

Approved: Carl Dan Holmes  
Date 1-25-96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on January 10, 1996, in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Marcia Ayres, Committee Secretary

Conferees appearing before the committee: David Pope, Division of Water Resources  
Gloria Timmer, Director of the Budget  
David Brenn, Associated Ditches of Kansas  
Terry Duvall, Kansas Water Office  
John Campbell, Attorney General's Office  
Bill Henry, Kansas Engineering Society  
Steve Frost, SW Kansas Groundwater Management District  
Wayne Bossert, NW Kansas Groundwater Management District  
Sharon Falk, Big Bend Groundwater Management District  
Bill Craven, Kansas Natural Resource Council

Others attending: See attached list

Chairperson Holmes made some announcements regarding disposition of bills.

**Hearing on HB 2613 and 2614: Use of moneys recovered in Arkansas river compact case**

**David L. Pope.** Mr. Pope, as Chief Engineer-Director of the Division of Water Resources, Kansas Department of Agriculture, represents the State of Kansas on each of the four interstate river compact commissions. Mr. Pope presented information on both HB 2613 and 2614. (Attachment #1)

**Gloria M. Timmer.** Ms. Timmer, Director of the Budget, expressed the Administration's position on HB 2613 which creates the Interstate Water Litigation Fund. (Attachment #2)

**David Brenn.** Mr. Brenn, representing the Associated Ditches of Kansas, requested recognition and reimbursement for their contributions to the State to support and continue the Kansas vs Colorado lawsuit. (Attachment #3)

**Terry Duvall.** Ms. Duvall, Manager of the Water Contracts Program of the Kansas Water Office, spoke on behalf of HB 2614. (Attachment #4)

**John W. Campbell.** Mr. Campbell, Senior Deputy Attorney General for the State of Kansas, testified in support of HB 2613 and 2614. (Attachment #5)

**William M. Henry.** Mr. Henry, Executive Vice-President of the Kansas Engineering Society, appeared in support of HB 2613 and 2614. (Attachment #6)

**Steven Frost.** Mr. Frost, Executive Director of the Southwest Kansas Groundwater District in Garden City, stated that the District supports the strategic intent of HB 2613, but would like to see any money recovered used for other litigation which is affected by interstate compacts in other areas of the state. The District stands solidly in support of HB 2614. The District would like to endorse and promote the idea that this money be used for the purchase of water rights for stream recovery and restoration in the Ark River Basin. (Will provide written testimony as Attachment #7) Mr. Frost displayed two illustrations of the Ark River reserves and historic water level trends in the area based on the declines over the last ten years and projected them into the future.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on January 10, 1996.

**Wayne Bossert.** Mr. Bossert, Manager, Northwest Kansas Groundwater Management District No. 4, basically endorsed HB 2613 and 2614 but had some specific concerns and recommendations regarding the funds. (Attachment #8)

**Sharon Falk.** Ms. Falk, Manager, Big Bend Groundwater Management District No. 5, did not oppose the concept of HB 2613 and 2614 but had some specific concerns about the litigation fund. (Attachment #9)

**William J. Craven.** Mr. Craven, Legislative Coordinator for the Kansas Natural Resource Council, supported the concept of HB 2613 and hopes to be able to support HB 2614 once some of his questions about it are resolved. (Attachment #10)

Upon completion of the hearing, Chairperson Holmes opened the meeting for questions of the conferees.

A proposed draft for an amendment to HB 2158 was distributed. The Chair hopes to work these bills tomorrow.

Chairperson Holmes asked the conferees to stay after the meeting for any further questions the committee members might have of them.

The meeting adjourned at 5:35 p.m.

The next meeting is scheduled for January 11, 1996.

ENERGY AND NATURAL RESOURCES COMMITTEE  
COMMITTEE GUEST LIST

DATE: January 10, 1996

NAME	REPRESENTING
John Campbell	K A G
Don Pitts	K A G
WAYNE BOSSERT	GMD # 4 COLBY
SHARON FALK	GMD # 5 STAFFORD
BILL HENRY	Ks Engineering Society
ALAN STEPPAT	PETE MCGILL & ASSOC.
David A. Brown	Great Eastern Ins. Assoc.
Al Knoll	Garden City Ditch Co
Erin Ploegen	Kearny County Farmer Irr. Assoc.
Bill Craven	KARCC / Sevia
LEW JENE SCHNEIDER	KLA
Leslie Kaufman	Ks Farm Bureau
STEVEN ZWOST	SW Ks LMD
Gloria Timmer	Division of the Budget
Matthew Holt	Division of the Budget
Maggie Wilson	Rep. Sloan
Mike Beam	Ks LUSTK Assn.

STATE OF KANSAS

BILL GRAVES, GOVERNOR  
Alice A. Devine, Secretary of Agriculture



DIVISION OF WATER RESOURCES  
David L. Pope, Chief Engineer-Director  
901 South Kansas Avenue, 2nd Floor  
Topeka, Kansas 66612-1283  
(913) 296-3717 FAX (913) 296-1176

KANSAS DEPARTMENT OF AGRICULTURE

TESTIMONY

TO THE

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

by

David L. Pope, Chief Engineer-Director

Presented January 10, 1996

Re: House Bill Nos. 2613 and 2614

Good afternoon, Chairman Holmes and Members of the Committee. My name is David L. Pope and I am the Chief Engineer-Director of the Division of Water Resources, Kansas Department of Agriculture. In my capacity as Chief Engineer, I represent the State of Kansas on each of our four interstate river compact commissions. I am also the Governor's representative to the Missouri River Basin Association. I am happy to be here today to present information to you about House Bills 2613 and 2614, which create the Interstate Water Litigation Fund and the Water Projects Fund, respectively.

While my testimony will relate to both of these bills to some extent, I will focus on:

- 1) how the concepts in these bills may relate to the other two interstate water disputes the State of Kansas is involved in, and
- 2) the provisions of HB 2614 related to the Water Projects Fund being created.

Gloria Timmer will be providing additional information on behalf of the Administration related to the establishment of the Interstate Water Litigation Fund.

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Attach. #1  
1-10-96



## Other Interstate Water Disputes

Besides the dispute with the state of Colorado over the Arkansas River, the State of Kansas is currently involved in two other interstate water controversies.

The first is with the state of Nebraska to enforce the terms of the Republican River Compact which allocates the waters of the Republican River among the states of Kansas, Nebraska and Colorado. We are currently involved in an active facilitation process with Nebraska to attempt to resolve this controversy without litigation. In the event this dispute is not successfully resolved and a determination is made to pursue litigation in the U.S. Supreme Court to secure and protect our Compact entitlement, then availability of funding to adequately prepare for and support such a case would be essential. Secondly, consideration of these bills could send a strong message to Nebraska that Kansas is serious about ensuring that Nebraska complies with the terms of the Republican River Compact.

The second interstate water dispute that Kansas is involved in involves the use of the waters of the Missouri River. There is no Compact nor U.S. Supreme Court decision dividing the use of the waters of the Missouri River. Currently Kansas is participating in an active facilitation process organized by the Basin Association, with representatives of seven other states, various federal agencies, and the Indian tribes, to attempt to resolve a dispute over how the U.S. Corps of Engineers should operate the six large Federal reservoirs on the mainstem of the Missouri River. Some of you may recall that the Legislature passed Senate Concurrent Resolution No. 1607 last year expressing concerns about this matter. This current controversy on the Missouri River, as well as related issues about the use of water among the states and tribes, could easily erupt into litigation. As a result, the Division suggests that the language in HB 2613 be broadened in section I (c) (1) to include any interstate water litigation, and not limit use of the fund, if it is created, to strictly enforcing the terms of an interstate water compact. On the Missouri River, litigation could take the form of an equitable apportionment case in the U.S. Supreme Court or a U.S. Federal District Court case by one or more states against the Corps of Engineers.

## Water Projects Fund

The Administration and I strongly support House Bill No. 2614, which creates the Water Projects Fund. We also support the concept of setting aside any money recovered as damages in Kansas v. Colorado litigation, over and above litigation expenses, to benefit the area of the state adversely affected by the Compact violations. It would be extremely difficult, if not impossible, to determine which specific individuals were actually damaged and to what extent. But we certainly agree with the concept of targeting the money for use in that area for the general purpose of improving water management, conservation, administration and delivery as described in Section 1 (d) and feel that such expenditures would benefit the state of Kansas, local water users and other interests in the Upper Arkansas River Basin in Kansas.

We also support the concept that the funds should only be spent on the **TYPE** of projects listed in items (1) through (5) under Section 1 (d). However, we have some concern that as time progresses, other projects not listed here, which could be extremely beneficial, will be proposed and because of the fact that there is no language authorizing "and similar types of projects" that we might be unable to fund a very worthwhile project because of that limitation. For instance, it might be desirable to enhance the use of the one small lake in the area, Lake McKinney, through maintenance or dredging, which is already being utilized for water delivery systems. Projects related to the water quality problem or the inter-relationship between surface water and groundwater may emerge. Perhaps educating the water users in that area on current methods and technology for water conservation and use efficiency might be appropriate. There may be some new technological advance that hasn't been invented yet that may be extremely beneficial to water use in that region of the state. Consequently, you may wish to broaden the language somewhat to allow for other worthwhile, but as yet unforeseen, projects of the very same type as those listed in the bill. If generic language cannot be added, then we would recommend expanding the list, at least to some degree.

Because these bills are designed not only to receive any money damages from the Kansas v. Colorado case, but also from any future interstate water compact litigation, it may be advisable to broaden the bill to allow money damages from other interstate litigation cases to be expended in the area from which those funds are recovered. For example, if Kansas were to ultimately sue Nebraska and recover monetary damages, wouldn't it be advisable for those funds to be expended in the Republican River Basin rather than in the Arkansas River Basin?

Examples of the types of projects the Division of Water Resources foresees are as follows:

(1) Provide funding for the installation of parshall flumes on each of the six ditch headgates and equipping each of those measuring flumes with state of the art recorders and data collecting platforms (DCPs) capable of transmitting real time flow information to a satellite system which can be monitored from the Garden City Field Office, DWR Headquarters or water users. Some additional measurement gages, recorders and D.C.P.s may need to be installed at various points on the Arkansas River between the stateline and Garden City. This would greatly enhance the ability of the Division of Water Resources to monitor and manage the water coming down the river. At the same time, this would lessen the number of person hours expended by the Division to actively administer the river during the irrigation season. At the present time, such administration requires use of nearly a full time person for 4 or 5 months of the year. Colorado already has the river and most of its major ditch head gates equipped with such equipment.

(2) Examples of other projects would be: improving efficiency of headgates, lining canals, installing pipe, tailwater recovery pits, and other types of more efficient irrigation systems. These could greatly enhance the use of the waters of the Arkansas River. Some

maintenance in the channel of the Arkansas River could help it maintain its carrying capacity and more efficient delivery of water. Historically, occasional flooding and high flows normally scours out debris, trees, salt cedar and trash from the channel. This scouring is not occurring at the present time because of much lower flows and the river is now controlled by the dam at John Martin Reservoir.

### Conclusion

The Administration appreciates the effort to carefully define the disposition and use of any revenue that may be received from the Kansas v. Colorado litigation. I hope these comments are helpful in refining these concepts. If you have any questions, I would be happy to answer them at this time.

Thank you very much for this opportunity to appear.

STATE OF KANSAS



DIVISION OF THE BUDGET  
Room 152-E  
State Capitol Building  
Topeka, Kansas 66612-1504  
(913) 296-2436  
FAX (913) 296-0231

Bill Graves  
Governor

Gloria M. Timmer  
Director

MEMORANDUM

TO: House Committee on Energy and Natural Resources  
Representative Carl Holmes, Chairperson

FROM: Gloria M. Timmer, Director of the Budget

DATE: January 10, 1996

SUBJECT: House Bill 2613

Thank you for the opportunity to testify and express the Administration's position on House Bill 2613 which creates the Interstate Water Litigation Fund. This fund would be created from revenues recovered from settlement or judgement in the Kansas/Colorado water litigation, from any settlements of judgements from future litigation, from interest earned from investment of the fund and possibly from gifts and grants received by the state. According to the bill, the fund could then be used only for state costs in future litigation concerning water suits and the monitoring and enforcement of another state's compliance with a settlement or judgement.

The costs of the Kansas/Colorado suit were borne entirely by the State General Fund and were appropriated as the state identified the next phase of the suit and the costs associated with that phase. Costs to date are projected to be more than \$11.0 million and funds are included again in the Governor's FY 1996 and FY 1997 budget recommendations. This method of funding allowed the legal activities to be monitored by the Governor and the Legislature, an oversight activity which seems both prudent and proper. It would appear the State's success in the suit attests to both the merits of the case and to the adequacy of the funding provided for the suit.

Obviously, it is somewhat early to be spending the possible settlement in the Kansas/Colorado case. However, if a monetary settlement is received, it is the position of the Administration that the State General Fund should first be reimbursed for the costs incurred in the case. Remaining funds would then be deposited in a separate fund to be designated for water issues

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in Kansas as envisioned in HB ~~2613~~<sup>2614</sup>. A separate litigation fund appears unnecessary especially as the present process of appropriating funds as needed has been successful and has allowed an ongoing and appropriate level of oversight by the Legislature.

Thank you again for the opportunity to testify and I will be happy to answer any questions.

HB2613.96

January 10, 1996

M E M O

To: The House Energy and Natural Resources Committee

Re: Written testimony presented on behalf of The  
Associated Ditches of Kansas in regards to House  
Bill #2613 and House Bill #2614.

The Associated Ditches of Kansas are as follows:

Finney County Water Users Association  
Kearny County Farmers Irrigation Association  
The Garden City Ditch Company  
The Great Eastern Irrigation Association  
Southside Ditch

The Associated Ditches of Kansas is an organization made up of representatives of the five larger ditch companies in Kansas on the Upper Ark River Basin.

These ditches have vested surface water rights dating back to the 1880's. With this in mind, we sincerely ask for your attention to the following:

1. Irrigators with Vested Surface Water Rights along the Ark River suffered tremendous financial losses in the 1970's and 1980's due to the lack of water which Colorado illegally held from them. Many of these losses are documented in the Kansas vs Colorado case.

2. At a time early in the Kansas vs Colorado law suit, Kansas lawyer's had used all the money allocated for them. David Pope, Chief Engineer for Water Resources, and then Attorney General, Bob Stephan, asked the ditches for a voluntary contribution to help them carry on the case until the Legislature could provide more funding. The ditch companies individually contributed a very substantial amount for this. Documentation to verify these contributions are attached under Exhibit A.

3. David Pope, Chief Engineer for Water Resources, has issued a directive to the four larger ditch companies to construct and install new and improved water measuring facilities, which is under his statutory authority. These are to be completed and ready for use before the 1998 irrigation season. When completed, the new facilities will enable the Division of Water Resources to install electronic monitoring systems, which could be read instantly from their office. No accurate cost for engineering and construction has been established at this time, but a conservative estimate is from \$30,000 to \$50,000 each, depending on the size and location of the "Partial Flume". This is also going to be a substantial out of pocket expense for the ditch companies.

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Attach.#3  
1-10-96

Page 2

Memo to the House Energy and Natural Resources Committee  
January 10, 1996

Therefore, the Associated Ditches feel that, if and when, Kansas does get a financial settlement from Colorado the following should be considered:

1. The ditch companies should be recognized and included in any Legislation in regards to compensation and other damages received from Colorado.

2. The ditch companies should be reimbursed for their contribution to the State to support and continue the case.

3. Consideration for compensation of engineering and construction costs of Partial Flumes.

The Associated Ditches of Kansas encourage your thoughtful consideration and attention to this matter.

Thank you.

EXHIBIT A



# KANSAS STATE BOARD OF AGRICULTURE

GARY L. HALL, Acting Secretary

## DIVISION OF WATER RESOURCES

901 S. Kansas Avenue, Second Floor  
TOPEKA, KANSAS 66612-1283

DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: 913-296-37  
FAX: (913) 296-1176

January 30, 1991

W F STOECKLY  
P O BOX 597  
GARDEN CITY KS 67846

RE: Kansas v. Colorado, Original No. 105

Dear Fred:

In response to our telephone conversation this morning regarding funding support by the Garden City Company, the special account being used to receive and expend funds for the Arkansas River litigation at the office of the Attorney General is entitled "Court Cost Fund", Fund No. 2012-2000.

We are very pleased that there is strong support for continued funding for the litigation in the Kansas legislature. Yesterday, the full Senate passed Senate Bill No. 37 for the full amount requested, without opposition. Final action is expected today at which time the bill will be referred to the House where we also anticipate strong support.

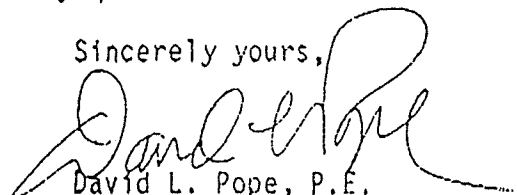
As I indicated on the telephone, timing is very important since funds are needed at this time to continue litigation. Thank you very much for your support.

Please forward the check made out to the Office of the Attorney General with a notation that the money is for the Kansas v. Colorado litigation to be deposited in the fund referred to above and send to:

Office of the Attorney General  
Kansas Judicial Center  
Topeka, KS 66612

Please let me know if you have any questions.

Sincerely yours,

  
David L. Pope, P.E.  
Chief Engineer-Director

DLP:dr  
pc: Neil Woerman



# KANSAS STATE BOARD OF AGRICULTURE

GARY L. HALL, Acting Secretary

## DIVISION OF WATER RESOURCES

901 S. Kansas Avenue, Second Floor  
TOPEKA, KANSAS 66612-1283

DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: (913) 296-4623  
FAX: (913) 296-1176

April 1, 1991

Great Eastern Irrigation Association  
Mr. Fred Stoeckly  
Box 597  
Garden City, KS 67846

Dear Fred:

I am writing because I personally wanted to thank the Garden City Company for its \$40,000 contribution to the Kansas v. Colorado, Original No. 105 litigation. Your ditch's contribution of money, information and testimony has been invaluable and greatly appreciated.

I understand you received a copy of a letter which Attorney General Stephan sent to the legislature explaining Mr. Tim Durbin's situation. Enclosed is a copy of the Order of the Special Master regarding Kansas' Motion for Continuance issued March 27, 1991.

Again, on behalf of myself and the State of Kansas, thank you for all of your company's efforts and contributions to support this litigation.

Sincerely,

David L. Pope  
Chief Engineer-Director

DLP/bs

enc.

cc: Attorney General Stephan  
Henry Gillan ✓  
Steve Frost





# KANSAS STATE BOARD OF AGRICULTURE

GARY L. HALL, Acting Secretary

## DIVISION OF WATER RESOURCES

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DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: (913) 296-4623  
FAX: (913) 296-1176

April 1, 1991

Finney County Water Users Association  
Mr. Irvin Caldwell  
6040 N. VFW Road  
Garden City, KS 67846

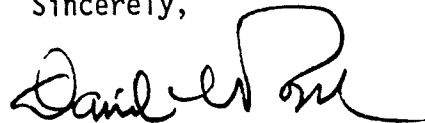
Dear Irvin:

I am writing because I personally wanted to thank the Finney County Water Users Association for its \$40,000 contribution to the Kansas v. Colorado, Original No. 105 litigation. Your ditch's contribution of money, information and testimony has been invaluable and greatly appreciated.

I understand you received a copy of a letter which Attorney General Stephan sent to the legislature explaining Mr. Tim Durbin's situation. Enclosed is a copy of the Order of the Special Master regarding Kansas' Motion for Continuance issued March 27, 1991.

Again, on behalf of myself and the State of Kansas, thank you for all of your company's efforts and contributions to support this litigation.

Sincerely,

  
David L. Pope  
Chief Engineer-Director

DLP/bs

enc.

cc: Attorney General Stephan  
Henry Gillan ✓  
Steve Frost



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GARY L. HALL, Acting Secretary

## DIVISION OF WATER RESOURCES

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TOPEKA, KANSAS 66612-1283

DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: (913) 296-4623  
FAX: (913) 296-1176

April 1, 1991

Kearny County Farmers Irrigation Association  
Mr. Wayne Miller  
Deerfield, KS 67838

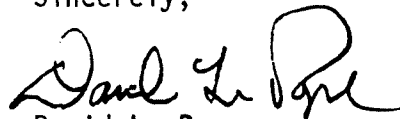
Dear Wayne:

I am writing because I personally wanted to thank the Kearny County Farmers Irrigation Association for its \$25,000 contribution to the Kansas v. Colorado, Original No. 105 litigation. Your ditch's contribution of money, information and testimony has been invaluable and greatly appreciated.

I understand you received a copy of a letter which Attorney General Stephan sent to the legislature explaining Mr. Tim Durbin's situation. Enclosed is a copy of the Order of the Special Master regarding Kansas' Motion for Continuance issued March 27, 1991.

Again, on behalf of myself and the State of Kansas, thank you for all of your company's efforts and contributions to support this litigation.

Sincerely,

  
David L. Pope  
Chief Engineer-Director

DLP/bs

enc.

cc: Attorney General Stephan  
Henry Gillan ✓  
Steve Frost



# KANSAS STATE BOARD OF AGRICULTURE

GARY L. HALL, Acting Secretary

## DIVISION OF WATER RESOURCES

901 S. Kansas Avenue, Second Floor  
TOPEKA, KANSAS 66612-1283

DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: (913) 296-4623  
FAX: (913) 296-1176

April 1, 1991

Garden City Ditch  
Mr. Al Knoll  
2385 Chmelka Road  
Garden City, KS 67846

Dear Al:

I am writing because I personally wanted to thank the Garden City Ditch for its \$1,500 contribution to the Kansas v. Colorado, Original No. 105 litigation. Your ditch's contribution of money, information and testimony has been invaluable and greatly appreciated.

I understand you received a copy of a letter which Attorney General Stephan sent to the legislature explaining Mr. Tim Durbin's situation. Enclosed is a copy of the Order of the Special Master regarding Kansas' Motion for Continuance issued March 27, 1991.

Again, on behalf of myself and the State of Kansas, thank you for all of your company's efforts and contributions to support this litigation.

Sincerely,

David L. Pope  
Chief Engineer-Director

DLP/bs

enc.

cc: Attorney General Stephan  
Henry Gillan ✓  
Steve Frost



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TOPEKA, KANSAS 66612-1283

DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: (913) 296-4623  
FAX: (913) 296-1176

April 1, 1991

Mr. Bill Turrentine  
1410 East Hackberry  
Garden City, KS 67846

Dear Bill:

I am writing to extend my personal gratitude to you on behalf of the state of Kansas for the \$1,000 you personally contributed to support the litigation in Kansas v. Colorado, Original No. 105.

I certainly would also like to thank you for the time that you spent with the Division's attorney, Leland E. Rolfs, and your general moral support of the effort of the State of Kansas.

Enclosed is a copy of the recent Order of the Special Master regarding Kansas' Motion for Continuance issued March 27, 1991.

Again, I thank you very much for your contribution and your support of this case.

Sincerely,

David L. Pope  
Chief Engineer-Director

DLP/bs

enc.

cc: Attorney General Stephan  
Henry Gillan ✓  
Steve Frost



# KANSAS STATE BOARD OF AGRICULTURE

GARY L. HALL, Acting Secretary

## DIVISION OF WATER RESOURCES

901 S. Kansas Avenue, Second Floor  
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DAVID L. POPE, Chief Engineer-Director  
(913) 296-3717

Respond to: (913) 296-4623  
FAX: (913) 296-1176

April 1, 1991

Southside Ditch  
Mr. Randy Hayzlett  
Route 1, Box 44  
Lakin, KS 67860

Dear Randy:

I am writing because I personally wanted to thank the Southside Ditch for its \$5,000 contribution to the Kansas v. Colorado, Original No. 105 litigation. Your ditch's contribution of money, information and testimony has been invaluable and greatly appreciated.

I understand you received a copy of a letter which Attorney General Stephan sent to the legislature explaining Mr. Tim Durbin's situation. Enclosed is a copy of the Order of the Special Master regarding Kansas' Motion for Continuance issued March 27, 1991.

Again, on behalf of myself and the State of Kansas, thank you for all of your company's efforts and contributions to support this litigation.

Sincerely,

David L. Pope  
Chief Engineer-Director

DLP/bs

enc.

cc: Attorney General Stephan  
Henry Gillan ✓  
Steve Frost

**Testimony of Terry Duvall,  
Kansas Water Office,  
Before the  
House Energy and Natural Resources Committee  
on House Bill Nos. 2613 and 2614  
January 10, 1995**

Thank you Mr. Chairman and members of the committee for giving the Kansas Water Office an opportunity to testify regarding House Bill 2613 and 2614. Al LeDoux, Director of the Kansas Water Office, has asked me as Manager of the Water Contracts Programs of the office to provide you with our comments on House Bill 2613 and 2614. Since the Kansas Water Office is generally not involved in litigation involving compacts, we would defer any comments on House Bill 2613 to our sister agency and David Pope, the Chief Engineer of the Division of Water Resources, and the Attorney General's Office. I would note; however, if House Bill 2614 is enacted, the Kansas Water Office stands ready to carry out the responsibilities outlined in that bill.

TD:hb261314.tst/ja

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Attach. #4  
1-10-96



HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

TESTIMONY IN SUPPORT  
OF  
HOUSE BILLS 2613 & 2614

by

John W. Campbell  
Senior Deputy Attorney General  
January 10, 1996

Mr. Chairman, members of the committee, my name is John Campbell, I am the Senior Deputy Attorney General for the State of Kansas. I am here today on the instructions of the Attorney General to testify in support of House Bills 2613 and 2614.

Last year, the Supreme Court found that Kansas had been denied its rightful share of the Arkansas River by the wrongful actions of Colorado. In ruling in favor of Kansas, the Court remanded the case back to the Special Master for a determination of damages and the formulation of a remedy. That phase of the litigation continues.

When the remedy and damages phase of the case is concluded, Kansas will receive judgment in the form of increased water, or money, or a combination of the two. House Bills 2613 and 2614 would provide the means to use any moneys awarded in the Kansas v. Colorado case for the

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1-10-96

redress past damages and even more importantly prevent future harm to Kansans.

HB 2613 would establish an interstate water litigation fund. This fund could provide the means to enforce our interstate water compacts through court action. This fund will send a clear message to our sister states in the Arkansas, Republican and Missouri River basins that Kansas will not be wronged. This fund, more than any speech or policy statement, will show to others that Kansas is serious when it comes to protecting our interstate water rights.

Other states will not provide Kansas with its rightful share of interstate water just because we are nice people. They may however take the often painful steps of insuring that we receive our rightful share of water if the alternative is lengthy and expensive litigation.

HB 2614 is a good bill that will that help those most harmed by Colorado. HB 2613 is an even better bill, which may prevent others from being harmed in the future.

The Attorney General urges the committee to adopt both House Bill 2613 and 2614.

**TESTIMONY**  
**HOUSE ENERGY & NATURAL RESOURCES COMMITTEE**  
**January 10, 1996**

Chairman Holmes, members of the committee I am Bill Henry, Executive Vice-President of the Kansas Engineering Society and I appear before you today in support of the creation of the interstate water litigation fund and the establishment of the water projects fund which are created by HB 2613 and HB 2614.

Although Kansas has been successful to date with its litigation against the state of Colorado for practices which violated the Arkansas River Compact, the state of Kansas cannot rest on its laurels.

Those members of this committee know only too well the issues of water supply, quality and management which we face in the future. The members of the Kansas Engineering Society across the state believe this is a wise path to take for the future.

The success achieved by this litigation was notable in that the state of Kansas was able to pursue a long term strategy in its litigation. However, to be able to maintain a similar path in any future litigation requires dollars that can be depended upon to complete necessary discovery and do the strategic work necessary to preserve Kansas citizens' rights to water.

One suggestion the members of the engineering society in HB 2614 is that the committee should direct careful attention the uses allowed for these funds. The use for any monies recovered that are in excess litigation costs is determined in section 1 (d). There are five specific areas that are noted. In reviewing these five areas the engineers who I represent said that all five purposes are effective uses that will promote efficiency in water conservation administration and delivery.

However, it is questionable whether or not this section would allow use of these funds to regain water supply for either municipal or rural water district use.

Secondly, in the case of regional cooperation between governmental entities when they deal with water supply and water quality, these entities might not have access to this water projects fund under the language that is set out in these five segments. In the area that the Arkansas River Basin serves we have several water quality issues that are affected at different times of the year by the amount of the supply itself. The engineers with whom I discussed this language are not certain that the proposed water projects fund could be used to deal with water quality issues under the language of HB 2614 .

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The Kansas Engineering Society however believes this is an excellent legislative first step to prepare for future litigation and to earmark the resources necessary for the efficient use of water in Kansas.

William M. Henry, Executive Vice-President  
Kansas Engineering Society



**Southwest Kansas  
Groundwater Management District**

\* \* \* \* \*

**(316) 275-7147**

**409 Campus Drive, Suite 106  
Garden City, Kansas 67846**

Testimony  
of the  
Southwest Kansas Groundwater Management District  
presented before the  
House Energy and Natural Resources Committee  
regarding  
House Bill No. 2613  
and  
House Bill No. 2614  
on  
January 10, 1996  
by  
Steven K. Frost, Executive Director

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Attach. #7  
1-10-96

Chairman Holmes and Associate Committee Members,

The District appreciates the opportunity to testify on these two proposals pending before you today. My name is Steven Frost, Executive Director of the Southwest Kansas Groundwater Management District. I was formerly the Water Commissioner for Southwest Kansas at the time Ks V. Co No. 105 was in trial before the Special Master, and testified in behalf of the State of Kansas during the course of that trial on several occasions.

I would like to qualify my remarks about these articles of proposed legislation by saying, that "the recovery of potential damages recovered from this case would best be received in water, not money". The present and future value of water will be far greater in long-term, economic sustainability to the region than the past determinations of value lost in money. However, the subject of discussion today relates to the potential recovery of monetary reparations, and I will further limit my testimony today to that subject.

**Regarding House Bill No. 2613:**

The District recognizes and strongly endorses the strategic intent of the legislation to establish an interstate litigation fund. It is extremely important to demonstrate a commitment from the State of Kansas to protect its interstate compact entitlements for the benefit of its peoples. Our experience in bringing this particular case to trial is a hard-learned lesson about the difficulties, complexities, and unanticipated expenses of such litigation.

The District, therefore, stands in support of the provisions of H.B. 2613 to establish a water litigation fund for the state from the proceeds of Ks V. Co No. 105 to the extent that other areas of Kansas are verified to have been economically deprived (and also damaged) from the water shortages and depletions suffered by the residents of the Upper Arkansas River Basin. In other words, the potential money awards to compensate damages suffered by Southwest Kansas should not be diverted away for other purposes, except to the extent that other areas of the state have also suffered from these very same water shortages incurred by the State of Colorado against the water users of the Upper Arkansas River Basin. I am sure that they have in some extended manner, although to what level this can be demonstrated I am uncertain.

If money is the vehicle of compensation provided by the State of Colorado for reparation of its damages incurred to Kansas, the District advocates its use for that purpose and that purpose only. This is not to say the District is opposed to the establishment of a prospective litigation fund.



**Regarding House Bill No. 2614:**

For the reason and purpose that the bill as introduced may be extensively modified during the course of its review and adoption, at this time I will only speak to its concept and effect in general.

The District stands solidly in support of the provisions of H.B. 2614, and most especially for the purposes of the Water Projects Fund as identified by (3) (d)

(4): artificial recharge on purchase of water rights for stream recovery or aquifer restoration;

I would briefly like to draw your attention to these illustrations (display of GIS maps portraying future projections of High Plains Aquifer in Southwest Kansas, particularly referencing areas along the Arkansas River Basin).

The Arkansas River is the only "renewable" source of water in Southwest Kansas; it may be the only principal source of future water supply for municipalities and industries, etc. in the basin. We have been litigating over the diminishing supply of the Arkansas River for over 100 years. What will the next 100 years be like?

As a legislatively empowered public entity, the District is very interested in the acquisition of water rights and importation of water for cooperative projects in the public interest. It is now very appropriate to consider the long-term benefits which could be provided by aquifer recharge and stream recovery projects in the Upper Arkansas River Basin.

It is absolutely essential to reinvest any potential recovery of economic damages in the area where the damage was incurred. For this reason the District endorses the adoption of H.B. 2614 for the benefit of Southwest Kansas, and the State of Kansas.

As always, the District is available to answer any questions or provide any assistance on these important issues.



**NORTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT NO. 4**  
**STATEMENT OF ISSUE**  
**January 9, 1996**

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Colby, Kansas 67701-0905  
(913) 462-3915  
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**ISSUE:**

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Two House Bill preliminary working drafts (yet to be numbered) which have been circulated on January 3, 1996 by Mary Torrence, Assistant Revisor of Statutes, for comment.

**BACKGROUND IDENTIFICATION:**

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The drafts propose two special funds designed to accept and then utilize any monies awarded to Kansas from the Kansas Vs. Colorado Arkansas River lawsuit originally filed in 1985, any future awards from interstate compact litigation efforts, and other funds identified by the state of Kansas.

*Interstate water litigation fund:* Administered by the Attorney General, this fund will accept all monies recovered from the Arkansas River lawsuit and future lawsuits; interest from fund investments; or any other money the state wants to provide. Expenditures can only go for costs of future litigation involving interstate compacts or monitoring or enforcing another state's compliance with any judgement in past or future lawsuits.

*Water projects fund:* Administered by the KWO, this fund is designed to receive all excess monies from the Ark River lawsuit which are not needed to reimburse the state for its actual litigation costs as determined by the AG. This fund will also receive all interest earned, and can be supplemented with other state monies. The funds can only be used to pay all or part of the following items, in the Arkansas river basin only:

- 1) Efficiency improvements to canals/laterals;
- 2) Water use efficiency devices, tailwater systems or irrigation efficiency upgrades;
- 3) Meters or other water measurement devices, including data collection platforms;
- 4) Artificial recharge or purchase of water rights for stream recovery or aquifer restoration; or
- 5) Ark river channel maintenance.

Any person in the Ark river basin may apply for use of the fund. KWO and DWR will jointly review each request and decide to fund it or not. If approved, KWO will recommend to the Legislature a line item budget for the

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approved project except that small projects (less than \$10,000) will not need a line item appropriation.

#### CONCERNS:

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- 1) It appears that an attempt is being made to see that only those affected by Colorado's indiscretions will have access to the monies awarded the state, after Kansas is reimbursed for its litigation costs. Allowing everyone in the entire basin to have access to this fund for all sorts of water use efficiency improvements does not accomplish this goal well at all. For example, a groundwater user in central Scott County who had never been impacted by the reduced flows of the Arkansas River will have access to a potentially significant fund for many personal improvements while an identical irrigator immediately across the basin divide line, who was also not affected, will not be eligible.
- 2) As written, we can see the possibility that no monies would ever get into the water projects fund since no one will be able to anticipate how much litigation there will be, and since compliance and monitoring of past lawsuits will be an on-going expense. There seems the real possibility of having a super litigation fund with no monies ever getting over into the water projects fund.
- 3) It also appears to us that all future interstate compact litigation awards are to go into the litigation fund, which after the state is reimbursed for its court costs, then spills over into the water projects fund. The problem is that all water projects funds are specified for the Arkansas River basin, regardless of which interstate compact provided the award. This does not sound correct to us.
- 4) The specifics of how applications for water project fund monies will be received, evaluated and approved is a concern to us and will need serious consideration before being developed. This decision will call for additional rules and regulations outside of the state water planning process which will need to insure at a minimum 3 things: 1) the fairest targeting of expenditures; 2) the most efficient expenditure of funds; and 3) that the expenditures are consistent with the State Water Plan. This will be a concern to many in the State as there will be no lack of ideas on how to best apply this money, or on arguments as to whether specific expenditures appropriately support the goals of the state water plan. While there may be advantages in developing a new fund with new regulations, there will likely be more advantages to using an existing and proven vehicle to divest any additional monies if one exists.

#### RECOMMENDATIONS: *(Numbers follow the concerns above)*

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- 1) If the state wants to see that the affected area receives the monies awarded, in a fair manner, a better job needs to be done identifying those directly affected by Colorado's de-watering of the Arkansas river. Certainly all surface water right holders have been directly and adversely affected. In addition, because of reduced recharge, all groundwater users within the alluvial aquifer associated with the Ark river have been to some extent

directly affected as well - some more than others based upon each persons relative proximity to the channel. We cannot see where groundwater users beyond any possible recharge region from channel flows should be included as beneficiaries of the fund while all other groundwater users in the state (who were also not affected) are excluded.

2) Placing a specific cap on the Litigation fund, or limiting it to a pre-set percentage of deposits would both insure that monies would flow over into the projects fund.

3) The bill draft needs to be changed to clarify that all monies awarded from any specific compact lawsuit award will stay within that basin when expended from the water project fund.

4) One way to divest awarded monies without additional rules and regulations would be to place it all into the State Water Plan fund instead of this newly proposed fund. Following are the advantages:

a) This process would already provide the Legislature (line-item) oversight for each prospective expenditure;

b) It would insure that all expenditures meet the goals of the State Water Plan we have all spent many years developing;


c) This process could just as easily target those affected in the Arkansas basin if so desired, as the accounting needed to this is already in place;

d) The KWO is already developing specific evaluation procedures for all major SWP expenditures which will ultimately insure the wisest use of SWP funds;

e) No additional Rules and Regulations are necessary.

5) The board would finally request that they be kept apprised of this issue while in Committee and informed of when it leaves committee and where it goes.

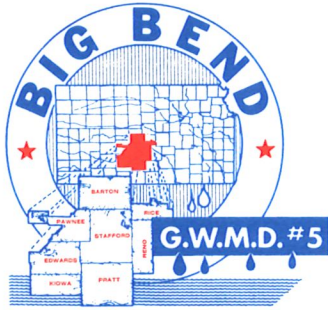
Approved by Board Executive Committee action - January 9, 1996

  
Signed: Wayne A. Bossert, GMD 4 Manager

Additional information may be obtained by contacting:

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[wab\issue.mst]



# Big Bend Groundwater Management District No. 5

125 South Main • P.O. Box 7 • Stafford, Kansas 67578 • Phone 316-234-5352

TESTIMONY  
PRESENTED TO THE HOUSE COMMITTEE  
ON ENERGY AND NATURAL RESOURCES  
BY SHARON FALK, MANAGER  
BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. FIVE

Committee Members,

Thank you for the opportunity to speak to you today regarding the proposed House Bill - concerning disposition of moneys recovered by the state in certain litigation; establishing the water projects fund.

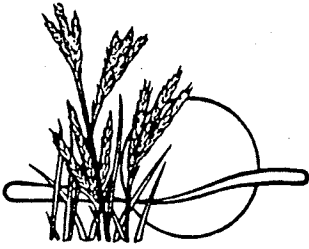
As representative of Big Bend Groundwater Management District No. Five, I would like to share with you our questions or concerns with the bill as proposed.

1. Is it necessary that a new water projects fund be established? Would it not save time and additional administrative costs to utilize the existing State Water Plan Fund, since it is also being administered by the Director of the Kansas Water Office?
2. Section 1. (d) states - only those in the Upper Arkansas River Basin and directly impacted by the provisions of the Arkansas River compact may benefit from this fund. How will it be determined as to who is directly impacted by the provisions of the Arkansas River compact? The hydrologic impact to many individuals in this case may not be completely recognized.
3. Will this act be amended as other future litigation or disputes are resolved involving other basins in Kansas? The only Basin referenced currently in the draft bill is the Upper Arkansas River Basin.

Again, thank you for your time today.

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Attach. #9  
1-10-96





# Kansas Natural Resource Council

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House Energy and Natural Resources Committee  
January 10, 1996  
Proposed Arkansas River Litigation Legislation  
H.B. 2613 and H.B. 2614  
Testimony of William Craven  
on behalf of the Kansas Natural Resource Council

These two bills craft significant policies with regard to the victory in the Kansas v. Colorado lawsuit involving interstate compact involving the Arkansas River. As for H.B. 2613, KNRC expresses no opposition to, and in fact supports, the concept of a dedicated fund not only to account for the proceeds of the litigation with Colorado but also to fund litigation against Nebraska pursuant to the Republican River interstate compact.

It is H.B. 2614 with which KNRC has reservations. It is more accurate to say that we have questions. There are parts of the bill we support, and we are hopeful that we will soon be able to support the entire bill.

As I understand the bill, proceeds from the fund can be used for the stated purposes only in the upper Arkansas river basin. The first significant policy question is whether that is appropriate or whether the stated purposes in the fund should be available statewide, or at least to benefit irrigators across all of western Kansas.

We all know the problems confronting the Ogallala aquifer. I think we are facing an important moment, because of the lawsuit, where the question is raised whether we will use this opportunity mainly to benefit the river, or mainly to benefit irrigators. I'm hopeful that the bill doesn't turn out to be a vehicle for what is called "corporate welfare."

I don't really disagree that efficiencies in irrigation are a matter which the state should be involved in, even to the point of investing in those efficiencies. There is probably no more important issue in western Kansas than the continued access to the aquifer. Thus, I don't disagree with the purposes set forth in the bill.

However, I'm not certain the bill gets to the ultimate question of how to manage the aquifer in a more sustainable way. For example, if an individual irrigator becomes more efficient by use of this legislation, shouldn't we seek to retire a certain percentage of his existing water rights? And if we don't, don't we run the risk of subsidizing greater efficiency only to have the irrigator sell his unneeded water rights to someone else? If that happens, then the effect of this publicly funded improvements on the aquifer won't result in any improvements to the situation facing the aquifer.

I'd also like the committee to consider prioritizing the improvements which are allowed. All those with whom I have spoken indicate that the most pressing need is for meters. My question is whether there is a way to make that the top priority. And as I said earlier, that may be a goal which should be expanded beyond the upper Arkansas River basin.

Another question I have is whether there should be role in this process for groundwater management districts. While it's true that not every irrigator in



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western Kansas lives in a GMD, a good many do. Is there a way in the bill to give priority for certain projects to the large-scale efficiencies which might be proposed by a GMD as opposed to the interests of a single person?

Finally, I'd like to point out that care must be taken not to pitch flood irrigators against groundwater irrigators. It seems that the best way to avoid that, as well as to serve the larger interests of the entire state, is to make certain that a certain percentage of the "new" water from Colorado, as well as a portion of the retired water rights, is set aside for the river itself. This will not only help with groundwater recharge (which is one of the purposes set forth in the bill), but it will also help restore the Arkansas River which I assume we all agree is an issue of statewide importance, and not limited only to those who live in that basin.

Thank you for the opportunity to testify.