

Approved Jan 30, 1991

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Senator August "Gus" Bogina, Chairperson at 11:10 a.m. on January 24, 1991, in Room 123-S of the Capitol.

All members were present except:

Senator Salisbury, who was excused

Committee staff present:

Leah Robinson, Legislative Research Department
Judy Bromich, Administrative Assistant
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

David Pope, Chief Engineer-Director, Division of Water Resources
Robert Stephan, Attorney General
Fred Phelps, Pastor, Westboro Baptist Church
Dr. Larry Fischer, Kansans for Fair Taxation
Steven Davies, Secretary, Department of Corrections
Ed Martin, Director of Architectural Services

The Chairman welcomed new member, Senator Bill Brady, to the Committee. He replaces Senator Michael Johnston who resigned to become Secretary of the Department of Human Resources.

It was moved by Senator Allen, seconded by Senator Gaines that the minutes of January 14, 1991 be approved. The motion carried.

A motion was made by Senator Doyen and seconded by Senator Gaines as a courtesy to the Governor to introduce all 1992 appropriation bills based upon her recommendations that are submitted to the Senate. The motion carried by a voice vote.

SB 37 - Appropriations for FY 91, supplemental appropriations for the attorney general

Written statements supporting SB 37 were prepared by Paul Fleener, Director, Public Affairs Division, Kansas Farm Bureau and distributed to committee members. (Attachment 1)

Attorney General Robert Stephan appeared before the Committee in support of SB 37, and reviewed funding of the litigation in the case of Kansas v. Colorado. (Attachment 2) Mr. Stephan explained that costs exceeded estimates primarily because of Colorado's refusal to cooperate, and that recovery of excess costs of litigation would be pursued if judgment is in favor of Kansas. He told the Committee that he is optimistic that the \$500,000 appropriation estimate for FY 92 will be adequate because of the decreased demand for legal documents. In answer to a question, Mr. Stephan stated that the Assistant Attorney General has been directed to proceed with the copyright procedure for the hydrological model developed as a result of this investigation.

Mr. David Pope testified in support of SB 37 and reviewed Attachment 3.

Mr. Joseph Harkins appeared in support of SB 37, and noted that the State entered into litigation 6 years ago only after considerable deliberation. At that time, there were 3 key questions: 1) what are the chances of winning, 2) what is the cost, and 3) how long will litigation take. He told the Committee that the case is 75% complete and the chances for favorable judgment appear good, the initial estimate of the cost could

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, January 24, 1991.

approach \$10 million, and the length of the litigation process could be 10 years. In answer to a question, he stated that no one could know if the \$3.3 million would cover the litigation expenses.

Mr. Fred Phelps appeared before the Committee in opposition to SB 37, and stated that provisions are in place to avoid obstructionism during litigation such as Colorado has caused. He noted that his opposition of the bill is not with the water rights, but with the amount of money paid to outside attorneys, which he termed "out of line". Mr. Phelps presented Attachment 4 for the Committee to review.

Dr. Larry Fischer presented testimony (Attachment 5) in opposition to SB 37, and requested an independent audit of the case. In answer to a question, he stated that Kansans for Fair Taxation had not requested documentation of case expenditures from the Attorney General's office, but hoped a state official would do so

SB 36 - Corrections, supplemental appropriations for FY 91 and financing for certain capital improvements

Mr. Steven Davies testified in support of SB 36 and submitted Attachment 6 for the Committee's review. He noted that SB 36 includes a request for \$5,914,175. to continue construction and equipping of both the Larned and El Dorado Correctional facilities and for \$2,453,024 for the staffing and operating costs of the two facilities. He stated that the bill is emergency in nature because of the court ordered deadline. Mr. Davies introduced Mr. Ed Martin.

Mr. Martin presented a visual display of the El Dorado Correctional Facility, and outlined its construction progress. He reviewed the bidding history of the El Dorado and Larned facilities (Attachments 7 and 8). Mr. Martin told the Committee that factors contributing to overrun were an inflation rate of 4.9% rather than the anticipated 3%, liquidated damage allowances in the contract to meet with the federally mandated completion date, and the legislative decision to place the project under the Davis-Bacon Act which added and estimated \$4. million to the cost of the El Dorado project. Upon request, Mr. Martin stated that he could supply documentation of the findings regarding prevailing wage rates.

Mr. Davis concluded testimony by reviewing the Department's plan to finance the cost overruns, Attachment 6-4. He stated that the request for the PMIB loan is for authorization, but the Department will not borrow the \$1,850,000 unless absolutely necessary.

Senator Gaines moved, Senator Allen seconded, to amend SB 36 by changing the amount for additional operating expenditures for investigation and litigation regarding interstate water rights to \$2,450,000, making the total \$3,350,000. The motion carried on a voice vote.

It was moved by Senator Gaines, seconded by Senator Allen that SB 37 as amended be recommended favorable for passage. The motion carried on a roll call vote.

Senator Gaines moved, Senator Allen seconded, that SB 36 be recommended favorable for passage. The motion carried on a roll call vote.

The Chairman called attention to Attachments 9 and 10, and asked that members review them.

The meeting was adjourned by the Chairman at 12:40 p.m.



Kansas Farm Bureau

2627 KFB Plaza, P.O. Box 3500, Manhattan, Kansas 66502-8508 / (913) 587-6000

January 24, 1991

RE: S.B. 37 - Supplemental Appropriation for
Attorney General's Office

Senator Gus Bogina, Chairman
Senate Committee on Ways and Means
Statehouse, Room 120-S
Topeka, KS 66612

Dear Senator Bogina:

This letter is in reference to S.B. 37, a bill which seeks to make a supplemental appropriation to the Office of the Attorney General for the purpose of funding the litigation in the case of the Arkansas River ... Kansas vs. Colorado.

At our most recent annual meeting which concluded on Saturday, December 8, 1990 the voting delegates representing farmers and ranchers from each of the 105 counties adopted without dissent the following policy position:

Arkansas River Litigation

The Kansas vs. Colorado water case is at a critical stage and is in immediate need of additional funding.

We urge swift and affirmative Legislative action on the emergency supplemental appropriation requests submitted by the office of the Attorney General.

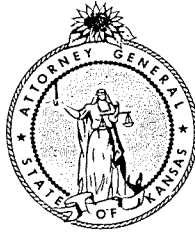
The funds sought by the Office of Attorney General are vital in advancing this Arkansas River litigation. We had the opportunity, as did many members of the Senate and House, to hear the Attorney General, the Special Counsel retained by Kansas, and the Chief Engineer, Division of Water Resources in a briefing on the progress of this case. The litigation is at a critical point. The case must be won by the state of Kansas. The appropriation is one of the major investments this state will make in this year. The beneficiaries are numerous, they are residents of cities large and small in Kansas, they are farmers and ranchers. They are citizens situated for miles on either side of the Arkansas River.

We respectfully request your favorable consideration and support for S.B. 37. The Governor of the state of Kansas included in her budget report, Vol. 1, page 22, her support for this supplemental appropriation. We appreciate her support. Our members and the citizens of this state will appreciate yours, as well.

Respectfully,

Paul E. Fleener, Director
Public Affairs Division

SWAM
January 24, 1991
Attachment 1



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

Testimony of
Attorney General Robert T. Stephan
Before the Senate Ways & Means Committee

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Re: 1991 Senate Bill 37

January 24, 1991

Mr. Chairman and Members of the Committee:

First of all, I want to thank Senator Bogina and the members of this committee for your prompt introduction of this bill and the 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 which enactment of this bill will allow us to pay.

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. Last Friday, our special water counsel who is directing the day-to-day presentation of Kansas' case, Mr. Richard Simms, 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 several 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

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Attachment 2

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. 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 Aquifer. 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. On Friday, Mr. Simms presented a graph which demonstrated a continuation of this 2:1 spending ratio. And, as he pointed out, it is impossible to track Colorado 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 Friday'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 had been noted in last session's House Appropriations Subcommittee report on the budget of the attorney general. With trial accelerated and discovery extended, attorneys and experts literally worked 16 hours a day, seven days a week, through much of July, August and September, this work for the most part at \$90 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 all 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 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.

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

KANSAS ATTORNEY GENERAL'S OFFICE

MEMORANDUM

To: Robert T. Stephan
 From: Neil A. Woerman
 Re: Kansas v. Colorado Billings
 Date: January 16, 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

KANSAS ATTORNEY GENERAL'S OFFICE

MEMORANDUM

To: Robert T. Stephan
 From: Neil A. Woerman
 Re: Kansas v. Colorado Billings
 Date: January 16, 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

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

January 24, 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 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 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

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Attachment 3

will be available for the long-term. However, 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, we have been able to replace some of the lost water, at great expense, of course, but that will not be able to continue for the long-term, due to the depletion of water from the Ogallala Aquifer.

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, 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. The failure to do so is one of the primary 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.

In addition, the collection and compilation of large amounts of data, investigation and analysis of the hydrological system and the development of the extensive computer models 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.

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 and provide the kind of evidence that is needed to succeed in this case. Together 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 adequate 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 this kind of effort that we currently have underway. I think it is also important to understand that the Colorado strategy seems to include a component based upon

our inability to continue this case at the level necessary to succeed, primarily 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.

FRED W. PHELPS

3701 W. 12TH - P. O. BOX 1886 - TOPEKA, KS. 66601

January 24, 1991

913 273-0338

BEFORE THE SENATE WAYS AND MEANS COMMITTEE

Testimony of Fred Phelps
In Opposition to \$3.4 Million More for Stephan's Water Case

Mr. Chairman and Members of the Committee:

My name is Fred Phelps of Topeka, and I appreciate the opportunity to appear before this distinguished committee.

WHEN Kansas vs. Colorado WAS FILED IN DEC. 1985, total costs were to be \$2 million, which was inordinately high. As of Aug. 1, 1990 we'd paid \$4.1 million. Last Sept. 13 Mr. Stephan said he'd need \$1 million more and Gov. Hayden said he'd support that figure, for a total of \$5.1 million, which would be a ripoff of the taxpayers.

NOW MR. STEPHAN IS ASKING \$3.4 MILLION MORE, saying the additional cost is the result of needless delays on Colorado's part, which is what he said when he asked for the \$1 million: "They've dragged their feet on everything we've tried to do." ("Kansas needs \$1 million to continue water suit," *Kansas City Star*, Sept. 14, 1990.) If it is Colorado's fault, Colorado has to pay, per 28 U.S.C. 1927.

THIS IS A RELATIVELY SIMPLE CONTRACT CASE, the issue being whether Colorado has violated the Arkansas River Compact of 1949 by taking too much water from the river flow. Outside lawyers probably were not needed at all, and this case may be the classic boondoggle all silk-stocking lawyers drool over and joke about over cocktails at fancy country clubs -- an open pipeline to the public purse.

A COGENT OVERVIEW OF THE STATE'S FISCAL WOES detects outside lawyer fees as a major iniquitous waste. The attached list of 30 deputy attorneys general and their fulltime salaries shows they average under \$15 per hour, yet outside lawyers bill \$200 per hour and up. A joke among lawyers who wangle lucrative government contracts derives from "The Rule of Padded Quarters" (time sheets pad four hours for every hour worked): *A newly deceased lawyer protested to St. Peter he was too young to die at 30. "That's strange," St. Peter replied, "according to your time sheets you're 120 years old."* Are we paying \$800 per hour for the water case? Or more?

I MAY HAVE HANDLED AS MUCH COMPLEX LITIGATION AS ANY LIVING KANSAN. The reported \$11 million total price tag on this case is way out of line, and a rigorous examination of the contemporary time sheets and work product of the outside lawyers would probably reflect much waste, fraud and abuse, for which the taxpayers of this state ought not have to pay. With \$4.1 million already in their pockets, these outside lawyers and their malpractice carriers might owe us money.

SWAM
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Attachment 4

(State Agency 08201)

Arthur R. Weiss	\$3,559.00
D. Jeanne Kutzley	2,655.00
Jay W. Watson	2,787.00
Mary R. Gasper	2,408.00
John K. Bork	3,228.00
Carole Harvey	2,133.00
Lawrence Lemon	2,133.00
Edwin A. VanPetten	3,830.00
Susan G. Stanley	2,528.00
Gloria A. Corona	2,133.00
Thomas H. Ball	2,469.00
Gregory G. Hough	2,655.00
Mark W. Stafford	2,528.00
Camile A. Nohe	2,787.00
Theresa M. Nuckolls	2,528.00
Rebecca E. Floyd	2,787.00
Richard D. Smith	2,408.00
Julene L. Miller	3,559.00
Carl A. Gallagher	2,857.00
Daniel P. Kolditz	2,787.00
Nancy L. Ulrich	2,787.00
David O. Plinsky	3,228.00
Carol R. Bonebrake	2,655.00
Mary A. Piper	2,787.00
Steve A. Schwarm	2,528.00
John W. Campbell	4,223.00
Mark S. Braun	2,528.00
Delores E. Boeck	2,185.00
Betty A. Bomar	2,673.00
Barbara A. Lombano	2,408.00

AVERAGE ANNUAL PAY: \$30,000

(UNDER \$15 PER HOUR)

Kansas needs \$1 million to continue water suit

Delays by Colorado are to blame for extra cost, Stephan says.

By STEVE KRASKE
Topeka Correspondent

TOPEKA — Kansas will need \$1 million more than the \$500,000 the Legislature appropriated this year to continue the state's water-rights lawsuit against Colorado, Attorney General Bob Stephan said Thursday.

Through Aug. 1, the state had spent \$4.1 million on the suit since it was filed in December 1985.

The additional \$1 million is for the trial phase of the case, Stephan said. After several delays, the trial is scheduled to begin Monday in Pasadena, Calif.

Much of the additional cost is the result of needless delays on Colorado's part, Stephan said.

"They've dragged their feet on everything we've tried to do," he said.

The case, which Stephan initiated, essentially alleges that Colorado is stealing water from the Arkansas River. Stephan contends that Colorado has violated terms of the Arkansas River Compact, an interstate agreement on water use signed in 1949.

Even after the trial ends, Stephan said, the state could be looking at \$2 million to \$3 million additional in legal expenses for a potential grand total of \$8.6

million.

Kansas officials first estimated the case would cost \$2 million.

But Stephan said the lawsuit was worth it.

"You can't give in on water cases," he said. "Kansas has no choice but to go forward."

Stephan, who will deliver the state's opening statement Monday, said he expected to win the case and cover the state's legal expenses through the damage award.

At the Kansas State Fair in Hutchinson on Thursday, Gov. Mike Hayden said he would support an additional \$1 million appropriation next session. He said the lawsuit's potential benefits were worth the litigation's cost.

The lawsuit alleges that the proliferation of irrigation wells in the Arkansas River Basin in Colorado has dramatically reduced the amount of water flowing into Kansas. The suit charges that Colorado has been illegally holding more water than it is entitled to in storage reservoirs.

Stephan complained that Colorado drove up the lawsuit's price by needlessly delaying the trial. The effort to obtain one document from Colorado officials wound up costing about \$150,000, he said.

"They've never been anxious to go to trial on this," Stephan said.

EXCESSIVE COSTS

28 § 1927

§ 1927. Counsel's liability for excessive costs

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

(As amended Sept. 12, 1980, Pub.L. 96-349, § 3, 94 Stat. 1156.)

KANSANS FOR FAIR TAXATION, INC.
PO Box 3820
Topeka, Kansas 66604

POSITION PAPER

January 24, 1990

SENATE WAYS AND MEANS COMMITTEE

Mr. Chairman and Honorable Members of the Committee,

Kansans for Fair Taxation, Inc. has followed with interest the money being spent in water-right disputes, Kansas vs. Colorado.

As a matter of review, Kansas officials first estimated the cost would be \$2 million. Now, just 5 years later, the cost is approaching \$8.6 million and could require an additional \$2-3 million. We find it hard to believe that much money could be spent over such a period of time with nothing being settled.

Indeed, the whole scenario is shocking. Consequently, before any new funds are spent, if no state official will do so, Kansans for Fair Taxation, Inc. formally requests a complete audit of all aspects of this case including: **disbursements and receipts; contemporary time sheets and work product for each outside attorney; a written justification** as to why this case, involving contract law, which does not require extensive fact finding, has not been settled more quickly; and lastly, a discernment why the entire situation could **not** be handled by state attorneys.

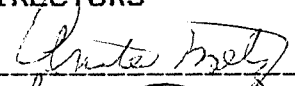
Kansans for Fair Taxation, Inc. offers to examine the requested document **pro bono**. We trust the Committee, which has highly competent legislators interested in the wise spending of taxpayers dollars, will continue in their business-like manner by closing the state's treasury until we are sure something is not amiss..

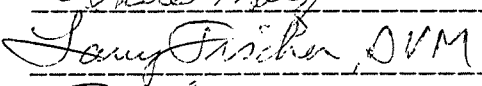
APPROVED BY THE BOARD OF DIRECTORS

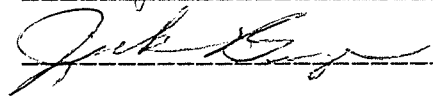
ANITA METZ

LARRY FISCHER, DVM

JACK BENGE







SWAM
January 24, 1991
Attachment 5

DEPARTMENT OF CORRECTIONS
EXPLANATION OF SENATE BILL NO. 36

Presented by

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

January 24, 1991

SWAM
January 24, 1991
Attachment 6

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 (\$2,453,024). The proposed funding is emergency in nature in that the facility cannot be finished and occupied and that the necessary staff cannot be hired until the additional funding is approved. The schedule for completing the facility and having it 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 not be advertised for rebidding until the latter part of this month. The bid date will be in early March (on or about 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. 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)

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.

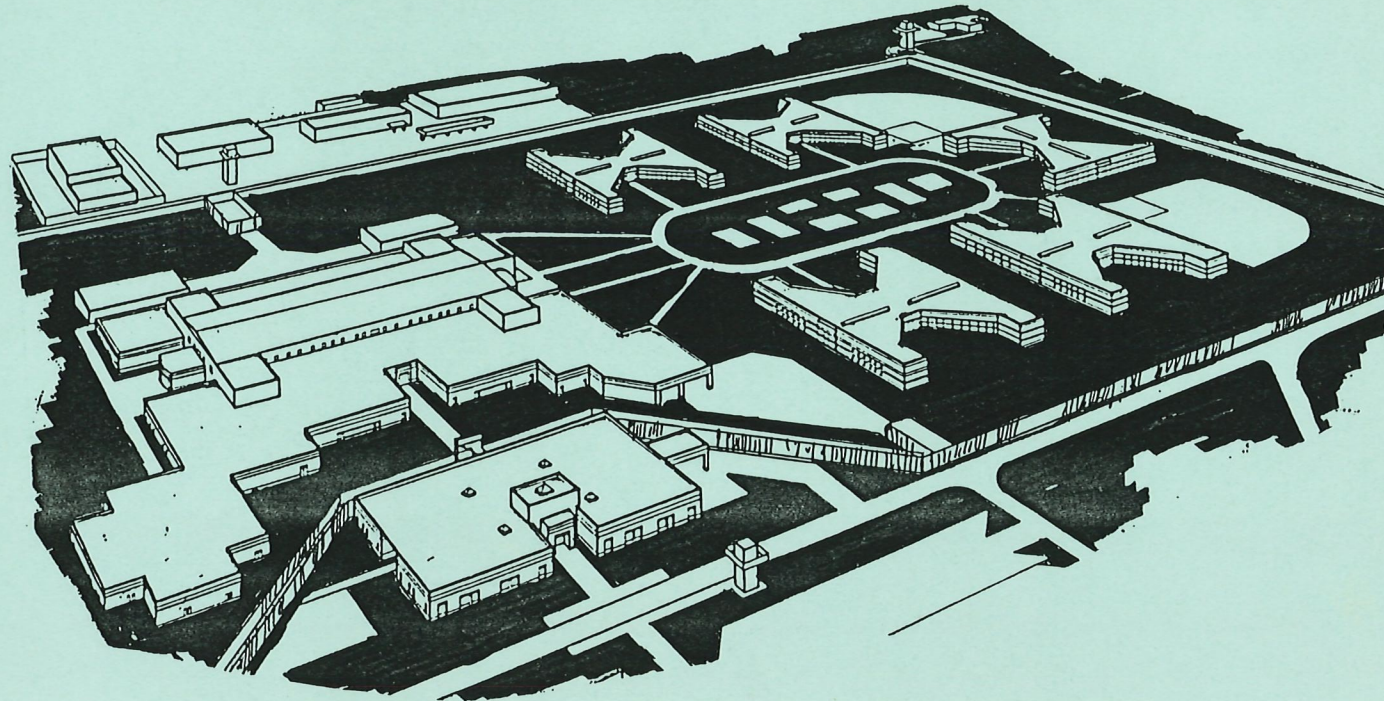
FY 1992: 19 positions funded for twelve months; six positions funded for nine months; one position funded for eight months.

To: Senate Ways & Means Committee

SWAM
January 24, 1991
Attachment 7

Status Report January 24, 1991

EL DORADO CORRECTIONAL FACILITY



El Dorado, Kansas

KANSAS DEPARTMENT OF ADMINISTRATION
DIVISION OF ARCHITECTURAL SERVICES

KANSAS DEPARTMENT OF CORRECTIONS

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, estimated to have added at least \$4,000,000 to the total cost of both the El Dorado and Larned projects. This amount was 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, 1991

7-4

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	YES	246,129	\$ 46,811,608	12/26/89	06/21/90	06/21/90
				Alt 1 Earth Wk	86,655	NO					
				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						
				1A Site Grading	01/25/90	02/27/90					
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										
2 Support Buildings	03/20/90	04/20/90	5,295,101				Base Bid	5,662,200	YES	6,483,440	40,328,168
				Alt 1 Kennel	371,000	Recommend*					
				Alt 2 Stor Bldg	103,000	NO					
				Alt 3 Warehouse	137,000	NO					
				Alt 4 Boiler	49,000	NO					
				Alt 5 Canopy	52,000	NO					
				Alt 6 Switchgear	20,000	YES					
				Alt 7 Main Schgr	135,000	NO					
				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						

* 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.

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			10/30/90	F-06/01/91	N/A			
				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.

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 DATES
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 <u>-126,312</u> 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							

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	-83,179

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.

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.

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.

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.

7-14

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.

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.

7-16

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.

7-17

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.

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:

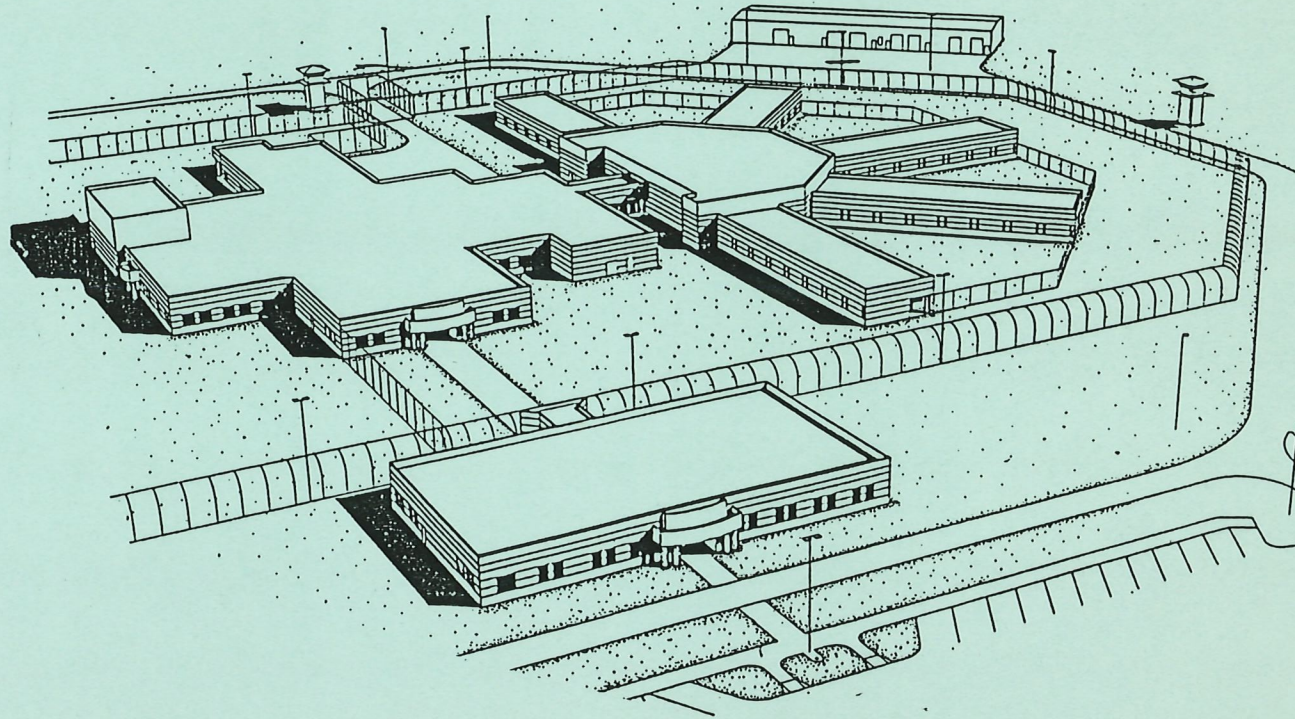
None.

To: Senate Ways & Means Committee

SWAM
January 24, 1991
Attachment 8

Status Report January 24, 1991

LARNED CORRECTIONAL MENTAL HEALTH FACILITY



Larned, Kansas

KANSAS DEPARTMENT OF ADMINISTRATION
DIVISION OF ARCHITECTURAL SERVICES

KANSAS DEPARTMENT OF CORRECTIONS

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.

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	
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	\$ 12,504,325	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			\$ 12,836,575	\$ 13,612,475							

January 3, 1991

FINANCIAL SUMMARY

RESOURCES FOR LARNED CORRECTIONAL MENTAL HEALTH FACILITY

Bonds - 1	\$ 712,377.22
For Planning and Design	
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	<u>700.77</u>
	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

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.

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.

DEMAND TRANSFERS FROM STATE GENERAL FUND

In Thousands

	Actual FY 1990	FY 1991			FY 1992	
		Prior Est. *	Revised Est.	Increase	Est.	Increase
Income Tax Rebate	\$ 167,274	\$ 187,400	\$ 189,720	\$ 2,320	\$ 203,900	\$ 14,180
State Highway Fund	63,489	73,834 ^(a)	74,468 ^(a)	634	78,100	3,632
Local Ad Valorem Tax Reduction Fund	35,326	37,177	37,164 ^(b)	(13)	38,696	1,532
County-City Revenue Sharing Fund	26,601	28,351 ^(b)	28,351 ^(b)	--	29,461 ^(b)	1,110
City-County Highway Fund	10,198	9,599 ^(a)	9,127 ^(a)	(472)	9,500	373
Water Plan Fund	--	5,895 ^(a)	5,895 ^(a)	--	6,000	105
Workers Comp. Fund	4,000	3,930 ^(a)	3,930 ^{(a)(b)}	--	4,000	70
Regents' Center	1,000	1,000 ^(b)	1,000 ^(b)	--	--	(1,000)
State Fair	88	--	--	--	--	--
TOTAL	\$ 307,976	\$ 347,186	\$ 349,655	\$ 2,469	\$ 369,657	\$ 20,002

* After 1990 Legislative Session.

a) Reflects 1.75 percent reduction required by 1990 S.B. 799.

b) Actual.

Kansas Legislative Research Department
November 20, 1990
Revised January 9, 1991

90-904/RWR

SWAN
January 24, 1991
Attachment 9

MEMORANDUM

Kansas Legislative Research Department

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

To: Legislative Budget Committee

SUMMARY OF STATE "SPENDING LID" BILL AND PROJECTIONS OF ITS POSSIBLE EFFECTS IN FYs 1992 AND 1993

1990 H.B. 2867. This bill, as enacted, contained amended versions of H.B. 2867 and H.B. 2900. The H.B. 2867 part of the bill is directed at the budget and appropriations process and sets targeted year-end State General Fund (SGF) balances expressed as a percentage of fiscal year expenditures and demand transfers, beginning in FY 1992. A new Cash Operating Reserve Fund is created to which an amount equal to 5 percent of authorized expenditures and demand transfers will be transferred on July 1 of each year commencing in 1991. In addition, the bill provides that the SGF shall have a balance equal to 1 percent or more of expenditures and demand transfers at the end of FY 1993, 2 percent or more at the end of FY 1994, and 2.5 percent or more at the end of FY 1995. In effect, this means that the targeted year-end balances in the SGF are 5 percent in FY 1992, 6 percent in FY 1993, 7 percent in FY 1994, and 7.5 percent in FY 1995. This is because the bill provides that the balance in the Cash Operating Reserve Fund at the close of a fiscal year must be transferred to the SGF, and there would have to be enough money in the SGF to make the required transfer to the Cash Operating Reserve Fund at the beginning of the next fiscal year. The bill also provides that the targeted balances must be adhered to in the Governor's budget recommendations.

An "omnibus reconciliation spending limit bill" will be relied upon to reconcile total SGF expenditure authorizations to the applicable ending balance target, beginning in the 1992 legislative session. This type of bill was enacted at the end of the 1990 Session (S.B. 799), but not under H.B. 2867. The latter bill does not require that any spending cuts made by the Legislature must be "across-the-board."

The Director of the Budget and the Director of the Legislative Research Department shall prepare joint SGF revenue estimates and revisions thereto to establish the revenue side of the budget equation (in the event no agreement is reached, the Legislature shall utilize the estimates of the Research Director and the Governor shall utilize the estimates of the Budget Director).

The other part of H.B. 2867 authorizes the Governor, beginning in FY 1992, to issue an executive order or orders, with approval of the State Finance Council, to reduce SGF expenditures and demand transfers if the estimated year-end balance in the SGF and Cash Operating Reserve Fund is less than \$100 million. The Budget Director must continuously monitor receipts and

SWAM
January 24, 1991
Attachment 10

expenditures and certify to the Governor the amount of reduction in expenditures and demand transfers that would be required to keep the year-end balance from falling below \$100 million. Debt service costs and the SGF contribution to school employees retirement (KPERS-School) are not subject to reduction.

If the Governor decides to make reductions, they must be on a percentage basis applied equally to all items of appropriations and demand transfers, *i.e.*, across-the-board with no exceptions other than the two mentioned above.

FY 1991 General Fund Finances

The current consensus estimate of receipts in FY 1991, as revised on November 15, is nearly \$2.361 billion. That amount is 2.6 percent more than actual receipts in FY 1990.

Expenditures authorized by the 1990 Legislature, adjusted for item vetoes, shifting from FY 1990 to FY 1991, and revised estimates of demand transfers, total \$2.493 billion, an increase of \$92.9 million or 3.9 percent from actual expenditures in FY 1990. Based on the current estimates, expenditures in FY 1991 are \$132.5 million more than receipts (in FY 1990 expenditures exceeded receipts by \$99.7 million). The SGF balance at the end of FY 1991 is now estimated at \$140.4 million, or 5.6 percent of expenditures. Not included in the estimate of expenditures are potential supplemental appropriations and other possible revisions, except for the new estimates of demand transfers.

Projections for FY 1992

The consensus estimate of receipts in FY 1992 is slightly over \$2.454 billion, or 4.0 percent above the revised estimate for FY 1991. To achieve the 5 percent targeted balance at the end of FY 1992 with no tax increase, expenditures would have to be \$22.1 million, or 0.9 percent, less than now estimated for FY 1991, and even so expenditures would exceed receipts by \$16.8 million. The year-end balance would be \$123.6 million.

Although total expenditures from the SGF would be less than in FY 1991, expenditures for certain programs would increase based on current laws and policies. Some examples follow.

Demand transfers from the SGF to other funds are estimated to increase by \$20.1 million. The statutorily required transfers from the SGF to KPERS-School are now estimated to rise by \$7.0 million largely due to an increase of 12.5 percent in the employer (state) contribution rate. The Department of Corrections has requested \$17.4 million for operation of new facilities at El Dorado and Larned, and \$6.0 million already has been appropriated for construction of the Historical Society Research Center. Debt service paid from the SGF is expected to increase by \$1.0 million. The 1990 Legislature shifted financing of all or part of the costs of a number of programs from the SGF to various other funds for FY 1991, but whether all or some of such costs will be shifted back to the SGF for FY 1992 obviously cannot be determined now. A big unknown at this time is what demands on the SGF will be in both FYs 1991 and 1992 for programs under the Department of Social and Rehabilitation Services.

Certain FY 1991 expenditures will not recur or will be less in FY 1992. For instance, \$2.0 million was appropriated for settlement of the correction officers lawsuit, a one-time payment

in FY 1991 which actually turned out to be about \$1.6 million. Another example is the SGF financing of the Regents' Center (\$1.0 million in both FYs 1990 and 1991), which will not recur.

Projections A, B, and C in the attached table are all the same for FY 1992 in that no tax increase is assumed. While it is by no means certain what the 1991 Legislature will do, Projections D and E are based on the premise that a tax increase package of some kind will be enacted in 1991 and that the additional revenue will be credited to the SGF.

Projection D assumes that the tax package would produce \$220 million. Total receipts would thus increase by 13.3 percent. Expenditures in FY 1992 could increase by \$187.5 million or 7.5 percent over FY 1991. The ending balance would be \$134.0 million or 5 percent of expenditures. Under this projection, expenditures would exceed receipts by \$6.4 million.

Projection E contemplates a tax package producing \$300 million, which would result in total receipts increasing by 16.7 percent over FY 1991. Expenditures in FY 1992 could increase by \$263.7 million, or 10.6 percent. Expenditures would exceed receipts by only \$2.6 million.

Projections for FY 1993

There are five different projections for FY 1993 in the attached table to illustrate possible effects of the new law (1990 H.B. 2867) in the second year of its application. As for FY 1992, Projections A, B, and C assume no tax increase. The only difference among them is the assumed rate of growth in revenue. Projections D and E are driven off of the presumed tax packages for FY 1992 discussed above.

Projection A is based on an increase in revenue of 3.0 percent. With a targeted closing balance equal to 6 percent of expenditures, the increase in expenditures over FY 1992 would be \$30.3 million or 1.2 percent. The ending balance would be \$150.1 million.

Projection B assumes revenue growth of 4.0 percent in FY 1993. Expenditures could increase by \$53.5 million or 2.2 percent, and the ending balance would be \$151.5 million.

Projection C has receipts growing by 5.0 percent. The increase in expenditures could be \$76.6 million or 3.1 percent, with an ending balance of \$152.9 million.

Projections D and E are both based on an increase in receipts of 4.0 percent, or the middle rate of Projections A-C. Under D, expenditures could increase by \$69.6 million or 2.6 percent in contrast to the 7.5 percent increase in FY 1992. The ending balance would be \$165.0 million.

Under E, the increase in expenditures could be \$75.5 million or 2.7 percent, compared with 10.6 percent in FY 1992. The balance at the close of FY 1993 would be \$169.9 million.

These last two projections illustrate two points that should be kept in mind. One is that all of the SGF revenue from a tax increase package cannot be spent in FY 1992 if a targeted ending balance equal to 5.0 percent of expenditures is to be attained. The second point is that the increase in expenditures in FY 1993 would have to be substantially less than in FY 1992 for two reasons: a much lower overall growth rate in receipts in FY 1993 compared with FY 1992 (4.0 percent as opposed to either 13.3 percent or 16.7 percent) and the targeted ending balance rises from 5 percent to 6 percent of expenditures.

To avoid the prospect that the growth in expenditures would be less in FY 1993 than FY 1992, the Legislature could decide to target a higher balance than 5 percent of expenditures in FY 1992 which, of course, would mean spending less in that year than indicated by the above projections. Another option would be to use a significant part of the money available for expenditure in FY 1992 for nonrecurring items.

Comment on Ending Balances

Finally, a statement needs to be made about all of the projections in this memo. While SGF balances might appear to be adequate, it should not be assumed that they would be sufficient, particularly in the event of a serious recession, to avoid triggering the second part of H.B. 2867 under which the Governor, with Finance Council approval, might have to decide to order across-the-board spending cuts.

FIVE PROJECTIONS – STATE GENERAL FUND AND CASH OPERATING RESERVE FUND

In Millions

	Actual FY 1990	FY 1991	Increase	FY 1992	Increase	FY 1993	Increase
A. Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		\$16.8 (7-1-91)		\$ (1.5) (7-1-92)	
Cash Oper. Res. Fund	—	—		123.6 (7-1-91)		125.1 (7-1-92)	
% of Expend.	—	—		5.0%		5.0%	
Receipts	2,300.5	2,360.6 ^(a)	2.6%	2,454.2 ^(a)	4.0%	2,527.8	3.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,471.0	\$(22.1) (0.9)%	2,501.3	\$30.3 1.2%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		123.6 (6-30-92)		150.1 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	—	—		0.0		0.0	
B. Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		\$ 16.8 (7-1-91)		\$ (2.6) (7-1-92)	
Cash Oper. Res. Fund	—	—		123.6 (7-1-91)		126.2 (7-1-92)	
% of Expend.	—	—		5.0%		5.0%	
Receipts	2,300.5	2,360.6 ^(a)	2.6%	2,454.2 ^(a)	4.0%	2,552.4	4.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,471.0	\$(22.1) (0.9)%	2,524.5	\$53.5 2.2%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		123.6 (6-30-92)		151.5 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	—	—		0.0		0.0	
C. Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		\$ 16.8 (7-1-91)		\$ (3.8) (7-1-92)	
Cash Oper. Res. Fund	—	—		123.6 (7-1-91)		127.4 (7-1-92)	
% of Expend.	—	—		5.0%		5.0%	
Receipts	2,300.5	2,360.6 ^(a)	2.6%	2,454.2 ^(a)	4.0%	2,576.9	5.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,471.0	\$(22.1) (0.9)%	2,547.6	\$76.6 3.1%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		123.6 (6-30-92)		152.9 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	—	—		0.0		0.0	

a. Consensus estimate as of November 15, 1990.

b. As authorized by the 1990 Legislature except for item vetoes by Governor, shifting of expenditures from FY 1990 to FY 1991, and revised estimates of demand transfers.

c. Includes \$1.3 million of released encumbrances.

	Actual FY 1990	FY 1991	Increase	FY 1992	Increase	FY 1993	Increase
<u>D.</u> Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		\$ 6.4 (7-1-91)		\$ (3.5) (7-1-92)	
Cash Oper. Res. Fund	-	-		134.0 (7-1-91)		137.5 (7-1-92)	
% of Expend.	-	-		5.0%		5.0%	
Receipts -- Base	2,300.5	2,360.6 ^(a)	2.6%	2,454.2 ^(a)	4.0%		
-- Legis. Adj.	-	-	-	220.0	-		
Total	2,300.5	2,360.6	2.6%	2,674.2	13.3%	2,781.2	4.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,680.6	\$187.5 7.5%	2,750.2	\$69.6 2.6%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		134.0 (6-30-92)		165.0 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	-	-		0.0		0.0	
<u>E</u> Beginning Balance							
General Fund	371.4	272.9		2.6 (7-1-91)		(3.8) (7-1-92)	
Cash Oper. Res. Fund	-	-		137.8 (7-1-91)		141.6 (7-1-92)	
% of Expend.	-	-		5.0%		5.0%	
Receipts -- Base	2,300.5	2,360.6 ^(a)	2.6%	2,454.2 ^(a)	4.0%		
-- Legis. Adj.	-	-	-	300.0	-		
Total	2,300.5	2,360.6	2.6%	2,754.2	16.7%	2,864.4	4.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,756.8	\$263.7 10.6%	2,832.3	\$75.5 2.7%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		137.8 (6-30-92)		169.9 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	-	-		0.0		0.0	

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FIVE PROJECTIONS - STATE GENERAL FUND AND CASH OPERATING RESERVE FUND

In Millions

	Actual FY 1990	FY 1991	Increase	FY 1992	Increase	FY 1993	Increase
A. Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		\$ 15.7 \$16.8 (7-1-91)		\$ (2.7) \$(1.5) (7-1-92)	
Cash Oper. Res. Fund	-	-		124.7 123.6 (7-1-91)		127.1 125.1 (7-1-92)	
% of Expend.	-	-		5.0%		5.0%	
Receipts	2,300.5	2,360.6 ^(a)	2.6%	2,477.4 2,454.2 + 23.2	7.9% 4.0%	2,576.5 2,527.8	4.0% 3.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,471.0 2,493.1	0% 0% (0.9)%	2,501.3 2,548.3	5.5% 2.2%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		124.7 123.6 (6-30-92)		152.9 150.1 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	-	-		0.0		0.0	
B. Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		13.3 \$ 16.8 (7-1-91)		(3.0) \$(2.6) (7-1-92)	
Cash Oper. Res. Fund	-	-		127.1 123.6 (7-1-91)		130.1 126.2 (7-1-92)	
% of Expend.	-	-		5.0%		5.0%	
Receipts	2,300.5	2,360.6 ^(a)	2.6%	2,529.3 2,454.2 + 75.1	7.1% 4.0%	2,630.5 2,552.4	4.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,471.0 2,542.6 *	49.5% 2.0% (0.9)%	2,524.5 2,601.5	5.8% 2.2%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		127.1 123.6 (6-30-92)		156.1 151.5 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	-	-		0.0		0.0	
C. Beginning Balance							
General Fund	\$ 371.4	\$ 272.9		10.8 \$ 16.8 (7-1-91)		(3.2) \$(3.8) (7-1-92)	
Cash Oper. Res. Fund	-	-		129.6 123.6 (7-1-91)		132.8 127.4 (7-1-92)	
% of Expend.	-	-		5.0%		5.0%	
Receipts	2,300.5	2,360.6 ^(a)	2.6%	2,582.0 2,454.2 + 127.8	9.4% 4.0%	2,685.3 2,576.9	4.0% 5.0%
Expenditures	2,400.2	2,493.1 ^(b)	3.9%	2,471.0 2,572.8 **	99.7% 4.0% (0.9)%	2,547.6 2,655.6	6.2% 2.4%
Ending Balance							
General Fund	272.9 ^(c)	140.4 (6-30-91)		129.6 123.6 (6-30-92)		159.3 152.9 (6-30-93)	
% of Expend.	11.4%	5.6%		5.0%		6.0%	
Cash Oper. Res. Fund	-	-		0.0		0.0	

a. Consensus estimate as of November 15, 1990.

b. As authorized by the 1990 Legislature except for item vetoes by Governor, shifting of expenditures from FY 1990 to FY 1991, and revised estimates of demand transfers.

c. Includes \$1.3 million of released encumbrances.

* FY 91 expend. + demand transfers, KPERS-School, corr. facilities oper., Hist. Soc. Res. Center, and debt service, and minus corr. off. lawsuit.

** To increase expend. by 4.0% or same growth rate as consensus est. of receipts.