

Approved

Ken Grotewiel  
Date 2/11/92

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at  
Chairperson

3:30 ~~am~~/p.m. on January 29, 1992 in room 526-S of the Capitol.

All members were present except:

Representative Krehbiel, excused  
Representative Lloyd, excused

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research Department  
Pat Mah, Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

John Baldwin, Chairman, Kansas Water Authority  
Gloria Timmer, State Budget Director

Chairperson Grotewiel welcomed all who were present and called on John Baldwin to present a review of Kansas Water Authority's recommendations to the Legislature.

John Baldwin, Chairman, Kansas Water Authority, briefly explained the composition and primary responsibility of the Kansas Water Authority, and he introduced the members who attended today's meeting. Mr. Baldwin requested that the Kansas Water Plan be amended to implement the modification of the Water Transfers Act Sub-section of the Kansas Water Plan which was approved by the Kansas Water Authority last August. (This sub-section is included with his testimony) He stated that the Kansas Water Plan works because the programs and actions it recommends to solve our state's water problems are now funded by a permanent, dedicated source of funding established in 1989. (Attachment 1)

Gloria Timmer, State Budget Director, appeared before the Committee to provide additional details on the Governor's recommendations to fund the State Water Plan for 1993. Ms. Timmer reviewed a list of proposed goals:

1. To develop sufficient water supplies.
2. To protect and improve water quality.
3. To reduce water loss due to floods.
4. To provide sound management for all water supplies.
5. To conserve water.
6. To provide for efficient distribution of water.
7. To develop water resources.
8. To prevent waste or pollution of water.

Ms. Timmer said that the major programs proposed are for cost-sharing, multi-purpose small lakes, non-point source, watershed dam construction, and state aid to Conservation Districts. She responded to questions from the Committee.

The meeting adjourned at 4:05 p.m.

Date: 1/29/92

GUEST REGISTER  
HOUSE  
COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Rich McKee	KWA	Topeka	273-5115
LARRY PANKING	KWA	ELLINWOOD Ks	
Marvin Odgers	KWA	Soblette Ks	
Wayland Anderson	DWR/KSBA	Topeka, Ks	296-3718
Bob Sullivan	KFB	Manhattan	587-6000
Jeff Mason	KWA	Goodland Ks	899-6188
Jim Mason	KWA	Wichita, Ks	267-3970
David L. Pore	KWA & DWR/KSBA	Topeka Ks	296-3717
Tom Van Dundy	KWA	Reading Ks	316 342-7063
Glen Kirk	KS Water Office	Topeka	296-3185
Lee Garland	KS Geological Survey	Lawrence	854-3960
Shaun McGrath	Ks Natural Res. Council	Topeka	233 6707
Wayne a Bossert	NW KS GMD #4	Colby	452-3915
Marda Marshall	KWA	De Soto	585-3401
Terry Heatherman	KCCI	Topeka	357-6321
Cathy Haldeman	City of Wichita	Wichita	268-4351
Scott Andrews	Sierra Club	Topeka	273-3217
Deborah Knepp		Parkersburg IA	315 346 2627
Jim Ludwig	KPL Gas Service	Topeka	296-1915
Curt Carpenter	West Plains Energy	Great Bend	793-1285
Dan Haas	KCPK	Overland Park	816-556-2998
Michelle Lister	KGC	Topeka	

**Testimony of  
John L. Baldwin, Chairman  
Kansas Water Authority**

**Before the  
House Energy and Natural Resources Committee**

**January 29, 1992**

Thank you, Mr. Chairman.

I am John L. Baldwin from Hutchinson and a lifetime resident of Kansas. I have been Chairman of the Kansas Water Authority since 1987.

The Kansas Water Authority is a 22-member body of private citizens and state water-related agency directors created in 1981. Its primary responsibility is to approve the *Kansas Water Plan* and make recommendations to the Governor and Legislature on a broad spectrum of water management issues.

Attached to my testimony is the membership list of the Kansas Water Authority. At this time, I would like to introduce those members of the Authority that are present here today.

The Kansas Water Authority works closely with the Kansas Water Office, 12 private citizen basin advisory committees and other public and private interests to develop the *Kansas Water Plan*. Since 1985, that Plan and the process that produced it has become the benchmark in water planning for most of the 17 western states. Our *Kansas Water Plan* is unique because it gets implemented. It is revised and updated yearly and, as a result, gets better and better each year.

**Legislation**

This year we are proposing one legislative initiative as part of that yearly updating of the *Kansas Water Plan*. This proposed legislation is primarily amendatory in nature and would

1/29/92  
E+NR  
Attachment 1

implement the Modification of the Water Transfers Act Sub-section of the *Kansas Water Plan* which was approved by the Kansas Water Authority last August. This sub-section is included with my testimony.

This sub-section, like all sub-sections of the *Kansas Water Plan*, was subjected to extensive public review. It was discussed at 12 public meetings and two public hearings. Four drafts were reviewed by the public and Kansas Water Authority before it was approved.

The Kansas Water Authority actually began studying this issue in November of 1988. Since then, we have probably spent more time and effort on the development of this sub-section than we have on any other issue.

This morning the Senate Energy and Natural Resources Committee voted to introduce this proposed legislation. When it arrives before this committee, I urge your favorable consideration of these important amendments to the Water Transfer Act.

### **Funding**

We are proud of the *Kansas Water Plan*, Mr. Chairman, because it works. It does what a plan is suppose to do. It works because the programs and actions it recommends to solve our state's water problems are now funded by a permanent, dedicated source of funding established in 1989. These funds have been available since the last half of 1990. Our goal is to utilize these funds in the best possible manner.

In its report to the Governor and the 1992 Legislature, the Kansas Water Authority worked diligently to recommend the highest priority items for funding to implement the State Water Plan while remaining within available resources. Included with my testimony is a summary of Governor Finney's recommendations to fund the State Water Plan for FY 1993. The

Kansas Water Authority supports the Governor's recommendations. The Governor's recommendations would fund the highest priority items which were identified by the Kansas Water Authority for implementation.

These priority needs are well documented in the State Water Plan. Because of these pressing needs, the Kansas Water Authority respectfully requests that State Water Plan Funds only be used to implement the *Kansas Water Plan*. For that reason, I would like to highlight three important recommendations contained in the Kansas Water Authority's report:

1. Water-related programs that are not identified in the State Water Plan should not be funded from the State Water Plan Fund. Under the law, these items are not eligible for funding from this fund.
2. Kansas Water Authority does not recommend the use of the State Water Plan Fund to offset the historic State General Fund base of state water-related programs. These expenditures should continue to be financed from the State General Fund while the State Water Plan Fund is used to supplement these programs.
3. Requests that result in long-term operation and program expenses such as permanent positions should not be financed from the State Water Plan Fund.

Accompanying me today, Mr. Chairman, is Gloria Timmer, the State Budget Director. Ms. Timmer will provide you with additional details on the Governor's recommendations to fund the State Water Plan for FY 1993.

Thank you.

Kansas Water Authority

Name, Address & Telephone	Occupation	Representing	Term Expires
Lowell K. Abeldt 900 NW 2nd Abilene, KS 67410 913/263-2334	Real Estate Broker & Owner of Insurance Agency	Association of Watersheds	5/1/94
John L. Baldwin 2700 East 4th Street Hutchinson, KS 67504 316/665-5511	Pres., Dillon Stores	Governor	Pleasure
Michael Conduff P.O. Box 748 Manhattan, KS 66502 913/537-0056, x-204	City Manager, City of Manhattan	Kansas League of Municipalities	5/1/93
Dr. Lee C. Gerhard Director, Kansas Geological Survey 1930 Constant Ave., Campus West, University of Kansas Lawrence, KS 66045 913/864-3965	Director, Kansas Geological Survey	Ex Officio	
Stephen A. Hurst Director, Kansas Water Office Suite 300, 109 W. 9th Street Topeka, KS 66612 913/296-3185	Director, Kansas Water Office	Ex Officio	
Byron Johnson, General Manager Water Dist. No. 1 of Johnson Co. P.O. Box 2921 Mission, KS 66201 913/722-3000	General Mgr. Water Dist. No.1 of Johnson Co.	President of Senate	7/1/93
Kenneth F. Kern, Exec. Dir. State Conservation Commission 5th Floor, 109 SW 9th St. Topeka, KS 66612 913/296-3600	Exec. Dir., State Conservation Com.	Ex Officio	
Jack Lacey, Secretary Kansas Dept. of Wildlife and Parks 5th Flr., Landon St. Off. Bldg. Topeka, KS 66612 913/296-2281	Secretary, Kansas Dept. of Wildlife and Parks	Ex Officio	
Sheila Leiker-Page Rt. 1, Box 68 Victoria, KS 67671 913/735-9242	Dairy Herd Improv. Assn.	Conservation District	5/1/92
Marsha Marshall 8560 Rik-Mar Drive DeSoto, KS 66018 913/585-3401	Co-Owner, Insurance Marketing Co.	Environmental Interests	10/31/92
James E. Mason 1145 Jackson Wichita, KS 67203 316/263-2811 316/264-8323 (message)	Interpretative Naturalist, City of Wichita	Speaker of the House	6/30/93
Jeffery Mason 224 Broadway Goodland, KS 67735 913/899-6588	Attorney	Public	5/1/93

Name, Address & Telephone	Occupation	Representing	Term Expires
Laura Nicholl Secretary, Dept. of Commerce 400 SW 8th, 5th Floor Topeka, KS 66612 913/296-3480	Secretary, Dept. of Commerce	Ex Officio	
Marvin Odgers HCR 1, Box 84 Sublette, KS 67877 316/675-2564	Farmer	GMDs #1, 3, 4	5/1/91
Larry K. Panning 500 W. 4th Ellinwood, KS 67526 316/564-2199	Farmer	GMDs #2 & #5	5/1/94
David L. Pope Chief Engineer, Division of Water Resources State Board of Agriculture 109 SW 9th Street Topeka, KS 66612-1283 913/296-3717	Chief Engineer, Div. of Water Resources	Ex Officio	
Jim Robinson, Chairman Kansas Corporation Commission 1500 SW Arrowhead Rd. Topeka, KS 66604 913/271-3233	Chairman, Kansas Corporation Commission	Ex Officio	
Dennis F. Schwartz 3260 SE Tecumseh Rd. Tecumseh, KS 66542 913/379-5553	Manager, Rural Water District	Rural Water Association	5/1/92
Myron VanGundy Rt. 2, Box 110 Reading, KS 66868 316/342-7063	Farmer	Public	6/30/92
David R. Warren 455 N. Main Wichita, KS 67202 316/268-4515	Dir., Wichita Water & Sewer	Kansas Assoc. of Commerce & Industry	5/1/95
Dr. Walter Woods Director, Agricultural Experiment Station 113 Waters Hall Kansas State University Manhattan, KS 66506 913/532-7137	Director, Ag. Exp. Station	Ex Officio	
Dr. Azzie Young, Secretary Dept. of Health and Environment Rm. 951, Landon State Off. Bldg. Topeka, KS 66612 913/296-1522	Secretary, Dept. of Health & Environment	Ex Officio	
January 1992			

# ***Kansas Water Plan Management Section***

## ***Sub-section: Modification of the Water Transfers Act***

Kansas Water Office  
109 S.W. Ninth, Suite 300  
Topeka, Kansas 66612-1249  
913-296-3185  
An Equal Opportunity Employer

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# ***FY 1993***

***Approved  
by the  
Kansas Water Authority***

***August 1991***

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# MODIFICATION OF THE WATER TRANSFERS ACT

## INTRODUCTION

The Water Transfers Act, K.S.A. 82a-1501 *et seq.*, as passed by the Kansas Legislature in 1983, sets out the requirements for the diversion and transportation of water in quantities of 1,000 acre-feet or more per year for beneficial use outside a ten mile radius from the point of diversion. This act also gave the Chief Engineer the discretionary authority to impose these requirements on any application for a water right regardless of the quantity of water or the distance to the point of use.

Approval for water transfers requires an application to the Chief Engineer, Division of Water Resources, State Board of Agriculture, hearings before a water transfer hearing panel, approval by the Kansas Water Authority and review by the Kansas Legislature. This is a rather complex and involved process, made even more complex by the fact that the procedure was recently modified by the legislature and now must meet the more formal administrative law requirements set out in the Kansas Administrative Procedures Act (K.S.A. 77-501 *et seq.*).

The issue of interbasin transfers of water is addressed specifically in the *Kansas Water Plan* under the Kansas-Lower Republican Basin Section, Sub-section Water Supply. The issue is also addressed under the Water Supply Sub-section of the Lower Arkansas Basin Section of the 1990 *Kansas Water Plan*. The Kansas-Lower Republican Basin Section emphasizes the need to examine factors such as the political, economic, social and environmental impacts of any interbasin transfer before a transfer is approved. This could include a cost benefit analysis weighing benefits to the area receiving the water and potential cost or harm to the basin of origin. The Kansas-Lower Republican Basin Advisory Committee also set out in the Kansas-Lower Republican Basin Section several suggested guidelines to be considered in the application of review standards before any transfer out of the Kansas-Lower Republican Basin is approved. The Lower Arkansas Basin Section basically deals with municipal and industrial water supply shortages in their area and explores various alternatives to address the problem such as water transfers and conjunctive water use management, which would alternate periods of use between groundwater and surface waters.

While the Water Transfers Act has been in the statute book since 1983, no water transfer application has been made to the Chief Engineer, and no convening of the water transfer hearing panel has taken place to date. Despite the lack of an actual transfer application pending before the hearing

panel, potential applicants for transfers and representatives of potential basins of origin alike have raised many questions as to the soundness of the current Water Transfers Act.

Prior to the passage of the Water Transfers Act in 1983, large transfers of water were governed by the criteria set out in the Appropriation Act, K.S.A. 82a-701 *et seq.* and the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.*, also known as the Water Marketing Act.

This sub-section describes the basic concepts that point out the need for modifications to the current Water Transfers Act. Issues are discussed and several options and recommendations aimed at modifying and improving the current Water Transfers Process are presented.

## CONCEPT

The Water Transfers Act sets out standards of review that must be met and an administrative procedural process, to afford protection to both the area of origin and area of use when water must be moved in large quantities from one area to another. The concept was to make sure that potential social, political, environmental and economic impacts would be considered in advance of such a transfer and that the public interest would be protected. The act also considers whether the transfer is in the best interest of the state. While the act basically sets out sound standards for review of water transfers there are a few basic issues that are in need of clarification, and these should be addressed by either amendatory legislation or new legislation.

## POLICY ISSUES, OPTIONS AND RECOMMENDATIONS

There are two policy issues that must be addressed in modifying the Water Transfers Act. These issues are:

1. Clarification of Definition of a Transfer
2. Clarification of Administrative Process and Procedures

## CLARIFICATION OF DEFINITION OF A TRANSFER

At the time of the drafting of the Water Transfers Act, as passed by the Kansas Legislature in 1983, the Kansas Water Authority's intent was to promote an interbasin transfers act. At that point in time the concept of basins was not clearly defined. Thus, the legislature decided to go forward with a Water Transfers Act that would apply to all water

transfers falling within the specific quantity amount of 1,000 acre-feet or more, transported outside a ten mile radius from the point of diversion. For lesser quantities of water transported over lesser distances the Chief Engineer has the discretion to determine when the act should be triggered.

Since the passage of the Water Transfers Act in 1983 the *Kansas Water Plan* has identified and set out 12 hydrologic basins that are subsets of the two major hydrologic drainage basins that divide the state in half, the Missouri River Basin and the Arkansas River Basin. These 12 basins have become generally accepted and used in the water planning process over the past six years. While the term basin is now commonly understood to mean the 12 hydrologic basins as described in the *Kansas Water Plan* and these basins generally follow watershed drainage lines, they are still subsets of the two true drainage basins, and were selected for management purposes. The definitional problem

that faced the legislature has to a large extent been eliminated, making it a much easier task to differentiate between interbasin transfers and intrabasin transfers. The options available to address this policy issue of clarification of the definition as to when the act should be automatically triggered are as follows:

The first option is to adopt the two hydrologic drainage basins that divide the state in half, the Missouri River Basin and the Arkansas River Basin as the dividing line to automatically trigger the provisions of the act. The Chief Engineer would retain his discretionary authority to impose the requirements on all water right applications. Such interbasin transfers would receive a high level of scrutiny via a detailed review process. The automatic trigger would be limited to transfers of 1,000 acre-feet or more across a basin's boundary. (See Figure 1)

### Basin Boundaries

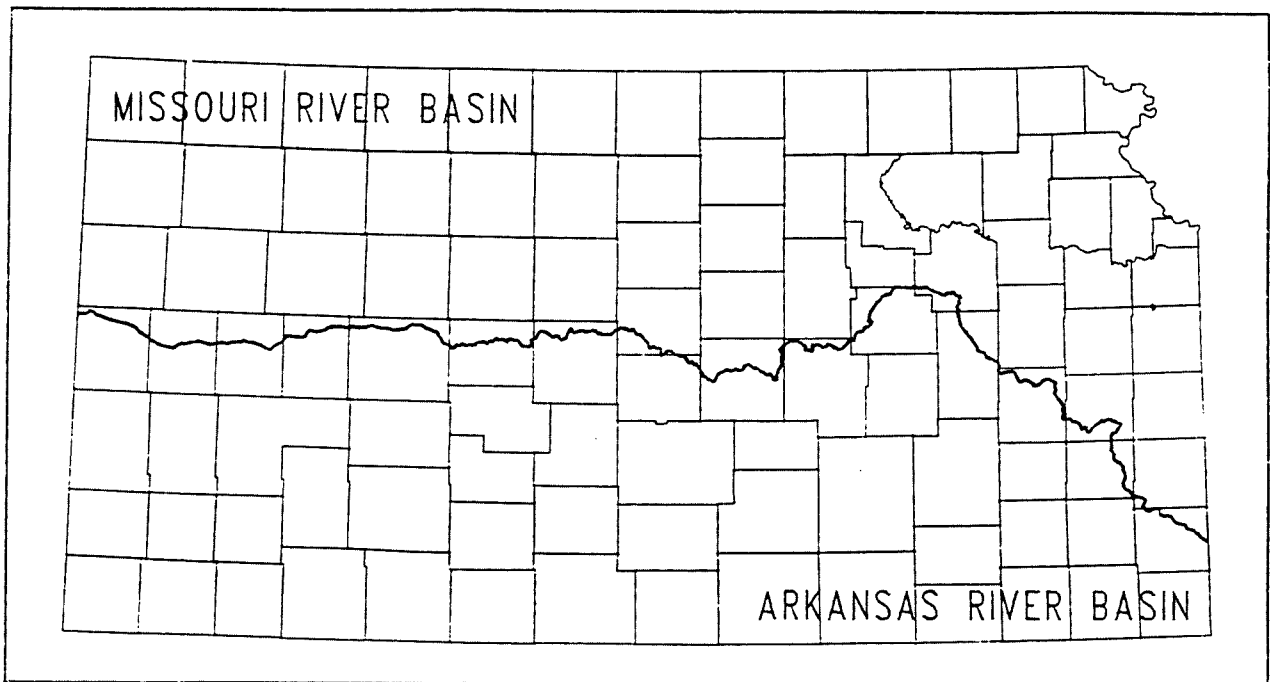


Figure 1

The second option is to continue with a Water Transfers Act that contains provisions to automatically trigger both interbasin transfers and intrabasin transfers, but that would be amended to reflect the two hydrologic drainage basins that divide the state in half, the Missouri River Basin and the Arkansas River Basin. This option would address the differing levels of protection needed for large interbasin transfers and large intrabasin transfers.

As in the first option this option would provide that an automatic trigger for an interbasin transfer would be defined as 1,000 acre-feet or more crossing the Missouri River Basin and Arkansas River Basin boundary. This option would, however, also provide for automatic protection of water from large intrabasin transfers, taking note that proposed large transfers of water from rural areas and extraordinarily managed groundwater reserves

deserve and require governmental scrutiny. An automatic trigger for an intrabasin transfer would be defined as the transfer of water within either the Arkansas or Missouri River Basin of 1,000 acre-feet or more per year for beneficial use outside a 10 mile radius from the point of diversion. The Chief Engineer would retain his discretionary authority to impose the requirements on all water right applications. Releases from reservoirs to the natural water course made under the authority of the State Water Supply Storage Act, K.S.A. 82a-1301 *et seq.*, or the Water Assurance Program Act, K.S.A. 82a-1330 *et seq.* shall be excluded from the intrabasin transfer provisions of this act. The management and review procedures for such inter and intra basin transfer applications is discussed in the following section, Clarification of Administrative Process and Procedures.

The third option is to continue with a Water Transfers Act that is automatically triggered by the diversion and transportation of water in an amount of 1,000 acre-feet or more per year for beneficial use outside a ten-mile radius from the point of diversion of such water. Such transfers would receive a high level of scrutiny via a thorough detailed review process. The Chief Engineer would retain his discretionary authority to impose the requirements on all water right applications.

The second option is recommended because it effectively deals with both large inter and intra basin transfers which were the primary concerns of the Legislature and the Kansas Water Authority in proposing and formulating a Water Transfers Act. It does, however, differentiate between the levels of scrutiny provided interbasin transfers and intrabasin transfers, making a formal hearing mandatory for interbasin transfers and discretionary, in some instances, for intrabasin transfers. It also retains the discretionary authority of the Chief Engineer to impose the requirements of the act on any water right application when conditions warrant. (See, Clarification of Administrative Process and Procedures) This option also clears up the long standing problem of reservoir releases to the natural water course or stream under either the Marketing Program or the Assurance Program, by eliminating this activity from the intrabasin transfers requirements of the act.

#### CLARIFICATION OF ADMINISTRATIVE PROCESS AND PROCEDURES

There are three basic sub-issues that are components of the primary issue of clarifying the Water Transfers Act Administrative Process and Procedures. The first is the applicability of the Kansas Administrative Procedures Act to the Water Transfers Process. The second sub-issue is the potential for "conflicts of interest" of hearing panel members. The third sub-issue is the constitutionality of legislative oversight.

#### "Kansas Administrative Procedures Act"

The current Water Transfers Act falls under the formal requirements of the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* It is noted in the Kansas Administrative Procedures Act that the Act applies only to the extent that other statutes expressly provide that the provisions of this act govern proceedings under those statutes. The Kansas Administrative Procedures Act creates only procedural rights and imposes only procedural duties that are in addition to those created or imposed by other statutes. The Water Transfers Act sets out its own procedural requirements for review including review by the three person hearing panel, review by the Kansas Water Authority and Legislative review. In July 1989 the Water Transfers Act was amended to provide that "... the panel shall consider the application and determine whether to approve the proposed water transfer in accordance with provisions of the Kansas Administrative Procedures Act." The Kansas Administrative Procedures Act provides for several avenues of administrative and judicial review of decisions made by the hearing panel. As noted, the Water Transfers Act as originally written had a less formal administrative procedure but one that was basically adequate, with the exception of the legislative oversight provision. The act as originally written also provided for sound decision making in a reasonable time frame.

The available options to address this policy sub-issue of applicability of the Kansas Administrative Procedures Act are as follows:

The **first option** is to remove the Water Transfers Act from the purview of the Kansas Administrative Procedures Act. There would remain on the statute books a Water Transfers Act that would set out what constitutes a water transfer as defined in the recommendation in issue number one discussed above, and that would also set out a special water transfers administrative procedure, adequate to protect and safeguard the rights of both the applicant and the area origin. The statute would provide the Chief Engineer of the Division of Water Resources with the authority to review an independent hearing officer's preliminary order supported by findings of fact and conclusions of law on a proposed interbasin transfer and to approve interbasin transfers of water under a modified Water Appropriation Act type approval process. The statute would direct the Chief Engineer to consider interbasin transfers as unusually large appropriations under the Appropriations Act K.S.A. 82a-701 *et seq.*, but would also allow testimony from certain state natural resource and environmental agencies such as the Kansas Department of Health and Environment, Kansas Water Office and Kansas Department of Wildlife and Parks. The statute would also authorize the Chief Engineer to condition his approval of an interbasin transfer based on the hearing officer's preliminary order reviewing the

testimony provided by the applicant, the basin of origin and the environmental review agencies mentioned above. This modified water transfers and appropriation procedure vesting final decision making power in the Chief Engineer should be limited to only those interbasin transfers that do not involve the waters marketed under the State Water Plan Storage Act K.S.A. 82a-1301 *et seq.*

The statute would also provide for the Chief Engineer's scrutiny of intrabasin transfers that do not involve waters marketed under the State Water Plan Storage Act K.S.A. 82a-1301 *et seq.* The intrabasin transfer review process would involve the following steps: (1) Upon receipt of an application to appropriate water within one of the two drainage basins in a quantity of 1,000 acre-feet or more per year for beneficial use outside a 10 mile radius from the point of diversion, and conveyed by a means other than reservoir releases to the natural water course, the Chief Engineer will determine if the water in the area is currently available for appropriation. (2) If water is not available for appropriation the application will be denied. (3) If there is water available for appropriation, an application for a water transfer could be filed and if so notice will be published in the State Register and in local papers of the pending application and special notice will go out to certain state natural resource agencies such as the Kansas Department of Health and Environment, Kansas Department of Wildlife and Parks and Kansas Water Office. (4) Public comments and state agency comments will then be solicited and considered by the Chief Engineer to determine if a hearing is necessary. (5) If there are significant concerns raised by the public or commenting agencies, a hearing will be held at the Chief Engineer's discretion. (6) Any such hearing will establish a formal record of findings of fact and conclusions of law upon which the Chief Engineer will then make a decision to approve or deny, or approve in part the application based upon criteria set forth in the Water Transfers Act. (7) If no significant concerns are raised then the Chief Engineer would act upon the proposed transfer based upon the information provided in the application and the criteria set out in the act.

A second provision in the new or amended transfers act would provide for the Kansas Water Authority approval of interbasin transfers as described in the recommendation in issue number one above, when such waters are requested from reservoirs that fall under the State Water Plan Storage Act. This procedure would also require the Kansas Water Office and Kansas Water Authority to review the hearing officer's report on testimony received from interested parties. A provision should also be made in the State Water Plan Storage Act that if a water marketing contract involves a water transfer, at least one public hearing must be held by the hearing officer, one formal hearing must be held in the basin of origin and if deemed necessary, by the hearing officer, a public comment hearing

may be held in the basin of use. The results of these hearings should be considered by the Kansas Water Authority in making a decision as to whether to approve or disapprove of an application. Also the statute should provide that the Kansas Water Authority shall consider the testimony of the environmental review agencies and the applicant and the basin of origin in conditioning, approving or denying any water transfers application.

The statute would also provide that intrabasin transfers of water from reservoirs that fall under the purview of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.* in quantities of 1,000 acre-feet or more per year for beneficial use outside a 10 mile radius from the point of diversion, conveyed by a means other than reservoir releases to the natural water course, shall be reviewed in accordance with the public interest finding requirements currently found under the aforementioned act.

In addition to the aforementioned provisions, the statute would also provide a mechanism for addressing the issues of acquiring water rights for future use and aggregation of small water transfers over the interbasin (Missouri/Arkansas Basin) boundary, or in amounts and distance sufficient to trigger an intrabasin transfer as follows: (1) The Chief Engineer, or the Kansas Water Authority, as appropriate, would have the authority to determine whether an aggregation of small water transfers over a period of time constitutes a transfer within the meaning of the Water Transfers Act. (2) The Chief Engineer, or the Kansas Water Authority, as appropriate, would have the authority to give final approval to a water transfer which would not physically take place for a period of up to twenty years, if the transfer was found to be in the public interest. (3) The Chief Engineer, or the Kansas Water Authority, as appropriate, could approve a water transfer of up to a total of ten thousand acre-feet from a specific geographic area from a specific source or sources of supply for use by specified water user(s) even though the specific water rights to be transferred had not yet been identified. This blanket advance water transfer approval would be subject to the condition that the applicant(s) subsequently obtain approvals of change in point of diversion, place of use, and/or type of use, as appropriate, in accordance with the provisions of the Kansas Water Appropriation Act.

The second option is to remove the current Water Transfers Act from the purview of the Kansas Administrative Procedures Act and to maintain the current procedural requirements set out in the Water Transfers Act with the possible exception of legislative oversight. This would make the Kansas Water Authority the final decision maker in any water transfer. A water transfer would be defined as in the recommended issue number one above. This option would not have the bifurcated process of the first option noted above, dividing the hearing officer report review proceedings and decision making authority between the Chief Engineer,

Division of Water Resources, for those transfers of "non marketing" water, and the Kansas Water Authority reviewing those transfers of water sold from state water supply storage.

The **third option** is to amend the current Water Transfers Act in such a way as to bring it in line with the Kansas Administrative Procedures Act. This option would provide a maximum level of formal procedural safeguards to both the applicant and the area of origin but could have the effect of delaying the approval of an application for several years due to the many formal appeals provided for. The Kansas Water Office, under a contract with the Kansas Water Resources Research Institute, has received a legal review of the Water Transfers Act that sets out some options for amending the Water Transfers Act to bring it in line with the Kansas Administrative Procedures Act. These options involve removing some of the confusing overlapping administrative provisions that were originally in the Water Transfers Act and that currently conflict with the Kansas Administrative Procedures Act requirements. Should this option be selected, the recommendations in that report should be considered.

The **fourth option** is to remove the Water Transfers Act from the purview of the Kansas Administrative Procedures Act. There would remain on the statute books a Water Transfers Act that would set out what constitutes a water transfer as defined in the recommendation in issue number one discussed above, and that would also set out a special water transfers administrative procedure, adequate to protect and safeguard the rights of both the applicant and the area origin. The statute would provide the Chief Engineer of the Division of Water Resources with the authority of review and approval of interbasin transfers of water under a modified Water Appropriation Act approval process. The statute would direct the Chief Engineer to treat these inter basin transfers as unusually large appropriations under the Appropriations Act K.S.A. 82a-701 *et seq.*, but would also allow testimony from Kansas Department of Wildlife and Parks, State and Extension Forestry, Kansas Biological Survey, Kansas Department of Health and Environment, State Historical Society, State Conservation Commission and Kansas Corporation Commission with the addition of the Kansas Water Office and Division of Water Resources as commenting agencies. The statute would also authorize the Chief Engineer to condition his approval of a transfer based on the testimony provided by the applicant, the basin of origin and the environmental review agencies mentioned above. This modified water transfers and appropriation procedure vesting power in the Chief Engineer should be limited to only those transfers that do not involve the waters marketed under the State Water Plan Storage Act K.S.A. 82a-1301 *et seq.*

A second provision in the new or amended transfers act would provide for the Kansas Water Authority approval of interbasin transfers as

described in the recommendation in issue number one above, when such waters are requested from reservoirs that fall under the State Water Plan Storage Act. This procedure would also allow the Kansas Water Office to hear or receive testimony from the Kansas Department of Wildlife and Parks, State and Extension Forestry, Kansas Biological Survey, Kansas Department of Health and Environment, State Historical Society, State Conservation Commission, Kansas Corporation Commission and from representatives of the basin of origin and the applicant and to report its findings to the Kansas Water Authority. A provision should also be made in the State Water Plan Storage Act that if a water marketing contract involves a water transfer, two public hearings must be held by the Kansas Water Office, one in the basin of origin and one in the basin of use. The results of these hearings should be considered by the Kansas Water Authority in making a decision as to whether to approve or disapprove of an application. Also, the statute should provide that the Kansas Water Authority shall consider the testimony of the Division of Water Resources, Kansas Department of Wildlife and Parks, State and Extension Forestry, Kansas Biological Survey, Kansas Department of Health and Environment, State Historical Society, State Conservation Commission, Kansas Corporation Commission, environmental review agencies and the applicant and the basin of origin in condition, in approving or denying any water transfers application.

The first option is recommended because it provides a reasonable process that differentiates between water transfers that are not out of state water supply storage reservoirs, and water transfers that are out of state water supply storage reservoirs. It provides that the Chief Engineer, Division of Water Resources, have decision making authority over those "non marketing" applications for water transfers and that the Kansas Water Authority, which currently has decision making authority over water marketing contracts, be the final decision maker for those water marketing contracts that involve a water transfer. This option also takes into consideration the traditional public input process used by the Kansas Water Authority, by providing for public hearings. One formal hearing in the basin of origin and an option for a public comment hearing in the basin of use when a marketing contract involves an interbasin transfer. Additional safeguards are provided for both hearing procedures in that both the Chief Engineer and the Kansas Water Authority are charged with reviewing the hearing officer's preliminary order, based on the formal testimony of certain state natural resources and environmental agencies set out in the Act and charged with conditioning their decision making by considering the testimony provided by these entities. Thus, the first option provides a bifurcated process with adequate input and procedural safeguards for both the applicant and the basin of origin. This option also addresses the important issue of large intrabasin

transfers and sets up a formal procedure for the Chief Engineer to review such proposed "non marketing" intrabasin transfers. This option also provides for Kansas Water Authority review and findings of public interest for proposed large intrabasin transfers from marketing storage. This option also addresses the issues of acquiring water rights for future use and aggregation of acquisitions of water. Due consideration will be given to the development of appropriate time frames for the review and approval processes when legislation is drafted.

### "Hearing Panel"

The three person hearing panel that is currently set out in the Water Transfers Act consists of the Secretary of the Kansas Department of Health and Environment or the Division of Environment Director, the Chief Engineer of the Division of Water Resources and the Director of the Kansas Water Office. These various panel members in their respective positions as state agency heads and administrators often come in contact with potential applicants for transfers. In many cases these administrators may in fact encourage activities such as the interconnection of water supply systems in water short areas, and the exploration and development of alternative sources of supply for water short areas. Some of these recommendations and policies developed by these water-related agencies to address water shortage problems in various areas of the state could potentially involve a water transfer as defined in issue number one above. As a result, these administrators may have a "conflict of interest" when serving as a hearing panel member in the Water Transfers Approval Process. The current statute also increases the possibility of *ex parte* communications during a formal hearing, as the agency heads work with their staff and others involved in water management on a regular basis.

The first option is to eliminate potential "conflicts of interests" and *ex parte* communications from the Water Transfers Process by eliminating the three person hearing panel that currently exists under the Water Transfers Act, and going with the review procedure described in option number four under Clarification of Administrative Process and Procedures above, in which the Chief Engineer and the Kansas Water Authority respectively have decision making power. This would include the statutory requirement that they consider public comments coming from public hearings, one formal hearing in the area of origin and if needed a public comment hearing in the area of use, and the testimony of the environmental review agencies and the applicant and representatives of the area of origin.

The second option is to retain the hearing panel as currently designated in the Water Transfers Act in addition to the review process recommended in

the above text. A provision should be made, however, that any panel member shall be permitted to withdraw from considering an application for transfer, either on his or her motion or on a petition for disqualification if that panel member has such a "conflict of interest." The panel member could then name a substitute from his or her agency that possesses the technical knowledge needed to render an informed decision on an application for transfer.

A third option is to retain the hearing panel as currently designated in the Water Transfers Act in addition to the review process recommended in the above text. A provision should be made, however, that the hearing panel is to convene only to select an independent hearing officer knowledgeable of water law and water issues for the purpose of conducting the hearings described in the above text under Clarification of Administrative Process and Procedures. The hearing officer's preliminary order should build a record of testimony and include findings of fact and conclusions of law.

The third option is recommended because it effectively eliminates the problems of "conflict of interest" of hearing panel members by appointing an independent hearing officer to build a record including findings of fact and conclusions of law and to issue a preliminary order. It also eliminates the problem of *ex parte* communications during the hearing. This option also eliminates the need for three agency heads to be away from their respective agencies for potentially extended periods of time to conduct hearings. The new administrative process and procedures recommended in the preceding issue discussion affords applicants and the area of origin more than adequate safeguards, with public hearings and testimony from several natural resource and environmental review agencies and a final determination based on review of the hearing officer's preliminary order by either the Chief Engineer or the Kansas Water Authority. There is also the additional safeguard of appeals to the courts which is always available in the case of a questionable decision.

### "Legislative Oversight"

An additional review issue concerns the constitutionality of the legislative oversight provisions in the Water Transfers Act. Presently, an order of the hearing panel disapproving a transfer is deemed a final order. An order of the panel approving a transfer is deemed an initial order. The Kansas Water Authority, an executive branch agency, is deemed the agency head for the purpose of reviewing the initial order of the panel. If the Kansas Water Authority approves the water transfer and there is no judicial review pending, the Chief Engineer of the Division of Water Resources then submits the proposed transfer to the legislature for review under a procedure provided for in the Water Marketing Act, K.S.A. 82a-1301 *et seq.* and amendments thereto. At this point absent legislative

disapproval, the Chief Engineer issues the order approving the transfer. The Kansas Water Office has received a formal Attorney General Opinion as to the constitutionality of the Water Transfers Act and also the related State Water Supply Storage Act. This opinion states that legislative veto or disapproval power over an executive agency decision violates the concept of separation of powers and is therefore unconstitutional. (See State ex rel. Stephan vs. Kansas House of Representatives, 236 Kan. 45 (1984).)

The available options to address this policy sub-issue of constitutionality of the Water Transfers Act are as follows:

The first option is to enact new legislation that would eliminate the legislative oversight provisions of water transfers as defined in issue number one above, and thus, eliminate the constitutional question of separation of powers. This new legislation in conjunction with the recommended options in the text above would provide more than adequate safeguards to both the applicant and the area of origin and would also avoid potential lengthy litigation on the constitutional issue.

The second option is to provide for legislative oversight in a new Water Transfers Act, but to draft it in such a way that it would meet the constitutional requirements of separation of powers. In a study contracted with the Kansas Water Resources Research Institute, the Kansas Water Office received recommendations on how the above mentioned legislative review could possibly be made in a constitutional manner. Should this option be selected, the recommendations in that study should be considered.

It is clear that a change is necessary to address this issue, but the decision should be left to the discretion of the Legislature.

## SUMMARY OF POLICY RECOMMENDATIONS

The following policies are recommended:

### CLARIFICATION OF DEFINITION OF A TRANSFER

Clarify the definition of a water transfer by automatically triggering the application of the Act to large interbasin and intrabasin transfers.

### CLARIFICATION OF ADMINISTRATIVE PROCESS AND PROCEDURES

Clarify the administrative procedures and process by a) removing the review process from the purview of the Kansas Administrative Procedures Act, b) retaining the review panel only for purposes of selecting an independent hearing officer and substituting a review procedure in which the Chief Engineer and the Kansas Water Authority have final

decision making power, and c) eliminating or correcting legislative oversight, (should be left to discretion of the Legislature).

## PLAN IMPLEMENTATION

### LEGISLATIVE ACTION

Legislation is needed to:

1. Amend the Water Transfers Act to clarify the definition of a water transfer by automatically triggering the application of the act to large interbasin transfers over the Arkansas River Basin and Missouri River Basin boundary line, and to large intrabasin transfers of 1,000 acre-feet or more per year for beneficial use outside a 10 mile radius from the point of diversion. The Chief Engineer would retain his discretionary authority to impose the requirements on all water right applications. Reservoir releases to the natural water course made under the authority of the Water Supply Storage Act, K.S.A. 82a-1301 *et seq.* or the Water Assurance Program Act, K.S.A. 82a-1330 *et seq.* shall be excluded from the intrabasin transfers provisions.

Note: This would provide for automatic protection of water from intrabasin transfers, taking note that proposed large transfers of water from rural areas and extra-ordinarily managed groundwater reserves deserve and require governmental scrutiny.

2. Establish an improved administrative review procedure and process for water transfers, providing the Chief Engineer of the Division of Water Resources with the authority of review of the hearing officer's preliminary order and approval of interbasin transfers of water under a modified Water Appropriation Act approval process which would apply Water Transfers Act standards, when such transfers involve waters not marketed under the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.* Such legislation shall allow the hearing officer to obtain testimony from certain state natural resource and environmental agencies such as the Kansas Department of Health and Environment, Kansas Water Office and Kansas Department of Wildlife and Parks. Such legislation shall also provide that the hearing officer conduct public hearings, one formal hearing in the basin of origin and one public comment hearing if deemed necessary in the basin of use. This legislation shall also authorize the Chief Engineer to condition his approval of a transfer based on the testimony provided in the hearing officer's preliminary order and report by the applicant, the basin of origin, the natural resource and environmental agencies and the public.

3. Authorize the Kansas Water Authority to review the hearing officer's preliminary order and report and approve those interbasin transfers that fall under the purview of the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.* Such procedure shall require the hearing officer to receive testimony from certain state natural resource and environmental agencies such as the Kansas Department of Health and Environment, Division of Water Resources, Kansas Water Office and Kansas Department of Wildlife and Parks and hear testimony from interested parties. Such legislation shall provide the Kansas Water Authority shall consider the testimony of the state natural resource and environmental agencies, the applicant and the representatives of the area of origin as provided in the hearing officer's preliminary order and report, in conditioning, approving or denying any water transfers application.
4. Amend the Water Transfers Act to provide for the Chief Engineer's scrutiny of intrabasin transfers that do not involve water marketed water under the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.* Such review would involve the following steps: (1) Upon receipt of an application to appropriate water within one of the two drainage basins in a quantity of 1,000 acre-feet or more per year for beneficial use outside a 10 mile radius from the point of diversion, and conveyed by a means other than reservoir releases to the natural water course, the Chief Engineer will determine if the water in the area is currently available for appropriation. (2) If water is not available for appropriation the application will be denied. (3) If there is water available for appropriation an application for a water transfer could be filed and if so notice will be published in the State Register and in local papers of the pending application. (4) Public comments and state agency comments will then be solicited and considered by the Chief Engineer to determine if a hearing is necessary. (5) If there are significant concerns raised by the public or commenting agencies, a hearing will be held at the Chief Engineer's discretion. (6) Any such hearing will establish a formal record of findings of fact and conclusions of law upon which the Chief Engineer will then make a decision to approve or deny, or approve in part the application based upon the criteria set forth in the Water Transfers Act. (7) If no significant concerns are raised then the Chief Engineer would review the proposed transfer based upon the information provided in the application and the criteria set out in the act.
5. Amend the Water Transfers Act to provide for the scrutiny of intrabasin transfers of water marketed from state owned storage, under the current State Water Plan Storage Act K.S.A. 82a-1301 *et seq.* public interest findings requirements.
6. Amend the Water Transfers Act to provide a mechanism for addressing the issues of acquiring water rights for future use and aggregation of acquisition of water as follows: (a) The Chief Engineer, or the Kansas Water Authority, as appropriate, would have the authority to determine whether an aggregation of small water transfers over a period of time constitutes a transfer within the meaning of the Water Transfers Act. (2) The Chief Engineer, or the Kansas Water Authority, as appropriate, would have the authority to give final approval to a water transfer which would not physically take place for a period of up to twenty years, if the transfer was found to be in the public interest. (3) The Chief Engineer, or the Kansas Water Authority, as appropriate, could approve a water transfer of up to a total of ten thousand acre-feet from a specific geographic area from a specific source of supply for use by specified water user(s) even though the specific water rights to be transferred had not yet been identified. This blanket advance water transfer approval would be subject to the condition that the applicant(s) subsequently obtain approvals of change in point of diversion, place of use, and/or type of use, as appropriate, in accordance with the provisions of the Kansas Water Appropriation Act.
7. Retain the three person hearing panel that is currently set out in the Water Transfers Act, K.S.A. 82a-1501 *et seq.* solely for the purpose of selecting an independent hearing officer.
8. Eliminate or retain the legislative oversight provisions in both the Water Transfers Act, K.S.A. 82a-1501 *et seq.* and in the State Water Plan Storage Act, K.S.A. 82a-1301 *et seq.* also known as the Water Marketing Act.
9. Develop appropriate time frames for the review and approval processes.

#### ADMINISTRATIVE ACTION

The Kansas Water Office and the Division of Water Resources, State Board of Agriculture, shall develop administrative guidelines for the hearing procedures involved in the review of any water transfers applications.

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## FINANCIAL REQUIREMENTS

All of the policy recommendations contained in this sub-section, with the exception of the possible need to hire an independent hearing officer - from outside the ranks of state government, can be accomplished by utilizing existing staff and existing state agency financial resources. . If it is determined that a suitable hearing officer can not be obtained from within the ranks of state government utilizing existing state agency resources, then one shall be hired at the expense of the applicant.

## TIME SCHEDULE

The legislation needed to implement the policy recommendations in this sub-section will be developed during the 1991 calendar year for introduction during the 1992 Legislative Session. The development of administrative guidelines by the Kansas Water Office and the Division of Water Resources to address procedures for hearings on water transfer applications could be completed by the end of calendar year of 1992, after the legislation has been passed.

## REFERENCES

1. Kansas Water Office, Modification of the Water Transfers Act (K.S.A. 82a-1501 *et seq.*) for the Fiscal Year 1993 State Water Plan, Background Paper No. 57, Kansas Water Office, November 1990.
2. Kansas Water Office, *Kansas Water Plan*, Kansas-Lower Republican Basin Section, Sub-section: Water Supply; Issue: Interbasin Transfer of Water, July 1990.
3. Kansas Water Office, *Kansas Water Plan*, Lower Arkansas Basin Section, Sub-section: Water Supply; Issue: Municipal and Industrial Water Supply Problems, July 1990.
4. Peck, John C., Professor of Law, University of Kansas School of Law and McLeod, Douglas P., Law Student, University of Kansas School of Law, Legal Study of Water Transfers Act, A Report to the Kansas Water Office under a contract between the Kansas Water Office and the Kansas Water Resources Research Institute, November 1989.
5. Keller, John W., Professor, and Burns, Robert E., Professor, Department of Regional and Community Planning, College of Architecture and Design, Kansas State University, Data Requirements for Water Transfer Act, A Report to the Kansas Water Office under a contract between the Kansas Water Office and the Kansas Water Resources Research Institute, November 1989.

## State Water Plan Fund Expenditures

*Review  
revised  
this*

	<u>FY 1992 Expenditures</u>	<u>FY 1993 Request</u>	<u>FY 1993 Recommended Transfers</u>	<u>FY 1993 Recommended Expenditures</u>
<b>Board of Agriculture</b>				
Conserv. Plan Coordination/Time Flow	100,000	195,000	176,223	195,000
Water Data Base Renovation	50,000	7,294	—	—
Geographical Info. System	—	160,000	—	—
Subtotal	<b>\$150,000</b>	<b>\$362,294</b>	<b>\$176,223</b>	<b>\$195,000</b>
<b>State Conservation Commission</b>				
Cost Share Programs	5,500,000	8,410,655	5,600,000	5,600,000
Multi-Purpose Small Lakes	1,974,223	2,933,349	1,068,804	1,068,804
Non-Point Source Program	—	1,500,000	1,000,000	1,000,000
Watershed Dam Constrution	1,700,000	2,282,163	1,405,815	1,512,163
State Aid to Conservation Districts	749,598	776,700	750,000	750,000
Benefit Area Program	—	172,534	—	—
Subtotal	<b>\$9,923,821</b>	<b>\$16,075,401</b>	<b>\$9,824,619</b>	<b>\$9,930,967</b>
<b>Health and Environment</b>				
Contamination Remediation	2,000,000	3,805,132	207,346	2,300,000
Local Environmental Aid	1,670,000	2,329,211	1,670,000	1,670,000 *
Non-Point Source Program	480,061	405,491	362,219	362,219
Private Well Protection	86,226	—	—	—
Subtotal	<b>\$4,236,287</b>	<b>\$6,539,834</b>	<b>\$2,239,565</b>	<b>\$4,332,219</b>
<b>University of Kansas</b>				
Dakota Aquifer Study	200,000	200,000	200,000	200,000
Subtotal	<b>\$200,000</b>	<b>\$200,000</b>	<b>\$200,000</b>	<b>\$200,000</b>
<b>Kansas Water Office</b>				
S/A Interaction-Hutch. - Wichita	100,000	—	—	—
S/A Interaction-Kinsley - Great Bend	36,000	16,000	16,000	16,000
S/A Interaction-South Fork-Solomon	—	—	—	—
S/A Interaction-Kansas River	—	85,000	85,000	85,000
Mineral Intrusion-So. Fork Ninnescah	—	—	—	—
Mineral Intrusion-Big Bend Prairie	—	130,000	130,000	130,000
Impact Watershed Projects	—	95,000	20,000	20,000
Economic Impact-Zero Depletion	—	47,000	47,000	47,000
Riparian EcoSystem Study	—	50,000	50,000	50,000
Educational Asst. to Water Users	—	50,000	50,000	50,000
Geography Resource Center	50,000	50,000	50,000	50,000
Geographic Information System	—	—	—	—
Data Base Development/GIS	500,000	500,000	500,000	500,000
Data Access and Support Center/GIS	120,880	267,700	120,000	120,000
Water Marketing Program	975,000	—	—	—
Halstead Flood Control	—	—	—	—
Subtotal	<b>\$1,781,880</b>	<b>\$1,290,700</b>	<b>\$1,068,000</b>	<b>\$1,068,000</b>
<b>Wildlife and Parks</b>				
Cheyenne Bottoms	1,000,000	1,000,000	1,000,000	1,000,000
Hillsdale State Park	—	1,000,000	—	— *
Acquire Easements	—	150,000	150,000	150,000
Subtotal	<b>\$1,000,000</b>	<b>\$2,150,000</b>	<b>\$1,150,000</b>	<b>\$1,150,000</b>
<b>TOTAL</b>	<b>\$17,291,988</b>	<b>\$26,618,229</b>	<b>\$14,658,407</b>	<b>\$16,876,186</b>
Amount Available	16,940,320	\$14,680,867	14,680,867	
<b>FUND BALANCE</b>	<b>(\$351,668)</b>	<b>(\$11,937,362)</b>	<b>\$22,460</b>	

\* Includes \$1,370,000 for LEPC, \$150,000 each for Hazardous Waste Program and Outreach Program.

\* Hillsdale State Park is funded from the proposed General Facilities Building Fund.

Source: The Governor's Budget Report, Volume 1, FY 1993

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# State Water Plan

KSA 82a-901 et seq. established the State Water Plan. This Act declares that "the state can best achieve proper utilization and control of the water resources of the state through comprehensive planning which coordinates and provides guidance for the management, conservation, and development of state water resources." The specific goals of the Water Plan are to develop sufficient water supplies to meet the future needs of the state, the reduction of loss because of floods, the protection and improvement of water quality, the sound management of all water supplies, the prevention of waste or pollution of water, the efficient distribution of water, the development of water resources in conjunction with other state resources, and the conservation of water.

The Kansas Water Authority is charged with coordinating and updating the State Water Plan. The Water Authority consists of 21 members, of which 11 are appointed by the Governor, one is appointed by the Speaker of the House, and one is appointed by the President of the Senate. The other eight members are the State Geologist, the Chief Engineer of the Division of Water Resources of the Board of Agriculture, the Secretary of Health and Environment, the Chairperson of the State Corporation Commission, the Secretary of the Department of Commerce, the Director of the Kansas Water Office, the Secretary of the Department of Wildlife and Parks, and the Director of the agricultural experimental stations, all of whom serve as ex-officio members. The Kansas Water Office serves as staff to the Water Authority and coordinates the water planning process. This planning process includes the involvement of other state agencies as well as public hearings throughout the state.

In order to implement the goals of the Water Plan, the Kansas Water Office has established 16 sections to the Plan. Four of these sections are statewide in scope, including the Management Section, the Conservation Section, the Quality Section, and the Fish, Wildlife, and Recreation Section. The remaining 12 sections correspond to the state's 12 river basins and are established to resolve the particular problems of the individual basins.

## State Water Plan Fund Establishment

The 1989 Legislature enacted SB 398, which established a dedicated funding source for specific Water Plan

Source: The Governor's Budget Report, Volume 1, FY 1993

activities. The bill provided eight sources of revenue for the fund, including a transfer of \$6.0 million from the State General Fund; a transfer of \$2.0 million from the Economic Development Initiatives Fund; a 3-cent per 1,000 gallon fee on municipal, industrial, and stock water use; an assessment of \$1.40 per ton on fertilizer sold in Kansas; a fee of \$100 on each pesticide label registered for sale in Kansas; and fines levied by the Department of Health and Environment for environmental pollution.

The law further stated that expenditures from the State Water Plan Fund could be used only for water-related projects or programs and related technical assistance. In addition, funds could not be used to replace other sources of funding for existing FTE positions or for recreational projects which do not meet at least one of the long-range goals of the State Water Plan. The Kansas Water Authority is also directed to submit an accounting of actual expenditures from the Water Plan Fund for the previous fiscal year and recommendations for expenditure from the Water Plan Fund for the upcoming fiscal year by December 1 of each year.

State Water Plan FY 1993	
Funding Sources:	
SGF Transfer	\$6,000,000
EDIF Transfer	2,000,000
Municipal Water Use Fee	3,314,605
Industrial Water Use Fee	596,125
Stock Water Use Fees	193,717
Pesticide Label Fees	672,400
Fertilizer Use Fees	2,172,730
Environmental Fines	80,000
Total	\$15,029,577

## FY 1992 Funding Revisions

The 1991 Legislature approved projects totaling \$17.3 million from the State Water Plan for FY 1992. Current estimates indicate that the expenditures approved by the 1991 Legislature for the current fiscal year will exceed estimated receipts to the State Water Plan Fund by \$351,668. However, it is projected that

those agencies with Water Plan-related projects will spend \$2.2 million less in FY 1992 than was initially estimated. Thus, the Governor's recommendation for FY 1993 expenditures assumes the carryover of available balances of approximately \$2.2 million from previous fiscal years and provides for a transfer of new monies totaling \$14,658,407.

### **FY 1993 Recommendation**

Actual receipts to the State Water Plan Fund totaled \$15,069,132 in FY 1991. The Governor's budget recommendations assume receipts to the State Water Plan Fund of \$15,013,029 in FY 1992 and \$15,029,577 in FY 1993. In FY 1993, there is a recovery of unspent funds totaling \$2,958. Given an estimated negative balance at the beginning of FY 1993 of \$351,668, available funds from the State Water Plan in FY 1993 are estimated to be \$14,680,867. As indicated previously, a continuation of major Water Plan programs is made possible through the use of an estimated \$2.2 million in unused appropriations from the previous fiscal year.

Adjustments are made in several programs, but the current level of activity is maintained in the Governor's recommendation for FY 1993. Worth noting is the Governor's recommendation for the Contamination Remediation Program administered by the Department of Health and Environment. Because of the large balances in the program projected for the end of FY 1992, the Governor proposes that the Department of Health and Environment receive new transfers totaling \$207,346 to fund contamination remediation projects totaling \$2.3 million in FY 1993.

The Governor's budget recommendations for expenditure of state water plan funds do not encompass all requests submitted by various state agencies for FY 1993. Agency requests totaled \$26,618,229, an amount far exceeding the estimated \$14,680,867 available. A discussion of the Governor's recommendations is detailed by agency below.

### **Board of Agriculture**

**Water Conservation Plans.** The Governor recommends \$150,000 in FY 1993 for review of water conservation plans. New applicants for certificates to appropriate water must submit a water conservation plan,

which is reviewed by the Board. The \$150,000 will allow the Board to contract with groundwater management districts to assist in review of these plans.

**Time Flow Meters.** An amount of \$45,000 will enable the Board to purchase five time flow meters to conduct field inspections outside the groundwater management districts. These meters will improve accuracy of flow rate tests and eliminate the need to drill holes in water user pipes to conduct flow rate tests.

**Water Rights Information System.** The Governor recommends \$160,000 for continuation of the Geographic Information System (GIS) development on a Water Rights Information System. However, the Governor supports a pool of funding for the Geographic Information System Policy Board. It is the intent of the Governor that the Board review the status of this project with the Board of Agriculture and consider proper funding in accordance with overall state funding and progress in the area of GIS.

### **State Conservation Commission**

**Cost-Share Programs.** These programs provide funds on a cost-sharing basis to assist landowners in the construction of land and water conservation projects. These projects are in the public interest for the protection and enhancement of the state's land and water resources.

There are two components within the Conservation Commission's Cost-Sharing Programs. First, the Water Resources Cost-Share program provides funding to assist landowners with construction costs of conservation practices which exceed financial benefits accruing to those landowners and which generally would create an undue financial burden on landowners if public assistance is not provided.

Second, the High Priority Cost-Share Program is a land treatment program which provides state financial assistance on a cost-sharing basis for the establishment of enduring conservation practices. This program is entitled "high-priority," for it is geared toward land areas identified by the Soil Conservation Service of the U. S. Department of Agriculture as highly erodible. The Federal Food Security Act has mandated that farmers are to implement land treatment practices by 1995. The Cost-Share programs assist in this effort.

While the Governor's recommendation of \$5.6 million to continue these cost-sharing programs reflects constraints on the availability of funding, it is the intent of the Governor that available resources are maximized.

The State Conservation Commission will place a growing emphasis on the High Priority Cost-Share Program, which is designed to assist the state's farmers in complying with conservation measures by January 1995. The State Conservation Commission has established new guidelines to provide each conservation district with a base level allocation. This allocation is referred to as the "District Needs Allocation." In addition, eligible districts will receive additional funds as part of the "Conservation Compliance Allocation," which represents that district's portion of the statewide conservation compliance needs as reported by each conservation district in accordance with mandates of the Federal Food Security Act.

Under the procedures established by the Conservation Commission, conservation districts would be required to expend the monies allocated according to Commission guidelines. These guidelines allow the individual districts to use district discretion in the expenditure of the "District Needs Allocation." The "Conservation Compliance Allocation" would be used for compliance-related projects only.

**Multi-Purpose Small Lakes.** The Governor recommends \$1,068,804 for this program in FY 1993. This program, part of the State Water Plan, provides for "add on" features to a planned structure (a dam). The "add on" feature provides for the development of a proposed structure to its fullest potential and renovation of an existing structure to provide for additional benefits. A planned flood control structure, if it meets the criteria, may become a multipurpose structure by adding water storage and/or recreation. A planned water supply structure may be a multipurpose structure by adding flood control or flood control and recreation. The same holds true for a renovation project. Each structure must contain flood control features to be eligible for Multipurpose Small Lakes Program funding. State assistance for a water supply "add on" requires reimbursement. The Conservation Commission has identified several projects which merit the assistance of the small lakes program. These projects include Banner Creek Project, Bourbon County Rural Water District No. 4, Mill Creek (Alma) Project, and Tenneyson Creek Projects.

**Non-Point Source Program.** The Governor recommends \$1.0 million for FY 1993 for the Non-Point Source program, which is designed to protect and/or restore surface and groundwater quality. The Department of Health and Environment has developed, as required by the Federal Clean Water Act of 1987, a Non-Point Source Pollution Assessment Plan and a State Non-Point Source Pollution Management Plan. The State Conservation Commission, through the 105 conservation districts and with technical assistance from local, state and federal agencies, is implementing a state-funded non-point source control fund. Local, state, federal and private sector entities are working with the conservation districts in developing a local non-point source pollution management plan.

**Watershed Dam Construction.** This program provides 80 percent matching funds for construction of flood control structures built by watershed districts in the state. The Governor's recommendation includes expenditures of \$1,512,163.

**State Aid to Conservation Districts.** The Governor recommends an amount of \$750,000 from the State Water Plan Fund for this aid in FY 1993. In 1963, the State Committee was given the responsibility for certifying and budgeting state funds equal to county contributions, but not exceeding the statutory limitation. The current statute provides for each of the state's 105 conservation districts to receive up to \$7,500 in state funds to match county funds. These funds, appropriated by the state and the county commission under provisions KSA 2-1907(b) and (c), as amended, may be used solely to carry out the activities and functions of the conservation district.

## Health and Environment

**Contamination Remediation.** An amount of \$2.3 million is recommended to be available for contamination remediation for the Department of Health and Environment for FY 1993. The majority of these expenditures would come from funding projected to carry forward from FY 1992. No specific projects are recommended for the essential clean-up program in FY 1993, but the Governor attaches high priority to the clean-up of already identified sites.

**Local Environmental Aid.** This program provides assistance to local health departments in developing

sanitarian services and special environmental projects. The Governor's recommendation of \$1,370,000 for FY 1993 is consistent with funding in the previous fiscal year.

**Public Water Supply Outreach.** The Governor provides funds of \$150,000 from the State Water Plan Fund for this program in FY 1993. This recommendation provides funding for the second year of a five-year effort to implement on-site assistance to public water supply personnel in accordance with the State Water Plan. This program also promotes public health protection and encourages, develops, and implements operating practices in public water systems.

**Household Hazardous Waste Program.** The Governor recommends \$150,000 by the Department of Health and Environment from the State Water Plan Fund for this program in FY 1993. This program will allow the continuation of grants to communities developing local hazardous waste collection programs.

**Non-Point Source Program.** The Department of Health and Environment will provide technical assistance in implementation of the Conservation Commission's aid program. The Governor's recommendation is \$362,219 for FY 1993.

#### University of Kansas

**Dakota Aquifer Study.** The \$200,000 recommended by the Governor for FY 1993 will continue a contract for the ongoing evaluation of an important source of agricultural and domestic water.

#### Kansas Water Office

**Stream/Aquifer Interaction—Kinsley to Great Bend.** The Governor recommends \$16,000 for the study of the stream/aquifer interaction on the Arkansas River from Kinsley to Great Bend to quantify the extent and nature of the interaction. FY 1993 will be the final year of this study, which will assess impacts of various pumping alternatives. Matching funds have been contributed by the Kansas Geological Survey.

**Stream/Aquifer Interaction—Kansas River.** An amount of \$85,000 is recommended for FY 1993 for a study to evaluate the impact of pumping centers on streamflow

from reservoir releases in the Kansas River basin. This will be the first year of the proposed three-year project. Matching funds would be provided by the U.S. Geological Survey.

**Mineral Intrusion—Big Bend Prairie.** The Governor recommends \$130,000 for FY 1993 for the first year of this four-year project. This study will survey areas of mineral intrusion in south central Kansas, including the saltwater-freshwater interface, evaluate the potential of the aquifer to become contaminated by intruding or residual salt, and model the aquifer to assess and evaluate alternative safe yield management policies of the groundwater management district to control saltwater contamination.

**Impact Watershed Projects.** The Governor recommends \$20,000 to initiate a study to determine whether watershed projects have a net positive or negative effect on fish, wildlife, and recreation. This funding will provide for the study of water quality and the effects of pesticides such as atrazine on water quality. The Kansas Water Office will coordinate the study with other state agencies, including the Kansas Biological Survey and the University of Kansas.

**Economic Impact—Zero Depletion.** The Governor recommends \$47,000 to study the Upper Republican, Solomon, and Smoky Hill-Saline basins. It is anticipated by the Water Office that this study will provide information on ways to preserve limited groundwater resources and minimize the economic impact to water users as well as the entire state. It is anticipated that these funds will also be matched by the Agricultural Experiment Station. This funding would be for the first of a two-year project.

**Riparian EcoSystem Study.** The Governor recommends \$50,000 to fund the first of a three-year research project which would establish baseline information regarding population dynamics and other factors related to terrestrial and aquatic organisms inhabiting riparian ecosystems. The resulting database will allow water management decisions to be made in consideration with basin biological resources.

**Educational Assistance to Water Users.** An amount of \$50,000 is recommended by the Governor for FY 1993 to provide for various contracts to disseminate information being developed by the research irrigation specialist at the Garden City Experiment Station.

**Geography Resource Center.** The Governor provides funding in the amount of \$50,000 in FY 1993 to enable the Water Office to work with other agencies in providing support facilities and training for geography teachers as well as to develop the outcome-based natural resources curriculum for Kansas schools.

**Database Development/GIS.** The Governor recommends \$500,000 for FY 1993 from the State Water Plan Fund, so the Geographic Information System Policy Board can continue with database development. It is recommended that the GIS-related request by the Board of Agriculture be considered for funding from this pool of funds.

**Data Access and Support Center/GIS.** The Governor recommends \$120,000 for FY 1993, an amount consistent with FY 1992 expenditures. The primary function of this center in FY 1993 will be to serve as a repository for the core databases and to respond to requests from Board member agencies to obtain copies of the data sets contained in the core database.

## **Wildlife and Parks**

**Cheyenne Bottoms.** The Governor recommends \$1.0 million for renovation of the Cheyenne Bottoms Wildlife Area. Cheyenne Bottoms is one of the few remaining great wetlands in North America and provides habitat to 45 percent of all migratory North American shore birds and several endangered species, including the least tern, the peregrine falcon, the bald eagle, and the whooping crane. In addition to the amount recommended by the Governor from the State Water Plan Fund, the Department anticipates a \$1.0 million appropriation from the federal government.

**Easement Acquisition.** For FY 1993, the Governor recommends \$150,000 to obtain conservation easements from willing sellers. These easements would protect valuable wetlands and riparian corridors from destruction. The easements would also contribute to improvements in water quality by helping to control non-point source pollution.

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