

MINUTES

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

February 9, 2000

The North Dakota State Water Commission held a telephone conference call meeting in the Lewis and Clark room, State Capitol, Bismarck, North Dakota, on February 9, 2000. Chairman, Governor Edward T. Schafer, called the meeting to order at 10:00 AM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman announced a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Larry Hanson, Member from Williston
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

OTHERS PRESENT:

State Water Commission Staff
Julie Krenz, Assistant Attorney General, Bismarck
Joe Bichler, Bartlett and West Engineers, Bismarck
Pinkie Evans-Curry, Southwest Water Authority, Dickinson

The attendance register is on file with the official minutes.

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

APPROVAL OF AGENDA

The agenda was revised to include a request to consider the execution of a proposed agreement to ratably share the net revenues of the Agassiz Water Users District. The Chairman announced the agenda approved, and requested Secretary Sprynczynatyk to present the agenda.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND CONSTRUCTION
STATUS; AND PROJECT UPDATE
(SWC Project No. 1736)**

The following contract, construction and project status report was provided:

Contract 2-6B - Burt Service Area Main Transmission Pipeline: The contract consists of the installation of 46.5 miles of pipeline between Mott and Carson, including service to the cities of New Leipzig, Elgin and Carson. Approximately 13 miles of 4-inch through 10-inch pipe have been installed between Mott and New Leipzig. The contractor completed construction activity for the season on December 17, 1999.

Contract 5-6 - Burt Reservoir: There has been no construction work completed since the contract was awarded. The contractor is expected to begin construction on the tank in the spring of 2000, with the contract completion date of September 2, 2000.

Contract 5-14 - Hebron Reservoir: The contract foundation work was completed last fall. The contractor is expected to begin erection of the glassfused bolted steel reservoir in the spring of 2000, with the contract completion date scheduled for August 26, 2000.

On June 9, 1999, the State Water Commission was informed the USDA, Rural Development was developing a financing package for the Mott-Elgin phase of the Southwest Pipeline Project. At that meeting, the Commission passed a motion to proceed with the development of a financial package providing for \$4.5 million in state funding under the authority provided by Senate Bill 2188. This funding will provide the majority of the state's share of funding for the Mott-Elgin phase.

The overall funding plan for MottElgin was developed in conjunction with the projected construction schedule and the estimated costs. The overall funding plan is shown in the following table:

**Mott-Elgin Phase Funding
(in millions \$)**

Year	State Grant	State Loan	USDA Grant	USDA Loan	Yearly Total
1999	\$3.63	\$0.00	\$1.10	\$1.00	\$ 5.73
2000	\$0.87	\$1.04	\$2.00	\$0.40	\$ 4.31
2001	\$0.00	\$0.46	\$2.00	\$0.50	\$ 2.96
Totals	\$4.50	\$1.50	\$5.10	\$1.90	\$13.00

The USDA, Rural Development funding is subject to yearly approval and the availability of funds. The funding package each year will include a letter of conditions stipulating the requirements that must be satisfied by the State Water Commission.

Mott-Elgin, Phase II, funded in 2000, consists of a single construction contract, Southwest Pipeline Project contract 7-6A for the Burt Service Area. It is anticipated the contract bids will be advertised in mid-February, 2000, with the bid opening occurring in mid-March, 2000. The Commission staff continues to work with USDA, Rural Development to develop the funding package for Phase II. The funding documents will be presented for the State Water Commission's consideration at a future meeting.

On December 10, 1999, the State Water Commission was informed that the Southwest Water Authority and the city of Dickinson were discussing the possible transfer of the management and operations of the Dickinson water treatment plant to the Authority. Public meetings were held, and the Authority and the city have discussed a possible transfer date of March 1, 2000, pending the resolution of outstanding items relating primarily to the preparation of the exhibits. The Commission is a party to this agreement because of its obligations under the present treatment agreement with the city and its relationship with the Authority. The agreement will be presented to the Commission for consideration at a later meeting.

The water treatment plant east sludge pond cleanout was satisfactorily completed. The Southwest Pipeline Project replacement and extraordinary maintenance funds will be used to pay for this project, as approved by the State Water Commission at its January 27, 1999 and June 9, 1999 meetings.

**SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 7-3B/7-5B,
SOUTHEAST JUNG LAKE AND
SOUTH HEBRON POCKET AREAS,
TO NORTHERN IMPROVEMENT
COMPANY, BISMARCK, ND
(SWC Project No. 1736)**

On December 15, 1999, bids were opened for Southwest Pipeline Project contract 7-3B/7-5B for the Southeast Jung Lake and South Hebron Pocket areas. This contract is for approximately 115 miles of rural distribution lines serving about 60 rural water customers. There were no alternate bid schedules for this contract.

The apparent low bid was received from Northern Improvement Company, Bismarck, North Dakota, at a bid price of \$1,513,871. Secretary Sprynczynatyk said this bid is approximately \$30,815 lower than the engineer's estimate of \$1,544,686. The contract allows the State Water Commission to select the most advantageous bid. The engineer has reviewed the bid, found the bid responsive, and recommended award of the contract to Northern Improvement Company.

At its July 2, 1993 meeting, the State Water Commission approved the adoption of the rural water feasibility and design criteria, developed with the cooperation of the Southwest Water Authority, which is summarized as follows:

No service area will be considered feasible in which less than 50 percent of the potential users have signed up as members and paid their membership fees. In addition, no more than \$25,000 will be allocated or expended for a single hookup. The \$25,000 maximum may be modified for certain factors.

When the final plans were prepared for contract 7-3B/7-5B, Secretary Sprynczynatyk said it was apparent that the South Hebron Pocket may not have 50 percent of the potential users in the area signed up, as required in the feasibility criteria for rural water delivery. For this reason, a field check of the occupied dwellings was undertaken to establish the sign-up percentage, which revealed that there were 48 occupied dwellings within three miles of the design pipeline route compared to 21 occupied dwellings signed up to receive water. This resulted in a sign-up percentage of about 44 percent in that pocket. The Southeast Jung Lake Pocket was checked with county highway maps, which showed that pocket exceeds the 50 percent sign-up requirement.

The rural water delivery feasibility criteria defines a service area as the hydraulic service area served by a particular storage reservoir. A strict interpretation of this criteria would mean that the 50 percent sign-up requirement must be taken over the entire Hebron service area, which would include most of the area constructed under contract 7-5A. Several years ago, the South Hebron Pocket area had been deleted from contract 7-5A because of limited funding available at that time. To determine the sign-up percentage of the entire Hebron service area, a map was prepared from 911 information in Morton, Stark and Grant counties. The service area boundary was adjusted to exclude those areas for which no capacity had been included in the design and those areas for which service would not be hydraulically possible. This analysis revealed that for the entire Hebron service area, including the South Hebron Pocket, there were 103 sign-ups and 92 occupied dwellings which had not signed up, for an overall sign-up percentage of 53 percent. The average cost per an equivalent service unit for the entire service area was calculated as \$16,276.28, including the costs for the main transmission pipeline from Richardton to Hebron and Glen Ullin, the Hebron reservoir, and rural contracts 7-5A and 7-5B.

The rural water delivery feasibility criteria includes a maximum limit of \$25,000 for distribution system costs allocated or expended for a single hookup. Secretary Sprynczynatyk explained this requirement is adjusted annually for inflation when developing the design of rural water distribution systems for each phase of the project. The current number used for the bid opening for contract 7-3B/7-5B was based upon the November CPI and is approximately \$29,780.

Secretary Sprynczynatyk informed the Commission that the South Hebron Pocket includes a pneumatic booster pump station. When costs of this booster pump station are deducted, the average cost per user is below the criteria. The cost of the booster can be considered part of the overall transmission cost similar to costs for tanks, other pump stations, and the intake, and it is, therefore, appropriate to not include them.

Secretary Sprynczynatyk explained that as the Southwest Pipeline Project moves forward, and the remote, more sparsely populated areas are addressed, it is becoming more difficult and expensive to provide rural water service to the users. Therefore, it was the recommendation of the State Engineer that the State Water Commission's MR&I subcommittee (Commissioners Olin, Swenson, Bjornson and DeWitz) and representatives of the Southwest Water Authority revisit the rural water feasibility and design criteria for the Southwest Pipeline Project that was adopted by the Commission in 1993. He said revisiting the criteria at this time is appropriate and will assist in making wise decisions relative to the future allocation of funds for the project.

Commissioner Swenson requested that in preparation for the subcommittee meeting, the Commission staff research the rural water feasibility and design criteria applicable in other states.

Based on the analysis and interpretation of the feasibility criteria adopted by the State Water Commission, Secretary Sprynczynatyk said the South Hebron Pocket and the Southeast Jung Lake areas satisfy the criteria. Therefore, it was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 7-3B/7-5B, Southeast Jung Lake and South Hebron Pocket Areas, Rural Distribution System, to Northern Improvement Company, Bismarck, North Dakota.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that:

1) the State Water Commission approve the award of contract 7-3B/7-5B, Southeast Jung Lake and South Hebron Pocket Areas, Rural Distribution System, to Northern Improvement Company, Bismarck, North Dakota; and

2) the State Water Commission's MR&I subcommittee and representatives of the Southwest Water Authority revisit the feasibility criteria for rural water delivery for the Southwest Pipeline Project.

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

**SOUTHWEST PIPELINE PROJECT -
SOUTHWEST WATER AUTHORITY
OPERATIONS BUDGET AND
WATER RATES FOR 2000
(SWC Project No. 1736)**

Under the Agreement for the Transfer of Management, Operations, and Maintenance Responsibilities for the Southwest Pipeline Project, the Southwest Water Authority is required to submit a budget to the

Secretary of the State Water Commission by December 15 of each year. The budget is deemed approved unless the Secretary of the Commission notifies the Authority of its disapproval by February 15.

Secretary Sprynczynatyk stated that the Southwest Water Authority has satisfactorily complied with this provision. The budget has been reviewed by the State Water Commission staff and is reasonable and adequate. A memorandum from the Southwest Water Authority describing the project's 2000 operations budget and water rates is attached hereto as ***APPENDIX "A"***.

**JEROME AND THERESA FISCHER
V. BOWMAN COUNTY WATER
RESOURCE DISTRICT, ET AL.;
CASE NO. 97-C-76, RELATING TO
SPRING LAKE DAM
(SWC Project No. 388)**

In October, 1997, Jerome Fischer and Theresa Fischer (Fischers) brought a civil action against the Bowman County Water Resource District (District), the State Water Commission, and the State Game and Fish Department.

The Fischers own land upon which a Works Progress Administration dam is located. The dam was constructed in the 1930s. Easements for the property flooded by the construction of the dam and providing access to the dam were conveyed to the State of North Dakota. The lawsuit was initiated because Fischers and the District had a dispute about the uses that can be made of the easements. The Fischers believe the easements can only be used to access the dam for fish, wildlife, and recreational purposes. The District believes the easements can provide access for industrial uses. The State Water Commission was named as a party to the suit because it owns the easements.

Julie Krenz, Assistant Attorney General for the State Water Commission, stated that in the District's answer and counterclaim to the suit, it raised various issues and asserted matters adverse to

the interests of the State Water Commission. These issues relate to the purposes of the 1930s water rights associated with Spring Lake Dam, ownership of the easements that provide access to Spring Lake Dam, and the District's authority and control over the water impounded by the dam, and the dam structure itself. Ms. Krenz stated it is anticipated these issues can be resolved outside of the litigation.

A proposed settlement agreement among the District, the State Water Commission, and the State Engineer regarding the issues was presented for the Commission's consideration. Ms. Krenz explained the agreement, which proposes to assign the easements to the District. The District has the responsibility for maintenance of the dam and, therefore, it is appropriate that the easements that provide access to the dam be assigned to the District. In addition, the water right, which originated in the 1930s, was to be assigned to Bowman County. At the time the dam was built, the District was not in existence. Under the proposed agreement, the water right will also be assigned to the District upon the request of Bowman County. Ms. Krenz said approval of the agreement will simplify the remaining issue of interest to the state in this case that will be decided by the court. That issue is the determination of purposes for which the easements can be used to access the dam. Ms. Krenz said she is working with the Bowman County Water Resource District attorney to address minor modifications to the proposed settlement agreement.

It was the recommendation of the State Engineer that the State Water Commission authorize the execution of the proposed Settlement Agreement among the Bowman County Water Resource District, the State Water Commission, and the State Engineer relating to Spring Lake Dam.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission authorize the execution of the proposed Settlement Agreement, including minor non-substantive modifications to it, among the Bowman County Water Resource District, the State Water Commission, and the State Engineer relating to Spring Lake Dam in Bowman County. SEE APPENDIX "B"

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

**APPROVAL OF AGREEMENT TO
RATABLY SHARE NET REVENUES
AGASSIZ WATER USERS DISTRICT
(SWC Project No. 237-03)**

Agassiz Water Users District is a rural water system, which serves approximately 1,284 users in Grand Forks county and a portion of south-eastern Walsh county. The District

provides service to Inkster, Forest River, Johnstown, Ardoch, Manvel, Gilby, Honeyford, and West Oslo.

Agassiz Water Users District formed a rural water district to take advantage of tax-exempt financing, as authorized under the North Dakota Century Code, Chapter 61-35, Water Districts. The District is proposing to refinance its existing USDA, Rural Development indebtedness with a \$700,000 term loan from the Bremer Bank in Grand Forks and a portion of available cash. The loan requires that revenues generated from the District be divided ratably, based upon the respective amounts due and owing by the Agassiz Water Users District.

Secretary Sprynczynatyk explained that the State Water Commission has a loan with the Agassiz Water Users District for a 1992 expansion project. The loan requires Commission approval of the District's refinancing. The draft agreement was presented for the Commission's consideration that would allow all revenues generated from the District to be divided ratably based upon the respective total amounts due and owing by the District to the North Dakota Municipal Bond Bank, the Bank of North Dakota, the North Dakota State Water Commission, and the Bremer Bank. The District's refinancing will reduce the monthly payments from \$6,030 to \$5,890 per month on a 15-year amortization. Secretary Sprynczynatyk said the proposed agreement may affect the State Water Commission's loan repayment in case the Agassiz Water Users District goes into default.

It was the recommendation of the State Engineer that the State Water Commission authorize the execution of the proposed agreement, which would allow all revenues generated from the Agassiz Water Users District to be divided ratably based on all outstanding amounts and due to the parties of the agreement that are providing credit accommodations to the District.

It was moved by Commissioner Hanson and seconded by Commissioner Thompson that the State Water Commission approve refinancing and authorize the execution of the agreement allowing all revenues generated from the Agassiz Water Users District to be divided ratably among the North Dakota Municipal Bond Bank, the Bank of North Dakota, the North Dakota State Water Commission, and the Bremer Bank based upon the respective total amounts due and owing by Agassiz Water Users District. SEE APPENDIX "C"

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

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for April 10, 2000, in Bismarck, ND, beginning at 1:30 PM in the State Office Building lower level conference room.

There being no further business to come before the State Water Commission, Governor Schafer adjourned the telephone conference call meeting at 10:20 AM.

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

SEAL

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