a water
0088 transfer.

0089 (c) The interbasin water transfer hearing panel shall consist
0090 of the chief engineer, the director ~~of the Kansas water office and~~
0091 ~~the secretary of the department of health and environment~~ or
0092 the director of the division of environment of the department of
0093 health and environment or their respective designees if desig-
0094 nated by ~~such~~ secretary. The chief engineer or the chief engi-
0095 neer's designee shall serve as the chairperson of the panel. A
0096 recommendation concurred in by any two of the three panel
0097 members shall constitute the recommendation of the panel in all
0098 matters. The panel shall have all power and authority necessary
0099 to conduct the hearings and make findings and recommendations
0100 required by this act.

0101 (d) To determine whether ~~a proposed interbasin water~~
0102 ~~transfer will impair the water needs of the basin of origin or area~~
0103 ~~of origin, with respect to groundwater and whether~~ the benefits
0104 to the state for approving the transfer outweigh the benefits to
0105 the state for not approving the transfer, the panel shall consider
0106 all matters pertaining to such questions, including specifically:

0107 (1) Any current beneficial uses being made of the water
0108 proposed to be diverted, including minimum desirable stream-
0109 flow requirements;

0110 (2) any reasonably foreseeable future beneficial uses of the
0111 water ~~in the basin of origin or area of origin, with respect to~~
0112 ~~groundwater~~;

0113 ~~(2) any adverse impacts of the proposed interbasin water~~
0114 ~~transfer;~~

0115 (4) the economic, environmental, public health and welfare
0116 and other ~~benefits of leaving the water in the basin of origin or~~
0117 ~~area of origin, with respect to groundwater, for current or future~~
0118 ~~beneficial uses and the economic, environmental, public health~~
and welfare and other impacts of leaving the transfer of the

the

Hearing to be concluded in a timely & prudent manner

impacts of approving or

3

0120 water ~~for beneficial use in the applicant's basin~~

0121 ~~(2) alternative sources of water available to the basin of origin~~

0122 ~~or area of origin, with respect to groundwater, and~~ the applicant

0123 for future beneficial uses; and

0124 ~~(3) the detailed~~ plan of design, construction and operation of

0125 any works or facilities used in conjunction with carrying the

0126 water ~~out of the basin of origin~~;

0127 ~~(4) conservation practices implementation plans for the use of~~

0128 water currently available to and being used by the applicant

and for the use of the water proposed to be transferred; and

0130 ~~(5) conservation plans and practices or the need for such~~

0131 plans and practices of persons protesting or potentially affected

0132 by the proposed transfer.

0133 (e) Notice of any such hearing shall be published in the

0134 Kansas register.

0135 (f) Upon timely application made therefor, any ~~interested~~ [?]

0136 person shall be permitted to intervene ~~as a party~~ [?] in any such

0137 hearing ~~and, in granting the privilege to intervene, the chief~~

0138 ~~engineer may do so~~ upon such terms and conditions as the chief

0139 engineer may deem equitable and just.

0140 (g) The record of the hearing and findings of fact shall be

0141 public records and open for inspection at the office of the chief

0142 engineer. The interbasin water transfer hearing panel shall

0143 assess the applicant with all of the costs of obtaining a court

0144 reporter for the hearing and transcribing the transcript of the

0145 hearing. Certified transcripts of the hearing shall be provided at

0146 the expense of those requesting same. A transcript shall be

0147 provided to the ~~chairman of the Kansas water authority~~

0148 Sec. 4. (a) Within 90 days following the conclusion of the

0149 hearing the interbasin water transfer hearing panel shall make

0150 its recommendation of approval or disapproval of the proposed

0151 interbasin water transfer, along with any dissenting recommen-

0152 dation, to the ~~Kansas water~~ authority. The panel's recommenda-

0153 tion shall specify the reasons for such recommendation, includ-

0154 ing findings of fact relating to each of the factors set forth in

0155 subsection (d) of section 3. The findings shall be documented by

0156 reference to specific portions of the hearing record and to any

and present or other potential users

proposed

from the point of diversion in sufficient detail to enable ^{the panel} all interested parties to understand the nature of the proposed water transfer _{impacts}

chairperson of the authority

0157 other sources used in making the recommendation. The panel
 0158 may recommend approval of an application for a smaller amount
 0159 of water than requested and may recommend approval of an
 0160 application upon such terms, conditions and limitations as it
 0161 deems necessary for the protection of the public interest of the
 0162 state as a whole. The ~~[Kansas water]~~ authority shall then deter-
 0163 mine whether to approve the proposed water transfer and shall
 0164 render its decision in writing to all interested parties. *in 90 days*

~~(b) The chief engineer, upon approval by the Kansas water
 0166 authority, shall issue an order to appropriate water to implement
 0167 the decision of the authority, or the director of the Kansas water
 0168 office, upon approval by the Kansas water authority, shall exe-
 0169 cute a contract for the purchase of water supply conservation
 0170 storage to implement the decision of the Kansas water authority.
 0171 The chief engineer, upon approval by the Kansas water author-
 0172 ity, shall submit to the legislature for its approval the order to
 0173 appropriate water to implement the decision of the authority.
 0174 Upon legislative approval, the chief engineer shall issue such
 0175 order. The director of the Kansas water office, upon approval by
 0176 the Kansas water authority, shall submit to the legislature for its
 0177 approval the contract for the purchase of water from the state's
 0178 conservation storage water supply capacity to implement the
 0179 decision of the Kansas water authority. Upon legislative ap-
 0180 proval, such contract shall be deemed valid and enforceable.
 0181 The legislative approval required by this subsection shall be
 0182 accomplished in the same manner as that prescribed by the
 0183 provisions of K.S.A. 82a-1307, and amendments thereto, for the
 0184 disapproval and revocation of contracts for the sale of water
 0185 from the state's conservation storage water supply capacity.]~~

0186 (c) Any party aggrieved by the decision of the ~~[Kansas water]~~
 0187 authority may appeal to the district court of Shawnee county.
 0188 The attorney general of the state of Kansas shall defend the
 0189 ~~[Kansas water]~~ authority's final decision in any appeal proceeding
 0190 in district court.

0191 Sec. 5. (a) The provisions of this section shall be exclusive in
 0192 determining appeals from all decisions of the ~~[Kansas water]~~
 0193 authority under this act after the effective date of this act and

(b) Upon approval of a proposed water transfer by the authority, the proposed transfer shall be submitted by the chief engineer to the legislature for review as provided for in K.S.A. 82a-1301 et seq., and amendments thereto. Absent legislative disapproval, the chief engineer shall issue the order approving the transfer involving the appropriation of water. Absent legislative disapproval, a water transfer contract involving the purchase of water from the state's conservation storage water supply capacity to implement the decision of the authority shall be deemed valid and enforceable.

0104 shall exclusively govern the procedure to be followed in taking
0105 an appeal from the ~~[Kansas water]~~ authority from and after such
0106 date.

0107 (b) An appeal shall be taken by filing with the clerk of the
0108 district court of Shawnee county within 30 days following the
0109 date of the ~~[Kansas water]~~ authority's final decision a written
0200 notice stating that the party appeals to the district court and
0201 alleging the pertinent facts upon which the appeal is grounded.
0202 Upon filing of the notice of appeal, the clerk of the district court
0203 of Shawnee county shall docket the cause as a civil action, and
0204 shall forthwith and without praecipe, issue summons and cause
0205 the same to be served upon all parties involved in the proceed-
0206 ings before the hearing panel and the ~~[Kansas water]~~ authority, in
0207 the manner now provided by law in civil cases. The appellant
0208 shall also, within 10 days of the filing of the notice of appeal,
0209 serve a written request upon the ~~[Kansas water]~~ authority to certify
0210 the complete record of the proceedings before the hearing panel,
0211 the panel's findings of fact and the ~~[Kansas water]~~ authority's final
0212 decision. The ~~[Kansas water]~~ authority shall certify the record and
0213 deliver same to the Shawnee county district court within 30 days
0214 following the appellant's request therefor.

0215 (c) Jurisdiction to hear and determine such appeals is hereby
0216 conferred upon the district court of Shawnee county. Such an
0217 appeal shall not be heard as a trial *de novo* but shall be limited to
0218 the review of the record certified by the ~~[Kansas water]~~ authority.
0219 In such appeal, the Shawnee county district court shall review
0220 the certified record for the sole purpose of determining whether:

0221 (1) The final decision of the ~~[Kansas water]~~ authority is based
0222 upon insufficient evidence, or

0223 (2) the final decision of the ~~[Kansas water]~~ authority is capri-
0224 cious, arbitrary or fraudulent.

0225 (d) Findings of fact within the authority of the ~~[Kansas water]~~
0226 authority shall be conclusive unless it is made to appear to the
0227 court that the findings of fact are not supported by substantial
0228 evidence after consideration of the record as a whole.

0229 (e) The final decision of the Shawnee county district court in
0230 such appeals shall be entered as a judgment as in other civil

0231 cases. Appeals may be taken from the district court to the Kansas
0232 appellate court as in civil cases.

0233 Sec. 6. The chief engineer shall adopt rules and regulations
0234 to effectuate and administer the provisions of this act.

0235 Sec. 7. The legislature adopts the following as the official
0236 map depicting the river basins in this state:

0237 Sec. 8 7. This act shall take effect and be in force from and
0238 after its publication in the statute book

Kansas register

PROPOSED HOUSE Substitute for SENATE BILL NO. 62

AN ACT concerning water; relating to water transfers; providing for a procedure for approval of such transfers.

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

Section 1. As used in this act:

(a) "Water transfer" means the diversion and transportation of water in a quantity of 1,000 acre feet or more per year for beneficial use outside a ten-mile radius from the point of diversion of such water.

(b) "Point of diversion means:

(1) For a reservoir: The point where the longitudinal axis of the dam crosses the center line of the stream;

(2) for a direct diversion from a river, stream or other watercourse: The location of the headgate or pump intake;

(3) for groundwater diversion: The location of the well;

(4) for multiple points of diversion: The geographical center of those points of diversion.

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

(d) "Secretary" means the secretary of the department of health and environment.

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

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

Sec. 2. No person shall make a water transfer in this state unless and until approved pursuant to the provisions of this act. No water transfer shall be approved which would reduce the amount of water required to meet the present or reasonably foreseeable future beneficial uses of water by present or other potential users, unless the authority determines that the benefits to the

state for approving the transfer outweigh the benefits to the state for not approving the transfer or, when the chief engineer recommends to the authority and the authority concurs that an emergency exists which affects the public health, safety or welfare or, when the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever the authority has determined, or the governor has declared that an emergency exists, a water transfer may be approved on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the chief engineer.

Sec. 3. (a) Any person desiring to make a water transfer shall file an application with the chief engineer. If the application is found to be insufficient to enable the water transfer hearing panel to determine the source, nature and amount of the proposed transfer, it shall be returned for correction or completion or for any other necessary information. This act does not exempt the applicant from complying with the provisions of the Kansas water appropriation act or the state water plan storage act, whichever is applicable.

(b) Within 60 days after receipt of a sufficient application, the chief engineer shall commence a hearing at which the water transfer hearing panel shall consider the application, make findings of fact and make a recommendation to the authority whether to approve the proposed water transfer. The chief engineer may commence such a hearing upon receipt of an application to appropriate water pursuant to the Kansas water appropriation act or upon receipt from the director of a proposal to contract for the sale of water from the state's conservation storage water supply capacity which application or proposal relates to the diversion and transportation of water which is not defined as a water transfer.

(c) The water transfer hearing panel shall consist of the chief engineer, the director or the director of the division of

environment of the department of health and environment if designated by the secretary. The chief engineer shall serve as the chairperson of the panel. A recommendation concurred in by any two of the three panel members shall constitute the recommendation of the panel in all matters. The panel shall have all power and authority necessary to conduct the hearings and make findings and recommendations required by this act.

(d) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the panel shall consider all matters pertaining to such questions, including specifically:

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

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

(3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;

(4) alternative sources of water available to the applicant and present or other potential users for future beneficial uses;

(5) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion in sufficient detail to enable all interested parties to understand the nature of the proposed water transfer;

(6) conservation practice implementation plans for the use of water currently available to and being used by the applicant and for the use of the water proposed to be transferred; and

(7) conservation plans and practices or the need for such plans and practices of persons protesting or potentially affected by the proposed transfer.

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

(f) Upon timely application made therefor, any interested

person shall be permitted to intervene [as a party] in any such hearing ~~[and, in granting the privilege to intervene, the chief engineer may do so]~~ upon such terms and conditions as the chief engineer may deem equitable and just. 2

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

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

(b) Upon approval of a proposed water transfer by the authority, the proposed transfer shall be submitted by the chief engineer to the legislature for review as provided for in K.S.A. 82a-1301 et seq., and amendments thereto. Absent legislative disapproval, the chief engineer shall issue the order approving the transfer, [involving the appropriation of water.] Absent

legislative disapproval, a water transfer contract involving the purchase of water from the state's conservation storage water supply capacity [to implement the decision of the authority] shall be deemed valid and enforceable.

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

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

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

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

In such appeal, the Shawnee county district court shall review the certified record for the sole purpose of determining whether:

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

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

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

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

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

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.