

MINUTES

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

November 14, 2002

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 14, 2002. Governor-Chairman, John Hoeven, called the meeting to order at 4:00 PM and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. ** (*Note: Because of cellular phone interference on line, Commissioner Robert Thompson decided to withdraw his participation in the meeting.*) Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Charles Halcrow, Member from Drayton
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page ** (see note above)
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

STATE WATER COMMISSION MEMBERS ABSENT:

Larry Hanson, Member from Williston
Curtis Hofstad, Member from Starkweather

OTHERS PRESENT:

Wayne Stenehjem, North Dakota Attorney General, Bismarck
Charles Carvell, Assistant Attorney General, Bismarck
Matthew Sagsveen, Assistant Attorney General, Bismarck
Robert Harms, Office of the Governor, Bismarck
State Water Commission Staff
Blake Nicholson, Associated Press, Bismarck
Warren Jamison, Garrison Diversion Conservancy District (by phone)
Robert Frantsovog, City of Minot (by phone)
David Waind, City of Minot (by phone)
Alan Walter, City of Minot (by phone)
Tom Rafferty, Associated Press, Minot (by phone)

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA

announced the agenda approved as presented.

There being no additional items for the agenda, Governor Hoeven an-

**NORTHWEST AREA WATER
SUPPLY PROJECT STATUS
(SWC Project No. 237-04)**

James Lennington, project manager for the Northwest Area Water Supply (NAWS) project, provided the following status report:

Contract 2-1A- First Main Transmission Line: The award of contract 2-1A was authorized by the State Water Commission on February 20, 2002 to S. J. Louis Construction, St. Cloud, Minnesota, contingent upon the written concurrence by the Bureau of Reclamation (received on March 28, 2002) and upon completion of the contract documents.

The contractor completed construction of the 7.5 miles of pipeline in contract 2-1A on October 25, 2002, with the exception of pressure testing, cleanup work, and administrative items. Contract 2-1A has a completion date of November 15, 2002.

The contract documents allow for change orders increasing the contract amount by up to 25 percent, contingent upon approval of the Bureau of Reclamation. On October 15, 2002, the Bureau of Reclamation approved change order No. 3 to contract 2-1A which will add 2 miles (10,000 feet) of pipeline as well as the bored crossing of US Highway 83 to this contract. The pipe will be delivered in early December, 2002, although the contractor has chosen to wait until spring to lay the pipe. The cost of change order No. 3 is \$965,000, which increases the total cost of contract 2-1A to \$5,782,000. The completion date for change order No. 3 is July 15, 2003.

Project Design: The construction schedule for 2003 includes approximately 9 additional pipeline miles to the junction of US Highway 83 and State Highway 23. Plans and specifications for contract 2-1B are being reviewed for submission to the Bureau of Reclamation in mid-November, 2002. Contingent upon the Bureau's approval, bids will be advertised in December, 2002, with a tentative bid opening date in late January or early February, 2003.

Secretary Frink discussed the acquisition of pipeline easements which turned out to be more difficult and costly than originally projected. Although there have been problems with some of the landowners, he said relations with the landowners have improved. Obtaining easements for the NAWS project has been more difficult than for the Southwest Pipeline Project partly because of the shorter negotiation time with the landowners for the NAWS easements. Thus, some of the landowners felt they were being pressured for a decision. The state has paid landowners for permanent easements on their property, but several of the landowners are appealing the compensation in court.

**NORTHWEST AREA
WATER SUPPLY PROJECT -
MANITOBA V. BUREAU OF
RECLAMATION LAWSUIT
(SWC Project No. 237-04)**

On October 21, 2002, the Government of the Province of Manitoba sued Gale Norton, Secretary of the United States Department of the Interior, John W. Keys, III, Commissioner of the Bureau of Reclamation, Maryanne C.

Bach, Great Plains Regional Director of the Bureau of Reclamation, and Dennis E. Breitzman, Dakota Areas Manager of the Bureau of Reclamation, in Federal District Court in Washington, D.C. The State of North Dakota was not named as a defendant in this lawsuit. The action was brought under the National Environmental Policy Act of 1969 (NEPA) and the implementing regulations of the Council on Environmental Quality as adopted by the Bureau of Reclamation in connection with their consideration and approval of the proposed NAWS project.

Manitoba is challenging the adequacy of the April 30, 2001 Final Environmental Assessment together with the May 18, 2001 Finding of No Significant Impact (FONSI), as revised September 10, 2001, that was prepared for the NAWS project. Manitoba also contends that the defendants' decision to authorize and expend federal funds for the NAWS project constitutes a "major federal action significantly affecting the quality of the human environment" within the meaning of NEPA and its implementing regulations, that defendants are therefore required to prepare, circulate for comment and consider in their decision-making process a detailed environmental impact statement on the NAWS project, and that their failure to do so violates NEPA and its implementing regulations.

Manitoba is seeking a declaratory judgment with respect to the claims listed above, and an injunction (a) requiring the defendants to fully comply with the requirements of NEPA and its implementing regulations including, but not limited to, the preparation, circulation for comment and consideration of an environmental impact statement on the NAWS project, and (b) enjoining the defendants from authorizing or expending any further federal funds for the NAWS project and from undertaking any further actions related to planning, design or construction of the NAWS project, unless and until the defendants have fully complied with such requirements.

It was the recommendation of the State Engineer that the discussion relating to the Manitoba v. Bureau of Reclamation lawsuit be held in executive session under the provisions of North Dakota Century Code § 44-04-19.1 for the purpose of determining the State Water Commission's level of participation. Because of the Garrison Diversion Conservancy District's involvement in the NAWS project, Warren Jamison was invited to participate in the executive session.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that under the provisions of North Dakota Century Code § 44-04-19.1, the State Water Commission proceed into executive session at 4:20 PM for the purposes of attorney consultation regarding the Manitoba v. Bureau of Reclamation lawsuit relative to the Northwest Area Water Supply Project.

Commissioners Halcrow, Hillesland, Johnson, Olin, Swenson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

Following attorney consultation regarding the Manitoba v. Bureau of Reclamation lawsuit relative to the Northwest Area Water Supply Project, Governor Hoeven reconvened the open session of the State Water Commission telephone conference call meeting at 4:35 PM.

It was the recommendation of the State Engineer that the State Water Commission authorize joining or participating in the Manitoba v. Bureau of Reclamation lawsuit relative to the Northwest Area Water Supply Project as determined appropriate by the State Engineer in consultation with the Governor of North Dakota and the North Dakota Attorney General.

It was moved by Commissioner Johnson and seconded by Commissioner Hillesland that the State Water Commission authorize joining or participating in the Manitoba v. Bureau of Reclamation lawsuit relative to the Northwest Area Water Supply Project as determined appropriate by the North Dakota State Engineer in consultation with the Governor of North Dakota and the North Dakota Attorney General.

Commissioners Halcrow, Hillesland, Johnson, Olin, Swenson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the telephone conference call meeting at 4:40 PM.

John Hoeven, Governor
Chairman, State Water Commission

SEAL

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission