

## **MINUTES**

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

**October 27, 1995**

The North Dakota State Water Commission held a telephone conference call meeting in the Governor's conference room, State Capitol, Bismarck, North Dakota, on October 27, 1995. Chairman, Governor Edward T. Schafer, called the meeting to order at 2:00 PM, and requested State Engineer and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

#### **MEMBERS PRESENT:**

Governor Edward T. Schafer, Chairman  
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck  
Mike Ames, Member from Williston  
Judith DeWitz, Member from Tappen  
Elmer Hillesland, Member from Grand Forks  
Jack Olin, Member from Dickinson  
Harley Swenson, Member from Bismarck  
Robert Thompson, Member from Page  
David Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **MEMBER ABSENT:**

Florenz Bjornson, Member from West Fargo

#### **OTHERS PRESENT:**

State Water Commission Staff  
Gregg Thielman, State Water Commission Devils Lake office (by phone from Devils Lake)  
Gordon Weixel, Devils Lake Daily Journal (by phone from Devils Lake)  
Julie Krenz, Assistant Attorney General, Bismarck  
Steve Galipeau, Bureau of Reclamation, Bismarck  
Greg Gere, Bureau of Reclamation, Bismarck  
Judy Carlson, Department of Agriculture, Bismarck  
Scott Carlson, Department of Agriculture, Bismarck  
Dale Wetzel, Associated Press, Bismarck  
Dave Thompson, Prairie Public Radio, Bismarck

The attendance register is on file with the official minutes.

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

Since this was a special meeting of the State Water Commission, Secretary Sprynczynatyk made reference to the North Dakota Century Code chapter 61-02-08 relating to meetings of the Commission. Chapter 61-02 states, in part:

Notice of any meeting of the commission shall be given by written notice sent to each member of the commission at least three days before the meeting. No notice shall be necessary for any member who has personally signed an admission of notice and consent to holding the meeting.

Because written notice was not provided three days prior to October 27, 1995, each member was asked to consent verbally and, in writing, that prior to the meeting he or she was verbally notified of the meeting and consented to holding the meeting. (The Commission members consented verbally, and written consent forms are on file with the official minutes of this meeting for each Commission member.)

#### **APPROVAL OF AGENDA**

There being no additional items for the agenda, the Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

#### **DEVILS LAKE EMERGENCY RESPONSE PLAN - DEVILS LAKE TO STUMP LAKE PUMPING COMPONENT STATUS REPORT (SWC Project No. 1882)**

Secretary Sprynczynatyk provided a status report on the Devils Lake Emergency Response plan, which is a short-term emergency flood control measure to alleviate flood conditions around Devils Lake while long-term flood reduction alternatives are being

evaluated. The plan consists of two critical, but completely separate, components, which are upper basin storage and pumping water from east Devils Lake to west Stump Lake. He said these two components are believed to be the most practicable and least damaging options for reducing the risk of added flood damages around Devils Lake in the short-term.

The Stump Lake component of the plan consists of pumping approximately 75,000 acre-feet of water from east Devils Lake to west Stump Lake. This will provide 1.2 feet of relief for Devils Lake and will raise Stump Lake from its current elevation of 1401.3 to 1411.75. Secretary Sprynczynatyk stated that the operating plan for pumping water to Stump Lake is such that pumping will only begin if the inflow forecast for Devils Lake is for above normal runoff and Devils Lake is projected to rise to an elevation higher than 1435.8 during the period applied for in the Section 404 permit application.

On October 19, 1995, bids were opened for the pump site work on east Devils Lake. The engineer's estimate was \$108,000. Harvey Sand and Gravel, Inc., was the low bidder with a bid of \$98,604.74.

Also on October 19, 1995, bids were opened for portable pumps for the project. The engineer's estimate was \$281,000. The low bid was received from Pump Systems of Dickinson, with a bid of \$236,880. The total cost of seven Gator pumps necessary to provide 250 cubic feet per second plus fuel consumption for 200 pumping days is approximately \$457,000. Secretary Sprynczynatyk stated both of the bids appear to be responsive, but the award of the bids will be delayed until after the Corps of Engineers has made its decision on the Section 404 permit application.

Because of the economic, social and environmental concerns and impacts associated with the Devils Lake to Stump Lake project, Secretary Sprynczynatyk reported that the Corps of Engineers made a decision to hold a public hearing on the Section 404 permit on October 27, 1995, in Devils Lake. The public record will remain open until November 6, 1995, after which time the Corps will make its decision on the permit application. If a decision by the Corps is made quickly, construction could begin this year. He said a June 1, 1996, pumping start is still possible, depending on conditions next spring.

Based upon public meetings with affected landowners and written comments received concerning the project, the original plan to abandon the Dutch Point road was reassessed. The decision has been made to retain and raise the road to a top elevation of 1417. Raising and maintaining Dutch Point road will also provide for water quality benefits to west Stump Lake. The co-mingling of the poorer quality water from east Stump Lake to west Stump Lake will be reduced, and it is also possible to manage water quality in west Stump Lake by controlling the flow of water through the Dutch Point road culvert. Secretary Sprynczynatyk said that fortunately cost savings in other areas have nearly offset the cost of this road raise. The total Devils Lake to Stump Lake pumping project is still estimated to be approximately \$4.6 million.

Commissioner Vogel reiterated concerns and questions regarding the funding for the project.

Secretary Sprynczynatyk discussed funding options being explored for the Devils Lake Emergency Response plan. He said when the overall plans for the project have been finalized and the course of action determined, a recommendation for funding will be presented to the Commission for consideration.

Secretary Sprynczynatyk responded to concerns relative to the use of condemnation in acquiring land for the emergency

plan. The State Water Commission has the authority to acquire easements or fee title to property that may be required as mitigation if the Section 404 permit authorizing pumping from Devils Lake to Stump Lake is issued. He said condemnation will not be used unless it is absolutely necessary. Any decision to condemn land will have to go through normal judicial procedures which will require time. In the event condemnation is necessary, the decision will be made by March, 1996, to allow sufficient time to deal with the matter in court.

**DEVILS LAKE EMERGENCY  
RESPONSE PLAN -  
APPROVAL TO COST SHARE  
IN UPPER DEVILS LAKE BASIN  
WATER STORAGE PROGRAM  
(SWC Project No. 1882)**

Secretary Sprynczynatyk stated that a very critical part of the Devils Lake Emergency Response plan includes the upper basin storage component. Upper basin storage will be obtained from landowners willing to participate in a voluntary program.

He said it is anticipated that available storage could provide one foot of relief to Devils Lake by storing the water in the upper portions of the basin instead of allowing it to flow to Devils Lake. The upper basin storage component is estimated to cost an additional \$3.2 million and efforts are ongoing for implementation.

A request from the Devils Lake Joint Water Resource Board was presented for the Commission's consideration to cost share in the amount of \$50,000 to initiate a water storage program in the upper Devils Lake basin. Secretary Sprynczynatyk presented the request, which will consist of storing approximately 3,000 acre-feet of water on CRP fields and will prevent water from reaching Devils Lake in 1996. The Natural Resource Conservation Service (NRCS) would administer the program and design the structures. The Devils Lake Joint Water Resource Board would make the payments to the farmers and the contractors as needed. The \$50,000 requested from the State Water Commission includes \$30,000 for structures and \$20,000 for landowner payments.

Secretary Sprynczynatyk said there are concerns among the landowners that they won't be able to put their land back into production and that it will become a wetland protected by law. He said the farmers won't have any problem putting their land back into production as far as the state is concerned, but there are questions at the federal level which need to be resolved.

Secretary Sprynczynatyk stated that a survey letter will be mailed to the landowners in the upper Devils Lake basin in an effort to determine the level of local interest and what is acceptable to them relative to the storage of water.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$50,000 to the Devils Lake Joint Water Resource Board for the storage of water on CRP land in the Devils Lake basin, contingent upon the availability of funds.

In discussion of the request, the Commission members expressed the importance of the project and said it is an appropriate time to take the first step in the implementation of a water storage project in the upper basin.

*It was moved by Commissioner Vogel and seconded by Commissioner Olin that the State Water Commission approve the allocation of \$50,000 from the Contract Fund to the Devils Lake Joint Water Resource Board for the storage of water on CRP land in the Devils Lake basin. This motion is contingent upon the availability of funds.*

*Commissioners Ames, DeWitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

*There being no further business to come before the State Water Commission, it was moved by Commissioner Thompson, seconded by Commissioner DeWitz, and unanimously carried, that the State Water Commission telephone conference call meeting adjourn at 2:45 PM.*

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

SEAL

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

