

North Dakota State Water Commission

**Meeting To Be Held At
State Office Building
Lower Level Conference Room
Bismarck, North Dakota**

**March 29, 2012
1:00 P.M., CDT**

AGENDA

- A. Roll Call
- B. Consideration of Agenda
- C. ***Tolna Coulee Road Crossings - Nelson County*** **
- D. Other Business:
 - 1) ***Floodway Property Acquisition Policy Revision*** **
- E. Adjournment

**** BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION**

To provide telephone accessibility to the State Water Commission meeting for those people who are deaf, hard of hearing, deaf and/or blind, and speech disabled, please contact Relay North Dakota, and reference ... TTY-Relay ND ... 1-800-366-6888, or 711.

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

March 29, 2012

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on March 29, 2012. Governor Jack Dalrymple, Chairman, called the meeting to order at 1:00 P.M., and requested Todd Sando, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor Jack Dalrymple, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Douglas Vosper, Member from Nече

STATE WATER COMMISSION MEMBER ABSENT:

Larry Hanson, Member from Williston

OTHERS PRESENT:

Todd Sando, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA

The agenda for the March 29, 2012 State Water Commission meeting was presented; there were no modifications to the agenda.

It was moved by Commissioner Olin, seconded by Commissioner Berg, and unanimously carried, that the agenda be accepted as presented.

***DEVILS LAKE EAST END OUTLET -
TOLNA COULEE ROAD CROSSINGS
(NELSON COUNTY) - STATE COST
PARTICIPATION APPROVAL (\$400,000)
(SWC Project No. 416-15)***

Major road crossings identified on the Tolna Coulee in Nelson County, which have been impacted from the operation of the Devils Lake east end outlet, includes County Road 4, which currently has a capacity of 135 cubic

feet per second (cfs), and County Road 23, which has a capacity of 363 cfs.

The Nelson County Commission has proposed upgrading the crossings on Tolna Coulee that could include reinforced concrete box culverts at both sites capable of handling the 25-year event in addition to the 350 cfs Devils Lake east end outlet flows. The County Road 4 project consist of a double 4 x 14 reinforced concrete box culvert, at an estimated cost of \$353,400. Because of the uncertainties involved with the proposed emergency gravity water transfer channel, it is suggested that culverts be added to County Road 23, at an estimated cost of \$46,600 to temporarily increase the capacity to allow for the flow of the Devils Lake east end outlet, with a permanent structure constructed at a later time.

A request from the Nelson County Commission was presented for the State Water Commission's consideration for state cost participation in the total amount of \$400,000 for upgrading crossings on Tolna Coulee (County Road 4 - \$353,400; and County Road 23 - \$46,600). The request before the State Water Commission is for state cost participation in the amount of \$400,000.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation of the eligible costs, not to exceed an allocation of \$400,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) to support the upgrade crossings on Tolna Coulee, County Road 4 and County Road 23.

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission approve state cost participation of the eligible costs, not to exceed an allocation of \$400,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) to the Nelson County Commission to support the upgrade crossings on Tolna Coulee, County Road 4 and County Road 23. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Dalrymple voted aye. There were no nay votes. Governor Dalrymple announced the motion unanimously carried.

**FLOODWAY PROPERTY
ACQUISITION COST SHARE
POLICY - REVISION APPROVAL
(SWC Project No. 1753)**

On February 2, 2012, the State Water Commission approved the following Floodway Property Acquisition cost share policy:

- The State Water Commission (SWC) will provide cost share to cities or counties for the acquisition of property in floodways to provide long-term flood reduction benefits that compliments, but does not duplicate, federal funding of flood mitigation projects. On any acquisitions cost shared by the SWC, the property must not be eligible for federal Hazard Mitigation Grant Program (HMGP) funding.

For the purpose of this policy, floodway is defined as the area needed to convey floodwaters. It does not refer to a specific return period flood. Use of the terms Individual Assistance and HMGP refers to federal cost share programs through the Federal Emergency Management Agency (FEMA), not programs under this cost share policy.

- Prior to applying for assistance, the applicant shall adopt and provide to the SWC an acquisition plan (similar to the plan required by HMGP) that includes the description and map of properties to be acquired, the estimated cost of property acquisition including contract costs, removal of structures, the benefit of acquiring the properties, and information regarding the ineligibility for HMGP funding. This plan must also include a description of how the applicant will insure there is not a duplication of benefits.
- Over the long-term development of a flood control project, following a voluntary acquisition program, the applicant's governing body must officially adopt a flood risk reduction plan or proposal including the flow to be mitigated. The flow used to develop the flood risk reduction plan must be included in zoning discussions to limit new development on other flood-prone property. An excerpt of the meeting minutes documenting the applicant's official action must be presented to the SWC.
- Eligible applicants must fund the local cost share for acquisitions. Local cost shares will not be waived.

- The SWC cost shares are identified as follows:
 - 1) SWC cost share for applicant's acquisition of property for potential temporary or permanent flood control projects in counties designated for FEMA Individual Assistance in 2011, with the addition of Ransom County, shall not exceed 75 percent.
 - 2) SWC cost share for applicant's acquisition of property that will provide additional conveyance (open space) but will not be protected by a proposed flood control project, in counties designated for FEMA individual Assistance in 2011, with the addition of Ransom County, shall not exceed 60 percent.
 - 3) SWC cost share for all other applicants shall not exceed 50 percent.

Purchase and removal of structures are eligible acquisition costs. All contracted costs directly associated with the acquisition will be considered eligible for cost share. Contracted costs may include appraisals, legal fees (title and abstract search/update, property survey, closing costs, etc.), hazardous materials abatement needs (asbestos, lead, paint, etc.), and site restoration. Salary and administrative costs incurred by the local sponsor shall not be eligible for cost share.

- The applicant shall include a perpetual restrictive covenant similar to the restrictions required by the federal HMGP funding with the additional exceptions being that the property may be utilized for flood control structures and related infrastructure, paved surfaces, and bridges. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds.
- The applicant shall provide justification acceptable to the SWC describing the property's ineligibility to receive federal HMGP funding.

This is not meant to require submission and rejection by the federal government, but rather an explanation of why the property would not be eligible for federal funding. Example explanations include: permanent flood control structures may be built on the property; project will not achieve required benefit/cost analysis to support HMGP eligibility; or lack of available HMGP funding. If inability to receive federal funding is not shown to the satisfaction of the SWC, following the SWC's consultation with the North Dakota Department of Emergency Services, the request for cost share will be returned to the applicant for submittal for federal funding prior to the use of these funds.

- The SWC must vote to approve the funding allocation toward all floodway acquisition cost share requests. The Chief Engineer-Secretary to the SWC, or a designee, will approve the specific payments under the funding allocation. Assistance pursuant to this policy will be limited by the SWC's determination of funding availability.
- FEMA Individual Assistance in 2011, with the addition of Ransom County, are in the following order:
 - 1) Property has flood damage and may be needed for construction of long-term flood control projects.
 - 2) Property has flood damage and may be needed for construction of temporary flood control projects.
 - 3) Property has flood damage and would increase the conveyance or provide other flood control benefits.
 - 4) Property **does not** have flood damage but may be needed for construction of long-term flood control projects.
 - 5) Property **does not** have flood damage but may be needed for construction of temporary flood control projects.

The SWC recognizes additional areas still recovering from prior floods may also require assistance.

Property in counties that qualified for FEMA Individual Assistance in 2009, but not in 2011, will be considered as priority 6 through 10, in the same order as outlined for priorities 1 through 5 above.

Property in counties that did not qualify for FEMA Individual Assistance in either 2009 or 2011 will be considered as priority 11 through 15, in the same order as outlined for priorities 1 through 5 above.

Cost share for construction of permanent flood control on the property acquired is subject to approval under the existing State Water Commission cost share policy.

The U.S. Department of Housing and Urban Development has a Community Development Block Grant Disaster (CDBG Disaster) program funded by Congress specifically for disaster recovery purposes. A majority of these funds are required to be used to benefit low and moderate-income individuals. Communities and counties that have received this type of funding in the

past have been able to use this funding as the local cost share with other federal programs. The Commission staff explained the CDBG Disaster funding requirements and the Commission's cost share policies, and discussion pursued that could allow the local entities to use CDBG Disaster funding as the local cost share.

The State Water Commission typically does not work with CDBG Disaster funding. In the Commission's cost share policies, federal funding is applied first and the state cost share applies to the remaining eligible portion. With the federal requirements on CDBG Disaster funding requiring it to be the last source of funding, and the State Water Commission's requirement to use federal funding first, projects funded by the Commission are not eligible for CDBG Disaster funding. The Commission's Floodway Property Acquisition Cost Share policy does not specifically state that CDBG Disaster funding would be recognized as federal funding.

It was the recommendation of Secretary Sando that the State Water Commission revise the Floodway Property Acquisition policy to include the underscored sentence to the fourth bullet: "Eligible applicants must fund the local cost share for acquisitions. Local cost shares will not be waived. Community Development Block Grant funding may be used for local cost share and will not be considered as federal funds."

It was moved by Commissioner Foley and seconded by Commissioner Berg that the State Water Commission's Floodway Property Acquisition policy be revised to include the underscored sentence to the fourth bullet: "Eligible applicants must fund the local cost share for acquisitions. Local cost shares will not be waived. Community Development Block Grant funding may be used for local cost share and will not be considered as federal funds."

Commissioners Berg, Foley, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Dalrymple voted aye. There were no nay votes. Governor Dalrymple announced the motion unanimously carried.

There being no additional business to come before the State Water Commission, Governor Dalrymple adjourned the meeting at 1:20 P.M.



Jack Dalrymple, Governor
Chairman, State Water Commission

Todd Sando, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary
to the State Water Commission

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