

Approved February 20, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

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

3:30 ~~x~~m./p.m. on February 13, 1986 in room 526-S of the Capitol.

All members were present except:
Representative Barr
Representative Roe

Committee staff present:
Ramon Powers, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:
Tom Stiles, Kansas Water Office
David Pope, Chief Engineer-Director, Division of Water Resources
Kenneth F. Kern, Executive Director, State Conservation Commission
Marsha Marshall, Kansas Natural Resource Council
(Written testimony only)
William Layher, Kansas Fish and Game Commission
(Written testimony only)
Clark Duffy, Assistant Director, Kansas Water Office

Chairman Fox called the meeting to order and called attention to fiscal notes re: House Bill 2722, which had been distributed. (See Attachment 1)

There were no objections to the minutes of February 4 and February 5, so they stand adopted.

House Bill 2722--State water plan; minimum desirable streamflows.

Tom Stiles, representing the Kansas Water Office, testified in support of the bill. He named the nine additional streams which the Kansas Water Office had recommended for minimum desirable streamflow values. Mr. Stiles named the state agencies which worked together as a Technical Advisory Committee to determine the basis of these flows. He said that among the considerations in setting the flow recommendations were the hydrology of the streams, fishery needs, water quality impacts, water rights, and existing interstate compacts. (See Attachment 2) Discussion concerning some of the streams involved, locations of gaging stations, and appropriation rights, followed.

David Pope, the Chief Engineer, stated that the Division of Water Resources was satisfied with the process used and consensus of opinion reached by the water related agencies which set the minimum desirable streamflow values. He explained in detail the responsibilities of his office in administering this legislation if it is passed. (See Attachment 3)

Written testimony in support of the bill was submitted by Marsha Marshall of Kansas Natural Resource Council (See Attachment 4) and by William Layher of the Kansas Fish and Game Commission. (See Attachment 5)

House Bill 2720--State water plan; resource planning.

Clark Duffy of the Kansas Water Office, said that this bill, which would amend the existing State Water Resources Planning Act, was requested by the Kansas Water Office with the approval of the Kansas Water Authority. He explained the changes that the bill would make:

1. It would transfer an existing program that is administered by the State Water Office to the State Conservation Commission.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on February 13, 1986.

2. It would implement portions of the state water plan--specifically those requirements related to the conditions under which the state would purchase additional water supply storage from the federal government. (See Attachment 6) Several questions related to the State Conservation Commission followed.

Ken Kern represented the State Conservation Commission with favorable testimony. He noted that the proposed legislation would not require additional operation funds or staff to implement. (See Attachment 7) In response to questions, he said that the State Conservation Commission and conservation districts do not have power of eminent domain, but the watershed districts do have for flood control purposes. He explained that the conservation districts do not build flood control structures, while the watershed districts do.

House Bill 2721--State water plan; storage act.

Clark Duffy represented the State Water Office. He presented two technical amendments to the bill for the committee's consideration. He stated that this bill provided a number of amendments to the existing state water marketing program. He gave background information and details of the proposed amendments. (See Attachment 8) An in-depth discussion of the fiscal elements of the bill followed.

The meeting was adjourned at 4:57 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on February 18, 1986 at 3:30 p.m. in Room 526-S.

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. 2722 by Committee
on Energy and Natural Resources

In accordance with K.S.A. 75-3715a, the following fiscal note concerning House Bill No. 2722 is respectfully submitted to your committee.

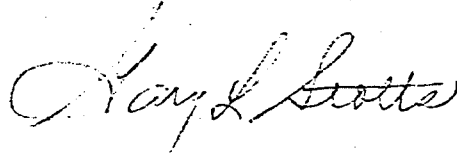
House Bill No. 2722 implements, in part, the Minimum Desirable Streamflow subsection of the State Water Plan by establishing minimum desirable streamflow standards for the following streams: Saline, Smoky Hill, Medicine Lodge, Chikaskia, Big Blue, Little Blue, Republican, Delaware, and Mill Creek. Maintenance of streamflow standards for these streams has fiscal implications for both the Kansas Water Office and the Division of Water Resources in the State Board of Agriculture.

Monitoring flows in the affected streams would require that the Kansas Water Office install four new gaging stations and modify five existing gaging stations. One-time installation and modification costs for FY 1987 would total approximately \$46,256. Annual operating expenses also would be incurred, estimated at \$39,344 for FY 1987. The U.S. Geological Survey would directly finance one-half of these expenditures through a cooperative agreement between the USGS and the Kansas Water Office. State General Fund expenditures by the Kansas Water Office would be approximately \$42,800 in FY 1987 and approximately \$20,000 in subsequent fiscal years. The Governor's Investment Budget recommendations include \$43,000 for this purpose in FY 1987.

It is estimated that \$55,000 would be required for the Board of Agriculture to protect minimum desirable streamflows on these additional streams, and to perform the additional analysis necessary on applications to appropriate water in the affected basins. The amount covers salary and other costs involved with 1.5 additional positions, including a hydrologist for the central office and a half-time civil engineer for the Stockton field office. The amount is included in the Governor's Investment Budget.

Attachment 1

Any expenditures resulting from passage of House Bill No. 2722, other than those identified above to be made directly by the U.S. Geological Survey, would be from the State General Fund and would be in addition to amounts contained in the FY 1987 Governor's Budget Report.



Gary L. Stotts
Acting Director of the Budget

GLS:JJ:sr

Testimony on H. B. 2722

Minimum Desirable Streamflows

Before the

House Energy and Natural Resources Committee

Presented by the
Kansas Water Office

February 13, 1986

Attachment 2

House Energy and Natural Resources 2/13/86

Minimum Desirable Streamflows

Over the past two years, as part of the State Water Plan, the Kansas Water Office and the Kansas Water Authority have recommended to the Legislature, minimum desirable streamflow values for nine streams in the state. The Legislature, in 1985, approved these minimum desirable streamflow values and thereby implemented the Minimum Desirable Streamflow subsection of the 1985 State Water Plan.

This year, again through the state water planning process, the Kansas Water Office has recommended minimum desirable streamflow values for nine additional streams. Those streams and their associated values are listed in H.B. 2722 on lines 294 to 420. They include the Saline, Smoky Hill, Medicine Lodge, Chikaskia, Big and Little Blue, Republican and Delaware rivers and Mill Creek. Their respective minimum streamflow values pertain to the reaches at and near the sites listed with each stream. Special conditions pertaining to certain minimum desirable streamflow values are described on lines 439 to 447.

The basis of these flows originated with the work and negotiations of a Technical Advisory Committee composed of the Kansas Water Office, the Division of Water Resources, the Department of Health and Environment and the Kansas Fish and Game Commission. Negotiations were conducted on two occasions in September of 1985. Among the considerations in setting these flow recommendations were the hydrology of the streams, fishery needs, water quality impacts, water rights and existing interstate compacts.

In October of 1985, the Kansas Water Office conducted three public meetings in the Smoky Hill-Saline, the Lower Arkansas and the Kansas-Lower Republican basins to solicit public concerns over the set of minimum desirable streamflow recommendations. No major concerns were expressed by the public at these meetings or at the State Water Plan public hearings in November. In December, the Kansas Water Authority approved the streamflows as recommended to be part of the State Water Plan.

The Kansas Water Office believes the streamflow recommendations listed in H.B. 2722 represent an equitable tradeoff of the various needs of water in the associated streams and supports this bill.

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

TO HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HOUSE BILL NO. 2722
February 13, 1986

Chairman Fox and Members of the Committee, thank you for the opportunity to comment on House Bill No. 2722 pertaining to the establishment of minimum desirable streamflows for several rivers and streams as listed in the bill.

The Division of Water Resources, Kansas State Board of Agriculture, has had an opportunity to provide input into the development of the proposed minimum desirable streamflows through an interagency technical committee working closely with the Kansas Water Office. The proposal for minimum desirable streamflow standards on the nine new stream reaches contained in House Bill No. 2722 is the result of extensive discussions between the water related agencies and has resulted in the best consensus of opinion between those agencies, taking into consideration extensive public input at the public meetings and hearings, as to what those minimum desirable streamflows should be. The Division is satisfied with the process that took place in order to set those minimum desirable streamflow values which are being brought before the legislature for approval this year.

If the legislature enacts legislation establishing these minimum desirable streamflows, it would be the responsibility of the Chief Engineer to withhold from appropriation that amount of water deemed necessary to establish and maintain for the identified watercourse the desired minimum streamflow. In other words, our office would be required to determine whether or not there was sufficient water available for appropriation in excess of the amount of water deemed necessary to satisfy the existing senior water rights and the minimum

Attachment 3

desirable streamflow requirements. In those cases where additional water is not available, additional permits for the appropriation of water would not be granted. If water is available a significant portion of the time, new appropriations would be granted, however, these appropriation rights would be junior to the minimum desirable streamflow requirements. Any such junior appropriation would be subject to regulation during periods of low flow and would not be allowed to divert water when the minimum desirable streamflow requirements were not being satisfied. In some cases, groundwater withdrawals from wells in the alluvial aquifer along streams can significantly affect the streamflow. Therefore, it will be necessary for us to analyse the effect of new wells on these streamflow requirements in order to determine whether new wells should be allowed, and if so, at what distance to the stream.

These proposed minimum desirable streamflows would not affect the holders of existing senior water rights with a priority date on or before April 12, 1984, provided they are operating in compliance with the conditions of their permits during times of streamflow administration.

Thank you very much. I would be happy to answer any questions the Committee might have.

Kansas Natural Resource Council

To: Members of the House Energy and Natural Resources Committee
Concerning HB 2722, minimum streamflow

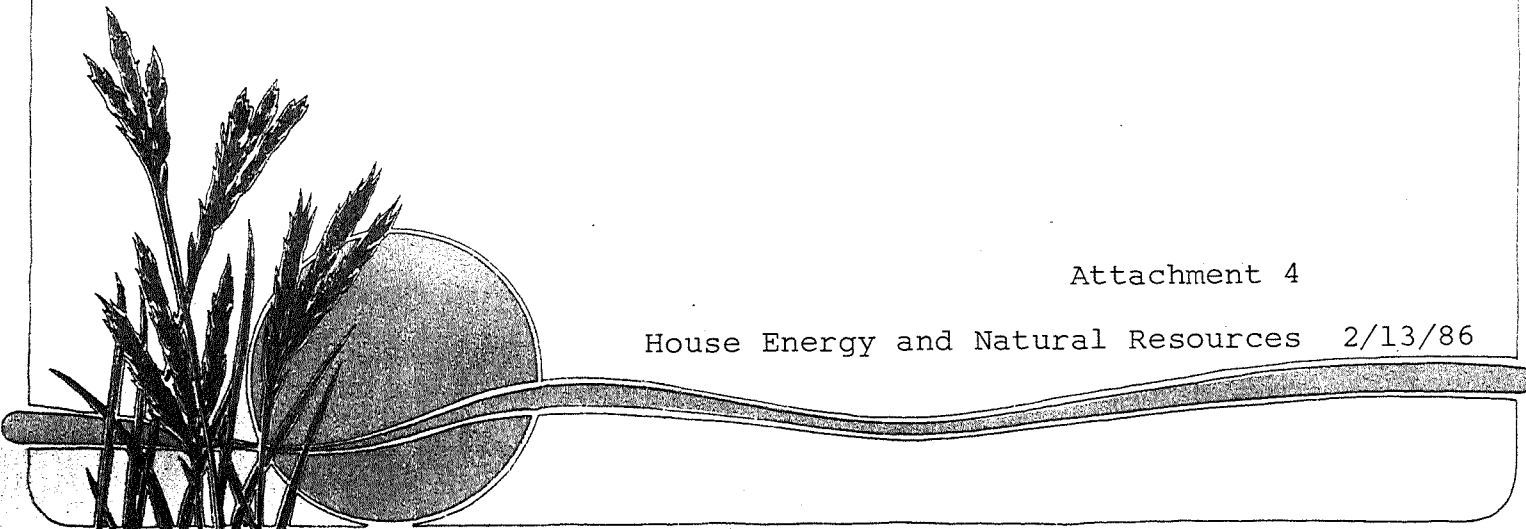
From: Marsha Marshall

February 13, 1986

As in the past, KNRC strongly supports minimum streamflow standards in Kansas, and we encourage your approval of the standards for watercourses listed in HB 2722.

Providing for minimum streamflows recognizes the inherent value of rivers and streams apart from their capacity to meet consumptive uses. In addition, minimum streamflows recognize the value of instream flows for wildlife, fish, recreation, and aesthetic purposes.

In our view, setting minimum streamflow standards ranks as one of the highest achievements of the water planning process. We urge your passage of this legislation.



Attachment 4

House Energy and Natural Resources 2/13/86

STATE WATER PLAN/MINIMUM DESIRABLE STREAMFLOWS
TESTIMONY PRESENTED TO THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
by the
KANSAS FISH AND GAME COMMISSION
February 13, 1986

The Kansas Fish and Game Commission endorses House Bill No. 2722. The flow values that appear in this bill are the result of a tremendous amount of inter-agency cooperation, flow needs assessments and public review and comment. We appreciate our opportunity to provide input and in assisting the state in proper water management for the benefit of fish and wildlife.

This bill includes flow standards for nine streams adopted over the previous two legislative sessions along with recommendations for nine new ones. We support continuation of all the previously adopted levels along with the endorsement of minimum desirable streamflows for the nine new streams.

We commend the Kansas Water Office and the Kansas Water Authority for their persistence and dedication to this section of the State Water Plan. It is an exhaustive task to gather pertinent information from sister water agencies, mold a diversity of opinions and recommendations into a product that is acceptable to all the principle decision makers involved and yet temper the whole effort with desires of a broad spectrum of public interest. Each specific monthly flow level you see for each stream is the product of biological and hydrological research, intensive negotiation sessions between state agencies and considerations for numerous and related water issues. These final monthly flow values reflect a compromise from all the water agencies involved. No one gained everything they desired but everyone can accept and support the results. The primary reason for this is that we feel that in most cases, these flows will provide the necessary protection for the fisheries and other wildlife that they are designed to protect, yet remain practical enough to allow proper administration.

Attachment 5

House Energy and Natural Resources 2/13/86

**Testimony on House Bill 2720
by the Kansas Water Office**

Transfer of "Assistance for Payments of Land Rights" Program

The Kansas Water Office currently administers a program which provides financial assistance for payment of land rights for certain water development projects. This program is managed in context with the state's overall watershed development program. The State Conservation Commission currently administers all other watershed programs dealing with financial assistance. Intent of these amendments is to transfer the administration of this existing program from the Kansas Water Office to the State Conservation Commission.

Requiring Contracts Prior to Purchase of Storage

Current law requires any existing or proposed reservoir to be included in the Table of Reservoirs or Watersheds contained in K.S.A. 82a-938 and K.S.A. 82a-939 prior to the state contracting for the purchase of water supply storage from such reservoirs. The State Water Plan recommends that these tables be repealed and that the state not be authorized to purchase additional water supply storage from reservoirs unless the reservoir is identified in the State Water Plan and some responsible person has contracted for the use of a substantial portion of the storage. House Bill 2720 would implement this recommendation in the State Water Plan.



State Conservation Commission

Telephone (913) 296-3600

109 S.W. 9th Street, Room 300

Topeka, Kansas 66612

TESTIMONY BY
KENNETH F. KERN
EXECUTIVE DIRECTOR

House Energy and Natural Resources
House Bill 2720
February 13, 1986

The State Conservation Commission has two state assisted flood control programs in operation: The State Assistance in Watershed Dam Construction and the Multipurpose Small Lakes Programs. We work with these public corporations and are familiar with the benefit areas. This proposed program can easily become a part of the Commission's responsibility.

I see no major effect on the workload of the agency, except in the initial preparation of rules and regulations and the necessary application forms. Limited travel will be required for on site evaluation of the application. However, travel can be incorporated with other planned travel thus eliminating special trips.

The proposed legislation would not require additional operation funds or staff to implement.

The State Conservation Commission recommends favorable consideration be given to House Bill - 2720.

Attachment 7

House Energy and Natural Resources 2/13/86

Testimony on

H.B. 2721

by

Kansas Water Office

House Committee on Energy and Natural Resources

February 1986

Attachment 8

House Energy and Natural Resources 2/13/86

BACKGROUND

State Water Plan Storage Act of 1974

Created Water Marketing Program which authorized the Kansas Water Office to contract for the sale of reservoir water with municipal and industrial users. The state currently has water supply storage in nine reservoirs.

1983 Amendments to Program

- Established specific procedures for contracting.
- Required public interest determination prior to contract approval.
- Established specific formula for program cost recovery.
- Created the "Development Fund."

H.B. 2721

- 1985 State Water Plan
Assurance Program
Water Marketing Program

Discussed public meetings and hearings during 1984 and approved by Kansas Water Authority December 1984. Kansas Water Authority approved proposed legislative changes in December of 1985.

- Program Administration
 - "Capped" Contracts - Those contracts prior to 1983.
 - Administrative action to reduce repayments to the federal government.

Discussed with customers; review and recommendations by Baker, Eck and Davis, Inc., Consultants; reviewed and approved by the Kansas Water Authority in December of 1985.

PROPOSED AMENDMENTS

(From State Water Plan)

**Volume of Water Contracted to be
Based on Graduated Use Schedule** Line 123 to 141

Allows municipal and industrial users and state to do better long-range planning.

**Allow for Contracting in Advance
of Availability of Water** Line 189 to 200

Companion to H.B. 2720. Contracts would be required before the state can purchase additional storage. Would also allow state to issue revenue bonds (H.B. 2704) for purchase of storage, if desirable.

**Require Potential Purchaser to
Have Conservation Plans** Line 344 to 345

Companion to H. B. 2703.

**Expands Eligible Uses of Development Fund
and Provides for Interest to be Retained
Thereon** Line 401 to 405
and 411-416

Intent is to provide legislative options to finance additional storage purchases. Use as a savings account or bond account (H.B. 2704).

PROPOSED AMENDMENTS
Financial Administration

Pricing Formula

Capital Cost Component

Line 245

Interest is computed in component 2, therefore, should not be included here. Administrative action to reduce payment on Milford and Perry reservoirs will reduce price.

Interest on General Fund Component

Line 254-255

Allows customers to receive credit for money they pay to the "Development Fund" when calculating the debt owed to the State General Fund.

Deposit of Receipts

Line 389-397

Allows receipts to be used to repay actual costs to the State General Fund first, then remainder of the receipts will be deposited to the "Development Fund." This will eliminate the adverse impact of the "Capped" contracts on the State General Fund and the marketing customer. All shortfalls will be a loss in receipts to the "Development Fund."

Apply Changes to 1986 Rate

Line 394-395

The 1986 rate for water has been established at 16.36 cents per 1,000 gallons. The intent is to retroactively apply the new 1986 rate which would be established by the amendments contained in this bill. The new rate would be 14.29 cents per 1,000 gallons.

PROPOSED AMENDMENTS
Clarifying and Technical

Definition of Capital Cost

Line 49-50

The intent is to clarify that capital cost is defined as the principle and interest payment owed to the federal government. This component does not include interest paid on advances from the State General Fund.

Act That Does Not Apply to Assurance Program

Line 75-75;
377-378; 423

Waters stored in state conservation water supply storage which would be dedicated to the Assurance Program should not apply to the provisions of this act.

Price Calculations Based on Preceding Calendar Year

Line 163,
165, 248-249

Intent is to calculate rate on the basis of the preceding calendar year's actual experience rather than estimates of cost and usage. This will allow for an accurate determination of the rate.

Repealer

Line 225-236

This section was only applicable during the 1983 legislative session.

Amount of Water Used Under Contract

Line 257-277

Intent is to clarify that in calculating the rate usage shall be based on 50 percent of the amount under contract or the actual amount of water withdrawn for each contract instead of the sum of these amounts from all contracts.

Transmittal of Information

Line 299-319

Intent is to require transmittal of information to the Kansas Water Authority at the time an applicant requests to negotiate a contract rather than to transmit such information at the time the applicant files the application. Under current law, applications can remain on file for up to 13 years before the applicant is required to request contract negotiations.

Procedures to Withdrawal Water

Line 355-356

Intent is to clarify that certain contracts have specific procedures for withdrawal in addition to the stipulations in the current law.

**Authorization for Expenditures from
Development**

Line 375-376

Intent is to allow expenditures from this fund for the purposes of acquiring state water supply storage in impoundments deemed necessary to implement the State Water Plan. Current law requires impoundments to be specifically named in the State Water Plan.

**Deposits of Funds for Administering
the Act**

Line 385

The intent is to clarify that funds which are received for administering and enforcing the act shall be deposited in the State Treasury. Current law does not include the deposit of funds collected for administering the act.

KANSAS

