

North Dakota State Water Commission

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

**February 2, 2012
1:30 P.M., CST**

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>*
- C. ***Floodway Property Acquisition Cost Share Policy*** **
- D. ***Consideration of Following Requests for Floodway Property Acquisition Cost Share:***
 - 1) ***City of Minot Flood Protection Project*** **
 - 2) ***City of Burlington Flood Protection Project*** **
 - 3) ***Ward County Flood Protection Project*** **
- E. ***Power Supply for East Devils Lake Outlet*** **
- F. Other Business:
 - 1) Next State Water Commission Meeting - March 7, 2012
- G. 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

February 2, 2012

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 February 2, 2012. Governor Jack Dalrymple, Chairman, called the meeting to order at 1:30 P.M., and requested Todd Sando, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor Jack Dalrymple, 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

STATE WATER COMMISSION MEMBER ABSENT:

Douglas Vosper, Member from Nече

OTHERS PRESENT:

Todd Sando, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Jennifer Verleger, Assistant Attorney General, Office of Attorney General, Bismarck
Andrea Travnicek, Office of Governor Dalrymple, Bismarck
MG Murray Sagsveen, State Disaster Recovery Coordinator, Bismarck
Dave Koland, Executive Director, Garrison Diversion Conservancy District, Carrington
Michael Dwyer, Executive Director, North Dakota Water Users Association, Bismarck
Jean Schafer, Executive Director, North Dakota Water Coalition, Bismarck
Howard Swanson, Counsel-City of Minot/Ward County, Grand Forks
Alan Walter, City of Minot, Public Works Director, Minot
Clifford Issendorf, Souris River Joint Board, Kramer
Tom Klein, Souris River Joint Board, Minot

Dave Ashley, Souris River Joint Board, Velva
Michael Gunsch, Houston Engineering/Burleigh Co. Water Resource Board, Bismarck
Gailen Narum, Burleigh County Water Resource District, Bismarck
David Flohr, North Dakota Housing Finance Agency, Bismarck
John Fjeldahl, Ward County Commission, Minot (via telephone)
Jerome Gruenberg, Mayor, City of Burlington/Ward County Commission (via telephone)
Bruce Christianson, Ward County Commission, Minot (via telephone)
Devra Smestad, Ward County Auditor-Treasurer, Minot (via telephone)
Amanda Schooling, Ward County Emergency Manager, Minot (via telephone)
Travis Schmit, Ward County Assistant Engineer, Minot (via telephone)
Cindy Hemphill, City of Minot Finance Director, Minot (via telephone)
Dan Jonasson, City of Minot Assistant Public Works Director, Minot (via telephone)
Mark Lyman, City of Minot PIO, Minot (via telephone)
Jill Schramm, Minot Daily News, Minot (via telephone)
Dave Leason, Valley City Times Record, Valley City (via telephone)
Leo Walker, Maddock (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

The agenda for the February 2, 2012 State Water Commission audio conference call meeting was presented; there were no modifications to the agenda.

It was moved by Commissioner Berg, seconded by Commissioner Thompson, and unanimously carried, that the agenda be accepted as presented.

APPROVAL OF FLOODWAY PROPERTY ACQUISITION COST SHARE POLICY (SWC Project No. 1753)

2011 Senate Bill 2371 was passed by the Sixty-second Legislative Assembly of North Dakota in special session commencing on November 7, 2011;

Governor Dalrymple executed Senate Bill 2371 on November 11, 2011:

SECTION 18. STATE WATER COMMISSION - FLOODWAY PROPERTY ACQUISITION AND CONSTRUCTION FUNDING. In its future plans, the state water commission shall place a high priority on providing for floodway acquisitions and construction. The funding must be used to supplement federal hazard mitigation grant funds or other federal funds for acquiring property and for the construction of flood control projects in qualifying political subdivisions,

including necessary funding for any state or local match requirements. For purposes of this section, qualifying political subdivisions are cities or counties that are eligible for federal emergency management agency hazard mitigation grant funding or other comparable federal programs for flood mitigation and have received, or are located within counties that have received, an individual assistance designation by the federal emergency agency as a result of a flood event occurring during 2011.

SECTION 19. APPROPRIATION - STATE WATER COMMISSION - RESOURCES TRUST FUND. There is appropriated out of any moneys in the resources trust fund, not otherwise appropriated, the sum of \$50,000,000, or so much of the sum as may be necessary, to the state water commission for the purpose of defraying the expenses of that agency, for the period beginning with the effective date of this Act and ending June 30, 2013. As provided in section 4 of chapter 46 of the 2011 Session Laws, expenditures pursuant to this section require budget section approval.

The following proposed floodway property acquisition cost share policy was presented for the State Water Commission's consideration. The proposed policy includes revisions based on discussions at the December 9, 2011 State Water Commission meeting, the December 16, 2011 cost share policy committee meeting, and discussions with the North Dakota Department of Emergency Services:

- The State Water Commission (SWC) will provide cost share to cities or counties for the acquisition of property in floodways to provide long-term flood reduction benefits that compliments, but does not duplicate, federal funding of flood mitigation projects. On any acquisitions cost shared by the SWC, the property must not be eligible for federal Hazard Mitigation Grant Program (HMGP) funding.

For the purpose of this policy, floodway is defined as the area needed to convey floodwaters. It does not refer to a specific return period flood. Use of the terms Individual Assistance and HMGP refers to federal cost share programs through the Federal Emergency Management Agency (FEMA), not programs under this cost share policy.

- Prior to applying for assistance, the applicant shall adopt and provide to the SWC an acquisition plan (similar to the plan required by HMGP) that includes the description and map of properties to be acquired, the estimated cost of property acquisition including contract costs, removal of structures, the benefit of acquiring the properties, and information regarding the ineligibility for HMGP funding. This plan must also include a description of how the applicant will insure there is not a duplication of benefits.

- Over the long-term development of a flood control project, following a voluntary acquisition program, the applicant's governing body must officially adopt a flood risk reduction plan or proposal including the flow to be mitigated. The flow used to develop the flood risk reduction plan must be included in zoning discussions to limit new development on other flood-prone property. An excerpt of the meeting minutes documenting the applicant's official action must be presented to the SWC.
- Eligible applicants must fund the local cost share for acquisitions. Local cost shares will not be waived.
- The SWC cost shares are identified as follows:
 - 1) SWC cost share for applicant's acquisition of property for potential temporary or permanent flood control projects in counties designated for FEMA Individual Assistance in 2011, with the addition of Ransom County, shall not exceed 75 percent.
 - 2) SWC cost share for applicant's acquisition of property that will provide additional conveyance (open space) but will not be protected by a proposed flood control project, in counties designated for FEMA individual Assistance in 2011, with the addition of Ransom County, shall not exceed 60 percent.
 - 3) SWC cost share for all other applicants shall not exceed 50 percent.

Purchase and removal of structures are eligible acquisition costs. All contracted costs directly associated with the acquisition will be considered eligible for cost share. Contracted costs may include appraisals, legal fees (title and abstract search/update, property survey, closing costs, etc.), hazardous materials abatement needs (asbestos, lead, paint, etc.), and site restoration. Salary and administrative costs incurred by the local sponsor shall not be eligible for cost share.

- The applicant shall include a perpetual restrictive covenant similar to the restrictions required by the federal HMGP funding with the additional exceptions being that the property may be utilized for flood control structures and related infrastructure, paved surfaces, and bridges. These covenants must be recorded either in the deed or in a restrictive covenant that would apply to multiple deeds.
- The applicant shall provide justification acceptable to the SWC describing the property's ineligibility to receive federal HMGP funding.

This is not meant to require submission and rejection by the federal government, but rather an explanation of why the property would not be eligible for federal funding. Example explanations include: permanent flood control structures may be built on the property; project will not achieve required benefit/cost analysis to support HMGP eligibility; or lack of available HMGP funding. If inability to receive federal funding is not shown to the satisfaction of the SWC, following the SWC's consultation with the North Dakota Department of Emergency Services, the request for cost share will be returned to the applicant for submittal for federal funding prior to the use of these funds.

- The SWC must vote to approve the funding allocation toward all floodway acquisition cost share requests. The Chief Engineer-Secretary to the SWC, or a designee, will approve the specific payments under the funding allocation. Assistance pursuant to this policy will be limited by the SWC's determination of funding availability.
- FEMA Individual Assistance in 2011, with the addition of Ransom County, are in the following order:
 - 1) Property has flood damage and may be needed for construction of long-term flood control projects.
 - 2) Property has flood damage and may be needed for construction of temporary flood control projects.
 - 3) Property has flood damage and would increase the conveyance or provide other flood control benefits.
 - 4) Property **does not** have flood damage but may be needed for construction of long-term flood control projects.
 - 5) Property **does not** have flood damage but may be needed for construction of temporary flood control projects.

The SWC recognizes additional areas still recovering from prior floods may also require assistance.

Property in counties that qualified for FEMA Individual Assistance in 2009, but not in 2011, will be considered as priority 6 through 10, in the same order as outlined for priorities 1 through 5 above.

Property in counties that did not qualify for FEMA Individual Assistance in either 2009 or 2011 will be considered as priority 11 through 15, in the same order as outlined for priorities 1 through 5 above.

Cost share for construction of permanent flood control on the property acquired is subject to approval under the existing State Water Commission cost share policy.

The Commission staff provided an explanation of the proposed cost share policy, and emphasized that it is the intent of the state funding to provide 75 percent of the costs of voluntary acquisitions of properties acquired by the local government entities as part of new flood protection measures. Properties potentially eligible for federal Hazard Mitigation Grant Program monies are encouraged to explore those options prior to seeking state funding. The availability of federal funding needs to be pursued for these projects - the state funding should be used secondary to the federal funding.

Governor Dalrymple explained "that the state's role in the process is more of a 'follower' by funding a program that will be managed by the local entities." Governor Dalrymple also stated that the availability for state funds does not face a "sunset" clause, or expiration date, at this time.

It was the recommendation of Secretary Sando that the State Water Commission approve the proposed floodway property acquisition cost share policy as presented.

Commissioner Berg mentioned he did not have an opportunity to review the proposed policy, therefore, stated his intent to abstain from voting.

It was moved by Commissioner Goehring and seconded by Commissioner Thompson that the State Water Commission approve the proposed floodway property acquisition cost share policy as presented, effective February 2, 2012.

Commissioners Foley, Goehring, Hanson, Olin, Thompson, Swenson, and Governor Dalrymple voted aye. An abstention of vote was recorded for Commissioner Berg. There were no nay votes. The recorded vote was 7 ayes; 0 nays; 1 abstention. Governor Dalrymple announced the motion carried.

***CITY OF MINOT FLOOD PROTECTION
PROJECT, PHASE I - APPROVAL OF
STATE COST PARTICIPATION
(2011 SENATE BILL 2371 - \$17,750,000)
(SWC Project No. 1408)***

properties in Phase 1 of the acquisition program. The estimated purchase price for these properties is \$23,670,000.

A request from the City of Minot was presented for the State Water Commission's consideration for state cost participation in their project to acquire property for a future flood control project. The city is proposing to acquire 117

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation at 75 percent of the eligible costs, not to exceed an allocation of \$17,750,000 from the funds appropriated to the State Water Commission in 2011 Senate Bill 2371, to the City of Minot to support the city's flood protection project, Phase I.

It was moved by Commissioner Foley and seconded by Commissioner Goehring that the State Water Commission approve state cost participation at 75 percent of the eligible costs, not to exceed an allocation of \$17,750,000 from the funds appropriated to the State Water Commission in 2011 Senate Bill 2371, to the City of Minot to support the city's flood protection project, Phase I. This action is contingent upon the availability of funds, and the criteria stipulated in the floodway property acquisition cost share policy.

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

**CITY OF BURLINGTON FLOOD
PROTECTION PROJECT, PHASE I -
APPROVAL OF STATE COST
PARTICIPATION
(2011 SENATE BILL 2371 - \$1,039,000)
(SWC Project No. 1971-02)**

A request from the City of Burlington was presented for the State Water Commission's consideration for state cost participation in acquiring property for a future flood control project. The city has acquired 11 properties in Phase I of the acquisition program.

The project expenses to date for acquiring these properties are \$1,411,700, of which \$1,385,000 has been determined eligible for a 75 percent state cost participation (\$1,039,000). The ineligible costs include legal fees and publication costs associated with bonding.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation at 75 percent of the eligible costs, not to exceed an allocation of \$1,039,000 from the funds appropriated to the State Water Commission in 2011 Senate Bill 2371, to the City of Burlington to support the city's flood protection project, Phase I.

It was moved by Commissioner Swenson and seconded by Commissioner Berg that the State Water Commission approve state cost participation at 75 percent of the eligible costs, not to exceed an allocation of \$1,039,000 from the funds appropriated to the State Water Commission in 2011 Senate Bill 2371, to the City of Burlington

to support the city's flood protection project, Phase I. This action is contingent upon the availability of funds, and the criteria stipulated in the floodway property acquisition cost share policy.

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

**WARD COUNTY FLOOD PROTECTION
PROJECT, PHASE I - APPROVAL OF
STATE COST PARTICIPATION
(2011 SENATE BILL 2371 - \$11,500,000)
(SWC Project No. 1523)**

quire 56 properties in this phase of the acquisition program. The estimated purchase price for these properties is \$15,300,000,

A request from the Ward County Commission was presented for the State Water Commission's consideration for state cost participation in their project to acquire property for a future flood control project. The county intends to ac-

quire 56 properties in this phase of the acquisition program. The estimated purchase price for these properties is \$15,300,000, It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation at 75 percent of the eligible costs, not to exceed an allocation of \$11,500,000 from the funds appropriated to the State Water Commission in 2011 Senate Bill 2371, to the Ward County Commission to support the county's flood protection project, Phase I.

It was moved by Commissioner Goehring and seconded by Commissioner Berg that the State Water Commission approve state cost participation at 75 percent of the eligible costs, not to exceed an allocation of \$11,500,000 from the funds appropriated to the State Water Commission in 2011 Senate Bill 2371, to the Ward County Commission to support the county's flood protection project, Phase I. This action is contingent upon the availability of funds, and the criteria stipulated in the floodway property acquisition cost share policy.

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

**EAST DEVILS LAKE OUTLET -
APPROVAL OF POWER AGREEMENT
WITH NODAK ELECTRIC COOPERATIVE;
INC.; AND APPROVAL OF ALLOCATION
FOR AID TO CONSTRUCTION (\$800,000)
(SWC Project No. 416-15)**

On June 21, 2011, the State Water Commission authorized the Secretary to the Commission to negotiate and finalize an electric supply contract in the best interests of the East Devils Lake Outlet project.

Because of North Dakota's Territorial Integrity Act implications, the State Water Commission is proceeding with Nodak Electric Cooperative to provide electrical services for the East Devils Lake Outlet project. Negotiations with electric suppliers resulted in an agreement where the profits of the power purchased by the state will be shared between Nodak Electric Cooperative, Inc./ Minnkota Power Cooperative, Inc., and Otter Tail Power Company.

Nodak Electric Cooperative has requested \$800,000 (funding up-front) as aid to construction, with a minimum annual purchase of 33.3 percent of the remaining construction costs for a period of 36 months. The total estimated cost is \$2,800,000. The projected monthly power costs during operation at full capacity are \$218,000 using a six-month operating duration. Annual power costs for the East Devils Lake Outlet are projected to be \$1,400,000. Power is scheduled to be available by May, 2012.

It was the recommendation of Secretary Sando that the State Water Commission approve an allocation not to exceed \$800,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) to Nodak Electric Cooperative, Inc. as aid to construction to provide electrical service for the East Devils Lake Outlet project; and that the Secretary to the State Water Commission be authorized to finalize and execute an agreement for the purchase of power with Nodak Electric Cooperative, Inc., for the East Devils Lake Outlet project.

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission:

1) approve an allocation not to exceed \$800,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) to Nodak Electric Cooperative, Inc. as aid to construction to provide electrical service for the East Devils Lake Outlet project. This action is contingent upon the availability of funds; and

2) that the Secretary to the State Water Commission be authorized to finalize and execute an agreement for the purchase of power with Nodak Electric Cooperative, Inc., for the East Devils Lake Outlet project. This agreement will include a minimum annual purchase of electricity for a period of 36 months commencing when service is available.

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

OTHER BUSINESS

It was announced that the next meeting of the State Water Commission is scheduled for March 7, 2012 beginning at 1:30 P.M. in the Commission's lower level conference room, Bismarck, ND.

There being no additional business to come before the State Water Commission, Governor Dalrymple adjourned the audio conference call meeting at 2:20 P.M.



Jack Dalrymple, Governor
Chairman, State Water Commission

Todd Sando, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary
to the State Water Commission