

State Water Commission (SWC) Meeting
SWC Building (SWC staff only)
900 E. Boulevard Ave.
Bismarck, North Dakota
July 30, 2021 – 12:00 p.m. CT

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AGENDA

- A. Roll Call
- B. Emergency Drought Relief
 - 1. **Additional Funding for Drought Disaster Livestock Water Supply Program** **
 - 2. **Emergency Livestock Water Supply Program** **
 - 3. **Permanent Trust Lands Water Supply Program** **
- C. **Confirmation of ND Department of Water Resources Director** **
- D. Adjourn

**** BOLD ITEMS REQUIRE SWC ACTION**

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

July 30, 2021

The North Dakota State Water Commission (SWC or Commission) held a meeting via telephone conference on July 30, 2021. Governor Burgum called the meeting to order at 12:16 p.m. A quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor Burgum, Chairman
Doug Goehring, Commissioner, ND Department of Agriculture, Bismarck
Michael Anderson, Hillsboro
Richard Johnson, Devils Lake
James Odermann, Belfield
Connie Ova, Jamestown
Gene Veeder, Watford City
Jay Volk, Bismarck
Jason Zimmerman, Minot

STATE WATER COMMISSION MEMBERS ABSENT:

April Walker, West Fargo

OTHERS PRESENT:

Pat Fridgen, SWC Planning and Education Director
SWC Staff
Jennifer Verleger, General Counsel, Attorney General's Office
Approximately 45 people interested in agenda items.

Governor Burgum welcomed newly appointed Commissioners Odermann, Ova, Veeder, and Walker to the Commission and thanked Commissioners Anderson, Johnson, Volk, and Zimmerman for their continued service. Governor Burgum welcomed, Andrea Travnicek, Ph.D., to the meeting and thanked John Paczkowski, Interim State Engineer, for his leadership provided during his interim role.

Drought Disaster Livestock Water Supply Program (DDLWSP)

Pat Fridgen, Planning and Education Director, presented an update on the DDLWSP. Current total program funding is \$4.14 million. Due to the continued need among North Dakota's livestock producers for support through the DDLWSP, an additional \$2 million was requested from the SWC discretionary fund.

As of July 26, 2021, SWC staff approved \$3.7 million for 940 projects involving 645 producers. The current balance of available funds is approximately \$406,000.

Pat Fridgen and Governor Burgum clarified that the \$6 million discretionary funding allocated in HB 1020 was intended for such purposes as the DDLWSP. The recommendation was to approve the additional funding request.

After discussion, the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Johnson the Commission approve an additional \$2,000,000 for the DDLWSP from the \$6,000,000 of discretionary funding included in Section 4 of House Bill 1020, for a total commitment of \$6,146,055 to the 2021 DDLWSP.

Commissioners Anderson, Johnson, Odermann, Ova, Veeder, Volk, Zimmerman, Goehring, and Governor Burgum voted aye. There were no nay votes. The motion carried.

ND Department of Agriculture Emergency Livestock Water Supply Program (ELWSP)

Pat Fridgen and Commissioner Goehring presented a request for \$2 million of funding authorized through the Commission's discretionary fund for the Department of Agriculture's ELWSP related to reimbursing producers for temporary water supply, equipment, and hauling expenses. Individuals would be reimbursed for 50 percent of eligible costs up to \$4,500 per individual. The Memorandum dated July 28, 2021, to the Commission with specific details of the purpose, program details, and eligibility requirements is attached as **ADDENDUM A**.

Commissioners discussed adding an income eligibility requirement that producers' income be derived from 50 percent of farming operations. Commissioners agreed to proceed without the income eligibility requirement, and applications would be audited and reviewed for accountability by the Department of Agriculture.

After further discussion, the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Anderson the Commission approve \$2,000,000 from the discretionary purpose funding to cover eligible costs for the ND Department of Agriculture's ELWSP.

Commissioners Anderson, Johnson, Odermann, Ova, Veeder, Volk, Zimmerman, Goehring, and Governor Burgum voted aye. There were no nay votes. The motion carried.

ND Department of Trust Lands Water Supply Program (WSP)

Mike Humann, Trust Lands Surface Management Division Manager, presented a request for \$1 million of funding authorized through the Commission's general fund for the ND Department of Trust Lands WSP. This program reimburses producers for costs exceeding the Land Department's maximum cost-share amounts for a permanent water

supply on trust lands. The Memorandum dated July 28, 2021, to the Commission with specific details of the purpose and proposal details is attached as **ADDENDUM B**.

Reice Haase, SWC Policy Advisor, clarified that dugouts would not be eligible under this program. Typically, the program provides funding for permanent water supplies with pasture taps, pipelines, or water wells. Because dugouts deal with surface water and concerns with blue-green algae are often a challenge, dugouts are specifically ineligible.

After further discussion, the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Anderson the Commission approve \$1,000,000 from the General Water purpose funding to cover the cost of developing permanent water supplies on state trust lands through the WSP. These funds will be used to cover eligible costs in excess of the maximum amounts allowed under the ND Department of Trust Land's WSP.

Commissioners Anderson, Johnson, Odermann, Ova, Veeder, Volk, Zimmerman, Goehring, and Governor Burgum voted aye. There were no nay votes. The motion carried.

Other Discussion

Governor Burgum thanked Commissioner Goehring and his staff for their efforts and collaboration with the ND Department of Trust Lands and SWC staff to bring forth the additional drought-related programs.

Commissioner Goehring requested waivers of testing and certification requirements for well drillers located out of state or not licensed in North Dakota. Corporate surety bonds would be required. Commissioner Goehring also requested fees, testing, and certification requirements be waived for well drillers previously licensed to drill in state. If not previously licensed to drill wells in North Dakota, fees associated with testing and certification would be waived. If waived, approximately 150 well drillers would be available to provide services.

Governor Burgum stated that General Counsel Leslie Oliver and Reice Haase are working with the state licensure board to review requested waivers and the Governor's Office is completing as an action item.

Confirmation of ND Department of Water Resources Director

Governor Burgum asked for a motion to approve the confirmation of Andrea Travnicek, Ph.D., as the Director of the ND Department of Water Resources.

After discussion, the following motion was made:

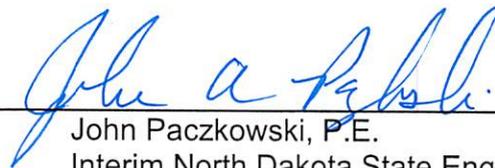
It was moved by Commissioner Goehring and seconded by Commissioner Zimmerman the Commission approve the confirmation of Andrea Travnicek, Ph.D., as the Director of the ND Department of Water Resources, effective August 1, 2021.

Commissioners Anderson, Johnson, Odermann, Ova, Veeder, Volk, Zimmerman, Goehring, and Governor Burgum voted aye. There were no nay votes. The motion carried.

There being no further business to come before the Commission, Governor Burgum adjourned the meeting at 1:01 p.m.



Doug Burgum, Governor
Chairman, State Water Commission



John Paczkowski, P.E.
Interim North Dakota State Engineer,
and Chief Engineer-Secretary
to the State Water Commission

MEMORANDUM

TO: Governor Doug Burgum
North Dakota Water Commission Members 
FROM: John Paczkowski, P.E., Interim Chief Engineer-Secretary
SUBJECT: Emergency Water Supply Program
DATE: July 28, 2021

Purpose and Need for Temporary Water Supply Assistance

- As of July 20, 2021, 100% of North Dakota is in drought status, with over 56% of the State being classified as extreme or exceptional drought¹
- 2021 is the driest year on record for North Dakota
- Montana, South Dakota, and Minnesota are also experiencing drought, although to a lesser degree than North Dakota
- This has exacerbated the situation in North Dakota by leading to an extreme shortage of feed for livestock
- Due to lower water levels and extreme heat, harmful algal blooms like blue-green algae are negatively impacting water quality across the state
- During 4 drought roundtables across the state, and calls to the Governor's Office, most relate to concerns with access to water or poor water quality, followed by requests for access to CRP, concerns about hay scarcity and high cost, issues with federal programs, concerns about large volume of cattle sell-offs, and requests for access to state-managed lands
- The Drought Disaster Livestock Water Supply Assistance Program is available through the Water Commission to cover 50% of the costs (up to \$4,500) of addressing water supply shortages, including drilling new water wells, new rural water connections, new pipeline extensions, and new taps
- More than 900 projects have been approved through the Water Commission's Drought Disaster Livestock Water Supply Assistance Program since April 9, 2021, totaling \$3.7 million
- An additional \$2 million was authorized at the June 8, 2021, Water Commission meeting
- Due to rising demand, the wait list for a water well driller often exceeds 6 months
- Assistance is needed to cover the gap until a new water well or other water source is secured

¹ United States Drought Monitor, accessed July 22, 2021

Proposal

After consultation with Legislators, ND Stockmen's Association, ND Department of Agriculture and Water Commission staff:

- Authorize \$2 million from Water Commission discretionary authority for a 50/50 cost-share for temporary water supply, equipment, and hauling
- Purpose of the program is to provide immediate water supply for livestock producers who are currently on a waiting list for a permanent water supply
- Funding is from Water Commission \$6 million discretionary bucket
- ND Department of Agriculture would administer the program and forward approved expenses to the Department of Water Resources for reimbursement
- Department of Water Resources staff would remit payment directly to producers approved by the Department of Agriculture
- Producers would cover the cost of water supply, necessary equipment, and hauling, and would submit invoices to the Department of Agriculture
- Individuals would be re-imbursed for 50% of eligible costs, up to \$4,500 per individual

Proposal Details²

- **WHO is eligible for this program?**
 - Livestock owners who have verifiable water losses from drought and must purchase water and/or transport water to livestock
 - Water losses verifiable through the following:
 - Photos
 - Written descriptions
 - Must own breeding livestock;
 - For the purposes of this program, breeding livestock is defined as; beef and dairy cows, bison, sheep, and goats
 - Must have a minimum of 25 animal unit equivalents. The Animal Unit Equivalents Guide is adopted from the *NRCS National Rangeland and Pasture Handbook*
 - The following will be considered "water"
 - Purchased from rural water system or municipality
 - Water from personal wells or on farm rural water is only eligible for transportation assistance
 - The following will be considered equipment for rental assistance
 - Storage tanks, transportation tanks, and other material to assist in transportation of water

² ND Department of Agriculture

- **WHAT is eligible for assistance?**
 - Transportation costs for water incurred between July 1, 2021, and October 31, 2021
 - Water must be used for the purposes of your own livestock operation
 - Eligibility details
 - Eligible for reimbursement of a portion of expenses based on loaded mile of purchased water delivered. Eligible mileage expenses include the following:
 - Personal mileage – rate will be set at \$2.00 per mile
 - Commercial mileage – rate will be based on total amount charged
 - Expense must be per mile basis for transportation
 - Reimbursement will be on percentage based
 - Receipts received for pick-up and trailer transportation will be prorated accordingly
 - Receipts for rental of equipment will be prorated based on averages of program
 - Receipts for water purchase will be prorated based on averages of program
 - If water receipt not available, please document where water was purchased and number of gallons.
 - Commercial rates higher than program average will be reduced to average or rejected
 - Receipts received at other than per mile will be calculated will be based on program average or rejected
 - Must have receipts for purchased water and or have transportation costs associated due to the loss of water supply
- Reimbursement requests must be submitted to the Department of Agriculture by December 1, 2021
- Completed application must include:
 - A signed IRS W-9 form
 - Third party verification of water loss form completed by Bank, County Extension Agent, or veterinarian
 - All receipts must be included
 - Producer must agree to terms on the application form

Therefore, I recommend the Water Commission approve \$2M from the discretionary purpose funding to cover the cost of emergency water supply. These funds will be used to cover eligible costs for the Department of Agriculture’s Emergency Livestock Water Supply Program.

MEMORANDUM

TO: Governor Doug Burgum
North Dakota Water Commission Members 
FROM: John Paczkowski, P.E., Interim Chief Engineer-Secretary
SUBJECT: Permanent Trust Lands Water Supply Program
DATE: July 28, 2021

Purpose and Need for Permanent Water Supply on Trust Lands

- As of July 20, 2021, 100% of North Dakota is in drought status, with over 56% of the State being classified as extreme or exceptional drought¹
- 2021 is the driest year on record for North Dakota
- Montana, South Dakota, and Minnesota are also experiencing drought, although to a lesser degree than North Dakota
- This has exacerbated the situation in North Dakota by leading to an extreme shortage of feed for livestock
- Due to lower water levels and extreme heat, harmful algal blooms like blue-green algae are negatively impacting water quality across the state
- During 4 drought roundtables across the state, and calls to the Governor's Office, most relate to concerns with access to water or poor water quality, followed by requests for access to CRP, concerns about hay scarcity and high cost, issues with federal programs, concerns about large volume of cattle sell-offs, and requests for access to state-managed lands
- NDCC 15-08-26 allows lessees of trust lands owned by the State of North Dakota acting by and through the Board of University and School Lands (NDDTL) and their managing agent the North Dakota Department of Trust Lands to place permanent improvements on trust lands with the written consent of the Commissioner of University and School Lands (Commissioner)
- Permanent improvements are deemed property of the State
- The Department currently cost shares up to \$11,100 for water wells, \$1,575 for rural water pasture taps and \$5,600 for water pipelines that originate from a water source on trust land
- A permanent water supply is needed to facilitate grazing during the current and future droughts and to mitigate water quality issues such as surface water algae blooms
- Assistance is needed to cover any costs exceeding maximum practice cost share amounts allowed by NDDTL with Commissioner approval for a permanent water supply

¹ United States Drought Monitor, accessed July 22, 2021

Proposal

After consultation with Legislators, ND Stockmen's Association, NDDTL and Water Commission staff:

- Authorize \$1 million from the Water Commission's General Water bucket for covering any costs exceeding the maximum practice cost share amounts for a permanent water supply on trust lands
- For the purposes of this program, "permanent water supply" means water wells, rural water pasture connections, taps, and water pipelines that originate from a water source on trust land.
- For the purposes of this program "non-permanent improvements" are temporary equipment such as water pumps, submersible pumps, solar panels, tanks, and other removable equipment
- The Department of Trust Lands will identify eligible projects based on need and lessee interest and issue a Permanent Improvement Permit for approved projects
- The Department of Trust Lands will continue to cost share up to the maximum practice cost share amount
- Remaining costs will be covered by the Water Commission under the program
- Permanent improvements will be deemed property of the State
- The Department of Water Resources may access and use any water wells for aquifer observation
- Lessees are responsible for non-permanent improvement costs and retain ownership of non-permanent improvements
- Upon expiration of the trust land Surface Land Lease, lessees have 120 days from lease expiration to sell the equipment to the next lessee or remove the improvement. Any non-permanent improvement not sold or removed within 120 days of lease expiration becomes the property of the next lessee.

Therefore, I recommend the Water Commission approve \$1M from the General Water purpose funding to cover the cost of developing a permanent water supply on state trust lands. These funds will be used to cover eligible cost in excess of the maximum amounts allowed under the Department of Trust Lands Program.