

Approved: January 31, 2000
Date

MINUTES OF THE SENATE WAYS & MEANS COMMITTEE.

The meeting was called to order by Chairperson Dave Kerr at 11:00 a.m. on January 26, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Alan Conroy, Chief Fiscal Analyst, KLRD
Norman Furse, Revisor of Statutes
Michael Corrigan, Asst. Revisor of Statutes
Rae Anne Davis, KS Legislative Research Department
Debra Hollon, KS Legislative Research Department
Judy Bromich, Administrative Assistant to the Chairman
Ronda Miller, Committee Secretary

Conferees appearing before the committee:

Attorney General Carla Stovall
Peggy Hanna, Assistant State Treasurer

Others attending: See attached list

The Chairman welcomed the Attorney General who appeared before the Committee to review written testimony regarding the Kansas vs. Colorado water case. (Attachment 1) She highlighted the kinds of damages Kansas is seeking and told members that the calculation of losses to Kansas farmers and the state goes back to 1950. She reviewed the total of all four categories of damages (Attachment 1-3), but cautioned that there is no guarantee that the Special Master will award damage on the interest figures or that the Supreme Court will affirm it. She reminded the Committee that Kansas originally filed the suit to make Colorado comply with the contract and did not ask for monetary compensation until after the Texas vs. New Mexico settlement in 1987.

Attorney General Stovall told the Committee that the damages phase of the trial should be complete by early February. She said that Colorado claims that if they have to pay, the maximum they would agree to is \$3 million and they would prefer paying Kansas back with water over a 15 year period. She indicated that she is hopeful that the Supreme Court will make its final ruling by the end of calendar year 2001. In answer to a question, the Attorney General stated that the agency estimates \$16 million will be expended to defend the case to its conclusion. She responded to an inquiry by stating that the agency will ask for expenses associated with the case, but the Supreme Court has never ruled on an actual amount of money for prejudgment interest and attorney fees.

There was some discussion regarding the quality of water that Kansas might receive. The Attorney General stated that neither of the compacts have anything to do with water quality but, should Kansas prevail, the state would have recourse on that issue.

There was some discussion regarding the calculation of damages associated with the erosion of crop production.

Attorney General Stovall provided background information on the Kansas vs. Nebraska case which was filed in June of 1998. She stated that the issue is groundwater pumping and Nebraska filed a motion to resolve the issue which was argued in Kansas City, Missouri on January 4. She stated that Nebraska maintains that Ogallala and streambed pumping do not count against their allocation, but Kansas and the U.S. government believe that it does. She told members that the Special Master, who was appointed by

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the Supreme Court, is a retired Chief Justice of the Maine Supreme Court and he will issue his report by the end of January. She said that he has scheduled a meeting for the first part of April to set the scheduling for the rest of discovery.

In answer to a question, a representative from the Office of the Attorney General stated that the Governor recommended an appropriation of \$856,000 in FY 2001 for the Nebraska case, in comparison to the agency's request for \$980,000). It was stated that the estimate for this year's expenses for the case is \$640,000 and the agency has spent \$450,000 to date. In answer to a question, Attorney General Stovall stated that it is difficult to predict estimates associated with expenses for defending this case. She responded to a member's inquiry by stating the agency anticipates getting water as a result of this suit, but will also ask for monetary damages.

The Attorney General appealed to Committee members to reconsider recent action taken by the House Appropriations Committee that would allow a defendant to be paid because the Court of Appeals reversed his conviction on a technicality. Her particular concern is that one-third of the money is to come from the Attorney General's budget.

SB 460: Office of state treasurer, designating certain positions in the unclassified service

Ms. Peggy Hanna, Assistant State Treasurer, appeared before the Committee in support of **SB 460** and reviewed her written testimony (Attachment 2). In answer to a question, she stated that employees in the Office of the State Treasurer are supportive of this proposal and that no employees would be laid off. In response to an inquiry, she stated that the main difference to her, as a manager, between classified and unclassified positions is that she can reward performance. It was moved by Senator Ranson and seconded by Senator Lawrence that SB 460 be recommended favorably for passage. The motion carried on a roll call vote.

Senator Salisbury moved and Senator Jordan seconded that the minutes of January 19 and 20 be approved. The motion carried on a voice vote.

A motion was offered by Senator Salmans and seconded by Senator Jordan that bill drafts 9rs 1900 and 9rs 2000 be introduced as requested by Senator Salmans. The motion carried on a voice vote.

The Chairman adjourned the meeting at 12:10 p.m. The next meeting is scheduled for January 27, 2000.

SENATE WAYS & MEANS COMMITTEE GUEST LIST

DATE: January 26, 2000

NAME	REPRESENTING
Bruce Grobel	Ho Co. Comm
John Campbell	AM
Nancy Lindberg	AG
Neil Woermen	AG
Peggy Nanna	State Treasurer's Ofc.
Ron Appletoft	Water DIST No 1 of So Co
D. KEITH MEYERS	KANSAS DEPT. OF ADMINISTRATION
Marc Hamann	Div. of the Budget
Karew Watney	DOA / DBS
Betty Boas	DOA / DBS
Mike Hutches	KS. Gov't. Consulting
Chris Jeff Pollard	Northwest High School JROTC
John McKinley	K. Whipple & Partners
Sten Clark	Senate
BILL Brady	KS Gov't Consulting



State of Kansas

Office of the Attorney General

CARLA J. STOVALL
ATTORNEY GENERAL

MEMORANDUM

TO: Senate Ways and Means Committee

FROM: Carla J. Stovall

DATE: January 26, 2000

RE: Summary of damages in *Kansas v. Colorado*

I have drafted an "executive summary" of the breakdown of our damages in this case. Our primary agricultural economist, Professor Norman Whittlesey, and several others arrived at the following:

Groundwater Pumping Costs Required to Replace Depletions of Usable Stateline Flow in the Canal Service Areas, Stateline to Garden City. Considered in this category are costs associated with the increased use of wells needed to facilitate the requirement of additional pumping. These costs include capital outlay, repair costs, fuel, electronic connect charges, lubrication, power unit maintenance, and well operator labor. Additionally, the opportunity cost (of using money for these necessitated expenditures as opposed to investments, etc.) was also calculated and included in these figures, as was decreased Social Security retirement benefits (based upon lower income taxes paid due to decreased income of the farmer as a result of the depleted water source).

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Attachment # *1*

Consideration of the decreased Social Security benefits is a very novel and “cutting edge” approach to calculating damages. Loss of tax revenue to Kansas state government (based upon lowered income of farmers in the region) was also included in this assessment.

Total Loss Figures: State government: \$79,758; Tax adjusted on-farm loss: \$2,111,775; Interest (on these damages calculated since 1950): \$10,819,939. This amounts to a total of \$13,011,473 for damages in this category.

Groundwater Pumping Costs Imposed by Reduced Regional Groundwater Levels Due to Depletions of Useable Stateline Flows. The aquifer levels under Kansas farms have been reduced by the Colorado violations which has caused Kansas farmers to pump from deeper levels that would have been otherwise unnecessary. Pumping from these lower levels is more expensive than pumping from more shallow water supplies and, hence, this category of damages. These increased expenses are essentially permanent.

Considered in these calculations was the actual increased cost of pumping (based primarily upon fuel costs) and the loss to Kansas state government in the form of lower income taxes collected. These amounts were figured for each year from 1950 to 1998 and from 1999 through 2048 to give a present 1998 value of \$14,089,690 (which includes compound interest).

Crop Production Loss Due to Depletions of Useable Stateline Flows. Calculations were made to determine the lower levels of yield of the crops primarily grown in this area (wheat, sorghum and alfalfa). An additional analysis was made in this section regarding the federal government set-aside program benefits, which were reduced to southwest Kansas farmers because the federal payments for a particular year were based upon crop yields for preceding years. The lower crop yields reduced the amounts the farmers would otherwise have received through these programs. Again, the loss of income tax revenue to state government was also calculated in this category.

Total Loss Figures: State revenue loss: \$155,118; On-farm tax adjusted loss: \$4,349,138; Interest: \$42,837,138. The 1988 present value of these amounts is \$47,342,117.

Secondary Economic Impacts in Kansas from Depletions of Usable Stateline Flows. The preceding three categories represent direct impact damages which form the basis of analysis for the secondary or indirect impact damages. The state economy was injured by the reduction in purchase of consumer goods (*e.g.*, cars, living-room furniture) due to farm families' lowered income in each instance - although the most significant damages occur in the farms that experienced crop losses. The indirect damage calculation had to take into consideration the *benefits* to the Kansas economy by the water shortage (almost a sacrilegious concept!), *e.g.*, increased income for those companies in energy or utilities and those in well digging, supply and maintenance. The income to these businesses and their employees worked to mitigate our secondary impact figures. However, overall, there is a net loss to Kansas in secondary economic impacts.

Total Loss Figures: Direct Losses: \$4,105,931; Indirect Gains: \$543,524; Total economic loss: \$3,562,307.

The total of all four categories of damages based upon these numbers is \$77,677,260. Of that number, \$64,423,437 is represented by interest. [These numbers will be reduced to approximately \$61 million, plus interest. The adjustments have been made necessary by more accurate (but lower) figures representing repair and fuel costs. The calculations will be modified between now and the January segment of trial.] It is absolutely unclear whether the Special Master will award interest on our damage figures. We had several experts of exceptional caliber (including Professor William Sharpe of Stanford who won the Nobel Prize for Economics in 1990) testify regarding the essential nature of interest to adequately compensate an injured party. The essence of their testimony was that if monetary

damages are awarded without an interest component, the plaintiff is not made whole and remains injured while the defendant enjoys an undeserved financial reward.

As you may remember, the issue of monetary damages in the *Kansas v. Colorado* case is a somewhat recent development. When the suit was initially filed in 1985 Kansas was simply asking for the court to enforce the compact. It was not until *Texas v. New Mexico* in 1987 that the United States Supreme Court approved the option of awarding monetary damages to a state as the result of another state's breach of a compact. We subsequently amended our claim to ask for monetary damages. Although the High Court has approved the concept of monetary damages, it is not an indication the Special Master will award them or that the Court would overturn him if he did not.

The Special Master in his report of last fall opened the door for Kansas to ask for prejudgment interest (in either money or water) which is an issue which has *never* before been submitted to the United States Supreme Court in a case between states. You may remember that, while Kansas and Colorado briefed this issue to the Supreme Court (with Kansas agreeing with the Master and Colorado, not unexpectedly, disagreeing) the Court punted the issue with the idea that it could be raised after the Master makes a actual finding on damages. If he doesn't order pre-judgment interest there would have been no reason for the Court to rule on it. As I told you in my earlier letter on this topic, Colorado intends to argue that our damages should be repaid in approximately 320,000 acre feet of water over a period of 15 years!



STATE OF KANSAS

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January 26, 2000

Senate Ways and Means Committee
State Capitol Building Room 123-S

RE: Senate Bill 460

Chairman Kerr and Members of the Senate Ways and Means Committee:

Thank you for the opportunity to submit comments on Senate Bill 460 on behalf of State Treasurer Tim Shallenburger. I am Peggy Hanna, Assistant State Treasurer.

We are requesting changes to the personnel statutes that would allow the Treasurer's office through attrition to transition from a majority of staff in the classified service to a majority of staff in the unclassified service. This would be consistent with other statewide elected officials' offices that are either totally unclassified or mostly unclassified. The Treasurer's office is currently approved for 48.5 FTE of which 12 (including the Treasurer) are in the unclassified service.

At the instruction of the Department of Administration and in anticipation of the passage of this proposed legislation, we currently have placed four staff members in temporary special projects positions that are "backed up" by vacant unfunded classified positions. We were told this was the best method to expand the number of unclassified positions. One of the staff members was on staff when Treasurer Shallenburger took office and three of them are new hires. The positions range from mail clerk to public relations officer.

We think the requested change would give the elected official more flexibility in changing the direction of the agency. The change would also add the ability to compensate high performers for creative thinking and above average performance instead of being locked into the pay matrix with its automatic step movements for average work performance.

In the long run, it is expected that the agency could work more efficiently with fewer employees, while the employees could be compensated according to their work performance.

Thank you for your attention today and your consideration of these changes.

Senate Ways and Means Committee

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Attachment # *2*