

MINUTES

North Dakota State Water Commission Grand Forks, North Dakota October 12, 2023

The ND State Water Commission (Commission or SWC) held a meeting in the Council Chambers, City Hall, 255 N 4th Street, Grand Forks, ND, and via phone conference on October 12, 2023. Lt. Governor Miller called the meeting to order at 1:00 PM. A quorum was present. The board opened the meeting by reciting the Pledge of Allegiance.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Miller, Acting Chairman
Doug Goehring, Commissioner, ND Dept. of Agriculture
Michael Anderson, Lower Red River Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Jay Volk, Lower Missouri River Basin
Gene Veeder, Upper Missouri River Basin
Jason Zimmerman, Mouse River Basin
April Walker, Upper Red River Basin
Jeff Frith, Devils Lake Basin

STATE WATER COMMISSION MEMBERS NOT PRESENT:

Connie Ova, James River Basin

OTHERS PRESENT:

Dr. Andrea Travnicek, Director, ND Dept. of Water Resources (DWR) and Commission Secretary
John Paczkowski, DWR State Engineer
DWR Staff
Jennifer Verleger, General Counsel, Attorney General's Office
Approximately 77 people present online and in person.

CONSIDERATION OF AGENDA

It was moved by Commissioner Anderson, seconded by Commissioner Zimmerman, and carried unanimously the agenda for the October 12, 2023, Commission meeting was approved as presented.

CONSIDERATION OF DRAFT MEETING MINUTES

It was moved by Commissioner Goehring, seconded by Commissioner Anderson, and carried unanimously the minutes of the August 10, 2023, Commission meeting be approved as written.

It was moved by Commissioner Zimmerman, seconded by Commissioner Frith, and carried unanimously the minutes of the September 14, 2023, Pre-Commission meeting be approved as written.

DISCLOSURE OF POTENTIAL CONFLICTS OF INTEREST

State Water Commissioners disclosed potential conflicts of interest. Commissioner Anderson disclosed he is the Vice President of East Central Regional Water District. Commissioner Odermann disclosed he is a member of the Southwest Water Authority Board of Directors. Commissioner Zimmerman disclosed he is a member of the newly formed Northwest Area Water Supply Authority.

COMMISSION SECRETARY UPDATE

Andrea Travnicek, Ph. D., Secretary, reported Jen Verleger, General Counsel, Attorney General's Office, has accepted a new position and will be leaving at the end of the month. Travnicek thanked Verleger for all the great work she's done on the commission as well as for the agency. Travnicek also reported she and State Engineer, John Paczkowski, attended the fall meeting of the Association of Western State Engineers and she will be headed to Washington, D.C. next week for the American Flood Coalition meetings.

FINANCIAL REPORT

The Glossary of Terms, allocated program expenditures, and financial reports were presented by Chris Kadrmas, DWR Administration Division Director (**APPENDIX A**).

The oil extraction tax deposits total \$36,028,969 estimated through September 2023 for the 2023-25 biennium, which is \$2,444,822 under the projected biennium revenue of \$38,473,792 through July 2023. No transfers from the Resources Trust Fund to the Water Projects Stabilization Fund have occurred through September 2023.

The 68th Legislative Assembly estimates oil extraction tax deposits for the 2023-2025 biennium to total \$449,860,000 through June 2025. It also provided for the transfer of oil extraction tax deposits in excess of the legislative forecast for the 2023-2025 biennium to be transferred quarterly to the water projects stabilization fund.

BASIC ASSET INVENTORIES AND CAPITAL IMPROVEMENT PLANNING

Duane Pool, Ph. D., DWR Economist, presented the Commission with a final draft of the Water Commission's Project Funding Policy, Procedure, and General Requirements Appendix C (**APPENDIX B**), that requires project sponsors of water supply projects to submit a basic asset inventory assessment and capital improvement plan with applications for construction cost-share assistance. After approval, DWR staff will work on public outreach and providing workshops for project sponsors and consultants.

After discussion, the following motion was made:

It was moved by Commissioner Volk and seconded by Commissioner Walker the Commission approve the Project Funding Policy, Procedure, and General Requirements Appendix C – Basic Asset Inventory Assessment and Management Guidance for Public Water Systems and the supporting fillable electronic tool – with implementation in 2024; and direct the staff to make minor adjustments to the fillable electronic tool as necessary to keep it updated and responsive to sponsor needs.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

IRRIGATION COST-SHARE POLICY & IRRIGATION LOAN INTEREST BUY-DOWN

Patrick Fridgen, DWR Planning and Education Division Director, discussed with the Commission several options on the Irrigation Cost-Share Policy and Irrigation Loan Interest Buy-Down, taking into consideration the public comments that were collected. Currently, DWR and SWC provide financial support for irrigation development in two (2) ways; one (1) of which eligible sponsors can receive up to 50% state cost-share for off-farm central supply works; and two (2) by providing funding in support of BND's Ag PACE (Partnership in Assisting Community Expansion) program. The BND Ag PACE program provides interest rate buydown on loans to producers investing in on-farm works of up to 4% with a cap of \$40,000 (with \$20,000 from both BND and DWR). Fridgen discussed several options for the Irrigation Cost-Share Policy and Loan Interest Buy-Down.

There was no discussion, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Walker the Commission modify the State Water Commission's Cost-Share Policy, Procedure, and General Requirements to increase the irrigation cost-share for off-farm central supply works from up to 50 percent to up to 75 percent; increase DWR's matching contribution to the Ag PACE program from \$20,000 to up to \$40,000; approve additional funding in the amount of \$200,000 for the Ag PACE program as DWR evaluates how this new change may result in additional Ag PACE program interest from producers; and DWR staff be directed to work with BND and Industrial Commission and request they allow irrigation-related projects be eligible under their Production Enhancement Program.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

ROAD CROSSING CENTURY CODE REFERENCE IN COST-SHARE POLICY

Fridgen discussed the road crossing Century Code reference within the Cost-Share Policy. Within the Rural Flood Control section of the Water Commission's Cost-Share Funding Policy, Procedures, and General Requirements, there is reference to Century Code related to road crossings. Current policy reads, "Construction costs for public road crossings that are integral to the project are eligible for cost-share as defined in N.D.C.C. §§ 61-21-31 and 61-21-32." (**APPENDIX C**)

Chapter 61-21 of N.D.C.C. was repealed during the 2023 Legislative assembly with an effective date of August 1, 2023. In addition, the previously referenced language included in repealed N.D.C.C. §§ 61-21-31 and 61-21-32 now exists in N.D.C.C. §§ 61-16.1-42 and 61-16.1-43. (**APPENDIX D**)

There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Walker the Commission update their Cost-Share Funding Policy, Procedures, and General Requirements with the current Century Code reference from repealed N.D.C.C. §§ 61-21-31 and 61-21-32 to the currently existing N.D.C.C. §§ 61-16.1-42 and 61-16.1-43; and as a standard operating

procedure that future Century Code or Administrative Code reference updates in policy be made at the Secretary's discretion, with notification to Commission members.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

SNAGGING AND CLEARING COST-SHARE POLICY

Fridgen discussed the Snagging and Clearing Cost-Share Policy with the Commission. In consideration of the policy-related issues raised and comments received from the Commission following the September Pre-Commission meeting, the following are revised snagging and clearing policy options for consideration and discussion.

1. No changes to current policy.
2. No changes to policy related to construction cost-share eligibility, with preconstruction costs ineligible.
3. Leave the cost-share percentage at up to 50 percent with a cap of up to \$50,000 per project.
4. Leave the cost-share percentage at up to 50 percent and modify the Commission's Project Prioritization Guidance under the "Moderate Policy" related to snagging and clearing to read, "Snagging and clearing in population centers or specific critical infrastructure locations."

After a brief discussion, the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Zimmerman the Commission approve leaving the cost-share percentage at up to 50 percent, and then modify the Water Commission's Project Prioritization Guidance under the Moderate Policy related to snagging and clearing to read "Snagging and clearing in population centers or specific critical infrastructure locations."

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

NORTHWEST AREA WATER SUPPLY (NAWS)

2024 NAWS Interim Water Rate

Tim Freije, NAWS Project Manager, stated the NAWS water service agreements require an annual review and adjustment of water rates that go into effect January 1 of the following year.

The NAWS Interim Water Rate is calculated based on projected water use and estimated expenses. The water rates are comprised of capital costs, supply and treatment costs, operation and maintenance costs, and reserve for replacements and extraordinary maintenance.

There was no discussion, and the following motion was made:

It was moved by Commissioner Frith and seconded by Commissioner Anderson the Commission approve the following NAWS Interim Water Rates

for the 2024 calendar year: \$4.20/1,000 gallons, which is an increase from \$3.55/1,000 gallons for 2023, for the NAWS Contract Customers; and, \$0.61/1,000 gallons for the Minot Contract Customers, which is an increase from the 2023 rate of \$0.60/1,000 gallons.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Goehring, and Lt. Governor Miller voted aye. Commissioner Zimmerman abstained. There were no nay votes. The motion carried.

Reimbursement from Replacement and Extraordinary Maintenance (REM) Fund

Freije requested reimbursement from the Replacement and Extraordinary Maintenance (REM) fund for the sacrificial anodes attached to the prefabricated below-ground steel vaults that were replaced at 11 of the project facilities this summer. Along with anode replacement, the contractor also changed some of the penetrations into the vaults to address groundwater ingress issues. The total costs incurred were \$70,556.12. Freije stated the NAWS REM account has a current balance of roughly \$2.8 million.

There were no questions, and the following motion was made:

It was moved by Commissioner Anderson and seconded by Commissioner Walker the Commission approve the sacrificial anode replacement project is an eligible Replacement and Extraordinary Maintenance project and approve reimbursement of \$70,566.12 from the NAWS Replacement and Extraordinary Maintenance Fund.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Goehring, and Lt. Governor Miller voted aye. Commissioner Zimmerman abstained. There were no nay votes. The motion carried.

SOUTHWEST PIPELINE PROJECT (SWPP)

Reimbursement From Reserve Fund for Replacement and Extraordinary Maintenance

Sindhuja S. Pillai-Grinolds, DWR Water Development Division Director, stated the DWR staff received a memo (**APPENDIX E**) from the Southwest Water Authority requesting reimbursement for the following six items.

1. Ultrafiltration Membranes for the Oliver Mercer North Dunn Water Treatment Plant (OMND WTP) for \$45,483.96. This was budgeted for \$40,000 in the 2023 budget. The increase is due to material price and freight.
2. Reverse Osmosis membranes at the OMND WTP. The amount billed to date is \$33,167.30. This was budgeted for \$75,000 in the 2023 budget. The remaining expenditures for this item will be carried over to the 2024 budget cycle.
3. Turbidity Meters at the OMND WTP for \$24,095.57. This was budgeted for \$26,500 in the 2023 budget.
4. Leak repair of the fire system supply piping at the Southwest Water Treatment Plant for \$24,000. A leak was detected in March 2023. Work performed included removal of concrete and location of the fire line leak. Two (2) leaks were found and repaired. The project was not a budgeted item for the Replacement and Extraordinary Maintenance Fund for 2023, however, it meets the requirements for reimbursement.

5. Flushing and replacing coolant on the generators at the intake for \$29,398.62. This was not a budgeted item for the Replacement and Extraordinary Maintenance Fund for 2023, however, it meets the requirements for reimbursement.
6. Repair of the PB3 motor at the intake which includes repair of the broken roto bars and installation of new bearings for \$36,983. This was not a budgeted item for Replacement and Extraordinary Maintenance Fund for 2023, however it meets the requirements for reimbursement.

The current balance of the REM fund is \$25,578,719.67 as of August 31, 2023. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Zimmerman the Commission approve the reimbursement from the Reserve Fund for the Replacement and Extraordinary Maintenance in the amount of \$193,128.45 for the six (6) REM items requested.

Commissioners Anderson, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioner Odermann abstained. There were no nay votes. The motion carried.

CONSENT AGENDA

The Consent Agenda included the following cost-share projects with requested funding amounts for approval:

Flood Control

- M1. Foster County: Foster County Drain #1 – \$270,407
- M2. Bottineau County WRD: Stone Creek Lateral B – Loan \$363,000
- M3. Pembina County WRD: Infrastructure 2023 – Loan \$929,000

General Water

- N1. NDDEQ: NPS Best Management Practices Team Phase IV/V – \$200,000

Water Supply (Municipal/Regional)

- O1. WAWSA: Stanley Rural Distribution Part 2 – \$444,400

Water Supply (Rural)

- P1. Central Plains WD: Maddock Connection to CPWD – \$134,055
- P2. East Central RWD: Phase 6 Expansion – \$641,250

There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Walker the Commission approve the Consent Agenda items as presented.

Commissioners Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioner Anderson voted aye on the Consent Agenda items, abstaining from item P2: East Central RWD. There were no nay votes. The motion carried.

STATE COST-SHARE REQUESTS

WATER SUPPLY (MUNICIPAL/REGIONAL)

Julie Prescott, DWR Engineer Manager, presented the following request for municipal and regional water supply projects.

Mandan: Collins Reservoir Replacement – \$93,420 (SWC Project No. 2050MAN)

The City of Mandan is requesting construction cost-share for replacing their 2,000,000-gallon Collins Reservoir, which has reached the end of its service life. The city's storage system consists of the Sunset (3,000,000-gallons), the South End (4,000,000-gallons), and the Collins Reservoir (2,000,000-gallons) – for a total of 9,000,000 gallons. The city's peak daily demand is 7,900,000 gallons. With the South End and Sunset Reservoirs storage providing a total of 7,000,000 gallons of storage, the remaining storage need is 900,000 gallons. By Commission policy, only that portion of the storage needed to meet peak daily capacity (900,000 gallons/2,000,000 gallons or 45%) is considered eligible for cost-share. This establishes a cost-share percentage of 27% (45% of the maximum 60%).

This project meets requirements of the Water Commission's cost-share policy for municipal water supply projects. After brief discussion, the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Frith the Commission approve the request from the City of Mandan for state cost-share participation in the Collins Reservoir Replacement project at 27 percent of eligible costs, not to exceed \$93,420. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

New Town: Phase I Improvements – \$2,279,637 (SWC Project No. 2050NEW)

The City of New Town is requesting construction cost-share for their Water Supply Improvements – Phase 1. The project will include replacement of approximately 20 blocks of aging water main, hydrants, gate valves, water services, and curb stops. The project is part of a combined water, sanitary sewer, and storm sewer infrastructure replacement project and will also include paving costs associated with water main trenching.

This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Walker and seconded by Commissioner Zimmerman the Commission approve the request from the City of New Town for state cost-share participation in the Water Supply Improvements – Phase I project at 60 percent of eligible costs, not to exceed \$2,279,637. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

WATER SUPPLY (RURAL)

Prescott presented the requests for the rural water supply projects.

Greater Ramsey WD: North System Capacity Improvements – \$3,999,360 (SWC Project No. 2050RAM)

The Greater Ramsey Water District is requesting cost-share for additional construction costs associated with their North System Capacity Improvements. The project is water treatment plant improvements, a new well and wellfield improvements, a pump station, a 500,000-gallon underground storage reservoir, and 11.9 miles of 12- and 16-inch transmission pipeline. The district previously received cost-share approval for installation of the pipeline. The district's storage system consists of the North Tower (500,000 gallons), the Pare Tower (300,000 gallons), and the water treatment plant (100,000 gallons) for a total existing storage of 900,000 gallons. The peak daily demand from 2021 is 1,800,000 gallons, which leaves a storage needs of 900,000 gallons.

This project meets requirements of the Water Commission's cost-share policy for rural water supply projects. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Anderson the Commission approve the request from the Greater Ramsey Water District for state cost-share participation in the North System Capacity Improvements project for an additional \$3,999,360 at 75 percent of eligible costs, with total cost-share not to exceed \$9,659,360. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

PROJECT UPDATES

DWR staff provided brief updates on the following projects:

- Tim Freije, NAWS Project Manager: NAWS.
- Sindhuja S. Pillai-Grinolds, DWR Water Development Division Director: Devils Lake and SWPP.
- Laura Ackerman, Water Resource Engineer: Mouse River.
- Clay Carufel, Missouri River Engineer: Missouri River.

LEGAL UPDATE

Jennifer Verleger, General Counsel, Attorney General's Office, provided a brief update on current legal matters involving the SWC and DWR.

**EXECUTIVE SESSION UNDER AUTHORITY OF NDCC § 44-04-19.1(9) FOR ATTORNEY
CLIENT CONSULTATION REGARDING SWPP - INTAKE, CONTRACT 1-2A**

It was the recommendation of Lt. Governor Miller that the discussion relating to the SWPP/Fowler Intake to be held in Executive Session, under the provisions of NDCC § 44-04-19.1(9), for the purpose of attorney consultation. The Commission invited the following to participate in the Executive Session:

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Miller, Acting Chairman
Doug Goehring, Commissioner, ND Dept. of Agriculture
Michael Anderson, Lower Red River Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Jay Volk, Lower Missouri River Basin
Gene Veeder, Upper Missouri River Basin
April Walker, Upper Red River Basin
Jason Zimmerman, Mouse River Basin
Jeff Frith, Devils Lake Basin

OTHERS PRESENT:

Dr. Andrea Travnicek, Director, ND Dept. of Water Resources (DWR) and Commission Secretary
John Paczkowski, DWR State Engineer
Jennifer Verleger, General Counsel, Attorney General's Office
Sindhuja S.Pillai-Grinolds, DWR Water Development Division Director
Justin Froseth, Southwest Pipeline Project Manager
Chris Kadrmaz, DWR Administrative Services Director
Shana Brost, DWR Administrative Officer
Ben Gehrig, DWR Data & Technology Services
John Reiten, Policy Advisor, Governor's Office
Ryan Norrell, General Counsel, Governor's Office

It was moved by Commissioner Goehring and seconded by Commissioner Volk that under the provision of NDCC § 44-04-19.1(9), the Commission proceed into Executive Session on October 12, 2023, at 2:59 PM for the purpose of attorney consultation relating to the Southwest Pipeline Project/Fowler Intake—Contract 1-2A.

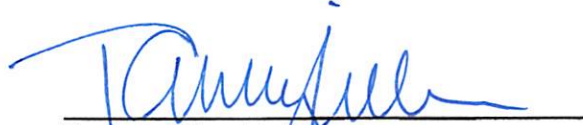
Commissioners Anderson, Odermann, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Following attorney consultation regarding the Southwest Pipeline Project/Fowler Intake, Contract 1-2A, Lt. Governor Miller reconvened the open session of the Commission meeting at 3:22 PM.

It was moved by Commissioner Goehring and seconded by Commissioner Walker the Commission approve \$450,000 in additional funds be allocated and approved from the SWPP's professional services account for mediation expenses.

Commissioners Anderson, Frith, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioner Odermann abstained. There were no nay votes. The motion carried.

There being no further business to come before the Commission, Lt. Governor Miller adjourned the October 12, 2023, meeting at 3:23 PM. The next State Water Commission meeting will be held on December 8, 2023, at 9:00 AM CST in #238 Lewis and Clark Room, Bank of North Dakota, 1200 Memorial Highway, Bismarck, North Dakota.



Tammy Miller, Lt. Governor
Acting Chair, State Water Commission



Andrea Travnicek, PH. D.
Director, DWR, and Secretary to the State
Water Commission