

MINUTES

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

November 25, 1998

The North Dakota State Water Commission held a telephone conference call meeting in the Governor's conference room, State Capitol, Bismarck, North Dakota, on November 25, 1998. Chairman, Governor Edward T. Schafer, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Mike Ames, Member from Williston
Judith DeWitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Florenz Bjornson, Member from West Fargo

OTHERS PRESENT:

State Water Commission Staff
Julie Krenz, Assistant Attorney General
Approximately 25 people interested in agenda items

The attendance register is on file with the official 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.

1999 PROPOSED LEGISLATION

At the October 19, 1998 State

Water Commission meeting, pro-posed legislation discussed at the staff level for introduction during the 1999 legislative session was presented. Secretary Sprynczynatyk stated the legislative items have been refined since the Commission meeting based on discussions from the meeting, further research, and discussions with other interested parties. The following bill drafts were presented for the State Water Commission's consideration for introduction during the 1999 legislative session, which are under the authority of the State Water Commission and the State Engineer:

Under the Authority of the State Water Commission

Northwest Area Water Supply Project (NAWS):

- 1) Amend the statute that gives the State Water Commission the authority to exercise "quick take" eminent domain authority for the Southwest Pipeline Project to include "quick take" authority for the Northwest Area Water Supply Project.
- 2) Amend the NAWS authorizing language to clarify that the project encompasses areas identified in the 1995 prefinal design report including Rugby and Pierce County.
- 3) Amend the NAWS authorizing legislation to clarify that the project can include delivery of water from the Missouri River or other sources, and that facilities constructed under the project for the delivery of water can include a pipeline or other works.
- 4) Establish accounts for the deposit of funds received for capital repayment, operation and maintenance, and replacement of NAWS.

Under the Authority of the State Engineer

Dikes Appeals:

Create a procedure that would allow anyone aggrieved by a decision of a water resource board with regard to a complaint of an unauthorized dike, dam, or other water control device to appeal to the State Engineer. Under the existing law, the remedy for a landowner aggrieved by the decision of a water resource board is to appeal to district court. The procedure to allow an appeal to the State Engineer for complaints of an unauthorized dike, dam, and other water control device would be similar to what exists for complaints regarding unauthorized drains.

Water Appropriations - Permit Proceedings:

Eliminates the need to hold a hearing on water permit applications where no one files an objection to the application and no one requests a hearing. It also authorizes the staff person who evaluates the application to recommend to the State Engineer whether the application should be approved.

Although the bill eliminates the need to hold a hearing on water permit applications unless requested, Governor Schafer stressed the importance of the public's opportunity to request a hearing. He indicated this information is to be clearly outlined in the notice to the applicants within the one-mile radius of the water appropriation site(s).

Secretary Sprynczynatyk explained the intent of the legislation is not to diminish anyone's right or opportunity to a hearing, but to streamline the water permit application process and to reduce costs to the state.

Indian Reserved Water Rights Negotiations:

This bill draft includes a legislative intent section expressing as the state's policy its position that it would rather negotiate than litigate Indian claims reserved water rights. The bill draft authorizes the State Engineer to negotiate Indian reserved water rights.

Secretary Sprynczynatyk stated that a letter was received from the Turtle Mountain Chippewa Tribe requesting that the state begin a process of water rights settlement. The State Engineer responded to the tribe's letter indicating that the state was ready to negotiate at the tribe's request. To date, a response has not been received from the tribe. Secretary Sprynczynatyk explained that the proposed legislation would clearly authorize the State Engineer to negotiate Indian reserved water rights.

Tex Hall, Chairman of the Three Affiliated Tribes, referenced tribal history. He further stated he had received the bill draft the day prior to this conference call meeting and, therefore, needed more time for a review and analysis. Christopher Quale, Legal Counsel for the Three Affiliated Tribes, requested an opportunity to meet with representatives of the other tribes to discuss the proposed legislation prior to final consideration by the Commission. He said the tribes' comments would be provided to the State Engineer for consideration prior to the December 10, 1998 Legislative Council deadline for the submission of legislation.

Elaine McLaughlin, Tribal Secretary of the Standing Rock Sioux Tribe, reiterated Chairman Hall's comments. She indicated it has been the long-standing position of the Standing Rock Sioux Tribe

not to initiate the quantification of water rights. The proposed legislation will be brought before the Council, and if the Council decides to change its position or if directed by the Council, she said tribal comments will be provided prior to the December 10 deadline.

Shirley Marvin, representing the Standing Rock Sioux Tribe, Department of Water and Natural Resources, requested the Indian Affairs Commissioner in Bismarck also be kept informed on the progress of the bill draft.

Paul Hoffman, Bureau of Indian Affairs, Aberdeen, South Dakota, provided comments to the bill draft relating to the intent and clarity of the process. He indicated written comments from the agency would be submitted.

Governor Schafer indicated that because of the insufficient time allowed for the tribes to review the proposed bill draft and to provide comments, he requested the State Water Commission defer action on the bill draft at this meeting, and that a telephone conference call be scheduled prior to December 10, 1998 for the Commission's consideration of the bill draft. (**Note:** A telephone conference call has been scheduled for December 10, 1998, at 1:30 PM.)

Water Supply Districts:

This bill draft proposes three changes to the law authorizing the State Engineer to establish water districts.

First, it requires a water district to pay for the costs of publishing notices required to create the water district.

Second, it allows water districts to select their initial board of directors within 30 days after the State Engineer issues the order forming the water district rather than requiring the board to be selected within 30 days of the State Engineer's hearing on whether the district should be established.

The third change amends N.D.C.C. 61-35-25(1), which, as presently written, requires a rural water cooperative or corporation to notify itself of its dissolution or merger when the cooperative or corporation petitions to become a water district. Title 10 requires notices of dissolution or merger to be filed with the Secretary of State or Attorney General. This amendment requires the notice of dissolution or merger of a rural water cooperative or corporation to be filed with the Secretary of State or Attorney General.

Secretary Sprynczynatyk stated that in the wake of the 1997 floods, Governor Schafer indicated the need to refine the state's floodplain management policies and consider possible statutory changes for the 1999 legislative session. The State Water Commission, as part of the 1999 State Water Management Plan, held eight public input meetings and discussions with various local, state, and federal officials to determine potential changes.

Draft legislation was provided to the Commission members at its October 19, 1998 meeting to initiate discussion on final legislation. As a result of the discussion regarding floodplain management and to address the potential areas of change, Secretary Sprynczynatyk explained several potential changes. The Commission staff continues to meet with various interested groups. Secretary Sprynczynatyk said it is anticipated a bill draft addressing the following areas of floodplain management will be available for the Commission's consideration prior to the December 10, 1998 deadline for submittal to the Legislative Council:

- 1) Requiring the State Engineer to review the determination of impacts of proposed development activities within the mapped, regulatory floodway.
- 2) Increasing by one foot, unless the State Engineer determines it is not necessary or practicable or that another elevation is acceptable, the elevation at which structures must be built in the floodfringe. Currently, structures, including basements, must be constructed to base flood levels.
- 3) Requiring plats for development of subdivisions in counties to show any portions of land located within the 100-year floodplain. This requirement already exists for plats for subdivisions of towns.
- 4) Specifying that the comprehensive plan adopted by zoning authorities may be designed to provide for "emergency management". The plan would provide for the development and maintenance of an effective capability to mitigate, prepare for, respond to and recover from, known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or the environment.
- 5) Requiring all communities to be enrolled in the National Flood Insurance Program. Failure to do so would make them ineligible to receive state disaster funds.
- 6) Allowing the State Engineer to establish a base flood elevation for lakes.

It was the recommendation of the State Engineer that the State Water Commission approve the bill draft relating to the Northwest Area Water Supply Project for submittal to the Legislature.

It was also the recommendation of the State Engineer that the State Water Commission support the concept of the bill drafts pertaining to dike appeals, water appropriation permit proceedings, and water supply districts.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission:

- 1) approve the bill draft relating to the Northwest Area Water Supply Project for submittal to the Legislature; and***
- 2) support the concept of the bill drafts pertaining to dike appeals, water appropriation permit proceedings, and water supply districts. SEE APPENDIX "A"***

Commissioners Ames, DeWitz, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for December 21, 1998 in Bismarck, North Dakota.

There being no further business to come before the State Water Commission, Governor Schafer adjourned the telephone conference call meeting at 2:30 PM.

/S/ Edward T. Schafer _____
Edward T. Schafer
Governor-Chairman

SEAL

/S/ David A. Sprynczynatyk _____
David A. Sprynczynatyk
State Engineer, and
Chief Engineer-Secretary