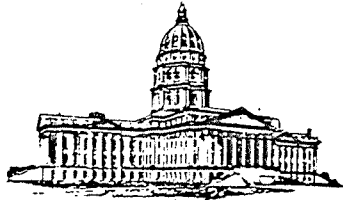


JIM PATTERSON
REPRESENTATIVE, EIGHTH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
VICE CHAIRMAN: ENERGY AND NATURAL
RESOURCES
MEMBER: ASSESSMENT AND TAXATION

SUB-COMMITTEE REPORT

The Sub-Committee appointed by the Chairman of Energy & Natural Resources to consider coal in southeast Kansas has had three sub-committee meetings, one conference discussion and one on site visitation. We have had the following appear before our committee:

Representative Lawrence Wilbert

Representative Sam Roper

Joyce Stover
Executive Director
Mined Land Office

George M. Barberich
Vice President
Alternate Fuels, Inc.
Arma, Kansas

John Spurling
Mined Land Reclamation Board
Fort Scott, Kansas

David Untermoelen
Alternate Fuels
Pittsburg, Kansas

William Giles
United Mine Workers
Pittsburg, Kansas

Russell Stilwell
United Mine Workers
Boonville, Ind.

Terry E. Denker
KS Dept. of Economic Development
Topeka, KS

The Sub-Committee has examined HB 2293 and HB 2041. At this time it appears that neither of these two bills will serve a useful purpose.

The Sub-Committee does strongly urge that "Coal in Southeast Kansas" be a subject for interim study. It is also very strongly recommended that the committee participate in on site inspections in southeast Kansas and, additionally, have at least one day of hearings in that area.

An on site inspection readily reveals that miners in strip mining in southeast Kansas no longer wear lanterns on their helmets, carry a pick and shovel, or have coal dust on their faces. Those miners are primarily heavy dirt moving equipment operators, drag line operators, truckers hauling 20 tons or more, mechanics and paper shufflers.

A study of the economic picture, no doubt, would consider the following:

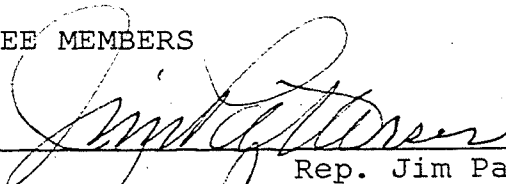
1. Five counties in southeast Kansas have minable coal; namely, Bourbon, Cherokee, Crawford, Labette and Linn.
2. Southeast Kansas coal has a higher BTU per ton than Wyoming coal, with which it is now competing.
3. Freight rates from Wyoming may continue to increase to make Kansas coal competitive.
4. Kansas coal has more sulphur to contend with than Wyoming coal.
5. A relatively new process called "fluidized-bed combustion" for utilities has claims it will eliminate the sulphur problem and maybe acid rain.
6. It has been questioned that the process will continue to function in this fashion successfully.
7. Time consumed and cost of a permit that will run in excess of \$150,000 to obtain.
8. The various tax and fees, such as the Black Lung tax, the per ton tax for office surface mining, the Kansas Mine Board.
9. The premium cost of the bond required on the reclamation.
10. Workmen's Compensation laws that may need modification to determine if they are designed more for deep shaft miners as compared to surface mining.
11. The number of Kansas Departments (Fish & Game, Health & Environment, etc.) that are involved in the strip mining.
12. The number of federal laws and agencies that may not serve a useful purpose.

The Sub-Committee was told that a small amount of Kansas coal could be blended with Wyoming coal without requiring "scrubbers" or change in the boilers. The Sub-Committee was urged to recommend a law that would require a percentage mix. Also, it was urged that we require state institutions, such as prisons, universities, etc., to use Kansas coal.

Universities and technical institutes in the eastern coal mining states do extensive research in coal, as well as certain foreign countries, such as Britain and South Africa. It is likely that China will open vast new coal reserves in the near future. The world coal supply is tremendous.

Since marketing of southeast Kansas coal is likely to be successful within a 100 to 200 mile radius, the Sub-Committee suggests that an appropriation to Pittsburg State University be made for the purpose of a market study for southeast Kansas coal.

SUB-COMMITTEE MEMBERS



Rep. Jim Patterson



Rep. Kerry Patrick



Rep. Fred Rosenau

ENERGY & NATURAL RESOURCES SUB-COMMITTEE

RE: HB 2703

CHAIRMAN: Representative Kent Ott

COMMITTEE MEMBERS:

Representative Shore
Representative Patrick
Representative Fry
Representative Charlton

The sub-committee met on several different dates to discuss HB 2703. During deliberations the committee was presented a new draft of HB 2703 by the Kansas Water Office. The committee took the new draft, as presented by the Water Office, and made many clean-up amendments. Due to the significant change from the original bill, the sub-committee asked for a substitute bill and recommended the enclosed draft to the full committee unanimously.

PROPOSED SUBSTITUTE FOR HOUSE BILL NO. 2703
By Committee on Energy and Natural Resources

AN ACT concerning water; relating to water conservation; amending K.S.A. 74-2608, 74-2622, 82a-711, 82a-927, 82a-1311a and 82a-1503 and repealing the existing sections.

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

Section 1. K.S.A. 74-2608 is hereby amended to read as follows: 74-2608. The Kansas water office shall:

~~(1)~~ (a) Collect and compile information pertaining to climate, water and soil as related to the usage of water for agricultural, industrial and municipal purposes and the availability of water supplies in the several watersheds of the state, and, in so doing, the office shall ~~first~~ collect and compile the information obtainable from other agencies, instrumentalities of the state, political subdivisions of the state and the federal government.

~~(2)~~ ~~Work out~~ (b) Develop a state plan of water resources management, conservation and development for water planning areas as determined by the office, and cooperate with any agency or instrumentality of the state or federal government now or hereafter engaged in the development of plans or having developed plans affecting any such area of the state.

(c) Develop and maintain guidelines for water conservation plans and practices. Such guidelines shall be technologically and economically feasible for each water user to implement and shall: (1) Be designed to curtail the waste of water; (2) consider the use of other water if the use of freshwater is not necessary; (3) not require curtailment in water use which will not benefit other water users or the public interest; (4) not result in the unreasonable deterioration of the quality of the waters of the state; (5) consider the reasonable needs of the

water user at the time; (6) not conflict with the provisions of the Kansas water appropriation act and the state water planning act; (7) be limited to practices of water use efficiency except for drought contingency plans for municipal users; and (8) take into consideration drought contingency plans for municipal and industrial users. When developing such guidelines, the Kansas water office shall consider the cost to benefit ratio effect of any plan.

Sec. 2. K.S.A. 74-2622 is hereby amended to read as follows: 74-2622. (a) There is hereby established within and as a part of the Kansas water office the Kansas water authority. The authority shall be composed of 16 members of whom 11 shall be appointed as follows: (1) Eight members shall be appointed by the governor for terms of four years, except that of the first members of the authority, two members shall be appointed for terms commencing July 1, 1981, and ending on May 1, 1982, two members shall be appointed for terms commencing on July 1, 1981, and ending on May 1, 1983, two members shall be appointed for terms commencing on July 1, 1981, and ending on May 1, 1984, and two members shall be appointed for terms commencing on July 1, 1981, and ending on May 1, 1985. The governor shall designate the term for which each of the members first appointed shall serve. Of the members appointed under this provision one shall be a representative of large municipal water users, one shall be representative of small municipal water users, one shall be a board member of a western Kansas groundwater management district, one shall be a board member of a central Kansas groundwater management district, one shall be a member of the Kansas association of conservation districts, one shall be representative of industrial water users, one shall be a member of the state association of watershed districts, and one shall be representative of the general public. The member who is representative of large municipal water users shall be appointed from three nominations submitted by the Kansas league of Kansas municipalities. The member who is representative of small

municipal water users shall be appointed from three nominations submitted by the Kansas rural water districts' association. The member who is representative of a western Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 1, 3 and 4. The member who is representative of a central Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 2 and 5. The member who is representative of industrial water users shall be appointed from three nominations submitted by the Kansas association of commerce and industry. The member who is representative of the state association of watershed districts shall be appointed from three nominations submitted by the state association of watershed districts. The member who is representative of the Kansas association of conservation districts shall be appointed from three nominations submitted by the state association of conservation districts. If the governor cannot make an appointment from the original nominations, the nominating authority shall be so advised and, within 30 days thereafter, shall submit three new nominations; (2) one member shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and such member shall serve at the pleasure of the governor and shall be the chairperson of the authority. Members appointed by the governor shall be selected with special reference to training and experience with respect to the functions of the Kansas water authority, and no not more than five of such members shall belong to the same political party; (3) one member shall be appointed by the president of the senate for a term of two years commencing on July 1, 1981; and (4) one member shall be appointed by the speaker of the house of representatives for a term of two years commencing on July 1, 1981. The state geologist, the chief engineer of the division of water resources of the state board of agriculture, the director

of the division of environment of the department of health and environment, the director of the Kansas water office and the director of the agricultural experiment stations of Kansas state university of agriculture and applied science shall be nonvoting members ex officio of the authority. The director of the Kansas water office shall serve as the secretary of the authority.

(b) In the case of a vacancy in the appointed membership of the Kansas water authority, the vacancy shall be filled for the unexpired term by appointment in the same manner that the original appointment was made. Appointed members of the authority attending regular or special meetings thereof shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(c) The Kansas water authority shall:

(1) Consult with and be advisory to the governor, the legislature and the director of the Kansas water office.

(2) Review plans for the development, management and use of the water resources of the state by any state or local agency.

(3) Make a study of the laws of this state, other states and the federal government relating to conservation and development of water resources, appropriation of water for beneficial use, flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream and stream pollution for the purpose of determining the necessity or advisability of the enactment of new or amendatory legislation in this state on such subjects.

(4) Make recommendations to other state agencies and political subdivisions of the state for the coordination of their activities relating to flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream, stream pollution and groundwater studies.

(5) Make recommendations to each regular session of the legislature and to the governor at such times as the authority considers advisable concerning necessary or advisable legislation

relating to any of the matters or subjects which it is required by this act to study for the purpose of making recommendations to the legislature. All such recommendations to the legislature shall be in drafted bill form together with such explanatory information and data as the authority considers advisable.

(6) Approve, prior to submission to the legislature by the Kansas water office or its director, (A) any contract entered into pursuant to the state water plan storage act, (B) any amendments to the state water plan or the state water planning act and (C) any other legislation concerning water resources of the state.

(7) Approve, before they become effective, any policy changes proposed by the Kansas water office concerning the pricing of water for sale pursuant to the state water plan storage act.

(8) Approve, before it becomes effective, any agreement entered into with the federal government by the Kansas water office.

(9) Request any agency of the state, which shall have the duty upon that request, to submit its budget estimate pertaining to the state's water resources and any plans or programs related thereto and, upon the authority's receipt of such budget estimate, review and evaluate it and furnish recommendations relating thereto to the governor and the legislature.

(10) Approve, prior to adoption by the director of the Kansas water office, rules and regulations authorized by law to be adopted.

(11) Approve, prior to adoption by the director of the Kansas water office, guidelines for conservation plans and practices developed pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

(d) The Kansas water authority may appoint citizens' advisory committees to study and advise on any subjects upon which the authority is required or authorized by this act to study or make recommendations.

(e) The provisions of the Kansas sunset law apply to the Kansas water authority established by this section, and the authority is subject to abolition under that law.

Sec. 3. K.S.A. 82a-711 is hereby amended to read as follows: 82a-711. (a) If a proposed use neither ~~will impair~~ impairs a use under an existing water right nor prejudicially and unreasonably ~~affeet~~ affects the public interest, the chief engineer shall approve all applications for such use made in good faith in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations except that the chief engineer shall not approve any application submitted for the proposed use of fresh water in any case where other waters are available for such proposed use and the use thereof is technologically and economically feasible. Otherwise, the chief engineer shall make an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water.

(b) In ascertaining whether a proposed use will prejudicially and unreasonably affect the public interest, the chief engineer shall take into consideration:

(1) Established minimum desirable streamflow requirements;

(2) the area, safe yield and recharge rate of the appropriate water supply;

(3) the priority of existing claims of all persons to use the water of the appropriate water supply;

(4) the amount of each such claim to use water from the appropriate water supply; and

(5) all other matters pertaining to such question.

(c) With regard to whether a proposed use will impair a use under an existing water right, impairment shall include the unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit. Any

person aggrieved by any order or decision by the chief engineer relating to that person's application for a permit to appropriate water may appeal to the district court in the manner prescribed by K.S.A. 82a-724, and amendments thereto.

(d) The chief engineer may require an applicant for a permit to appropriate water to adopt and implement conservation plans and practices. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. Prior to approval of an application, the chief engineer, in consultation with the director of the Kansas water office if requested by the applicant, shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

Sec. 4. K.S.A. 82a-927 is hereby amended to read as follows: 82a-927. The long-range goals and objectives of the state of Kansas for management, conservation and development of the waters of the state, are hereby declared to be:

~~(1)~~ (a) The development, to meet the anticipated future needs of the people of the state, of sufficient supplies of water for beneficial purposes;

~~(2)~~ (b) the reduction of damaging floods and of losses resulting from floods;

~~(3)~~ (c) the protection and the improvement of the quality of the water supplies of the state;

~~(4)~~ (d) the sound management, both public and private, of the atmospheric, surface, and groundwater supplies of the state;

~~(5)~~ (e) the prevention of the waste of the water supplies of the state;

~~(6)~~ (f) the prevention of the pollution of the water supplies of the state;

~~(7)~~ (g) the efficient, economic distribution of the water supplies of the state; and

~~(8)~~ (h) the sound coordination of the development of the

water resources of the state with the development of the other resources of the state-; and

(i) the conservation of the water resources of the state in a technologically and economically feasible manner.

Sec. 5. K.S.A. 82a-1311a is hereby amended to read as follows: 82a-1311a. (a) The date of receipt of each application submitted pursuant to K.S.A. 82a-1310a, and amendments thereto, shall be stamped thereon and authenticated as directed by the director. Applicants shall notify the director in writing that they wish to commence negotiations for a contract to withdraw and use water. Within 10 days after the completion of negotiations for a contract to withdraw and use water, the director shall transmit to the chairperson of the authority a copy of the proposed contract.

(b) In order to determine whether a proposed contract for the sale of water from the state's conservation water supply capacity is in the interest of the people of the state of Kansas and whether the benefits to the state for approving the contract outweigh the benefits to the state for not approving the contract, the authority shall consider all matters pertaining to such questions, including:

(1) The present and future water supply needs of the applicant;

(2) any current beneficial uses being made of the noncontracted water proposed to be diverted;

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

(4) the economic, environmental, public health and welfare and other benefits or adverse impact of approving the contract;

(5) alternative sources of water available to the applicant;

(6) the preliminary plan of design, construction and operation of any works or facilities used in conjunction with carrying the water to its point of use;

(7) whether the proposed purchase is consistent with the

state water plan approved by the legislature;

(8) the date of receipt of the application to contract for withdrawal and use of water; and

(9) minimum streamflow requirements.

(c) The authority may require an applicant for a contract for the sale of water from the state's conservation water supply capacity to adopt and implement conservation plans and practices. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. Prior to approval of an application, the director of the Kansas water office, in consultation with the chief engineer, shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

~~(e)~~ (d) The authority may approve or reject the proposed contract and may recommend purchase of water from an alternative source. The authority may approve a contract for a smaller amount of water than requested and may approve a contract upon such terms, conditions and limitations as it deems necessary for the protection of the public interest of the state as a whole.

Sec. 6. K.S.A. 82a-1503 is hereby amended to read as follows: 82a-1503. (a) Any person desiring to make a water transfer shall file, with the chief engineer, an application in the form required by rules and regulations adopted by the chief engineer. If the application is found to be insufficient to enable the panel to determine the source, nature and amount of the proposed transfer, it shall be returned for correction or completion or for any other necessary information. This act shall not be construed as to exempt the applicant from complying with the provisions of the Kansas water appropriation act or the state water plan storage act, whichever is applicable.

(b) No water transfer shall be approved unless the applicant has adopted and implemented conservation plans and practices. Such plans and practices shall be consistent with the

guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. Prior to approval of an application for a water transfer, the panel shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

{b} (c) Within 60 days of receipt of a sufficient application for a water transfer pursuant to this act, the chief engineer shall convene and conduct a hearing thereon. At such hearing, the panel shall consider the application and shall take testimony, hear oral arguments and accept all other evidence offered to determine whether to approve the proposed water transfer.

If it is determined to be in the best interest of the state, the chief engineer may convene and conduct such a hearing within 60 days of receipt of (1) an application to appropriate water pursuant to the Kansas water appropriation act or (2) a proposed contract for the sale of water from the state's conservation storage water supply capacity even though such diversion and transportation of water is not a water transfer as defined by K.S.A. 82a-1501, and amendments thereto.

{e} (d) The panel shall consist of the chief engineer, the director and the secretary or the director of the division of environment of the department of health and environment if designated by the secretary. The chief engineer shall serve as the chairperson of the panel. All actions of the panel shall be taken by a majority of the members thereof. The panel shall have all powers necessary to conduct the hearings, make its findings and ~~effeetuate~~ implement the provisions of this act. The hearing shall be conducted in a prudent and timely manner.

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

(1) Any current beneficial use being made of the water

proposed to be diverted, including minimum desirable streamflow requirements;

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

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

(4) alternative sources of water available to the applicant and present or future users for any beneficial use;

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

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

~~(7)~~ (6) conservation plans and practices or the need for such plans and practices of persons protesting or potentially affected by the proposed transfer. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

~~(e)~~ (f) Any person shall be permitted to appear and testify at any such hearing upon the terms and conditions determined by the chief engineer.

~~(f)~~ (g) Notice of any such hearing shall be published in the Kansas register. Such notice shall be published at least 15 days prior to the date of the hearing.

~~(g)~~ (h) The record of the hearing and findings of fact shall be public records and open for inspection at the office of the chief engineer. The panel shall assess to the applicant all costs of obtaining a court reporter for the hearing and transcribing the transcript of the hearing. Certified

transcripts of the hearing shall be provided at the expense of those requesting same. A transcript shall be provided to the chairperson of the authority.

New Sec. 7. Each member of a water assurance district shall adopt conservation plans and practices for such member. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto. Prior to entering into a contract with an assurance district, the director of the Kansas water office, in consultation with the chief engineer, shall determine whether such plans and practices are consistent with the guidelines for conservation plans and practices adopted by the Kansas water office.

Sec. 8. K.S.A. 74-2608, 74-2622, 82a-711, 82a-927, 82a-1311a and 82a-1503 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.