

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

November 19, 1986

The North Dakota State Water Commission held a meeting on November 19, 1986, in the Harvest Room of the State Capitol, Bismarck, North Dakota. Governor-Chairman, George A. Sinner, called the meeting to order at 1:15 p.m., and requested State Engineer-Secretary, Vernon Fahy, to call the roll and present the agenda.

MEMBERS PRESENT:

Governor George A. Sinner, Chairman
Richard Backes, Member from Glenburn
Joyce Byerly, Member from Watford City
Jacob Gust, Member from West Fargo
William Guy, Member from Bismarck
Ray Hutton, Member from Oslo, MN
William Lardy, Member from Dickinson
Jerome Spaeth, Member from Bismarck
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBER ABSENT:

Kent Jones, Commissioner, Department of Agriculture, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 30 persons interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official copy of minutes).

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

SIGNING OF COOPERATIVE
AGREEMENT BETWEEN U.S. BUREAU
OF RECLAMATION AND GARRISON
DIVERSION CONSERVANCY DISTRICT
CONCERNING MUNICIPAL, RURAL AND
INDUSTRIAL WATER SYSTEMS IN
NORTH DAKOTA
(SWC Project No. 237-3)

Governor Sinner introduced C. Dale Duvall, Commissioner of the U.S. Bureau of Reclamation; R.E. Martin, Regional Director of the U.S. Bureau of Reclamation; and, Roland Dolly, Special Assistant to the Commissioner of Reclamation. The Governor and the State Water Commission participated in the formal

signing of the cooperative agreement between the U.S. Bureau of Reclamation, on behalf of the United States of America, and the Garrison

Diversion Conservancy District to implement the municipal, rural and industrial program of the Garrison Diversion Reformulation Act.

Commissioner Duvall said the document which was signed implements the municipal, rural and industrial water sections of the Garrison Diversion Reformulation Act. That program provides cost sharing by the Federal Government for up to \$200 million to bring water to North Dakota cities, industries and rural communities via the Garrison Diversion Project, the Southwest Pipeline Project, and other water supply projects. The program requires a non-federal cost share of 25 percent from state and local entities. The Garrison Diversion Conservancy District has been designated by the Governor to carry out the responsibilities on behalf of the State of North Dakota. In addition to providing federal funding the Bureau of Reclamation will be responsible for oversight and review of project development.

Commissioner Duvall said "The \$200 million in federal funds which has been authorized for the MR&I program will have a significant economic impact on the State of North Dakota as the construction proceeds. Jobs will be created during the construction period as well as for the oversight, operation and maintenance of the facilities after they have been constructed. As this phase of the Garrison Diversion Project proceeds, a small portion of equity which has been so long overdue is being returned to the State of North Dakota."

Governor Sinner discussed his decision to designate the Garrison Diversion Conservancy District as the agent to negotiate and carry out the responsibilities on behalf of the State of North Dakota for the MR&I program. Governor Sinner also referred to the Agreement for the Joint Exercises of Governmental Powers between the North Dakota State Water Commission and the Board of Directors of the Garrison Diversion Conservancy District that was signed on July 18, 1986 relating to the management of this program.

Governor Sinner stated North Dakota had been promised \$12.3 million through the Bureau of Reclamation for the 1987 fiscal year for the MR&I program. Of the \$12.3 million authorized for the MR&I program, \$8 million was to be allocated to the Southwest Pipeline Project and \$4.3 million for other flood control and water projects in the state. Governor Sinner then informed the State Water Commission members that North Dakota is now facing critical cuts in federal funding for the Southwest Pipeline Project and other water projects and said that the federal funds have been reduced to \$5.3 million for fiscal year 1987. The state is currently negotiating with the federal officials to see if some of the money can be restored for the water projects, although negotiations on the issue may go into January, 1987. The Governor said this reduction in federal funding is going to limit what the state can do on the water projects. He said he does not anticipate the state will be able to contribute any more funds to the water projects because the state is already facing a deficit.

CONSIDERATION OF MINUTES
OF OCTOBER 17, 1986 MEETING -
APPROVED

The minutes of the October 17,
1986 meeting were approved by the
following motion:

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It was moved by Commissioner Backes, seconded by Commissioner Gust, and unanimously carried, that the minutes of October 17, 1986 be approved as circulated.

UPDATE ON SOUTHWEST
PIPELINE PROJECT
(SWC Project No. 1736)

Secretary Fahy further discussed the reduction in federal funding for the Garrison MR&I program. As previously stated by Governor

Sinner, the state is now to receive \$5.3 million through the U.S. Bureau of Reclamation instead of the \$12.3 million authorized for the 1987 fiscal year. Secretary Fahy indicated \$8 million was to be allocated to the Southwest Pipeline Project, and this reduction is "pretty disconcerting to us. We are going to be extremely limited as to what we can do and we're in dire straits, particularly with the Southwest Pipeline Project." Secretary Fahy indicated the state is negotiating with the federal officials to see if it can get additional funding and, if not, some money may be had by reshuffling the \$33 million Garrison appropriation.

Secretary Fahy commented on the status of the Resources Trust Fund which is expected to have approximately \$6.5 million in it for the 1987-1989 biennium. He said "this further complicates the matter of which project gets top priority." Governor Sinner and Secretary Fahy commented that people in the state have held in the past that the Southwest Pipeline Project should have the highest priority for funding from the Resources Trust Fund.

C. Emerson Murry, Manager of the Garrison Diversion Conservancy District, indicated the possibility of trying to get additional money for the MR&I program through a supplemental appropriation has been discussed. The State of Utah will likely request a supplemental appropriation from Congress. Mr. Murry indicated that the Commissioner of Reclamation advised North Dakota to also become involved in supplemental funding to the maximum extent possible.

Dale Frink, Manager of the Southwest Pipeline Project, presented a progress report and indicated both of the contractors have shut down for the season. Approximately 16 miles of pipeline were installed. The contractors have about 82 percent of their work completed.

The State Water Commission pre-advertised for bids on four pipeline segments extending from Dodge to Richardton. The four segments total 33.5 miles and have an estimated bid price of \$11.5 million. The amount advertised was based on anticipated \$8 million of federal funds from the Garrison MR&I program. If the federal funding is reduced, the bid advertising will have to be matched with the funding available. Mr. Frink said the formal advertising for bids will be in early December with bid openings in mid-January, 1987.

Mr. Frink discussed archeological concerns along the raw water pipeline route that were discovered near the water treatment plant site. The University of North Dakota has done considerable study in this area and has recommended a rerouting of the

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pipeline around the area. Mr. Frink indicated that at a recent meeting of the Indian Affairs Commission, it became clear that the Indians still have several concerns and specifically recommended a reroute around the area considered "sacred" by the tribal representation. Mr. Frink said a rerouting of the pipeline in this area has been recommended by the Advisory Committee and is being pursued. Additional costs will be approximately \$75,000-\$100,000.

At the Commission's last meeting, the staff was directed to prepare draft legislation to eliminate the five percent preference for North Dakota contractors on the pipeline. This legislation is necessary if federal funds are used. The draft legislation was distributed for the Commission's consideration. Mr. Frink said if the Commission approves the draft, the bill would be introduced in the Special Session of the Legislature.

It was moved by Commissioner Lardy and seconded by Commissioner Hutton that the State Water Commission concur and support the draft legislation eliminating the five percent preference for North Dakota contractors on the Southwest Pipeline Project.

In discussion of the motion, Commissioner Lardy stated elimination of the five percent preference for North Dakota contractors should only relate to the Southwest Pipeline Project.

Commissioner Backes indicated he will support the motion, but with reservation. A Special Session of the Legislature has been called to try to improve the State's economy. He feels a preference for North Dakota contractors on projects would also help the economy.

Commissioners Backes, Byerly, Gust, Guy, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Mr. Frink indicated state law requires a single water treatment plant near the intake structure for the Southwest Pipeline Project. At the Commission's October 17, 1986 meeting, they were informed of a request from the City of Dickinson on the possibility of using Dickinson's existing water treatment plant for the Southwest Pipeline Project. Staff was directed to draft legislation that would give the State Water Commission the option for determining the most appropriate location for the water treatment plant.

Mr. Frink distributed copies of draft legislation for the Commission's consideration that would provide the Commission the option for determining the most appropriate location for the water treatment plant for the Southwest Pipeline Project. He noted the draft was also considered at the Advisory Committee Board meeting. Mr. Frink informed the Commission members the language is "strictly optional at this point". Mr. Frink does not support a change unless the studies show that money can be saved and that all users will receive a treated water

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supply. The studies referred to by Mr. Frink will not be completed until water sample tests can be taken next spring and summer at the intake site on Lake Sakakawea.

Herbert Urlacher, Chairman of the West River Joint Advisory Committee Board, stated the Advisory Committee supports this legislation to allow studies of all alternatives to determine the most appropriate location for the water treatment plant. Mr. Urlacher stated the Advisory Committee is very concerned relative to future funding for rural water cooperatives for delivery systems and said this matter should be addressed on a total regional basis.

Ken Dukart, Dickinson City Commission member, and Bruce Pier, Dickinson City Engineer, stated the City of Dickinson supports a multi-plant concept using Dickinson's existing treatment plant with several smaller facilities; the city is willing to treat water from the pipeline and sell it back to the state; and, the city wants to maintain ownership of its treatment plant if the multi-plant concept is selected.

It was moved by Commissioner Guy and seconded by Commissioner Byerly that the State Water Commission concur and approve the draft legislation amending Section 61-24.3-04 relating to the extent and type of water treatment and the location for the water treatment plant for the Southwest Pipeline Project.

In discussion of the motion, Commissioner Lardy expressed concern that if the Commission approves this bill draft there may not be sufficient time prior to the legislative session to educate the 21 legislators in the southwest area whose districts are touched by the pipeline. Commissioner Lardy also said he feels there could be a problem in educating the people outside of the City of Dickinson relative to the justification, if any, for this change. He said "we need to do everything possible to maintain unity". He added that rural sentiment is already against the water treatment plant scenarios because of a feeling it will delay their getting pipeline water. Since it appears the funding for this project will be reduced significantly, Commissioner Lardy said he feels there will not be money available in the next biennium for construction of the water treatment plant. Commissioner Lardy stated he does not think the current legislation needs to be amended at this time in order to complete the studies which are underway by the engineers to determine the most appropriate location for the treatment plant.

Commissioner Guy indicated he felt the original language in the bill, "The pipeline project includes a single water treatment plant near the source for the treatment of water ..." eliminates any reason for conducting a study of alternatives. Commissioner Guy said he believes this is not simply a pipeline project for the southwest as this pipeline is of interest to all of the State of North Dakota. He said the Commission needs to approve a bill draft to submit to the Legislature that will provide the Commission and the planners of the pipeline project with the greatest flexibility possible in determining the most appropriate location for the treatment plant. Commissioner Guy said

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he feels "this amendment does just that, and I don't have the feeling that the southwest area legislators are going to be that hard to educate."

Commissioner Byerly stated she feels the influence on the Legislature and their final decision will be based on the data provided relative to costs. If that data is not available, then Commissioner Byerly said she feels there is no need for the amendment to the current language.

Commissioner Lardy stated this may be true but to date the cost savings on the multi-water treatment plant scenario versus the single water treatment plant scenario is not available and we are being asked to make a recommendation on data that is not available.

Mr. Frink emphasized this bill draft legislation merely creates an option. If this language is not provided we will not have options for change in the future if it is determined the multi-water treatment plant is the most appropriate approach.

Commissioners Backes, Gust, Guy, Hutton, Spaeth, and Governor Sinner voted aye.
Commissioners Byerly and Lardy voted nay.
Recorded vote was six ayes and two nays.
The Chairman declared the motion passed.

UPDATE ON GARRISON
DIVERSION PROJECT
MR&I PROGRAM
(SWC Project No. 237-3)

C. Emerson Murry, Manager of the Garrison Diversion Conservancy District, further commented on the reduced federal funding for the Garrison MR&I program, and indicated state officials will continue to negotiate in an effort to try and restore some of the money in that budget for the state's water needs.

He stated that the "needs survey" is progressing well and should be available for review by the State Water Commission and the Legislature early in January, 1987. The survey will delineate areas which have either water quantity or water quality programs.

The Wetlands Trust Committee has been appointed and at its organizational meeting appointed Russell Dushinske as chairman. The Wetlands Trust will hold its annual meeting on January 13-14, 1987, at which time it will be considering programs that might be suggested for all types of interested groups for the Wetlands Trust. The Committee has indicated one of its goals will be to improve production and management of existing wetlands rather than acquiring large amounts of additional land.

Governor Sinner stated that he has emphatically indicated to the Trust Committee that its funds be used to

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enhance areas around existing wetlands because this practice would benefit the maximum number of people and would increase the production values of wetlands.

UPDATE ON RED
RIVER DIKING
(SWC Project No. 1638)

David Sprynczynatyk, Director of Engineering for the State Water Commission, updated the Commission members on the status of the work

in North Dakota relative to bringing the dikes into compliance with the Federal District Court order. Mr. Sprynczynatyk indicated the work on the North Dakota side of the river would be completed that week. Approximately 40 miles of dikes have been brought into compliance since October 1, 1986, including about 25 miles in the past two weeks. Some of the affected 33 landowners did the work themselves and the remaining landowners chose to have contractors do the work that were hired by the State. The contractors' costs would be assessed back to the landowner. Mr. Sprynczynatyk indicated the contractors' costs are approximately \$30,000, and although the exact amount is not known at this time for the landowners who did their own work, Mr. Sprynczynatyk feels the total effort to modify the North Dakota dikes should not exceed \$40,000.

Mr. Sprynczynatyk stated approximately three miles of dikes have been modified in Minnesota with approximately 20-25 miles remaining to be lowered and an additional amount to be lowered and relocated. He said he anticipated some additional work would be done this week in Minnesota, but is not aware of any plans to complete all of the required dike lowering in Minnesota. In conversations with Minnesota representatives, Mr. Sprynczynatyk said "we have indicated to them that when the work has been completed on the North Dakota side we plan to continue with the lawsuit to find out why Minnesota has not complied with the Federal District Court order."

Rosellen Sand, Director of Legal Services for the State Water Commission, informed the Commission members she has met with the North Dakota Attorney General and has requested that North Dakota seek a contempt order against the Minnesota defendants for failing to comply with the Federal Court order to lower the dikes along the Red River on the Minnesota side. Ms. Sand indicated that if the Judge finds the Minnesotans in contempt of court there are a wide range of penalties that could be assessed, including daily fines.

Commissioner Lardy said he feels we may have placed North Dakota landowners in jeopardy if this issue is not resolved by spring when flooding occurs. Ms. Sand indicated the Judge could also fine Minnesotans for any flood damages that may occur to North Dakota landowners.

Commissioner Hutton inquired as to what needs to be done to move forward in addressing the other flooding problems along the Red River. Mr. Sprynczynatyk indicated that as soon as the diking issue has been completed the two states will begin addressing these problems.

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CONTINUED DISCUSSION OF
INTER-BASIN BIOTA
TRANSFER STUDY
(SWC Project No. 1828)

Commissioner Guy reviewed the background of the Inter-Basin Biota Transfer Study, and then referred to a letter from Governor Sinner to the State Engineer, dated November

17, 1986, in which the Governor states, in part:

"Because of the complexity of the research that will be required and because of the need to coordinate the work of many levels of government, including Canada, and the work of a number of agencies and research personnel, I am directing our State Government to assume the water research leadership through the North Dakota Water Commission.

In accordance with your recommendation, I hereby appoint Gene Krenz of the State Water Commission as Program Coordinator to represent my office and the state in planning and coordinating the work of the state agencies such as the State Game and Fish Department and the Water Commission; regional and local entities such as the Garrison Conservancy District, the North Dakota State University and the University of North Dakota; and, all federal cooperating agencies such as the Bureau of Reclamation, Army Corps of Engineers, Environmental Protection Agency, Federal Fish and Wildlife Service, the United States Geological Survey, and others.

I request that Gene include various sources of funding in the financial planning for the research program to be developed. This should include the National Science Foundation grants to the state, the federal contribution to the North Dakota Water Institute, as well as funds from the appropriate state, conservancy, and federal agencies.

The planning process should emphasize the need to begin as soon as possible that research which will move the complex studies forward and establish the baseline information upon which to build the expanded research program as research personnel and funding become available.

Any initial contact with the Canadian Government to participate in the inter-basin water research program will be made through my office. It is my hope that a procedure of cooperation in and verification of results of the research can be developed with the Canadians.

I request that Gene Krenz report to me and the State Water Commission on a quarterly basis concerning progress in the proposed comprehensive water research program that will include inter-basin water transfer effects from biota, fish pathogens and fish species, as well as other water quality questions."

The State Engineer endorsed the Governor's appointment of Gene Krenz as being appropriate in view of the complexity of the undertaking.

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SCHEDULING OF NEXT
STATE WATER COMMISSION
MEETING

North Dakota Water Users and the North Dakota Water Resource Districts Associations annual meeting.

The next meeting of the State Water Commission has been scheduled for December 3, 1986, at Kirkwood Motor Inn in Bismarck, ND, following the

CONSIDERATION OF AGENCY
FINANCIAL STATEMENT

Secretary Fahy distributed and discussed the agency's financial statement as of October 30, 1986.

BRIEFING ON NORTH DAKOTA -
U.S. FISH AND WILDLIFE
SERVICE AGREEMENT
NEGOTIATIONS

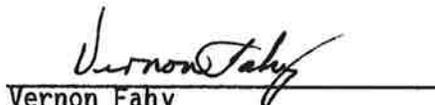
Service will do business in North Dakota in the future. The Governor recalled that when he approved the Habitat Acquisition Plan in August, 1985, he conditioned his approval upon the negotiations and completion of agreements to resolve issues of controversy between the Fish and Wildlife Service and North Dakota. The Governor indicated before any subsequent agreements on the controversial issues are signed he would bring them before the State Water Commission for its consideration.

Governor Sinner briefed the Commission members on negotiations between North Dakota and the United States Fish and Wildlife Service relative to how the Fish and Wildlife

It was moved by Commissioner Backes, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission meeting adjourn at 4:00 p.m.


George A. Sinner
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer and Secretary

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