

MINUTES

NORTH DAKOTA ATMOSPHERIC RESOURCE BOARD JUNE 28, 2002

A telephone conference call meeting of the Atmospheric Resource Board was called to order by Chairman Jay Sandstrom at 10:00 a.m., Friday, June 28, 2002.

ROLL CALL

Roll call was taken and members participating were Jay Sandstrom, Chuck Tompkins, Hattie Melvin, Bobb Brewer, Dale Frink, Gary Ness, and Steven Weber. Staff members participating were Darin Langerud, Director; LeNor Dollinger, Business Manager; Aaron Gilstad, Chief Meteorologist; and Dawn Feist, Project Assistant. Others participating were Matt Sagsveen, Assistant Attorney General and James Sweeney, Weather Modification, Inc.

MINUTES

Chuck Tompkins moved the minutes of the March 28, 2002 telephone conference call be approved as distributed. Second by Bobb Brewer. A roll call vote was taken and Chuck Tompkins, Hattie Melvin, Bobb Brewer, Dale Frink, Gary Ness, and Steven Weber voted aye. There were no nay votes. Motion carried.

ND CLOUD MODIFICATION PROJECT

Operations update – Darin Langerud briefly updated the board on the ongoing cloud modification activities in District I and District II. To date 139 hours have been flown in the districts with approximately 70 hours flown for hail suppression, 48 hours for rain enhancement, 10 hours for reconnaissance, and 10 hours for other, which is aircraft repositioning or returning to its base of operation after landing at another airport, 19 hours for maintenance. It was noted maintenance hours are contractor expense. About 23% of project time has passed with use of 17% of contracted flight hours.

Dawn Feist reported recordkeeping has been good and is improving as the crews have become more experienced. She also reported there have been two missed launches. One in District I on June 7 when Seed 2 was launched but had to return to base due to communications problems. Seed 2 had land and fix this problem. The second missed launch was in District II on June 9 when Seed 9 was launched by the Stanley Radar meteorologist and once airborne observed the aircraft oil cap was popping off. Seed 9 returned to base to fix the problem.

Mr. Langerud noted operations have been proceeding quite smoothly. There have been some reports of hail in the target areas but considerably less hail than reports from other areas.

Bobb Brewer stated he feels an excellent job is being done in District I and commended project personnel for their efforts.

ARB-WMI Service Contract -

Chairman Sandstrom stated discussion of the ARB-WMI service contract may be discussed in executive session under ND Century Code 44-04-19.1.

Matt Sagsveen, Assistant Attorney General, stated executive session is designed to allow the board to have a conversation with legal counsel in a privileged format. However that does not require the board to go into executive session for discussion of things that the board does not wish to be privileged.

It was the general consensus of those members participating that they wanted to ask questions of James Sweeney, Weather Modification, Inc. prior to entering into executive session, if necessary.

Darin Langerud stated he had received a letter from James Sweeney, Weather Modification, Inc., late the day before this meeting outlining how WMI planned to resolve the issue of supplying a contract performance bond. Mr. Langerud asked Mr. Sweeney to explain to the board the content of the letter regarding this issue.

Mr. Sweeney stated WMI has over the years used several different means to put up some type of performance guarantee under contract. However, bonding people have never been favorable in issuing a bond for cloud modification work. The cost of a performance bond is far greater than a simple letter of credit from a bank that satisfies the requirement. For the past 10 years WMI has done business with a particular bank. That bank would send a letter to the board stating they were guaranteeing the dollar amount required for the contract performance bond. WMI now has a new lender. This bank approaches the situation very differently in that they state they can't issue a letter of credit to satisfy the board's contract performance bond. Mr. Sweeney recapped what the letter stated: "we haven't issued a performance bond (letter attached from the bank stating this), and have also pursued a bond which has not been a realistic process for WMI". Mr. Sweeney goes on to say in the letter - - - "for more than 20 years this company has been providing the service to the state without any type of performance issue and we deal with many contracts very similar to this in a given year and have over a number of years. Frequently in a number of cases what we have put up as our performance bond is hiring over a dozen people and placing over \$1.4 million dollars of equipment in the field. We do all this without any deposit to cover our costs or risk going into the contract. Additionally, more than half of this equipment put under contract in North Dakota, this company

owns solely for the purpose of this contract. If North Dakota did not have a cloud seeding program next year, we would liquidate half of that equipment. It is the only reason we own certain aircraft.” Weather Modification, Inc., request to the board is the contract being amended to accept our people and equipment in the field as the performance guarantee that we will perform this contract for 92 days out of the year.”

The question was asked by Mr. Tompkins whether there was any the board could amend the requirements to make this workable.

Matt Sagsveen stated ND Century Code 61-04.1-34 requires that before the board contracts with any controller the board shall require the controller to furnish a surety bond, cash or negotiable securities for the faithful performance of the contract.

The question was asked to Mr. Sweeney by Mr. Frink if the equipment in the field has a value of \$100,000 or is the value tied up.

Mr. Sweeney responded they would not let their clients place a lien on their equipment, but the equipment in the field has a value of approximately \$1.4 million. Mr. Sweeney stated by hiring people and putting the equipment in the field they are committing to performing the contract and have done so for the past 20 years or more.

Mr. Sagsveen asked Mr. Sweeney what amount of expenditures is made in preparing for this contract? Mr. Sweeney stated is what a difficult amount to determine, but preparing the aircraft, preparing the seeding equipment, bringing the pilots in from all over the country, and training may add up to an amount of approximately \$75,000.

Mr. Sagsveen asked if these were costs that WMI would otherwise not have to pay but for this program? Mr. Sweeney replied “absolutely”. This is money spent “pre-June 1”.

Mr. Ness asked, “What does the performance bond give us under the short frame of operations that we have, if we have a failure to complete and what protection does it give us?”

Mr. Sagsveen replied a performance bond in its traditional form is to would protect the board if the contractor quit performing the contract. The performance bond would cover our costs in bringing in a new contractor and potentially any amount over the contracted for amount that the board would have with a contractor. Due to the fact that the contract period is so short and mobilization could take anywhere from 3 to 4 weeks, it is difficult to say how a performance bond would be used to properly continue.

Mr. Sweeney asked how you could expect to bring in any new contractor within 3 to 4 weeks and stated, for the record, he would strongly disagree.

Mr. Sandstrom stated the intent of a performance bond is to try to get a new contractor in place, not necessarily that it could be done in any given project period.

Mr. Sagsveen stated the only answer he was proposing was what a performance bond covered.

Mr. Sagsveen stated the law allows the controller to furnish security bond, cash, or negotiable securities as a performance bond. Since the contractor spends considerable amount to prepare for the project, the board needs to decide it that would satisfy the risk requirements.

Mr. Bob Brewer mentioned he feels there are considerable costs that the contractor incurs well before the project starts.

Mr. Sweeney stated there are considerable annual costs such as insurance on the equipment that is dedicated solely to this project.

Mr. Sweeney state in the past it was very easy for the bank to issue a letter of credit and forward it to the board. The contractor's new lender, and under today's financial terms, is not willing to do that. A letter has been forwarded to the director of the board to this effect.

Mr. Sagsveen stated the statute states, "the board can require the controller to furnish a security bond, cash, or negotiable securities in such amount as determined by the board." Mr. Sagsveen said the amount does not need to be a definite percentage of the contract. It is whatever the board thinks is appropriate.

Mr. Sandstrom asked, "If we had a breach of the contract, that bond we had from the contractor could not be used for anything other than securing another company to continue the project. It could not be used as a penalty or settlement for the breach?"

Mr. Sagsveen stated that is his understanding.

Mr. Sagsveen asked Mr. Sweeney, "On the letter you sent to the director of ARB, it stated the bank is unable to approve the letter of credit that would extend beyond July 1. Is your current letter or credit coming due on July 1?"

Mr. Sweeney stated that is the date of renewal of the line of credit with the US Bank. At the moment it is on an extension so it has not been renewed but rather extended on a 30-day basis. Several negotiations are on-going at this time.

Mr. Langerud asked if the 30-day extension extends through the month of July. Mr. Sweeney said this is correct. Mr. Langerud also asked if the line of credit is not extended beyond July, is this due to a credit problem or a banking relationship problem? Mr. Sweeney stated he did not feel this question was pertinent to the discussion.

There were no further questions.

Chuck Tompkins moved a \$1000 cash performance bond be assessed to Weather Modification, Inc. for the 2002 North Dakota Cloud Modification Project. Seconded by Bobb Brewer. Members Chuck Tompkins, Hattie Melvin, Bobb Brewer, Dale Frink, Gary Ness and Steven Weber voted aye. There were no nay votes. Motion carried.

FLIGHT AUTHORIZATION

Darin Langerud stated that the board has had a policy that pertinent persons the board finds relevant to the project, such as board and authority members, be allowed to accompany seeding flights to oversee how operations are progressing. Members of the media have also been included in the past for public relations purposes.

A request have been received from Mr. Hank Bodmer of Ward County to go on a cloud seeding mission. Mr. Langerud stated in conversation with Jim Sweeney he stated changes in the provisions of their insurance no longer allows this.

Mr. Sweeney stated that for identical coverage they have had in the past on their fleet and entire operations, for this year the increase was 85%. Therefore, they have been forced to make choices on all types of coverages and limits and adjust accordingly so insurance would still be affordable and keep coverages in place that they need for operations. Under high recommendation from the insurance broker that we do not have anyone beyond our crew or employees on board the aircraft under today's circumstances.

Mr. Langerud stated it has always been the contractor who makes the final decision as to who flies on a cloud seeding mission. The purpose of discussion today was to determine the board's response to these requests. The board policy does not need to be changed at this time.

2003-2005 BUDGET

Mr. Langerud noted the budget instructions for the 2003-2005 biennium require a reduction of 5% in funding sources of general, federal, and special funds. At our current general fund appropriation this would mean a reduction of approximately \$36,000. Staff is now working on identifying areas where reductions can be made to meet this requirement.

NEXT MEETING

The suggestion has been made to hold a board meeting during the project in one of the operational districts. A meeting of the board has not been held in District II for some time and if the meeting were held in Stanley it would provide the opportunity for the board to meet project staff and view the radar. The suggestion was made to hold a meeting in Stanley July 25th.

OTHER BUSINESS

Discussion was held about interest expressed by members of the insurance industry in sponsoring hail suppression programs primarily in metropolitan areas of the state.

Being no further business, Dale Frink moved the meeting be adjourned. Second by Chuck Tompkins. Motion carried.

HATTIE MELVIN, SECRETARY

JAY SANDSTROM, CHAIRMAN