

MINUTES

**North Dakota State Water Commission
Telephone Conference Call Meeting
Bismarck, North Dakota**

March 11, 1992

The North Dakota State Water Commission held a telephone conference call meeting in the Missouri River Room, State Capitol, Bismarck, North Dakota, on March 11, 1992. Chairman, Lieutenant Governor, Lloyd Omdahl, called the meeting to order at 3:00 PM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Lieutenant Governor Lloyd Omdahl
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
Marjorie Farstveet, Member from Beach
Jacob Gust, Member from West Fargo
Lorry Kramer, Member from Minot
Daniel Narlock, Member from Grand Forks
Norman Rudel, Member from Fessenden
Jerome Spaeth, Member from Fargo
David Sprynczynatyk, State Engineer and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Joyce Byerly, Member from Watford City

OTHERS PRESENT:

State Water Commission Staff Members
Kris Moelter, Attorney General's Office
Mike Chaussee, KX-12 TV
Janell Cole, Bismarck Tribune

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.

APPROVAL OF AGENDA

There being no additional items for the agenda, the Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

**SOUTHWEST PIPELINE PROJECT-
CONSIDERATION AND APPROVAL
OF AMENDMENT TO WATER
SERVICE CONTRACT RELATING
TO BILLING PROCEDURE
(SWC Project No. 1736)**

At the February 4, 1992 meeting the Commission members were informed that the water service contracts now in place for service from the Southwest Pipeline Project assume communities will use other sources of water and blend the water their consumers receive. Tim Fay, Manager of the Southwest Pipeline Project, indicated that if communities were to do this, it would be prudent and practical to keep monthly track of their use of pipeline water with respect to the annual amount they had committed to use in their contracts. The existing contracts address this in Sections VI C, D.3, and E.3. These sections require that the cities be billed for the higher cost of either the amount of pipeline water actually used or the "monthly minimum", which is one-twelfth of their minimum annual purchase.

Mr. Fay explained that two factors have become important since these provisions were adopted. First, is the decline in population. Nearly all of the contracted cities have expressed concern about being able to use their annual minimum water purchase. Because of this concern, the design capacities are being re-examined and reduction, where appropriate, is being carefully evaluated. The other factor is the intention of Dickinson to use the pipeline as its sole source of water. Mr. Fay said there will likely be other cities doing this as well.

Mr. Fay said if a city's only source of water is the Southwest Pipeline, the billing policies in the contract would result in overcharging the city. In the winter months, water use is lower than the annual average and the amount billed would be the monthly minimum. In summer months, use is greater than the annual average and the amount billed would be the actual use. Mr. Fay said no bill could ever be lower than the monthly minimum even though several months will see lower use. The contract's reimbursement provisions do not allow the refunding of the overcharge until the first four months of the following year. Thus, the overcharge will not be completely refunded for 16 months after it began and it will occur every year.

The City of Dickinson has requested an amendment to its water service contract. A draft amendment was presented for the Commission's consideration, which is attached hereto as APPENDIX "A". Mr. Fay stated that the draft has been reviewed by the City, the Commission staff and the Attorney General's office. Mr. Fay commented the amendment would prevent consistently overcharging the city and delaying reimbursements.

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It was the recommendation of the State Engineer that the State Water Commission approve the amendment to water service contracts to allow billing for the actual amount used for cities with no other source than the Southwest Pipeline. Contracts with cities who blend water sources would not be affected.

It was moved by Commissioner Vogel and seconded by Commissioner Rudel that the State Water Commission approve the amendment to water service contracts to allow billing for the actual amount used for cities with no other source of water other than the Southwest Pipeline. Contracts with cities who blend water sources shall not be affected.

Commissioners Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL
OF REQUEST FROM CITY OF
DICKINSON FOR AMENDMENT TO
WATER SERVICE CONTRACT
RELATING TO BILLING PROCEDURE
(SWC Project No. 1736)**

Tim Fay explained that under the provisions of the original water service contract, it was necessary to bill the City of Dickinson for one-twelfth of its annual use for January and February, 1992, resulting in an overcharge for water the city did not use in each month. The cost of the overcharge was \$26,274.72, which was paid to the State Water Commission for January, 1992. An overcharge of \$33,242.52 has been billed for February, 1992.

It was the recommendation of the State Engineer that the State Water Commission approve a credit to the City of Dickinson in subsequent billings for overbilling in January and February, 1992, for water the city did not use, in the amount of \$59,517.24. Approval of credit to the City of Dickinson shall be contingent upon execution of the amendment to the water service contract to allow billing for the actual amount of water used for cities with no other source other than the Southwest Pipeline.

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It was moved by Commissioner Vogel and seconded by Commissioner Rudel that the State Water Commission approve a credit to the City of Dickinson in subsequent billings for overbilling in January and February, 1992, for water the city did not use, in the amount of \$59,517.24. This motion is contingent upon the execution by the City of Dickinson of the amendment to the water service contract to allow billing for the actual amount of water used for cities with no other source than the Southwest Pipeline.

Commissioners Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL
OF CONTRACT FOR SOUTHWEST
WATER AUTHORITY USE OF
OPERATION AND MAINTENANCE
HEADQUARTERS
(SWC Project No. 1736)**

A request from the Southwest Water Authority was presented for the Commission's consideration to use office space in the Southwest Pipeline Project's Operation and Maintenance headquarters building in Dickinson. Tim Fay indicated that use by

the Authority would be helpful to the overall progress of the project. A draft agreement relating to the responsibilities for the joint use of the building was presented for the Commission's consideration. The draft agreement is attached hereto as APPENDIX "B".

It was the recommendation of the State Engineer that the State Water Commission approve entering into an agreement with the Southwest Water Authority for joint use of the Operations and Maintenance headquarters building in Dickinson.

It was moved by Commissioner Spaeth and seconded by Commissioner Gust that the State Water Commission approve entering into an agreement with the Southwest Water Authority for joint use of the Southwest Pipeline Project's Operation and Maintenance headquarters building in Dickinson.

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Commissioners Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
SOUTHWEST PIPELINE/WEST FARGO
STATE BANK LAWSUIT BRIEFING
(SWC Project No. 1736)**

In the summer of 1989, Johnson Construction filed bankruptcy during construction of Southwest Pipeline Contract 2-3A, a main transmission line segment east of Dickinson. Tim Fay indicated that the contract was satisfactorily completed by the bonding company with the exception of a payment of \$32,000 to Stark County. This payment was to compensate the county for lifting load limits on a portion of Old Highway 10 for hauling construction material. Johnson Construction had not made this payment at the time of his bankruptcy and the bonding company refused to honor it. The payment was eventually made out of the contract retainage.

Mr. Fay informed the Commission members that the bonding company disputed making the payment out of retainage. As part of their settlement with the creditors of Johnson Construction, the bonding company transferred their claim for the \$32,000 to the West Fargo State Bank. The bank sued the Water Commission for that amount plus interest.

Mr. Fay briefed the Commission members on the lawsuit which was heard in Fargo on February 28, 1992. The Judge ruled against the Commission, but the written decision has not been provided at this time. Mr. Fay indicated the court apparently ruled that Stark County did not have a valid legal claim for the \$32,000 and that the Commission, therefore, should not have made the payment out of retainage.

Secretary Sprynczynatyk commented on the lawsuit and indicated a detailed briefing will be provided at a future Commission meeting.

There being no further business to come before the State Water Commission, it was moved by Commissioner Vogel, seconded

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by Commissioner Spaeth, and unanimously carried, that the State Water Commission telephone conference call meeting adjourn at 3:15 PM.



Lloyd B. Omdahl
Lieutenant Governor-Chairman

SEAL



David A. Spryncznaty
State Engineer and
Chief Engineer-Secretary

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Richard Register

Site meeting - March 11

KX-12

Bismark station

Attorney General office

Site

Mike Lawrence

Prinell Cole

Kyle Meister

Dave Spangenberg

Dale Frank

Tim Fay

Sharon Beckel

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**SOUTHWEST PIPELINE PROJECT
WATER SERVICE CONTRACT AMENDMENT**

Contract No. SWC 1736-3

Notwithstanding the provisions of Sections VII C, D.3, and E.3, or any other terms of the Water Service Contract, if the City uses water from no other source than the Southwest Pipeline during the course of the year, the City will make payment based on the actual amount of water used, and the monthly payment shall be based on the actual amount used in the respective month. This amendment shall be in effect from January 1, 1992, until the termination of the Water Service Agreement.

NORTH DAKOTA STATE WATER COMMISSION

Address: _____

By: _____

Title: _____

Date: _____

Approved and entered into by resolution of the State Water Commission this _____ day of _____, 1992.

David A. Sprynczynatyk
Secretary and Chief Engineer

CITY OF _____

Address: _____

By: _____

Title: _____

Date: _____

Approved and entered into by resolution of the City of _____ this _____ day of _____, 1992.

APPENDIX "B"

SWC Project No. 1736

A G R E E M E N T
for Office Space Use

I. PARTIES

THIS AGREEMENT is between the North Dakota State Water Commission, through its Secretary, David A. Sprynczynatyk, 900 East Boulevard, Bismarck, North Dakota, (hereinafter "Landlord"), and the Southwest Water Authority, through its President, Alfred Underdahl, a corporation of the State of North Dakota, with its principal office and place of business in Dickinson, North Dakota, (hereafter "Tenant").

For and in consideration of the mutual benefits accruing to both parties, they hereby enter into this agreement for office space use.

II. CONDITIONS

Office space to be made available to the Tenant as follows:

1. The Landlord shall make available at its operation and maintenance facility in the West Industrial Park at Dickinson, North Dakota, one furnished office space as designated on the plan sheet attached. Furnishings shall include: one desk, one desk chair, two side chairs, one telephone, and two keys for the building's front entry.
2. A receptionist area, desk, and dedicated telephone line identified on the plan sheet attached will be provided.
3. The Tenant shall have access to a photocopy machine, facsimile machine, the conference room, kitchenette, and restrooms, as their needs dictate, including the right to store the supplies and equipment necessary for conducting board meetings in the conference room.
4. Employee parking spaces will be provided on the outside of the security fence of the operations and maintenance facility.

III. UTILITIES AND MAINTENANCE EXPENSES

1. The Landlord shall determine what is adequate, without expense to the Tenant, and pay all electrical, heating, water, sewer, garbage collection, custodial services, snow removal, paving repair, yard maintenance, and any necessary repairs to the building required to keep it in habitable condition.
2. The Tenant shall pay for the telephone expenses of its dedicated line and rental costs for a copy machine for joint use.

IV. SECRETARY/RECEPTIONIST UTILIZATION

The Landlord will hire one person to perform secretarial and receptionist duties. The Landlord and Tenant agree to share equally in the salary and benefits of the employer. The Landlord shall pay the employee the agreed salary at monthly intervals and claim reimbursement from the Tenant each month. The employee shall perform services from both the Landlord and the Tenant as needed.

V. TENANT LIABILITY INSURANCE

During the term of this lease, Tenant, at its own expense, shall carry public liability insurance in not less than the following limits:

1. Bodily injury - \$1,000,000 per person.
2. Property damage - \$1,000,000 per occurrence.
3. Renter content - adequate to cover any loss to Tenant's supplies and equipment housed in Landlord's building. The Landlord will not provide coverage for any Tenant-owned supplies and equipment.

VI. TERMS

This agreement will continue for one year from the date entered, at which time it can be renewed. Either party may, however, cancel this agreement by giving 30 days' written notice.

VII. AMENDMENTS

This agreement may not be amended unless in writing, signed by both parties, and attached hereto.

VIII. OTHER

This office space use agreement may not be assigned or sublet without the consent of the Landlord.

IX. INDEMNITY

The Tenant accepts responsibility for, and holds the State of North Dakota, the North Dakota State Water Commission, the State Engineer, and their employees and agents, free from all claims and damages to public or private property, rights, or persons arising out of this agreement. In the event a suit is initiated or judgment entered against the State of North Dakota, the North Dakota State Water Commission, the State Engineer, or their employees or agents, the Tenant agrees to indemnify it for any settlement arrived at or judgment satisfied, except those resulting from the negligence of the Landlord.

NORTH DAKOTA STATE WATER
COMMISSION
By:

SOUTHWEST WATER AUTHORITY
By:

DAVID A. SPRYNCZYNATYK
Secretary

ALFRED UNDERDAHL
President

DATE:

DATE:
