

Approved: 3-18-96  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 12, 1996 in Room 254-E- of the Capitol.

All members were present except:  
Senator Bill Wisdom, Excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Ardan Ensley, Revisor of Statutes  
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:  
David L. Pope, Chief Engineer-Director, Division of Water Resources  
Senator Dave Kerr  
Henry Gillan, Jr., President, Associated Ditches of Kansas  
John W. Campbell, Senior Deputy Attorney General  
Written testimony only, Steve Frost, Southwest Kansas Groundwater Management District

Others attending: See attached list

**SUB SB 621--Concerning waters of the state; relating to the evaporation of water from sand and gravel pits**

The Chairperson called the meeting to order and Senator Morris requested an opportunity to present an amendment to **SUB SB 621** which was under consideration at the time of adjournment March 11, 1996. Senator Morris stated the need to remove **SB 617** which was amended into **SUB SB 621** in the March 11, 1996 meeting and then add the amendment which would allow the chief engineer to determine the impact of evaporation on the source of supply and determine whether approval of an application will not directly impair use under an existing water right (Attachment 1)

A member questioned how this bill, with the amendment included, would differ from the one passed in 1995. The chairperson stated the bill would be the same bill that previously passed out of committee with the additional language giving the chief engineer authority to determine exceptions. David Pope stated the bill would reinstitute into law the evaporation component in sand and gravel operations on a statewide basis and is significantly different from 1995 legislation which exempted most of the sand and gravel operations. The bill does provide flexibility in those situations or areas where the evaporation is not significant permitting certain exceptions. Hopefully, this would mean that in areas where there is no problem consideration may be given. Another member requested further explanation. Mr. Pope stated the amendment uses statutory language to provide a basis for making a decision for exceptions.

A member questioned whether there has been any discussion about credits for storing water. Mr. Pope stated it was not spelled out in the bill but they were well aware of the issue.

**Senator Morris made a motion to remove SB 617 from SUB SB 621 and add the balloon amendment to SUB SB 621. Senator Lee seconded the motion and the motion carried.**

**Senator Morris moved to report SUB SB 621 favorable for passage as amended. Senator Lee seconded the motion.**

Discussion explained this bill is just opposite of the bill passed in 1995. It was also noted that this bill will require much of the state to make applications for exemption causing a great deal of additional paperwork and difficulty.

The motion carried.

**SUB HB 2613--Concerning disposition of moneys recovered by the state in certain litigation; establishing the interstate water litigation fund and the water conservation projects fund**

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 12, 1996.

David L. Pope, Chief Engineer-Director, Division of Water Resources, presented testimony in support of **SUB HB 2613** noting in his capacity of Chief Engineer he represents the State of Kansas on each of the four interstate river compact commissions, also he is the Governor's representative to the Missouri River Basis Association (Attachment 2).

Mr. Pope reviewed **SUB HB 2613** stating it would create the Interstate Water Litigation Fund and create a Water Conservation Projects Fund. Placing funds in the Litigation Fund would send a strong message to Nebraska that Kansas is ready to defend its Compact entitlement on the Republican River and hopefully encourage a settlement avoiding costly litigation with Nebraska. He noted litigation likely will be filed by the State of Missouri and Kansas could be brought into that issue and this fund could help pay for litigation that may become necessary concerning the Missouri River.

A provision of **SUB SB 2613** would require that first moneys contributed to this fund shall be used to reimburse those persons or entities who contributed money to the Attorney General to fund the Kansas v. Colorado litigation.

A member expressed concern with the concept of the bill as it could affect discussions of the Supreme Court. Mr. Pope stated it was his understanding that those involved were in agreement that this issue would not be a problem. Providing for repayment of damages points out the realization of actual damages which need to be reimbursed. He also stated he felt it would be helpful in the Republican Compact issue as it would serve notice the Legislature was very interested in the issue.

Senator Dave Kerr appeared in opposition of **SUB HB 2613** stating repayment of the State General Fund for litigation would appear to be the most basic requirement for fairness (Attachment 3). He further noted nothing wrong with the planned uses of the Water Conservation Project Fund other than the fact that apparent planned uses are not deemed of topmost priority within the state.

Senator Kerr expressed the opinion that this bill could hurt the likelihood of future expenditures from the State General Fund for necessary litigation since it would appear repayment to that fund was not planned.

A member questioned whether it really makes a difference if the state reimburses the litigation expenses and then immediately re-appropriates funds to be used for litigation on the Republican river. If the funds are not used they will eventually return to the State General Fund. In discussing the use of the fund to serve notice that Kansas was prepared to turn to litigation versus having to go to the State General Fund, Senator Kerr stated Kansas has a great deal of credibility with surrounding states and noted litigation has been funded from the State General Fund over a number of years, that if it is of sufficient priority it will continue to be funded. He noted easy access to funds could too readily allow litigation.

Henry Gillan, Jr., President, Associated Ditches of Kansas, appeared to present testimony on **SUB HB 2613** stating his association feels that should Kansas get a financial settlement from Colorado the ditch companies should be recognized and included in legislation for compensation and other damages (Attachment 4). Reimbursement for contributions to the State to support and continue the litigation, compensation of engineering and construction costs and funds for continued monitoring of Colorado's compliance with the Arkansas River Compact all need to be included in consideration of use of funds if and when received.

John W. Campbell, Senior Deputy Attorney General, stated he was appearing on instruction from the Attorney General to testify in support of **SUB SB 2613** (Attachment 5). Mr. Campbell commented that with the Open Records Act it is very difficult to bluff opposition. Mr. Campbell stated that if this money is set aside (and it all must be appropriated before it can be set aside) it will send a message to Nebraska and other states that they need to stop present actions.

A member questioned whether the contributions and expenses of the Association of Ditches had been included in the litigation with Mr. Campbell stating these costs were not included in the original petition because the Supreme Court cannot give damages but it was included in the amended petition and there is an intent to recover these funds.

A member questioned whether or not the five year period would be a sufficient period of time with Mr. Campbell stating the preference was for no time limit, therefore a compromise had been reached.

Written testimony was submitted by Steven K. Frost, Executive Director, Southwest Kansas Groundwater Management District (Attachment 6). Mr. Frost stated the Arkansas River is the only "renewable" source of water in Southwest Kansas, also there will never be any more water than there is today and the value of water will become greater.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 12, 1996.

Mr. Frost commented that "any recovery of potential damages realized 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. He further noted it is absolutely essential to reinvest any potential recovery of economic damages in the area where the damage was incurred.

Mr. Frost noted that 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 and only for the areas which have been economically impacted by the deprivations.

Senator Tillotson, with a second from Senator Lee, moved to approve the minutes of March 5, 6, 7 and 8. The motion carried.

The meeting adjourned at 9 a.m.

The next meeting is scheduled for March 13, 1996.



# SUBSTITUTE for SENATE BILL No. 621

By Committee on Energy and Natural Resources

2-26

9 AN ACT concerning waters of the state; relating to the evaporation of  
10 water from sand and gravel pits; amending K.S.A. 1995 Supp. 82a-711  
11 and repealing the existing section; also repealing K.S.A. 1995 Supp.  
12 82a-734.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 1995 Supp. 82a-711 is hereby amended to read as  
16 follows: 82a-711. (a) If a proposed use neither impairs a use under an  
17 existing water right nor prejudicially and unreasonably affects the public  
18 interest, the chief engineer shall approve all applications for such use  
19 made in good faith in proper form which contemplate the utilization of  
20 water for beneficial purpose, within reasonable limitations except that the  
21 chief engineer shall not approve any application submitted for the pro-  
22 posed use of fresh water in any case where other waters are available for  
23 such proposed use and the use thereof is technologically and economically  
24 feasible. Otherwise, the chief engineer shall make an order rejecting such  
25 application or requiring its modification to conform to the public interest  
26 to the end that the highest public benefit and maximum economical de-  
27 velopment may result from the use of such water.

28 (b) In ascertaining whether a proposed use will prejudicially and un-  
29 reasonably affect the public interest, the chief engineer shall take into  
30 consideration:

- 31 (1) Established minimum desirable streamflow requirements;
- 32 (2) the area, safe yield and recharge rate of the appropriate water  
33 supply;
- 34 (3) the priority of existing claims of all persons to use the water of  
35 the appropriate water supply;
- 36 (4) the amount of each claim to use water from the appropriate water  
37 supply; and
- 38 (5) all other matters pertaining to such question; and

39 (6) *any application to appropriate water for evaporation caused by a  
40 sand and gravel pit operation exposing the groundwater table shall be  
41 exempt from meeting the safe yield, allowable appropriation or similar  
42 type of criteria if it meets all of the following criteria:*

- 43 (i) *The application is filed for a commercial or governmental sand*

the chief engineer determines that the impact of the evaporation on the source of supply is not significant, and that approval of the application will not directly impair a use under an existing water right, nor prejudicially and unreasonably affect the public interest, or

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1 and gravel operation in existence on or before July 1, 1995;

2 (ii) the application is filed on or before December 31, 1997;

3 (iii) the maximum annual quantity of water requested shall not exceed  
4 the projected water needs for evaporation based on the historic average  
5 annual rate of expansion of the surface area of the groundwater exposed  
6 by that pit operation;

7 (iv) the maximum annual quantity of water requested shall not exceed  
8 the projected maximum annual need for evaporation for that pit operation  
9 prior to January 1, 2018; and

or permitted for hydraulic dredging

10 ~~(v) the permit shall allow only one pit operation at a time, but any~~  
11 ~~unused quantity shall be transferable to another pit operation within two~~  
12 ~~miles by the same operator in the same source of water prior to January~~  
13 ~~1, 2018, provided, however, that the maximum annual quantity shall not~~  
14 ~~be increased and the new location shall not cause substantial adverse~~  
15 ~~impacts to the area groundwater supply. The permit may be transferred~~  
16 ~~to another pit operation by the same operator beyond two miles in the~~  
17 ~~same source of water prior to January 1, 2018, if it is demonstrated to the~~  
18 ~~satisfaction of the chief engineer that the transfer will not substantially~~  
19 ~~impair a use under an existing water right, nor prejudicially and unrea-~~  
20 ~~sonably affect the public interest.~~

(c) Permits issued pursuant to Section (b) (6)

100 percent

directly

(d)

21 ~~(c)~~ With regard to whether a proposed use will impair a use under  
22 an existing water right, impairment shall include the unreasonable raising  
23 or lowering of the static water level or the unreasonable increase or de-  
24 crease of the streamflow or the unreasonable deterioration of the water  
25 quality at the water user's point of diversion beyond a reasonable eco-  
26 nomic limit. Any person aggrieved by any order or decision by the chief  
27 engineer relating to that person's application for a permit to appropriate  
28 water may appeal to the district court in the manner prescribed by K.S.A.  
29 82a-724, and amendments thereto.

30 New Sec. 2. This act is part of and supplemental to the Kansas water  
31 appropriation act.

32 Sec. 3. K.S.A. 1995 Supp. 82a-711 and 82a-734 are hereby repealed.

33 Sec. 4. This act shall take effect and be in force from and after its  
34 publication in the Kansas register.

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

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

by

David L. Pope, Chief Engineer-Director

Presented March 12, 1996

Re: Substitute for House Bill No. 2613

Good morning, Chairman Sallee 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 testify as a proponent of Substitute for House Bill 2613, which creates the Interstate Water Litigation Fund and the Water Conservation Projects Fund.

SUBSTITUTE FOR HB 2613

Substitute for HB 2613 would create an Interstate Water Litigation Fund and a Water Conservation Projects Fund. 75% of any monetary recovery from the Kansas v. Colorado litigation will be placed in the Litigation Fund until that fund reaches the cost of the litigation. The other 25% will be placed in the Water Conservation Projects Fund. Any recovery in excess of these two amounts will be split on a 50/50 basis between the Water Conservation Projects Fund and the State Water Plan Fund with the money earmarked solely for water conservation projects. Monies placed into the Interstate Water Litigation

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Fund will be administered by the Attorney General and used to fund current and future interstate water litigation, or preparation for such litigation, with the fund to be terminated in 5 years and the balance transferred to the General Fund, if interstate litigation is not ongoing. Monies may also be used for monitoring compliance with interstate water compacts or court decrees. Monies placed into the Water Conservation Projects Fund will be administered by the Director of the Kansas Water Office and returned to the Upper Arkansas River Basin areas directly impacted by Colorado's violation to the Compact for water management, conservation, administration and delivery projects.

My testimony will focus on:

- 1) The provisions of Substitute for HB 2613 which establish the Interstate Water Litigation Fund, and how this fund may relate to the other two interstate water disputes in which the State of Kansas is currently involved, and
- 2) The provisions of HB 2613 which create the Water Conservation Projects Fund.

#### I. Interstate Water Litigation Fund

The Division supports the creation of the Interstate Water Litigation Fund. 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. These discussions seem to be worthwhile thus far; however, 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.

Passage of this bill creating the Interstate Water Litigation Fund, and placing money in it, will send a strong message to Nebraska that Kansas is willing, ready and able to defend its Compact entitlement on the Republican River and hopefully to encourage a settlement and avoid costly litigation with Nebraska.

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. The Division supports the language on page 1, lines 30-32, which allows the fund to be used in any interstate water litigation. 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.

In fact, we have been informed that litigation will likely be filed by the State of Missouri against the Corps of Engineers this week concerning deviations from the Master Manual. Although Kansas will apparently not be named as a party at this time, Kansas could be brought in as a necessary party at some time in the future. This fund could be used as a vehicle to fund any litigation that may be necessary on the Missouri River.

The bill also requires that the first money contributed to this fund shall be used to reimburse those persons or entities who contributed money to the Attorney General to fund the Kansas v. Colorado litigation. We support that concept.

## II. Water Conservation Projects Fund

We strongly support creation of the Water Conservation Projects Fund. We also support the concept of setting aside the 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 2 (c). We 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 (6) under Section 2 (c), including the monitoring of future compliance by the State of Colorado.

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 DCPs

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 properly manage and distribute 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, replacing ditches with 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, which would result in 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.

(3) Monitoring and enforcement of Colorado's compliance with the Arkansas River Compact.

#### CONCLUSION

The Division of Water Resources supports the passage of Substitute for HB 2613. If you have any questions, I would be happy to answer them at this time.

Thank you very much for this opportunity to appear.

TESTIMONY ON SUB. FOR HB 2613

Senator Dave Kerr

Mr. Chairman and members of the Senate Energy and Natural Resources Committee, I appear before you in strong opposition to Substitute for HB 2613. From FY 1984 through FY 1997, the Legislature will have appropriated \$11.6 million to the litigation effort against Colorado. This funding history almost exactly matches my tenure in the legislature and I am pleased to acknowledge that as a member of the Ways and Means Committee, I have listened to twelve briefings on this case and voted for the appropriation necessary to carry forward the suit all twelve years.

Now appears Substitute for HB 2613 which seems to me to run counter to what I had thought would be the most basic requirement for fairness - repayment of the State General Fund for litigation proceeds out of the first money received. Apparently even the bill's drafters recognized the importance of paying back those who funded the litigation because page 1, lines 24-27 take special care to pay back private companies who provided the first few dollars to get this lawsuit started. Why the taxpayers of Kansas and their State General Fund are treated less well remains something of a mystery. Yes, I am aware that according to *the bill, the*

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litigation fund could revert to the State General Fund. That is far in the future.

I also find fault with other parts of this bill which would divert monies to a new Water Conservation Project Fund and eventually to the State Water Plan Fund. Indeed this fund, which required \$6 million of State General Fund and \$2 million of EDIF each year, is an example of how segregating funds can sometimes distort priorities. None of the apparent planned uses of the Water Conservation Project Fund is "bad" nor is the present Water Plan Fund prohibited from spending money on them. The problem is that they have not made it to the top of the priority heap. We, in our wisdom have simply chosen to put things like Hillsdale State Park and Weather Modification before the<sup>se</sup> projects.

Mr. Chairman, I understand the desire to put some of these monies back into the area damaged by Colorado's water diversion, but let's do it by some other means than a slush fund that will almost certainly lead to spending on things which have not had to stand the appropriate tests of competition.

But most importantly, please do not do anything which prevents the immediate reimbursement of the State General Fund for the costs of litigation.

March 12, 1996

M E M O

To: The Senate Energy and Natural Resources Committee

Re: Written testimony presented on behalf of The  
Associated Ditches of Kansas in regards to  
Substitute for House Bill #2613

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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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.

4. It is essential that a portion of the money that may be credited to the fund be ear marked for the continued monitoring and enforcement of Colorado's compliance with the Arkansas River Compact.

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

Thank you.

*Henry Sillan Jr.*  
*Pres, Assoc. Ditches*

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.

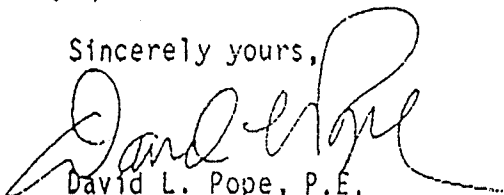
As I indicated on the telephone, timing is very important since funds are needed at this time to continue litigation. Thank you very much for your support.

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

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

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

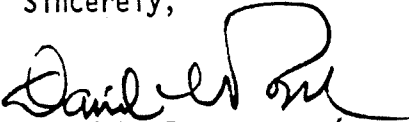
Dear Irvin:

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



# 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

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  
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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



# 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

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

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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

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

Dear Bill:

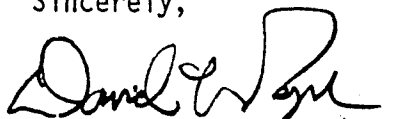
I am writing to extend my personal gratitude to you on behalf of the state of Kansas for the \$1,000 you personally contributed to support the litigation in Kansas v. Colorado, Original No. 105.

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



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GARY L. HALL, Acting Secretary

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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

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

TESTIMONY IN SUPPORT

OF

SUBSTITUTE FOR HOUSE BILLS 2613

by

John W. Campbell  
Senior Deputy Attorney General  
March 12, 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 Substitute for House Bill 2613.

Last year, the Supreme Court found that the wrongful actions of Colorado had denied Kansas its rightful share of the Arkansas River. 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. Substitute for House Bill 2613 will provide the means to use any moneys awarded in the Kansas v. Colorado case for the redress past damages and even more importantly prevent future harm to Kansans.

Substitute for HB 2613 would establish an interstate water litigation fund. This

Senate Energy & Natural Res.  
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Attachment 5



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 will show to others that Kansas is serious when it comes to protecting our interstate water rights.

Other states will not give Kansas 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.

Substitute for HB 2613 is a good bill that will be of help to those most harmed by Colorado. Even better the bill may prevent others from being harmed in the future.

The Attorney General urges the committee to adopt Substitute for House Bill 2613.

**Testimony**  
**of the**  
**Southwest Kansas Groundwater Management District**  
**offered before the**  
**Senate Energy and Natural Resources Committee**  
**regarding**  
**Substitute House Bill No. 2613**  
**on**  
**March 12, 1996**  
**by**  
**Steven K. Frost, Executive Director**

Senate Energy & Natural Res.  
March 12, 1996  
Attachment 6

Chairman Sallee and Associate Committee Members,

The District appreciates the opportunity to offer testimony on the proposal 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 of the Supreme Court, and testified in behalf of the State of Kansas during the course of that trial on several occasions. I am sincerely sorry I cannot be with you today.

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?

Two things are for certain.

1. There will never be any more water than there is today (without importation), and
2. The value of the water will only become greater than it is today.

I would like to qualify my remarks about the article of proposed legislation by saying, that "any recovery of potential damages realized 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.

**It is absolutely essential to reinvest any potential recovery of economic damages in the area where the damage was incurred.** The District respectfully begs you to consider that these reparations are rightfully owed to the people of Southwest Kansas, and are not appropriate for the development of other litigation funds or for inclusion in general State Water Plan Fund projects.

The District recognizes and strongly endorses the strategic intent of 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.

However, 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 and only for the areas which have been economically impacted by the deprivations. This is not to say the District is opposed to the establishment of a prospective litigation fund.

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.

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