

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Merrill Werts at
Chairperson

8:00 a.m./p.m. on MARCH 26, 1986 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

- Ramon Powers - Research
- Don Hayward - Revisor
- Nancy Jones - Secretary

Conferees appearing before the committee:

- R. L. Chandler, Kansas River Alliance, and Water District #1, Johnson County
- Bill Henry, Kansas Engineering Society, Inc.
- Ken Kern, State Conservation Commission
- Joe Harkins, Kansas Water Office
- David Pope, Board of Agriculture, Water Resources
- Marsha Marshall, Kansas Natural Resource Council
- Tom Stiles, Kansas Water Office
- Ken Brunson, Fish & Game Commission

HB 2704 - Relating to large Reservoir projects

HB 2705 - Relating to a water assurance program

HB 2720 - Relating to the State Water Plan

Mr. Chandler testified that the Alliance supports the development of additional water storage. Interbasin transfers are acceptable provided there is assurance of an adequate water supply for users in the basins. Under the assurance program the users should expect to pay storage costs and the water district is willing to do this as should all districts. (Attachment A).

Bill Henry stated the Society is supportive of the water assurance program proposed in HB 2705. This concept should receive greater acceptance. A concern was expressed regarding the obligation of municipal and industrial water rights holders to participate in the assurance program. Mr. Henry suggested there is need for a specific directive giving authority to the Chief Engineer to prohibit withdrawal of assurance flows by users not members of the assurance district and consideration should be given to allow assurance users a voice in the development of reservoir plans. Mr. Henry asked the committee to reflect upon the fact that many users will not be paying for the benefits received with this program, as the assurance members do. It is felt more information on fiscal impact and water deliveries should be furnished for districts being formed. The Society feels eventually the state should assume part of the cost of this program as all citizens benefit. (Attachment B).

Ken Kern testified that programs proposed in HB 2720 can be handled by the Conservation Commission without additional operational expense or staff. (Attachment C).

HB 2703 Relating to water conservation

Joe Harkins testified this proposed legislation is part of the Conservation section of the State Water Plan. The bill establishes protection of the public interest as a long range goal in water conservation. (Attachment D).

Discussion was held to clarify intents and aspects of this proposed legislation as it relates to the Water Plan. Also, concern was expressed regarding the authority of the Chief Engineer.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S, Statehouse, at 8:00 a.m./~~p.m.~~ on MARCH 26, 1986

David Pope reviewed the four categories subject to the bill: water appropriations, contracting and marketing of water, water transfers and the water assurance program. He stated support of local entities will be essential to implementation of water conservation. The water district can be of great assistance to other entities and water users in preparation of conservation plans. The intent of HB 2703 appears to insure that all programs are consistent with conservation guide lines. (Attachment E).

Marsha Marshall testified the KNRC has not taken an official position on HB 2703 but proposed a change in language as follows: delete Section 4 (i) lines 264 - 266 to more accurately reflect public interests. It is felt by KNRC that present language is too limiting regarding public interests. (Attachment F).

HB 2722 - Relating to minimum desirable streamflow

Tom Stiles stated this proposed legislation recommends the addition of nine streams for minimum streamflow values. These streams were selected after a study was made regarding hydrology, fishery needs, water quality and future water right development. (Attachment G).

Ken Brunson testified that the Fish & Game Commission endorses this bill as the standards set out demonstrate sound and rational planning. The Commission urges a favorable recommendation of this proposal. (Attachment H).

Meeting adjourned. The next meeting will be March 27, 1986.

QUEST list
3/26/86

Bill Henry	Topeka	Ks Engineering Society
Leland E. Rolfe	Topeka	DWR-KSBA
Wayland Anderson	Topeka	DWR-KSBA
Tom Sules	Topeka	KWO
Bob Chandler	WDA#1 Co. Mission	Kaewas
Joe Harbans	TOPEKA	KWO
Ron Brunson	Pratt	Ks Fish & Game Com.
Ch Druffy	Topeka	KWO
CHARLES BELT	WICHITA	CHAMBER OF COMMERCE
Jan Johnson	Topeka	Budget Division
Kevin Davis	"	League of Ks Munic
Jerry Slaughter	Oswatimie	Ks Historical Group



KANSAS RIVER ALLIANCE

March 25, 1986

Chairman Merrill Werts and Members
Committee on Energy and Natural Resources
Kansas Senate

HOUSE BILLS 2704 & 2705
Testimony of
KANSAS RIVER ALLIANCE

The Kansas River Alliance is an organization of water users in the Kansas River Basin consisting of municipal water departments, rural water districts and industrial users. Members of the Alliance are:

City of Topeka	Board of Public Utilities,
City of Manhattan	Kansas City, Kansas
Northern Hills Rural	Bowersock Mills & Power Co.
Water District No. 4	City of Olathe
Water District No. 1	City of Wamego
of Johnson County	Kansas Power and Light Co.
City of Bonner Springs	City of Odgen
City of Rossville	City of Lawrence
City of Salina	

The Alliance supports these bills for the following reasons:

1. Future water supplies for the State depend upon the development of all feasible sources of water supply. We believe that the State should acquire and develop these sources as a part of the State Water Plan.
2. We understand that the Director of the Kansas Water Office has negotiated an agreement with the U.S. Army Corps of Engineers to purchase water supply storage in three reservoirs in which there is no water supply currently (Tuttle Creek, Melvern and Pomona) and additional storage in four other reservoirs (Elk City, Council Grove, John Redmond and Marion). It is our understanding that this additional 368,000 acre feet (119 billion gallons) of water storage can be purchased over the next ten years for the Corps of Engineers' original costs of approximately \$33,000,000.

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(A)

It is our understanding that this cost is based upon the original cost of these reservoirs. We feel that the acquisition of this additional water supply storage is vital to the future water supplies of Kansas.

3. The purchase of the additional storage in Tuttle Creek Reservoir is of direct benefit to the Kansas River basin water suppliers. A study conducted by the Kansas River Alliance indicates that the potential water supply storage in Tuttle Creek is necessary to provide future water demands for the Kansas River basin. The District recently participated in a drought exercise conducted by the Kansas Water Office. This exercise imposed a drought of 1950's magnitude upon current water demands. Results indicated serious water supply problems if such a drought should occur.

Studies indicate that with the addition of Tuttle Creek, the water supply storage in the existing reservoirs would provide adequate water supplies for the foreseeable future (year 2035).

The Kansas Water Office is continuing to study the water resources in the Kansas River basin using the available storage in all reservoirs as one unit. The Water District and Kansas River Alliance members are participating in these studies.

The estimated available storage in Tuttle Creek reservoir is 124,000 acre feet (40 billion gallons). We understand that the negotiated purchase price for this storage is \$6.5 million.

4. There is concern in the Kansas River basin over the proposed inter-basin transfer of water from Milford reservoir to the South Central Kansas Wholesale Water District (Wichita, Newton, McPherson, Hutchinson areas).

We do not oppose this transfer if we are "assured" that adequate supplies are available for Kansas River basin users.

House Bill 2704 provides the means to acquire additional water storage and a method to finance the acquisition of the storage.

We believe that revenue bond financing is a viable method of financing the acquisition of this additional water supply storage.

We do believe that whatever the method of financing, the State should acquire the additional water supply storage in the seven reservoirs over the ten-year acceptance period.

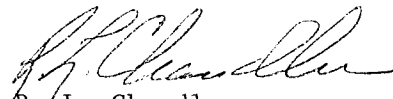
Chairman Merrill Werts & Members
Committee on Energy & Natural Resources
Page 3

House Bill 2705 provides for an assurance program to assure water supply storage equal to the acquired water rights, and approved appropriation applications of water users in a given basin.

The Alliance understands and agrees that Assurance District members will have to pay a fee for the assurance storage. It would seem logical that a Kansas River Assurance District would be largely responsible for the acquisition costs for storage in Tuttle Creek Reservoir.

We urge that you vote in favor of these bills.

Respectfully submitted,



R. L. Chandler
President

SW

WATER DISTRICT NO. 1 OF JOHNSON COUNTY



5930 Beverly — Mission, Kansas 66202
Mailing Address: P.O. Box 2921, Mission, Kansas 66201

Tel. (913) 722-3000

WATER DISTRICT NO. 1 OF JOHNSON COUNTY

TESTIMONY ON

HOUSE BILLS NOS. 2704 AND 2705

BEFORE THE

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

March 25, 1986

✓ Water District No. 1 of Johnson County urges your support of the subject bills for the following reasons:

1. We firmly believe that to assure future water supplies for Kansas residents every feasible source of water supply in the State should be acquired or developed as a part of the State Water Plan.
2. We understand that the Director of the Kansas Water Office has negotiated an agreement with the U.S. Army Corps of Engineers to purchase water supply storage in three reservoirs in which there is no water supply currently (Tuttle Creek, Melvern and Pomona) and additional storage in four other reservoirs (Elk City, Council Grove, John Redmond and Marion). It is our understanding that this additional 368,000 acre feet (119 billion gallons) of water storage can be purchased over the next ten years for the Corps of Engineers' original costs of approximately \$33,000,000. Based upon present day costs, we believe this is the "buy of the century."
3. The purchase of the additional storage in Tuttle Creek Reservoir is of direct benefit to the Kansas River basin water suppliers. A study conducted by the Kansas River Alliance indicates that the potential water supply storage in Tuttle Creek is necessary to provide future water demands for the Kansas River basin. The District recently participated in a drought exercise conducted by the Kansas Water Office. This exercise imposed a drought of 1950's magnitude upon current water demands. Results indicated serious water supply problems if such a drought should occur.

Studies indicate that with the addition of Tuttle Creek the water supply storage in the existing reservoirs would provide adequate water supplies for the foreseeable future (year 2035).

The Kansas Water Office is continuing to study the water resources in the Kansas River basin using the available storage in all reservoirs as one unit. The Water District and Kansas River Alliance members are participating in these studies.

The estimated available storage in Tuttle Creek reservoir is 124,000 acre feet (40 billion gallons). We understand that the negotiated purchase price for this storage is \$6.5 million, again an excellent buy.

4. There is concern in the Kansas River basin over the proposed inter-basin transfer of water from Milford reservoir to the South Central Kansas Wholesale Water District (Wichita, Newton, McPherson, Hutchinson areas).

We do not oppose this transfer if we are "assured" that adequate supplies are available for Kansas River basin users.

House Bill 2704 provides the means to acquire additional water storage and a method to finance the acquisition of the storage.

We strongly support the concept of revenue bond financing to acquire additional water supply storage. This District was acquired and expanded solely by the use of revenue bonds and revenues provided from water sales.

We do believe that whatever the method of financing, the State should acquire the additional water supply storage in the seven reservoirs over the ten-year acceptance period.

House Bill 2705 provides for an assurance program to assure water supply storage equal to the District's acquired water rights, and approved appropriation applications on the Kansas River.

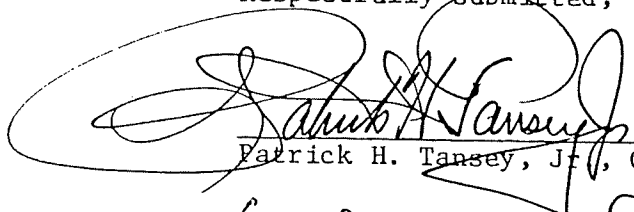
We understand and agree that the District will be required to pay a fee for this assurance storage. We feel that this is necessary if we want to protect adequate water supplies for the Kansas River basin from inter-basin transfer.

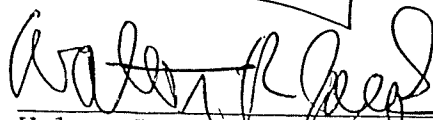
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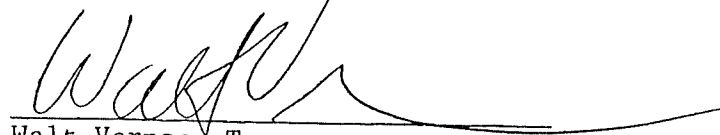
The District will participate in the formation of a Kansas River Basin Assurance District if this bill is passed.

We urge your support of these bills.

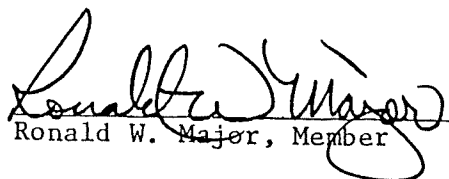
Respectfully submitted,


Patrick H. Tansey, Jr., Chairman

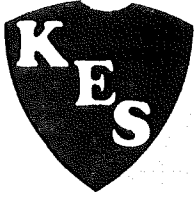

Walter R. Jacobs, Secretary


Walt Vernon, Treasurer


Ron Gullickson, Member


Ronald W. Major, Member

SW



Kansas Engineering Society, Inc.
627 S. Topeka, P.O. Box 477
Topeka, Kansas 66601 (913) 233-1867

Testimony before the Senate Energy &
Natural Resources Committee

March 25, 1986

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House Bill 2705 proposes to implement a water assurance program. The Kansas Engineering Society is supportive of this basic concept and believes the legislation is a move in the right direction. The assurance program represents an overdue recognition that a very high percentage of the storage previously acquired in federal reservoirs, or to be acquired in the future, is actually not needed in excess of 90 percent of the time. Nonetheless, the storage does provide insurance (assurance) that during the critical dry years endemic to the plains environment the needed water will be available. Past efforts to market state acquired storage under pricing assumptions which reflected continuing usage concepts have proven unacceptable. We believe this new approach will find far greater acceptance. The following comments are offered in the spirit of attempting to improve the proposal before you.

1. As now drawn, the bill makes it obligatory that all Municipal & Industrial water rights holders within a prescribed assurance district must participate in the assurance program. This would appear to include both vested and appropriation rights. Vested rights were developed under common law. As such, they were and are limited by the natural flow characteristics of the stream. It is not clear to us that such users can be "forced" to participate as an assurance member without violating due process requirements. This question should be addressed by an attorney general's opinion prior to adoption of the Act in its present form. Quite clearly, vested right holders who do not participate in the assurance program could and should be denied access to assurance flows.

2. Marketability of this product and acceptance of the assurance district concept would be enhanced if there was a specific directive in the bill requiring the Chief Engineer to prohibit withdrawal of assurance flows by any user not a member of the assurance district. Presumably this concept is already in place elsewhere in the appropriation act, but its restatement here would prove helpful in gaining assurance district support.

3. Section 9 of the Bill, as initially drafted, raised the specter of a number of small users preventing a large user, serving many people, the opportunity to participate in the assurance program. As reworded in the House, the Bill now allows a large user with a large quantity of water use to force small users into assurance participation with attendant financial responsibilities. Either option poses some troublesome questions for a nation based on democracy. This problem could be minimized by returning to the original version

but providing an alternative assurance program for individual contracts where district organization is not achieved.

4. The Bill is silent on what information can or will be furnished to would be assurance members as they consider a vote on district formation. Presumably some information on anticipated costs and projected water deliveries would be required. Specific language assigning responsibility for preparation of the information and detailing the information required would be appropriate.

5. As now drafted, it is implied that assurance users will pay all the costs associated with the assurance storage. Surely, this must give them some voice, if not total voice, in the development and implementation of reservoir operating plans. Yet, no reference to this type of authority is to be found in the bill in its current form.

6. The foregoing issue serves to highlight a major inconsistency in the program as now visualized. That is, the assurance program has been conceived in recognition of the infrequent need Municipal & Industrial users have for this storage. By the same token, this means that during a high percentage of the time the major benefits derived from the system relate to widespread public uses for recreation and flow regulation and augmentation. The stated policy of having assurance members pay all costs is, in essence, a denial of these benefits and may be a very shortsighted position for the state to adopt. In time, it may lead to less and less state control of operational plans (see item 5 above) and the possible overriding of some basic public values.

Again, KES wishes to reaffirm its support of the basic assurance concept. It does believe that the issues identified in the foregoing paragraphs are important. Failure to resolve these issues by deliberate consideration now could, in the opinion of the Society, endanger the possibility of successful implementation of the assurance program.



State Conservation Commission

Telephone (913) 296-3600

109 S.W. 9th Street, Room 300

Topeka, Kansas 66612

TESTIMONY BY
KENNETH F. KERN
EXECUTIVE DIRECTOR

Senate Energy and Natural Resources
Committee
House Bill 2720
March 25, 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, as it relates to the transfer of benefit area program from the Kansas Water Office to the State Conservation Commission.

3-26-86
S.FNR
(c)

March 26, 1986

Testimony by
Kansas Water Office

on
H.B. 2703

- I. This bill is based upon the Conservation Section of the State Water Plan.
- II. The bill establishes a new long-range goal of the state for the management, conservation and development of the waters of the state as: the protection of the public interest through the conservation of water resources of the state in a technologically and economically feasible manner. (line 0246)
- III. The bill establishes the methods to achieve the goal by authorizing:
 - A. Kansas Water Office to develop and maintain guidelines for conservation (use efficiency) plans and practices which meet ten basic standards. (lines 0036 through 0058)
 - B. Kansas Water Authority to approve use efficiency guidelines prepared by the Kansas Water Office. (line 0183)
 - C. The Chief Engineer could require an applicant for a water right to adopt and implement plans and practices consistent with the approved guidelines. (line 0231)
 - D. The Kansas Water Office and Kansas Water Authority could require such plans and practices as a condition to obtaining water in the Water Marketing Program. (line 0301)
 - E. Water transfers could not be approved unless the applicant has adopted plans and practices consistent with approved guidelines. (line 0329)
 - F. All members of an Assurance District would be required to follow plans and practices consistent with approved guidelines. (line 0403)

3-26-86
S. ENR

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

TO SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBSTITUTE FOR HOUSE BILL NO. 2703
MARCH 26, 1986

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

Substitute for House Bill No. 2703 is a concept developed by the House, Energy and Natural Resources Committee to implement a state water policy concerning the conservation of water.

This Bill will require preparation and implementation of conservation plans under certain circumstances.

The first step in this process was to amend existing statutes to require the Kansas Water Office (KWO) "to develop and maintain guidelines for water conservation plans and practices." (Lines 36 and 37). These guidelines must take into consideration eleven factors set forth in lines 38 through 58 of the Bill when developing these guidelines. Prior to adoption by the director of the KWO, the guidelines for conservation plans and practices would have to be approved by the Kansas Water Authority (KWA). (Lines 183 to 186).

The Kansas Water Appropriation Act would be amended to allow the chief engineer to require an applicant for permit to appropriate water to adopt and implement conservation plans and practices consistent with the guidelines developed by the KWO and approved by the KWA. (Lines 231 to 236). The Bill also provides for consultation with the director of the KWO, if requested by the applicant, presumably to allow informal resolution of any concerns about whether a conservation plan is consistent with the guidelines developed by the KWO.

The Bill would also allow the KWA to require an applicant for a contract

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for the sale of water from the state's conservation water supply capacity to adopt and implement a conservation plan. Such conservation plans and practices must also be consistent with the guidelines developed by the KWO.

The bill would also require an applicant for a water transfer to adopt and implement a conservation plan consistent with the guidelines developed by KWO. The water transfer panel, consisting of the chief engineer, the director of the KWO, and the secretary of Health & Environment would determine if such plans and practices are consistent with the KWO guidelines. (Lines 329-337).

And, finally, the Bill contains a provision in the new section 7 (Lines 403-412) requiring each member of a water assurance district to adopt a conservation plan prior to entering into a contract for storage with the District. The director of KWO, in consultation with the chief engineer, would determine if such plans and practices are consistent with the guidelines.

The Division of Water Resources strongly supports water conservation. The Division of Water Resources feels that Substitute for House Bill No. 2703 will implement the general intent of the State Water Plan section adopted by the KWA concerning conservation plans. Support of local entities, such as Groundwater Management Districts, Conservation Districts, and Basin Advisory Committees will be essential to successful implementation of conservation of water throughout the State of Kansas. In the case of water appropriations, I would expect that the Groundwater Management Districts would address the need for such conservation plans in their district management program and make recommendations to the chief engineer regarding the need for them just like they do on other water right matters. Likewise, the districts and other such entities can assist the water users with the actual preparation of any plans required.

Thank you for this opportunity to appear and I will be happy to answer any questions you may have concerning this Bill.

Kansas Natural Resource Council

Testimony before the Senate Energy and Natural Resources Committee

Concerning Substitute for HB 2703, relating to water conservation

Presented by Marsha Marshall

March 26, 1986

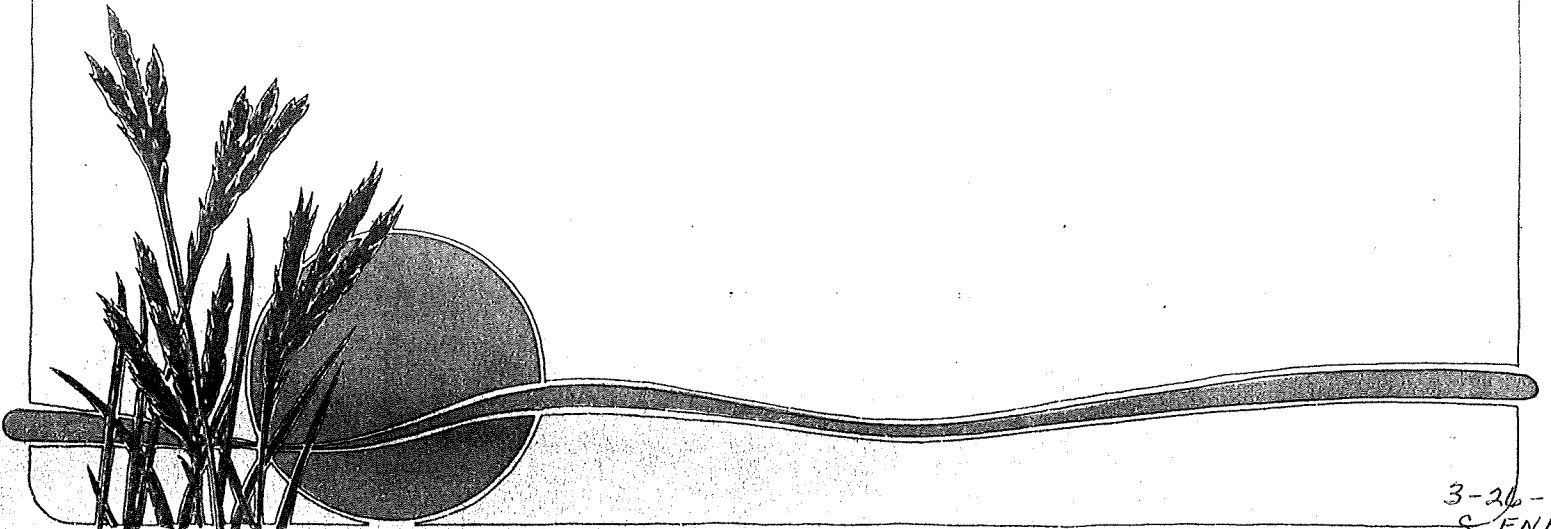
Kansas Natural Resource Council is a non-profit, public interest organization which promotes sustainable natural resource policies and practices.

Our organization opposed HB 2703 in its original form. The bill has since undergone extensive sub-committee review in the House and several redrafts. At this time, KNRC takes no official position on the bill pending one change, as follows:

Delete, on page 7, Section 4, (1), lines 0264-0266, and insert the following:

- (i) the protection of the public interest
- (j) the conservation of the water resources of the state in a technologically and economically feasible manner.

This language more accurately reflects the intent of the committee amendments regarding public interest language.



Testimony on H. B. 2722

Minimum Desirable Streamflows

Before the

Senate Energy and Natural Resources Committee

Presented by the
Kansas Water Office

March 26, 1986

3-26-86
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(G)

Minimum Desirable Streamflows

Over the past two years, the Kansas Water Office and the Kansas Water Authority have used a successful planning process to recommend to the Legislature, minimum desirable streamflows for nine streams in the state. The Legislature, in 1985, approved these minimum desirable streamflows, 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 include the Saline, Smoky Hill, Medicine Lodge, Chikaskia, Big and Little Blue, Republican and Delaware rivers and Mill Creek. The respective minimum streamflow values pertaining to the stream reaches at and near the sites listed have historically been met an average of 85 percent of the time. Certain minimum desirable streamflow values are recommended under special conditions.

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, present and future water right development 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. The process used to develop these values has been working and allows continued evaluation. The Kansas Water Office supports this bill.

STATE WATER PLAN MINIMUM DESIRABLE STREAMFLOWS
TESTIMONY PRESENTED TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
by the
Kansas Fish and Game Commission
March 26, 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.

3-26-86
S. ENR

(H)