

North Dakota State Water Commission

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**Audio Conference Call Meeting
Governor's Conference Room - Ground Floor
State Capitol
Bismarck, North Dakota**

**July 28, 2010
2:50 P.M., CDT**

AGENDA

- A. Roll Call
- B. Consideration of *Agenda* - Information pertaining to the agenda items is available on the State Water Commission's website at <http://www.swc.nd.gov> (select 'News and Information')
- C. ***Swan Buffalo Detention Dam No. 12 (Absaraka Dam) - Cass County*** **
- D. ***Cottonwood Creek Dam - LaMoure County*** **
- E. State Grants for Water Supply Projects:
 - 1) ***City of Wildrose - Crosby Water Supply*** **
- F. Northwest Area Water Supply Project:
 - 1) ***Contract 4-2A, High Service Pump Station*** **
- G. State Engineer's Search Committee Report
- H. Other Business:
 - 1) September 1, 2010 - Next State Water Commission Meeting
- I. Adjournment

**** BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION**

To provide telephone accessibility to the State Water Commission meeting for those people who are deaf, hard of hearing, deaf and/or blind, and speech disabled, please contact Relay North Dakota, and reference ... TTY-Relay ND ... 1-800-366-6888, or 711.

MINUTES

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

July 28, 2010

The North Dakota State Water Commission held an audio conference call meeting in the Governor's conference room at the State Capitol, Bismarck, North Dakota, on July 28, 2010. Governor John Hoeven, Chairman, called the meeting to order at 2:50 P.M., and requested Todd Sando, Interim State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Douglas Vosper, Member from Neche

OTHERS PRESENT:

Todd Sando, Interim State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Andrea Travnicek, Office of the Governor, Bismarck
Jennifer Verleger, Assistant Attorney General, Office of Attorney General, Bismarck
Joe Belford, Devils Lake Downstream Program, Devils Lake
Jeff LeDoux, Houston Engineering, Inc., Fargo
Dale Wetzel, Associated Press, Bismarck
Mary Massad, Southwest Water Authority, Dickinson (via telephone)
Craig Good, Mayor, City of LaMoure (via telephone)
Ron Splitt, LaMoure Recreation Board Chair (via telephone)
Al Ulmer, LaMoure City Councilman (via telephone)
Sheri Gartner, LaMoure County Emergency Manager (via telephone)
Representatives from Cities of Crosby and Wildrose (via telephone)

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

**SWAN BUFFALO DETENTION
DAM NO. 12 (ABSARAKA DAM)
IN CASS COUNTY - CONDITIONAL
APPROVAL OF STATE COST
PARTICIPATION (\$114,783)
(SWC Project No. 847)**

A request from the Maple River Water Resource District was presented for the State Water Commission's consideration for state cost participation for their project to repair Swan Buffalo Detention Dam No. 12, commonly known as Absaraka Dam. The project is located in

Section 33, Township 141 North, Range 53 West, in Cass County, on an unnamed tributary of Swan Creek approximately one-half mile north of the City of Absaraka. The dam was built in 1960 by the Soil Conservation Service for flood control purposes and is owned and operated by the Maple River Water Resource District.

Absaraka Dam is a rolled earth, Class III medium hazard dam that at normal pool stores 88.9 acre-feet of water over a surface area of 29.2 acres. When the water level reaches the elevation of the grassed, uncontrolled emergency spillway, the surface area of the reservoir is 104 acres and storage is up to 984.2 acre-feet. Water Permit No. 1442 was approved in 1967, however, a construction permit has not been issued.

During the spring flood of 2009, the dam sustained major erosion damage to its emergency spillway. The Natural Resources Conservation Service (NRCS) constructed an emergency project to divert water away from the erosion resulting in a new erosion area forming. The earthen emergency spillway again sustained erosion damage in 2010. After the events, the dam was analyzed in its existing condition to see if it met dam safety standards per the North Dakota design handbook. It was determined that the dam did not meet principal spillway requirements for a Class III dam, nor did it meet velocity requirements for the emergency spillway. The District concluded that the emergency spillway needed to be repaired or construct a concrete emergency spillway that would bring the dam into compliance with all safety standards.

The Natural Resources Conservation Service is managing the rehabilitation of the Absaraka Dam emergency spillway and has agreed to sponsor the 2010 rehabilitation through its Emergency Watershed Protection program. The Service intends to improve the spillway with articulating con-

crete blocks to provide erosion protection rather than repair the spillway to its pre-disaster condition. This will greatly increase the safety of the dam, decreasing the risk of loss of life and property to downstream residents. The Service will provide funding at 75 percent for all contract bid items. A construction permit application is currently being processed.

The project engineer's cost estimate is \$918,261, of which \$229,565 is determined eligible for state cost participation as a flood control project at 50 percent of the eligible cost participation (\$114,783). The District will be responsible for the remaining 50 percent (\$114,783). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$114,783.

It was the recommendation of interim Secretary Sando that the State Water Commission approve conditional state cost participation as a flood control project at 50 percent of the eligible costs not to exceed an allocation of \$114,783 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the Swan Buffalo Detention Dam No. 12 (Absaraka Dam) 2010 flood control dam safety improvement rehabilitation project.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve conditional state cost participation as a flood control project at 50 percent of the eligible costs not to exceed an allocation of \$114,783 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Maple River Water Resource District to support the Swan Buffalo Detention Dam No. 12 (Absaraka Dam) 2010 flood control dam safety improvement rehabilitation project. This action is contingent upon the availability of funds, satisfaction of permit requirements, and receipt of the final engineering plans.

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**COTTONWOOD CREEK DAM
(LAMOURE COUNTY) -
APPROVAL OF STATE COST
PARTICIPATION (\$373,440)
(SWC Project No. 1515)**

A request from the City of LaMoure was presented for the State Water Commission's consideration for state cost participation for permanent repairs to the earthen emergency spillway on Cottonwood Creek Dam (Lake

LaMoure), which has sustained major erosion damages resulting from floods that occurred in 2009 and 2010. Lake LaMoure was constructed in 1974 and is located approximately 5 miles south of the City of LaMoure (LaMoure County). The 500-acre lake has been developed as a regional recreation center with a swimming beach, playground, camping, paved roads, and boat launching facilities. Since its creation, over 350,000 pine trees have been planted to enhance this unique area for North Dakota.

The Natural Resources Conservation Service (NRCS) is managing the rehabilitation of the Cottonwood Creek Dam emergency spillway and has agreed to sponsor the 2010 rehabilitation through its Emergency Watershed Protection program funding 75 percent of the construction costs. The estimated cost for the construction work to repair the damages and armor the emergency spillway with articulating concrete blocks is \$2,533,760. The non-federal portion (25 percent) of this project is \$633,440 with a proposed cost share arrangement with the North Dakota Game and Fish Department (\$130,000); State Water Commission (\$373,440); and the City of LaMoure (\$130,000). The request before the State Water Commission is up to a 60 percent state cost participation in the amount of \$373,440.

It was the recommendation of interim Secretary Sando that the State Water Commission approve state cost participation as a dam safety project up to 60 percent of the eligible non-federal costs, not to exceed an allocation of \$373,440 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the 2010 construction of the spillway repairs at Cottonwood Creek Dam.

It was moved by Commissioner Berg and seconded by Commissioner Swenson that the State Water Commission approve state cost participation as a dam safety project up to 60 percent of the eligible costs, not to exceed an allocation of \$373,440 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the City of LaMoure to support the 2010 construction of the spillway repairs at Cottonwood Creek Dam. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**CITY OF CROSBY/BURKE,
DIVIDE AND WILLIAMS REGIONAL
WATER SUPPLY PROJECT -
APPROVAL OF 2009-2011 BIENNIUM
STATE FUNDS (\$1,270,000)
(SWC Project No. 237-03)**

A request was presented for the State Water Commission's consideration for state cost participation regarding the potential regional water service from the Ray and Tioga (R&T) Water Supply Association to serve the Cities of Wildrose and Crosby, and the Burke, Divide,

and Williams (BDW) Water Supply Association. Under the proposed project, a 12-inch pipeline from R&T to Crosby would meet the projected long-term regional water needs. The City of Crosby held a citywide election on July 20, 2010 and the voters approved the purchase of water from an outside source. The City of Wildrose is under a consent agreement with the North Dakota Department of Health to have their arsenic violation resolved by December 31, 2010.

The original project was based on the capacity of a 6-inch pipeline from R&T. Wildrose's approved funding will only cover their share of the cost of the 12-inch pipeline. The cost for the additional capacity of a 12-inch pipeline from R&T to the City of Wildrose would be the responsibility of the City of Crosby and BDW. The total estimated project cost for a water supply from R&T to serve the Cities of Wildrose and Crosby, and BDW is \$6,516,094 (R&T to Wildrose - \$3,366,094, and Wildrose to Crosby - \$3,150,000).

The R&T to Wildrose pipeline was divided into two segments with construction on the first segment presently in progress. The second 12-inch pipeline segment was bid on July 20, 2010, with a cost of \$1,215,655. Previous funding approvals for this segment of the project are: Permanent Oil Tax Trust Fund - \$593,000, and the American Recovery and Reinvestment Act of 2009 (ARRA) - \$1,503,094. The request before the State Water Commission is for a grant in the amount of \$1,270,000 for additional capacity for the City of Crosby/BDW Water Regional Water Supply project.

It was the recommendation of interim Secretary Sando that the State Water Commission approve a grant allocation to the City of Crosby not to exceed \$1,270,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020) for additional capacity for the City of Crosby/BDW Water Regional Water Supply project.

It was moved by Commissioner Hanson and seconded by Commissioner Goehring that the State Water Commission approve a grant allocation to the City of Crosby not to exceed \$1,270,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to support additional capacity for the City of Crosby/BDW Water Regional Water Supply project. This action is contingent upon the availability of funds, and subject to future revisions.

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
CONTRACT 4-2A, MINOT HIGH
SERVICE PUMP STATION -
AUTHORIZE EXECUTION
OF SETTLEMENT AGREEMENT
(SWC Project No. 237-04)***

Northwest Area Water Supply (NAWS) project contract 4-2A involves the construction of a new 2 million gallon reservoir and an 18 million gallon high service pump station adjacent to the Minot water treatment plant, as well as the demolition of the existing high service pumps and backwash pumps, and

the installation of new backwash pumps and controls. The project will pump water into the 36-inch pipeline installed under contract 2-2A and the existing Minot water distribution system.

On April 23, 2008, the State Water Commission authorized the award of contract 4-2A, in the amount of \$12,435,793.58 to John T. Jones Construction, Fargo, N.D., and the notice to proceed was executed on May 20, 2008. The contract substantial completion date was December 14, 2009, and the final completion date was February 1, 2010.

The contractor submitted a \$500,000 claim, which was denied by Houston Engineering. A mediation session was held on May 4, 2009 which resulted in a timeframe for requesting and answering additional questions. A second mediation session was held on August 24, 2009, and no agreement was reached although the parties continued discussion. The settlement agreement was under negotiation and was presented to the State Water Commission on December 11, 2009, however, the settlement agreement was not executed within the Commission's time frame. A notice was issued that the mediation was unsuccessful.

John T. Jones presented a second issue for mediation involving their lack of installation of valve actuators delaying commissioning. Houston Engineering also denied this claim. A third mediation was completed on April 19, 2010 and a memorandum of understanding (MOU) was executed addressing the first and second issues. A settlement agreement, based on the MOU, was presented for the State Water Commission's consideration.

The terms of the settlement agreement are similar to where the first mediation ended, however, payment by the State Water Commission and the engineering firms will not be made until the contractor has completed all of the work. The contractor also agreed to complete additional work on

the generators and additional programming to allow the city to operate the treatment plant on flow rather than pressure during the interim. There was concern that the warranties could be affected if the work was completed outside of the contract. It was the recommendation of interim Secretary Sando that the State Water Commission authorize the interim secretary to the Commission to execute the settlement agreement with John T. Jones Construction to resolve and release the claims on Northwest Area Water Supply contract 2-4A.

It was moved by Commissioner Swenson and seconded by Commissioner Foley that the State Water Commission authorize the interim secretary to the Commission to execute the settlement agreement with John T. Jones Construction, Fargo, N.D. to resolve and release the claims on Northwest Area Water Supply Contract 2-4A. The executed Settlement Agreement and Release is attached hereto as APPENDIX "A".

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**STATE ENGINEER'S SEARCH
COMMITTEE RECOMMENDATION -
APPOINTMENT OF TODD SANDO,
17TH N.D. STATE ENGINEER**

Assistant State Engineer, was appointed to serve as the interim State Engineer, and Chief Engineer-Secretary to the Commission, effective July 1, 2010, until the position is filled.

On June 1, 2010, North Dakota State Engineer, and Chief Engineer-Secretary to the State Water Commission, Dale L. Frink, announced his retirement, effective June 30, 2010. Todd Sando,

The State Engineer's search committee was appointed consisting of Commissioner members Jack Olin, chair, Arne Berg, and Robert Thompson, and representation from the Office of the Governor. Governor Hoeven asked that the position be filled as soon as possible.

Commissioner Olin, committee chair, reported the closing date for accepting applications for the position of the North Dakota State Engineer was July 2, 2010. Two applications were received and each applicant was interviewed.

It was the recommendation of the State Engineer's search committee that Todd Sando be appointed as the 17th North Dakota State Engineer, and Chief Engineer-Secretary to the State Water Commission, effective August 1, 2010. The Commission members expressed comments of support for the committee's recommendation.

It was moved by Commissioner Olin and seconded by Commissioner Goehring that the State Water Commission approve the appointment of Todd Sando as the 17th North Dakota State Engineer, and Chief Engineer-Secretary to the State Water Commission, effective August 1, 2010.

Commissioners Berg, Foley, Hanson, Goehring, Olin, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

Todd Sando expressed his appreciation to Governor Hoeven and to the members of the State Water Commission and said he is "humbled and honored to be selected to serve the people of North Dakota as the State Engineer. We have pressing water issues. I'll work closely with the Commission members, and I'll work hard to communicate in our efforts to solve the water issues for the betterment of North Dakota for the future generations. Thank you very much for your support."

Governor Hoeven and the State Water Commission members expressed their appreciation to the State Engineer's search committee for their efforts. Governor Hoeven dismissed the committee.

***DEVILS LAKE
(SWC Project No. 416-10)***

Commissioner Thompson discussed the federal task force study that is currently underway indicating that he and Commissioner Berg have concerns about the outcome. There was a suggestion that the State Water Commission consider a motion at its next meeting directing the Commission's staff to develop plans and project costs for either a Stump Lake or Jerusalem channel outlet option. Study findings would be available by December 31, 2010 to aid in discussions with the federal government and possible presentation to the North Dakota legislature.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the audio conference call meeting at 3:45 P.M.



John Hoeven, Governor
Chairman, State Water Commission

Todd Sando
Interim North Dakota State Engineer,
and Chief Engineer-Secretary to the
North Dakota State Water Commission

July 28, 2010

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made this ~~June~~ ^{July} 28 day of ~~June~~ 2010, by and between the John T. Jones Construction Company ("JTJ"), the State of North Dakota, acting through the North Dakota State Water Commission (collectively "ND"), Houston Engineering, Inc. ("HEI") and MWH Americas, Inc. ("MWH"). All the aforementioned parties are collectively referred to herein as the "Parties." ND, HEI and MWH are collectively referred to herein as the "Paying Parties."

WHEREAS, on or about June 12, 1996, ND entered into a written agreement with HEI pursuant to which HEI agreed to furnish certain professional engineering services (the "Engineering Contract") in connection with the design and construction of the Northwest Area Water Supply Project, ND Contract No.: 237-4. On June 19, 2008, ND issued an authorization to HEI to provide certain construction management services for Contract 4-2A, the High Service Pump Station Project, located at 16th Street SW adjacent to the Minot water Treatment Plant in Minot, North Dakota ("Project");

WHEREAS, on or about April, 24, 2008, ND entered into a written agreement with JTJ (the "Construction Contract") for the construction of the Project;

WHEREAS, on or about June 25, 2008, HEI issued an authorization to MWH to provide certain construction administration services during the construction phase of the Project, which authorization was pursuant and subject to a written agreement between HEI and MWH dated July 8, 1996;

WHEREAS, on or about December 31, 2008, JTJ filed a Demand for Mediation with the American Arbitration Association, wherein JTJ asserted that it suffered damages for delays and extra costs allegedly as a result of actions and/or inactions of the Resident Project Representative under the Construction Contract;

WHEREAS, on or about January 22, 2010, JTJ filed a second Demand for Mediation with the American Arbitration Association, wherein JTJ asserted a delay in the commissioning process;

WHEREAS, ND, HEI and MWH have denied liability for any claims asserted in the Mediation;

WHEREAS, mediation was conducted on three occasions before Mediator Jack Marcil, and the Parties have reached a full and final settlement and compromise of any and all claims of JTJ relating to the Construction Contract as a result of good-faith negotiation between the Parties conducted through counsel and authorized representatives;

WHEREAS, the parties executed a MEMORANDUM OF UNDERSTANDING at the conclusion of the mediation session on April 19, 2010;

NOW, THEREFORE, in consideration of these recitals which are incorporated below, and other good and valuable consideration, the adequacy and receipt of which is hereby expressly acknowledged, the Parties hereby agree as follows:

- 1. Settlement Payments.** JTJ has agreed to accept the Aggregate Settlement Amount of TWO HUNDRED FIFTY THOUSAND Dollars (\$250,000) (the "Aggregate Settlement Amount") as full and final satisfaction of any and all claims raised, or which could have been raised, by JTJ, in its PCO 14-R. The Paying Parties shall issue one-half payment of the Aggregate Settlement Amount upon the completion of the Remaining Work set forth in the document entitled "NAWS Contract 4-2A Estimate of Remaining Work" dated April 7, 2010. The Paying Parties shall issue the remaining one-half payment of the Aggregate Settlement Amount upon the completion of both the Remaining Work and Work Change Directive No. 5 or within sixty (60) days after final completion, whichever date is earlier. The payments will be tendered via checks made payable to "John T. Jones Construction Company" (tax identification number 45-0257237) and shall be delivered to the attorney for JTJ, Maurice McCormick, Vogel Law Firm 218 NP Avenue, Fargo, North Dakota 58102 (the "Settlement Payments") in the following respective sums: ND shall pay Sixty-Two Thousand Five Hundred Dollars (\$62,500), HEI shall pay Sixty Two Thousand Five Hundred Dollars (\$62,500), and MWH shall pay One Hundred Twenty Five Thousand Dollars (\$125,000).
- 2. Retention Payment.** ND shall pay the remaining retention amount upon completion of the Remaining Work set forth in the document entitled "NAWS Contract 4-2 Estimate of Remaining Work" dated April 7, 2010.
- 3. Variable Speed Modules.** JTJ shall install and make operational eight (8) Variable Speed Modules by June 10, 2010, and provide a three (3) year repair or replace warranty in connection with the installation of the modules. In addition, JTJ shall provide training on such modules as requested by ND. JTJ shall not charge ND, HEI, or MWH any costs for the installation of the VSM modules or necessary training.
- 4. Liquidated Damages.** JTJ shall complete the Project by June 10, 2010. The remaining items for completion of the work under the Contract shall include and be limited to the items listed in the document entitled "NAWS Contract 4-2A Estimate of Remaining Work" dated April 7, 2010, excluding liquidated damages from January 5, 2010 to April 7, 2010, and the work to be performed as described in Work Change Directive No. 5. If not completed by June 10, 2010, ND shall assess liquidated damages in the amount of \$500 per day for all Remaining Work, with the exception of the Variable Speed Motor modules. ND shall assess liquidated damages in the amount of \$1,500 per day for any VSM work which is not completed by June 10, 2010. Any assessed liquidated damages shall not exceed \$15,000.

- 5. Modifications to Construction Contract.** Unless specifically modified by the Settlement Agreement, all terms of the Contract remain in effect.
- 6. JTJ's Release of Claims.** Upon final completion and JTJ's receipt of the Aggregate Settlement Amount, JTJ, on behalf of itself and its respective officers, directors, employees, managers, agents, guarantors, assigns, and successors, does hereby release and forever discharge ND, HEI and MWH and each of them, and their respective officers, directors, trustees, shareholders, employees, members, managers, agents, representatives, insurers, subsidiaries, predecessors, assigns, successors and heirs, from any and all asserted or unasserted and known or unknown claims, charges, demands, causes of action, losses, expenses and damages, including, without limitation, attorneys' fees and costs and consultants' fees and costs, whether such claims sound in tort, contract or otherwise, that JTJ has or may have against ND, HEI and MWH, including anything arising out of or related to each and every claim asserted in the Claim Letter from JTJ dated November 12, 2008, and included within PCO 14-R including claims for interference with contract and anything arising out of or relating to each and every claim asserted in the Demand for Mediation Letter from JTJ dated January 22, 2010 (hereinafter collectively sometimes referred to as the "Claims"), liability for which is denied by the Paying Parties.
- 7. ND's Release.** Upon JTJ's receipt of the Settlement Payments from HEI and MWH, ND, and their respective officers, directors, trustees, managers, agents, and assigns, does hereby release and forever discharge HEI and MWH and each of them, and their respective officers, directors, shareholders, employees, members, managers, agents, representatives, insurers, subsidiaries, predecessors, assigns, successors and heirs, from any and all claims, suits, charges, demands, causes of action, losses, expenses and damages, including without limitation, attorneys' fees and costs and consultants' fees and costs, losses, whether sounding in tort, contract or otherwise, in connection with the Claims asserted by JTJ, including, but not limited to, claims for indemnity, contribution or reimbursement of the Settlement Payment made by ND or any costs, damages, or expenses incurred in connection with JTJ's Claims, investigation and mediation of same.
- 8. HEI's Release.** Upon JTJ's receipt of the Settlement Payments from MWH and ND, HEI, on behalf of itself and its officers, directors, trustees, managers, agents, and assigns, does hereby release and forever discharge MWH and ND and each of them and their respective officers, directors, shareholders, employees, members, managers, agents, representatives, insurers, subsidiaries, predecessors, assigns, successors and heirs, from any and all claims, suits, charges, demands, causes of action, losses, expenses and damages, including without limitation, attorneys' fees and costs and consultants' fees and costs, losses, whether sounding in tort, contract or otherwise, in connection with the Claims made by JTJ, including, but not limited to, claims for indemnity, contribution or reimbursement of the Settlement Payment made by HEI or any

costs or expenses incurred in connection with JTJ's Claims, investigation and mediation of same.

- 9. MWH's Release.** Upon JTJ's receipt of the Settlement Payments from ND and HEI, MWH on behalf of itself and its officers, directors, trustees, managers, agents, and assigns, does hereby release and forever discharge HEI and ND and each of them and their respective officers, directors, shareholders, employees, members, managers, agents, representatives, insurers, subsidiaries, predecessors, assigns, successors and heirs, from any and all claims, suits, charges, demands, causes of action, losses, expenses and damages, including without limitation, attorneys' fees and costs and consultants' fees and costs, losses, whether sounding in tort, contract or otherwise, in connection with the Claims made by JTJ, including, but not limited to, claims for indemnity, contribution or reimbursement of the Settlement Payment made by MWH or any costs or expenses incurred in connection with JTJ's Claims, investigation and mediation of same.
- 10. No Admission of Liability.** This Agreement does not contain or constitute any admission, concession or agreement by any Party concerning the merits of any issue raised by JTJ as part of its claims, in its Claim Letter or in the Mediation, and this Agreement shall not be construed as constituting or containing any such admission, concession, or agreement.
- 11. Understanding of Agreement and Advice of Counsel.** The Parties represent and acknowledge that they each understand their right to discuss any and all aspects of this Agreement with their legal counsel, and to the extent they desire to do so, have availed themselves of that right. The Parties represent and acknowledge that they have carefully read and fully understand all provisions of this Agreement; that they voluntarily enter into this Agreement; that they have the capacity to enter into this Agreement; and that they have executed this Agreement with full legal authority to bind the respective Party to all terms and conditions contained in this Agreement. The Parties hereto further warrant and represent that they have made no assignment of any claim, cause of action, suit or demand covered by this Agreement.
- 12. Choice of Law.** This Agreement shall be governed by, subject to, and construed in accordance with the laws of the state of North Dakota without regard to conflict of law principles.
- 13. Miscellaneous Provisions.** This Agreement shall bind and inure to the benefit of the Parties and their heirs, legal representatives, successors and assigns. The provisions of this Agreement are severable and no provision shall be affected by the invalidity of any other provision. This Agreement may be executed in counterparts, and the execution and transmission to the other Parties of an original executed counterpart by mail, facsimile, email, or any other

electronic means shall have the same force and effect as execution and hand delivery of an original executed by that Party.

14. Integration; No Oral Modification. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all prior negotiations, understandings and agreements are integrated herein. No modification to this Agreement shall be enforceable unless reduced to writing and executed by all Parties hereto.

15. Contract. Nothing herein shall be construed to nor intended to alter, change or modify the terms and conditions of the Construction Contract.


16. No Presumption. This Settlement Agreement and Release is the result of collaborative drafting by all Parties hereto and no presumption shall arise in favor of any or against any Party to this Agreement regarding the drafting of this Settlement Agreement and Release.

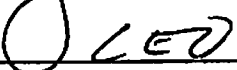
17. Joint Tortfeasors. All Parties agree that the Paying Parties have not acted in concert with, aided, encouraged, ratified, or adopted the acts or omissions of another Paying Party, or of any other person or entity, resulting in or causing JTJ's alleged damages covered herein. To the extent any Paying Party has concerted with, aided, encouraged, ratified or adopted any other person or entity's acts or omissions resulting in or causing JTJ's alleged damages covered herein, then all Parties intend to release such other parties as joint tortfeasors under N.D.C.C. 32-38-04(1).

18. Confidentiality. JTJ agrees to keep confidential and to not publish this Settlement Agreement and Release and any information concerning the Mediation or negotiations in connection with this settlement. However, this paragraph shall not prohibit disclosure: (1) as required by law or order of court; (2) with the express advance written consent of the Paying Parties; (3) in an action to enforce the Settlement Agreement and Release; or (4) to the Parties' accountants, insurers and financial, business or tax advisors, who shall as a condition of disclosure, agree to this Confidentiality provision.

IN WITNESS WHEREOF, the Parties, by and through their authorized representatives, have executed this Agreement on the date last written below.

JOHN T. JONES CONSTRUCTION COMPANY

By:  _____

Its:  _____

Dated: 6-11-10

STATE OF NORTH DAKOTA, acting through the
NORTH DAKOTA STATE WATER COMMISSION

By: Todd Sandoz

Its: Secretary + State Engineer

Dated: 7/28/10

Approved and entered into by resolution of the State Water Commission this 28 day
of July, 2010.

Secretary and State Engineer

HOUSTON ENGINEERING, INC.

By: [Signature]

Its: President/CEO

Dated: 6/22/10

MWH AMERICAS, INC.

By: Brian Broussard

Its: Vice-President

Dated: 1-July-2010