

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./~~pm~~ on Wednesday, March 30, 1983 in room 123-S of the Capitol.

All members were present except:

Senator Bert Chaney
Senator Paul Feleciano
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:

Representative Sandy Duncan
Jim Kaup, League of Kansas Municipalities
Joe Harkins, Kansas Water Office
John Henderson, Kansas Water Office

The minutes of the March 29, 1983 meeting were approved.

H.B. 2418 - Development of minerals within the corporate limits of a city

Representative Duncan explained this bill would solve a problem that is beginning to arise as more and more cities begin to explore within the city limits for oil and gas. H.B. 2418 is a forced pooling of units within the city. He explained how the bill would protect the minority interest holders as well as protecting against someone holding out and preventing exploration. Representative Duncan said that the Kansas Independent Oil and Gas Association has no position on the bill, the Kansas Corporation Commission has no objection to the bill and the Attorney General supports it.

Jim Kaup said that his organization's Legislative Policy Committee endorsed H.B. 2418 last month. He mentioned that it would help prevent conflict within the community between mineral interest holders and would contribute to further development.

The Committee began their review of Water Purchase Contracts No. 83-1 and 83-2 (Attachments 1 and 2).

Joe Harkins distributed information on each of the contracts (Attachments 3 and 4). He said in the hurried process of preparing these contracts, several typographical errors were made and they are preparing amended pages to correct these errors. Mr. Harkins pointed out that these contracts are the first written under the provisions of S.B. 61. It is the intent of the Kansas Water Office and the Kansas Water Authority to prepare a standard contract for all future contracts. Mr. Harkins said that any new language that would be developed in the standard contract would be amended into these two contracts being considered. He said he had agreed with Johnson County Rural Water District No. 7 to express their feelings of discomfort in signing the contract because of the restricted time possible for negotiations.

The Committee asked questions of Mr. Harkins and John Henderson concerning language in the water contracts.

The meeting was adjourned at 9:00 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on March 31, 1983.

Senate Energy & Natural Resources

Mar. 30, 1983

Alan Solomons

John A. Henderson

Joe HARKINS

Tom Stiles

CR Duffy

Kenny Wedel

Ed Reinert

Chris McKenzie

Jim Kamp

Intern

Ks. Water Office

RWD

KWO

"

Ks. Natural Resource Council

League Women Voters

League of Kansas Municipalities

" " "

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 83-1
BETWEEN THE STATE OF KANSAS

AND

JOHNSON COUNTY RURAL WATER DISTRICT NO. 7
March 15, 1983

The following information is provided for use in deciding whether to approve Water Purchase Contract No. 83-1 with Johnson County RWD No. 7. This Water Purchase Contract would sell water supply from Hillsdale Lake, Miami County, for public water supply purposes.

1. Johnson County RWD No. 7 is organized under laws of the State of Kansas in K.S.A. 82a-601 et seq. The District serves rural areas in southwest Johnson County and in northwest Miami County, north and east of Hillsdale Reservoir.

2. The District was a member of Public Wholesale Water Supply District No. 1 which planned to develop a regional water supply system to use water from Hillsdale Lake. The Public Wholesale Water Supply District Act was passed by the Kansas Legislature to facilitate organization of the wholesale district. The wholesale district has not been able to develop a system as originally planned.

3. At present, RWD No. 7 purchases water supply from the City of Olathe under an agreement which provides a maximum of four million gallons of water per month. The District intends to continue purchasing water from Olathe to serve a portion of the District. The remaining needs of the District will be provided from Hillsdale Lake. The District presently serves 585 customers, with 530 customers actually using water. The District has approximately 75 requests for new service connections which cannot be satisfied with the existing water supply.

4. Hillsdale Lake began impounding water on September 19, 1981, and the State of Kansas began payment for the immediate use portion of the water supply storage at that time. The State has contracted for the entire 53,000 acre-feet of water supply storage in Hillsdale Lake. In addition, 15,000 acre-feet of storage has been provided for water quality purposes. The water supply storage will provide 17.38 million gallons per day (mgd) during prolonged drought. The water quality storage will provide an additional 4.91 mgd of yield. The water supply storage is divided into immediate use and future use portions under terms of the Water Supply Act of 1958. The immediate use portion of the storage will provide a yield of 2.5 mgd during prolonged drought. The future use storage will provide 14.9 mgd. The State will begin payments for the future storage after 1991 unless water use is initiated from that portion of the storage before then.

Attch. 1

5. By letter of April 14, 1980, the District submitted a written request to negotiate the purchase of water supply from storage in Hillsdale Lake. The District requested to negotiate a forty year contract for up to 3.935 mgd or 1,436.3 mgy. By letter of February 12, 1981, the quantity requested was reduced at the District's request to 1.5 mgd or 547.5 mgy. During negotiations in February 1983 the quantity was further reduced to 110 mgy or 0.301 mgd. This quantity was requested by the District on recommendation of their engineering consultant.

6. Water supply yield available from Hillsdale Lake is 17.38 mgd through a prolonged drought. One water purchase contract has been negotiated for sale of water supply from this reservoir. Water Purchase Contract No. 81-1 was negotiated on October 21, 1981, to sell 0.656 mgd to Miami County RWD No. 2. Sale of the amount of water supply requested for this contract and the amount already sold to Miami County RWD No. 2 would leave 16.40 mgd available for future sales. This contract would bring to 5.5% the amount obligated from the total water supply yield available from the lake.

7. Because of a need for an alternate water supply source for City of Spring Hill and continuing negotiations with Johnson County RWD No. 7 and Cities of Gardner, Paola, and Olathe which prevented beginning negotiations with Spring Hill, a decision was made after a meeting with potential water users on December 29, 1982, to include water needs of Spring Hill in the contract for Johnson County RWD No. 7. Plans at that time were for RWD No. 7 and City of Spring Hill to contract with Miami County RWD No. 2 for treatment of the water and to use Miami County RWD No. 2's water supply intake in the lake.

8. Since that time, City of Spring Hill has decided against obtaining treatment through Miami County RWD No. 2. The City is investigating the possibility of building their own water supply intake and treatment facilities. Studies for this development are in the preliminary stages at this time. A separate contract will be negotiated with City of Spring Hill at a future date if they decide to purchase water from Hillsdale Lake.

9. The total of all applications for water supply from Hillsdale Lake is 48.36 mgd. This is more than 30 mgd more than available. However, several of the applications were filed by users who have now made arrangements for water supply from other sources. No other prospective purchasers want water supply from Hillsdale Lake at this time. Olathe, Paola, and Gardner have declined to enter into contracts at this time. City of Spring Hill would need a maximum of 130 mgy or 0.36 mgd.

10. The benefits to the Purchaser from approval of this contract are increased reliability of service to the District's customers. The District would be able to supply water from both the north and south sides of the district. This would provide better water

pressure and more reliable service to all the District's customers. The District would also be able to supply customers who are presently without service by a rural water system.

11. The benefits to the State from approval of this contract are an increased number of citizens receiving reliable water service. In addition, the State has already begun paying for water supply storage in Hillsdale Lake and the sale of a portion of this supply will reduce the amount of funds which must be borrowed from the general fund to make payments to the federal government. Since water supply will be taken directly from the reservoir, the Chief Engineer, Division of Water Resources, will have only minimal enforcement costs for this contract.

12. The present water supply needs of the Purchaser are in excess of the 110 mgy requested. However, the remaining portion of the needs will be supplied through the existing water supply contract with City of Olathe.

13. Since Miami County RWD No. 2 has not begun using water from Hillsdale Lake, the current beneficial use of the water supply is for development of the reservoir fishery. The reservoir has not been in operation long enough to reach conservation pool. Some releases have been made from the reservoir to maintain a stage filling plan for the lake.

14. Future beneficial uses of the reservoir are for public water supply. The water supply storage in this reservoir has been purchased by the State of Kansas under terms of the Water Supply Act of 1958. The water is designated for municipal and industrial water supply purposes, and this use is consistent with the State Water Plan approved by the Kansas Legislature.

15. There are no economical and reliable alternative water supply sources reasonably near to the district. The nearest alternative source is the Kansas River. Developing a water supply from that source and pumping it to the District would cost more and provide water of lesser quality than will be available from the lake.

16. The District filed Application No. 2 to negotiate the purchase of water supply from Hillsdale Lake on April 29, 1974. This application is the first on file for water supply from this lake.

17. Minimum streamflow requirements in Bull Creek below the reservoir are minimal. The flow requirements are expected to be small. Minimum streamflow requirements are greatest on the Marais des Cygnes River downstream from the reservoir, and those flows can be provided by water quality storage in Pomona and Melvern reservoirs.

Attachment 2

KANSAS WATER OFFICE

WATER PURCHASE CONTRACT NO. 83-2
BETWEEN THE STATE OF KANSAS
AND
PUBLIC WHOLESAL WATER SUPPLY DISTRICT NO. 4
March 15, 1983

The following information is provided for use in deciding whether to approve Water Purchase Contract No. 83-2 with Public Wholesale Water Supply District (PWSD) No. 4. This Water Purchase Contract would sell water supply from Big Hill Lake, also known as Pearson-Skubitz Big Hill Lake, for public water supply purposes.

1. Public Wholesale Water Supply District No. 4 is organized under laws of the State of Kansas in K.S.A. 19-3545 to 19-3556, inclusive. The District is located in the vicinity of Big Hill Lake on Big Hill Creek, Labette County, Kansas. The participating members of the District are: Cities of Altamont, Bartlett, Edna, Mound Valley, and Parsons; Labette County RWD's No. 2, 3, 5, 7, and 8; and Montgomery County RWD's No. 2, 6, and 12.
2. The District has been working for some time to develop a regional water supply system, complete plans, and arrange financing for construction of necessary water treatment and distribution facilities. The District's organizational papers were filed with the Secretary of State on October 28, 1980. The District has been working closely with the Kansas Department of Health and Environment (KDHE) to ensure that the water treatment plant and distribution system design will be acceptable to the Department. Final design plans have been submitted to KDHE and should be approved within two weeks. Construction of facilities could begin by early summer and would continue through November 1984.
3. Participation by the City of Parsons in this District is for the purpose of obtaining water supply for an industrial park. The smaller communities and the rural water districts in this area have had water supply problems due to drought and inadequate supplies in the past. The District will solve a number of water supply problems in the Labette-Montgomery county area.
4. The Big Hill Lake began impounding water on March 31, 1981, and the State of Kansas began payment for the immediate use portion of the water supply storage at that time. The State has contracted for all of the conservation storage in Big Hill Lake. There is no water quality storage in this

reservoir. The immediate use portion of the storage will provide a yield of 2.5 million gallons per day (mgd) during prolonged drought. The future use portion of the storage will provide a yield of 4.6 mgd. The State will not begin payments on the future use storage until 1991 unless water use is initiated from that portion of the storage before then.

5. By letter of January 27, 1983, the District submitted a written request to negotiate the purchase of water supply from storage in Big Hill Lake. The District requested to negotiate a 40-year water purchase contract for 547.5 mgd at an average rate of 1.5 mgd.
6. Water supply yield available from Big Hill Lake is 7.11 mgd through a prolonged drought. No water has been sold to date from this reservoir. Sale of the amount of water supply requested for this contract would leave 5.61 mgd available for future sales. This contract would obligate 60% of the yield from the immediate use portion of the storage in Big Hill Lake. The State is already paying for this storage. The contract would obligate 21% of the total yield available.
7. The total of all applications for water supply from Big Hill Lake is 9.152 mgd. This is 2.043 mgd more than is available. However, several of the applications were filed by users who will be served by the District. A more realistic assessment of quantities requested is:

<u>Prospective Purchaser</u>	<u>Annual Amount</u>	<u>Average Daily Amount</u>
City of Cherryvale	120.00 mgd	.328 mgd
City of Coffeyville	302.50 mgd	.829 mgd
Big Hill PWWSD No. 4	547.50 mgd	1.50 mgd
County of Wilson	<u>1,095.00 mgd</u>	<u>3.00 mgd</u>
Total	2,065.00 mgd or	5.66 mgd

This is less than the 2,594.75 mgd (7.11 mgd) available from the lake during prolonged drought conditions. In addition, the Wilson County users also have the option of contracting for water supply from Elk City Lake.

8. The benefits to the Purchaser from approval of this contract are increased reliability of the public water supplies for the cities and RWDs who are members of the District. The unit costs for the individual members of the District should be less than if each developed a separate water supply source and treatment facilities. Operation and maintenance (O&M) costs for a single water treatment plant will be less than the combined O&M costs for several plants.

9. The benefits to the State from approval of this contract are fewer requests for emergency assistance due to lack of water supply during times of drought. The State has already begun paying for water supply storage in Big Hill Lake and sale of a portion of this supply will reduce the amount of funds which must be borrowed from the general fund to make payments to the federal government. This lessens the price of the water supply to other users of the State system. Since water supply will be taken directly from the reservoir, the Chief Engineer, Division of Water Resources, will have only minimal enforcement costs for this contract.
10. The present water supply needs of the Purchaser are about 220 mgd with projections of future needs of 1.5 mgd or 547.5 mgd.
11. Current beneficial use of the water supply in Big Hill Lake is only for development of the reservoir fishery. The reservoir has not been in operation long enough to reach conservation pool. Some releases have been made from reservoir to maintain the stage filling plan for the lake.
12. Future beneficial uses are for public water supply. All of the conservation storage in this reservoir has been purchased by the State of Kansas under terms of the Water Supply Act of 1958. The water is designated for municipal and industrial water supply purposes, and this use is designated in the State Water Plan approved by the Kansas Legislature.
13. There are no reliable alternative water supply sources reasonably near to the District. The nearest large reservoir is Elk City Lake. Developing a water supply from that lake and pumping it to the District would change the District configuration. Some members of the District would drop out because of the increased cost and other members might be induced to join because of better access to the alternative water supply.
14. The District filed an application to negotiate the purchase of water supply from Big Hill Lake on March 5, 1980. This application is the 6th on file for water supply from this lake.
15. Other applicants were notified by letter of February 3, 1983, that contract negotiations with the District were beginning. None of the other applicants desired to enter into contract negotiations during this round of negotiations. The cities of Mound Valley, Cherryvale, and Coffeyville and Montgomery County RWD No. 6 submitted written statements to waive their rights to negotiate a water purchase contract ahead of the District. The City of Altamont did not waive its right to

negotiate, but the right was forfeited in accordance with the rules and regulations for administration of the State Water Plan Storage Act when no response was received within the allotted 30-day time period. Altamont is a member of the District and will obtain water service from the District.

16. Minimum streamflow requirements in Big Hill Creek below the reservoir are minimal. There are no sewage treatment plants emptying into the stream and the flow requirements are too small to merit administration.

S T A T E O F K A N S A S
K A N S A S W A T E R O F F I C E

CONTRACT

Between the State of Kansas
and
Rural Water District No. 7
Johnson County, Kansas

FOR A PUBLIC WATER SUPPLY
AND MUNICIPAL AND INDUSTRIAL WATER SUPPLY
FOR RURAL WATER DISTRICT NO. 7
from
HILLSDALE RESERVOIR

Water Purchase Contract No. 83-1
March 21, 1983

Att. 3

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KANSAS WATER OFFICE
WATER PURCHASE CONTRACT NO. 83-1

This contract is executed and entered into this 21ST day of March, 1983, between the State of Kansas (hereinafter referred to as the "State") as represented by the Kansas Water Office, and the Rural Water District No. 7, Johnson County, Kansas, (hereinafter referred to as the "Purchaser").

WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a public water supply and for municipal and industrial water supply; and

WHEREAS, the State has signed an agreement (Contract No. DACW41-74-C-0098 with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), as amended, for water supply storage space in Hillsdale Lake; and

WHEREAS, the State filed Water Reservation Right No. 10 on May 24, 1974, to divert and store water in Hillsdale Lake; and

WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615, as amended, and by K.S.A. 82a-1305, as amended, to continue the negotiation of contracts for the sale of water initiated by the Executive Director of the Kansas Water Resources Board; and

WHEREAS, the Purchaser filed Application No. 2 and Application No. 23 with the Executive Director of the Kansas Water Resources Board to negotiate the purchase of 2,872.6 million gallons of water annually from ~~Big Hill~~ ^{Hillsdale} Lake at an average daily rate of 7.87 million gallons per day, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended; and

WHEREAS, the Director of the Kansas Water Office is the successor to all the powers, duties, and functions of the Kansas Water Resources Board with regard to negotiation of water purchase contracts; and

WHEREAS, the amount requested by the Purchaser is in excess of the immediate and projected combined water needs of the Purchaser; and

WHEREAS, the annual withdrawal and use of 110.00 million gallons of water from Hillsdale Lake by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, Purchaser's Application No. 2 filed with the Executive Director of the Kansas Water Resources Board on April 29, 1974, is approved for a maximum total amount of 110.00 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

NOW THEREFORE, in consideration of the foregoing, the parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

(a) "Authority" means the Kansas Water Authority, or its successor.

(b) "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.

(c) "Point of withdrawal from the reservoir" means the point at which water is taken from the reservoir by pump, siphon, canal or any other device; or released through a dam by gates, conduits, or any other means.

(d) "Raw water" refers to the quality of the water at the point of withdrawal from the reservoir.

(e) "Reservoir" means Hillsdale Lake.

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of forty (40) years beginning on the date of execution of this contract. The Purchaser may commence using water at any time after the execution of this contract as provided in Article 13.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, any amendment hereto, or renewal thereof is subject to revocation by the Kansas Legislature as provided by K.S.A. 82a-1307, as amended.

ARTICLE 4. UNITED STATES APPROVAL

The Purchaser shall secure the right from the federal government to construct, modify, alter, or maintain installations and facilities when such installations and facilities are on federal lands. The Purchaser shall bear the cost of construction, modification, operation, and maintenance of Purchaser owned installations and facilities.

The Purchaser shall provide the Director with proof of any easement granted by the federal government for rights-of-way across, in, and upon federal government land required for intake, transmission of water, and necessary appurtenances.

ARTICLE 5. AGREEMENT AND CONTRACT
WITH MIAMI COUNTY RWD NO. 2

The Purchaser shall provide the Director with proof that Rural Water District No. 2, Miami County, Kansas, assumes the duties of the Purchaser to construct, operate, and maintain the water intake and transmission facilities to conduct the raw water from the point of withdrawal to ^{Rural A.B. JTH} ~~Rural~~ Water District No. 2's water treatment plant for treatment. In the event the Purchaser

does not negotiate a contract with ^{Rural} ~~Real~~ Water District No. 2, ^{403 JAH}
Miami County, ^{Kansas, 403 JAH} ~~Kansas~~ for treatment of raw water, the Purchaser
shall notify the Director and the Authority, and the Purchaser
shall have the option to obtain or construct, operate, and main-
tain other facilities for intake, ^{transmission 403 JAH} ~~transmission~~ of water, and
necessary appurtenances as set forth in this contract.

ARTICLE 6. COMPLIANCE WITH KANSAS LAW

This contract is subject to such statutes as may be applicable, including specifically but not by way of limitation, the State Water Planning Act, K.S.A. 82a-901 et seq., as amended; the State Water Plan, K.S.A. 82a-927 et seq., as amended; and the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended, and the Purchaser agrees to comply with such statutes, and any amendments to said statutes which may be enacted subsequent to the execution of this contract.

ARTICLE 7. QUANTITY OF WATER

During the term of this contract defined in Article 2, subject to the conditions herein stated, the State will permit the Purchaser to withdraw from the reservoir not to exceed four billion, four hundred million (4,400,000,000) gallons of raw water; provided, however, that the State shall not be obligated to furnish more than one hundred and ten million (110,000,000) gallons of raw water in any one (1) calendar year.

If the Purchaser in any calendar year does not withdraw the entire amount obligated under terms of this article, the unused amount of water shall not add to the Purchaser's entitlement in any subsequent year.

All water purchased under this contract shall be used for purposes consistent with the reasons for organization of the rural water district. In determining the amount of water to be included in this contract, allowances have been made to provide water for anticipated future needs of the Purchaser. The Director shall review the quantity and purpose for which water is used on the sixth anniversary of the execution of this contract, and on each annual anniversary for the remaining portion of the term of this contract. The Director may adjust the total amount of water contracted for on the sixth anniversary of the execution of the contract and each annual anniversary thereafter, if the purchaser does not begin full payment for the water under contract and another water user is ready, willing and able to contract for such water.

Any adjustment in the annual quantity of water to be supplied under the terms of this contract shall be accompanied by an adjustment of the minimum payment specified in Article 10.

Any water appropriation right acquired by the Purchaser after May 24, 1974, under the Kansas Water Appropriation act, K.S.A. 82a-701 et seq., as amended, shall not be used by the

Purchaser in lieu of any quantity of water obligated under terms of this water purchase contract.

ARTICLE 8. PRICE OF WATER

The Purchaser agrees to pay the State the rate of \$0.1158 for each one thousand (1,000) gallons of raw water taken from the Reservoir by or for the Purchaser during calendar year 1983; provided, however that the Purchaser is obligated and agrees to pay the State the minimum charge in accordance with Article 10 regardless of the quantity of raw water actually taken, except as provided in Article 14.

The Purchaser specifically acknowledges and agrees that any such adjustment of rate will be dependent upon any and all pertinent statutes which are in effect July 15 of each year during the term of this contract.

The Purchaser shall pay as specified in this article for all water received under terms of this contract up to the maximum quantity obligated by this contract. The Purchaser shall be entitled to receive without making payment therefor any water in excess of one hundred and ten million (110,000,000) gallons of raw water per year as allowed under the Kansas Water Appropriation Act. Any water received under the Kansas Water Appropriation Act shall not be counted against the Purchaser's annual water entitlement under this contract even though the

Purchaser may have paid the State as if the water were received under this contract. In the event the Purchaser receives one hundred and ten million (110,000,000) gallons of water or less in any one year from combined use under this contract and any water rights having priority dates later than May 24, 1974, then the Purchaser shall pay the State regardless of the source of water, subject to the provisions of Article 14(c).

The Director shall review the rate stated in this article on July 15 of each year during the term of this contract and may adjust the rate effective January 1 of the following year to reflect any change in experience by substituting the adjusted rate for the rate then stated in the contract. Such adjusted rate shall be charged for all water used or water which must be paid for under terms of this contract as provided in Article 10. The Director shall notify the Purchaser by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser of the adjusted minimum payment which will be required under the terms and conditions of this contract. Failure to furnish such notification shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 9. PURPOSE AND PLACE OF USE.

Water purchased under this contract shall be used within

Rural Water District No. 7, Johnson County, Kansas, and the Purchaser agrees that all water purchased under this contract shall be used for purposes consistent with the reasons for organization of the rural water district. The Purchaser shall inform the Authority of any intention to sell any water under this contract to any water user located outside the boundaries of Rural Water District No. 7 of Johnson County, Kansas. Whenever the Purchaser shall propose to enter into a contract to sell water purchased under this contract to any such user outside the boundaries of Rural Water District No. 7 of Johnson County, the Purchaser shall, before execution thereof, submit a copy of such contract to the Authority for review. The Purchaser agrees not to execute and enter into any such contract unless such contract is approved by the Authority. The notification and contract approval provisions of this article shall apply to sales of water in excess of the amount that is being sold at the time of execution of this contract. Other changes in the place of use shall be accomplished by submitting such information with the water withdrawal schedule required under Article 13.

ARTICLE 10. BILLING AND PAYMENT SCHEDULE

On the first day of commencement of the term of this contract as defined in Article 2, the initial minimum payment shall become due. The purchaser shall pay to the State the ini-

tial minimum payment within thirty (30) days after date of billing by the State.

Provided that, the beginning of the payment period may be deferred for a period of three (3) years, or until such time as actual use of the water contracted for commences, whichever occurs first, if in order to use the water contracted for, bonds are required to be issued, or the construction of transmission or treatment facilities is required. Any deferment of the payment period is conditioned upon the approval of the Director and the Authority.

The initial minimum charge shall be prorated by the number of months or portions thereof in service during the calendar year. The minimum charge for a calendar year shall be the sum of the following two components: (1) one-half ($\frac{1}{2}$) of the total annual amount of water contracted for purchase multiplied by the rate fixed in Article 8, and (2) a charge equal to one-half ($\frac{1}{2}$) of the total annual amount of water contracted for purchase multiplied by a rate per annum as interest equal to the average rate of interest earned the past twelve (12) months on the investment of state monies by the Pooled Money Investment Board multiplied by the net amount of monies advanced from state funds for the costs incurred and associated with providing that one-half ($\frac{1}{2}$) of the total annual amount of water contracted for purchase.

THE PURCHASER SPECIFICALLY AGREES THAT THE FORMULAS BY WHICH ALL CHARGES ARE TO BE COMPUTED UNDER THIS ARTICLE SHALL BE PREPARED BY THE DIRECTOR WITH THE APPROVAL OF THE AUTHORITY. THE PURCHASER ADDITIONALLY AGREES THAT SAID FORMULAS AND COMPUTATIONS ARE SUBJECT TO CHANGE, BASED UPON SUBSEQUENT AMENDMENTS TO STATE STATUTES WHICH MAY AFFECT THE TERMS OF THIS CONTRACT. FINALLY, PURCHASER AGREES THAT IT MAY NOT CONTEST ANY FORMULA BY WHICH ANY CHARGE IS COMPUTED; AND THAT PURCHASER MAY ONLY CONTEST AN ERROR (OR ERRORS) IN MATHEMATICS.

The initial minimum payment shall be paid to the State in either one annual payment within thirty (30) days after date of billing by the State or in equal monthly installments during the calendar year in which the initial minimum payment is due, whether or not water is withdrawn during the calendar year.

Payment of the initial minimum payment shall entitle the Purchaser to receive during the remaining portion of the calendar year one-half ($\frac{1}{2}$) of the maximum annual quantity of water as set forth in Article 7, without additional charge.

The Director shall review and may adjust the rate which is set forth in Article 8 on July 1 of each year, and the adjusted rate shall become effective on the next January 1 and shall apply to the minimum annual payment required for that calendar year and to any water used during the calendar year in excess of the minimum quantity for which payment is made.

On each succeeding January 1 following the due date of the initial minimum payment, subsequent minimum payments shall become due. The Purchaser shall pay to the State the subsequent minimum payments in either one annual payment within thirty (30)

days after date of billing by the State or in equal monthly installments during the calendar year in which the minimum payment is due, whether or not water is withdrawn during the calendar year.

Payment of the minimum payment shall entitle the Purchaser to receive during the calendar year, without additional charge, one-half ($\frac{1}{2}$) of the maximum annual quantity obligated under terms of this contract.

The minimum payment for calendar year 1983 shall be \$6,664.39.

At the end of each calendar year throughout the term of this contract or within thirty days after the end of each calendar year, the State shall bill the Purchaser for any water used during the calendar year in excess of one-half ($\frac{1}{2}$) the total annual quantity of water purchased under contract. The charge for this water shall be at the rate in effect for the year in which the water was used. If the Purchaser shall use a quantity of water in excess of the amount of water used to compute the minimum charge, and said quantity is less than the total annual quantity contracted for, the Purchaser shall be assessed a charge based upon the unused balance.

The payment due for water used in excess of the quantity for which payment has been made shall be paid to the State in full within thirty (30) days after date of billing by the State.

If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges provided herein, such overpayment or underpayment shall be credited or debited, as the case may be, to the Purchaser's account for the next succeeding payment and the state shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

In the event the Purchaser is unable in any year due to apportionment under Article 14 herein to withdraw the amount which the Purchaser is entitled to receive after payment of the minimum payment, the amount of such minimum payment in excess of the amount of water actually received by Purchaser shall be credited to reduce the obligation of the Purchaser during the next succeeding contract year.

If the Purchaser shall fail to make any of the payments when due, then the overdue payments shall bear interest compounded annually at the rate prescribed in K.S.A. 82a-1317, or as may be prescribed by amendments thereto during the term of this contract. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the Authority or State that might result from such default by the

Purchaser.

The Purchaser shall transmit all payments due hereunder to the Director.

ARTICLE 11. POINT OF WITHDRAWAL

The point of withdrawal from the reservoir shall be in the Southwest Quarter of the Southeast Quarter of the Northeast Quarter (SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$) of Section 7, Township 16 South, Range 23 East, Miami County, Kansas.

The Purchaser may use water withdrawn in accordance with the terms of the contract without obtaining a permit or water right under the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property interest (including vested water rights, water appropriation rights, and approved applications for permit to appropriate water).

ARTICLE 12. METERING OF WATER

The Purchaser shall at its own expense, furnish, install, operate and maintain at the place of diversion, a commercial measuring device as approved by the Director.

The previous readings of any measuring device disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half ($\frac{1}{2}$) the period since the last test, whichever is shorter, in accordance with the percen-

tage of inaccuracy found by such tests.

If any measuring device fails to register for any period, the amount of water furnished during such period shall be determined by the most accurate method agreed upon by the Director and the Purchaser.

The Purchaser shall read the measuring device on or before the last calendar day of each month, and shall send such reading to the Director within ten (10) days after it has been taken.

The Purchaser shall provide to the State monthly reports of all water withdrawn from any sources under authority of water used permits or water appropriation rights having priority dates after May 24, 1974. Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

The State may measure releases by means of a rating curve at the point of withdrawal, or by other suitable means, as an auxiliary measuring device for calibration of the Purchaser's measuring device or to measure the amount of water furnished when the Purchaser's measuring device fails to register.

ARTICLE 13. WATER WITHDRAWAL SCHEDULE

The Purchaser shall notify the Director, in writing, of the date for the initial withdrawal of water at least forty-five (45) days prior to such withdrawal. At such time the Purchaser

shall also notify the Director, in writing, of the amounts, times and rates of withdrawal of water required during the remainder of the calendar year in which such initial withdrawal is made. The Purchaser agrees to submit a water withdrawal schedule for each succeeding calendar year to the Director on or before November 1 of each year.

Such proposed water withdrawal schedule shall be approved or disapproved by the Director within thirty (30) days of the filing of such schedule, and subject to his or her approval, such schedule may be amended upon written request by the Purchaser. The Director shall not unreasonably disapprove or withhold his or her approval of the water withdrawal schedule.

The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal, provided the maximum daily rate does not exceed Seven Hundred and Fifty thousand (750,000) gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under terms of this contract from the reservoir other than that scheduled in the annual withdrawal plan, the Purchaser shall advise the Director at least two (2) working days prior to the time that such water is to be withdrawn from the reservoir. Such notice may be transmitted to the Director by oral communication, but the notice must be confirmed in writing within fifteen (15) days after the oral communication.

ARTICLE 14. CONTINUITY OF WATER SERVICE

(a) The Director shall make all reasonable efforts to perfect and protect the water reservation right necessary for the satisfaction of the water supply commitment. In the event it becomes necessary for any reason to apportion the water among the persons having contracts therefor, or to temporarily discontinue the furnishing of water to such persons, the State will give each person an oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable;

(b) Neither the Director nor the Authority shall be responsible or have any legal liability for any insufficiency of water or the apportionment thereof, and the duty of the Director and the Authority to furnish water is specifically subject to the following conditions;

(1) If the total amount of water contracted for withdrawal by all purchasers from the reservoir in any year is greater than the supply available from the conservation water supply storage in that reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor as may best provide for the health, safety, and general welfare of the people of this state as determined by the Authority;

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir, and if such evaluation indicates that the sediment deposits have reduced the yield from the state con-

servation water supply storage space, the Director will apportion available water among the persons having contracts in relation to the annual volume of all water contracted.

(3) If the United States temporarily discontinues or reduces water storage available to the State under its agreement with the United States for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the project or other reasons deemed necessary by the United States, the Director will apportion the available water among the persons having contracts as determined by the State.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts therefor as may best provide for the health, safety, and general welfare of the people of Kansas.

(c) In the event the Director finds it necessary to apportion the available water from the reservoir among the persons having contracts therefor, and such apportionment results in the Purchaser being unable during the year to receive the amount of water that has been purchased by the minimum payment, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 15. LIABILITY

Neither the Director nor the Authority shall be liable for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the point of withdrawal as described in this contract; and the Purchaser shall hold the Director and the Authority harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water beyond the point of withdrawal. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article ¹¹ ~~10~~ *AS JFH*.

ARTICLE 16. AMENDMENT OR ^{NULLIFICATION} ~~NULIFICATION~~ *AS JFH*

The contract may be amended or nullified by written agreement of the parties, as provided in K.S.A. 82a-1316. The fixed rate as stated in Article 8 may be subsequently adjusted on January 1 after the execution of the contract and on each January 1 thereafter, pursuant to the terms and conditions of this contract.

ARTICLE 17. ASSIGNMENT OF CONTRACT

No assignment, sale, conveyance, or transfer of all or

any part of this contract, or of interest therein, shall be valid unless and until same is approved by the Authority under such reasonable terms and conditions as the Authority may impose.

Whenever the assignment, sale, conveyance, or transfer of all or any part of the water purchase contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the water purchase contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended.

ARTICLE 18. RENEWALS

When this contract expires, the Director shall give the Purchaser the opportunity to refuse any new offering of the water before offering the same to any other applicants.

ARTICLE 19. TERMINATION

In the event the Purchaser is unable to construct, maintain, or operate the necessary water treatment and distribution facilities, the Purchaser may terminate this contract upon giving the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the Purchaser hereunder shall cease. Provided, however, that nothing in this article shall be construed to affect the duty of the Purchaser to pay the prorated share of the minimum annual charge

for the year in which the contract is terminated or the actual charge for the quantity of water withdrawn, whichever is greater, before notice of termination is given.

ARTICLE 20. SEVERABILITY

In the event any provision of this agreement or any part of any provision of this agreement are held invalid by a court or competent jurisdiction, such invalidity shall not affect other terms hereof which can be given effect without the invalid provisions or portion of such provision, and to that end the terms of this agreement are intended to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

JOHNSON COUNTY RURAL WATER
DISTRICT NO. 7, BY:

Glenn Bonar

Chairman
Rural Water District No. 7
Johnson County, Kansas

THE STATE OF KANSAS, BY:

Joseph F. Harkins

Joseph F. Harkins,
Director
Kansas Water Office

and,

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,
BY:

Patrick J. Regan

Patrick J. Regan,
Chairman
Kansas Water Authority

Janet K. Roberts

Secretary
Rural Water District No. 7
Johnson County, Kansas

S T A T E O F K A N S A S
K A N S A S W A T E R O F F I C E

CONTRACT

Between the State of Kansas
and
Public Wholesale Water Supply District No. 4
Labette, Montgomery and Wilson Counties, Kansas

FOR A PUBLIC WATER SUPPLY
AND MUNICIPAL AND INDUSTRIAL WATER SUPPLY
from
PEARSON-SKUBITZ BIG HILL RESERVOIR

Water Purchase Contract No. 83-2
March 21, 1983

Atch. 4

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KANSAS WATER OFFICE
WATER PURCHASE CONTRACT NO. 83-2

This contract is executed and entered into this 21ST day of March, 1983, between the State of Kansas (hereinafter referred to as the "State") as represented by the Kansas Water Office, and Public Wholesale Water Supply District No. 4, Labette, Montgomery, and Wilson Counties, Kansas, (hereinafter referred to as the "Purchaser").

WITNESSETH: WHEREAS, the Purchaser desires to purchase water for a public water supply and for municipal and industrial water supply; and

WHEREAS, the State has signed an agreement (Contract No. DACW56-74-C-0021) with the United States of America under the provisions of the Water Supply Act of 1958 (Title III, P.L. 85-500), as amended, for water supply storage space in Big Hill Lake, also known as Pearson-Skubitz Big Hill Reservoir; and

WHEREAS, the State filed Water Reservation Right No. 7 on May 1, 1974, to divert and store water in Big Hill Lake; and

WHEREAS, the Director of the Kansas Water Office is authorized by K.S.A. 74-2615, as amended, and by K.S.A. 82a-1305, as amended, to continue the negotiation of contracts for the sale of water initiated by the Executive Director of the Kansas Water Resources Board; and

WHEREAS, the Purchaser filed Application No. 70 ~~and~~ ^{JK SMC} with the Executive Director of the Kansas Water Resources Board to negotiate the purchase of 1,460 million gallons of water annually from Big Hill Lake at an average daily rate of 4.00 million gallons per day, in compliance with the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended; and

WHEREAS, the Director of the Kansas Water Office is the successor to all the powers, duties, and functions of the Kansas Water Resources Board with regard to negotiation of water purchase contracts; and

WHEREAS, the amount requested by the Purchaser is in excess of the immediate and projected combined water needs of the Purchaser; and

WHEREAS, the annual withdrawal and use of 547.50 million gallons of water from Big Hill Lake by the Purchaser is in the interest of the people of the State of Kansas and will advance the purposes set forth in Article 9 of Chapter 82a of Kansas Statutes Annotated; and

WHEREAS, Purchaser's Application No. 70 filed with the Executive Director of the Kansas Water Resources Board on March 5, 1980, is approved for a maximum total amount of 547.50 million gallons per year in accordance with Articles 9 and 13 of Chapter 82a of Kansas Statutes Annotated.

NOW THEREFORE, in consideration of the foregoing, the

parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

As used in this contract, unless the context otherwise requires:

- (a) "Authority" means the Kansas Water Authority, or its successor.
- (b) "Director" means the Director of the Kansas Water Office, his or her successor, or designated representative.
- (c) "Point of withdrawal from the reservoir" means the point at which water is taken from the reservoir by pump, siphon, canal or any other device; or released through a dam by gates, conduits, or any other means.
- (d) "Raw water" refers to the quality of the water at the point of withdrawal from the reservoir.
- (e) "Reservoir" means Big Hill Lake.

ARTICLE 2. TERM OF THE CONTRACT

The term of this contract shall be for a period of forty (40) years beginning on the date of execution of this contract. The Purchaser may commence using water at any time after the execution of this contract as provided in Article 12.

ARTICLE 3. LEGISLATIVE DISAPPROVAL AND REVOCATION

This contract, any amendment hereto, or renewal thereof is subject to revocation by the Kansas Legislature as provided by K.S.A. 82a-1307, as amended.

ARTICLE 4. UNITED STATES APPROVAL

The Purchaser shall secure the right from the federal government to construct, modify, alter, or maintain installations and facilities when such installations and facilities are on federal lands. The Purchaser shall bear the cost of construction, modification, operation, and maintenance of Purchaser owned installations and facilities.

The Purchaser shall provide the Director with proof of any easement granted by the federal government for rights-of-way across, in, and upon federal government land required for intake, transmission of water, and necessary appurtenances.

ARTICLE 5. COMPLIANCE WITH KANSAS LAW

This contract is subject to such statutes as may be applicable, including specifically but not by way of limitation, the State Water Planning Act, K.S.A. 82a-901 et seq., as amended; the State Water Plan, K.S.A. 82a-927 et seq., as amended; and the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended, and the Purchaser agrees to comply with such statutes, and any amendments to said statutes which may be enacted subsequent to the execution of this contract.

ARTICLE 6. QUANTITY OF WATER

During the term of this contract defined in Article 2, subject to the conditions herein stated, the State will permit the Purchaser to withdraw from the reservoir not to exceed twenty-one billion, nine hundred million (21,900,000,000) gallons of raw water; provided, however, that the State shall not be obligated to furnish more than five hundred forty-seven million, five hundred thousand (547,500,000) gallons of raw water in any one (1) calendar year.

If the Purchaser in any calendar year does not withdraw the entire amount obligated under terms of this article, the unused amount of water shall not add to the Purchaser's entitlement in any subsequent year.

All water purchased under this contract shall be used for purposes consistent with the reasons for organization of the ~~rural water district~~ ^{Public Wholesale Water Supply District.} *JH JMC IK* In determining the amount of water to be included in this contract, allowances have been made to provide water for anticipated future needs of the Purchaser. The Director shall review the quantity and purpose for which water is used on the sixth anniversary of the execution of this contract, and on each annual anniversary for the remaining portion of the term of this contract. The Director may adjust the total amount of water contracted for on the sixth anniversary of the execution of the contract and each annual anniversary thereafter, if the

purchaser does not begin full payment for the water under contract and another water user is ready, willing and able to contract for such water.

Any adjustment in the annual quantity of water to be supplied under the terms of this contract shall be accompanied by an adjustment of the minimum payment specified in Article 10.

Any water appropriation right acquired by the Purchaser after May 1, 1974, under the Kansas Water Appropriation act, K.S.A. 82a-701 et seq., as amended, shall not be used by the Purchaser in lieu of any quantity of water obligated under terms of this water purchase contract.

ARTICLE 7. PRICE OF WATER

The Purchaser agrees to pay the State the rate of \$0.1158 for each one thousand (1,000) gallons of raw water taken from the Reservoir by or for the Purchaser during calendar year 1983; provided, however that the Purchaser is obligated and agrees to pay the State the minimum charge in accordance with Article 9 regardless of the quantity of raw water actually taken, except as provided in Article 13.

The Purchaser specifically acknowledges and agrees that any such adjustment of rate will be dependent upon any and all pertinent statutes which are in effect July 15 of each year during the term of this contract.

The Purchaser shall pay as specified in this article for all water received under terms of this contract up to the maximum quantity obligated by this contract. The Purchaser shall be entitled to receive without making payment therefor any water in excess of five hundred forty-seven million, five hundred thousand (547,500,000) gallons of raw water per year as allowed under the Kansas Water Appropriation Act. Any water received under the Kansas Water Appropriation Act shall not be counted against the Purchaser's annual water entitlement under this contract even though the Purchaser may have paid the State as if the water were received under this contract. In the event the Purchaser receives five hundred forty-seven million, five hundred thousand (547,500,000) gallons of water or less in any one year from combined use under this contract and any water rights having priority dates later than May 1, 1974, then the Purchaser shall pay the State regardless of the source of water, subject to the provisions of Article 13(c).

The Director shall review the rate stated in this article on July 15 of each year during the term of this contract and may adjust the rate effective January 1 of the following year to reflect any change in experience by substituting the adjusted rate for the rate then stated in the contract. Such adjusted rate shall be charged for all water used or water which must be paid for under terms of this contract as provided in Article 9.

The Director shall notify the Purchaser by July 31 of each year of the adjusted rate which will become effective on January 1 of the ensuing year and shall notify the Purchaser of the adjusted minimum payment which will be required under the terms and conditions of this contract. Failure to furnish such notification shall not relieve the Purchaser of the obligation to pay such adjusted rate.

ARTICLE 8. PURPOSE AND PLACE OF USE.

Water purchased under this contract shall be used within Public Wholesale Water Supply District No. 4, Labette, Montgomery, and Wilson Counties, Kansas, and the Purchaser agrees that all water purchased under this contract shall be used for purposes consistent with the reasons for organization of the ~~rural water~~ ^{Public Wholesale Water Supply} District. ~~district.~~ ^{DH SMC/K} The Purchaser shall inform the Authority of any intention to sell any water under this contract to any water user not a member of Public Wholesale Water Supply District No. 4. Whenever the Purchaser shall propose to enter into a contract to sell water purchased under this contract to any such user which is not a member of Public Wholesale Water Supply District No. 4, the Purchaser shall, before execution thereof, submit a copy of such contract to the Authority for review. The Purchaser agrees not to execute and enter into any such contract unless such contract is approved by the Authority. The notification and

contract approval provisions of this article shall apply to sales of water in excess of the amount that is being sold at the time of execution of this contract. Other changes in the place of use shall be accomplished by submitting such information with the water withdrawal schedule required under Article 12.

ARTICLE 9. BILLING AND PAYMENT SCHEDULE

On the first day of commencement of the term of this contract as defined in Article 2, the initial minimum payment shall become due. The purchaser shall pay to the State the initial minimum payment within thirty (30) days after date of billing by the State.

Provided that, the beginning of the payment period may be deferred for a period of three (3) years, or until such time as actual use of the water contracted for commences, whichever occurs first, if in order to use the water contracted for, bonds are required to be issued, or the construction of transmission or treatment facilities is required. Any deferment of the payment period is conditioned upon the approval of the Director and the Authority.

The initial minimum charge shall be prorated by the number of months or portions thereof in service during the calendar year. The minimum charge for a calendar year shall be the sum of the following two components: (1) one-half ($\frac{1}{2}$) of the

total annual amount of water contracted for purchase multiplied by the rate fixed in Article 7, and (2) a charge equal to one-half ($\frac{1}{2}$) of the total annual amount of water contracted for purchase multiplied by a rate per annum as interest equal to the average rate of interest earned the past twelve (12) months on the investment of state monies by the Pooled Money Investment Board multiplied by the net amount of monies advanced from state funds for the costs incurred and associated with providing that one-half ($\frac{1}{2}$) of the total annual amount of water contracted for purchase.

THE PURCHASER SPECIFICALLY AGREES THAT THE FORMULAS BY WHICH ALL CHARGES ARE TO BE COMPUTED UNDER THIS ARTICLE SHALL BE PREPARED BY THE DIRECTOR WITH THE APPROVAL OF THE AUTHORITY. THE PURCHASER ADDITIONALLY AGREES THAT SAID FORMULAS AND COMPUTATIONS ARE SUBJECT TO CHANGE, BASED UPON SUBSEQUENT AMENDMENTS TO STATE STATUTES WHICH MAY AFFECT THE TERMS OF THIS CONTRACT. FINALLY, PURCHASER AGREES THAT IT MAY NOT CONTEST ANY FORMULA BY WHICH ANY CHARGE IS COMPUTED; AND THAT PURCHASER MAY ONLY CONTEST AN ERROR (OR ERRORS) IN MATHEMATICS.

The initial minimum payment shall be paid to the State in either one annual payment within thirty (30) days after date of billing by the State or in equal monthly installments during the calendar year in which the initial minimum payment is due, whether or not water is withdrawn during the calendar year.

Payment of the initial minimum payment shall entitle the Purchaser to receive during the remaining portion of the calendar year one-half ($\frac{1}{2}$) of the maximum annual quantity of water as set forth in Article 6, without additional charge.

annual quantity of water purchased under contract. The charge for this water shall be at the rate in effect for the year in which the water was used. If the Purchaser shall use a quantity of water in excess of the amount of water used to compute the minimum charge, and said quantity is less than the total annual quantity contracted for, the Purchaser shall be assessed a charge based upon the unused balance.

The payment due for water used in excess of the quantity for which payment has been made shall be paid to the State in full within thirty (30) days after date of billing by the State.

If for reason of error in computation, measuring device malfunction, or other causes, there is an overpayment or underpayment to the State by the Purchaser of the charges provided herein, such overpayment or underpayment shall be credited or debited, as the case may be, to the Purchaser's account for the next succeeding payment and the state shall notify the Purchaser thereof in writing. However, all charges made in any year shall be conclusively presumed to be correct six (6) months after the end of such year.

In the event the Purchaser is unable in any year due to apportionment under Article 13 herein to withdraw the amount which the Purchaser is entitled to receive after payment of the minimum payment, the amount of such minimum payment in excess of the amount of water actually received by Purchaser shall be

credited to reduce the obligation of the Purchaser during the next succeeding contract year.

If the Purchaser shall fail to make any of the payments when due, then the overdue payments shall bear interest compounded annually at the rate prescribed in K.S.A. 82a-1317, or as may be prescribed by amendments thereto during the term of this contract. This shall not be construed as giving the Purchaser the option of either making payments when due or paying interest, nor shall it be construed as waiving any of the rights of the Authority or State that might result from such default by the Purchaser.

The Purchaser shall transmit all payments due hereunder to the Director.

ARTICLE 10. POINT OF WITHDRAWAL

The point of withdrawal from the reservoir shall be in the Northwest Quarter of the Southwest Quarter of the Southeast Quarter (NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$) of Section 7, Township 32 South, Range 18 East, Labette County, Kansas.

The Purchaser may use water withdrawn in accordance with the terms of the contract without obtaining a permit or water right under the Kansas Water Appropriation Act, K.S.A. 82a-701 et seq. Rights of the Purchaser under this contract shall be entitled to the same protection as any other vested property

interest (including vested water rights, water appropriation rights, and approved applications for permit to appropriate water).

ARTICLE 11. METERING OF WATER

The Purchaser shall at its own expense, furnish, install, operate and maintain at the place of diversion, a commercial measuring device as approved by the Director.

The previous readings of any measuring device disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test or one-half ($\frac{1}{2}$) the period since the last test, whichever is shorter, in accordance with the percentage of inaccuracy found by such tests.

If any measuring device fails to register for any period, the amount of water furnished during such period shall be determined by the most accurate method agreed upon by the Director and the Purchaser.

The Purchaser shall read the measuring device on or before the last calendar day of each month, and shall send such reading to the Director within ten (10) days after it has been taken.

The Purchaser shall provide to the State monthly reports of all water withdrawn from any sources under authority of water used permits or water appropriation rights having priority dates

after May 1, 1974. Representatives of the State shall, at all reasonable times, have access to the measuring device for the purpose of verifying all readings.

The State may measure releases by means of a rating curve at the point of withdrawal, or by other suitable means, as an auxiliary measuring device for calibration of the Purchaser's measuring device or to measure the amount of water furnished when the Purchaser's measuring device fails to register.

ARTICLE 12. WATER WITHDRAWAL SCHEDULE

The Purchaser shall notify the Director, in writing, of the date for the initial withdrawal of water at least forty-five (45) days prior to such withdrawal. At such time the Purchaser shall also notify the Director, in writing, of the amounts, times and rates of withdrawal of water required during the remainder of the calendar year in which such initial withdrawal is made. The Purchaser agrees to submit a water withdrawal schedule for each succeeding calendar year to the Director on or before November 1 of each year.

Such proposed water withdrawal schedule shall be approved or disapproved by the Director within thirty (30) days of the filing of such schedule, and subject to his or her approval, such schedule may be amended upon written request by the Purchaser. The Director shall not unreasonably disapprove or withhold his or

her approval of the water withdrawal schedule.

The Purchaser's approved water withdrawal schedule shall govern the rate of withdrawal, provided the maximum daily rate does not exceed three million (3,000,000) gallons. Whenever the Purchaser wishes to make a withdrawal of water provided under terms of this contract from the reservoir other than that scheduled in the annual withdrawal plan, the Purchaser shall advise the Director at least two (2) working days prior to the time that such water is to be withdrawn from the reservoir. Such notice may be transmitted to the Director by oral communication, but the notice must be confirmed in writing within fifteen (15) days after the oral communication.

ARTICLE 13. CONTINUITY OF WATER SERVICE

(a) The Director shall make all reasonable efforts to perfect and protect the water reservation right necessary for the satisfaction of the water supply commitment. In the event it becomes necessary for any reason to apportion the water among the persons having contracts therefor, or to temporarily discontinue the furnishing of water to such persons, the State will give each person an oral notice, followed by a written notice, of such action as far in advance as is reasonably practicable;

(b) Neither the Director nor the Authority shall be responsible or have any legal liability for any insufficiency of

water or the apportionment thereof, and the duty of the Director and the Authority to furnish water is specifically subject to the following conditions;

(1) If the total amount of water contracted for withdrawal by all purchasers from the reservoir in any year is greater than the supply available from the conservation water supply storage in that reservoir, the Director, with the approval of the Authority, will apportion the available water among all the purchasers having contracts therefor as may best provide for the health, safety, and general welfare of the people of this state as determined by the Authority;

(2) The Director shall evaluate the effect of sediment deposits in the Reservoir, and if such evaluation indicates that the sediment deposits have reduced the yield from the state conservation water supply storage space, the Director will apportion available water among the persons having contracts in relation to the annual volume of all water contracted.

(3) If the United States temporarily discontinues or reduces water storage available to the State under its agreement with the United States for the purpose of inspection, investigation, maintenance, repair, or rehabilitation of the project or other reasons deemed necessary by the United States, the Director will apportion the available water among the persons having contracts as determined by the State.

(4) If, because of an emergency, the Director deems it necessary for the health, safety, and general welfare of the people of Kansas to reduce or terminate the withdrawal of water from the reservoir, the Director, with the approval of the Authority, will apportion any available water among the persons having contracts therefor as may best provide for the health, safety, and general welfare of the people of Kansas.

(c) In the event the Director finds it necessary to apportion the available water from the reservoir among the persons having contracts therefor, and such apportionment results in the Purchaser being unable during the year to receive the amount of water that has been purchased by the minimum payment, the Purchaser shall pay the State only for the amount of water actually made available to the Purchaser during the year.

ARTICLE 14. LIABILITY

Neither the Director nor the Authority shall be liable for any claim arising out of the control, carriage, handling, use, disposal, or distribution of water furnished to the Purchaser beyond the point of withdrawal as described in this contract; and the Purchaser shall hold the Director and the Authority harmless on account of damage or claim of damage of any nature whatsoever arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water

beyond the point of withdrawal. Nothing in this Article shall be construed to impair any protection of the rights of the Purchaser as set forth in Article 10.

ARTICLE 15. AMENDMENT OR ~~NULLIFICATION~~ NULLIFICATION *JJC JMC*

The contract may be amended or nullified by written agreement of the parties, as provided in K.S.A. 82a-1316. The fixed rate as stated in Article 8 may be subsequently adjusted on January 1 after the execution of the contract and on each January 1 thereafter, pursuant to the terms and conditions of this contract.

ARTICLE 16. ASSIGNMENT OF CONTRACT

No assignment, sale, conveyance, or transfer of all or any part of this contract, or of interest therein, shall be valid unless and until same is approved by the Authority under such reasonable terms and conditions as the Authority may impose.

Whenever the assignment, sale, conveyance, or transfer of all or any part of the water purchase contract involves a change in either the place of use or the purpose of use, the Authority shall have the option to cancel the water purchase contract or portion thereof and make the water available for purchase by persons who have filed applications in accordance with rules and regulations for administration of the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., as amended.

ARTICLE 17. RENEWALS

When this contract expires, the Director shall give the Purchaser the opportunity to refuse any new offering of the water before offering the same to any other applicants.

ARTICLE 18. TERMINATION

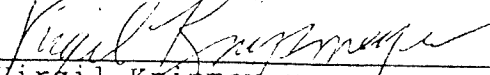
In the event the Purchaser is unable to construct, maintain, or operate the necessary water treatment and distribution facilities, the Purchaser may terminate this contract upon giving the State thirty (30) days written notice of its intent to do so, and all rights and liabilities of the Purchaser hereunder shall cease. Provided, however, that nothing in this article shall be construed to affect the duty of the Purchaser to pay the prorated share of the minimum annual charge for the year in which the contract is terminated or the actual charge for the quantity of water withdrawn, whichever is greater, before notice of termination is given.

ARTICLE 19. SEVERABILITY

In the event any provision of this agreement or any part of any provision of this agreement are held invalid by a court or competent jurisdiction, such invalidity shall not affect other terms hereof which can be given effect without the invalid provisions or portion of such provision, and to that end the terms of this agreement are intended to be severable.


IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

PUBLIC WHOLESALE WATER SUPPLY
DISTRICT NO. 4, LABETTE,
MONTGOMERY, AND WILSON COUNTIES,
KANSAS, BY:



Virgil Knipmeyer
President

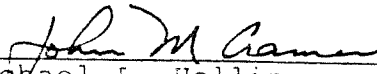
THE STATE OF KANSAS, BY:



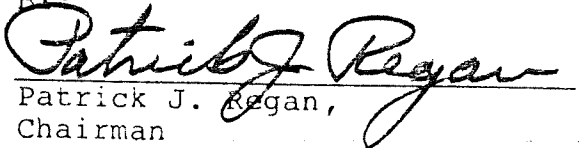
Joseph F. Harkins,
Director
Kansas Water Office

and,

WITH THE EXPRESS APPROVAL OF
THE KANSAS WATER AUTHORITY,
BY:



Michael L. Hollingsworth
Secretary
JOHN M. CRAMER JJA
VICE-PRESIDENT JMC
QB031730-1/10



Patrick J. Regan,
Chairman
Kansas Water Authority