

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Charlie L. Angell at
Chairperson

8:00 a.m. ~~7:00~~ on Thursday, February 24, 1983 in room 123-S of the Capitol.

All members were present except:
Senator Tom Rehorn

Committee staff present:
Ramon Powers, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee: None

The minutes of the February 23, 1983 meeting were approved.

S.B. 21 - Mineral production leases on state-owned real property, prescribing powers and duties of state geologist

After discussion of the bill, Senator Kerr moved that the bill be reported adversely. Senator Chaney seconded the motion. Senator Hess made a substitute motion that the bill be held in Committee. Senator Roitz seconded the motion, and the substitute motion carried.

S.B. 20 - Mineral production leases on state-owned real property, requiring state agencies to give information to state geological survey

Senator Hess moved that S.B. 20 be reported favorably for passage. Senator Roitz seconded the motion, and the motion carried.

S.B. 62 - Interbasin transfers of water

Senator Feleciano, Chairman of the Subcommittee on S.B. 62, read the Subcommittee Report (Attachment 1). Senator Feleciano said the basic change made to the bill was to do away with any basin lines and instead specify that any water transfer of more than 1,000 acre feet per year moved more than 10 miles would come under the extraordinary hearing process. This would include surface water, groundwater and basin water. The Director of the Kansas Water Office, on transfers of reservoir water, or the Chief Engineer would have the right to trigger the special hearing process for any water transfer which does not automatically come under the special hearing process. Senator Chaney moved that the Subcommittee Report be adopted. After discussion, it was agreed, by consensus, that the balloon of S.B. 62 (Attachment 2) which incorporates the recommendations of the Subcommittee, would be changed as follows: the phrase "in a quantity of less than 1,000 acre feet per year for beneficial use at a point less than 10 miles from the point of diversion of such water" be stricken from the insert to line 70 and the phrase "which is not defined as a water transfer" be inserted in its place. The motion to adopt the Subcommittee Report carried.

The meeting was adjourned at 9:05 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on February 25, 1983.

Senate Energy & Natural Resources

Feb. 24, 1983

<u>Name</u>		<u>Organization</u>
Cathy Behan		AP
Gene Bell		MAPCO Inc.
Ed Reinert	Topeka	Ks League Women Voters Ks Sierra Club
Mary Fund		Ks. Rural Center
John A. Henderson	Topeka	Ks. Water Office
James Power	"	KDHE
Jim Aiken	"	"
CR Duffy	"	KWO
Kenneth Wedel	Topeka	KNRC

Attachment 1

SUBCOMMITTEE REPORT
ON
INTERBASIN TRANSFERS

Subcommittee Members:

Senator Paul Feleciano
Senator Charlie Angell
Senator Ben Vidrickson
Senator Fred Kerr
Senator Bert Chaney

The subcommittee met on two occasions and submits the following report to the full committee.

The members of the subcommittee were told how interbasin transfers of water are handled under present law. Application of interbasin transfers to surface stream flows, groundwater, and water from storage capacity were described by agency personnel.

Agency personnel also explained to subcommittee members why they felt such legislation is necessary. It was stated that the extraordinary hearing process and public interest finding would be beneficial. It was agreed, however, that the legislation should involve special approval by the Hearing Panel of only certain water transfers.

The subcommittee members agreed to eliminate distinctions between interbasin and intrabasin transfers. The bill should apply to all water transfers of more than 1,000 acre feet of water per year moved more than 10 miles. By suggesting that the bill apply to water transfers of a specific magnitude being moved a certain distance, the subcommittee members rejected designating various basins and making the bill apply only to transfers across basin boundaries.

It was agreed that the Hearing Panel specified in SB62 should be maintained, however, the subcommittee members discussed the provision in the bill for the designee of the specified Panel members. There was not agreement among the subcommittee members as to whether provision for designees be retained or deleted. The subcommittee members agreed to leave in provision for a majority decision of the Panel members, and rejected the suggestion that the Secretary of the Department of Health and Environment

instead of the Director of the Division of Environment be on the Panel.

The subcommittee members insisted that a specific consideration be made by the Panel concerning conservation practices that would be implemented by the entity acquiring the water transfer.

Finally, it was agreed that any major water transfer involve legislative approval. The legislative review would be identical to that provided in SB61.

Senator Paul Feleciano

Chairman

Subcommittee on Interbasin Transfers

AMENDMENT TO SUBCOMMITTEE MINUTES

The subcommittee also agreed that the Chief Engineer would be authorized at his discretion to require water transfers involving the appropriation of water of less than 1,000 acre feet of water per year moved less than 10 miles to be submitted to the Hearing Panel, and the Director of the Kansas Water Office would be authorized at his discretion to require water contracts for quantities of less than 1,000 acre feet of water per year moved less than 10 miles to be submitted to the Hearing Panel.

SENATE BILL No. 62

By Committee on Energy and Natural Resources

1-20

water

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

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. As used in this act:

0022 (a) "Basin of origin" means the river basin in which the point
0023 or proposed point of diversion of water is located.

0024 (b) "Interbasin transfer" means the diversion of water in one
0025 river basin and the transportation of such water to another river
0026 basin for beneficial use, including water diverted and used under
0027 the authority of the provisions of the Kansas water appropriation
0028 act and the state water plan storage act.

"Water transfer" means the diversion and transportation of water in a quantity of 1,000 acre feet or more per year for beneficial use at a point 10 miles or more from the point of diversion of such water.

0029 (c) "River basin" means the natural hydrological river basins
0030 of the state, as depicted on the map adopted and enacted by the
0031 legislature as section 7 of this act.

0032 (d) "Chief engineer" means the chief engineer of the division
0033 of water resources of the state board of agriculture.

0034 Sec. 2. No person shall make an interbasin transfer of water a water transfer

0035 in this state unless and until approved pursuant to the provisions
0036 of this act. No interbasin transfer of water shall be approved transfer

0037 which would reduce the amount of water required to meet the
0038 present or reasonably foreseeable future beneficial uses of water
0039 within the basin of origin unless the Kansas water authority
0040 determines that the benefits to the state for approving the transfer
0041 outweigh the benefits to the state for not approving the transfer
0042 or, when the chief engineer recommends to the Kansas water
0043 authority and the authority concurs that an emergency exists
0044 which affects the public health, safety or welfare or, when the
0045 governor has declared that an emergency exists which affects the
0046 public health, safety or welfare. Whenever the Kansas water

047 authority has determined, or the governor has declared that an
0048 emergency exists, [an interbasin transfer of water] may be ap-
0049 proved on a temporary basis for a period of time not to exceed one
0050 year under rules and regulations adopted by the chief engineer.
0051 The emergency approval shall be subject to the terms, conditions
0052 and limitations specified by the chief engineer.

0053 Sec. 3. (a) Any person desiring to make [an interbasin transfer
0054 of water] shall file an application with the chief engineer. If the
0055 application is found to be insufficient to enable the [interbasin]
0056 transfer hearing panel to determine the source, nature and
0057 amount of the proposed transfer, it shall be returned for correc-
0058 tion or completion or for any other necessary information. All
0059 such applications shall be accompanied with a fee in such
0060 amount as the Kansas water authority shall prescribe.

0061 (b) Within 60 days [of] receipt of a sufficient application, the
0062 chief engineer shall commence a hearing at which the [interbasin]
0063 transfer hearing panel shall consider the application [and] make
0064 findings of fact, except that whenever the applicant proposes an
0065 interbasin transfer in an amount not to exceed 100 million gallons
0066 of water per year (307 acre feet per year), the chief engineer may
0067 suspend a formal hearing of the panel, shall make findings of fact
0068 set forth in subsection (c) and [shall] make a recommendation to
0069 the Kansas water authority whether to approve the proposed
0070 [interbasin transfer of] water.

0071 (c) The [interbasin] transfer hearing panel shall consist of the
0072 chief engineer, the director of the Kansas water office and the
0073 director of the division of environment of the department of
0074 health and environment or their respective designees. The chief
0075 engineer or the chief engineer's designee shall serve as the chair-
0076 person of the panel. A recommendation concurred in by any two
0077 of the three panel members shall constitute the recommendation
0078 of the panel in all matters. The panel shall have all power and
0079 authority necessary to conduct the hearings and make findings
0080 and recommendations required by this act.

0081 (d) To determine whether a proposed [interbasin] transfer will
0082 impair the water needs of the basin of origin and whether the
0083 benefits to the state for approving the transfer outweigh the

a water transfer

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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 the Kansas water office 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 in a quantity of less than 1,000 acre feet per year for beneficial use at a point less than 10 miles from the point of diversion of such water

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0084 benefits to the state for not approving the transfer, the panel shall
0085 consider all matters pertaining to such questions, including spe-
0086 cifically:

0087 (1) Any current beneficial uses being made of the water pro-
0088 posed to be diverted, including minimum desirable streamflow
0089 requirements;

0090 (2) any reasonably foreseeable future beneficial uses of the
0091 water in the basin of origin;

0092 (3) any adverse impacts of the proposed interbasin transfer;

0093 (4) the economic, environmental, public health and welfare
0094 and other benefits of leaving the water in the basin of origin for
0095 current or future beneficial uses and the economic, environmen-
0096 tal, public health and welfare and other impacts of denying the
0097 transfer of the water for beneficial use in the applicant's basin;

0098 (5) alternative sources of water available to the basin of origin
0099 and the applicant for future beneficial uses; and

0100 (6) the detailed plan of design, construction and operation of
0101 any works or facilities used in conjunction with carrying the
0102 water out of the basin of origin;

0103 (e) Notice of any such hearing shall be published in the
0104 Kansas register.

0105 (f) Upon timely application made therefor, any interested
0106 person shall be permitted to intervene as a party in any such
0107 hearing and, in granting the privilege to intervene, the chief
0108 engineer may do so upon such terms and conditions as the chief
0109 engineer may deem equitable and just.

0110 (g) The record of the hearing and findings of fact shall be
0111 public records and open for inspection at the office of the chief
0112 engineer. The interbasin transfer hearing panel shall assess the
0113 applicant with all of the costs of obtaining a court reporter for the
0114 hearing and transcribing the transcript of the hearing. Certified
0115 transcripts of the hearing shall be provided at the expense of
0116 those requesting same. A transcript shall be provided to the
0117 chairman of the Kansas water authority.

0118 Sec. 4. (a) Within 90 days following the conclusion of the
0119 hearing the interbasin transfer hearing panel shall make its rec-
0120 ommendation of approval or disapproval of the proposed inter-

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and; (7) conservation practice implementation plans for the use of
the water proposed to be transferred

water

0121 basin transfer, along with any dissenting recommendation, to the
0122 Kansas water authority. The panel's recommendation shall spec-
0123 ify the reasons for such recommendation, including findings of
0124 fact relating to each of the factors set forth in subsection (d) of
0125 section 3. The findings shall be documented by reference to
0126 specific portions of the hearing record and to any other sources
0127 used in making the recommendation. The panel may recommend
0128 approval of an application for a smaller amount of water than
0129 requested and may recommend approval of an application upon
0130 such terms, conditions and limitations as it deems necessary for
0131 the protection of the public interest of the state as a whole. The
0132 Kansas water authority shall then determine whether to approve
0133 the proposed transfer and shall render its decision in writing to
0134 all interested parties.

0135 (b) The chief engineer, upon approval by the Kansas water
0136 authority, shall issue an order to appropriate water to implement
0137 the decision of the authority, or the director of the Kansas water
0138 office, upon approval by the Kansas water authority, shall execute
0139 a contract for the purchase of water supply conservation storage
0140 to implement the decision of the Kansas water authority.

0141 (c) Any party aggrieved by the decision of the Kansas water
0142 authority may appeal to the district court of Shawnee county. The
0143 attorney general of the state of Kansas shall defend the Kansas
0144 water authority's final decision in any appeal proceeding in
0145 district court.

0146 Sec. 5. (a) The provisions of this section shall be exclusive in
0147 determining appeals from all decisions of the Kansas water au-
0148 thority under this act after the effective date of this act and shall
0149 exclusively govern the procedure to be followed in taking an
0150 appeal from the Kansas water authority from and after such date.

0151 (b) An appeal shall be taken by filing with the clerk of the
0152 district court of Shawnee county within 30 days following the
0153 date of the Kansas water authority's final decision a written notice
0154 stating that the party appeals to the district court and alleging the
0155 pertinent facts upon which the appeal is grounded. Upon filing of
0156 the notice of appeal, the clerk of the district court of Shawnee
0157 county shall docket the cause as a civil action, and shall forthwith

water

The chief engineer, upon approval by the Kansas water authority, shall submit to the legislature for its approval the order to appropriate water to implement the decision of the authority. Upon legislative approval, the chief engineer shall issue such order. The director of the Kansas water office, upon approval by the Kansas water authority, shall submit to the legislature for its approval the contract for the purchase of water from the state's conservation storage water supply capacity to implement the decision of the Kansas water authority. Upon legislative approval, such contract shall be deemed valid and enforceable. The legislative approval required by this subsection shall be accomplished in the same manner as that prescribed by the provisions of K.S.A. 82a-1307, and amendments thereto, for the disapproval and revocation of contracts for the sale of water from the state's conservation storage water supply capacity.

0158 and without praecipe, issue summons and cause the same to be
0159 served upon all parties involved in the proceedings before the
0160 hearing panel and the Kansas water authority, in the manner now
0161 provided by law in civil cases. The appellant shall also, within 10
0162 days of the filing of the notice of appeal, serve a written request
0163 upon the Kansas water authority to certify the complete record of
0164 the proceedings before the hearing panel, the panel's findings of
0165 fact and the Kansas water authority's final decision. The Kansas
0166 water authority shall certify the record and deliver same to the
0167 Shawnee county district court within 30 days following the
0168 appellant's request therefor.

0169 (c) Jurisdiction to hear and determine such appeals is hereby
0170 conferred upon the district court of Shawnee county. Such an
0171 appeal shall not be heard as a trial *de novo* but shall be limited to
0172 the review of the record certified by the Kansas water authority.

0173 In such appeal, the Shawnee county district court shall review the
0174 certified record for the sole purpose of determining whether:

0175 (1) The final decision of the Kansas water authority is based
0176 upon insufficient evidence, or

0177 (2) the final decision of the Kansas water authority is capri-
0178 cious, arbitrary or fraudulent.

0179 (d) Findings of fact within the authority of the Kansas water
0180 authority shall be conclusive unless it is made to appear to the
0181 court that the findings of fact are not supported by substantial
0182 evidence after consideration of the record as a whole.

0183 (e) The final decision of the Shawnee county district court in
0184 such appeals shall be entered as a judgment as in other civil cases.
0185 Appeals may be taken from the district court to the Kansas
0186 appellate court as in civil cases.

0187 Sec. 6. The chief engineer shall adopt rules and regulations
0188 to effectuate and administer the provisions of this act.

0189 Sec. 7. The legislature adopts the following as the official
0190 map depicting the river basins in this state:

0191 Sec. 8 This act shall take effect and be in force from and after (7)
0192 its publication in the statute book.