

Approved: 2-7-94  
Date

## MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on February 1, 1994 in Room 423-S of the Capitol.

All members were present or excused:

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

Conferees appearing before the committee:

Terry Duvall, Policy Consultant and Staff Assistant, Kansas Water Office  
Steve Hurst, Kansas Water Office

Others attending: See attached list

Terry Duvall, Policy Consultant, Kansas Water Office, appeared to present a briefing on Federal Storage Purchase Initiative for water storage in Kansas reservoirs. Attachment 1

Mrs. Duvall covered her written testimony stating the ad hoc committee composed of agencies whose programs are funded through the State Water Plan proposed a three-pronged strategy for storage acquisition.

1. Dedicate sufficient funds from the State Water Plan Fund to cover the principal and interest costs of Milford and Perry lakes and the annual operation and maintenance costs of new state storage.
2. Recommend a one year sales tax to generate sufficient revenue to be used to acquire storage.
3. Recognizing the political distaste for a new tax, recommend use of bonds to acquire the storage with revenue from the State Water Plan Fund and the State General Fund to retire the bonds.

Mrs. Duval told the committee the Governor's budget recommendations did not include funding for the acquisition of additional storage. She also told members the full House had passed HB 2563 which spells out funding sources and the priority in which those funds are to be used to make bond or loan payments for acquisition of storage.

A member questioned whether purchase of this storage would allow state control of releases in such times as were encountered during the 1993 flood. Mrs. Duvall stated this would not give the state any control, that it was strictly in the purview of the Corps of Engineers.

When questioned Mrs. Duval stated her personal preference would be to issue bonds.

A member requested an explanation concerning "reallocation of water quality storage to water supply storage". Mrs. Duval told members that when the federal government built the reservoirs, they allocated a certain amount of storage space in each for flood control, water quality, water supply and sediment pool. When the reservoirs were being built it was thought that the solution to pollution was to add more water. That belief has changed and it is now considered best to treat pollution at its source. Therefore, the Corps has decided they can manage with less water, consequently there is more water for reallocation. A member commented that recently Mrs. Duval had considered the use of idle funds. She stated that in talking to the House Energy and Natural Resources Subcommittee there was some thought to at least use the pool money investment board as

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on February 3, 1994.

an option to get the money needed to make the payment and then utilizing bonding for the actual repayment. Mrs. Duvall stated that the subcommittee had requested her to draw four scenarios:

- 1) The amount of storage shown in the attachment which would be the bare minimum.
- 2) A second scenario would include Marion Lake
- 3) A third scenario would adding back in Elk City
- 4) The final scenario would be to add in all storage possible in the system.

A member questioned whether there had ever been consideration of including Kanopolis. Mrs. Duvall stated there has been some interest by the Corps of Engineers to consider a similar deal on Kanopolis storage and a study was currently in progress.

A member asked Mrs. Duvall whether she thought the money could come from the State Water Fund. She replied about \$6,000,000 a year could be available, the total needed being about \$16,000,000.

A member questioned the difference between contracts with Milford and Perry Reservoirs and Melvern and Pamona. Mrs. Duvall stated the storage at Milford and Perry reservoirs has not been called into service. A small contract with Melvern and Pamona has been negotiated to furnish water for Osage City and Burlingame.

A member questioned the use of the water funds for about two years and whether there was anything in that time span that would be considered an emergency. Steve Hurst, Director, Kansas Water Office, stated that from discussion it seemed there were no emergencies but there were major concerns that the ongoing programs of various agencies could not afford deferral for a period of a one to three years.

There was further discussion concerning the Republican River Compact and it was stated that Water Plan funds were available for studies and further work toward the compact.

Senator Emert made a motion to approve the minutes for January 25, 26, 27 and 28, 1994. Senator Lawrence seconded the motion and the motion carried.

The meeting adjourned at 8:45 a.m.

The next meeting is scheduled for February 3, 1994.

## GUEST LIST

## SENATE COMMITTEE ON ENERGY &amp; NATURAL RESOURCES

DATE February 1, 1994(PLEASE PRINT)  
NAME AND ADDRESSTERRY DUVALSteve HurstKathy LewisLarry ShannonLeland E. RolpBob TottenED SCHAUB

ORGANIZATION

KS WATER OFFICE" " "KOHETopeka - KSAWWADWR - Ka Dept of Agric.Ks Contractors AssociationWESTERN RESOURCES

**Testimony to the  
Senate Energy and Natural Resources Committee  
February 1, 1994**

**By  
Terry Duvall, Policy Consultant and Staff Assistant  
Kansas Water Office**

**Briefing on Federal Storage Purchase Initiative**

Thank you, Mr. Chairman and members of the committee, for this opportunity to update you on the issue of acquisition of additional storage in federal reservoirs in Kansas.

The State of Kansas currently holds contracts negotiated between the years 1974 and 1991 for water supply storage space in ten major reservoirs in the eastern ne-third of the state. The lakes are:

Acre-feet of storage

Big Hill	25,700
Clinton	89,200
Council Grove	24,400
Elk City	24,300
Hillsdale	53,000
John Redmond	34,900
Marion	38,300
Milford	300,000
Perry	150,000
Tuttle Creek	27,500

The first nine contracts were negotiated specifically under the provisions of the 1958 Federal Water Supply Act. In some cases, the contracts allow the State to call the storage into service incrementally. In other words the State has been allowed to defer payment on some of the storage until it was ready to call the storage into use. The water supply in these lakes has generally been utilized under the State Water Marketing Program. In order to participate in the Water Marketing Program, municipal and industrial water users are required to sign long-term (up to 40 year) contracts with the state agreeing to repay the state for costs of providing the water; pay for at least 50 percent of the contracted water each year, regardless of their actual use; and pay for water lost in transit from the dam to the purchaser's intake.

The state recognized that the marketing program might not meet the needs of many municipal and industrial water users who hold valid appropriation rights to the "natural flow" of streams below reservoirs. Their water rights might be totally adequate during times of normal streamflow, but without supplementation from up stream storage in reservoirs, their supply could quickly become inadequate during droughts. In recognition of the shortcomings of the Water

Marketing Program to provide temporary supplemental releases without a long-term financial obligation from downstream municipal and industrial users, the state developed the Water Assurance Program. Gaining access to storage in ALL the major reservoirs within each river basin, at affordable costs, was key to development of the Water Assurance Program. Following extensive negotiations with the federal government, Kansas signed a Memorandum of Understanding (MOU) with the Corps of Engineers in 1985 which gave the state access to storage reallocated from water quality to water supply storage at original construction costs and original interest rates.

The tenth contract (Tuttle Creek), negotiated in 1991, was negotiated under the provisions of the 1985 MOU. The major difference between the MOU purchase and the contracts signed earlier was that the State was not given the option to pay the capital construction costs off over 50 years. The capital costs must be paid in one lump sum within 30 days of conclusion of contract negotiations.

The real importance of the 1985 MOU, however, lies in the fact that it provides for reallocation of water quality storage to water supply storage in certain reservoirs which heretofore were unavailable to the State to use for water supply purposes: Melvern, Pomona and Tuttle Creek. The MOU will expire in June of 1996, leaving the State a "window of opportunity" to take advantage of this offer from the federal government prior to that date.

An additional issue of immediate importance relates to the ability of the state to control releases from water supply storage space which the state has not yet "called into service" in some of the major federal reservoirs. Releases of water supply from the Kansas River reservoirs to support navigation on the Missouri River during the drought in 1991 brought this issue to the forefront. Control of additional storage space would also give the state a larger voice in decisions which might be made by the Environmental Protection Agency regarding water quality.

The 1993 Legislature passed two bills directing the Kansas Water Office and the Kansas Water Authority to examine the issue of acquisition of additional storage space. One directed the Kansas Water Office to expeditiously acquire the available storage in Tuttle Creek, Melvern and Pomona lakes utilizing bonds or whatever financing means available. The second called for the Kansas Water Authority to study options for acquiring storage in the other lakes covered by the MOU.

During the summer of 1993, the Kansas Water Authority established an ad hoc committee to address the issue of acquisition. The ad hoc committee examined the amount of storage available, its associated capital costs, the costs of ongoing operation and maintenance for that storage and potential revenue sources to meet bond payment obligations.

Early in the ad hoc committee's review, it was apparent that complete acquisition might not be possible due to cost considerations. The committee asked the staff of the Kansas Water Office to remove all costs which were likely to be picked up by local users (Water Marketing customers or Assurance Districts) prior to 1996. Additionally, the committee asked for advice regarding

reservoirs which might be eliminated from consideration of purchase due to their marginal benefits. Storage in Marion Lake was deemed to have insufficient water available for the cost of the added storage, and storage in Elk City Lake was in a location where there appears little likelihood of ever needing the additional water. Therefore, storage in either reservoir was not targeted for acquisition.

The committee turned to an examination of potential revenue sources for acquiring the storage. In July the ad hoc committee recommended to the Kansas Water Authority that the selected amounts of storage be acquired within the next two fiscal years, purchase outright, using State Water Plan Funds. Such a commitment would have required approximately \$8 million in FY 1995 and \$6 million in FY 1996. The Kansas Water Authority requested state water agencies whose programs are funded through the State Water Plan to indicate with programs or projects could be deferred to provide the necessary funding from the State Water Plan Fund to purchase the storage over the next two fiscal years.

In August the agencies reported back indicating that existing program needs would not lend themselves to effectively free up the necessary money to acquire the storage as outlined by the ad hoc committee. Feedback from Basin Advisory Committees indicated that current needs in implementing other policies of the Kansas Water Plan were too great to allow substantial deferral of State Water Plan funding.

The ad hoc committee went back to the drawing board and drew up a three-pronged strategy for storage acquisition:

1. Dedicate sufficient funds from the State Water Plan Fund to cover the principal and interest costs of Milford and Perry lakes and the annual operation and maintenance costs of new state storage.
2. Recommend a one year sales tax to generate sufficient revenue to be used to acquire storage.
3. Recognizing the political distaste for a new tax, recommend use of bonds to acquire the storage with revenue from the State Water Plan Fund and the State General Fund to retire the bonds.

At its meeting on September 13, 1993, the Kansas Water Authority, following considerable debate and discussion, and with input from the ad hoc committee, comments from state water related agencies and from the 12 basin advisory committees, unanimously recommended the strategy outlined on page 2 and 3 of the Report to the Governor and 1994 Legislature on Recommendations to Implement the State Water Plan for FY 1995. (See attached)

During hearings before the Interim Committee of the House Energy and Natural Resources Committee in September, the Director the Kansas Development Finance Authority (KDFA) noted that loans might be available from idle funds managed by the Pooled Money Investment Board

(PMIB). In follow up investigations of this possibility, it was noted that the Kansas Water Office currently has a \$4 million loan from the PMIB which was made when the original MOU with the Corps was negotiated in 1985. At that time the Legislature directed the PMIB to place a \$4 million loan of idle funds in an escrow account to satisfy the requirements of the MOU. Those moneys are currently in an interest bearing account in the name of the Kansas Water Office. Each year, the Office is required to transfer the interest earned on the \$4 million back to the PMIB. We are further required to repay the \$4 million to the PMIB at the end of the MOU period--July 1, 1996.

In its budget request for FY 1995, the Kansas Water Office requested State General Funds over the next two years to finance the acquisition of additional storage. At the time of budget preparation, we had no way to know what the final recommendations of the Kansas Water Authority might be.

The Governor's budget recommendations did not include funding for the acquisition of additional storage.

The first day of the Legislative session, the House Energy and Natural Resources Committee introduced HB 2563 (copy attached), which spells out funding sources and the priority in which those funds are to be used to make bond or loan payments for the acquisition of storage. HB 2563 has been passed by the full House and has been assigned to the Senate Energy and Natural Resources Committee.

I should note the Chairman of the House Energy and Natural Resources Committee, Carl Holmes, has established a subcommittee to further examine the use of bonds or other forms of financing to accomplish the acquisition of additional storage.

That brings us up to date on this issue. I have attached a table of the estimated updated costs for the acquisition of storage and would be open to any questions from the committee.

The state agencies reported back to the Kansas Water Authority in August and indicated that existing program needs would not lend themselves to effectively free up the necessary money to acquire the storage in line with the ad hoc committee's recommendations. Feedback from the agencies as well as local interests indicated that current needs in implementing other policies of the *Kansas Water Plan* were too great to allow substantial deferral of State Water Plan funding.

In light of this position, the ad hoc committee reconvened and discarded the original ground rules it had worked under. Among the options it considered were to not acquire storage, acquire far less storage than originally recommended, use bonds to acquire storage, seek alternative funds such as the State General Fund, fee increases or dedicated sales taxes or override agency concerns and continue with the original recommendation of use of the State Water Plan Fund.

The ad hoc committee developed a three prong strategy for storage acquisition. First, dedicate sufficient funds from the State Water Plan Fund to cover the principal and interests costs of Milford and Perry reservoirs and the annual operation and maintenance costs of any new state storage. Second, recommend a one year sales tax to generate sufficient revenue to be used in acquiring storage under the Memorandum of Understanding. Finally, recognizing the political distaste for a new tax, recommend use of bonds to acquire the storage under the Memorandum of Understanding with revenue from the State Water Plan Fund and the State General Fund to be used to retire the bonds.

This strategy was presented to the 12 Basin Advisory Committees in September. In general, 10 of the 12 committees favored acquiring the storage and a majority felt the sales tax mechanism was an equitable method to fund such acquisition. The use of bonds was also generally favored, although some committees preferred this method as a fallback option, while others favored it over taxes. The limited use of State Water Plan Fund as outlined by the ad hoc committee was generally supported.

The Kansas Water Authority met on September 13, 1993 to review the ad hoc strategy, the comments from state agencies and the advice from the 12 Basin Advisory Committees. After considerable debate and discussion, the Kansas Water Authority recommended unanimously that the following strategy be forwarded to the Governor and 1994 Legislature:

1) The following amounts of storage should be acquired by the state in Fiscal Years 1995 & 1996:

Lake	Available Storage (AF)	Local Acquisition (AF)	State Acquisition (AF)	Cost of State Acquisition	O&M Cost	Time Frame
Milford	198,350	60,400	137,950	\$304,410/YR (50 yrs)	\$97,800	FY95
Perry	125,000	15,000	110,000	\$339,377/YR (50 yrs)	\$120,700	FY95
Tuttle Creek	22,400	13,850	8,650	\$637,377	\$9,100	FY95
Melvorn	50,000	16,700	33,300	\$4,540,394	\$28,900	FY95
Pomona	32,000	5,000	27,000	\$2,676,806	\$11,900	FY95
John Redmond	20,000 (Est)	2,100	17,900	\$3,782,449	\$215,600	FY96



Lake	Available Storage (AF)	Local Acquisition (AF)	State Acquisition (AF)	Cost of State Acquisition	O&M Cost	Time Frame
Council Grove	15,000 (Est)	5,500	9,500	\$944,015	\$319,800	FY96
Marion	40,000 (Est)	200	0	\$0	\$0	N/A
Elk City	15,000 (Est)	0	0	\$0	\$0	N/A

Note: Cost of Marion storage is estimated to be \$2.78 million and cost of Elk City storage is estimated to be \$ 2.16 million. Operation and maintenance costs are expected to be \$850,000 for FY 97.

2) Dedicate up to \$1.5 million from the State Water Plan Fund for the principal and interest payments for Milford and Perry reservoirs and annual operation and maintenance payments on all storage called into service. Expected use of the fund for these purposes would be \$883,000 in FY 95 and \$1.43 million in FY 96.

3) Use a dedicated sales tax, not to exceed one year in duration, at a sufficient percentage to generate the necessary revenue to purchase the recommended storage under the 1985 Memorandum of Understanding.

4) In the event that the sales tax initiative fails, issue appropriate bonds to pay for the capital cost of storage acquired under the 1985 Memorandum of Understanding and pay principal and interest payments on such bonds in priority order from:

- a) amounts received from contracts under the State Water Plan Storage Act or the State Water Assurance Act
- b) the State Economic Development Initiative Fund
- c) the State General Fund

HOUSE BILL No. 2563

By Committee on Energy and Natural Resources

12-14

11 AN ACT concerning sources of payment of principal and interest on  
12 bonds issued or loans made by the pooled money investment  
13 board to acquire certain conservation water supply storage  
14 capacity.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. (a) The principal of and interest on any bonds issued  
18 by the Kansas development finance authority or any loans made by  
19 the pooled money investment board to acquire conservation water  
20 supply storage capacity in federal reservoirs shall be payable in ac-  
21 cordance with appropriations acts from the following sources:

22 (1) Amounts received under contracts entered into pursuant to  
23 the state water plan storage act or the water assurance program act,  
24 if the water supply storage capacity purchased with the bond or loan  
25 proceeds is to be used to service such contracts;

26 [(2) the state general fund;]

27 ~~(2)~~ [(3)] the state economic development initiatives fund created  
28 by K.S.A. 79-4804 and amendments thereto; [and]

29 ~~(3)~~ the state general fund; and

30 (4) state water plan fund created by K.S.A. 82a-951 and amend-  
31 ments thereto.

32 (b) The sources of payment listed in subsection (a) are listed in  
33 order of the priority which each shall be given as a source of pay-  
34 ment. No payment shall be made from any such source unless the  
35 legislature determines that there are insufficient moneys for payment  
36 from the sources listed preceding such source.

37 Sec. 2. This act shall take effect and be in force from and after  
38 its publication in the statute book.

## PROPOSAL FOR PURCHASE

28-Jan-94

	Acre-Feet of storage purchased	50-yr Amort.	Cost to be Financed	O&M
Milford	198,350	\$381,859		\$89,748
Perry	125,000	\$391,192		\$188,235
Tuttle*	8,650		\$650,650	\$14,971
Melvern*	33,300		4,674,621	\$28,891
Pomona*	27,000		2,804,701	\$11,850
Marion	0		0	\$0
Council Grove*	5,400		\$827,820	\$6,922
John Redmond*	13,300		\$1,064,266	\$31,305
Elk City	0		0	\$0
Big Hill	0		0	\$0
Clinton	0		0	\$0
Hillsdale	0		0	\$0
Total	411,000	\$773,051	\$10,022,058	\$371,922

\*Some portion of the available storage is projected to be used by assurance districts and is therefore NOT included in this calculation.

4