

Approved: 2-3-99
~~1-27-99~~
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:00 a.m. on January 27, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Pugh who was excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Edward R. (Woody) Moses, Kansas Cement Council
Carla Stovall, Attorney General
Don Pitts, Assistant Attorney General
Ed Schaub, Western Resources, Inc.

Others attending:

See attached list.

A motion was made by Senator Vratil, and seconded by Senator Morris to approved the minutes of January 26. The motion carried.

Chairperson Corbin called on Woody Moses to explain his bill proposal.

Edward R. (Woody) Moses, Kansas Cement Council, said they were requesting a bill to amend the statutes concerning the closure, filling or covering of abandoned wells and mines. The statute has had very little activity since 1923. The overriding authority for closures is vested with Kansas State Conservation Commission, Kansas Department of Health and Environment or the Kansas Division of Water Resources. If this legislation was adopted it would clarify for their industry who has the regulating authority. Senator Morris moved to have the bill introduced, and Senator Vratil seconded the motion. The motion carried.

Mr. Moses said the Kansas Cement Council was also representing a cement plant in southeast Kansas that collects and burns hazardous waste as a part of their process. In 1987 - 1989 when this plant was started dedicated fees were not popular and the fees have flowed into the general fund. The legislation they are requesting would amend this and they would be allowed to capture these fee funds to be used by their industry. Senator Goodwin moved to have the bill introduced, and Senator Morris seconded the motion. The motion carried.

Chairperson Corbin said Senator Steffes had asked that a bill be introduced that would allow Water District #2 to increase their tax levy. Senator Biggs moved to have the bill introduced, and Senator Goodwin seconded the motion. The motion carried.

Senator Morris ask to have legislation introduced that would amend the statutes so that rules and regulations concerning water issues in the Department of Agriculture and the Department of Water Resources Agencies would be sent to the Secretary of Agriculture for review and then forward to the Department of Administration. Senator Morris moved to introduce the legislation. Senator Huelskamp seconded the motion, and the motion carried.

Attorney General Carla Stovall present testimony regarding the status of Kansas' enforcement of is interstate water rights pursuant to Compact 1 will focus on Kansas' enforcement of the Arkansas River Compact with Colorado through Kansas vs. Colorado, and the Republican River Compact through Kansas vs Nebraska. The General said the Kansas vs Nebraska lawsuit had been accepted by the Supreme Court

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on January 27, 1999.

and the Governor has included the needed funds in his budget (Attachment 1). General Stovall responded questions.

Don Pitts, Assistant Attorney General responding to a question regarding the increase in wells being dug in Nebraska. He said in 1996 there were 143 permits issued for new wells, in 1997 there were 243 permits and in 1998 through September there were 148 permits granted. A significant number of these permits were issued in the Republican River Basin.

Referring to the Low Level Nuclear Waste Compact Attorney General Stovall stated Nebraska has had a change of heart and they no longer want to be the host for the Low Level Nuclear Waste Site. Former Secretary of Health and Environment James O'Conner continues to be Kansas representative on the Compact Commission. General Stovall introduced M. J. Willoughby, Assistant Attorney General who attends the Commission meetings. General Stovall said Kansas has great concern about what will happen if Nebraska does not become the host state for the Low Level Nuclear Waste Site, as Kansas has more appropriate locations for a low level waste site than any other state in the compact.

Ed Schaub, Western Resources, Inc., offered some clarify remarks regarding the dollar amount paid by Western Resources.

The meeting adjourned at 8:41 a.m.

The next meeting will be held on February 2, 1999.

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
TESTIMONY REGARDING STATUS OF
KANSAS ENFORCEMENT OF INTERSTATE WATER RIGHTS

by

Carla Stovall

Attorney General

January 27, 1999

Mr. Chairman, members of the committee, I am here today at your request to present testimony regarding the status of Kansas' enforcement of its interstate water rights pursuant to Compact. I will focus on Kansas' enforcement of the Arkansas River Compact with Colorado through Kansas vs. Colorado, Original No. 105 and the Republican River Compact through Kansas vs. Nebraska, Original No. 126.

Kansas v. Nebraska and Colorado, No. 126, Original

On May 26, 1998, the State of Kansas filed a Motion for Leave to File Bill of Complaint, Bill of Complaint, and Brief in Support of Motion for Leave to File Bill of Complaint against the State of Nebraska and the State of Colorado in the United States Supreme Court. Colorado was named as a party because it is a signatory to the Compact, but no relief was requested against the State of Colorado.

Kansas, in its Bill of Complaint, requested the Court to award the State of Kansas all damages and other relief which were appropriate to fully remedy the injuries suffered by the State of Kansas by reason of the State of Nebraska's past and continuing violations of the Republican River Compact, and to issue a decree commanding the State of Nebraska to deliver the waters of the Republican River in accordance with the provisions of the Republican River Compact in the future.

In July 1998, the State of Nebraska filed its Brief in Reply. In August 1998, Kansas filed its reply. In August 1998, Nebraska also filed a Motion for Leave to File Sur-Reply to Kansas' Reply to Nebraska's Brief in Opposition and Sur-Reply. In September, Kansas filed its Response to Nebraska's Motion for Leave to File Sur-Reply.

On October 5, 1998, the United States Supreme Court issued an Order which did not rule on Kansas' motion for leave to file, nor any other motion before it, but rather simply invited, "The Solicitor General ... to file a Brief expressing the views of the United States."

In late December 1998 the United States filed a brief, as Amicus Curiae, concluding that, "The Motion of the State of Kansas for leave to file a complaint should be granted." However, it also concluded that, "The Court may wish to grant the State of Nebraska leave to file a motion to dismiss" in the nature of a motion under Rule 12(b)(6), limited to the question whether, as a matter of law, the Republican River Compact limits Nebraska's right to consume groundwater.

On January 19, 1999, the Court issued an order granting Kansas' motion for leave to file and ordered the State of Nebraska to file its answer within sixty days.

Kansas v. Colorado, No. 105, Original

This case was filed by the State of Kansas on December 16, 1985 against the State of Colorado in the original jurisdiction of the United States Supreme Court to enforce the terms of the Arkansas River Compact.

On May 15, 1995, in an opinion by Chief Justice Rehnquist, the United States Supreme Court unanimously affirmed the Special Master's Final Report, which held that the State of Colorado was liable for violating Article IV-D of the Arkansas River Compact by allowing increased post-compact well pumping in Colorado. The Court has since ruled that Colorado has depleted the usable state line flows of the Arkansas River, in violation of the Arkansas River Compact, by 420,070 acre feet during the period 1950 through 1994.

An additional trial segment was held in May, 1998 on the amount of Colorado depletions to usable state line flow during the period 1995 through 1996. On January 11, 1999 the Special Master issued an order finding stateline depletions for 1995-1996 period in the amount of approximately 7900 acre feet. This brings the total amount of stateline depletions caused by Colorado's post-compact well pumping for the period from 1950 - 1996 to 427,970 acre feet.

Some of the issues that remain to be decided include:

1. Whether Colorado will repay Kansas for past damages in water or in money;
 2. Whether Colorado owes Kansas past or future interest on water or money damages;
- and
3. Whether Colorado regulations and actions are sufficient to prevent future compact violations by Colorado.

A trial segment will be scheduled this year to consider the form and amount of remedy to Kansas.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

January 19, 1999

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

John B. Draper
Special Assistant Attorney General
Montgomery & Andrews
P.O. Box 2307
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**RE: Kansas v. Nebraska and Colorado
No. 126, Original**

Dear Mr. Draper:

The Court today entered the following order in the above-entitled case:

"The motion for leave to file a bill of complaint is granted. The motion of Nebraska for leave to file a sur-reply brief is denied. Defendants are allowed 60 days within which to file an answer."

Very truly yours,

WILLIAM K. SUTER, Clerk

By



Francis J. Lorson
Chief Deputy Clerk

cc: (Service List)

