

Approved 2-12-91
Date

MINUTES OF THE House COMMITTEE ON Appropriations

The meeting was called to order by George Teagarden
Chairperson

1:30 ~~am~~/p.m. on February 4, 1991 in room 514-S of the Capitol

All members were present except: Representatives Dean and Goossen (excused)

Committee staff present: Ellen Piekalkiewicz, Legislative Research Department
Debra Duncan, Legislative Research Department
Jim Wilson, Revisor of Statutes
Susan Miller, Administrative Aide
Sue Krische, Committee Secretary

Conferees appearing before the committee:

Steve Davies, Secretary, Department of Corrections
Ed Martin, Director, Division of Architectural Services
Attorney General Robert Stephan
David Pope, Chief Engineer, Division of Water Resources, Board of Agriculture
Joseph Harkins, Director, Kansas Water Office

Others attending: see attached list.

SB 36 - Corrections, supplemental appropriations for FY91 and financing for certain capital improvements.

Steve Davies, Secretary, Department of Corrections, introduced Ed Martin, Director, Division of Architectural Services, for a status report on construction of the El Dorado and Larned correctional facilities (Attachments 1 and 2). Mr. Martin advised that SB 36 is an emergency supplemental appropriations bill providing the necessary financing to complete the construction and equipping of the El Dorado and Larned correctional facilities (\$5,914,175) and to finance staffing and operating costs for the El Dorado Correctional Facility (\$2,453,024). Mr. Martin reviewed the reasons supplemental funds are needed on the projects and provided a memorandum summarizing the reasons (Attachment 3). He reviewed in detail the history on the bid packages on the El Dorado and Larned facilities. He stated the El Dorado project is \$4,489,151 over budget and Larned is \$1,425,024 over budget.

Secretary Davies provided written testimony explaining construction costs and including data illustrating the need for the operating funding on El Dorado (Attachment 4). In response to a question, Secretary Davies explained the 214 additional positions requested this year for El Dorado are needed to allow time for training, as 120 segregation inmates from Lansing will be the first moved into the new facility. He advised that inmate labor will be used at El Dorado for sidewalks, fencing, and finish work such as painting. In response to a question, it was noted the Joint Committee on State Building Construction has reviewed and recommended funding the total shortfall on these two projects. Discussion focused on the necessity in this project to establish liquidated damages of \$10,000 a day per contract at El Dorado and \$2,500 a day per contract at Larned to insure a completion schedule meeting federal court ordered mandates. The net effect for the contractors was to increase their bids an estimated \$1,000,000 in order to reduce their risk due to construction delays.

Representative Kline asked Mr. Martin to advise following the meeting the prevailing wage rates used at El Dorado and Larned. In response to a question, Mr. Martin speculated that it is possible the project could have been less costly if the state had been able to bid the whole package together, but that was not possible because of time constraints.

SB 37 - Appropriations for FY91, supplemental appropriations for the attorney general.

Attorney General Robert Stephan testified that \$3,350,000 in supplemental funds are needed to pursue the water litigation in the case of Kansas v. Colorado, dealing with the enforcement of the terms of the Arkansas River Compact. Attorney General Stephan provided written testimony (Attachment 5). He noted through FY 1990 the State of Kansas has spent just over \$4 million in direct expenses attributable to this case. In addition to the current request, it is requested that \$500,000 be appropriated to the case in FY 1992 and the need for approximately \$1 million in FY 1993 is anticipated to conclude the determination of damages phase of the trial.

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

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Appropriations

room 514-S, Statehouse, at 1:30 ~~a.m.~~/p.m. on February 4, 1991

David Pope, Chief Engineer, Division of Water Resources, Board of Agriculture, appeared in support of SB 37 stating administrative efforts were made to try to resolve Kansas' concerns in securing its apportionment of water from the Arkansas River under the terms of the Arkansas River Compact and it was after these efforts were unsuccessful that litigation was initiated in late 1985. Mr. Pope provided a written copy of his comments (Attachment 6). He emphasized that the state's only prudent option at this time is to fund the case and fund it adequately, as we have suffered considerable damage in the past and can expect things to get even worse if we do not press our rights.

Joseph Harkins, Director, Kansas Water Office, testified in support of SB 37 stating it is critical to Kansas to pursue this case to completion.

In response to a question, Mr. Pope stated there are three major issues relating to Colorado's violation of the Arkansas River Compact: (1) material depletion of water flows in the river; (2) operation of two major reservoir systems in violation of previous agreement; and (3) operation of the winter water storage program.

The meeting was recessed at 3:30 p.m. Chairman Teagarden announced the Committee will reconvene at 5:00 p.m. today for discussion and action on these bills.

Chairman Teagarden reconvened the meeting at 5:05 p.m. Representative Kline moved to concur with the recommendations of the Governor and the Senate on SB 36 and that SB 36 be recommended favorably for passage. Representative Hamm seconded. Motion carried.

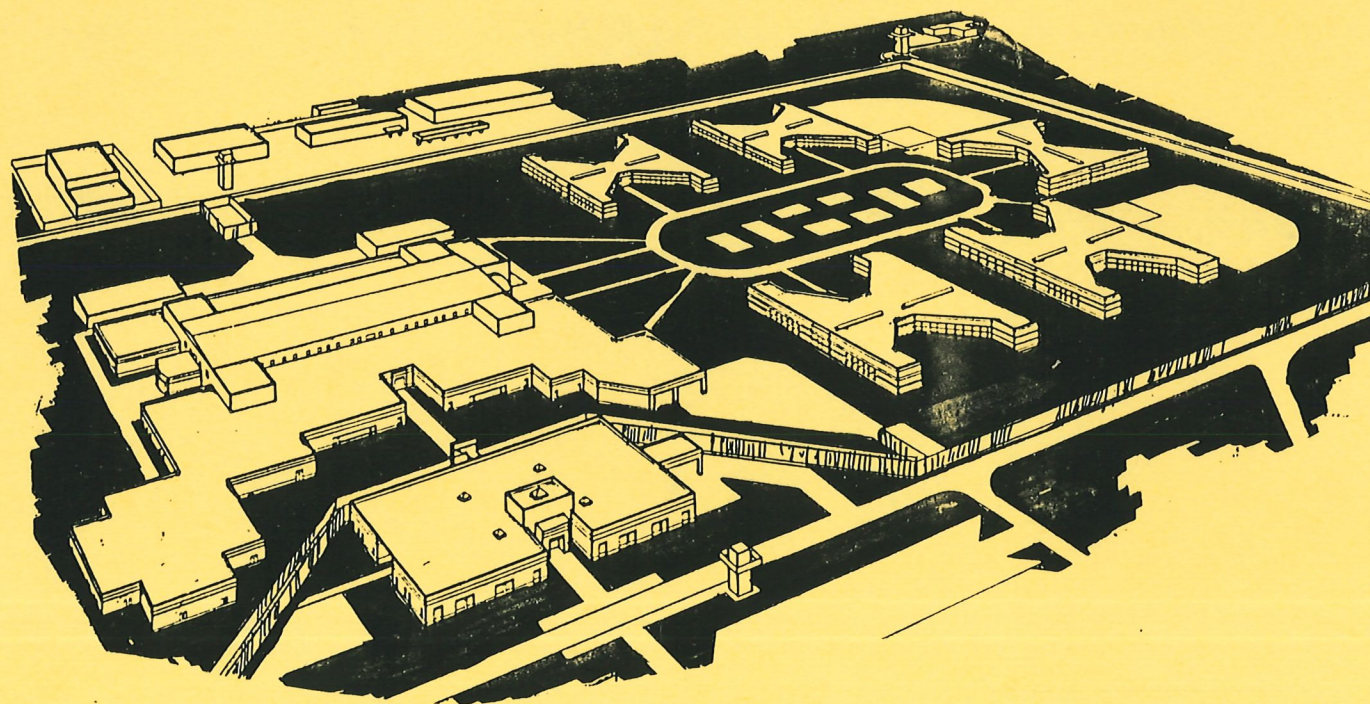
Representative Heinemann moved that SB 37 be recommended favorably for passage. Representative Wisdom seconded. Motion carried.

The meeting was adjourned at 5:15 p.m. The next meeting is scheduled for Tuesday, February 12 at 1:30 p.m. in 514-S.

To: House Appropriations Committee

Status Report February 4, 1991

EL DORADO CORRECTIONAL FACILITY



El Dorado, Kansas

KANSAS DEPARTMENT OF ADMINISTRATION
DIVISION OF ARCHITECTURAL SERVICES

KANSAS DEPARTMENT OF CORRECTIONS

HA
2-4-91
Attachment 1

INTRODUCTION

The purpose of this briefing is to familiarize this committee with the current status of the El Dorado Correctional Facility and the Larned Correctional Mental Health Facility.

Data presented herein reflects the status of the project on January 3, 1991.

EL DORADO CORRECTIONAL FACILITY

The El Dorado Correctional Facility is now well underway. The Support Buildings, Housing Units and the Commons/Administration Buildings are presently being constructed. Also, the installation of utilities and other site work is progressing well. The bids on several packages have exceeded expectations and the estimates prepared by the consultants. A need for emergency additional funding has prompted the preparation of this document.

Since the beginning of the design process, the Department of Corrections and the Division of Architectural Services have worked with the architects, Gossen Livingston Associates, to provide the state with a "no frills" facility meeting both the American Correctional Association standards and the federal court ordered requirements. In view of the hard core inmates to be housed at this facility, the prison design has been trimmed to the minimum

in all areas while still making escape extremely difficult. The facility is being constructed with materials to withstand the abuse of a prison environment, have a low maintenance cost, and make the most efficient use of staff.

In an attempt to keep costs down and allow small contractors within the state the opportunity to compete with the large out-of-state contractors, the decision was made early in the design process to allow the project to be bid in several small packages. Five of the six packages bid to date have been awarded to Kansas firms.

As can be determined from the enclosed summary sheets, when all bid packages have been awarded, the project's costs will exceed the budget available for construction in the amount of \$3,167,038. The Department of Administration, Division of Architectural Services, identified several factors which have contributed to the cost overrun. The first factor was a higher inflation rate than expected this past year. When the project was funded, an inflation rate of 3% was used which was the national average at the time. According to monthly construction reports, the current inflation rate is 4.9% for the construction industry. This is estimated to have added \$1,127,000 to the construction costs for both projects. The second factor was the necessity to establish liquidated damages of \$10,000 a day per contract at El Dorado and \$2,500 a day per contract at Larned to ensure a completion schedule meeting federal

court ordered mandates. The net effect for the contractors has been to increase their costs in order to reduce their risk due to construction delays. Third, was the decision to place this project under the Davis-Bacon Act, which the Department of Administration, Division of Architectural Services, is continuing to collect data to establish the total cost effect on both the El Dorado and Larned projects. This amount will be derived by reviewing average labor costs with contractors who have bid on this project, and other contractors who have been involved on similar size projects.

Carter Goble Associates, a consultant to the project architects, developed the original movable equipment budget of \$2,039,281 in 1988. After a later area-by-area review of movable equipment needs, the budget estimate was revised to \$3,239,281. This would require a funding increase of \$1,200,000. The Kansas Department of Corrections requested additional funds for movable equipment to be appropriated for FY 1991, but the increase was not approved.

In addition, changes in the construction management costs and miscellaneous costs have added \$122,113 to the project. The \$122,113 combined with the \$3,167,038 needed for construction and the \$1,200,000 required for movable equipment brings the total amount needed to \$4,489,151 at El Dorado.

EL DORADO CORRECTIONAL FACILITY
BIDDING HISTORY

January 3, 1990

BID PACKAGE	DATE DOC ISSUE	BID DATE	PACKAGE BUDGET	COST FOR BASE BIDS AND EACH ALTERNATE	ACCEPTED	CUMULATIVE TOTAL	BUDGET BALANCE	START CONST.	COMPLETION DATE	OCCUPANCY DATE
1 Entrance Road & Box Culvert	11/10/89	12/11/89	\$ 201,292	Base Bid \$ 236,331 Alt 1 Earth Wk 86,655 BID ACCEPTED 236,331 C.O. Roadway -31,000 C.O. CCTV Conduit 489 C.O. Const Road 22,800 C.O. Ext Const 17,509 Balance 246,129 Over -44,837	YES NO	246,129	\$ 46,811,608 46,565,479	12/26/89	06/21/90	06/21/90
1A Site Grading	01/25/90	02/27/90	773,924	Base Bid 567,192 No Alt's Bid BID ACCEPTED 567,192 C.O. Silt Fence 2,560 C.O. Select Fill -9,000 C.O. Fill Req. -22,000 C.O. Const Rd 13,071 Balance 551,823 Under +222,101	YES	797,952	46,013,656	03/28/90	08/07/90	08/07/90
2 Support Buildings	03/20/90	04/20/90	5,295,101	Base Bid 5,662,200 Alt 1 Kennel 371,000 Alt 2 Stor Bldg 103,000 Alt 3 Warehouse 137,000 Alt 4 Boiler 49,000 Alt 5 Canopy 52,000 Alt 6 Switchgear 20,000 Alt 7 Main Schgr 135,000 BID ACCEPTED 5,682,200 C.O. Hardware 1,703 C.O. Conduit 1,050 C.O. OH Door 535 Balance 5,685,488 Over -390,387	YES Recommend* NO NO NO NO YES NO	6,483,440	40,328,168	05/30/90	04/01/91	04/15/91

* Due to the high cost, this project is not included in the total. The high cost is due to the amount of labor required to build the pens. It is our hope to have the contractor build the shell of the kennel building and use inmate labor to do the pens and all interior construction at a considerable lower cost.

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BID PACKAGE	DATE DOC ISSUE	BID DATE	PACKAGE BUDGET	COST FOR BASE BID AND EACH ALTERNATE	ACCEPTED	CUMULATIVE TOTAL	BUDGET BALANCE	START CONST	COMPLETION DATE	OCCUPANCY DATES	
3 Housing Units	04/26/90	05/31/90	20,196,410	Base Bid	19,929,426	YES			06/11/90	A-05/01/91	06/01/91
				Alt 1 Precast/Cl	26,250	YES			B-05/01/91	07/01/91	
				Alt 2 Chain Cell	0	NO			C-08/01/91	09/01/91	
				Alt 3 Toilet Fix	25,200	YES			D-09/01/91	10/01/91	
				Alt 4 AC Drives	67,725	NO			E-09/01/91	10/01/91	
				Alt 5 SS Lights	95,000	NO					
				Alt 6 Intercom	120,000	YES					
				Alt 7 Video	9,305	YES					
				BID ACCEPTED	20,110,181						
				C.O Food Shelf	5,907						
				C.O Elev Rev	4,895						
				C.O Cell Pad	-57,748						
				C.O Roof Insul	-8,750						
				Balance	20,054,485			26,537,925	20,273,683		
				Under	+141,925						
				3A Site Utilities	09/24/90	10/9/90	4,456,557	Base Bid	6,198,501	YES	
Alt 1 Pre-Insul	200,000	NO							A-05/01/91	N/A	
Alt 2 Leak Detc	66,250	NO							S-06/01/91	N/A	
Alt 3 Kennel	55,000	YES							C-08/01/91	N/A	
BID ACCEPTED	6,253,501							32,791,426	14,020,182	D-09/01/91	N/A
Over	-1,796,944										
4 Commons/Admin. Buildings	07/18/90	09/06/90	12,948,079	Base Bid	13,053,426	YES		09/17/90	kit 06/01/91	07/01/91	
				Alt 1 Bldg U	550,000	YES			adm 09/01/91	10/01/91	
				Alt 2 Bldg V	543,000	NO			others 09/01/91	10/01/91	
				Alt 3 Energy	163,000	NO					
				Alt 4 AC Drive	46,200	NO					
				BID ACCEPTED	13,603,426						
				C.O. Roofing	-10,200						
				C.O. Precast	-15,000						
				Balance	13,578,226			46,369,652	441,956		
				Over	-630,147						
5A Guard Towers/ Miscellaneous Site Work/Electronic Security	08/23/90	09/27/90	934,770	Base Bid	842,096			Will be Rebid		10/01/91	
				Alt 1 Sidewalk	61,420						
				Alt 2 Ball Field	3,000						
				Alt 3 Rec. Area	190,527						
				*BID PENDING	1,097,043			47,466,695	(655,087)		
Over	-162,273										

* NOTE: This package has not been accepted and is being rebid. Prices shown in bidding history are from original low bid.

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BID PACKAGE	DATE DOC ISSUE	BID DATE	PACKAGE BUDGET	COST FOR BASE BID AND EACH ALTERNATE	ACCEPTED	CUMULATIVE TOTAL	BUDGET BALANCE	START CONST	COMPLETION DATES	OCCUPANCY DATE
5B Kitchen Equip.	10/08/90	10/31/90	588,392	Base Bid <u>994,378</u> BID ACCEPTED 994,378 C.O.Delete Equip -126,312 Balance 868,066 Over -279,674	YES	48,334,761	(1,523,153)	02/15/91	06/01/91	07/01/91
5C Laundry Equip.	10/15/90	10/31/90	331,800	Base Bid <u>283,909</u> BID ACCEPTED 283,909 Under +47,891	YES	48,618,670	(1,807,062)	02/15/91	06/01/91	07/01/91
Inmate Furniture	N/A	N/A	566,272	From KCI <u>566,272</u> BID PENDING 566,272	NO	49,184,942	(2,373,334)	03/15/91	N/A	05/01/91
6 Materials, Fence & Electronic Security		10/29/90	519,011	Base Bid Fence 438,000 Base Bid Security 191,772 Spare Parts Sec. 9,920 DOC Material <u>154,012</u> BID ACCEPTED 793,704 Over -274,693	YES YES YES	49,978,646	(3,167,038)	01/01/91	05/01/91	N/A
TOTAL			46,811,608							

6344 Budget

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FINANCIAL SUMMARY

RESOURCES FOR EL DORADO CORRECTIONAL FACILITY

State General Fund	\$ 750,000
Preliminary Planning & Program	
Bonds - 1	\$ 31,066,149
Planning and Design - SGF to Bonds	
PMIB Loan	<u>23,073,655</u>
TOTAL	\$ 54,889,804

BUDGET SUMMARY PER 1/3/91 REVISIONS

Total Project Budget	\$ 54,889,804
Less Architect's Fees	2,757,656
Less Preliminary Planning & Misc. Costs	892,765
Less Construction Management	465,229
Less Movable Equipment	<u>3,239,281</u>
Amount for Construction and Fixed Equipment	\$ 47,534,873
Less Contingency	<u>2,045,378</u>
Amount for Award	\$ 45,489,495
Less Bids Awarded & Scheduled to be Awarded	<u>-49,978,646</u>
BALANCE	\$ -4,489,151

CHANGE ORDER SUMMARY

1	Entrance Road	
	Change Roadway Profile	-31,000
	Add Conduit for CCTV & Tele.	489
	Temp Road Construction	22,800
	Extend Construction Road	<u>17,509</u>
	Subtotal	9,798
1A	Site Grading	
	Build a Silt Fence	2,560
	Delete Amount of Select Fill	-9,000
	Reduce Amount of Fill Required	-22,000
	Temporary Const. Road	<u>13,071</u>
	Subtotal	-15,369
2	Support Buildings	
	C.O. Conduit	1,050
	Hardware Revisions	1,703
	Increase OH Door Size	<u>535</u>
	Subtotal	3,288
3	Housing Units	
	Cell Dr. Food Shelf	5,907
	Foundation for Elevator	4,895
	Delete Cell Padding	-57,748
	Roof Insulation Revisions	<u>-8,750</u>
	Subtotal	-55,696
4	Commons/Admin. Buildings	
	C.O. Roofing	-10,200
	Revise Precast	<u>-15,000</u>
	Subtotal	-25,200
TOTAL		-83,176

EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 1
ENTRANCE ROAD AND BOX CULVERT**

Description:

Construct an entrance road into the correctional facility site and build a box culvert structure over a drainage way for the road.

C.O. Extra Construction Road: Extend the entrance road through the prison construction site to provide all-weather access to the individual building locations for construction vehicles.

Alternates Accepted:

None

Change Orders Accepted:

C.O. Roadway: Revise roadway design to reduce rock excavation.

C.O. CVTV Conduit: Install three conduits over box culvert for future cables.

C.O. Construction Road: Install underlayment fabric and two layers of rock on the portion of the entrance road within this contract to enable it to carry construction traffic without damage.

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EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 1A
SITE GRADING**

Description:

Extend the entrance road and provide all grading of the correctional facility site, including excavation as required and placement of engineered fill for building pads to support building construction.

C.O. Construction Road: Install underlayment fabric and two layers of rock on the portion of the entrance road within this contract to enable it to carry construction traffic without damage.

Alternates Accepted:

None

Change Orders Accepted:

C.O. Silt Fence: Reconfigure the temporary erosion barriers around the support buildings.

C.O. Select Fill: Allow the contractor to crush rock excavated on site and utilize that as fill material.

C.O. Fill Requirements: Modify the original specifications on fill requirements to achieve savings without sacrificing quality of end result.

EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 2
SUPPORT BUILDINGS**

Description:

These facilities, all located outside the security fence, are pre-engineered metal buildings housing functions which support the operation of the correctional facility. Included in the base bid are the Energy Center (Building F), General Maintenance (Building G), Auto Maintenance (Building H) and Warehouse (Building J).

C.O. Overhead Door: Increase overhead door in energy center to allow for larger equipment to be installed in the building.

Alternates Accepted:

Alt. 1 Switchgear: Changed main switchgear from fusible switches to vacuum contractor and relays.

Change Orders Accepted:

C.O. Hardware: Upgrade the door lock cylinders to match those used in the housing buildings to facilitate master keying.

C.O. Conduit: Provide conduit stubbed out of the Energy Building to allow for economical electrical hook-up of potential future support buildings.

EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 3
HOUSING UNITS**

Description:

This package is composed of five separate buildings, each designed to house 120 inmates in two separate groupings of 60 each. The buildings are constructed of precast concrete panels. Housing Units A and B are to be maximum security and Housing Units C, D and E are to be medium security, although their appearance is virtually identical.

Alternates Accepted:

Alt. 1 Precast Color: Provide a low maintenance custom buff color in the precast wall panels for improved uniform appearance. This will require no painting and virtually no maintenance would be required.

Alt. 3 Toilet Fixtures: Provide a chip resistant color coating on all stainless steel plumbing fixtures. This is to enhance sanitation and maintenance.

Alt. 6 Intercom: Provide devices, wires, conduits, and controls associated with placing security intercom stations in areas of Housing Units C, D and E (dayrooms, stairways, exterior doors, etc.).

Alt. 7 Video: Provide time-lapse video recorders and

associated switches in areas of Housing Units C, D and E (observation cells, dayrooms, etc.).

Change Orders Accepted:

C.O. Food Shelf: Provide 4-inch deep steel shelves at the food slot on cell doors in Housing Units C, D and E.

C.O. Elevator Revision: Revise the grade beam foundation system to accommodate the elevators added to Housing Units A and B during the bidding period.

C.O. Cell Padding: Delete the resilient cell padding in four of eight holding cells in Housing Units A and B.

C.O. Roof Insulation: Substitute roof insulation and provide a protective cover board, to achieve a more durable roof system than originally specified, at less cost.

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EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 3A
SITE UTILITIES**

Description:

This package included the installation of all site utilities from the property line to each of the buildings and other locations being served. It also includes construction of parking lots, driveways, final surfacing of roadways and the construction of a water tower.

Alternates Accepted:

Alt. 3 Kennel: The dog kennel facility will be constructed at a future date, possible using inmate labor. This alternate extends utilities to the future kennel site, since this is the most economical and feasible time to do so.

Change Orders Accepted:

None.

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EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 4
COMMONS/ADMINISTRATION BUILDINGS**

Description:

This package is composed of the administrative office building which serves as the front entrance to the entire correctional facility and the large multi-service Commons Building located directly behind it. Areas included in the Commons Building are the infirmary, intake/discharge, clinic, visiting, education, recreation, laundry, kitchen, dining and commissary.

C.O. Revised Precast: A different design for the exterior precast panels was submitted and approved with no loss in quality or appearance.

Alternates Accepted:

Alt. 1 Building U: Both Prison Industries' Buildings (U and V) were included as alternates to identify their costs. It was decided that at least one such building was needed for initial program operation; therefore Building U was included. This building will house the vocational programs. This area will also very likely be needed for temporary housing of inmates who will install the security fence, recreation areas, install inmate furniture, etc.

Change Orders Accepted:

C.O. Roofing: It was determined that a different roofing system from that originally specified could be provided at less cost without sacrificing quality.

EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 5A
GUARD TOWERS/MISCELLANEOUS SITEWORK/ELECTRONIC SECURITY**

Note: This package has not been accepted and is being rebid. Prices shown in bidding history are from original low bid.

Description:

This package includes the construction of five guard towers around the perimeter of the correctional facility, a small shakedown building at the rear entrance, and a small toilet building in the outdoor recreation area. Also included are the remaining driveways and electronic security equipment associated with the perimeter fence.

Alternates to be Considered:

Alt. 1 Sidewalks: Provide the sidewalks connecting the Commons Building with the Housing Buildings and an asphalt running track.

Alt. 2 Ballfield: Provide complete ballfields, including equipment.

Alt. 3 Recreation Area: Provide all exterior recreation surfaces and equipment located within the running track oval.

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EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 5B
KITCHEN EQUIPMENT**

Description:

This package includes the equipment for the food service kitchen and also the vocational training kitchen.

Alternates Accepted:

None.

Change Orders Accepted:

C.O. Delete Equipment: This was to delete those items of kitchen equipment which are not absolutely essential in food service for feeding a population of 640 inmates and staff.

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EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 5C
LAUNDRY EQUIPMENT**

Description:

This package includes all the equipment needed for the correctional facility laundry service for a population of 640 inmates.

Alternates Accepted:

None.

Change Orders Accepted:

None.

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EL DORADO CORRECTIONAL FACILITY

(NOT A BID PACKAGE)
INMATE FURNITURE

Description:

This package includes most of the inmate housing furniture which will be constructed by Kansas Correctional Industries.

Alternates Accepted:

Not applicable.

Change Orders Accepted:

None.

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EL DORADO CORRECTIONAL FACILITY

**BID PACKAGE NO. 6
MATERIALS, FENCE AND ELECTRONIC SECURITY**

Description:

The Department of Corrections will build the exterior perimeter security fence system using inmate labor to save money. This package includes all the fencing materials, the electronic security system, and the other related construction materials needed to complete the work.

Alternates Accepted:

None.

Change Orders Accepted:

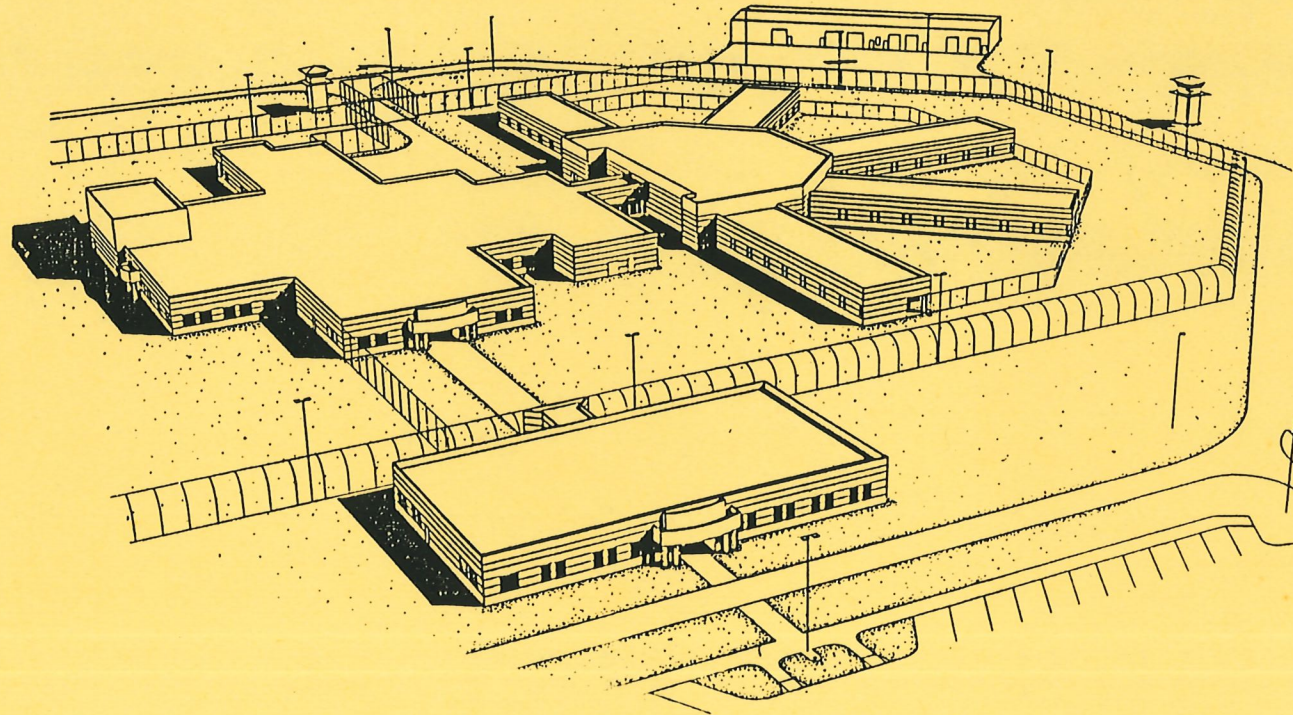
None.

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To: *House Appropriations Committee*

Status Report February 4, 1991

LARNED CORRECTIONAL MENTAL HEALTH FACILITY



Larned, Kansas

KANSAS DEPARTMENT OF ADMINISTRATION
DIVISION OF ARCHITECTURAL SERVICES

KANSAS DEPARTMENT OF CORRECTIONS

HA
2-4-91
Attachment 2

LARNED CORRECTIONAL MENTAL HEALTH FACILITY

In June of 1987 and October of 1988, the United States Department of Justice issued reports in which it concluded mental health needs of inmates confined by the Kansas Department of Corrections were not being met. In April of 1989, the United States District Court entered an order in the case of Arney, et al. v. Hayden, et al. in which it reached similar conclusions. As a result of these findings, the court, on April 13, 1989, issued an order directing the Department of Corrections to submit by September 1, 1989, a plan to address the long-term needs of mentally ill inmates.

During the 1989 legislative session the Department requested appropriations to construct a facility for mentally ill inmates. H.B. 2548 provided authorization and appropriations for this purpose.

On September 1, 1989, the Department of Corrections filed a plan with the Court. Both plaintiffs and the department retained experts to evaluate the plan and assess services of mentally ill inmates in the Kansas system. As a result of this process, the Court, on December 11, 1989, approved the department's plan which included locating a 150 bed correctional mental health facility on the grounds of Larned State Hospital.

Based on this plan, the Department authorized the architectural firm of Gossen Livingston Associates to

design a facility at Larned which would meet the requirements of the Court order. The design process was completed in the fall of 1990.

The construction of the new facility was divided into five bid packages. The first bid package was for site work which is now substantially complete. The second bid package was for all construction exclusive of the site work. Foundation work is now beginning. Although the first bid package was under budget, the second bid package was substantially over budget in spite of major reductions in program spaces during design. Other budget changes were in the areas of construction management (reduced \$50,000), miscellaneous cost (increased \$117,000), and the addition of telephone equipment for \$237,000 and inmate furniture for \$95,250. The net effect was for the total of the contracts for construction and fixed equipment to be \$1,108,150 over budget.

Furthermore, an additional \$ 250,000 must be added to the movable equipment budget. This increase is based on recent experience from other projects. Other miscellaneous costs have also increased bringing the project to a grand total of \$1,425,024 over the original budget.

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January 3, 1991

LARNED CORRECTIONAL MENTAL HEALTH FACILITY
BIDDING SUMMARY

BID PACKAGE	DATE DOC ISSUE	BID DATE	PACKAGE BUDGET	COST FOR BASE BIDS AND EACH ALTERNATE	ACCEPTED	CUMULATIVE TOTAL	BUDGET BALANCE	START CONST.	COMPLETION DATE	OCCUPANCY DATE
							\$ 12,504,325			
1 Rough Grading Bldg. Pads	09/20/90	10/25/90	\$ 519,923	Base Bid \$ 240,250 No Alt's Bid 0 BID ACCEPTED 240,250 C.O. Extend Road 701 Balance 240,951 Under +278,972	YES	240,951	12,263,374	11/08/90	12/20/90	01/01/91
2 Buildings	10/16/90	11/26/90	11,784,402	Base Bid 12,714,000 Alt 1 Grd Tower 61,327 Alt 2 Warehouse 58,477 Alt 3 Cell Dr Cl 25,470 Alt 4 Pipe Insul -20,000 Balance 12,839,274 Over -1,054,872	YES YES YES YES YES	13,080,225	(575,900)	12/03/90	11/20/91	12/20/91
3 Kitchen/ Laundry Equip.	11/19/90	01/08/91	200,000	Est. Bid 200,000 BID PENDING 200,000		13,280,225	(775,900)	03/15/91	11/20/91	12/20/91
4 Inmate Furniture	N/A	N/A	95,250	From KCI 95,250 BID PENDING 95,250		13,375,475	(871,150)	11/20/91	12/10/91	12/11/91
5 Telephones	N/A	N/A	237,000	Est. Bid 237,000 BID PENDING 237,000		13,612,475	(1,108,150)	06/01/91	11/20/91	12/20/91
TOTALS			<u>\$ 12,836,575</u>	<u>\$ 13,612,475</u>						

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January 3, 1991

FINANCIAL SUMMARY

RESOURCES FOR LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bonds - 1 For Planning and Design	\$ 712,377.22
Bonds - 1	11,964,123.78
PMIB Loan	<u>1,926,344.62</u>
TOTAL	\$ 14,602,845.62

CHANGE ORDER SUMMARY

1 Rough Grading	
Extend Road	<u>700.77</u>
Subtotal	700.77
TOTAL	700.77

BUDGET SUMMARY

Total Project Budget	\$ 14,602,845
Less Architect's Fees	691,552
Less Preliminary Planning & Miscellaneous Cost	242,000
Less Construction Management	75,000
Less Movable Equipment	<u>799,476</u>
Amount for Construction and Fixed Equipment	\$ 12,794,817
Less Contingency	<u>607,366</u>
Amount for Award	\$ 12,187,451
Less Bids Awarded & Scheduled to be Awarded	<u>-13,612,475</u>
BALANCE	\$ -1,425,024

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p-4

LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bid Package No. 1
ROUGH GRADING

Description:

Complete all rough grading including construction of entrance road and placement of engineered fill for building pads to support foundation construction.

Alternates Accepted:

Not Applicable.

Change Orders Accepted:

C.O. Roadway Extention: The entrance roadway was extended to intersect with the state highway. This is required for safety and site access.

LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bid Package No. 2
CORRECTIONAL MENTAL HEALTH FACILITY

Description:

Package 2 Work includes all sitework (walks, roads, driveways, parking lots), utilities, fencework and building(s) construction. Buildings to be built are: (1) the Administration Building, (2) Physical Plant (Energy Center and Vehicle Maintenance), (3) Housing Unit, consisting of 5 wings, each housing 30 inmates (total 150) and related dayrooms, control and mechanical/electrical spaces, (4) Commons building, including intake/discharge, visiting, clinic/infirmary, exercise, education, laundry, kitchen, staff and inmate dining, canteen and storage/custodial areas and (5) two guard towers.

Change Orders Accepted:

None.

Alternates Accepted:

- Alt. 1: Add the third guard tower.
- Alt. 2: Add Building G (warehouse) to Physical Plant.
- Alt. 3: Add cell door closers in Housing Units.
- Alt. 4: Use pre-insulated underground piping.

LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bid Package No. 3
KITCHEN AND LAUNDRY EQUIPMENT AND SIGNAGE

Description:

Package 3 includes equipment for the food service kitchen and laundry service for the inmate population of 150. This is the minimum amount of equipment. Food and laundry services will be provided by the Larned State Hospital.

Alternates Accepted:

None.

Change Orders Accepted:

None.

LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bid Package No. 4
INMATE FURNITURE

Description:

This package includes most of the inmate housing furniture which will be constructed by Kansas Correctional Industries.

Alternates Accepted:

Not applicable.

Change Orders Accepted:

None.

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LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bid Package No. 5
TELEPHONE

Description:

This package includes equipment and wiring for the telephone system. This package will be designed with assistance from the Department of Administration, Division of Information Systems and Communications, and given to the Division of Purchasing for bidding.

Alternates Accepted:

None.

Change Orders Accepted:

None.

DEPARTMENT OF ADMINISTRATION
Division of Architectural ServicesJOAN FINNEY,
Governor
EDWARD A. MARTIN, AIA
Director625 Polk
Topeka, Kansas 66603-3288
(913) 233-9367M E M O R A N D U M

TO: Arthur H. Griggs
Acting Secretary of Administration

FROM: Edward A. Martin, AIA *EXM*
Director of Architectural Services

RE: Reasons for Supplemental Appropriation
Senate Bill 36
El Dorado and Larned Correctional Facilities

DATE: January 29, 1991

Per your request, I have conducted further research in determining the reasons for needing a supplemental appropriation of \$5,914,175 to complete the El Dorado and Larned Correctional Facilities. My conclusions follow for your consideration.

1. The original estimate prepared in 1987 by Carter-Goebel, a consulting firm hired by Secretary Endell, was too low. Though the program was adjusted at various times later, and the budget was adjusted to correspond, it is my opinion that the total budget was never appropriate to meet the total need. Consider the following assumptions in the original budget calculations.
 - a. All construction would occur at a single location.
 - b. There would be ample time for design and construction.
 - c. All construction would be bid as a single contract.
 - d. Utilities would be available to the site at minimal expense.

HA

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Attachment 3

- e. Miscellaneous costs for surveys, soils testing, construction testing, printing, etc., would not exceed 1% of the construction budget.
 - f. The prison design would be a campus concept with only one guard tower.
2. The following are tabulated budget deficiencies:
- | | |
|---|------------------|
| a. Underestimate of moveable equipment | \$1,450,000 |
| b. Underestimate of surveys, testing and printing | 242,000 |
| c. Finance Council increased Larned 22 beds | 1,900,000 |
| d. Underestimate of inflation | 1,100,000 |
| e. Unplanned water tower and pump station | 550,000 |
| f. Liquidated damages included by contractors | <u>1,000,000</u> |
| Total Budget Deficiencies | \$6,242,000 |
3. The following are factors which have added to the project cost, but which have not been tabulated to specific dollar amounts:
- a. Two locations increased costs by duplicating systems.
 - b. Lawsuits and a resultant delay in site selection reduced available time.
 - c. Fast-track design and multiple contracts were required to meet court deadline. This also allowed more Kansas contractors to participate, but may have increased cost over single contract.
 - d. Mental Health Facility was enlarged to ensure adequate support functions were available.

- e. Patient rooms in Mental Health Facility were enlarged from 80 s.f. to 100 s.f. each to meet standards for conversion to hospital.
 - f. Concept of El Dorado facility was revised to include five guard towers for better security.
4. My review of the Project Architect's study on the effect of Davis-Bacon shows it was an unscientific telephone poll of only a few contractors. The conclusions drawn were based on input from unsuccessful bidders whose information may be suspect. In a poll I conducted January 28 among successful bidders in the El Dorado project, contractors representing 87% of the construction cost indicated Davis-Bacon had no effect. Based on this new information, I recommend that reference to Davis-Bacon as a factor in cost overruns be dropped unless a scientific study is authorized.
5. All bid packages at El Dorado have already been placed under contract except for one construction package valued at \$1,000,000. All construction at Larned is under contract except for \$530,000 of furnishings and equipment.

EAM:gk

DEPARTMENT OF CORRECTIONS
EXPLANATION OF SENATE BILL NO. 36

Presented to the House Appropriations Committee

by

Steven J. Davies, Ph.D.
SECRETARY OF CORRECTIONS

February 4, 1991

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2-4-91
Attachment 4

Introduction

Senate Bill No. 36 is an emergency supplemental appropriations bill providing the necessary financing to complete the construction and equipping of the El Dorado and Larned correctional facilities (\$5,914,175) and to finance staffing and operating costs for the El Dorado Correctional Facility (\$2,453,024). The proposed funding is emergency in nature in that the facilities cannot be finished and occupied and that the necessary staff for the El Dorado facility cannot be hired until the additional funding is approved. The schedule for completing the facilities and having the El Dorado facility staffed and operational in time to meet the requirements of the federal court order requires that the additional financing be approved as soon as possible.

The bidding of the contract for construction of security towers and site improvements at the El Dorado Correctional Facility is currently being held up until the additional funding included in Senate Bill No. 36 is approved. Because the initial bids received on this portion of the project were considered excessive, the decision was made to rebid the work. Because of insufficient available funding, this contract will be advertised for rebidding this month. The bid date is March 5. However, just as significant is the fact that immediate additional funding is required in order to provide sufficient lead-time to order and purchase loose equipment and to recruit and train staff for the El Dorado facility. Equipment cannot be purchased and staff cannot be hired until the additional funding included in Senate Bill No. 36 is approved.

Bill Summary

- * Section 2(a) increases the total amount that can be expended for construction of the El Dorado Correctional Facility and the Larned Correctional Mental Health Facility from \$68,800,000 to \$74,714,175, an increase of \$5,914,175. Of this amount, \$4,489,151 is for the El Dorado Correctional Facility and \$1,425,024 is for the Larned Correctional Mental Health Facility.
- * Section 2(b) appropriates \$550,000 from the Correctional Institutions Building Fund (CIBF) as partial financing of the \$1,425,024 for the Larned Correctional Mental Health Facility.
- * Section 2(c) appropriates additional financing of \$2,453,024 from the State General Fund to staff and operate the El Dorado Correctional Facility.
- * Section 2(d) increases the position limitation for the Department of Corrections by 198 positions in order to provide the additional staff required for the EL Dorado Correctional Facility.

- * Section 3 lapses \$600,000 from the CIBF appropriation to replace locking systems at the Hutchinson Correctional Facility to offset the additional financing for the Larned Correctional Mental Health Facility appropriated in Section 2(b). Due to highly favorable bids received on the project, this amount can be lapsed.
- * Section 4 increases the amount of the loan from the Pooled Money Investment Board for construction of the El Dorado and Larned correctional facilities from \$25,000,000 to \$26,850,000, an increase of \$1,850,000. This amount will partially finance the additional expenditure authority required for the El Dorado Correctional Facility.

The additional expenditure authority included in Senate Bill No. 36 is detailed and explained in the following sections of this bill explanation.

Construction and Equipment

The additional expenditure authority required to complete construction of and to equip the El Dorado and Larned correctional facilities totals \$5,914,175. Of this amount, \$550,000 would be financed from the Correctional Institutions Building Fund with savings in the locking system project for the Hutchinson Correctional Facility, \$1,850,000 would be financed with an additional loan from the Pooled Money Investment Board, and \$3,514,175 would be funded with previously uncommitted interest earned from the investment of bond proceeds. It should be noted that the additional funding would maintain the contingency for both projects at the amount included in the original project cost. **To the extent that use of the contingency amounts is not necessary for completion of the projects, the additional expenditure authority included in Senate Bill No. 36 will not be utilized.**

The following tables summarize the additional expenditure authority and method of financing recommended for each project:

El Dorado and Larned Correctional Facilities
Comparison of Project Costs - Summary

Category	<u>Original Project Cost</u>	<u>Revised Project Cost</u>	<u>Difference</u>
Construction & Equipment	\$64,557,474	\$70,282,622	\$ 5,725,148
Other Costs	<u>4,935,175</u>	<u>5,124,202</u>	<u>189,027</u>
	<u>\$69,492,649</u>	<u>\$75,406,824</u>	<u>\$ 5,914,175</u>
Financing			
State General Fund	\$ 750,000	\$ 750,000	\$ --
Bonds	43,742,649	43,742,649	--
PMIB Loan	25,000,000	26,850,000	1,850,000
Bond Interest	--	3,514,175	3,514,175
CIBF	<u>--</u>	<u>550,000</u>	<u>550,000</u>
	<u>\$69,492,649</u>	<u>\$75,406,824</u>	<u>\$ 5,914,175</u>

(For details, refer to pages 4 and 5)

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El Dorado Correctional Facility
Comparison of Project Costs - Detail

	<u>Original Project Cost</u>	<u>Revised Project Cost</u>	<u>Difference</u>
Construction & Equipment			
Construction & Fixed Equipment	\$46,811,608	\$49,978,646	\$ 3,167,038
Moveable Equipment	2,039,281	3,239,281	1,200,000
Contingency	<u>2,045,378</u>	<u>2,045,378</u>	<u>-0-</u>
Subtotal	<u>\$50,896,267</u>	<u>\$55,263,305</u>	<u>\$ 4,367,038</u>
Other Costs			
Architect Fees	\$ 2,757,656	\$ 2,757,656	\$ -0-
Preliminary Planning & Program- ming, Site & Miscellaneous	300,000	175,000	(125,000)
Construction Management	468,116	465,229	(2,887)
Miscellaneous Costs (surveys, printing, etc.)	<u>467,765</u>	<u>717,765</u>	<u>250,000</u>
Subtotal	<u>\$ 3,993,537</u>	<u>\$ 4,115,650</u>	<u>\$ 122,113</u>
Total	<u>\$54,889,804</u>	<u>\$59,378,955</u>	<u>\$ 4,489,151</u>
Financing			
State General Fund (planning & programming)	\$ 750,000	\$ 750,000	\$ -0-
Bonds	31,066,149	31,066,149	-0-
Bond Interest	--	2,639,151	2,639,151
PMIB Loan	<u>23,073,655</u>	<u>24,923,655</u>	<u>1,850,000</u>
Total	<u>\$54,889,804</u>	<u>\$59,378,955</u>	<u>\$ 4,489,151</u>

Larned Correctional Mental Health Facility
Comparison of Project Costs - Detail

	<u>Original Project Cost</u>	<u>Revised Project Cost</u>	<u>Difference</u>
Construction & Equipment			
Construction & Fixed Equipment	\$12,504,325	\$13,612,475	\$ 1,108,150
Moveable Equipment	549,476	799,476	250,000
Contingency	<u>607,406</u>	<u>607,366</u>	<u>(40)</u>
Subtotal	<u>\$13,661,207</u>	<u>\$15,019,317</u>	<u>\$ 1,358,110</u>
Other Costs			
Architect Fees	\$ 691,552	\$ 691,552	\$ -0-
Construction Management	125,043	75,000	(50,043)
Miscellaneous Costs (surveys, printing, etc.)	<u>125,043</u>	<u>242,000</u>	<u>116,957</u>
Subtotal	<u>\$ 941,638</u>	<u>\$ 1,008,552</u>	<u>\$ 66,914</u>
Total	<u>\$14,602,845</u>	<u>\$16,027,869</u>	<u>\$ 1,425,024</u>
Financing			
Bonds	\$12,676,500	\$12,676,500	\$ -0-
PMIB Loan	1,926,345	1,926,345	-0-
Bond Interest	-0-	875,024	875,024
CIBF	<u>-0-</u>	<u>550,000</u>	<u>550,000</u>
Total	<u>\$14,602,845</u>	<u>\$16,027,869</u>	<u>\$ 1,425,024</u>

Operating Expenditures

Senate Bill No. 36 includes supplemental funding of \$2,453,024 to staff and operate the new El Dorado Correctional Facility [Section 2(c)]. This amount, when combined with the current authorized appropriation of \$211,238, results in a recommended total budget of \$2,664,262 for the current fiscal year. Of this amount, \$1,721,637 is for salaries and wages to support 269 positions and \$942,625 is for other operating expenditures. The following table summarizes the authorized and revised budgets for the El Dorado Correctional Facility:

	<u>Authorized Budget</u>	<u>Revised Budget</u>	<u>Difference</u>
Salaries and Wages	\$165,230	\$1,721,637	\$1,556,407
Other Operating Expenditures	<u>46,008</u>	<u>942,625</u>	<u>896,617</u>
	<u>\$211,238</u>	<u>\$2,664,262</u>	<u>\$2,453,024</u>
Positions	55	269	214

The recommended budget of \$2,664,262 for the El Dorado Correctional Facility assumes that two of the five 128-bed housing units will be occupied by July 1, in time for the Department of Corrections to meet the court order requirement for vacating the Adjustment and Treatment Building at the Lansing Correctional Facility. The recommended budget of \$1,721,637 for salaries and wages is based upon a schedule designed to have staff hired and trained prior to the placement of inmates. A breakdown of the 269 positions, 55 of which were authorized for the current fiscal year, is included on an attached table. The table also provides a comparison of the recommended staffing pattern for the current fiscal year with the recommended staffing pattern for fiscal year 1992. In addition, another table provides a general description of the hiring schedule utilized in projecting expenditures for salaries and wages.

A net increase of 198 positions in order to allow for the hiring of the additional staff is required for the Department of Corrections. The following table summarizes the components of this net increase:

Recommended Positions for El Dorado Correctional Facility	269.0
Less:	
Positions Already Authorized	(55.0)
Medical Positions Vacated by State Employees	(14.0)
Positions Deleted by the Governor	<u>(2.0)</u>
Net Increase in Position Limitation	198.0

The recommended budget of \$942,625 for other operating expenditures would provide the necessary funds to start-up and operate the facility and to establish inventories of consumable supplies required to support staff and the inmate population.

Recommended Staffing Pattern - Summary
El Dorado Correctional Facility

<u>Program</u>	<u>No. of Positions FY 1991</u>	<u>No. of Positions FY 1992</u>
Administration	20	22
Security	187	256
Recreation	4	4
Counseling & Evaluation	2	2
Mechanical Services	16	16
Laundry and Supply	7	7
Food Service	14	14
Classification and Records	<u>19</u>	<u>26</u>
Total Positions - El Dorado Correctional Facility	<u>269</u>	<u>347</u>

(For details, refer to pages 8-10)

**Recommended Staffing Pattern - Detail
El Dorado Correctional Facility**

<u>Program/Position Classification</u>	<u>No. of Positions FY 1991</u>	<u>No. of Positions FY 1992</u>
Administration		
Corrections Director IV	1	1
Correctional Manager III	2	2
Inst. Business Administrator III	1	1
Personnel Management Specialist III	1	1
Administrative Officer III	1	1
Training Officer, Corrections	1	1
Corrections Specialist II	1	1
Accountant II	1	1
Safety Specialist II	1	1
Office Specialist	1	1
Secretary III	1	1
Storekeeper III	1	1
Secretary II	2	2
Bookkeeper	1	1
Office Assistant IV	1	1
Secretary I	1	2
Office Assistant III	2	2
Attorney	<u>0</u>	<u>1</u>
Total - Administration	<u>20</u>	<u>22</u>
Security		
Correctional Manager I	1	1
Correctional Specialist III	7	7
Correctional Specialist II	8	8
Correctional Specialist I	29	45
Correctional Officer II	22	27
Correctional Officer I	118	166
Secretary I	1	1
Office Assistant II	<u>1</u>	<u>1</u>
Total - Security	<u>187</u>	<u>256</u>

Recommended Staffing Pattern - Detail
El Dorado Correctional Facility

<u>Program/Position Classification</u>	<u>No. of Positions FY 1991</u>	<u>No. of Positions FY 1992</u>
Recreation		
Librarian I	1	1
Activity Therapist II	1	1
Activity Therapist I	<u>2</u>	<u>2</u>
Total - Recreation	<u>4</u>	<u>4</u>
Counseling & Evaluation		
Clinical Chaplain II	2	2
Mechanical Services		
Physical Plant Supervisor III	1	1
Physical Plant Supervisor II	1	1
Facilities Maintenance Supervisor	7	7
Lock Systems Specialist II	1	1
Grounds Maintenance Supervisor II	1	1
Power Plant Operator II	<u>5</u>	<u>5</u>
Total - Mechanical Services	<u>16</u>	<u>16</u>
Laundry & Supply		
Procurement Officer II	1	1
Laundry Manager	1	1
Laundry Supervisor	1	1
Storekeeper III	2	2
Storekeeper II	1	1
Office Assistant III	<u>1</u>	<u>1</u>
Total - Laundry & Supply	<u>7</u>	<u>7</u>

Recommended Staffing Pattern - Detail
El Dorado Correctional Facility

<u>Program/Position Classification</u>	<u>No. of Positions FY 1991</u>	<u>No. of Positions FY 1992</u>
Food Service		
Food Service Manager	1	1
Food Service Supervisor II	1	1
Food Service Supervisor I	<u>12</u>	<u>12</u>
Total - Food Service	<u>14</u>	<u>14</u>
Classification & Records		
Correctional Manager I	1	1
Unit Team Manager	3	5
Correctional Counselor II	7	11
Office Specialist	1	1
Office Assistant IV	1	1
Office Assistant III	1	2
Office Assistant II	<u>5</u>	<u>5</u>
Total - Classification & Records	<u>19</u>	<u>26</u>

Hiring Schedule for Recommended Staffing Pattern
El Dorado Correctional Facility

Administration

FY 1991: Positions funded for periods of time ranging from 1 to 11 months. Average is approximately five months.

FY 1992: All positions funded for 12 months.

Security

FY 1991: Positions funded for periods of time ranging from one-half month to nine months. Average is approximately 2.5 months.

FY 1992: 189 positions funded for 12 months; five positions funded for ten months; 24 positions funded for nine months; 38 positions funded for eight months.

Recreation

FY 1991: Positions funded for periods of time ranging from 1.5 to three months. Average is approximately two months.

FY 1992: All positions funded for twelve months.

Counseling and Evaluation

FY 1991: Positions funded for 1.5 months.

FY 1992: Positions funded for twelve months.

Mechanical Services

FY 1991: Positions funded for periods of time ranging from two to 12 months. Average is approximately four months.

FY 1992: All positions funded for twelve months.

Laundry and Supply

FY 1991: Positions funded for periods of time ranging from one to four months. Average is approximately three months.

FY 1992: All positions funded for twelve months.

Food Service

FY 1991: Positions funded for periods of time ranging from one to four months. Average is approximately two months.

FY 1992: All positions funded for twelve months.

Classification and Records

FY 1991: Positions funded for periods of time ranging from one to five months. Average is approximately two months.

FY 1992: 19 positions funded for twelve months; six positions funded for nine months; one position funded for eight months.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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Testimony of
Attorney General Robert T. Stephan
Before the House Appropriations Committee

Re: 1991 Senate Bill 37

February 4, 1991

Mr. Chairman and Members of the Committee:

First of all, I want to thank Representative Teagarden and the members of this committee for your prompt scheduling of today's hearing. Indeed, we have done everything possible to date to insure that lack of money is not injurious to the trial of the Kansas v. Colorado water litigation. Now, it is prompt action on this bill which will keep the litigation on its present positive course.

For the sake of being able to meet the January billings for attorneys, experts and expenses and to be able to meet the March payroll in my own office in its normal course, I would hope that this bill could be in effect by the middle of February. We also now owe \$520,564.33 in deferred fees of our attorneys and experts for the last three months of 1990 which enactment of this bill will allow us to pay.

I have provided several attachments to this testimony. The first is a memorandum from Mr. Richard Simms, our special water counsel, which discusses the complexity and magnitude of this case and the issue of possible sanctions and fees against the State of Colorado. It is followed by a breakdown of costs through Fiscal Year 1990, a summary of billings this fiscal year and deferred fees, more detailed summations of the September and December, 1990, billings (that is the largest and smallest billings for this fiscal year) and, finally, a sample page from a Simms and Stein billing to demonstrate the detailed accounting of fees with which we are provided.

I have written each of you twice within the last few months in an effort to keep you up-to-date on our status both in the litigation and financially. January 18th Mr. Simms, who is directing the day-to-day

HA
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Attachment 5

presentation of Kansas' case, was here in Topeka and addressed many of you in a special meeting held in the old Supreme Court Room. Here I will try to summarize our various previous communications and then I will be pleased to take your questions.

As you are aware, since 1982, Kansas has been engaged in a renewed effort to reclaim its rightful share of Arkansas River water. Reductions in stateline river flow and subsurface water cost the Kansas economy millions of dollars a year. Continued and increasing depletions would be devastating to the economies of certain western Kansas counties. Over the last eight fiscal years, money has been appropriated specifically to work toward the point at which we find ourselves today -- in trial before the Special Master who will make recommendations to the U.S. Supreme Court. It was in 1985, three years after we had begun negotiations with Colorado over the river that, as a last resort, we filed suit in the U.S. Supreme Court.

I believe this is a very important case to the state of Kansas -- in fact, the most important case of my 12 years as attorney general. We are seeking to recover for the future our most basic natural resource -- water. And in the case of the Arkansas River, we are seeking a renewable resource. This case is critical in its own right in that continued and future depletions of Arkansas River water will lead to serious economic damage to several western Kansas counties, and it also leads to further demand on the Ogallala Acquifer, a non-renewable resource. It is also critical that Kansas make a strong stand now in regard to the Arkansas River, because litigation is likely to resurface over the Missouri River. Only last year, we combined efforts with other states to appeal a federal district court decision which would have withheld Missouri River water in North Dakota. This would have stopped barge traffic on the river and threatened water supplies in the Kansas City area. We won before the Eighth Circuit Court of Appeals sitting in St. Paul, Minnesota. The court's decision was 2-1, with downstream judges outvoting the upstream judge on the panel. This fight is not over, and I believe victory for Kansas in the present Kansas v. Colorado litigation will send a strong message to the upstream states of North Dakota, South Dakota and Montana. We also have a dispute with Nebraska over groundwater issues involved in the Republican River Compact. Water disputes are here to stay.

This is the third time this Century we have been in court with Colorado over the Arkansas River. If Kansas had put the effort into the two previous cases we are putting into the case today, further litigation may not have been necessary.

The complexity and costs of this litigation have escalated beyond anyone's belief. Discovery in the case was prolonged and expensive, due primarily to the posture Colorado typically takes in water litigation. It has had or currently is involved in a water dispute with each of its neighbors. It will not settle and has adopted a strategy of attempting to outspend the money and will of its opponents. Through Fiscal Year 1990,

the State of Kansas had spent just over \$4 million in direct expenses attributable to this case; it is believed Colorado had spent over \$8 million. When he made his presentation last month, Mr. Simms provided a graph which demonstrated a continuation of this 2:1 spending ratio. And, as he pointed out, it is impossible to track all of Colorado's spending because it is divided among state agencies.

Even with a supplemental appropriation, we had difficulty in meeting expenses in Fiscal Year 1990. Thanks to the assistance of the governor's office and the Division of Budget, \$147,000 was transferred from other funds available to the attorney general to attempt to meet Fiscal Year 1990 obligations. From the tort claims fund, \$45,777 was spent to defend counterclaims and affirmative defenses of Colorado. Still, the team of attorneys and experts representing Kansas was unable to be paid \$72,248 in billings.

In Fiscal Year 1991, a total of \$532,561 was available. This was a gross underestimate of the money necessary for trial. In last month's meeting, Mr. Simms explained some of the reasons, including gross underestimates of attorney and expert time necessary to prepare and try the case. To make matters worse in this fiscal year, intensive discovery was extended through the first part of September and trial, which it had been believed would start in December, 1990, was accelerated to September 17, 1990, in the Los Angeles area. Had trial begun in December, as was believed, the legislature would have been in session early on to address budget shortfalls. This scheduling had been noted in last session's House Appropriations Subcommittee report on the budget of the attorney general to indicate that supplemental funding might be necessary. With trial accelerated and discovery extended, attorneys and experts literally worked seven days a week, many days 16 hours a day, through much of July, August and September, this work for the most part at \$60 to \$125 per hour.

In addition to expenses of state officers within the office of attorney general and the division of water resources, billings for attorneys, experts as well as trial and discovery expenses this fiscal year have been: July, \$201,718.52; August, \$426,483.94; September, 452,572.29; October, \$410,496.18; November \$205,532.18; and December, \$158,065.55. Further, the Special Master assessed each state \$120,000 to be placed in escrow for his fees, which it was required be paid before the beginning of trial.

To not incur these expenses would have meant to not prosecute the case the State of Kansas had spent eight years and over \$4 million in preparing. To not prosecute the case would have meant Kansas giving up its claim to water which should be crossing the stateline, which has been worth tens, if not hundreds, of millions of dollars over the years. It would have meant standing by and watching Colorado continue to withhold water from Kansas for the future, resulting in the eventual economic decimation of several western Kansas counties. It would have meant giving up our claim to monetary damages against Colorado. Kansas would have lost

all that it has put into the case so far and would have risked the possibility of being assessed the costs to the state of Colorado in representing itself in the litigation. Finally, Kansas would have demonstrated a lack of will in water litigation which would haunt it for years to come in cases such as the one which is likely to develop over Missouri River water.

Thus, in cooperation with the then Director of Budget and Governor, a plan was developed to meet expenses as best we could through requests for transfer of other general fund money available to this office. Emergency supplemental appropriations would be requested to finance the case and replace that money which was transferred. A total of \$900,000 in such transfers was requested and approved. It was also requested and approved that an additional \$61,133 be transferred from an account which does not require replacement. With such transfers, we were able to pay all fees expenses through September; however, beginning in October, it was necessary to reach agreement with attorneys and experts on the trial team to defer payments for fees, collecting only out-of-pocket expenses until the legislature could act. Among five attorneys and their staff and seven expert consulting firms, \$520,564.33 in fees has been deferred for the months of October, November and December. It has only been possible to pay expenses for the month of December through contributions of western Kansas water user associations.

At the time of making our budget amendment and appeal in November, we made the following estimates and arrived at a supplemental request total of \$3.35 million. Those estimates were:

Replacement of funds transferred from Operating Expenditures (1000-0103)	\$ 900,000
Fees incurred to date (11-20-90) for which payment was deferred (1000-0050)	\$ 268,290
Trial costs from November through April at \$350,000/month (1000-0050)	\$2,100,000
Post-trial briefings for May and June at \$75,000/month (1000-0050)	<u>\$ 150,000</u>
TOTAL	\$3,418,290

We had some money on hand at that time, which when subtracted from the above total left us with a need for funding for Fiscal Year 1991 of \$900,000 for the Operating Expenditures account (1000-1013) and \$2,450,000 for the Additional Operating Expenditures for Investigation and Litigation Regarding Interstate Water Rights account (100-0050), or a total of \$3.35 million. Prompt enactment of Senate Bill 37 is critical. Our attorneys and experts are working at this time without payment of fees, and they have

agreed to do so until the legislature has an opportunity to consider this bill at this time. If payment does not appear to be forthcoming, our case would collapse and we would experience all of the negative repercussions I have previously mentioned. As for that which is requested to replace money transferred from our Operating Expenditures account, funds will be necessary to make the office of attorney general March 1 payroll normally paid from this account.

As for the future, beyond the current fiscal year, we would hope that by early in Fiscal Year 1992, the Special Master will issue his report and recommendations to the U.S. Supreme Court. At that time, we would anticipate filing further briefs with the Court itself and preparing for oral argument. All in all, after consulting with Mr. Simms, it is our belief there could be as much as five months of work averaging \$100,000 a month among attorneys and experts involved. Thus, it is our request that \$500,000 be appropriated to the case in Fiscal Year 1992.

Looking forward even one more fiscal year to 1993, we believe we will have prevailed before the U.S. Supreme Court in the liability phase of the litigation. The case will then go back to the Special Master for a determination of monetary damages. This should be a much narrower phase of the case and one which will be short in comparison to the liability phase. We would anticipate a need to appropriate approximately \$1 million to conclude this phase of trial. It is our belief that we have a strong case for recovering monetary damages to redress past loss of water. Such damages should more than compensate the state for its expenses throughout this litigation.

I understand this is a request for a lot of money, and it is coming at a bad time in terms of available state resources. I apologize for the difficulty in estimating the cost of this case, as down the line do our lead counsel and each of the experts we have hired. Their dedication to this case is demonstrated by their willingness to work for several months while this office has been unable to provide them with an absolute guarantee of funding. This office itself has put our very existence on the line for the last four months of this fiscal year, by transferring operating funds to use for this litigation.

The cause is a worthy one, in securing for this state its most basic natural resource. It is a cause which will become more and more important in the years to come along all of Kansas' borders. It is important that we prevail for the sake of this case alone, as well as for establishing Kansas' position in water matters for years to come. The case presentation has gone very well so far. We have been successful on all critical legal issues, our experts have been relatively unscathed by cross examination, and the irrigators, drillers and David Pope, chief engineer of the Division of Water Resources, have done an outstanding job of testifying. Our special water counsel, Mr. Simms, has done a tremendous job in developing and organizing Kansas' case. It was necessary to move ten tons of documents

and equipment to temporary offices in the Los Angeles area, where the case is being heard before the special master appointed by the U.S. Supreme Court.

Mr. Simms and those attorneys associated with him are experienced in both water law and original actions before the U.S. Supreme Court. Mr. Simms has 19 years of experience in water law. He has tried and argued the cases of United States v. New Mexico (1978), Texas v. New Mexico (1980), Colorado v. New Mexico (1982) and Colorado v. New Mexico (1984). In addition to representing the State of Kansas in the present litigation, he also represents the State of Nebraska in Nebraska v. Wyoming. He is a recognized author and speaker on the subject of water law. His partner, Jay Stein, similarly has 14 years of experience in water law. For this case, they have associated with them John Draper, who is a past chairman of the Natural Resources Section of the New Mexico State Bar and a member of the American Bar Association Natural Resources Section.

I hope funding can proceed without delay so our case is not jeopardized. I will be happy to answer your questions.

MEMORANDUM

TO: Robert T. Stephan, Kansas Attorney General

FROM: Richard Simms

DATE: January 28, 1991

It is difficult to know how to describe the complexity of Kansas v. Colorado with any more precision than I did in Kansas' Pre-Trial Statement, a 189-page document, drafted pursuant to the Special Master's order of March 7, 1990, which attempts to describe any "pre-trial statements setting forth any stipulations concerning joint exhibits, any admissions of fact, data or documents, a statement of disputed issues of fact and law, and a list of exhibits which may be offered at trial." The Pre-Trial Statement included all but the latter category of items, viz., a listing of the exhibits that have been lodged. The exhibits were listed in two other volumes, each about 3/4 inch thick, totaling 1,366. That is the number of exhibits lodged or admitted to date, though the number will approach 2,000 before trial is over. Some of these are 1-page, 8.5 x 11 exhibits. Others are oversized maps and illustrations, as large as 4' x 12'. Most exhibits are voluminous, e.g., our 546-page historical report and countless computer printouts of basic data like how much rain fell each day at each of 38 precipitation stations between 1920 and 1985.

Perhaps another way to visualize the case is to describe it physically. Not counting the exhibits and file cabinets, the hard-copy part of the case fits into 372 banker boxes which would stack 491 feet high (approximately 86 assistant attorneys general standing on one another's shoulders). Altogether, the case weighs approximately 20,000 pounds. It took three medium sized U-Hauls, each fully packed, to move the case to trial.

Technically, only state-of-the-art, high powered computers can see the case. There are three offices set up in Arcadia containing roughly \$100,000 of computing and plotting equipment. Over the past five years, computer files have generated roughly 500 megabytes of information, which is equivalent to about 5,000,000 pages of material, all of which has been read or reviewed. In excess of 15,000 hours of computer time has been utilized in developing the case. At typical performance rates, each computer does approximately 1,000,000 calculations per second, which translates into 277 man-hours per second, assuming one computation can be made per second. In turn, one hour's worth of computer time equals 997,200 man-hours. On a more human level, our historian alone reviewed over 30,000 documents, all of which got synthesized into his report, three weeks of testimony, and 215 exhibits. In sum, it takes a while to think the case through.

To get some idea of the legal complexity, I would again refer any interested person to Kansas' Pre-Trial Statement, though it only relates to the pending factual and legal disputes. Since 1985, after we had gone through a lengthy and complicated process to exhaust all conceivable administrative remedies under Article VIII of the Compact, 203 pleadings,

112 briefs, and 45 substantive and procedural motions have been filed. We have held six pre-trial conferences, resulting in 38 orders from the Special Master and 8 orders from the Court. To date, 123 depositions have been taken, and we will be taking more during the next few days.

In conclusion, interstate water cases are not simple contract cases. Technically, Kansas v. Colorado will have likely been the most complicated case ever heard by the United States Supreme Court. Legally, the above-mentioned numbers speak for themselves. In terms of legal concept, the meaning of the Arkansas River Compact will be analyzed by analogy to administrative law [California ex rel. Younger v. Tahoe Regional Planning Agency, 516 F.2d 215 (9th Cir. 1975)], as a contract between sovereign states [West Virginia ex rel. Dyer v. Sims, 341 U.S. 22 (1951)], as a federal law [Delaware River Joint Toll Commission v. Colburn, 310 U.S. 419 (1940)], as the "negotiated equivalent" of a judicially imposed equitable apportionment decree [Arizona v. California 373 U.S. 546 (1963)], and as the equivalent of a treaty between states, otherwise prohibited by Article 3, § 10, Clause 1 of the United States Constitution [Green v. Biddle, 8 Wheat. 1 (1823)]. No interstate water case has been determined without an intermixing of those conceptual analytical approaches.

Both technically and legally, interstate water disputes, whether they are equitable apportionment actions, decree enforcement actions, or compact enforcement actions, are inordinately complicated and protracted -- the most obvious reason being their socio-economic importance to the litigating states. Nebraska v. Wyoming for example, originally took 11 years to try and involved the work of approximately 75 attorneys, engineers, technicians, and field personnel. We presently represent Nebraska to enforce the decree entered in that case in 1945. Currently, seven attorneys are actively involved in the case on Nebraska's side and about the same on Wyoming's side. Approximately 40 engineers, technicians, staff members, and field personnel are actively at work. I could provide similar figures for the last two original actions that Mr. Stein and I defended, viz., Texas v. New Mexico and Colorado v. New Mexico. In the last interstate case we were involved in (and still are), i.e., El Paso v. Reynolds, the attorneys for El Paso billed in excess of \$15,000,000 in four years' time. In sum, these disputes are not like ordinary lawsuits.

Fees and Sanctions: With respect to awards of attorneys' costs, the basic statement of the "American Rule" of awarding costs of litigation and attorney's fees is that each party to the litigation should pay its own legal expenses. Exceptions such as that for "bad faith" do exist, providing the courts with some discretion, but the power to award attorney's fees is rarely fully invoked.

Although there is a lack of clear direction from the Supreme Court, it has stated that "because inherent powers [to award bad faith fees] are shielded from democratic controls, they must be exercised with restraint and discretion" Roadway Express, Inc. v. Piper 447 U.S. 752, 776 (1980). Courts are in agreement that "whatever the parameters of the bad faith" exception, fees should be awarded under its authority only in extraordinary

circumstances and for dominating reasons of justice." Cordeco Development Corp. v. Santiago Vasquez, 539 F.2d 256, 263 (1st Cir.) cert. denied 429 U.S. 978 (1976). Our own experience in Kansas v. Colorado revolving around the Thiemert Report is that even in the face of egregious dilatory tactics, expenses will not be awarded. In that situation, as you know, the Court ordered the production of the Thiemert Report after we had moved to compel its production. Colorado finally produced a six-page memorandum describing the report instead of producing the report, which was contemptuous, in my opinion. When we asked for costs because we were forced to go through the briefing and argument process twice, the Special Master noticed Colorado's bad faith, but nevertheless declined to award costs.

KANSAS ATTORNEY GENERAL'S OFFICE

MEMORANDUM

To: Robert T. Stephan
 From: Neil A. Woerman
 Re: Kansas v. Colorado Billings
 Date: February 1, 1991

The following table demonstrates how Kansas v. Colorado appropriations have been spent since Fiscal Year 1984:

	<u>Experts</u>	<u>Attorneys</u>	<u>State</u>	<u>Master</u>	<u>Computer</u>	<u>TOTAL</u>
FY84	\$ 55,100	\$ ---	\$40,932	\$ ---	\$ ---	\$ 96,032
FY85	32,424	38,000	---	---	---	70,424
FY86	139,653	140,369	1,302	---	---	281,324
FY87	564,853	82,449	4,147	---	---	651,449
FY88	332,327	98,281	4,492	40,385	35,560	511,045
FY89	346,159	391,640	6,499	---	2,192	746,490
FY90	<u>817,140</u>	<u>792,110</u>	<u>6,562</u>	<u>40,000</u>	<u>---</u>	<u>1,655,812</u>
TOTAL	\$2,287,656	\$1,542,849	\$63,934	\$80,385	\$37,752	\$4,012,576

KANSAS ATTORNEY GENERAL'S OFFICE

MEMORANDUM

To: Robert T. Stephan
 From: Neil A. Woerman
 Re: Kansas v. Colorado Billings
 Date: February 1, 1991

Following is a breakdown of Kansas v. Colorado expenses to date in this fiscal year. Of the total, payment of \$275,268 in attorney fees and \$245,296.33 in expert fees has been deferred for a total of \$520,564.333 from the months of October through December.

	<u>Atty. Fees</u>	<u>Atty. Exp.</u>	<u>Other Exp.</u>	<u>Expert Fees</u>	<u>Expert Exp.</u>	<u>Master</u>	<u>State and Direct Expense</u>
July	64,271.50	12,495.53	23,193.41	92,620.52	9,137.56	---	Total
Aug.	196,050.50	10,044.04	22,802.44	166,753.76	30,833.20	---	provided
Sept.	203,839.00	18,701.41	41,051.51	140,674.00	48,306.37	120,000	below
Oct.	140,332.50	34,053.32	78,047.36	138,917.37	21,365.24	---	
Nov.	75,761.00	8,836.70	45,982.19	55,863.15	19,089.14	---	
Dec.	<u>59,174.50</u>	<u>5,607.39</u>	<u>23,493.77</u>	<u>61,476.00</u>	<u>8,313.89</u>	---	
Total	739,429.00	89,738.39	234,570.68	656,304.80	137,045.40	120,000	70,519.12

Total cost of above categories = 2,047,607.39

Fees Deferred

	<u>Atty.</u>	<u>Experts</u>	=	
Dec.	59,174.50	61,476.00	=	120,650.50
Nov.	75,761.00	55,863.15	=	131,624.15
Oct.	<u>140,332.50</u>	<u>127,957.18</u>	=	<u>268,289.68</u>
	\$275,268.00	\$245,296.33		\$520,564.33

Simms & Stein Billing for September, 1990

<u>Attorney</u>	<u>Hours</u>	<u>Expenses</u>
Richard Simms (\$125)	253.4	3,724.55
Jay Stein (\$100)	239.6	4,485.14
Stacey Goodwin (\$100)	270.4	716.00
John Draper (\$100)	273.2	5,872.90
John Wheeler (\$100)	237.8	2,218.07
Anthony Gilles (\$100)	62.4	-0-
James Brockman (\$100)	15.0	-0-
Others (\$100)	<u>13.7</u>	<u>-0-</u>
	1,365.5	17,376.66

Paralegal (\$40) 1,515.1 \$1,324.75
 Includes some 25 Simms & Stein staff and temporary personnel who primarily were utilized to summarize and index depositions and exhibits and computer code and enter the same into the litigation support computer system.

Total Fees Billed = \$203,839.00 \$18,701.41

Spronk Water Engineers

599 hours @ \$23-\$75/hour among 4 engineers, plus technical and clerical staff for \$34,719 in fees and for \$12,360.47 in expenses (minus \$3,265 for reimbursement from State of Colorado).
 Total = \$43,814.47

Littlefield Research Associates

590 hours @ \$20-\$75/hour for historian and research assistant for \$29,942.50 in fees and \$11,050.09 in expenses. Total = \$40,992.59

Hydrologic Consultants, Inc.

1,119 hours @ \$30-\$100/hour among 7 members of the firm's professional staff, plus drafting and clerical staff for \$74,512.50 in fees and \$24,563.02 in expenses. Total = \$99,075.52

HMS Associates, Inc.

56.5 hours @ \$50/hour for \$2,825 in fees and \$293.86 in expenses.
 Total = \$3,118.86

Richard Howitt

15 hours @ \$60/hour economist time for \$900 in fees. Total = \$900

S.S. Papadopulos & Associates, Inc.

9 hours @ \$40-\$120/hour for hydrologist and support personnel for \$920 in fees and \$158.93 in expenses. Total = \$1,078.93

Other Trial Expenses

Includes payment to Colorado for expert time in depositions of \$15,166.34, Intrastate Taxes at \$4,789.97, Copying at \$4,390.06, Temporary Services for Residence Inn office at \$3,636.86, Residence Inn for office and lodging (partial) at \$3,468.96, Moving Expenses of material and equipment to California at \$1,882.72, plus miscellaneous expenses. Total = \$41,051.51

TOTAL BILL = \$452,572.29

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Simms & Stein Billing for December, 1990

<u>Attorney</u>	<u>Hours</u>	<u>Expenses</u>
Richard Simms (\$125)	117.0	762.00
Jay Stein (\$100)	98.7	928.74
Stacey Goodwin (\$100)	16.7	-0-
John Draper (\$100)	158.5	3,771.89
John Wheeler (\$100)	129.7	65.17
	<u>520.6</u>	<u>5,527.80</u>
Paralegal (\$40)	106.5	79.59
Total Fees Billed =	\$59,174.50	\$5,607.39

Spronk Water Engineers

189 hours @ \$23-\$75/hour among 3 engineers, plus technical and clerical staff for \$11,066 in fees and \$1,545.29 in expenses. Total = \$12,611.29

Littlefield Research Associates

\$221.63 in expenses only

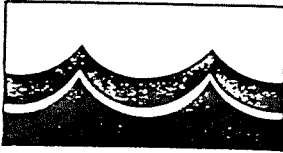
Hydrologic Consultants, Inc.

776 hours @ \$30-\$100/hour among 7 members of the firm's professional staff, plus clerical staff for \$50,410 in fees and \$6,546.97 in expenses. Total = \$56,956.97

Other Trial Expenses

Includes Residence Inn for temporary trial offices and all participants' lodging at \$12,331.02, Court Reporter at \$3,600, Temporary Services for Residence Inn office at \$2,520, Intrastate Taxes at \$1,026.01, plus miscellaneous expenses.
Total = \$23,493.77

TOTAL BILL = \$158,065.55



SIMMS & STEIN, P.A.

ATTORNEYS AT LAW

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505-983-3880

INVOICE

No. 34

Date 1/3/91

Mr. Neil Woerman
Chief of Staff
Office of the Attorney General
2nd Floor, Kansas Judicial Center
301 W. 10th Street
Topeka, Kansas 66612

HOURS	LEGAL SERVICES AND EXPENSES	AMOUNT
4.5 @\$125	RAS - Organization of materials; review of incoming; review of brief re historical testimony; conference with John Draper re institutional changes in model. 12/3/90	562.50
8.4 @\$100	JFS - Review and revise David Pope questions; review Colorado brief re Motion to Strike; office conference re proof and work assignments. 12/3/90	840.00
4.5 @\$100	SJG - Office conference with JFS and JWW re past testimony and areas to be developed; begin outline of proof on direct; staff meeting re work assignments. 12/3/90	450.00
3.7 @\$100	JBD - Telephone conference with RAS re meeting on case; telephone conference with Tim Durbin re status of work and related matters; meeting with RAS re case progress and model changes; review same. 12/3/90	370.00
2.3 @\$100	JWW - Office conference re outling elements of proof; staff meeting and review of assignments; Colorado brief on Motion to Strike. 12/3/90	230.00
2.0 @\$40	JF - Organization of exhibit notebooks; telephone conversation with Pat Weiss regarding Kansas exhibits; staff meeting re tasks at trial and other work. 12/3/90	80.00
3.1 @\$100	SJG - Review of incoming materials and processing of consultant invoices; calls to HCI re expenses. 12/4/90	310.00
0.5 @\$125	RAS - Conferences with John Draper re changes in model and Colorado exhibits. 12/4/90	

5-14

STATEMENT OF DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
BEFORE THE
HOUSE APPROPRIATIONS COMMITTEE
ON
SENATE BILL NO. 37

February 4, 1991

Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear in support of Senate Bill No. 37 and the continued funding of the litigation in the case of Kansas v. Colorado, Original No. 105, dealing with the enforcement of the terms of the Arkansas River Compact.

By virtue of my position as Chief Engineer of the Division of Water Resources, Kansas State Board of Agriculture, with responsibility for the administration of water rights in Kansas, I serve as a Member of the Arkansas River Compact Administration. Since I became Chief Engineer and a Member of the Compact Administration in 1983, I have devoted a considerable amount of time and effort to various matters related to the Arkansas River in an attempt to secure for the State of Kansas its apportionment under the terms of the Compact. This has included attempts to resolve our concerns through a formal administrative investigation as provided for under the terms of the Compact. Obviously, these efforts were not successful and this litigation was initiated by Attorney General Robert Stephan in late 1985.

I believe it goes without saying, that water in southwest Kansas is extremely valuable because it plays such an important role in the local, regional and state economy and helps directly

HA
2-4-91
Attachment 6

support the livelihood of many of our citizens in that area. While we cannot expect this litigation to solve all of our regional water problems, it is an especially important component because of the fact that surface water in the Arkansas River is a renewable resource that will be available for the long-term. Much of the groundwater that has been pumped to make up for the shortfall of surface water to continue the irrigation of historically irrigated land pre-compact, has come from the Ogallala Aquifer. Consequently, at great expense, we have been able to substitute groundwater for some of the surface water that was unlawfully depleted and used by Colorado. Of course, that will not be able to continue for the long-term, due to the depletion of water from the Ogallala Aquifer. While success in this case will not solve the depletion problem in the Ogallala, as a whole, it will be very helpful in Hamilton, Kearny and Finney Counties. The economic benefits should be tremendous.

The Arkansas River is also an important river in our state for many other reasons. While we need to recognize the major demands placed upon the river system by both Kansas and Colorado for various beneficial uses, I believe there will also be many indirect benefits from the additional water in the river. Studies have indicated that the most important element in the hydrological system is the inflow available to the river at the stateline.

It is my view that we have already received some benefits as a result of the dispute. Clearly, Colorado interests have been more careful in the operation of their water facilities as a result

of Kansas concerns. As an example, a year or so ago the State Engineer ordered the Purgatory River Water Conservancy District, the sponsor of the Trinidad Reservoir Project, to operate in accordance with the operating principals approved by the State of Kansas and other interests, pending the outcome of this litigation. The failure of Colorado to do so originally is one of the issues that led to this dispute, although many other concerns exist, as well. However, Colorado has not given up on their position on Trinidad in the litigation. One of the most significant other issues in the case is our allegation of the material depletion of river flows by the large number of wells that withdraw water from the hydrologically connected river alluvium in Colorado.

The collection and compilation of large amounts of data, investigation and analysis of the hydrological system and the development of the extensive hydrologic computer models for the case will be helpful to our understanding of the hydrology of the Arkansas River system in both Kansas and Colorado no matter what else happens. I believe this information and knowledge will help improve management of the system and the protection of our rights in the future also. Even after this case is over, we must have the capability to monitor compliance with the Compact and any Court orders.

As has been indicated, the trial in this matter is progressing with what we believe is a good case on behalf of the State of Kansas. Having spent a considerable amount of time at trial, both as a member of the team helping prepare our case and as a witness,

I am convinced that the State of Kansas has assembled an extremely well-qualified team of attorneys and experts that are serving our interest well. These people have dedicated a considerable amount of time and effort to the case and have made a major professional commitment to the case, both in terms of their reputations and their willingness to continue support for the litigation under adverse financial circumstances. Let me assure you that these people have worked long and hard, under a great deal of pressure, to meet the various deadlines to provide the kind of evidence that is needed to succeed in this case.

I am also very proud of my staff who have also contributed large amounts of extra time and energy to this case. For example, Mr. Lee Rolfs, Legal Counsel for the Division of Water Resources, was largely responsible for preparing and putting on the portion of the case involving local water officials, and did an excellent job, as did Mr. Steve Frost, our Water Commissioner in charge of the Garden City Field Office of the Division of Water Resources who testified concerning the results of an irrigated acreage survey conducted by our office, among other things.

I would also like to recognize the strong support from the water users of the Arkansas River in southwest Kansas and other interested parties. Representatives of the ditch companies have provided valuable information and testimony along with direct financial support during this critical period when funds were otherwise not available to pay expenses, let alone professional fees of the consultants, for the litigation.

With the specialized expertise of our lead counsel, his associates and the numerous technical experts and with the support from Attorney General Stephan's office and our office, I believe we can succeed. However, we must have adequate funding to continue the case at this time. We are at a critical junction in terms of both the case itself and the ability of our consultants to continue without funding.

I believe we have an opportunity to take a major step forward in securing the water to which the State of Kansas and its citizens are entitled. We have suffered considerable damage in the past and can expect things to get even worse if we are not willing to stand up for our rights. From a historical perspective, as best that I can determine, the State of Kansas has never before mounted the kind of effort and the quality of case that we currently have underway. I think it is also important to understand the tremendous benefit to Colorado if we are unable to continue this case due to lack of funding.

In summary, I believe our only prudent option is to fund the case and fund it adequately. I might also mention that successful action in this case will likely go a long way in helping us in other future endeavors by establishing the fact that the State of Kansas is willing to protect its interests through whatever means are necessary. Hopefully, this kind of time and expense will not be necessary in other cases, but that simply cannot be ruled out because of the ever increasing value and importance of water and the conflicts that seem to be occurring at this time.

Thank you very much. I would be happy to respond to questions to the extent possible.