

MINUTES

North Dakota State Water Commission
Dickinson, North Dakota

December 7, 1983

The North Dakota State Water Commission held a meeting on December 7, 1983, at the Holiday Inn in Dickinson, North Dakota. Acting Chairman, Vernon Fahy, called the meeting to order at 8:30 a.m., Mountain Standard Time, and presented the agenda.

MEMBERS PRESENT:

Kent Jones, Commissioner, Department of Agriculture, Bismarck
Florenz Bjornson, Member from West Fargo
Ray Hutton, Member from Oslo, Minnesota
Garvin Jacobson, Member from Alexander
Alvin Kramer, Member from Minot
Guy Larson, Member from Bismarck
Henry Schank, Member from Dickinson
Bernard Vculek, Member from Crete
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBER ABSENT:

Allen I. Olson, Governor-Chairman

OTHERS PRESENT:

State Water Commission Staff
Approximately 40 persons interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official minutes).

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

Mayor Art Baumgartner welcomed the Commission members to Dickinson. Pat O'Meara, Executive Vice President of the National Water Resources Association in Washington, D. C., was introduced.

Mr. O'Meara briefed the Commission members on cost sharing and Section 404 permits on the federal level. He also indicated that the next issue of NWRA's Newsletter will include an article asking all NWRA members across the 17 western states to begin now to support North Dakota in its bid for appropriations for the Garrison Project, and stated that NWRA as an Association will work as hard as it possibly can in North Dakota's fight for the project.

Chairman's chair.

Commissioner Jones resumes

CONTINUED DISCUSSION
RELATIVE TO PROPOSAL
TO CHANGE SWC COST
SHARING POLICY

Secretary Fahy stated there has been a considerable amount of interest in the eastern portion of the State in changing the cost sharing policy of the State

Water Commission. The main interest is in allowing the fees of consulting engineers to be an eligible item for cost sharing on water resource projects.

Mr. Norman Cross, President of the Water Resource Districts Association, updated the Commission members on what the Association is currently involved in. In speaking on the issue of cost sharing, Mr. Cross stated that the Association is requesting a policy change to allow private engineering consulting services to be an eligible item for cost sharing from the State Water Commission's Contract Fund. He said that this proposal is no indication that the local boards are unhappy with the services they have received from the State Water Commission or with the way the services have been handled. The intent is as a result of a shortage of State Water Commission staff, resulting in a backlog of requests for projects from the State Water Commission. This has resulted in some projects being delayed for a considerable time. He said it is the feeling of the local people that the backlog seems to be a real problem and for this reason the proposal was developed. This proposal, if adopted, would allow more projects to get underway. Mr. Cross distributed copies of the proposal for the Commission's review.

Mr. Robert Thompson, Chairman of the Red River Joint Water Resources Board, discussed the possibility of employing an engineer/hydrologist in the eastern part of the State. The Red River Joint Board had indicated its willingness to cost share in hiring a new staff member.

Secretary Fahy indicated that both of these matters would be on the agenda of the next State Water Commission meeting for further discussion.

CONSIDERATION OF MINUTES
OF SEPTEMBER 20, 1983 AND
SEPTEMBER 28, 1983 MEETINGS -
APPROVED

The minutes of September 20, 1983 and September 28, 1983 were approved by the following motion:

It was moved by Commissioner Kramer, seconded by Commissioner Larson, and unanimously carried, that the minutes of September 20, 1983 and September 28, 1983 be approved as presented.

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UPDATE ON SOUTHWEST
PIPELINE PROJECT
(SWC Project No. 1736)

Bob Dorothy, Project Manager for the Southwest Pipeline Project, indicated that 19 water service contracts had been negotiated for

the Project. The cities of New Salem and Hazen, who have never expressed an interest in the past, have now stated they are interested. Mr. Dorothy explained there is a legal question of whether or not the authority exists under the current legislation to extend the pipeline since the Legislature approved Plan B and this plan did not include the cities of New Salem and Hazen.

Mr. Dorothy indicated a meeting was held on October 11, 1983 with Consolidation Coal and North American Coal Companies to discuss routing the pipeline through the coal reserve areas. The coal companies have agreed to provide information that is needed to make comparative studies on routing through these areas, but to date the State Water Commission has not received the information.

Relative to progress on the design work, Mr. Dorothy indicated the basic contract calls for the execution of a specific authorization to cover each phase of the design work, of which seven specific authorizations have been executed to date. Review and investigations on the Renner Bay site for the location of the intake structure have proceeded and weather has permitted the basic underwater surveys and drilling to be completed.

Mr. Bruce McCollom explained through the use of maps the problems concerning the routing of the Southwest Pipeline Project through the coal fields to minimize costs and meet coal companies requirements. These areas are affected by coal reserves: 1) the intake structure area; 2) the Dodge and Halliday area; and 3) the Scranton and Bowman area. The critical area is in the location of the intake structure because it involves the water treatment plant location. It is in this area that mining is most imminent, possibly within the next 30 years, or even within 15 years if Antelope Valley Three is constructed and ANG expansion occurs. Mr. McCollom indicated that the preliminary design and layout has been completed on the water treatment plant to begin final design, and the final design of this plant requires the longest time of any of the facilities. The discussion included points involving the most favorable location for a water treatment plant, the probability that a segment of the line would someday require relocation to fit coal company planning and the need for developing more refined cost estimates for each of the alternatives.

Mr. McCollom indicated that in order to make comparative costs, the coal companies have agreed to provide the necessary information to assist the Commission in making a decision on the possible relocation of a segment of the pipeline. In order to keep the final design on timetable, this decision will have to be made in January, 1984.

Secretary Fahy stated that it does not appear that the next State Water Commission meeting will be scheduled before mid-February. In order to permit surveying work to proceed, he requested the Commission to consider either holding a special meeting in

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order to make their decision relative to route alternatives, or to delegate the State Engineer and staff to analyze route alternatives from a cost and feasibility standpoint and make a decision of a preferred alternative.

It was moved by Commissioner Schank and seconded by Commission Vculek that the State Water Commission delegate to the State Engineer and staff the authority to select the best route through the coal fields based upon the best data available.

Continued discussion of the matter, led to the offering of the following amendment to the motion:

It was moved by Commissioner Kramer to amend the motion that the State Engineer examine all alternatives from feasibility and cost standpoints and then advise the Commission members of the selected alternative so that members would be fully aware of the factors influencing the State Engineer's selection. The motion received a second from Commissioner Jacobson. All members voted aye; motion unanimously carried.

Mr. McCollom discussed the alternate pipeline construction standards contained in the Interim Report affecting four areas: 1) grade of pipe; 2) quality of pipe; 3) backfilling of pipe; and 4) level of construction inspections. By using a lower grade of construction standards, there is an estimated \$6.8 million in cost savings. He indicated that it will be necessary for the Commission to make a decision at their next meeting on which standards to use. Deletion of the pipeline extensions to Killdeer, Beulah and Glen Ullin would save approximately \$5 million.

Secretary Fahy discussed project right-of-way acquisition. He stated that although the Legislature authorized funding to proceed with the final design and the acquisition of right-of-way, he is reluctant at this time to proceed with the acquisition of right-of-way until the Legislature has approved funding for construction of the project. He suggested that the Commission consider a five-year option position for acquisition of right-of-way for the pipeline and that critical sites such as those necessary for pumping stations and the treatment plant be acquired in fee title as soon as possible.

It was moved by Commissioner Jacobson, seconded by Commissioner Larson, and unanimously carried, that the State Water Commission concur with the State Engineer's proposal to delay overall acquisition of right-of-way and proceed with options for the acquisition of right-of-way and expedite the purchase of critical area sites on a fee title basis.

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Mr. Joe Cichy, Legal Counsel for the State Water Commission, updated the Commission members on the matter of the selection of a bond underwriter. He said that the Industrial Commission has selected a committee, consisting of representatives of the Industrial Commission, the Attorney General, the Agricultural Commissioner, the Governor, the State Engineer, the Bank of North Dakota and Bond Counsel to review 12 proposals for bond underwriters that have been selected. The Committee has completed their review of the proposals and has selected four of the companies to make oral presentations scheduled for January, 1984.

CONSIDERATION OF REQUEST FOR
COST PARTICIPATION FROM MORTON
COUNTY WATER RESOURCE DISTRICT
FOR ZACHMEIER COULEE PROJECT
(SWC Project No. 1292)

A request has been received from the Morton County Water Resource District for the State Water Commission's consideration of cost participation in the construction of the Zachmeier Critical Area

Treatment project. The total cost of the project is estimated to be \$18,412.

Dave Sprynczynatyk indicated that the project was completed earlier this year and consists of stabilizing a gully that has developed on the banks of the Missouri River. The project includes a drop structure and underground pipe to more effectively allow the runoff to reach the Missouri River. Bank stabilization in the vicinity of the outlet was also provided. Mr. Sprynczynatyk explained that the project will reduce the amount of sediment reaching the Missouri River and will reduce the erosion that has taken place on the bank. If the erosion had been allowed to continue, it would have damaged a steel power line structure owned by the Federal Government and would have caused damages to residences in the immediate vicinity. The completed project will protect the power line structure, will eliminate erosion and sediment production, and will increase flood protection to three landowners, a public road, and the Burlington Northern Railroad embankment. Mr. Sprynczynatyk indicated this project is a Critical Area Treatment project and the Soil Conservation Service will be providing 75 percent of the total project cost. The non-federal share is \$4,602. The District has requested the State Water Commission to cost share in the non-federal share.

Mr. Andy Mork, Chairman of the Morton County Water Resource Board, and Mr. Dick Moun, the Board's Engineer, provided additional information relative to the project and urged the Commission's favorable consideration to cost share in the project.

It was the recommendation of the State Engineer that the State Water Commission cost participate in 40 percent of the local cost, in an amount not to exceed \$1,841, contingent upon the availability of funds.

It was moved by Commissioner Larson, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission approve cost participation in 40 percent of the local cost, in an amount

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not to exceed \$1,841, for the construction of the Zachmeier Critical Area Treatment project in Morton County. This motion shall be contingent upon the availability of funds.

CONSIDERATION OF REQUEST FROM TRI-COUNTY JOINT BOARD FOR COST PARTICIPATION IN TRI-COUNTY DRAIN NO. 6 PROJECT (SWC Project No. 1217)

The Commission considered a request for cost participation received from the Tri-County Joint Water Resource Board (Richland, Sargent and Ransom Counties) to construct a four-mile long lateral to the existing Tri-County Drain No. 6 that was originally constructed in 1944. The project will provide for the drainage of about eight square miles of existing cropland which is within the assessment area for the Tri-County Drain. The cost of the project which has been bid is \$62,590.

The Commission heard from Mr. Norman Cross, Chairman of the Tri-County Joint Board. Mr. Cross further detailed the project and urged favorable consideration. He noted this project is unique in that it is a legal drain running through three counties and managed by three separate government entities who have joined in a Joint Board. It drains two ways with outlets at the Sheyenne River and the Wild Rice River.

The recommendation of the State Engineer was that the Commission consider cost sharing in 40 percent of the eligible items, not to exceed \$22,165, contingent upon the availability of funds.

It was moved by Commissioner Vculek, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission approve cost participation in 40 percent of eligible items, not to exceed \$22,165, for the Tri-County Drain No. 6 project. This motion shall be contingent upon the availability of funds.

CONSIDERATION OF REQUEST FROM MORTON COUNTY WATER RESOURCE DISTRICT FOR COST PARTICIPATION FOR THE FLASHER CRITICAL AREA TREATMENT (SWC Project No. 1778)

The Commission members considered a request for cost participation received from the Morton County Water Resource Board for construction of the Flasher Critical Area Treatment Project. Mr. Sprynczynatyk stated the project will consist of re-aligning Louse Creek on the north side of the Flasher Cemetery. Presently, Louse Creek is eroding towards the cemetery and if allowed to continue will expose many of the graves in the cemetery. Mr. Sprynczynatyk also explained that as the stream meanders a considerable

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amount of sediment is entering into Louse Creek which is a tributary to the Cannonball River. The project will consist of filling in the old channel and constructing a new channel that would be riprapped to prevent bank erosion.

Mr. Sprynczynatyk indicated that since this project is a Critical Area Treatment project, 75 percent of the funds for construction will come from the Soil Conservation Service and the remaining funds will come from the City of Flasher and the Morton County Water Resource District. The cost estimate for the project ranges from \$150,000 to \$250,000.

Mr. Andy Mork, Chairman of the Morton County Water Resource Board, further explained the project to the Commission members. Mr. Mork indicated that concurrent with this project there is an ongoing flood control project at Flasher which is also funded by Soil Conservation Service funds. He urged favorable consideration by the Commission for cost sharing for the project.

It was the recommendation of the State Engineer that since this project is an erosion control measure and will provide for public health and safety by not exposing the grave sites, the Commission should consider cost participation in 40 percent of the actual non-federal construction costs, not to exceed \$22,550, and contingent upon the availability of funds.

It was moved by Commissioner Schank, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission approve cost participation in the construction of the Flasher Critical Area Treatment project in 40 percent of the actual non-federal construction costs, not to exceed \$22,550, and contingent upon the availability of funds.

CONSIDERATION OF REQUEST FROM
STARK COUNTY WATER RESOURCE
DISTRICT FOR COST PARTICIPATION
FOR THE NORTH DICKINSON CRITICAL
AREA TREATMENT
(SWC Project No. 1777)

The Commission considered a request for cost participation that was received from the Stark County Water Resource District for construction of the lower end of the North Dickinson Channel Treatment project.

Mr. Sprynczynatyk indicated that the project will consist of re-aligning a tributary to the Heart River and the installation of three drop structures near the southeast corner of the City of Dickinson. He said that presently the tributary is severely eroding and is depositing a considerable amount of sediment into the Heart River. The tributary also is causing flooding on adjacent lands because of increased runoff from the watershed of which part is located within the City of Dickinson. A sizeable portion of these adjacent lands are used for livestock feeding and when flooding occurs the floodwater will carry off animal waste from the area causing pollution of the Heart River. The

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project is being developed as a Soil Conservation Service Critical Area Treatment project and the estimated cost for the project is \$396,100.

Mr. Sprynczynatyk said the benefits of the project are threefold: 1) the agricultural area adjacent to the meandering channel will be protected from floodwater and from the continuing erosion; 2) because of the reduced erosion, the amount of sediment reaching the Heart River and eventually Lake Tschida will be reduced; and 3) the increased channel capacity will help to alleviate backwater problems into the City of Dickinson and will provide an adequate outlet for its storm-water system.

In 1979, a similar request for cost sharing was received from the Stark County Water Resource District, and Mr. Sprynczynatyk explained at that time it was thought that the primary benefactor for the project would be the City of Dickinson. As such, it was felt that the City of Dickinson would be able to provide the local cost share for the project and the Water Commission should not participate in the project. However, it was also stated that if greater agricultural benefits could be identified, then reconsideration could be given to the request. It is now felt that although the City of Dickinson may still receive many of the benefits from the project, the benefits to agricultural areas in the immediate vicinity and downstream are considerable.

The Commission members heard comments from Mr. Herb Urlacher, Stark County Water Resource Board, and from Mayor Art Baumgartner, City of Dickinson. Both of these gentlemen urged the Commission's favorable consideration of the request.

Mr. Francis Schwindt, Health Department, indicated that approximately five years ago the State Health Department notified one of the livestock sales companies that it was in violation of the Water Pollution Control Law and that some waste management facility would have to be constructed. Mr. Schwindt explained that in meeting with local representatives concerning this matter, it was pointed out that this project was being considered and that there was a possibility of cost savings for all parties concerned if the two projects could be worked together. He stated that based on the information that is available, the waste management facility can be constructed using excavated material from the North Dickinson Critical Area Treatment project.

Secretary Fahy stated that since the North Dickinson Critical Area Treatment project will provide erosion control and flood protection to the area it would be partially eligible for State Water Commission cost participation. The primary benefit to the agricultural areas would probably be the erosion control and reduction of sediment reaching the Heart River and the three drop structures will be most important in providing for sediment reduction. He indicated that the drop structures should be the only items considered eligible for Water Commission cost participation, of which the non-federal cost of the drop structures is estimated to be \$88,000. Therefore, it was the recommendation of the State Engineer that the State Water Commission consider 40 percent of cost participation for the drop structures for the project in an amount not to exceed \$35,200, contingent upon the availability of funds. Secretary Fahy also stated that the project should

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involve measures to meet the State Health Department standards for runoff from areas of the livestock sales ring.

It was moved by Commissioner Schank, seconded by Commissioner Jacobson, and unanimously carried, that the State Water Commission approve 40 percent cost participation for the drop structures in the North Dickinson Critical Area Treatment project, in an amount not to exceed \$35,200, contingent upon the availability of funds.

REPORT ON BANK
STABILIZATION -
MISSOURI RIVER
(SWC Project No. 576)

Mr. Andy Mork, Chairman of the Upper Missouri Basin Bank Stabilization Task Force, updated the Commission members on activities of this Task Force which was organized

on November 8, 1983 and consists of landowners, state and local officials from the States of Nebraska, South Dakota, North Dakota and Montana. The Task Force was organized to primarily explore the bank erosion and permanent loss of land along the Missouri River in the reaches downstream from the dams of the main stem. The fact is that there is continuing loss of land below Garrison, Oahe, Fort Randall and Gavins Point Dams, and the consensus is that the cause is the release of clear water from the dams at times and in quantities most advantageous to flood control, navigation and power production - a situation which is entirely different than before the dams were installed.

Mr. Mork indicated that since the problem is common to several states, the Task Force felt it was logical to organize on a regional basis. The problem will be addressed by requesting Senators and Congressmen to assist in securing federal funds to prevent further loss. It is the Task Force's belief that the cost of this bank protection should not be borne by normal federal appropriation, but by charging it to the Pick-Sloan account and paid for in the same manner as other Pick-Sloan construction and maintenance expenditures. Therefore, it will be the Task Force's main goal at this time to convince Congress and the Corps of Engineers of the merit of this approach and to secure their concurrence. Another approach that may be used is to sue the Federal Government for correction of the problem the Pick-Sloan project has caused.

UPDATE ON INTAKE
WATER LAWSUIT

Mr. Joe Cichy, Legal Counsel for the State Water Commission, explained Tenneco Company's approach to

developing a gasification plant near Wibaux, Montana, and the necessity for that Company to take water from the Yellowstone River to satisfy the needs of that plant. The diversion point is near Intake, Montana. He said that because a transfer of water from the Yellowstone River is involved and is in conflict with provisions of the Yellowstone River Compact, considerable litigation has been involved.

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Mr. Cichy said that because water is being taken out of the Yellowstone River Basin and because the water of the Yellowstone River Basin is compacted, the three signatory states to the Compact (North Dakota, Montana and Wyoming) must approve of the transfer. The lawsuit was initiated in 1973. An amended complaint was filed in 1981, and Motions to Dismiss were filed by the defendants. The motions were heard in April, 1983, and the Court handed down a decision in October, 1983, granting the defendant's Motion to Dismiss. Intake's argument was that the Compact is State law and as such the states couldn't prevent the transfer of waters considered an article of interstate commerce. The defendant's argument was that the Compact was approved by the three States' Legislatures and approved by the Federal Government; and, therefore, it is a federal law and immune from commerce clause challenge. The court agreed with the defendant's position. The plaintiff has filed a Motion to Alter, Amend or Vacate the three-judge panel's decision.

Secretary Fahy explained that this case is important because North Dakota is a signatory state to the Yellowstone River Compact and if there are to be any changes made in that Compact that are not litigated or congressionally approved, the State of North Dakota would have to consent to that change. Montana and Wyoming are the other two states to the Compact and have conflicting interests. Secretary Fahy stated North Dakota has taken the position that if Montana and Wyoming could agree, North Dakota would probably assent to whatever they have agreed to but so long as they are not in agreement, North Dakota will not be a swing State in any Yellowstone Compact decision. Ultimately, in North Dakota it has been determined that the State Water Commission could act on matters affecting the Yellowstone Compact and in the other two states it has been determined their Legislatures must act.

CONSIDERATION OF AGENCY
FINANCIAL STATEMENT

Secretary Fahy stated that in terms of the current fiscal position, the agency is within their limitations imposed by the Legislature and have not exceeded any of the items. He distributed copies of the Projects Authorized Status for the Commission's information.

STATUS REPORT ON CITY
OF WEST FARGO WATER
PERMIT ADJUDICATION

Secretary Fahy indicated the State Water Commission is in the process of evaluating the flows of all the water permits on all the rivers in the State and is currently working on the Sheyenne River.

He stated that many years ago, the City of West Fargo received a water appropriation permit from the Sheyenne River, which they have not exercised in some 20 years. This is not in accordance with State law, which states that if the permit holder does not make use of water for a period of three consecutive years then that right may be declared forfeited. Therefore, the City of West Fargo's water

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permit is being considered for possible forfeiture. He stated that a hearing date has been scheduled for December 14, 1983 in order that the city can substantiate any claims that they might have. He noted that the City is only using about 60 percent of the water they already have under permit not including the old permit being considered for cancellation.

Commissioner Bjornson expressed the concerns of the City of West Fargo indicating that with the rapid growth of the city, the anticipated growth, and the fact the way the water is being used and allocated at the present time does not include anticipated commercial and industrial growth, which is one of the items that the City has as its' long-term goals.

Commissioner Bjornson explained that the 60 percent of the water that is being used is aquifer water and this is the same aquifer that the City of Fargo has applied for a permit for use of five wells. The City of West Fargo feels that their aquifer source is being threatened by pending applications for water from that aquifer. The City wants to be assured of sufficient water supply for their future use.

ILLEGAL DRAINAGE
(SWC Project No. 1053)

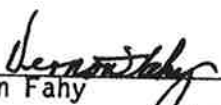
Commissioner Hutton expressed concern relative to allowing illegal drains to exist in the State and the need to be more concerned about installing control structures on these illegal drains.

Secretary Fahy responded to Commissioner Hutton's concern that in the drainage field the primary responsibility lies with the Water Resource District and the Legislature has strengthened the powers of the Water Resource District in that field stating that if they are aware of or receive a complaint relative to an illegal drain, they must investigate or take action for correction. Also, a damaged person has every right to take action necessary to seek relief from any damages caused by an illegal act.

It was moved by Commissioner Schank, seconded by Commissioner Kramer, and unanimously carried, that the meeting adjourn at 12:00 noon.


Allen I. Olson
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer and Secretary

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