

MINUTES

North Dakota State Water Commission Telephone Conference Call Meeting Bismarck, North Dakota

March 8, 2000

The North Dakota State Water Commission held a telephone conference call meeting in the Governor's conference room, State Capitol, Bismarck, North Dakota, on March 8, 2000. Chairman, Governor Edward T. Schafer, called the meeting to order at 9:00 AM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman announced a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Robert Thompson, Member from Page
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBERS ABSENT:

Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Harley Swenson, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff
Julie Krenz, Assistant Attorney General, Bismarck
Scott Wegner, Beauclair & Cook, Bismarck
Ken Vein, City Engineer, Grand Forks (by phone)
Pinkie Evans-Curry, Manager, Southwest Water Authority, Dickinson (by phone)
Greg Sund, Administration Department, City of Dickinson (by phone)
Dale Wetzel, Associated Press, Bismarck
Dave Thompson, Prairie Public Radio, Bismarck

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

APPROVAL OF AGENDA

Available Storage Acreage Program 1999 carryover funds to expand the combined State Water Commission and North Dakota Wetlands Trust water storage program. The Chairman announced the agenda approved, and requested Secretary Sprynczynatyk to present the agenda.

The agenda was revised to include consideration of using the Devils Lake

GRAND FORKS FLOOD DAMAGE REDUCTION PROJECT - COMPLIANCE OF PROVISIONS REQUIRED TO ISSUE BONDS UNDER SENATE BILL 2188 (SWC Project Nos. 830 and 1907-02)

requirements must be satisfied before the State Water Commission can issue bonds for the project.

The North Dakota Fifty-sixth Legislative Assembly approved funding for the Grand Forks Flood Damage Reduction Project through passage of the 1999 Senate Bill 2188. Section 3 of Senate Bill 2188, codified in part at N.D.C.C. § 61-02.1-01(5), provides that

By letter, dated February 29, 2000, the city of Grand Forks provided certification to the State Water Commission that the requirements of the North Dakota Century Code and Senate Bill 2188 have been satisfied. The letter from the city of Grand Forks, excluding the attachments, is attached to these minutes as **APPENDIX "A"**. (Note: The attachments from the city of Grand Forks are not included as a part of these minutes because of their volume. All originals provided by the city of Grand Forks are retained in the office of the State Water Commission, Project No. 1907-02).

Secretary Sprynczynatyk informed the Commission that all of the requirements necessary to issue bonds have been satisfied, contingent upon a determination by the State Engineer that the contract between the State Water Commission and the city of Grand Forks is fully executed prior to the issuance of bonds; and receipt on the date the bonds are issued (March 23, 2000) of an opinion from its attorney providing that no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the project.

A memorandum from the State Engineer, dated March 1, 2000, to Governor Schafer and the State Water Commission outlining the requirements and a summary describing how those requirements have or will be met is attached hereto as **APPENDIX "B"**. (Note: The memorandum included attachments, which are not included as a part of these minutes because of their volume; the attachments are retained in the office of the State Water Commission, Project No. 1907-02).

It was the recommendation of the State Engineer that the State Water Commission finds that all requirements necessary to issue bonds under N.D.C.C. § 61-02.1-01(5) and Senate Bill 2188 for the Grand Forks Flood Damage Reduction project have been satisfied, contingent upon receipt of the fully executed agreement between the State Water Commission and the city of Grand Forks; and receipt of the opinion of counsel for the city of Grand Forks on the date bonds are issued (March 23, 2000) that no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the project.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission finds that all requirements necessary to issue bonds under N.D.C.C. § 61-02.1-01(5) and Senate Bill 2188 have been satisfied, contingent upon receipt of the fully executed agreement between the State Water Commission and the city of Grand Forks; and receipt of the opinion of counsel for the city of Grand Forks on the date the bonds are issued (March 23, 2000) that no order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of the Grand Forks Flood Damage Reduction Project.

Commissioners Hanson, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**GRAND FORKS FLOOD DAMAGE
REDUCTION PROJECT -
EXECUTION OF AGREEMENT
BETWEEN STATE WATER
COMMISSION AND CITY
GRAND FORKS
(SWC Project Nos. 830 and 1907-02)**

Secretary Sprynczynatyk presented the final agreement between the State Water Commission and the city of Grand Forks for providing state funds to the Grand Forks Flood OF Damage Reduction Project. The agreement specifies the conditions upon which the city of Grand Forks will

receive state funding for the non-federal portion of the project.

It was the recommendation of the State Engineer that the State Water Commission approve the concept of the agreement between the State Water Commission and the city of Grand Forks for providing state funds to the Grand Forks Flood Damage Reduction Project, and authorize the State Engineer, as Secretary of the Commission, to execute such agreement when he is satisfied with its terms.

It was moved by Commissioner Thompson and seconded by Commissioner Hanson that the State Water Commission approve the concept of the agreement between the State Water Commission and the city of Grand Forks, North Dakota, for providing state funds to the Grand Forks Flood Damage Reduction Project, and authorize the State Engineer, as Secretary of the Commission, to execute the agreement when he is satisfied with its terms. SEE APPENDIX "C"

Commissioners Hanson, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

NORTH DAKOTA WATER DEVELOPMENT TRUST FUND BOND PROGRAM - APPROVAL OF BOND ISSUANCE AUTHORIZATION RESOLUTION; GENERAL BOND RESOLUTION; 2000 SERIES A RESOLUTION; PRELIMINARY OFFICIAL STATEMENT; AND BOND PURCHASE CONTRACT (SWC Project No. 1907-02)

Secretary Sprynczynatyk reported on the continuing efforts of the bond counsel and the Commission staff in preparation for the first bond sale related to the North Dakota Water Development Trust Fund Bond Program. The intent is that the bond sale would provide the funds needed during the 1999-2001 biennium for the following projects:

Grand Forks Flood Damage Reduction Project	\$22.0 Million
Southwest Pipeline Project	4.5 Million
Grand Forks or other projects	1.0 Million
Total	\$27.5 Million

Secretary Sprynczynatyk indicated that the projects at Wahpeton, Grafton and Devils Lake have not met the requirements for bonding at this time. A portion of the Grand Forks allocation may go toward the Wahpeton project, depending on timing.

On February 10-11, 2000, state representatives and bond counsel met with the potential bond rate agencies and bond insurance companies in New York. Moody's Investors Service indicated it will assign an underlying rating of A1 for these bonds, and Standard and Poor's indicated it will assign an underlying rating of A+, both of which are considered excellent ratings. MBIA quoted insurance at 24.5 basis points (0.245%) that would allow the bonds to carry insured rates of Aaa or AAA.

The underwriter priced the bonds on March 7-8, 2000. Secretary Sprynczynatyk said it appears the net interest cost of the bonds will be 5.72 percent. With the cost of issuance, bond reserve funds, capitalized interest, and other associated bond costs, the total bond sale is approximately \$32.1 million.

Secretary Sprynczynatyk presented the following documents for the State Water Commission's consideration. He said if the bond sale is approved by the Commission, the bonds will be issued on March 23, 2000:

1) **BOND ISSUANCE AUTHORIZATION RESOLUTION**

This document, sometimes called a "wrap-around resolution", is the general resolution which, if adopted, will do the following:

- a) approve the execution, delivery, and sale of the bonds
- b) accept and approve the acts and proceedings with respect to the General and Series Resolutions
- c) authorize the issuance of bonds pursuant to the General and Series Resolutions
- d) authorize the execution of the Bond Purchase Agreement
- e) describes the method of executing the bonds
- f) authorizes investment agreements between the State Water Commission and the Trustee

2) **GENERAL BOND RESOLUTION**

This is the overall description of the Water Development and Management Program Bonds. It authorizes the issuance of bonds, and describes their general properties and purpose. It identifies the obligations and rights of the various parties in the process. It specifies what happens in cases of redemption, default, and defeasance.

3) **2000 SERIES A RESOLUTION**

This resolution, under the provisions of the General Bond Resolution, describes the details of the "2000 Series A Bonds". These are the bonds, totalling approximately \$32.1 million, that will be purchased by investors. The resolution provides all of the details relating to this series of bonds.

4) **PRELIMINARY OFFICIAL STATEMENT**

This is the document that will be sent to potential purchasers. It summarizes information from the General and Series Resolutions and contains information about the project. When the information from the bond pricing is included, it will become the Official Statement and will be provided to the owners of the bonds.

5) **BOND PURCHASE CONTRACT**

This is the contract between the State Water Commission and the underwriter that specifies the underwriter's purchase of the bonds.

It was the recommendation of the State Engineer that the State Water Commission approve and adopt the Bond Issuance Authorization Resolution; and approve the General Bond Resolution; the 2000 Series A Resolution; the Preliminary Official Statement; and the Bond Purchase Contract.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve and adopt the Bond Issuance Authorization Resolution; and approve the General Bond Resolution; the 2000 Series A Resolution; the Preliminary Official Statement; and the Bond Purchase Contract. SEE APPENDIX "D" - BOND ISSUANCE AUTHORIZATION RESOLUTION (General Bond Resolution, 2000 Series A Resolution, Preliminary Official Statement, and Bond Purchase Contract attached to official minutes)

Commissioners Hanson, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

SOUTHWEST PIPELINE PROJECT - APPROVAL OF WATER TREATMENT AGREEMENT FOR ASSIGNMENT OF MANAGEMENT, OPERATIONS, AND MAINTENANCE RESPONSIBILITIES FOR DICKINSON WATER TREATMENT PLANT FROM CITY OF DICKINSON TO SOUTHWEST WATER AUTHORITY (SWC Project No. 1736)

At its meeting on December 10, 1999, the State Water Commission was informed that the Southwest Water Authority and the city of Dickinson were discussing the possible transfer of management and operations of the Dickinson water treatment plant to the Southwest Water Authority, and had developed a draft agreement.

The State Water Commission is a party to this agreement because of its obligations under the present treatment agreement with the city and its relationship with the Authority. Discussions

regarding the transfer have been ongoing since November, 1997 and, in the last several months, have progressed to the point that the city approved the agreement at its February 22, 2000 meeting. The Southwest Water Authority approved the agreement at its March 6, 2000 meeting.

Secretary Sprynczynatyk explained that under the agreement, the city retains ownership of the plant and the Authority assumes the responsibilities for management, treating the water, and maintaining the plant and equipment. The new agreement will terminate and supersede the old Southwest Pipeline Project Water Treatment Plant Agreement, dated November 4, 1991, and all addenda. As under the old agreement, the State Water Commission will retain the responsibility for making future modifications or improvements to the treatment facilities if the water quantity, water quality, or Safe Drinking Water Act requirements of the project exceed the capabilities of the plant. The State Water Commission also approves any expenditures from the reserve fund for replacement and extraordinary maintenance associated with the plant.

The agreement has been reviewed by State Water Commission staff and legal counsel. Secretary Sprynczynatyk stated the transfer of the treatment. operations and maintenance of the Dickinson water treatment plant to the Southwest Water Authority is a positive development for the project. He said the transfer will bring all of the operations and budgeting functions associated with the project together, and will improve the overall project planning and communications. If the agreement is approved by the State Water Commission, the effective date of the transfer would be April 1, 2000.

It was the recommendation of the State Engineer that the State Water Commission approve the Southwest Pipeline Project Water Treatment Agreement for the assignment of management, operations, and maintenance responsibilities for the Dickinson water treatment plant from the city of Dickinson to the Southwest Water Authority.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the Southwest Pipeline Project Water Treatment Agreement for the Assignment of Management, Operations, and Maintenance Responsibilities for the Dickinson Water Treatment Plant from the City of Dickinson to the Southwest Water Authority, effective April 1, 2000. SEE APPENDIX "E"

Commissioners Hanson, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

DEVILS LAKE AVAILABLE STORAGE ACREAGE PROGRAM - APPROVAL OF REALLOCATION OF 1999 CARRYOVER FUNDS TO EXPAND COMBINED SWC/N.D. WETLANDS TRUST WATER STORAGE PROGRAM (SWC Project No. 1882-01)

The Devils Lake Available Storage Acreage Program (ASAP) was initiated in 1996 to provide compensation for landowners who would store water on their land rather than allow it to run off into Devils Lake. The program was started as a temporary emergency program to provide flood relief for Devils Lake, and the program

has remained funded through 1999. The State Water Commission entered into a cooperative agreement with the North Dakota Wetlands Trust in 1999 to combine the respective water storage programs. The combined program allows the State Water Commission to offer long-term contracts of 10-15 years for water storage, rather than the annual storage agreements previously offered through the ASAP program.

Secretary Sprynczynatyk said in light of the current dry conditions, most of the Commission's traditional ASAP sites are not expected to fill with water, rendering them ineffective for water storage. Therefore, it was the recommendation of the State Engineer that the State Water Commission not renew the traditional ASAP contracts for 2000.

Secretary Sprynczynatyk stated that watershed management and floodwater retention continues to be an important part of the comprehensive approach for combating the ongoing flooding at Devils Lake. He emphasized that these efforts need to be continued.

It was the recommendation of the State Engineer that the State Water Commission reallocate the 1999 carryover ASAP program funds of approximately \$120,000 to support the ASAP/EIP program in 2000 to allow 10-15 year contracts to be offered to former ASAP participants whose site may not offer water storage benefits this year, but has the potential of water storage in subsequent years. Payment rates for these combined contracts should be increased from the current \$20.00 per acre for wetland acres and \$35.00 for upland acres, to a straight payment rate of \$40.00 for all acreage under contract. This increased payment approximates the average rental rate, and it could expand interest in the program resulting in up to 850 acres under 1015 year contracts.

It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission approve the reallocation of 1999 carryover Available Storage Acreage Program funds of approximately \$120,000 to expand the combined State Water Commission and North Dakota Wetlands Trust water storage program; and increase the participant payment rates to \$40.00 per acre for all acreage under contract .

Commissioners Hanson, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

There being no further business to come before the State Water Commission, Governor Schafer adjourned the telephone conference call meeting at 9:30 AM.

/S/ Edward T. Schafer _____
Edward T. Schafer
Governor-Chairman

SEAL

/S/ David A. Sprynczynatyk _____
David A. Sprynczynatyk
State Engineer, and
Chief Engineer-Secretary