

Approved April 4, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:08 a.m./~~p.m.~~ on April 2, 1991 in room 423-S of the Capitol.

All members were present except: Quorum was present.

Committee staff present:

Pat Mah, Legislative Research Department
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClaflin, Committee secretary

Conferees appearing before the committee:

John Strickler, Former Chairman of the Governor's Drought Response Team
Clark Duffy, Assistant Director, Kansas Water Office
David Pope, Chief Engineer-Director, Division of Water Resources,
Kansas State Board of Agriculture
Rich McKee, Kansas Livestock Association
Shaun McGrath, Kansas Natural Resource Council
Ernie Mosher, Executive Director, League of Kansas Municipalities
Jerry Hazlett, Executive Manager, Kansas Wildlife Federation

The Chairman opened the hearing on HB 2037 - concerning water conservation, providing for adoption and implementation of conservation plans and practices; authorizing declaration of a state of drought under certain circumstances and implementation of drought contingency plans.

John Strickler said the legislation addresses water use conservation, during times of plenty and during times of drought, and puts in place drought contingency plans. The proposal allows the Governor to declare by proclamation that a state of drought exists and shall effect immediate implementation of drought contingency plans (Attachment 1).

Clark Duffy stated they requested the introduction of HB 2037 to implement the water use conservation sub-section of the Kansas Water Plan. The drought of 1988 and 1989 made clear the need to better manage water use. They believe that some clarification is necessary in some sections of the bill (Attachment 2).

The Chairman called on David Pope. He asked Mr. Pope, before giving his testimony on HB 2037 if he would give an update on the law suit between Kansas and Colorado regarding the water in the Arkansas River.

Mr. Pope gave an update on the proceedings. He presented his testimony in support of HB 2037 and suggested some amendments (Attachment 3).

Rich McKee stated the members of their organization have little control over their water consumption, unless they decrease their herds, therefore they oppose the legislation (Attachment 4).

Shaun McGrath supported the original concept, but the amendment added that exempts water right holders within Groundwater Management Districts exempts about 90% of the water users of the state, therefore the bill can no longer accomplish its objective, and they must oppose it (Attachment 5).

Ernie Mosher said they supported several sections of the proposed legislation, but because they did not think this proposal championed fairness to urban and rural areas, and different kinds of water users, they must oppose it (Attachment 6).

Jerry Hazlett opposed exempting water users within groundwater management

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 and Natural Resources,
room 423-S, Statehouse, at 8:08 a.m. ~~4:00~~ on April 2, 1991

districts (Attachment 7).

The hearing on HB 2037 was closed.

Information from Kelly Kindscher concerning HB 2375 was distributed
(Attachment 8).

Senator Hayden moved to adopted the minutes of March 27 and 28, 1991.
The motion was seconded by Senator Yost. The motion carried.

The meeting adjourned at 9:00 a.m. The next meeting will be at 8:00
a.m., April 3, 1991.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date April 2, 1991

PLEASE PRINT

GUEST LIST

NAME

REPRESENTING

David Pope

DWR, KSBA

Wayland Anderson

DWR KSBA

BRAD SMOOT

BFI

Ed Mosher

~~League of Municipalities~~

Paula Trecksen

League of KS Municipalities

Walter Dawson

Pete McGill & Associates

Stephen Hurst

KWO

Shawn McGrath

KNRC

Eileen Kautela

W.D. #1 - Jo. Co.

Jim Ludwig

RPL Gas Service

Testimony by

John K. Strickler
Former Chairman of the
Governor's Drought Response Team

Before the
Senate Energy and Natural Resources Committee

RE: H.B. 2037

April 2, 1991

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attachment 1

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Testimony by
John K. Strickler
Former Chairman of the
Governor's Drought Response Team

Before the
Senate Energy and Natural Resources Committee

RE: H.B. 2037

April 2, 1991

Mr. Chairman and members of the Committee, the drought of 1988 and 1989 was a particularly harsh one for Kansas, that not only impacted agricultural production, but also taxed public water supply systems in many areas severely. In June of 1988, the Governor established a Drought Response Team comprised of key governmental agencies to monitor the drought and make recommendations for an appropriate response. The Drought Response Team formed a working group to provide weekly drought status reports and to coordinate a list of appropriate governmental contacts for drought assistance. These status reports were made available by the Governor to nearly 2,500 public and governmental officials. The Governor encouraged local units of government in the state to form a partnership to work with the federal government in preparing for drought contingencies.

The state also established a hay hot line and drought hot line offering agricultural information on drought assistance programs. All of these activities were coordinated with the U.S. Department of Agriculture which approved 77 counties for emergency haying and grazing, and authorized counties to approve applications for the Emergency Feed Assistant Program and Emergency Feed Program and issued an emergency declaration for 11 counties.

During this time four informational seminars on "Dealing with the Effects of Drought" were conducted in August through a cooperative effort of state agencies and public water resources organizations. Representatives of 49 cities, 75 rural water districts and six other

public water supply systems attended the seminars in Salina, El Dorado, Chanute and Lawrence.

Emergency water supply problems during the fall and winter in Osage City, Easton and Sparks were addressed through the Division of Emergency Preparedness, in cooperation with other state, local and federal agencies.

In February of 1989, upon the recommendation of the Public Education Advisory Group, the Governor's Drought Response Team established a Drought Assistance Advisory Group made up of state agency personnel to work with local officials in preparing for continuing drought. Public water supplies judged to be the most vulnerable to drought were identified by March 20. A memorandum from the Governor was sent to the 90 public water supplies identified, notifying them that the advisory team would be contacting them to provide any needed assistance. A memorandum was also sent to approximately 900 other public water suppliers and 600 self-supplied industrial water users offering assistance from the advisory team. A State of "Kansas Drought Preparedness Handbook" was developed for use by the advisory team in briefing water suppliers and water users on how best to deal with drought situations.

During April of 1989, six meetings were held to provide information to irrigators on water rights and water conservation during drought conditions. These meetings were held through cooperative efforts of the Division of Water Resources, Kansas Cooperative Extension Service and the Kansas Water Office.

In late June 1989 six workshops on "Water Supply in Times of Shortage" were conducted for public water suppliers. Over 350 individuals representing 56 cities and 76 rural water districts participated in these workshops which were held in Wichita, Chanute, Dodge City, Hays, Salina and Lawrence, and conducted by the Kansas Rural Water Association in cooperation with the Kansas Water Office; Division of Water Resources, Kansas State Board

of Agriculture; the Kansas Department of Health and Environment; and the League of Kansas Municipalities.

The Governor also issued Executive Orders No. 89-115 and 89-116 in March 1989 directing state agencies to develop water conservation plans and drought contingency plans for state facilities and to implement those plans.

With a span of several years between severe drought events, memory fades quickly as to the strain the drought placed on both natural resources and governmental resources in administering and developing responses to the drought situation. The lessons learned from the state's experience during this last drought strongly suggests that a "Risk Management" or proactive approach to drought events is a much more effective mitigation tool than the "Crisis Management" or reactive approach to drought. Sharply focused contingency plans, prepared in advance, could greatly assist state government and others in the early identification of drought, lessen personal hardship, improve economic efficiency of resource allocation and ultimately reduce drought related impacts and the need for government sponsored relief programs. Work has already begun to develop this type of drought response through the *Kansas Water Plan*.

The current legislation before you, House Bill 2037 addresses both water use conservation, which is using the water as efficiently as possible during times of plenty as well as during times of drought, and drought contingency planning. This legislation would authorize the Governor to declare a "State of Drought" which would automatically trigger the implementation of those drought contingency plans developed by water users throughout the state in their state approved water use conservation plans. This would allow for a proactive approach to drought management, in that drought contingency efforts would be implemented prior to the drought becoming an emergency or disaster situation. As former Chairman of the Governor's Drought Response Team, I would highly recommend that this legislation go forward.

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Testimony on House Bill 2037
before the
Senate Committee on Energy and Natural Resources

by

Clark R. Duffy, Assistant Director, Kansas Water Office

April 2, 1991

House Bill 2037 was introduced at the request of the Kansas Water Authority to implement the Conservation Section of the *Kansas Water Plan*. The impetus for this subsection came about as a result of our experience with the drought of 1988 and 1989.

1. This bill clarifies responsibilities of the Governor and state agencies to allow the state to better manage adverse impacts of drought. (Section 1 and 2)

2. The intent is to allow Chief Engineer to target the use of conservation plans as a management tool to conserve water in water-short areas (see map). Current law only allows conservation plans for new users which are mostly outside water-short areas and for eastern Kansas reservoir usage. (Section 3, 4 and 5a-c)

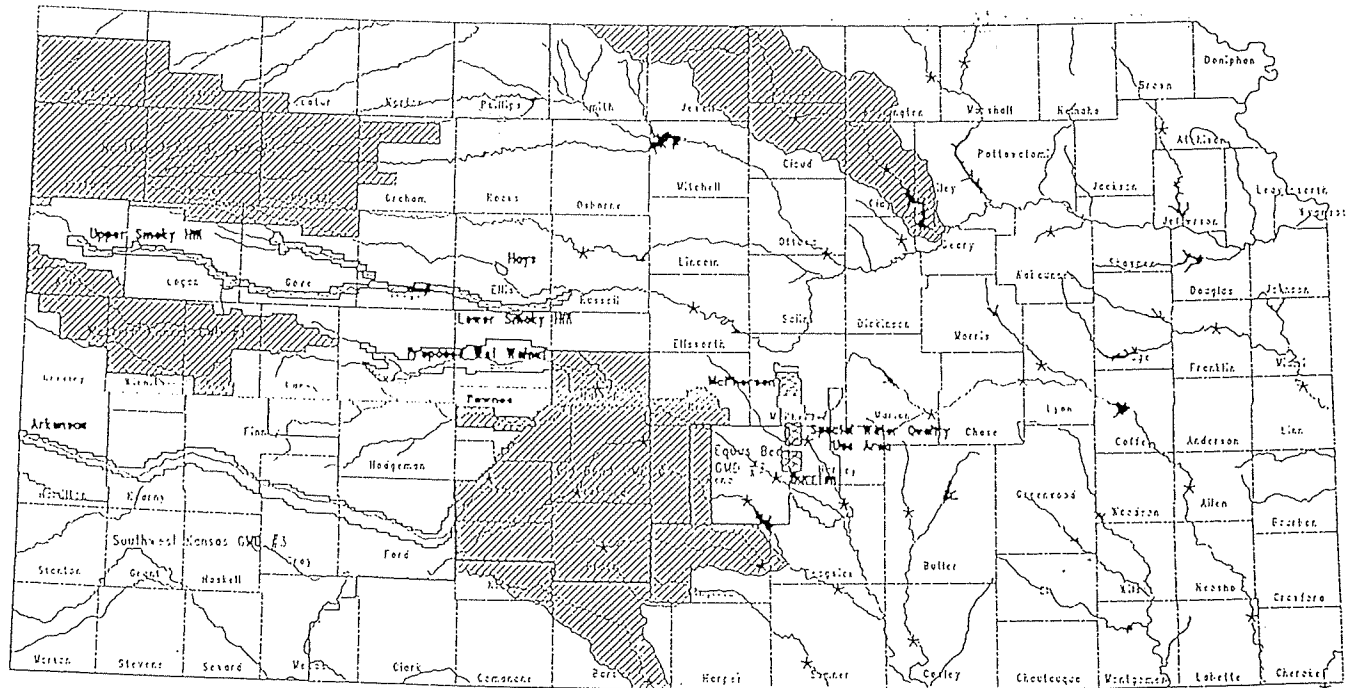
3. Allows agencies to require conservation plans under limited conditions prior to issuing water-related grants. Because of the House Committee amendments to this section, House Bill 2037 has no fiscal impact. (Section 5d and e)

As amended in Section 5f, the bill appears to exempt water users within groundwater management districts from any conservation plan requirements (see map). If this interpretation is correct, it would prevent the groundwater management districts or the state from using this management tool for approximately 90 percent of the state's water usage. The committee may want to clarify this section to ensure that the groundwater management district's have the authority to use conservation plans as a management tool, if they so choose.

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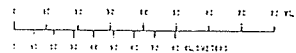
Division of Water Resources Administration Summary



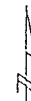
LEGEND

- | | |
|--|------------------------------------|
| Groundwater Management District | Moratorium Area |
| Intensive Groundwater Use Control Area | Federal Reservoir |
| Streams/Rivers Closed to Appropriation | Minimum Streamflow Gaging Stations |
| Major River/Stream | |
| County | |
| State | |

Kansas State Board of Agriculture, Division of Water Resources
ARC/INFO Map, Composed 7/19/90



Scale 1 : 1,000,000



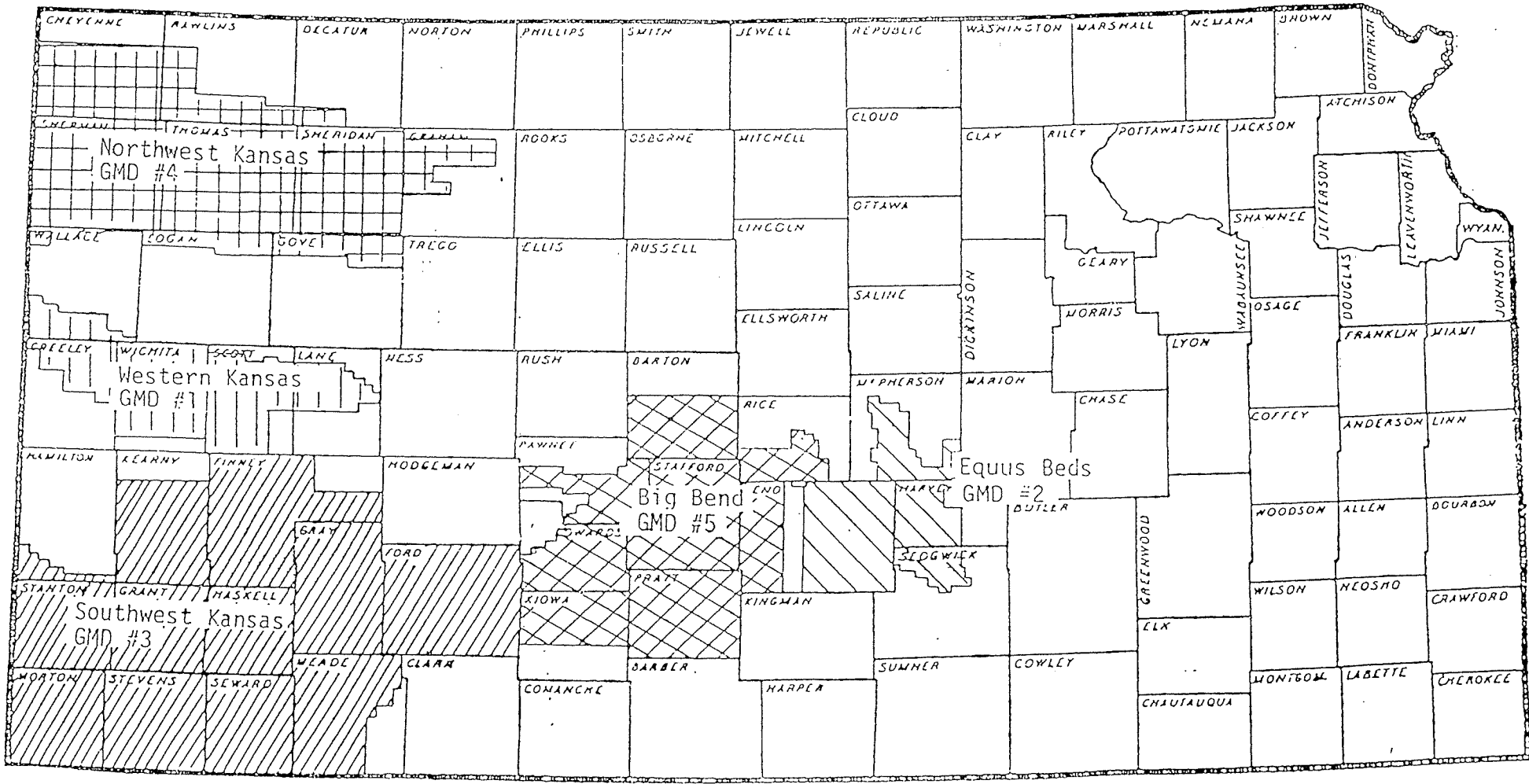
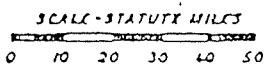


Figure 1. Organized Groundwater Management Districts in Kansas





H.B. 2037

(As Further Amended by the
House Committee of the Whole)
Water Use Conservation

Kansas Water Office

March 1991

INTRODUCTION

This bill was introduced at the request of the Kansas Water Authority to implement the Water Use Conservation Sub-section of the *Kansas Water Plan*. The impetus for this sub-section came about as a result of the states experiences with the drought in 1988 and 1989. This experience made clear the need for the state to better manage the adverse impacts caused by drought.

Water use conservation has traditionally been encouraged only during drought emergencies or other emergencies. The key concept of water use conservation is that the most effective method for conserving water during times of shortage is to be using it efficiently when it is plentiful.

BACKGROUND

In 1986, legislation was passed that partially implemented the water use conservation policy recommendations contained in the 1985 State Water Plan. The legislature authorized the Chief Engineer of the Division of Water Resources to require water use conservation plans for (a) anyone purchasing water from the State Water Marketing Program, (b) anyone participating in the new Water Assurance District Program, (c) anyone transferring water under the Water Transfers Act and (d) anyone obtaining a new water right or appropriation permit. This legislation did not, however, authorize the Chief Engineer to require water use conservation plans for owners of existing water rights or appropriation permits. The granting of such authority was recommended in the *Kansas Water Plan*.

To date, the Chief Engineer has required water use conservation plans on approximately 500 new water rights and appropriation permits. Conservation plans have also been required for participants in the new Water Assurance District

Program and for those with new contracts in the State Water Marketing Program.

The drought experience of 1988 and 1989 was a great education for Kansas government. It taught us the state was basically unprepared to address a drought crisis. Emergency measures and local drought contingency planning was developed on a piece meal basis.

The State of Kansas is in a meteorologically semi-arid region of the nation and will generally face serious drought conditions every five to ten years. It only makes good sense from a policy perspective to develop an institutionalized drought contingency and water use conservation structure within state government to address and minimize the problems to be faced in the next drought, which is certain to come.

CONCEPT

Conservation plans are an effective management tool to ensure efficient use of water in water-short areas. The Chief Engineer has closed many of these areas to new appropriations. Under current law conservation plans can only be required on new users, therefore, conservation plans can not be used as a management tool to conserve water supplies in the areas of greatest need.

H.B. 2037 was intended to improve the current law by authorizing the Chief Engineer to require conservation plans for water right holders pursuant to a finding that such plans will assure public benefit and promote public interest. This would allow the Chief Engineer to consider water users sharing a common source of supply that could be insufficient in times of drought or users in water-short areas as priority users that should have conservation plans. It would also authorize the Chief Engineer to consider water users whose use is significantly higher than their peers. As currently

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amended in New Sec. 5, however, H.B. 2037 does not accomplish this goal as it ignores the areas of the state having the greatest water use. This could be remedied by a simple amendment to the bill.

H.B. 2037 also clarifies the responsibilities of the Governor and state agencies to allow the state to better manage the adverse impacts caused by drought.

SUMMARY OF H.B. 2037 AS AMENDED BY HOUSE COMMITTEE OF THE WHOLE

A brief summary of the drought and water use conservation provisions in the bill follows:

Sec. 1: - The Governor, when advised by the Kansas Water Office pursuant to K.S.A. 74-2608 that conditions indicative of drought exist, shall be authorized to declare that a "state of drought" exists.

Sec. 2: - The Kansas Water Office will advise the Governor when conditions indicative of drought exist.

Sec. 3: - Strikes Chief Engineer's authority to require conservation plans for new applicants for appropriation of water. The Chief Engineer's authority to require conservation plans is now discussed under new Sec. 5.

New

Sec. 5(a): - Authorizes the Chief Engineer to require owners of water rights to adopt and implement conservation plans and practices consistent with Kansas Water Office guidelines for such plans and practices, pursuant to a finding that such plans and practices will assure public benefit and promote public interest.

- The Chief Engineer shall give priority to water users that share a common source of supply that could be insufficient during times of drought and to water users whose use is significantly higher than their peers as described in the annual water use reports of the Kansas Water Office and Division of Water Resources (water users in water short areas, including fully appropriated areas or within the boundaries of intensive groundwater use control area, the areas most in need of conservation plans, were struck as priorities to be considered by the Chief Engineer).

(c) - The Kansas Water Office shall provide or arrange to provide technical

assistance for water users required to adopt and implement conservation plans.

(d)&(e) - A state agency that makes a grant for water-related projects that would significantly increase the amount of water used may require the entity to have a water conservation plan. "Water-Related Projects" shall include but not be limited to: interconnections of supply systems; development of new supply and delivery systems; improvements or repairs to existing supply systems, sanitary sewer system or water treatment system which would significantly increase the amount of water used; small lakes development, improvement or repair; and development of other small impoundments for public water supply or irrigation.

(f) - Eliminates the Chief Engineer's authority to require conservation plans for any water users located within the boundaries of a groundwater management district. (This effectively removes over 90 percent of the water used for irrigation in the state from conservation plan requirements.)

FISCAL IMPACT

H.B. 2037 as amended has no fiscal impact.

As introduced the Division of the Budget indicated this bill would require three FTE's at a cost of \$117,870 for the Division of Water Resources to review and evaluate an estimated 400 to 500 conservation plans required under section 4(e).

As amended section of 4(e) of this bill would only authorize the state to impose an additional 21 plans. The state currently approves approximately 270 plans per year. As a result House Bill 2037, as amended would have no additional fiscal impact.

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

BEFORE THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON
HOUSE BILL 2037

On April 2, 1991

Chairman Doyen and members of the Committee, thank you for this opportunity to appear and provide comments concerning House Bill 2037, which authorizes a declaration of drought by the Governor and provides for the review and approval of conservation plans by the Chief Engineer under certain circumstances.

New Section 5 of House Bill 2037 would authorize the Chief Engineer, Kansas State Board of Agriculture, to selectively require water conservation plans of owners of water rights or permits to appropriate water; and require water conservation plans of entities receiving loans, grants or cost-share from a state agency for water-related projects that would significantly increase the amount of water used. The proposed legislation lists several criteria for

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the Chief Engineer to use to determine which owners of water rights or permits to appropriate water should be required to submit water conservation plans. Before I comment on the effect of this Bill, I would like to briefly review the existing State law concerning water conservation plans.

In the 1985 State Water Plan, the Kansas Water Authority recommended that "Legislative action will be needed to vest power in the Chief Engineer, Division of Water Resources, to require persons, municipalities or industries to prepare conservation plans. The Chief Engineer would be further empowered to review, approve and enforce such plans." The State Water Plan also recommended that the Attorney General be given broadened powers to enforce compliance, upon request of the Chief Engineer.

In 1986, the House Committee on Energy and Natural Resources ultimately authorized a Substitute for House Bill 2703 that incorporated a "guideline" concept. Substitute for House Bill 2703 eventually became law with the following provisions:

- a. K.S.A. 82a-1311a(d), as amended, now provides that the Kansas Water Authority may require an applicant for a contract for the sale of water from State Controlled conservation water supply capacity in federal reservoirs to adopt and implement conservation plans and practices consistent with the Kansas Water Office guidelines.
- b. K.S.A. 82a-1503(b), as amended, provides that no water

transfer shall be approved unless the applicant has adopted and implemented conservation plans and practices consistent with guidelines.

- c. K.S.A. 82a-1345(c), as amended, requires each member of a water assurance district to adopt conservation plans and practices consistent with the guidelines developed and maintained by the Kansas Water Office.
- d. K.S.A. 74-2608(c), as amended, requires that the Kansas Water Office develop and maintain guidelines for water conservation plans and practices with specific limits on what those guidelines could contain.
- f. K.S.A. 74-2622(c)(11), as amended, requires the Kansas Water Authority to approve such guidelines prior to adoption by the Kansas Water Office.

After the Bill was passed in 1986, the Kansas Water Office developed and adopted conservation planning guidelines which were subjected to extensive public review and approved by the Kansas Water Authority. The Division of Water Resources sought technical assistance from various entities such as groundwater management districts, county conservation districts and the U.S. Soil Conservation Service, to aid applicants in preparation of conservation plans, and developed the communications network and administrative procedures to carry out that portion of the Act affecting new applicants for permit to appropriate water.

Slight over two years ago on January 1, 1989, we began the

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formal implementation of K.S.A. 82a-711(d) by requiring all new applicants to appropriate water for municipal, industrial and irrigation use, applicants for change in the type of use of an existing water right and applicants requesting to increase the size of place of use for irrigation by more than 25%, to adopt and implement conservation plans and practices consistent with guidelines developed by the Kansas Water Office. Since January 1, 1989, 1,040 new applications for permit to appropriate water for municipal, industrial or irrigation use have been received. Water conservation plans accompanied these applications, or applicants have been or will be requested by the Division to provide them if they did not accompany the application when it was filed. In addition, Division staff estimate approximately 50 applications to change existing permits were received for which acceptable conservation plans were required as conditions of approval.. Most of these plans were, or will be, reviewed by hydrologists responsible for the review of the applications. Until September of 1990, the Division of Water Resources has had to implement K.S.A. 82a-711(d) with existing staff. The additional requirement of a conservation plan has already caused some delays in processing new applications as a result of the additional workload. Beginning September 4, 1990, a Civil Engineer was hired with new fee revenues available as a result of legislation passed in 1990. We have assigned this person duties to provide overall water conservation technical support to the Division hydrologists, who provide conservation plan review as a part of the new application review, and to oversee the conservation contract program with the

groundwater management districts to address water conservation plan monitoring and compliance.

In summary, current statutory authority authorizes conservation plans on water users with existing water rights who are in assurance districts, or who apply for: (a) a new permit, (b) a change to an existing water right, (c) a water transfer, or (d) a purchase of water through the water marketing program from the Kansas Water Office. I would also like to point out that K.S.A. 82a-717(e) states that "appropriation rights in excess of the reasonable needs of the appropriator shall not be allowed", which allows conservation of water to be considered when decisions on the amounts of water allowed to be appropriated are made. The Water Appropriation Act and both the Division's and groundwater management district's rules and regulations also prohibit waste. However, House Bill 2037 would fill a void in that the limitations imposed on the quantity of water authorized by the water right or permit do not necessarily mean that water conservation practices will be used in every case.

There are more than 30,000 active water rights in Kansas. Fortunately, many of these water users would not benefit from developing water conservation plans because they are already practicing water conservation measures. In addition, requiring a water conservation plan for all of these rights would far exceed the current staff capability of our office and would also likely exceed the amount of technical assistance available through the

Soil Conservation Service and other sources.

We would suggest the committee consider adding the language found on page 6 of the attached "balloon copy", which would allow water conservation plans to be required by some new applications. This would allow the Chief Engineer to exercise some discretion within the framework of this legislation because there are certain areas where water conservation should accompany new applications. With this change, we can support the House amendment in Section 3, which repeals 82a-711(d). New Section 5(a) of the bill would clearly define when conservation plans should be required by limiting the adoption and implementation of conservation plans and practices to situations where there is public benefit and it will promote public interest. It would also provide guidance as to when water conservation plans should be required.

Another modification we are offering in conjunction with the five groundwater management districts and the Kansas Water Office is found on page 7 of the balloon copy. This language contains two changes we believe are important: (1) The clarification that ground water be included in section (f), since groundwater management districts are responsible under the Groundwater Management District to manage groundwater but not surface water. The current version would exempt both surface and groundwater with groundwater management districts from the Chief Engineer's scrutiny with regard to water conservation plans. (2) The language added to allow joint consideration by the Chief Engineer and the groundwater management

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district board for the need to have water conservation plans is more flexible and provides input from both the State and local level. This approach to overall management works very well in other areas and we believe it would work equally as well here.

The Division of Water Resources' plan to implement House Bill 2037 would be to target areas or groups of water users for the conservation plan requirement where a particular problem or need exists. This can be accomplished in part by reviewing annual water use reports to ascertain individual water users whose reported water use is higher than others with similar circumstances in their peer group. The conservation requirements which the Chief Engineer can impose on a water user are limited by the water conservation guidelines adopted by the Kansas Water Office, which serve as the "standard."

The fiscal requirements of this proposed legislation have been a concern to our office and others. We did not feel that a significant number of conservation plans could be required and adequately monitored and enforced without additional staff. However, the House amendments to the bill have effectively remedied this problem by removing the mandatory language originally contained in Section 5 [(d)] pertaining to requirements for conservation plans when State loans or grants are provided, by repealing K.S.A. 82a-711(d) pertaining to water conservation plans for new applications for permits to appropriate water and removing areas within the groundwater management districts.

However, with our suggested amendments, consideration could be given to areas and circumstances where conservation plans would be useful and effective both within and outside groundwater management districts by targeting our limited resources. Under this alternative, we would: (1) no longer require conservation plans for all new applications for permit (consistent with the repeal of 82a-711(d) in Section 3 of the bill). This would allow current staff resources to expedite the processing of applications for permits where water is available and divert more attention to the priorities set forth in new Section 5(a) for water conservation plans. This would include working with the groundwater management districts in a cooperative partnership to accomplish as much as possible to conserve water within the districts since they include most of the major aquifer systems in the State and a large number of water rights.

In conclusion, I support the general concept of water conservation. The passage of House Bill 2037 would be a significant step in implementing the original recommendations of the Kansas Water Authority in the State Water Plan and as provided for in the amended water conservation section adopted last year. By reducing the scope of this program, there is a much greater likelihood this activity can be assimilated into the Division's staff and budget resources which are fully allocated.

Thank you very much. I would be happy to answer any questions.

[As Further Amended by House Committee of the Whole]

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1991

HOUSE BILL No. 2037

By Committee on Energy and Natural Resources

1-23

13 AN ACT concerning water conservation; providing for adoption and
14 implementation of conservation plans and practices; authorizing
15 declaration of a state of drought under certain circumstances and
16 implementation of drought contingency plans; amending K.S.A.
17 48-924[, 82a-711] and 82a-732 and K.S.A. 1990 Supp. 74-2608
18 and repealing the existing sections.

19
20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. K.S.A. 48-924 is hereby amended to read as follows:
22 48-924. (a) The governor shall be responsible for meeting the dangers
23 to the state and people presented by disasters.

24 (b) The governor, upon finding that a disaster has occurred or
25 that occurrence or the threat thereof is imminent, shall issue a
26 proclamation declaring a state of disaster emergency. The state of
27 disaster emergency so declared shall continue until the governor
28 finds that the threat or danger of disaster has passed, or the disaster
29 has been dealt with to the extent that emergency conditions no
30 longer exist, and. Upon making such findings the governor shall
31 terminate the state of disaster emergency by proclamation, but no
32 state of disaster emergency may continue for longer than fifteen
33 ~~(15)~~ 15 days unless ratified by concurrent resolution of the legis-
34 lature, with the single exception that upon specific application by
35 the governor to the state finance council and an affirmative vote of
36 a majority of the legislative members thereof, a state of disaster
37 emergency may be extended once for a specified period not to exceed
38 ~~thirty (30)~~ 30 days beyond such ~~fifteen-day~~ 15-day period. At any
39 time, the legislature by concurrent resolution may require the gov-
40 ernor to terminate a state of disaster emergency. Upon such action
41 by the legislature, the governor shall issue a proclamation terminating
42 the state of disaster emergency. Any proclamation declaring or ter-
43 minating a state of disaster emergency which is issued under this

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Attachment 3

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1 subsection shall indicate the nature of the disaster, the area or areas
2 threatened or affected by the disaster and the conditions which have
3 brought about, or which make possible the termination of, the state
4 of disaster emergency. Each such proclamation shall be disseminated
5 promptly by means calculated to bring its contents to the attention
6 of the general public and, unless the circumstances attendant upon
7 the disaster prevent the same, each such proclamation shall be filed
8 promptly with the division of emergency preparedness, the office of
9 the secretary of state and each city clerk or county clerk, as the
10 case may be, in the area to which such proclamation applies.

11 (c) In the event of the absence of the governor from the state
12 or the existence of any constitutional disability of the governor, the
13 lieutenant governor may issue a proclamation declaring a state of
14 disaster emergency in the manner provided in and subject to the
15 provisions of subsection (a). During a state of disaster emergency
16 declared pursuant to this subsection, the lieutenant governor may
17 exercise the powers conferred upon the governor by K.S.A. 48-925
18 and amendments thereto. Upon the return of the governor to the
19 state or the removal of any constitutional disability of the governor,
20 the authority of the lieutenant governor to exercise such powers shall
21 terminate immediately and the governor shall resume the full powers
22 of such office. Any state of disaster emergency and any actions taken
23 by the lieutenant governor under this subsection shall continue and
24 shall have full force and effect as authorized by law unless modified
25 or terminated by the governor in the manner prescribed by law.

26 (d) A proclamation declaring a state of disaster emergency shall
27 activate the disaster response and recovery aspects of the state dis-
28 aster emergency plan and of any local and interjurisdictional disaster
29 plans applicable to the political subdivisions or areas affected by the
30 proclamation. Such proclamation shall be authority for the deploy-
31 ment and use of any forces to which the plan or plans apply and
32 for use or distribution of any supplies, equipment, materials or fa-
33 cilities assembled, stockpiled or arranged to be made available pur-
34 suant to this act during a disaster.

35 (e) *The governor, when advised pursuant to K.S.A. 74-2608 and*
36 *amendments thereto that conditions indicative of drought exist, shall*
37 *be authorized to declare by proclamation that a state of drought*
38 *exists. This declaration of a state of drought can be for specific areas*
39 *or communities, can be statewide or for specific water sources and*
40 *shall effect immediate implementation of drought contingency plans*
41 *contained in state approved conservation plans, including those for*
42 *state facilities.*

43 Sec. 2. K.S.A. 1990 Supp. 74-2608 is hereby amended to read

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Attachment 3
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1 as follows: 74-2608. The Kansas water office shall:
2 (a) Collect and compile information pertaining to climate, water
3 and soil as related to the usage of water for agricultural, industrial
4 and municipal purposes and the availability of water supplies in the
5 several watersheds of the state, and, in so doing, the office shall
6 collect and compile the information obtainable from other agencies,
7 instrumentalities of the state, political subdivisions of the state and
8 the federal government.
9 (b) Develop a state plan of water resources management, con-
10 servation and development for water planning areas as determined
11 by the office, and cooperate with any agency or instrumentality of
12 the state or federal government now or hereafter engaged in the
13 development of plans or having developed plans affecting any such
14 area of the state.
15 (c) Develop and maintain guidelines for water conservation plans
16 and practices. Such guidelines shall:
17 (1) Not prejudicially or unreasonably affect the public interest;
18 (2) be technologically and economically feasible for each water
19 user to implement;
20 (3) be designed to curtail the waste of water;
21 (4) consider the use of other water if the use of freshwater is not
22 necessary;
23 (5) not require curtailment in water use which will not benefit
24 other water users or the public interest;
25 (6) not result in the unreasonable deterioration of the quality of
26 the waters of the state;
27 (7) consider the reasonable needs of the water user at the time;
28 (8) not conflict with the provisions of the Kansas water appro-
29 priation act and the state water planning act;
30 (9) be limited to practices of water use efficiency except for
31 drought contingency plans for municipal users; and
32 (10) take into consideration drought contingency plans for mu-
33 nicipal and industrial users.
34 When developing such guidelines, the Kansas water office shall
35 consider existing guidelines of groundwater management districts and
36 the cost to benefit ratio effect of any plan.
37 (d) *The Kansas water office, with the approval of the Kansas*
38 *water authority, shall establish guidelines as to when conditions*
39 *indicative of drought exist. When the Kansas water office determines*
40 *that such conditions exist in an area, it shall so advise the governor*
41 *and shall recommend the assembling of the governor's drought re-*
42 *sponse team.*
43 [Sec. 3. K.S.A. 82a-711 is hereby amended to read as follows:

1 82a-711. (a) If a proposed use neither impairs a use under an
2 existing water right nor prejudicially and unreasonably affects the
3 public interest, the chief engineer shall approve all applications for
4 such use made in good faith in proper form which contemplate the
5 utilization of water for beneficial purpose, within reasonable lim-
6 itations except that the chief engineer shall not approve any ap-
7 plication submitted for the proposed use of fresh water in any case
8 where other waters are available for such proposed use and the
9 use thereof is technologically and economically feasible. Otherwise,
10 the chief engineer shall make an order rejecting such application
11 or requiring its modification to conform to the public interest to
12 the end that the highest public benefit and maximum economical
13 development may result from the use of such water.

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

- 17 [(1) Established minimum desirable streamflow requirements;
18 [(2) the area, safe yield and recharge rate of the appropriate
19 water supply;
20 [(3) the priority of existing claims of all persons to use the water
21 of the appropriate water supply;
22 [(4) the amount of each claim to use water from the appropriate
23 water supply; and
24 [(5) all other matters pertaining to such question.

25 [(c) With regard to whether a proposed use will impair a use
26 under an existing water right, impairment shall include the unrea-
27 sonable raising or lowering of the static water level or the unrea-
28 sonable increase or decrease of the streamflow or the unreasonable
29 deterioration of the water quality at the water user's point of di-
30 version beyond a reasonable economic limit. Any person aggrieved
31 by any order or decision by the chief engineer relating to that
32 person's application for a permit to appropriate water may appeal
33 to the district court in the manner prescribed by K.S.A. 82a-724,
34 and amendments thereto.

35 [(d) The chief engineer may require an applicant for a per-
36 mit to appropriate water to adopt and implement conservation
37 plans and practices. Such plans and practices shall be consistent
38 with the guidelines for conservation plans and practices de-
39 veloped and maintained by the Kansas water office pursuant
40 to subsection (c) of K.S.A. 74-2608, and amendments thereto.
41 Prior to approval of an application, the chief engineer, in con-
42 sultation with the director of the Kansas water office if re-
43 quested by the applicant, shall determine whether such plans

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1 and practices are consistent with the guidelines adopted by
2 the Kansas water office.]

3 Sec. 3 [4]. K.S.A. 82a-732 is hereby amended to read as follows:
4 82a-732. (a) The owner of a water right or permit to appropriate
5 water for beneficial use, except for domestic use, shall file an annual
6 water use report on a form prescribed by the chief engineer of the
7 division of water resources of the state board of agriculture on or
8 before March 1 following the end of the previous calendar year. The
9 report shall completely and accurately set forth such water use in-
10 formation as requested by the chief engineer.

11 (b) Any person failing to file a water use report or other docu-
12 ments required under the provisions of subsection (a) shall be subject
13 to a civil penalty in an amount not to exceed \$250. The chief engineer
14 upon a finding that the owner of a water right or permit to appro-
15 priate water for beneficial use has failed to file such a report may
16 impose a civil penalty as provided in this section. Any person filing
17 a document knowing it to contain any false information as to a
18 material matter shall be guilty of a class C misdemeanor. ~~(c)~~ All
19 fines collected by the chief engineer pursuant to this section sub-
20 section shall be remitted to the state treasurer as provided in K.S.A.
21 82a-731, and amendments thereto.

an applicant for permit, or

22 New Sec. 4 [5]. (a) The chief engineer may require the owner
23 of a water right or permit to appropriate water for beneficial use to
24 adopt and implement conservation plans and practices. The chief
25 engineer shall not mandate the adoption and implementation of
26 conservation plans and practices except pursuant to a finding that
27 such plans and practices will assure public benefit and promote
28 public interest. In selecting the water rights or permits for which
29 conservation plans and practices are required to be adopted and
30 implemented, the chief engineer shall give priority to: (1) Water
31 users that share a common source of supply that could be insufficient
32 during times of drought; (2) ~~water users in water short areas;~~
33 ~~including fully appropriated areas or within the boundaries of~~
34 ~~an intensive groundwater use control area;~~ (3) water users whose
35 use is significantly higher than their peers; and (4), as described
36 in the annual water use reports of the Kansas water office and
37 division of water resources; and (3) water users who apply for any
38 state administered grant, loan or cost-share moneys for water-related
39 projects. Prior to requiring the adoption and implementation of con-
40 servation plans and practices, the chief engineer shall assess the
41 availability of technical assistance and inform the owner of a water
42 right or permit who is required to adopt and implement a conser-
43 vation plan and practices of the available sources of technical as-

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1 sistance to prepare the conservation plan.

2 (b) The chief engineer shall allow the owner of a water right or

3 permit a minimum of 60 days to prepare a required conservation

4 plan. The time allowed to prepare the required conservation plan

5 may be extended by the chief engineer for good cause shown by

6 the applicant. The chief engineer shall provide the owner of the

7 water right or permit a reasonable time to implement the conser-

8 vation plan and, for good cause shown, such as the need to apply

9 extensive land treatment practices, the chief engineer may extend

10 the time for implementation for a period of up to five years.

11 (c) Plans and practices required pursuant to this section shall be

12 consistent with the guidelines for conservation plans and practices

13 developed and maintained by the Kansas water office pursuant to

14 subsection (c) of K.S.A. 74-2608 and amendments thereto. If re-

15 quested by the owner of the water right or permit, the chief en-

16 gineer, in consultation with the director of the Kansas water office,

17 shall determine whether such plans and practices are consistent with

18 the guidelines adopted by the Kansas water office. The Kansas water

19 office shall provide, or arrange to provide, technical assistance for

20 water users required to adopt and implement conservation plans and

21 practices pursuant to this section.

22 (d) ~~The chief engineer may require domestic users of water~~

23 ~~to adopt and implement conservation plans and practices, and~~

24 ~~delegate this authority to municipalities that have conservation~~

25 ~~plans meeting state guidelines, so that they can require com-~~

26 ~~pliance from private well owners within the city limits.~~

27 (e) ~~[(d)] No state agency shall lend, grant or cost-share funds~~

28 ~~Before any state agency makes any loan or grant, or provides any~~

29 ~~cost-share funds, for any water-related projects to any person or~~

30 ~~entity without first determining that the person or entity has~~

31 ~~submitted to, the state agency may require the person or entity~~

32 ~~to submit to, and have approved by, the chief engineer a water~~

33 ~~conservation plan consistent with the guidelines for conservation~~

34 ~~plans and practices developed and maintained by the Kansas water~~

35 ~~office pursuant to subsection (c) of K.S.A. 1990 Supp. 74-2608 and~~

36 ~~amendments thereto, and that the chief engineer has approved~~

37 ~~the plan.~~

38 (f) ~~[(e)] As used in this section, "water-related projects" shall~~

39 ~~include, but not be limited to, the following: Interconnections be-~~

40 ~~tween water supply systems; development of new water supply and~~

41 ~~delivery systems; improvements or repairs to an existing water sup-~~

42 ~~ply; sewer or water treatment system; land treatment on irri-~~

43 ~~gated land system, sanitary sewer system or water treatment~~

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1 system, which would significantly increase the amount of water
2 used; small lakes development, improvement or repair; and devel-
3 opment of other small impoundments for public water supply or
4 irrigation.

5 (g) [(f)] [The provisions of this section shall not apply to any
6 water right or permit to appropriate water from within the bound- ground
7 aries of a groundwater management district.]

8 [(g)] This section shall be part of and supplemental to the Kansas
9 water appropriation act.

10 Sec. 5 [6]. K.S.A. 48-924[, 82a-711] and 82a-732 and K.S.A.
11 1990 Supp. 74-2608 are hereby repealed.

12 Sec. 6 [7]. This act shall take effect and be in force from and
13 after its publication in the Kansas register statute book.

unless approved jointly by the chief engineer and
appropriate board of directors of the groundwater
management district, or are incorporated in a
groundwater management district's management
program that has been approved by the chief engineer
pursuant to K.S.A. 82a-1029

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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

April 2, 1991

STATEMENT OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE COMMITTEE OF
ENERGY AND NATURAL RESOURCES
SENATOR ROSS DOYEN, CHAIRMAN

WITH RESPECT TO HB 2037

Presented by

Rich McKee

Executive Secretary, Feedlot Division

Mr. Chairman and members of the committee, I am Rich McKee, representing the Kansas Livestock Association. KLA speaks for a broad range of over 10,500 members involved in the production of livestock. Their operations can be found in virtually every geographic corner of the state.

The Kansas Livestock Association opposes HB 2037. This proposed legislation could require water conservation plans to be drafted when it is neither practical or logical. Such may likely be the case with most stockwatering permit holders. Short of selling the stock there is not much, if anything, a stockwatering permit holder can do to conserve water.

For your information, any confined livestock operation with the capacity to hold 1,000 or more head is required to have a stockwatering permit from the Division of Water Resources (DWR). There are approximately 510 stockwatering permits issued by DWR. The amount of water used by these permit holders is roughly .4 percent of the total water appropriated in Kansas (less than one-half of one percent).

Thank you for considering the position of the Kansas Livestock Association.

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4-2-91

Kansas Natural Resource Council

April 2, 1991

Testimony before the Senate Energy and Natural Resources Committee

Re: HB 2037 Concerning Water Conservation Plans

From: Shaun McGrath, Program Director

My name is Shaun McGrath, and I represent the Kansas Natural Resource Council, a private, non-profit, organization which advocates sustainable resource policies for the state. Our membership is over 850 statewide. Today, I am also speaking on behalf of the 2500 members of the Kansas Rural Center, and 5000 members of the Kansas Audubon Council.

In 1986, the Kansas Legislature passed legislation which authorized the state to require the adoption and implementation of water use conservation plans for anyone purchasing water from the State Water Marketing Program, anyone participating in the new water Assurance District Program, anyone transferring water under the Water Transfer act, and anyone obtaining a new water right. The legislation did not authorize the state to require water use conservation plans for existing water rights which make up the bulk of water rights held in the state.

The 1990 Sub-section of the State Water Plan, "Water Use Conservation", which was the impetus for HB2037 before you today, states: "The main problem with the 1986 legislation leaving out conservation plans and drought contingency requirements for existing users is that in a drought situation it would be impossible to protect a common source of water supply. This is due to the fact that in order to protect a common source of supply, all users of that source must share the shortage, and thus, each must have a conservation plan with drought contingency provisions in place. The 1986 legislation is thus ineffective in protecting common sources of supply."

HB2037 was thus introduced in order to make the existing laws effective in protecting common sources of supply.

KNRC, KRC and Audubon had supported passage of the original bill. The House, however, added an amendment which exempts water right holders within Groundwater Management Districts from developing plans, effectively exempting 90% of the water used in the state. With this amendment (page 7, lines 5 through 7), the bill can no longer accomplish its objective of protecting common sources of supply.

The House also amended the Bill by striking the current statute which gives the state authority to require new permit applicants to develop plans (Section 3, pp 3-5). The rationale behind the amendment was to allow the Chief Engineer to focus on critical areas of the state. From a policy perspective, we feel that it is important that all new applicants develop conservation plans. Restoring this language would have no effect on the Chief Engineer's authority to require plans.

A third House amendment raises additional objections. On page 5, line 24, the bill now reads: "The chief engineer shall not mandate the adoption and implementation of conservation plans and practices except pursuant to a finding that such plans and practices will assure public benefit and promote public interest." Who is to define 'public benefit' and 'public interest'? Will the public have any say as to whether something is in its interest? Is water conservation in and of itself ever not in the best interest of the public? This language does not add anything to the bill but confusion. We recommend that it be deleted.

KNRC, KRC and Audubon oppose passage of HB2037 in its current form. We encourage you to take into consideration our concerns and make the amendments that allow the bill to meet its objective of protecting common water supplies in Kansas.



League of Kansas Municipalities

MUNICIPAL LEGISLATIVE TESTIMONY

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Senate Committee on Energy and Natural Resources
FROM: E.A. Mosher, Executive Director League of Kansas Municipalities
RE: HB 2037-Mandated Water Conservation Plans; Drought Emergencies
DATE: April 2, 1991

While supporting certain provisions of HB 2037, I appear on behalf of the League and its member cities in opposition to the bill for the purpose of making comments and to propose certain amendments. My comments are consistent with a League convention-adopted Statement of Municipal Policy provision on this issue, which reads as follows:

"J-1d. Conservation and Drought Planning. Continuing efforts are necessary to conserve our water supply. All local units should develop and implement water conservation and water shortage emergency plans, recognizing that failure to do so may result in further state mandates. The legislature should provide the Kansas water agencies with adequate staffing to assist local units of government in developing and implementing water shortage emergency and conservation plans. Public water systems should only bear the burden of state mandated water use conservation requirements (1) to the extent all water users—including agricultural/irrigation users—share in similar requirements, and (2) only when such mandates will achieve a significant state or regional benefit. State mandated water use conservation guidelines for municipal water systems should not usurp the responsibilities or authority of locally elected officials regarding such local decisions as pricing, distribution and other management practices. We oppose mandated water use conservation plans for recipients of state grant money involving non-water related projects."

Several League-supported amendments to the bill were adopted by the House Committee, and I will not comment on those changes. Our comments are presented by order of the sections and subsections.

We support Sections 1 and 2 as to drought emergencies.

We have no special comments as to Section 3, which we interpret to be an attempted reconciliation with the provisions of what is now Section 5. However, we wonder whether Section 3 is consistent with new subsection (f) on page 7, which would exclude the application of the conservation plan provisions of Section 5 from areas within a groundwater management district. We understand the Kansas Water Office will propose amendments to subsection (f).

Most of our comments relate to the first part of Section 5, so I will comment on that part later. However, we support the provisions beginning on line 39 on page 5, through line 21 on page 6. These include the provisions for technical assistance in the preparation and implementation of conservation plans.

*ETNR
4-2-91*

Attachment 6

President: Frances J. Garcia, Commissioner, Hutchinson * **Vice President: Bob Knight**, Mayor, Wichita * **Past President: Irene B. French**, Mayor, Merriam * **Directors: Michael A. Conduff**, City Manager, Manhattan * **Ed Eilert**, Mayor, Overland Park * **Harry L. Felker**, Mayor, Topeka * **Greg Ferris**, Councilmember, Wichita * **Idella Frickey**, Mayor, Oberlin * **William J. Goering**, City Clerk/Administrator, McPherson * **Judith C. Holinsworth**, Mayor, Humboldt * **Jesse Jackson**, Commissioner, Chanute * **Stan Martin**, City Attorney, Abilene * **Mark Mingenback**, Councilmember, Great Bend * **Joseph E. Steineger, Jr.**, Mayor, Kansas City * **Bonnie Talley**, Commissioner, Garden City * **Executive Director: E. A. Mosher**

1 of 3

We request the restoration of lines 22 through 26 on page 6. We believe the chief engineer should be authorized to require domestic users to implement conservation plans, and to delegate this authority to municipalities where needed, such as for the Hays situation.

We have no objections to what are now subsections (d) and (e) on page 6, since we think it is reasonable to require conservation plans under the listed fact situations.

Back to page 5. While we maintain a fundamental opposition to state mandates, we also appreciate the need for conserving water where there is competition for a limited supply, or where preventing the wasteful use of water would achieve a significant state or regional benefit. This leads us to suggest that clause (2), beginning on line 32 on page 5, should be restored and clause (3) be eliminated.

We appreciate the fact that what was clause (2), the stricken language on lines 32:34 on page 5, may be a redundant declaration of existing powers vested in the chief engineer. But we think it still should be listed as a factor to be considered by the chief engineer, achieved by restoring the stricken language.

We submitted our objections to the peer factor in clause (3) (line 35) to the House Committee. While we objected then to an undefined peer provision, as I will later explain, the Committee's amendment--the bold face type on lines 35 to 37, makes the peer factor even more onerous on cities than the original provision. The phrase "water users whose use is significantly higher than their peers" was not defined in the original bill, and is improperly defined in the amended version, in our judgment.

Let me focus the problem by posing a few questions:

Q.1 Presumably this peer provision means, for example, that if the water consumption in a city of 2,000 was 25% more than occurred in comparable sized cities, that city would become subject to the chief engineer's mandate. Does this mean the two cities must be in the same area? Can one be in the northeast and one in the southwest?

Q.2 Do the "peers" have to share a common supply source? Or do we make comparisons without considering where the water comes from, or the quantity or quality available?

Q.3 Should the state be empowered to mandate a conservation plan where a stream supply is used, and the quantity and quality of water of the stream below the city is more than the above stream intake, even though that city "processes" twice as much as similar (peer) cities.

Q.4 And most importantly, if a city of 640 acres uses twice as much water as another city of similar size and population, but uses less water than is used by a nearby 640 acres under irrigation, which is the appropriate "peer"?

As noted, we had some problems with the word "peer" in the original bill. Our argument was that in the absence of a meaningful and fair definition of "peer", it should be eliminated. The boldface type amendments referring to water use reports simply compounds the problem. With the existing bill defining "peer" as irrigation against irrigation, or municipal against municipal, we rise to the point of indignation over its unfairness. If the peer factor must be

used, we suggest it relate to the area and supply source, and not to the class of water use.

Finally, I would observe that we support the idea of conservation—even, reluctantly, state mandated conservation— when it results in some present and future public benefits. But we also champion fairness, applied to urban and rural areas, and to different kinds of water users, including the use of water for land irrigation as well as for human consumption. In terms of the total waters of the state, you could cut municipal water use in half and still only reduce the total water use in Kansas by less than 5%. Further, some of our cities simply "borrow" water, returning it for downstream use. We are worried that municipal water systems—which use about 7% of the water in Kansas to serve about 75% of the people of Kansas—will be unduly targeted, and thus look for fairness in this legislation and in the implementation of laws relating to mandatory conservation.

GALLONS OF WATER USED IN KANSAS-1989

From Reports of the Kansas Water Office

| <u>User</u> | <u>Surface Water</u> | <u>Ground Water</u> | <u>Percent of Total</u> |
|-------------|----------------------|---------------------|-------------------------|
| Domestic | 2,685,011 | 20,616,589 | 0.0013% |
| Industrial | 30,367,475,386 | 37,579,297,672 | 3.8912% |
| Irrigation | 53,337,295,621 | 1,464,739,203,705 | 86.9366% |
| Municipal | 60,392,751,838 | 63,381,216,045 | 7.0882% |
| Recreation | 23,957,666,886 | 3,699,037,731 | 1.5839% |
| Stock Water | 65,831,676 | 8,643,689,780 | 0.4988% |
| Totals | 168,123,706,418 | 1,578,063,394,522 | 1,746,187,100,940 |
| Percent | 9.628% | 90.372% | 100% |

Kansas Wildlife Federation, Inc.

P.O. Box 5715
Topeka, Ks. 66605

Affiliate of National Wildlife Federation
913/266-6185

200 S.W. 30th
Suite 106
Topeka, Ks. 66611

TESTIMONY HB 2037 - DROUGHT EMERGENCY/CONTINGENCY PLANS;
WATER USE CONSERVATION PLANS

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE April 2, 1991

I am Jerry Hazlett, Executive Manager of the Kansas Wildlife Federation. The Federation is a non-profit wildlife and natural resources conservation and education organization. Our volunteer membership joins with the members of our national affiliate, the National Wildlife Federation, to support the wise use and sustained management of our vital air, water, soil, forest and wildlife resources.

The Kansas Wildlife Federation thanks you for the opportunity to testify in opposition to HB 2037 as amended by the House Committee of the Whole and passed by the House.

We are opposed to exempting water users within groundwater management districts from planning and implementing water conservation practices. The State does have a public responsibility for long term water management. This responsibility should be upheld in State Law while cooperatively working with all water users.

Secondly, the Federation is opposed to this amended legislation because it assures that proposed uses and conservation planning will be in the public interest. Examples of these assurances are found on page 4, line 1-4, lines 14-16; and page 5, lines 24-28. Yet legislation leaves it up to the Chief Engineer's discretion in this decision making process. There is no language that allows for public input to the Chief Engineer.

How can any person or agency make a decision that assures public benefit or promote public interest without an established mechanism for public notice, review and comment?

The Federation asks this Committee to not pass this legislation forward unless it can be amended to provide for fair and equitable water conservation planning by all users and amended to provide all Kansans the opportunity for input to the Chief Engineer through public notice, review and comment.

*E+NR
4-2-91
attachment 7*

March 27, 1991
Kansas Land Trust
Rt. 2, Box 394A
Lawrence, KS 66046
1-842-1203

Dear Senator,

We very much appreciated having had the opportunity to speak to you today concerning House Bill 2375, the Uniform Conservation Easement Act. We urge your support of this bill. In response to the opposition to this bill, we thought it appropriate to respond to some of the concerns raised.

We believe that the Farm Bureau's testimony is sympathetic with ours and we would view their suggested amendment, putting a carefully worded disclaimer on every easement to inform the landowner that it is clearly "in perpetuity," to be a friendly amendment.

Parts of the other testimony are based on mis-information. For example, testimony from the Kansas Association of Wheat Growers mentions U.S. Senate Bill 50, which actually does not relate to H.B. 2375 because U.S. Senate Bill 50 states in Section 2 that it pertains only to the federal actions. We ask you to carefully read our and others testimony and to look at what has actually happened in other states. We believe that our testimony is a good response to the concern of those who appose this legislation. Conservation easements have not been controversial in other states, nor have they resulted in an increase of litigation. Very few people even know what conservation easements are because they have not been controversial.

House Bill 2375 has not been invisible. Although, we have no paid lobbyists, volunteers have discussed the bill with Bill Fuller of the Farm Bureau and others. In addition, the hearings in the House Judiciary Committee were attended by the Home Builders Association and the Kansas Livestock Association. No one testified against this bill in that committee.

Let me close by stating that we had a native prairie outside Lawrence that was owned by the Elkins family. Eight years ago, the owner (who was post-retirement age) wanted to both sell it and protect it. She tried in vain to find a buyer for it--at that time neither the University of Kansas or the Nature Conservancy were interested. She apparently wanted, but did not have the right to protect her property. Instead, she sold it to a developer. He held onto it until last fall when he had it plowed (after being offered by Douglas County a price more than five times his original purchase price. It is clear that at that time it was his private property and he had the right to do with it as he saw fit. Eight years ago, the Elkins Family wanted to protect this tract--as landowners they did not have the right to do with the land as they wanted--to protect it. With this specific example in mind, we urge you to support this bill to give landowners further rights for their land.

Please call me with any questions that you have.

Sincerely,

Kelly Kindscher
Executive Director



E+NR
4-2-91
attachment 8