

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

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

3:30 ~~am~~/p.m. on January 27, 1986 in room 526-S of the Capitol.

All members were present except:

Representative Holmes (excused)
Representative Grotewiel (excused)

Committee staff present:

Ramon Powers, Legislative Research Department
Raney Gilliland, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

David Litwin, Director of Taxation, Kansas Chamber of Commerce
and Industry
Joseph F. Harkins, Director, Kansas Water Office
David L. Pope, Chief Engineer-Director, Division of Water Resources,
Kansas State Board of Agriculture
Ken Carter, City Manager, Hays, Kansas
Marsha Marshall, Kansas Natural Resource Council
Mary Fund, The Kansas Rural Center, Inc. (Written testimony only)

The meeting was called to order by Chairman Fox, who made several announcements. He said that the final report of the Joint Oil and Gas Program Review by the Blue Ribbon Task Force had been received and copies could be obtained in his office. He urged the committee to study this material because hearings had been tentatively set for the following week on this program. He called attention to the minutes of January 21, 22 and 23, which had been distributed, as well as a fiscal note on House Bill 2703. (See Attachment 1)

Joe Harkins of the Kansas Water Office told the committee that he was not prepared to request additional bills because the state printer had advised him that it would be approximately February 17 before the additional sections of the State Water Plan are completed.

David Litwin, representing the Kansas Chamber of Commerce and Industry, was the first conferee on House Bill 2703. He said that his organization supported the bill in principle, but noted two possible technical problems. First, he suggested that some avenue of appeal to the chief engineer's decisions be provided. Second, he thought it would be appropriate for the committee to determine just what acts or omissions would be grave enough to justify a criminal prosecution, and then expressly list them in the bill. (See Attachment 2) Committee discussion followed.

Joe Harkins, Director of the Kansas Water Office, testified in favor of House Bill 2703, giving some background on the issue of water efficiency. He noted that fifteen other states have taken steps toward use efficiency programs and that this proposal would establish a fundamental principle in Kansas that the right to use water is accompanied by the responsibility to use it wisely. (See Attachment 3) Discussion followed.

David Pope, Chief Engineer-Director, Division of Water Resources (DWR), testified in support of House Bill 2703. He commented that the Division of Water Resources strongly supports water conservation and that this bill would implement the section of the State Water Plan adopted by the Kansas Water Authority concerning conservation plans. He stated that the intent of the bill was to give the Chief Engineer of the DWR authority, in certain instances, to require a water user to develop and implement a water conservation plan. Mr. Pope noted that in order to fully implement this legislation, support of local entities such as Groundwater Management Districts, Conservation Districts, and Basin Advisory Committees would be essential.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on January 27, 1986

He said that financial support from the legislature would also be necessary for additional Division of Water Resources personnel to adopt guidelines, and review and approve conservation plans. (See Attachment 4) Considerable discussion followed.

Ken Carter, City Manager of Hays, Kansas, also testified in favor of House Bill 2703, noting that his city had been one of the leaders in water conservation in his area. He commented that developing a conservation plan was a lengthy and difficult process, but that every city should have to do it. It involves hard decisions at the local level, such as whether to close swimming pools and whether to allow people to water grass (50-60 percent of all municipal water usage is for grass and shrubs). This process allows a city to set their own guidelines as to how they will react in terms of waste and in terms of drought contingencies, and to do that in a rational sense and not at a time of emergency. Committee discussion followed.

The last conferee was Marsha Marshall, representing the Kansas Natural Resource Center. She spoke in opposition to House Bill 2703. She noted that the bill provided a framework for the conservation of water supply, but offered revisions and additions which she felt could encompass the conservation of the capacity for renewal as well. (See Attachment 5)

A written statement was submitted by Mary Fund, of the Kansas Rural Center. Her organization supported the concept of House Bill 2703, but did not endorse it because of some changes they felt were needed. These changes were listed. (See Attachment 6)

The meeting was adjourned at 5:07 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on January 28, 1986 at 3:30 p.m. in Room 526-S.

Fiscal Note
1986 Session
January 27, 1986

Bil No.

The Honorable Ron Fox, Chairperson
Committee on Energy and Natural Resources
House of Representatives
Third Floor, Statehouse

Dear Representative Fox:

SUBJECT: Fiscal Note for House Bill No. 2703 by Committee
on Energy and Natural Resources

In accordance with K.S.A. 75-3715a, the following fiscal note concerning House Bill No. 2703 is respectfully submitted to your committee.

House Bill No. 2703 authorizes the Chief Engineer of the Board of Agriculture to require water users to prepare and submit water conservation plans when recommended by river basin plans; when application is made for transfer of water pursuant to K.S.A. 82a-1501 et seq; or when deemed by the Chief Engineer to be in the public interest. The bill also requires that a water conservation plan be submitted by parties entering into new contracts for purchase of water under the state's water marketing program.

Recommended guidelines for preparation of water conservation plans are to be developed by the Kansas Water Office for adoption by the Chief Engineer. Unless a time extension is granted, water users must submit a plan within six months of receiving notification by the Chief Engineer of the planning requirement. If the plan is not submitted or if the plan is submitted but not approved, the Chief Engineer may suspend the water right held by the user. Failure to comply with provisions of the act would be a Class C misdemeanor. House Bill No. 2703 also amends K.S.A. 82a-706d by directing the Attorney General to bring suit, at the request of the Chief Engineer, for the purpose of compelling preparation and/or implementation of a water conservation plan by a water user so instructed by the Chief Engineer.


The Governor's Investment Budget recommendations include \$105,000 in FY 1987 for implementation of HB 2703 by the Board of Agriculture. The amount includes salaries and other operating costs associated with two engineers and one clerical position for the purpose of providing technical assistance to agricultural, municipal and industrial water users affected by the bill and to conduct reviews of the water conservation plans submitted for approval.

Attachment 1

House Energy and Natural Resources 1/27/86

No fiscal effect is foreseen for the Kansas Water Office because the responsibilities assigned the office by HB 2703 are considered to be within the Water Office's existing statutory charge. Information has been requested regarding the fiscal implications of the bill for the Attorney General's Office. If the bill is found to have an impact, the fiscal note will be amended and forwarded to the Committee.

Any expenditures resulting from enactment of HB 2703 would be from the State General Fund and would be in addition to those contained in the FY 1987 Governor's Budget Report.

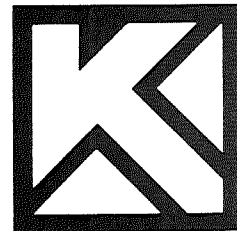


Gary L. Stotts
Acting Director of the Budget

GLS:JJ:ks

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

HB 2703

January 27, 1986

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Energy & Natural Resources Committee

by

David S. Litwin
Director of Taxation

Mr. Chairman, members of the Committee. I am David Litwin, representing the Kansas Chamber of Commerce and Industry. We appreciate the opportunity to comment on HB 2703.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

KCCI's Water Committee adopted as one of its goals for 1986 to support, consistent with our policies, "any legislation and administrative actions needed to effectuate

the recommendations incorporated in the Kansas Water Plan where such recommendations would further the objective of providing adequate supplies of clean water in the future for all purposes." Subsequently, this was approved by KCCI's Board of Directors.

For the most part, water assurance planning to this point has focused on maximizing present and future supplies of usable water. Vital though that is, it does not address the entire problem. No matter how much water we plan to have available in storage, ultimately our fortune depends on the cooperation of nature. We can significantly improve our odds by long-range planning for storage, but droughts will occur and, indeed, long-range precipitation patterns may change adversely. We cannot do much about that with our present technology.

We have absolute control, however, over water usage. We are thus pleased that the state is now proposing to turn its attention to the other side of the preparedness coin, conserving available water supplies. We support HB 2703 in principle.

I would like to call to your attention two possible technical problems. First, the bill reposes a great deal of power in the chief engineer in terms of deciding when a conservation plan must be prepared, but there is no express provision for appeal of his decisions. I am not confident that existing law provides such an appeal channel. Certainly frivolous or dilatory appeals must not be allowed to impede the vital work of conservation, but the incumbent in this office will change and mistakes will no doubt be made. Thus we suggest that some avenue of appeal be provided.

Second, section 3(d) provides that failure to comply "with any provision of this section by any person is a class C misdemeanor." The creation of criminal penalties is serious business, and we feel that much greater specificity is called for. As it now stands, read literally, failure to submit a conservation plan within the six-month period set forth could be not only grounds for suspension of water rights, but for a criminal prosecution. Indeed, if the chief engineer fails to do anything required of him by section 3, he too would be subject to criminal prosecution under the existing language. I think it would be appropriate for the committee to determine just what

acts or omissions are grave enough to justify a criminal prosecution, and then expressly list them in the bill.

Thank you once again for the opportunity to testify. If there are any questions, I will try to answer them.

Testimony on House Bill No. 2703

by

Kansas Water Office

to the

House Committee on Energy and Natural Resources

January 1986

Attachment 3
House Energy and Natural Resources 1/27/86

Background. During 11 public meetings held to discuss the first draft of the State Water Plan in 1983, repeated testimony was heard on the need to address the issue of water use efficiency.

The Kansas Water Office and Kansas Water Authority gave priority consideration to this important issue in 1984. The Kansas Water Office formed a technical advisory committee of individuals from agriculture, industry and municipalities to assist in developing a reasonable, workable approach. Three technical papers were prepared covering water use efficiency in agriculture, industry and public water supply systems. A special committee of the Kansas Water Authority was assigned to concentrate on the issue. A draft plan was subjected to six Kansas Water Authority Conservation Committee reviews; review by the full Kansas Water Authority on four occasions; considered in 12 additional public meetings; two formal public hearings; and finally, approved by the Kansas Water Authority in December of 1985.

Fifteen other states have taken steps toward use efficiency programs with the most comprehensive efforts in California and Florida. This is a proposal to establish a fundamental principle in Kansas that the right to use water is accompanied by the responsibility to use it wisely.

Who is Covered?

1. Water right holders or applicants.
2. Buyers in the marketing program.
3. Applicants for water transfers
4. Participants in the assurance program.

Guidelines

1. Tailored to different types of use (agriculture, industry, municipal).
2. Advice in preparation - public hearings before adopted.
3. Must contain drought contingency plans.

Plan Approval

1. Chief Engineer may approve or designate another entity (i.e., groundwater management district).
2. Reviews every five years.

I would like to close by emphasizing this policy would not be applied automatically on a statewide basis. The Chief Engineer will apply this authority when:

1. In his opinion the public is served.
2. Upon advice of basin plans when he agrees.
3. Or, automatically for
 - transfers
 - marketing program
 - assurance program.

PRESENTATION
BY
DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

RE: HOUSE BILL NO. 2703

BEFORE

HOUSE ENERGY AND NATURAL RESOURCE COMMITTEE

JANUARY 27, 1986

Thank you, Chairman Fox, and members of the committee for this opportunity to appear relative to House Bill No. 2703.

The conservation section of the State Water Plan adopted by the Kansas Water Authority (KWA) contains a new policy which, if implemented by the passage of legislation, would require the preparation of conservation plans under certain circumstances.

The Kansas Water Office (KWO), the Division of Water Resources (DWR), Legislative Research, and the Revisor's Office have met on several occasions over the past months to discuss the implementing language for the Conservation Section of the State Water Plan.

Attachment 4

House Energy and Natural Resources 1/27/86

House Bill No. 2703 represents the legislation which this group felt was necessary to implement the intent of the State Water Plan policy relative to conservation plans and enforcement thereof.

The intent of this bill is to give the Chief Engineer of the DWR authority, in certain instances, to require a water user to develop and implement a water conservation plan. Under the terms of the bill, a water user would be anyone who purchases from the State of Kansas, anyone who owns a water right as defined by the Kansas Water Appropriation Act, or who applies to transfer water under the Water Transfer Act.

The first step in implementing this bill would be that the KWO would seek advice from local entities, such as Basin Advisory Committees, Groundwater Management Districts, and Conservation Districts, and develop general planning guidelines to develop conservation plans for recommendation to the Chief Engineer.

After consideration of these recommendations, the Chief Engineer would be required to adopt guidelines for the preparation and the implementation of conservation plans.

Section three would allow the Chief Engineer to require preparation of a conservation plan by a water user whenever: (1) an area plan prepared and approved under the Basin Planning Process of the State Water Plan, contains such a recommendation to the Chief Engineer; (2) an application for transfer of water under the Water Transfer Act is made; or, (3) the Chief Engineer, upon investigation thereby deems preparation of conservation plans to be in the public interest. For example, the Chief Engineer might require development and implementation of the Water Conservation Plan when an intensive groundwater use control area is designated.

The water user is given six months after notification by the Chief Engineer, or within an authorized extension of time, to submit a conservation plan to the Chief Engineer for approval.

Failure to submit a conservation plan within the authorized time could result in suspension of the water right by the Chief Engineer. Subsection 3(d), also makes it a Class C misdemeanor to fail to comply with the provisions of this section, and each day after notification by the Chief Engineer of the failure to comply shall constitute a separate offense.

K.S.A. 82a-706d is also amended to allow the Chief Engineer to bring an action in the name of the State of Kansas to compel preparation or compliance with a conservation plan approved by the Chief Engineer.

The bill also contains authority to allow the Chief Engineer to appoint a "designee" to review and approve the conservation plans. The intent of this provision is to allow the Chief Engineer to designate some entity, such as a Groundwater Management District, to have the responsibility of reviewing and approving conservation plans, in accordance with the guidelines officially adopted by the Chief Engineer for the preparation of such plans.

The Water Marketing Program statute is also amended to require that any person buying water from the State of Kansas will have to have a conservation plan prepared and approved by the Chief Engineer prior to entering into a new purchase contract with the State of Kansas.

The DWR strongly supports water conservation. The DWR feels that House Bill No. 2703 will implement the section of the State Water Plan adopted by the KWA concerning conservation plans. In order to fully implement this legislation, support of local entities, such as Groundwater Management Districts,

Conservation Districts, and Basin Advisory Committees, will be essential. Financial support from the legislature will also be necessary for additional DWR personnel to adopt guidelines, and review and approve conservation plans.

I will be happy to answer any questions you may have concerning this bill.

Kansas Natural Resource Council

Testimony before the House Energy and Natural Resources Committee
Presented by Marsha Marshall
Concerning HB 2703, relating to water conservation plans and
enforcement thereof.

January 27, 1985

Conservation plans either state or imply conservation policy. While it may be the function of the Water Office and Water Authority to consider the interests of private water users, it is the legislature which must formulate public water policy. Such a policy, to be successful must encompass the interests and intentions of the public as well as the interests of private users.

The public interest component of water conservation policy -- the reason for conserving water -- is missing from this legislation, and from the entire water conservation section of the Water Plan. The time has come for the legislature to recognize that Kansas is moving away from "developing" water toward conserving it, and needs a clear water conservation policy.

Water Plan

"Water conservation is considered to be supply and demand management so as to diminish uncertainty regarding water availability and quality for all users."

Essentially this is a definition of water planning, not specifically water conservation.

Geared toward private use and probably short-term considerations.

Emphasis is on management. No distinction between renewable and nonrenewable supplies.

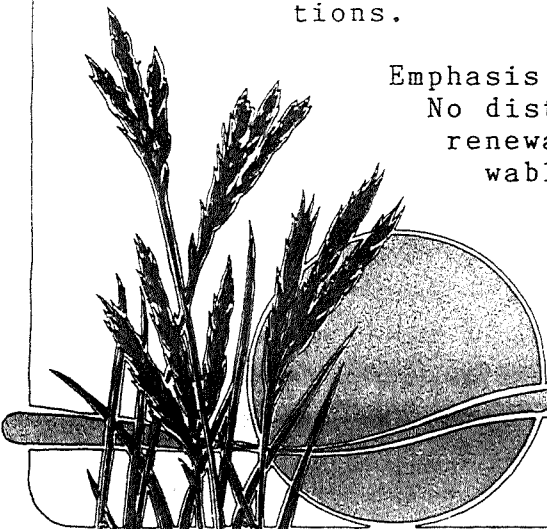
Aldo Leopold

"Health is the capacity of the land for self-renewal. Conservation is our effort to understand and preserve this capacity."

This defines conservation, sets forth a goal, and recognizes its long-term importance.

Speaks to public interest issues.

Clearly emphasizes the need to reduce demand in areas where demand exceeds the renewable supply.



This bill provides a framework for the conservation of supply and with revisions and additions could encompass the conservation of the capacity for renewal as well. Using HB 2703 as a starting point, we offer the following legislative options for your consideration.

Add a policy statement at the beginning of the bill that says: "It is the policy of the state to conserve Kansas water resources and to understand and preserve their capacity for self-renewal."

New Sec. 2, line 0036. after "plan." add "Each plan shall state:

1. Why the plan is being developed.
2. What measurable goals will be sought/achieved. In areas where the demand is greater than the renewable supply, the goal shall be a reduction in water use.
3. Plans must also address, at a minimum, the following techniques: seasonal rates, metering, drought contingencies, end use matching, recycling, building/plumbing codes.

New sec. 2, line 0041, delete drought contingency planning, since it is already incorporated above.

New Sec. 3, part (2) add a comprehensive listing of other water acts, 82a-1305, 82a-1310a to reference when conservation plans are required by law.

New Sec. 3, line 0055. Characterize the public interest to be consistent with the above conservation policy.

New Section 3, line 0072, the chief engineer shall evaluate progress against the stated, measurable goal in each plan, and recommend revisions of the goal if necessary.

Sections 4 & 5 merit separate legislation, since they deal with separate though related issues.

THE KANSAS RURAL CENTER, INC.

304 Pratt Street

WHITING, KANSAS 66552

Phone: (913) 873-3431

Testimony for the House Energy and Natural Resource Committee
on HB 2703 January 27, 1986
Written Statement Submitted by Mary Fund, Kansas Rural Center

The Kansas Rural Center supports the concept of requiring conservation plans for all water right holders, and we commend the Kansas Water Office and the Kansas Water Authority on their work toward this legislation over the past year. However, we stop short of giving HB 2703 our endorsement. We do this because we feel there are a few changes that must be made in the bill's language and content and we have some questions we would like to see addressed.

The first change we suggest is that under New Section 3, line 46, "may require" should be changed to "shall require". If this is not changed, the Chief Engineer has the flexibility to not require development of a conservation plan even if any of the three criteria listed in lines 48-55 are present. Over the past three years of the state water planning process, the public has clearly indicated that they consider conservation a critical aspect of water management. The Rural Center believes that the state is ready for a clearer directive for conservation than the language of HB 2703 relates.

Also, the "may require" of line 46 conflicts with the existing statute KSA 82a-1501 et seq., the water transfer law, which clearly requires preparation of a conservation plan before a water transfer can be considered.

My most important point is related to the above stated need for a clear directive for conservation in Kansas. As HB 2703 is written, it is not clear what we are hoping to achieve. Yes, we can say that the bill's intent is to set up a mechanism so that water users can be required to have conservation plans. But requiring conservation plans in the three instances listed in lines 46-58 is not a goal in and of itself, unless we know what we hope to accomplish with these plans we are recommending. In other words, under this bill, we could be creating a paper dragon that in the long run saves no water, and more importantly does not contribute to the state's ability to ensure water for future generations and for future economic growth and health.

The Rural Center thus suggests that the state needs an overall conservation goal or policy, with measurable objectives for industrial, municipal and agricultural water use and a timeframe for easing into or accomplishing these goals. Requiring conservation plans without a goal or policy will not do any good because we won't know what we're working toward. Also having such a goal or policy would provide direction for the Kansas Water Office in drafting conservation planning guidelines.

For example, the state could have a goal of increasing water use efficiency or reducing water use in agriculture by a set percent by the year 1990, and by another set per cent by the year 2000. Or the state could require municipalities to reduce water use by a certain percent over the next 10 to 15 years. The guidelines drafted could then offer suggestions or ways of reaching these specific goals through things like building codes, new irrigation technology and management practices, etc.

Related to this need for a conservation policy or goal is our concern about line 53-55 in New Section 3, which states that the chief engineer may require preparation of a conservation plan if it is found to be in the public interest. No where within our current body of water law or in administrative rules and regulations is there a definition of what constitutes the public interest. For example, is it within the public interest when streamflows are endangered or when streams are unable to meet all existing appropriations? Is it within the public interest only when we're studying the need for new sources of supply? Or is it within the public interest to consider the ecological impacts of continued use which is over and above the source's ability to replenish itself? Is it within the public interest to consider the needs of future generations? The Rural Center believes that our administrative agencies need direction from the Legislature on this matter.

A final concern of the Rural Center's, which is very much related to the need for a conservation goal or policy, is where does this piece of legislation fit within the existing body of water law? What is its relation to the Water Appropriation Act?

Although this piece of legislation addresses the powers of the Chief Engineer to manage and conserve the water of the state, it has the potential to do more than amend the Water Appropriation Act. It is the beginning of a whole new body of water conservation law. As such, it should be named appropriately the "Water Conservation Act" and should include a goal or policy statement that clearly establishes a direction for our administrative agencies who have the responsibility to manage and conserve the state's water.