

Approved: 2-7-97

Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on January 28, 1997 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Legislative Research Department
Kathy Porter, Legislative Research Department
Mark Burenheide, Legislative Research Department
Norman Furse, Revisor of Statutes
Michael Corrigan, Revisor of Statutes
Judy Bromich, Administrative Assistant
Janet Henning, Committee Secretary

Conferees appearing before the committee: Russell Mills, Fiscal Analyst,
Kansas Legislative Research Department
Steve Williams, Secretary, Wildlife and Parks
Amelia McIntyre, Legal Counsel, Wildlife and Parks

Others attending: See attached list

Senator Ranson moved, Senator Feleciano seconded, that bill draft 7 RS 0472 be introduced as requested by Senator Ranson. The motion carried on a voice vote.

SB 43: Appropriations for FY97, supplemental appropriations for Department of Wildlife and Parks

Russell Mills, Fiscal Analyst, Kansas Legislative Research Department, appeared before the Committee to explain **SB 43** which is a State General Fund appropriation bill for \$8.2 million. This is for a payment to the federal government as the state's share of construction costs of El Dorado State Park. As a result of non-payment by the State of Kansas for its share of the construction cost, the Corps of Engineers has now indicated it will consider legal proceedings against the State.

Mr. Mills informed the Committee a post audit report was authorized by the House Appropriations and Senate Ways and Means in an attempt to determine the actual liability obligations for the state. The post audit report concluded the state has a financial obligation to pay its share of development costs incurred at El Dorado. Mr. Mills responded to questions from the Committee by stating the \$8.2 million is a negotiated figure and would meet the obligations and requirements set forth by the Corps of Engineers.

Steve Williams, Secretary, Wildlife and Parks, appeared before the Committee in support of **SB 43** and explained to the Committee this project began in 1972 when the Kansas Legislature passed **SB 649** giving authority to the then Parks and Resources Authority to acquire land for recreational facilities, specifically El Dorado State Park. In response to a question if **SB 649** violated provisions of the state's constitution regarding obligating future years credit, Mr. Williams responded that the Attorney General's Office rendered an opinion that it did not violate the state's constitution. The Kansas Parks and Resources Authority and the Army Corps of Engineers entered into a contract to develop recreational facilities at El Dorado and the estimate for the project was approximately \$4.3 million. Between 1989 -1992, there were discussions between the Corps of Engineers and Parks and Resources Authority to arrive at an amount due. During this time period, the state put money into the development of facilities and the Corps of Engineers originally paid for this overall project. As bills became due, the cost was split 50-50 between the State of Kansas and the Corps of Engineers. The state put some of its own money into the project and this was considered "in-kind credit" toward the total project. The final figure for this project was approximately \$18.4 million. The increase was due primarily to the supplements to the contract during the construction phase.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on January 28, 1997.

Mr. Williams told the Committee that as early as 1993, the Corps of Engineers had notified Wildlife and Parks that failure to meet this obligation could result in the Department of Justice bringing a lawsuit against the State of Kansas. In the time period of 1993-1995, there were unresolved issues between the Corps and the Wildlife and Parks relating to costs and the department did an informal audit on its own. Because of the state's financial situation, the Governor requested some leeway with the Corps so the state's budget could absorb the cost associated with fulfilling the obligation. In April, 1996, an audit was conducted and the Legislative Post Audit could best document the State of Kansas' obligation was \$8.5 million. Negotiations were started and the obligation was lowered to \$8.2 million always with the caveat it would have to receive Legislative approval. Mr. Williams stated if the State of Kansas does not fulfill this obligation, there is the possibility of being placed in high risk for future federal funds.

In response to questions from the Committee, Mr. Williams stated it was his feeling this payment would fulfill the obligation of agreement to the Corps of Engineers and the audit was conducted as accurately as possible. Mr. Williams also stated this obligation is to be settled by May 30, 1997. In response to questions from Senator Petty, Mr. Williams defined the term of "emergency" as considerable concern of this matter going to the Department of Justice and a possible lawsuit.

Ms. Amelia McIntyre, Legal Counsel, Wildlife and Parks, spoke in support of **SB 43** and explained to the Committee the negotiations of the settlement with the Corps of Engineers (Attachment 1). Ms. McIntyre told the Committee that construction period interest has been included from the date the Corps incurred the item to 1988 when the facility was opened to the public. Regarding the question as to whether or not they were collecting interest and penalties, it was reported that the negotiating team for the State of Kansas was able to negotiate an elimination of penalties. Ms. McIntyre stated that one of the things anticipated in a suit brought by the Justice Department is for prejudgment interest from the period of 1988 until they collect and this could be another substantial figure not reflected in the documentation provided (Attachment 1-3).

The negotiation started from the basis of the Legislative Post Audit determined amount which was approximately \$8.5 million. This amount was reduced by \$374,547. Ms. McIntyre told the Committee that a "good faith" letter (Attachment 1-2) had been received from the Corps of Engineer's Office, Tulsa, Oklahoma for payment by May 30, 1997 in the amount of \$8,170,755.09.

Senator Petty requested information regarding the initial agreement where there would be a 35 year payout. Ms. McIntyre responded that during the Finney administration there was a discussion between the Corps, the Governor's Office, and Wildlife and Parks office trying to set up an amortization schedule. The Corps was somewhat skeptical about the credibility on an amortization. An offer was made in November, 1994 at a discounted present value which was denied.

Ms McIntyre stated that if the state would go to an installment basis, it is doubtful this proposed settlement amount would be satisfactory.

Senator Petty stated that it was her understanding that the State was at a disadvantage because the State had not provided any evidence of a "good faith" effort. Ms. McIntyre stated the negotiations were in the hands of the Corps.

Senator Morris inquired as to the amount charged for supervision and administration. Mr. Tongier and Ms. McIntyre both stated the time which was charged was the actual time spent on the project.

Ms. McIntyre and Mr. Williams both emphasized to the Committee the concern of the State of Kansas being placed in a high risk category which could affect future funding and projects. To the best of their knowledge, the Wildlife and Parks department is not aware of any other outstanding debt of this magnitude.

Senator Petty expressed concern as to whether all possible options had been reviewed, if there was money available in the Water Plan Fund or if there are other payment options and the "good faith" commitment. Senator Petty also expressed concern of the "emergency" nature of the payment.

Senator Kerr advised the Committee that **SB 43** would be held in Committee until Wednesday, January 28 for further study by Senator Petty.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS, Room 123-S Statehouse, at 11:00 a.m. on January 28, 1997.

It was requested by Senator Salisbury to amend the January 23 minutes to read as follows:

In response to concerns, Senator Salisbury, a member of the Budget Committee, commented that the Budget Committee did consider a split budget but the Budget Director did not convey to the Committee opposition to budgeting on a biennial basis for all agencies if given sufficient lead time.

It was moved by Senator Salisbury and seconded by Senator Downey that the minutes of January 22 and January 23 be approved as amended. The motion carried on a voice vote.

The meeting was adjourned at 12:00 p.m.

The next meeting is scheduled for January 29, 1997.



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



Memorandum

To: Senate Ways and Means Committee
From: Amelia J. McIntyre, Legal Counsel
Re: El Dorado State Park Recreational Development Repayment Obligation / S.B. No. 43
Date: January 27, 1997

In an effort to provide additional background to the Senate Committee on Ways and Means with respect to the repayment of the State's portion of the recreational development costs of El Dorado State Park, we wanted to share with you the basis for the settlement reached with the U.S. Army Corps of Engineers ("Corps"). The settlement is reflected in Senate Bill No. 43. The settlement has the support of Governor Graves, and the Governor's Budget Report has provided for the settlement amount.

The Corps agreed by letter dated December 2, 1996, a lump sum payment of \$8,170,755.09, would repay the non-Federal costs for recreation development at El Dorado Lake. A copy of such letter is attached for your further reference. The repayment may be made anytime up to May 30, 1997. The lump sum settlement payment is broken out on a chart prepared by the Corps which is also attached. The bottom line reduction between the amount deemed owed by the Legislative Division of Post Audit in April 1996 (which essentially was the beginning point of negotiation) was \$374,547. The key components making up that difference were:

- Lands and Damages were reduced to reflect the lack of development of the Lost Lakes area. There are no plans for development.
- Engineering, Design, Supervision, and Administration costs were increased to reflect costs incurred by the Department during construction. These additional development costs (totaling approximately \$344,000) increased the total costs, of which the department would pay 50%, however, they also increased our credit for work-in-kind (credited at 100%).
- The negotiating team was successful in eliminating the late payment interest that would have cost the state approximately \$95,000.

A chart highlighting those differences is also attached.

cc: Secretary Steve Williams
Lee Thompson, Esq., Faxed
Brent Anderson, Counsel to the Governor
Jamie Clover Adams, Governor's Legislative Liaison

Senate Ways and Means Committee

Date 1-28-97

Attachment # 1

8503-01



DEPARTMENT OF THE ARMY
TULSA DISTRICT, CORPS OF ENGINEERS
P. O. BOX 81
TULSA, OKLAHOMA 74121-0081

DEC 2 1996

DEC 5 1996

Triplett, Woolf & Garretson

REPLY TO
ATTENTION OF:

Office of Counsel

SUBJECT: El Dorado Lake, Kansas Contract No. DACW56-72-G-0221

Mr. Lee Thompson
Triplett, Woolf & Garretson, LLP
Centre City Plaza
151 North Main, Suite 800
Wichita, KS 67202-1409

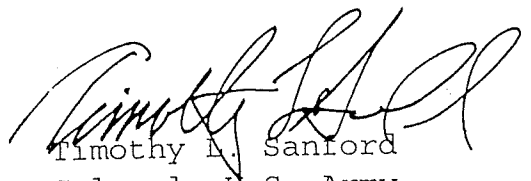
Dear Mr. Thompson:

This letter is in response to your letters of July 31, 1996, September 11, 1996, and October 21, 1996, Ms. Amelia McIntyre's letter of September 30, 1996, and the meeting held with my staff on September 27, 1996, at the Tulsa District Office. I appreciate your efforts to resolve this serious issue.

You requested May 30, 1997 as the date for repayment of the non-Federal costs for recreation development at El Dorado Lake because funds for the lump sum payment will, if appropriated by the Kansas Legislature, be appropriated in the legislative session which ends in April 1997. For purposes of the lump sum payment, I agree that the repayment may be made on or before May 30, 1997. As I stated in my letter of October 9, 1996, the lump sum payment of \$8,170,755.09 will repay the non-Federal costs for recreation development at El Dorado Lake.

If you have further questions regarding this matter, please contact Ms. Kay Hoover at 918-669-7572 or 7178.

Sincerely,


Timothy L. Sanford
Colonel, U.S. Army
District Engineer

CONTRACT DACW56-72-C-0221
RECREATION DEVELOPMENT
EL DORADO LAKE, KANSAS

	Initial Federal	Cost Non-Federal	Interest During Construction	Totals
Lands & Damages	\$ 458,132.00		\$ 171,181.11	\$ 629,313.11
Recreation Facilities	13,261,029.05	\$ 889,828.13	1,027,584.77	15,178,441.95
Engineering & Design	1,461,905.28	164,186.00	158,005.81	1,784,097.09
Supervision & Administration	664,513.96	180,311.72	92,470.21	937,295.89
Totals	\$15,845,580.29	\$1,234,325.85	\$ 1,449,241.90	\$ 18,529,148.04
Total Non-Federal Allocation (50% of Total Cost of Recreation):				9,264,574.02
Total Credit for Work-in-Kind				1,093,818.93
Total Remaining Non-Federal Costs				\$ 8,170,755.09

El Dorado State Park - Recreation Development Costs
Preliminary and Negotiated Totals - 9/27/96

Cost Category	Initial Federal	Cost Non-Federal	Interest during Construction	Preliminary Totals	Negotiated Deviation	Negotiated Totals
Lands and Damages	\$672,121.00		\$171,181.11	\$843,302.11	(\$213,989.00)	\$629,313.11
Recreation Facilities	\$13,261,029.05	\$889,828.13	\$1,027,584.77	\$15,178,441.95	\$164,186.00	\$15,178,441.95
Engineering & Design	\$1,461,905.28		\$158,005.81	\$1,619,911.09	\$180,311.72	\$1,784,097.09
Supervision & Admin	\$664,513.96		\$92,470.21	\$756,984.17	\$180,311.72	\$937,295.89
Total Cost	\$16,059,569.29	\$889,828.13	\$1,449,241.90	\$18,398,639.32	\$130,508.72	\$18,529,148.04
Total Non-Federal Allocation (50% of total cost)				\$9,199,319.66	\$65,254.36	\$9,264,574.02
Total Credit for Work-In-Kind				(\$749,321.25)	(\$344,497.68)	(\$1,093,818.93)
Total Late Payment Interest (1992 to Aug 1996)				\$95,303.90	(\$95,303.90)	\$0.00
Total Remaining Non-Federal Costs (State Obligation)				\$8,545,302.31	(\$374,547.22)	\$8,170,755.09

Note:
Preliminary totals from Legislative Post Audit Committee (LPA 96-50, April 1996)