

Approved April 10, 1992
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

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

8:04 a.m./p.m. on April 7, 1992 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 McClaflyn, Committee Secretary

Conferees appearing before the committee:

Rich McKee, Kansas Livestock Association
Shaun McGrath, Kansas Natural Resource Council
Bill Fuller, Kansas Farm Bureau
Joyce Wolf, Kansas Audubon Council
Phil Barber, Mayor, city of Wakefield
Mark Taddiken, Lower Republican Water Association, Clay County
Mike Armstrong, Water District #1, Johnson County
David Pope, Division of Water Resources, Kansas State Board of Agriculture
Steve Hurst, Kansas Water Office

The Chair continued the hearing for the opponents on SB 555 - relating to water; concerning interbasin and intrabasin transfers and providing procedures.

Rich McKee said their members thought the bill discourages public input, and does not provide enough scrutiny over proposed transfers, and they are concerned about the elimination of legislative oversight on proposed water transfers (Attachment 1).

Shaun McGrath believes that water users should be required to develop and implement conservation plans to insure efficient use of their current supply before they can go looking elsewhere for new water supplies. He suggested that this issue be sent to an interim committee for further study (Attachment 2).

Bill Fuller urged the Kansas Water Authority to incorporate into the State Water Plan a strong conservation ethic and methodology for recycling water, and suggest the issue be sent to an interim committee study (Attachment 3).

Joyce Wolf suggested either major revisions need to be made in SB 555 or it should be sent to an interim committee for further review. (Attachment 4).

Phil Barber suggested that perhaps SB 555 did not go far enough and maybe legislation should be introduced to make it unlawful to allow any interbasin transfers of water (Attachment 5).

Mark Taddiken recommended some amendments to the bill, and suggested rather than transfer the water to another basin for economic development that the development be brought to the water resource (Attachment 6).

Scott Andrews representing the Sierra Club was not able to be present, but his written testimony opposing the passage of SB 555 was distributed (Attachment 7).

Mike Armstrong said he hope any changes would be considered carefully. He suggested there are some inconsistency with the present bill that need to be cleared up, and the constitutionality part needed to be address.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,
room 423-S, Statehouse, at 8:04 a.m./~~p.m.~~ on April 7, 1992

He urged the Committee to look closely at the Appropriation Act and stressed the differences in areas of the state be considered in making decisions.

A member of the Committee suggested the water transfer and Appropriation Act needed to be studied and clarified, and the Water Authority needed to take a serious look at the conservation guidelines, as they are just that guidelines, and this area needed to come up with some solutions.

Steve Hurst, Kansas Water Office, said they would be willing to work on the guidelines.

David Pope stated it clearly is an important and complex issue. He thought the proposed legislation did not need to have the fundamental criteria changed, but it may need some fine tuning, and they certainly would not be oppose to an interim study. At the request of the Chair, he briefed the Committee on the current statutes of the law suit with Colorado.

Senator Sallee moved the adoption of the minutes of March 27 and 31, and April 1, 1992. Senator Langworthy second, and the minutes were adopted.

The meeting adjourned at 8:27 a.m.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date

4/7/92

PLEASE PRINT

GUEST LIST

NAME

REPRESENTING

Rich Mee

AS Llewellyn Oswald

Bernie Koch

Wichita Area Chamber

Joyce A. Wolf

Ks. Audubon Council

Shaun McGrath

Ks. Natural ~~Resource~~ Resource Council

MIKE ARMSTRONG

WATER DIST. NO 1 OF JO CO.

Kristy Weiter

KNRC

David Pope

DWR, KSBA

Dave Toplikar

Lawrence Journal-World

Clark Druffy

KWO

Steve Hurst

KWO

Dennis Schwantz

Id's Water Authority

Jim Alley

McGill - Assoc

Mark Taddiken

Lower Republican Water Assn

PHIL BARBOUR

CITY OF WAKEFIELD

Alfred

CKFO



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March 26, 1992

STATEMENT OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE COMMITTEE OF
ENERGY AND NATURAL RESOURCES
Senator Ross Doyen, Chairman
WITH RESPECT TO SB 555

Presented by

Dee Likes
Executive Vice-President

The Kansas Livestock Association (KLA) is a voluntary trade organization with approximately 9,000 members. These members are predominantly cow-calf producers, purebred breeders, stocker cattle operators and cattle feeders. Many KLA members are diversified and operate both grain and livestock enterprises. The state's livestock industry is a major consumer of feed grains. Kansas feedyards alone feed 4.1 million cattle and use over 180 million bushels of grain, 8 million bushels of soybeans, and 8 billion pounds of silage and hay annually. Of the 4.1 million cattle fed in Kansas, over 70% were imported from other states. In 1991, over 6.2 million cattle were slaughtered by Kansas packing plants, ranking first in the nation.

Mr. Chairman and members of the committee, the Kansas Livestock Association opposes Senate Bill 555. This bill proposes to significantly amend a section of the statutes that deals with a very important and emotional issue, the transfer of water. The members of our association believe this bill discourages public input and does not provide enough scrutiny over proposed transfers.

For the purpose of the water transfer act, the bill proposes to divide the state into two major basins, the Missouri and the Arkansas. The bill would allow intrabasin water transfer applications to be approved without any requirement for a formal hearing. This could discourage public participation in the water transfer process.

K+NR
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pg 1-2
Attachment 1
1-1

Furthermore, on page six, lines 15 - 21, the bill mandates the cost of any hearings held, in regard to a proposed water transfer, will be assessed against all parties that participate in the hearing process. It was my understanding there was some confusion about this language and we'd suggest that it be specifically discussed and clarified during these proceedings. Hopefully, the costs would not be assessed against individual citizens who participate in the process.

Senate Bill 555 also proposes to eliminate legislative oversight of proposed water transfers. This change is being proposed due to an opinion that legislative oversight of water transfers may be unconstitutional. With an issue as important and sensitive as the transfer of water, we feel every effort should be made to assure the legislature retains authority over proposed transfers and not relegate this authority to a state agency.

Thank you for considering our position on this proposal.

Kansas Natural Resource Council

Testimony by the Kansas Natural Resource Council

To: Senate Energy and Natural Resources Committee
From: Shaun McGrath
Executive Director
Re: SB555 Water Transfer Act
Date: March 31, 1992

The Kansas Natural Resource Council is a private, non-profit organization devoted to the advocacy of sustainable energy and natural resource policies for the state of Kansas. Our statewide membership is 850.

Last year, Johnson County Water District No. 1 made the first application for a water transfer under the Water Transfer Act. The application was heard before the Water Transfer Panel in November, and an order was made in January. At its last meeting in February, The Water Authority remanded the order back to the Water Transfer Panel for further review, and a hearing is now scheduled in April.

KNRC, represented by our attorney, John Simpson, has intervened throughout the application process, raising a number of questions regarding the Water District's application. Through this experience, KNRC has become very acquainted with the Water Transfer Act. We agree with the Kansas Water Authority that the current act needs revising. Unfortunately, we believe that SB555 is not the proper vehicle for this revision.

A fundamental problem in both the current act and SB555 involves the requirement for conservation plans. In both instances, the protocol for a transfer is to receive a water appropriation and then to apply for a transfer. As a part of the transfer application, the applicant must demonstrate adoption and implementation of a conservation plan consistent with the Water Office Guidelines.

KNRC believes that this process is backwards. Water users should be required to develop and implement conservation plans to insure the most efficient use of their current water before they can go looking elsewhere around the state for new supplies. Unless this is the case, conservation plans will simply be bureaucratic dust collectors. In the Kansas



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attachment 2

2-1

Water Resources Research Institute report, "Water Transfer Implementation Policy and Procedures - A Legal Study of Water Transfer Act", John Peck and Douglas McLeod of KU Law School write, "we suggest that conservation plan approval by the chief engineer be a condition precedent to the applicant's filing a transfer application."

Another fundamental deficiency common to the original and proposed act is their reliance on the Water Office Guidelines for water conservation planning. These guidelines are simply that -- 'guidelines'. Under the efficiency practices for water utilities, for example, the various components are either "optional", "recommended", or "highly recommended." It is thus not surprising that the Water Office testified before the Water Transfer Panel that the Johnson County Water District No. 1 conservation plan, although weak in some areas, generally met or exceeded the Guidelines. Yet, the Water Transfer Panel found the Water District's Plan to be inadequate, and told them to set a goal by July 1 to reduce consumption. And for irrigators, the conservation plan guidelines take up just three pages in the 1986 KWO booklet, "Water Conservation Planning Guidelines."

It is not unrealistic to have strict water conservation regulations. 21 states and a number of local governments have enacted restrictions for toilets, showerheads and faucets. And in Hays, Kansas, per capita consumption rates have fallen to 62 gallons per day as a result of a strict conservation plan with programs for low-flow toilets and showerheads, low-water lawns, education, public swimming pools, effluent water, rate structure, and fines. In contrast, the average daily per capita consumption rate for the area is 114 gallons.

In addition to these fundamental problems we see with the Act and the bill, KNRC also believes SB555 is problematic in a number of other areas.

- By virtually doing away with the role of the Water Transfer Panel, too much authority is concentrated with the Chief Engineer for this potentially political resource.
- Public hearings are optional for 'intra-' basin transfers. KNRC believes public hearings should be mandatory for all proposed transfers.
- The procedure for setting up public hearings under the bill would include naming a third party as hearing officer. There are no qualifications set for this person. Because the hearing officer does not answer to any elected official, public accountability for their decisions would be questionable.

- The costs of the hearing officer and the costs of the public hearing would be borne by the applicant and anyone making public comment. The public should not have to pay to participate! [The Kansas Administrative Procedures Act should govern all public hearings.]
- Under the bill, transfers can be granted which would not physically take place for up to 20 years. Yet, the bill requires that transfers be weighed for their costs and benefits. How can we determine the costs of something, when its impacts will not be known for at least 20 years? Further, this provision could promote speculation on the future values of water, and certainly does not make conservation the focus.

KNRC believes that it is important for the Legislature to consider the Water Transfer Act, and to make revisions which will alleviate problems with the current law. The intent of the law, however, in any form, should make the protection of the state's water resources its priority. SB555 falls way short of this goal.

KNRC advocates that this issue be sent to an interim committee for further study. We oppose passage of SB555.

**TABLE 1
LONG-TERM WATER USE EFFICIENCY PRACTICES FOR WATER UTILITIES**

Long-Term Water Use Efficiency Component	Water Use Efficiency Practices	Plan Guideline Status					
		Small Water Utilities ^{a/} With Low or Medium GPCD ^{d/}	Small Water Utilities ^{a/} With High GPCD ^{e/}	Medium Water Utilities ^{b/} With Low or Medium GPCD ^{d/}	Medium Water Utilities ^{b/} With High GPCD ^{e/}	Large Water Utilities ^{c/} With Low or Medium GPCD ^{d/}	Large Water Utilities ^{c/} With High GPCD ^{e/}
A. Education	1. Water bills will show the amount of water used in gallons and the cost of the water.	Optional	Recommended	Optional	Recommended	Optional	Highly Recommended
	2. Water bills will show the amount of water used in gallons during this billing period and the number of gallons used last year during the same billing period.	Optional	Optional	Optional	Recommended	Optional	Recommended
	3. Water conservation tips will be provided with the monthly water bills during the summer months.	Optional	Recommended	Optional	Recommended	Optional	Highly Recommended
	4. Water conservation articles or issues will be provided or discussed each month during the summer by the local news media.	Optional	Optional	Optional	Optional	Optional	Highly Recommended
	5. The Board of Education and teachers will be encouraged to become involved in water conservation through classroom lectures and incentives for children to conduct home checks.	Optional	Optional	Optional	Optional	Optional	Recommended
	6. Make available information on water conserving landscape practices through publications, local news media, seminars or other appropriate means.	Optional	Recommended	Optional	Highly Recommended	Recommended	Highly Recommended
	7. Provide information to the general public on lawn water requirements on a regular basis during the summer months.	Optional	Optional	Optional	Optional	Optional	Recommended
	8. Other appropriate education actions.	Optional	Optional	Optional	Optional	Optional	Optional
B. Management	1. All raw water intakes will have meters installed and the meters will be repaired or replaced within two weeks when malfunctions occur.	Highly Recommended	Highly Recommended	Highly Recommended	Highly Recommended	Highly Recommended	Highly Recommended
	2. Meters at raw water intakes will be tested for accuracy at least once every three years. Each meter will be repaired or replaced if its test measurements are not within two percent of the actual volume of water passing through the meter.	Highly Recommended	Highly Recommended	Highly Recommended	Highly Recommended	Highly Recommended	Highly Recommended

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PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES RE: S.B. 555 - Intrabasin and Interbasin Transfers of Water

March 31, 1992
Topeka, Kansas

Presented by:
Bill Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Doyen and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We appreciate this opportunity to testify on S.B. 555 on behalf of the farm and ranch members of the 105 County Farm Bureaus in Kansas.

The Voting Delegates representing the 105 County Farm Bureaus at the most recent Annual Meeting of Kansas Farm Bureau added language concerning water transfers to their resolution on "State Water Policy":

State Water Policy

CNR-16

The Kansas Water Authority should be the agency for water management in Kansas. We believe the Authority should be responsible for coordinating development and approval of all changes proposed for the State Water Plan. We support continuation of 12 River Basin Advisory Committees and their participation in examination of all proposals for change in the State Water Plan. We oppose any modifications to the Kansas Water Transfer Act that would encourage or permit water transfers between basins which would be detrimental to rural Kansas. We oppose any changes to the water appropriation process that would weaken or remove any authority from the Chief Engineer, Division of Water Resources, Kansas State Board of Agriculture. We encourage all farmers and ranchers to actively participate in the review process and recommendations concerning the State Water Plan.

Water shortages in some areas of Kansas have emphasized the need for increased conservation measures. Unfortunately, "conservation" has meant to some people a restriction or elimination on water usage by "junior" water rights holders. We will continue to protect vested and domestic water rights. When water shortages occur in any area of the state, we believe non-vested water users in that geographic location should be the first to reduce water usage. Other water users in that geographic location could then be encouraged to reduce usage rather than shutting off water to a few.

We will strongly oppose any attempts to diminish the use of agricultural soil and water conservation practices and structures in order to make more water flow in our streams and rivers. Minimum streamflow designations should be limited to the goal of protection against over appropriation of streams, without jeopardizing water rights of existing appropriators.

We encourage negotiations with the State of Missouri for a Kansas City Metropolitan Stormwater Management Compact.

Farm Bureau policy only addresses "water transfers between basins" (interbasin transfers). Farm Bureau policy calls for a judgement decision to be made by opposing any transfers "which would be detrimental to rural Kansas". Our members, not unlike many other citizens, have concerns, fears, and a lack of facts.

An abundance of quality water is basic to life and the economic well-being of each community and the entire state. We believe the first step in water allocation is conservation. In fact, KFB policy states ... "We believe the State Water Plan should promote conservation of water by all users. We urge the Kansas Water Authority to incorporate into the State Water Plan a strong conservation ethic and methodology for recycling water to extend the life of this limited resource." While the City of Hays has recently implemented strong conservation measures, many more water users must implement meaningful conservation plans.

Because of the need for additional public information and the lack of strong water conservation plans statewide, we recommend the issue of "water transfers" be the subject of an extensive interim committee study.

We appreciate the opportunity to testify on S.B. 555. Thank you!

The Wichita Eagle

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EDITORIALS

Dithering

Delay on new water rate could cost city millions

It's hard to swallow the city of Wichita's laid-back attitude about water conservation. That attitude could cost citizens millions of dollars.

This week, the council postponed for the fifth time a final decision on new water rates that will penalize excessive use.

The delays started because city officials wanted to placate area golf course managers who were upset because the new structure will be based on winter water use, and thus would hit them hard in the summer.

But now that a compromise between the city and the golf course officials has been reached, Water Director David Warren says it's too late to get started this year. He's worried about the "rate shock" the new rates would cause other big water users this summer.

If all this dithering didn't have the potential to be so expensive, it would be laughable. But water conservation is too important for these gratuitous delays.

Everybody knows the city is heading toward a water crisis. Current estimates are that by the end of the decade the demands of peak usage very likely will outstrip the city's water supply.

Conservation is the best way to manage the problem, but by itself won't be enough. The city needs to find new supplies of water, by acquiring new rights in the Equus Beds northwest of the city, by drawing water from an existing supply such as Milford Lake near Manhattan, by building its own new reservoir, or by some combination of the three.

All of these methods are expensive, not to mention difficult politically. Buying farmland for a reservoir is akin to a communist plot in Kansas. Taking water from north central Kansas would be considered almost as insidious.

Still, the city must find new water. Growth of the Wichita area is inevitable, and appears to be picking up speed. Conservation is the way to help the city buy time, and to manage its water resources in the future.

Actually, conservation will help the city buy much more than time. City Manager Chris Cherches estimates that each year Wichita can put off the need for a new source of water will save \$10-15 million in operating expenses. That doesn't even take into account the untold millions needed to find, buy and develop a new water source.

The council knows all this, so why it's dragging its feet on a conservation plan with the potential to save the citizens big money is anybody's guess. An aggressive public relations and educational campaign on conservation could deaden much of the rate shock. And one summer of rate shock for people who are water hogs anyway is insignificant compared to the benefits of a successful conservation program.

The council is supposed to make its final decision on the new water rates next Tuesday. It should approve them without delay. And it should tell city staff to put the rates into action as soon as possible. Waiting until summer of 1993 is water down the drain.

Hays showers water regulations on residents

■ New consumption ordinances will restrict use, impose high fines for abusers

By DENISE RIEDEL
The Capital-Journal

HAYS — Water guzzlers in Hays will have to pay luxury prices for their weakness in the future.

City commissioners in the thirsty northwest Kansas community passed two ordinances and one resolution aimed at restricting water consumption and waste this week. And penalties for wasting water include even residents with private wells.

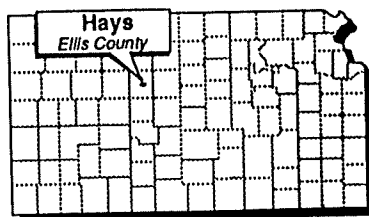
The commissioners had been wrestling for months about the most fair way to ration water while awaiting new sources to begin producing more water.

"Hopefully by midsummer, probably by late summer, we'll have water from the Dakota (Aquifer)," said Commissioner Joe Glassman. "There is a light at the end of the tunnel, but we have to suffer through this summer."

The water allotment resolution sets the basic amount of water per household at 100 cubic feet a day, with an additional 50 gallons for each person.

A cubic foot is roughly 7.5 gallons. Current usage is estimated at 62 gallons a person a day.

Businesses are being restricted to 85 percent of water used during the corresponding period of 1991.



The water allotment ordinance sets regulations for water usage. The resolution is designed for flexibility to change specific quotas and penalties, depending on the current situation.

Water users who exceed their limit still will get water, but they will pay dearly for it. The more they use, the higher the rate they will pay. They may use the water any way they want — wash the car, soak the shrubs — as long as they stay

within their allotment.

The penalty will be \$10 on first offense for every hundred cubic feet more than the limit, \$20 on second offense and \$30 on third offense. It will be added to the regular bill.

Residents may appeal their allotment, but only after they demonstrate they have installed water-saving devices and have no water leaks on the premises.

At year's end, penalties will be refunded if the year's average is at or below the yearly allotment.

Water wasters will find themselves in municipal court for violating the second ordinance. And that includes people with private wells, who are exempt from allotments.

To knowingly allow water from any source to escape from private property onto the sidewalks, streets

or gutters will bring a warning and lecture on first conviction, a fine up to \$25 on second conviction and fine of \$25 to \$100 on third conviction.

And those penalties will be added to any surcharge for exceeding the water allotment.

The ordinances also specify additional restrictions on water use.

Other actions by the commission to reduce consumption include a decision to open only three of the city's five swimming pools this season, distribution of \$110 rebates to citizens who retrofit their bathrooms with ultra-low-flow toilets, free distribution of low-flow shower heads and approval of the purchase of a new computer system for the water department to structure water allotment rationing system, as well as a search for other possibilities.



Kansas Audubon Council

March 31, 1992

Testimony on SB 555 before the
Senate Energy and Natural Resources Committee

My name is Joyce Wolf and I am the legislative liaison for the Kansas Audubon Council (KAC) whose members share a desire to promote a sustainable society through the conservation, protection, and wise use of the earth's natural resources.

The Kansas Audubon Council has many serious concerns about provisions of SB 555. I will attempt to enumerate most of them, and explain some of them more fully than others.

1) The change from 12 basins to 2 basins causes a shift in what constitutes an interbasin transfer. There are now 12 basins which are the planning units for the State Water Plan. With SB 555, these are reduced to 2 for the purposes of water transfers: the Missouri River Basin and the Arkansas River Basin. What once would have been an interbasin transfer becomes an intrabasin transfer and therefore would be subject to a different review process.

For interbasin transfers, the three-member review panel would be replaced by a special hearing officer; an intrabasin transfer would be decided by the Chief Engineer. Clearly, this is a major policy shift and one which can have enormous impacts. KAC believes that the 12 basin concept should be retained, not only for planning purposes, but also for water transfers. While Kansas is fortunate currently to have the position of Chief Engineer filled by a person with a great deal of integrity, we cannot be assured that will always be the case. Under SB 555, a disproportionate amount of power is vested in the office of Chief Engineer, especially for intrabasin transfers.

Furthermore, if the concept of a hearing officer is retained it is extremely important to ensure that the person named as the hearing officer under SB 555 not only must be familiar with the various ramifications of such a transfer, but also be able to make the decision on an impartial basis.

2) On page 3, Section 2(a)(3), SB 555 allows a one-year transfer to be made if an emergency exists, but the bill does not define emergency, nor does it describe the conditions that must exist to constitute an emergency.

3) Section 2(g) requires that an applicant for a water transfer to adopt and implement water conservation plans consistent with guidelines from the KS Water Office. The problem is that those guidelines are mostly permissive, i.e., the applicant should rather than shall adopt certain measures and practices. For example: Johnson County Water District #1 recently requested additional water from the Missouri River, and partly justified the request by saying that if they didn't get the extra water, lawns would be devastated.

In that regard, the KS Water Office conservation guidelines state that up to 70% of residential water use in the summer is for lawn irrigation. The guidelines go on to say that proper timing and duration of lawn sprinkling can reduce water use, but the guidelines do not mandate that those measures be implemented. How many times have you driven down the street to see automatic sprinklers operating during a rain, or at mid-day at the peak of loss to evaporation, or improperly installed so that they water the pavement rather than the grass? Unfortunately, there is nothing in the guidelines that forces compliance with water use efficiency. We believe it is imperative that stringent conservation measures must be adopted by all water users so that the state can move toward a goal of long-term sustainable use of our water resources.

4) SB 555 appears to have no mechanism to rescind a transfer if the basin of origin should become adversely impacted, i.e., if circumstances change from the time of the approval of the transfer. Similarly, there is a provision that would permit a transfer to be granted, but not exercised for up to twenty years later, again with no mention for consideration of changed circumstances in the basin of origin.

5) SB 555 alters the language of the KS Administrative Procedures Act which sets up the guidelines for proceedings. We support the suggestion that has already been made that the KAPA process continue to be used for water transfer hearings.

6) It seems to KAC there is a basic flaw in the process. The first step an applicant must take is to file for a "right to appropriate water." While several factors are to be taken into consideration by the Chief Engineer in making the determination to grant the water right, the fact that several areas of the state are in a condition of over appropriation causes concern that there may not be adequate data available to make a fully informed decision on this matter.

Perhaps, before we travel too far down the road of changing the water transfers process, what is really needed is: first, tightening of the state's water conservation plans and implementation strategies, and then the development of a much more complete data base of water availability throughout the state. The latter would help ensure that when the question of whether excess water in a basin exists, the answer will be based on scientific data.

We appreciate this opportunity to share these comments with the committee, and suggest that either major revisions need to be made to SB 555 or it should be sent to an interim committee to draft an entirely new bill that would address its major flaws and weaknesses.

CITY OF WAKEFIELD

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CONCERNS ABOUT INTER BASIN TRANSFERS

My name is Phil Barber I live in Wakefield Kansas which is located on the north end of Milford Lake. I am currently serving as the Mayor of Wakefield.

Speaking as an individual I have concerns about transferring the natural resources base from one part of the State to another part of the State. It is my understanding that the position has been taken that the water in Kansas belongs to the State. I believe that is a reasonable position to be taken. I also believe it is not a reasonable position that we shift water resources around the State without shifting the economic base around the State.

I understand Wichita and other communities along the proposed transfer route need additional water for their communities to continue to grow and prosper. Maybe we have come to the point we should shift economic base, (business expansion) to areas of the State that have the natural resources rather than transferring the resource.

Speaking as the Mayor of a small Kansas community I wanted the Committee to be aware that as Milford Lake levels rise and fall, so do the water levels in our City water wells.

Let us not take away from one part of our State so that another part may prosper. Where are we going to get the water for our part of the State if we run short.

In closing I would suggest that the Committee even go further than Bill 555 and submit legislation making it unlawful to allow any inter basin transfers of water.

Respectfully submitted,



Phil Barber
Mayor
City of Wakefield

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Attachment 5

Testimony on Senate Bill 555

April 7, 1992

By the Lower Republican Water Association

Honorable Senators of the State of Kansas,

I thank you for this opportunity to testify before this committee on Senate Bill 555.

I'm Mark Taddiken, a dirt farmer from the northern part of Clay County, located in the Republican River Valley just north of Milford Reservoir. Today I'm here on behalf of the Lower Republican Water Association. The Lower Republican Water Association is comprised of approximately 300 water users and businesses located in the Republican River Valley between Milford Reservoir and the Kansas-Nebraska border.

Our association supports the concept of water transfer, along with the wise utilization of this precious resource by all users, whether it be municipalities, agricultural producers, industry, wildlife, or recreation interests. We are all in this together for the long run. Considering how water affects the lifeblood of any region we firmly believe first priority for any water transfer should be within the originating basin. Transferring water to another basin should be done only in emergency situations or to sustain human life, not merely to shift our most precious resource to another basin for economic development. Let's bring the development to the resource.

After reviewing Senate Bill 555 our association believes this bill could be strengthened in several areas.

1) KAPA

We feel the transfer of water in Kansas is an extremely important matter and thus deserves to be governed by the Kansas Administrative ^{EANR} ~~4-7-92~~ ⁴⁻⁷⁻⁹² attachment-6
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Procedures Act. The KAPA procedure works well in other areas and should be part of this bill.

2) HEARING OFFICER

Considering the strength of the role the hearing officer will possess in transfer decisions, we believe that besides being well qualified for the position, it is imperative that the hearing officer be impartial. Therefore, the hearing officer must be someone without connection to, or under the undue influence of either proponents or intervenors.

3) MECHANISM FOR DISCONTINUANCE

Under today's economic conditions, the ability to make dependable long range plans is crucial. Both the dispensing and receiving parties need to know under what time frame and conditions the transfer order could be terminated.

4) EFFECTS OF UPSTREAM STATES

From past experience we are all aware of the importance and effect the decisions affecting water flows made by upstream states have upon our state. At the present time in the Republican River Basin above Milford there is a state imposed moratorium on the development of water appropriations. This year in our valley, the stream flow in the Republican River is so low that "Junior Rights" are being shut off. This affects municipalities and industries, as well as agricultural producers. At the same time across the state line in Nebraska new wells are being developed at a rapid rate. The natural flow of the river itself is being stored in reservoirs effectively minimizing water flow available for Milford Reservoir. Our association believes that the hearing officer should be REQUIRED

to take these factors into consideration.

I have attached the amendments we feel would strengthen this bill to this testimony. I appreciate this opportunity and thank you very much.

Mark Taddiken

Lower Republican Water Association

PROPOSED AMENDMENTS TO SENATE BILL 555

PROPOSED BY THE LOWER REPUBLICAN WATER ASSOCIATION

April 7, 1992

1) New Section 5. "All proceedings conducted hereunder shall be in conformity with the provisions of K.S.A. 77-501 et seq. and amendments thereto."

2) Section 1 (o), Page 2, lines 33-34 should be amended to read: "Hearing Officer" means an independent hearing officer knowledgeable in water law, rules of procedure and evidence, as well as water issues who is not personally or professionally connected in any way with either the applicant, intervenors, or the basins of origin or transfer.

3) Section 2, page 3, lines 2-3 should be amended to read: "(1) Unless the final decision maker determines that the benefits to the state for approving the transfer SUBSTANTIALLY outweigh the benefits to the state for not approving the transfer...."

4) Section 2, page 3, line 34 should be amended to read, "The plan shall be in sufficient detail to enable all parties to understand AND CALCULATE the impacts of the proposed water transfer..."

5) Section 2 (i), page 4 should be amended by the addition of the following language, "...Any approval granted under this provision shall also state, to the extent ascertainable, the conditions under which a transfer shall be rescinded without further action by the approving authority."

6) New Section 2 (c) 7 "... the effects of actions and/or inactions of upstream states upon the reliability of the basin of origin for a

dependable source of water."

The association thanks you for the opportunity to have the proposals
be considered.

Mark Taddiken
Vice- President



SIERRA CLUB

Kansas Chapter

Testimony to Senate Energy and Natural Resources

SB 555 - Water Transfer

The Kansas Chapter of the Sierra Club opposes passage of SB 555 in its present form. It is clear that current water transfer statutes need re-working, and while this bill is a start, we believe it raises many questions and concerns.

* Transfers of less than 1000 acre feet are not addressed. This is equivalent to the annual water use of a city of 10,000. What is the process for review of water transfers under 1,000 acre feet, are they regulated by DWR, and is there any public review? This issue needs clarification.

* The process of who chooses and serves as hearing officers and final decision makers and their qualifications (or dis-qualifications) and who reviews their decisions, needs more study and clarification.

* The control of much of the process by the Chief Engineer (especially when acting as final decision maker) and DWR's position under an state agency with conflicts of interest and little accountability to the electorate, continues to be of concern. While we do not question the current Chief Engineers integrity and independence, there is no guarantee of that of future Chief Engineers.

* Why not add the additional check and balance of requiring approval by another body such as the Legislature or the Water Authority?

* Allowing an approval to stand for 20 years with no review is not reasonable. A lot can happen in 20 years, including changes in water availability, technology, or populations.

* Water Conservation - the lack of requirements for implementation of real water conservation before water transfers are allowed is the crux of the problem with our water transfer laws. Too often "water conservation" in Kansas has meant having a drought contingency plan on the shelf, rather than actually saving water. This is especially true in major urban areas. Wichita, for instance, should have serious water conservation programs in place before attempting to tap Milford Reservoir.

Water allocation and water transfers are often very contentious issues. I doubt that most basins believe they have extra water that should be transferred elsewhere. A long hard look should be taken at this process, including more stringent water conservation requirements, before legislation is passed. We urge the committee to send this issue to interim study to give it the time and consideration it deserves.

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