

MINUTES

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

May 18, 1998

The North Dakota State Water Commission held a telephone conference call meeting in the Governor's conference room, State Capitol, Bismarck, North Dakota, on May 18, 1998. Chairman, Edward T. Schafer, called the meeting to order at 4:00 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
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Florenz Bjornson, Member from West Fargo
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 A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Mike Ames, Member from Williston

OTHERS PRESENT:

State Water Commission Staff
Julie Krenz, Assistant Attorney General, Bismarck
Bill Pearson, U.S. Fish and Wildlife Service, Bismarck
Pat Condon, The Forum, 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.

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.

**CORPS OF ENGINEERS DEVILS
LAKE EMERGENCY OUTLET -
APPROVAL TO EXERCISE
AUTHORITY UNDER NDCC
§§ 61-02 AND 32-15 TO OBTAIN
RIGHT TO ENTER ON PROPERTY
OF LANDOWNERS ALONG
PROPOSED PETERSON COULEE**

**OUTLET ROUTE
(SWC Project No. 416-01)**

meeting on October 29, 1997, the Corps of Engineers reported that the Corps and their consultant, Barr Engineering, were continuing work on the pre-construction engineering and design of an emergency outlet from Devils Lake to the Sheyenne River via Peterson Coulee. The Corps and Barr Engineering met with State Water Commission staff and other state agencies on September 12 and October 8, 1997 to present the current status of their technical review. Seven alternatives consisting of various combinations of pumped storage, open channels, and pipe have been investigated. The preliminary cost estimates varied from \$35 to \$39.7 million.

On October 29, 1997, based on the additional information from the Corps of Engineers and the consultant, the State Water Commission reconsidered its endorsement (by motion of July 22, 1997) of the preliminary plan using a combination of pumped storage, pipeline, and open channel components, and endorsed a pipeline alternative.

Congress appropriated \$5,000,000 for preconstruction engineering and design and an environmental impact statement for an emergency outlet from Devils Lake to the Sheyenne River in the 1997 Emergency Supplemental Appropriations Act. Congress also appropriated \$5,000,000 to initiate construction of the emergency outlet. Before the Corps can utilize the \$5,000,000 appropriated by Congress for the construction of an outlet, the Corps must report to Congress that the construction is technically sound, economically justified, environmentally acceptable, and in compliance with the National Environmental Policy Act of 1969.

The Corps of Engineers and the State Water Commission have been acquiring the rights-of-entry needed to survey, make test borings and test pits, install temporary ground-water monitoring wells, and perform the cultural resources investigations needed to complete the engineering design of the emergency outlet, and to determine its final alignment along the route.

Numerous meetings as well as individual contacts have been held with all of the landowners along the proposed route. Secretary Sprynzynatyk briefed the Commission members on the most

On July 22, 1997, the State Water Commission endorsed the Peterson Coulee outlet route from Devils Lake to the Sheyenne River, and the preliminary plan using a combination of pumped storage, pipeline, and open channel components, with a design flow capacity of 300 cubic feet per

second.

At the State Water Commission

recent meeting held May 12, 1998, in Maddock, ND. Roger Kolling, Real Estate Officer for the State Water Commission, informed the Commission members of the rights-of-entry efforts that have been pursued.

Secretary Sprynczynatyk said it appears an impasse has been reached with several of the landowners who are not willing to execute a right-of-entry on to their land. He said their concerns are related to compensation for the devaluation of their land if a pipeline is built, and restitution for land flooded by Devils Lake. He said the state can make no guarantees relative to their concerns. Because a critical point has been reached in the design process where the soil tests, surveying, ground-water monitoring, and cultural resources information is needed, the Corps of Engineers has requested the Commission to provide immediate additional assistance in obtaining rights-of-entry along the Peterson Coulee route for an emergency outlet. Delays in acquiring the surveys will delay the design process and the time at which the emergency outlet will be ready to be constructed.

Secretary Sprynczynatyk informed the Commission members that he received a faxed letter from the chairman of the Peterson Coulee Outlet Association the morning of May 18, 1998 (the date of the scheduled State Water Commission's conference call meeting) indicating a willingness to meet to further negotiate the rights-of-entry agreements. A meeting with the Association is scheduled for May 20, 1998. Secretary Sprynczynatyk informed the Association's chair that the State Water Commission meeting would convene as scheduled at 4:00 PM on May 18, 1998, and that the State Engineer's recommendation would be presented to the Commission for consideration at its meeting.

Secretary Sprynczynatyk explained North Dakota Century Code chapter 61-02-14, and that the State Water Commission is an agency of the State of North Dakota with broad powers over the management and development of water projects in the state. All acts of the Commission are acts of "the state of North Dakota functioning in its sovereign and governmental capacity." N.D.C.C. § 61-02-09. The Commission has the authority to condemn land or easements needed for flood control projects. N.D.C.C. §§ 61-02-14, 61-02-22, and 61-02-23.

It was the recommendation of the State Engineer that the State Water Commission exercise its authority under North Dakota Century Code chapters 61-02 and 32-15 to obtain the right to enter on the property of the landowners to make surveys and examinations along the Peterson Coulee outlet route, but that this authority not be exercised until after the meeting on May 20, 1998 with the Peterson Coulee Outlet Association in an effort to accommodate the landowners' concerns.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission exercise its authority under the North Dakota Century Code chapters 61-02 and 32-15 to obtain the right to enter on the property of landowners along the proposed Peterson Coulee outlet route. This authority shall not be exercised until after the meeting on May 20, 1998 with the Peterson Coulee Outlet Association in an effort to accommodate the landowners' concerns.

Commissioner Johnson expressed opposition to the motion indicating the state should wait until after the meeting with the Association's reluctant landowners on May 20, 1998. He stated that every possible step should be taken to try and accommodate the Association before invoking the authority of the law to enter on to private property over the objection of landowners.

Secretary Spryncynatyk assured the Commission that he did not intend to invoke the authority provided in the law until after the scheduled meeting with the Association, and only as a last resort, if necessary.

Commissioners Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, and Chairman Schafer voted aye. Commissioner Johnson voted nay. The Chairman declared the motion passed.

(Note: The meeting with the Peterson Coulee Outlet Association was rescheduled and held on May 21, 1998.)

There being no further business to come before the State Water Commission, Governor Schafer adjourned the meeting at 4:30 PM.

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

SEAL

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

