

MINUTES

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

May 23, 2006

The North Dakota State Water Commission held an audio conference call meeting in the Governor's conference room, Bismarck, North Dakota, on May 23, 2006. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 2:00 PM, and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman
Roger Johnson, Commissioner, North Dakota Department of Agriculture, Bismarck
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Curtis Hofstad, Member from Starkweather
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

STATE WATER COMMISSION MEMBER ABSENT:

Charles Halcrow, Member from Drayton

OTHERS PRESENT:

State Water Commission Staff
Lance Gaebe, Office of the Governor, Bismarck
Ray Christenson, Southwest Water Authority, Dickinson
Loren Myran, Southwest Water Authority, Taylor
Joe Bichler, Bartlett & West Engineers, Bismarck
Terry Steinwand, North Dakota Game and Fish Department, Bismarck
Greg Power, North Dakota Game and Fish Department, Bismarck
Dale Wetzel, Associated Press, Bismarck
Dave Thompson, North Dakota 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.

CONSIDERATION OF AGENDA

announced the agenda approved as presented.

There being no additional items for the agenda, Lt. Governor Dalrymple an-

RESOURCES TRUST FUND AND WATER DEVELOPMENT TRUST FUND REVENUES, 2005-2007 BIENNIUM

The oil extraction tax deposits into the Resources Trust Fund total \$9,943,550 and are currently \$816,880, or 8.9 percent ahead of the budgeted revenues. The revenue projected to be received the second year of the biennium is 49.8 percent less than that projected for the first year. If the oil prices remain where they are to date, approximately \$3.5 to \$4.0 million dollars above the projections for the biennium could be received.

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The revenue projected to be received

The April receipts into the Water Development Trust Fund totaled \$9,518,408, which brings the year to date total to \$9,636,331. This is currently \$701,099, or 6.8 percent behind the projections. The reduced payments are due to the tobacco company's contention that the states have not forced the companies that were not part of the original master settlement to also make payments. Reduced payments can be expected until the issue is resolved in the courts.

Secretary Frink explained that the 2005 Legislature authorized the State Water Commission to issue an additional \$7.0 million of bonds using the tobacco settlement revenues. The potentially reduced revenues (approximately \$1.4 million in the 2005-2007 biennium) may not support the additional bonding. He said that although this could leave the State Water Commission \$8.4 million short of total funds, it appears the shortfall could be made up by increased receipts in the Resources Trust Fund and carry over funding from the 2003-2005 biennium. Sections 4 and 5 of House Bill 1021, the State Water Commission's appropriation bill, provides that any additional amounts in the Resources Trust Fund and the Water Development Trust Fund that becomes available in excess of the Commission's budget authority are appropriated to the State Water Commission.

SOUTHWEST PIPELINE PROJECT - CONTRACT AND STATUS REPORT (SWC Project No. 1736)

Todd Sando, Assistant State Engineer, provided the following Southwest Pipeline Project status report:

Red Trail Energy: On March 22, 2006, the State Water Commission approved Southwest Pipeline Project Water Service Contract RW-6 with Red Traill Energy LLC. The contract has been executed by all parties. Red Traill Energy awarded the bid for the pipeline to connect their facilities to the raw water transmission line to Northern Improvement Co. with a low bid of \$499,000. Construction commenced during the last week in April, 2006.

Medora-Beach Regional Service Area:

Contract 7-8B - Abbot, Arne, Schwindt, Inc. resumed work during the second week of April, 2006, with several crews working on tie-ins to the 2-5B main transmission line, appurtenances, and service lines. Approximately 4.5 miles of pipeline and 31 services (curb stops and meter pits) were installed, and 6.4 miles of pipeline were tested. Crews began plowing pipe into the ground during the first week in May, 2006.

Contract 7-8C - Northern Improvement Co. resumed work on contract 7-8C during the second week in April, 2006 with crews trenching 6-inch PVC (roughly 6,500 feet per week), installing meter pits, curb stops, manholes, services lines, pasture taps, and boring road crossings. The remaining easements were obtained from the landowners in the area. Approximately 16 miles of pipeline and 12 services were installed in April, 2006.

The water supply contract was not executed by all parties as the USDA, Rural Development loan period was not the same as the time period remaining on the Missouri West water supply contract with the city of Mandan. These concerns have been satisfied by all parties.

Northern Improvement Co. indicated that the North Crown Butte VFD booster station is scheduled for installation in late May, 2006. Users in the North Crown Butte VFD pocket area will then be turned over to the Southwest Water Authority for service.

***SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 7-9A,
BEULAH INTERIM SERVICE AREA,
ABBOT, ARNE, SCHWINDT, INC.,
MOORHEAD, MN
(SWC Project No. 1736)***

On March 29, 2006, bids were opened for Southwest Pipeline Project contract 7-9A, Beulah interim service area. There were three bids received from the following for contract 7-9A: Abbot, Arne, Schwindt, Inc., Moorhead, MN; Northern Improvement Co., Fargo, ND;

and Titus Excavating, Inc., Bismarck, ND. The apparent low bid received for bid schedule I was \$824,433.50 from Abbot, Arne, Schwindt, Inc., Moorhead, MN, which was \$112,727.50 under the project engineer's estimate of \$937,161.00 (13.7 percent).

The contract documents allow the State Water Commission to select the most advantageous bid. The project engineer reviewed the bids received and noted that the unit prices for pipe are higher than those received on contracts 7-8B and 7-8C that were bid in July and August, 2005, respectively. PVC prices have increased substantially since the natural disasters and have generally been correlated with rising PVC resin prices as oil prices have increased. The low bid received for the construction of contract 7-9A appears to be a responsive bid to the contract documents, and a reasonable cost in light of the higher PVC and oil prices. It was recommended by the project engineer to award contract 7-9A to Abbot, Arne,

Schwindt, Inc., Moorhead, MN. The award of the contract and notice to proceed are dependent on the completion of the contract documents, approval by USDA, Rural Development, and a legal review.

At the June 22, 2005 meeting, the State Water Commission approved a funding package for the Beulah interim service area conditioned on receiving a 45 percent grant from USDA, Rural Development. A 55 percent USDA, Rural Development loan accompanied the grant resulting in a \$572,000 loan (2005 Series B bond) and a \$462,000 grant. Construction costs are estimated to be \$1,164,000, resulting in a \$130,000 shortfall in funding. An application has been submitted to USDA, Rural Development requesting a 45 percent grant for the \$130,000 overrun, with the understanding the state will be responsible for the remaining 55 percent shortfall (\$71,500). The State Water Commission will consider the additional funding request under a separate item at this meeting.

It was the recommendation of Secretary Frink that the State Water Commission award Southwest Pipeline Project contract 7-9A, Beulah interim service area, to Abbot, Arne, Schwindt, Inc., Moorhead, MN, in the amount of \$824,433.50.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission award Southwest Pipeline Project contract 7-9A, Beulah interim service area, to Abbot, Arne, Schwindt, Inc., Moorhead, MN, in the amount of \$824,433.50.

Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF PIPELINE UPSIZING
ON CONTRACT 7-8B FOR FUTURE
DEVELOPMENT (MEDORA-BEACH
REGIONAL SERVICE AREA)
(SWC Project No. 1736)***

As construction continues on the Medora-Beach regional service area, Phase II, additional users have expressed an interest in sign ups for both Phase II and Phase III, which includes the Trotters pocket north of Belfield and the south Fryburg and

Fairfield pocket areas south and north of Belfield, respectively. Interest has also been expressed in an area west of the Killdeer mountains north of the Fairfield pocket, which was not originally included in the design of Phase III. It would be impractical to serve this area from the Oliver-Mercer-North Dunn regional service area, but it could be served as part of Phase III.

The pipeline bid on contract 7-8B was designed for the users signed up at the time of final design. Since additional users have been received, increased capacity under contract 7-8B is necessary to accommodate the additional users wishing to receive water from the project. The pipeline in the Beach service area was already upsized to accommodate the Trotters pocket. The estimate of costs to upsize the pipe to accommodate the increased sign ups in the Fairfield pocket is \$59,000 and in the Fryburg pocket \$43,000, respectively, for a total upsizing cost of \$102,000. The State Water Commission will consider additional funding for the upsizing costs under a separate item at this meeting.

The south Fryburg and the southern portion of the Fairfield pockets are near the maximum cost per equivalent service unit of \$35,350. The cost per the equivalent service unit based on the contract 7-9A bid unit prices is \$33,000 per unit. The west Killdeer area and the northern portion of the Fairfield pocket are currently above the maximum cost. The Southwest Water Authority intends to revisit these areas for additional sign ups to meet the criterion.

It was the recommendation of Secretary Frink that the State Water Commission approve the upsizing of Southwest Pipeline Project contract 7-8B, Medora-Beach regional service area, to accommodate future development in the south Fryburg and Fairfield pockets, including the west Killdeer area.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve the upsizing of Southwest Pipeline Project contract 7-8B, Medora-Beach regional service area, to accommodate future development in the south Fryburg and Fairfield pockets, including the west Killdeer area.

Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF ADDITIONAL ALLOCA-
TION OF STATE FUNDS (\$342,000)
(SWC Project No. 1736)**

Secretary Frink presented a request for the State Water Commission's consideration of an additional allocation of \$342,000 to the Southwest Pipeline Project from the funds appropriated to

the State Water Commission in the 2005-2007 biennium for the following:

- \$ 71,500** Funding for Contract 7-9A, Beulah interim service area, has a shortfall of \$130,000 primarily due to the increased crude oil prices and the high demand for PVC pipe as a result of natural disasters. A grant application for 45 percent (\$58,500) of this shortfall has been submitted to the USDA, Rural Development with the understanding that the remaining 55 percent (\$71,500) will be covered by state funds.
- \$102,000** Medora-Beach regional service area, Phase III, has additional sign ups in the south Fryburg and Fairfield pocket areas requiring the need to upsize the pipeline for service to those areas.
- \$ 78,500** Contingencies, reimbursements, add ons, and professional services outside of the current contracts
- \$ 90,000** State Water Commission operations
- \$342,000** Total additional state funds for Southwest Pipeline Project

It was the recommendation of Secretary Frink that the State Water Commission approve an additional allocation of \$342,000, from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the Southwest Pipeline Project, contingent upon the availability of funds.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve an additional allocation of \$342,000, from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the Southwest Pipeline Project. This motion is contingent upon the availability of funds.

Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SWEETBRIAR CREEK DAM
(MORTON COUNTY) UPDATE
(SWC Project No. 642-01)**

Sweetbriar Creek Dam is located in Morton county approximately 17 miles west of Mandan, ND. The Department of Transportation (DOT) built Sweetbriar Creek Dam in 1960. Morton county, the North Dakota Game and Fish Department, and the State Water Commission are responsible for maintenance of the dam. Sweetbriar Lake, which was created by the damming of Sweetbriar Creek, has a surface area of

250 acres, is approximately 40 feet deep, and has a volume of 2,000 - 3,000 acre-feet of water. The lake was drawn down several feet in 2005 to alleviate pressure on the dam.

In the spring of 2002, a major crack in the upstream face of the concrete drop inlet spillway was discovered by personnel from the DOT. The concrete wall was repaired in 2003. In 2004, excessive seepage through the dam forced engineers to draw down the reservoir to alleviate pressure on the dam.

Previous State Water Commission approvals include: March 5, 2003, an allocation of \$43,333, of which \$25,333 was from the funds appropriated to the State Water Commission in the 2001-2003 biennium, and \$18,000 was for in-kind services provide by the Commission; May 11, 2005, an additional allocation of \$4,010.33, from the funds appropriated to the State Water Commission in the 2003-2005 biennium; and November 1, 2005, an additional allocation of \$20,000 to proceed with the engineering process from the funds appropriated to the State Water Commission in the 2005-2007 biennium. (The allocated \$20,000 to proceed with the engineering process was not expended.) On December 9, 2005, the State Water Commission approved an allocation of \$80,000 for consultant services with Bartlett and West Engineers, Inc./Boyle Engineering Corporation.

Specific Authorization No. 1 was executed in January, 2006 authorizing the consultant to conduct an initial site investigation. The investigation included evaluating the site, gathering soil borings, installing piezometers, digging test pits, and testing water, soil, and concrete. The estimated cost to complete Specific Authorization No. 1 was \$110,000.

Specific Authorization No. 2 was executed on April 7, 2006 authorizing the consultant to complete the preliminary and final design work for the seepage control measures, repairing the box culvert, and increasing spillway capacity. The estimated cost to complete Specific Authorization No. 2 is \$90,000.

On May 11, 2006, a meeting was held with all involved parties to discuss seepage and spillway design alternatives:

Seepage alternatives: The preferred alternative to address the uncontrolled seepage is estimated to cost \$1.0 million. This alternative includes the installation of an outlet sand drain to safely collect the seepage, repair of the stilling basin wall, installation of a measuring flume, repair of the box culvert, mud jacking the floor, and installation of additional piezometers.

Spillway alternatives: Alternatives to increase the spillway capacity of the dam, including overtopping protection of the downstream slope, ranged from \$1.6 to \$2.8 million dollars. These estimates do not include the cost for seepage control. A preferred alternative has not been selected as additional information on the results of the dam break model, and a cost estimate for the complete replacement of the existing spillway are required.

Secretary Frink stated that construction in 2006 is uncertain at this time due to funding issues with the various parties.

***MISSOURI RIVER UPDATE
(SWC Project No. 1392)***

The 2005-2006 annual operating plan for the Missouri River basin prescribes a spring rise below Gavins Point Dam, which is intended to enhance the spawning of the endangered pallid sturgeon. This event includes two pulses, one each in March and May, estimated to use an additional 160,000 acre-feet of system storage. For 2006, a system storage preclude of 36.5 million acre-feet has been selected for each pulse, with storage checks occurring on March 1 and May 1. On March 1, 2006, the Missouri River system storage was at 36.3 million acre-feet, which was below the storage preclude of 36.5 million acre-feet required for a spring pulse, therefore, the March 1 rise did not occur.

Todd Sando briefed the State Water Commission members on the Corps of Engineers efforts relating to the May, 2006 spring rise below Gavins Point Dam. The annual operating plan prescribed that to help offset the storage losses in the upper three reservoirs for the spring rise, staging water in Fort Randall was the preferred alternative. If this alternative was not feasible, water usage for the event would then be split between the upper three reservoirs.

***NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT STATUS
(SWC Project No. 416-07)***

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. The project was based on a three-year construction time line with construction commencing in the fall of 2002. Operation of the outlet, within the guidelines of the water quality discharge permit, began on August 15, 2005.

The North Dakota Department of Health water quality discharge permit that governs the outlet's operation specifies that the water may not have an average weekly sulfate concentration of more than 300 milligrams per liter. The sulfate levels in west Devils Lake and the Sheyenne River were both high enough to restrict discharges into the river, therefore, the outlet was not able to operate after September 1, 2005.

The water quality discharge permit also limited the outlet's flow in 2005 to 50 cubic feet per second (cfs) and pumping operations were to cease from December through April. If the outlet is allowed to pump to its capacity, which is increased to 100 cfs in 2006, it could remove up to four inches of water from the lake annually.

The project did not begin operations on May 1, 2006 to divert Devils Lake water into the Sheyenne River because of the sulfate restrictions in the State Health Department's water quality discharge permit.

Secretary Frink informed the State Water Commission members that modifications to the water quality discharge permit have been requested from the North Dakota State Health Department that would allow the outlet to be operated as long as the sulfate levels in the Sheyenne River were not increased more than 15 percent up to a maximum level of 450 milligrams per liter, and that the outlet be allowed to pump as long as the Sheyenne River and Devils Lake were ice free and the original constraints are met concerning the water levels in the Sheyenne River. The State Health Department has scheduled a public hearing on the water quality discharge permit modifications on June 27, 2006 in Devils Lake.

***NEXT STATE WATER
COMMISSION MEETING***

The next meeting of the State Water Commission is scheduled for June 28, 2006, convening at 1:30 PM at the State

Office Building lower level conference room in Bismarck.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the audio conference call meeting at 2:55 PM.

Jack Dalrymple, Lt. Governor
Representing Governor John Hoeven
Chairman, State Water Commission

SEAL

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission

