

MINUTES

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

December 10, 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 December 10, 1998. Chairman, Governor Edward T. Schafer, called the meeting to order at 1:30 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
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
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:

Judith DeWitz, Member from Tappen

OTHERS PRESENT:

State Water Commission Staff
Julie Krenz, Assistant Attorney General, Bismarck, ND
Dave Koland, North Dakota Rural Water Systems, Bismarck, ND
Christopher Quale, Three Affiliated Tribes, New Town, ND (by phone)
Alan Walter, City of Minot Public Works Director, Minot, ND (by phone)
Nona Miller, Prairie Public Radio, Bismarck, ND
Elaine McLaughlin, Standing Rock Sioux Tribal Council Member, Fort Yates, ND

Larry A. Bodin, Bureau of Indian Affairs, Fort Yates, ND
Raphael See Walker, Standing Rock Sioux Tribal Council Member,
Fort Yates, ND

The attendance register is on file with the official minutes.

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

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APPROVAL OF AGENDA

the agenda approved, and requested Secretary Sprynczynatyk to present the agenda.

There being no additional items for the agenda, the Chairman declared

1999 PROPOSED LEGISLATION State

During the November 25, 1998
Water Commission

teleconference call meeting, the State Water Commission passed a motion to approve a bill draft relating to the Northwest Area Water Supply project, which is under the authority of the State Water Commission, and supported the concepts of bill drafts relating to dike appeals, water appropriations permit proceedings, and water supply districts, which are under the authority of the State Engineer, for submittal to the 1999 Legislature.

Under the Authority of the State Engineer

Indian Reserved Water Rights Negotiations:

The State Water Commission also considered a proposed bill draft at its November 25, 1998 meeting relating to Indian reserved water rights negotiations, which expresses as the state's policy its position that it would rather negotiate than litigate Indian claims reserved water rights. The bill draft authorizes the State Engineer to negotiate Indian reserved water rights.

Secretary Sprynczynatyk had informed the Commission members at its November 25, 1998 meeting, that a letter was received from the Turtle Mountain Band of Chippewa Indians requesting that the state begin a process of water rights settlement. The State Engineer responded to the tribe's letter indicating that the state was ready to negotiate at the tribe's request. Secretary Sprynczynatyk stated that to date no response had been received from the tribe. He also explained that the proposed legislation would clearly authorize the State Engineer to negotiate Indian reserved water rights.

During discussion of the proposed bill draft on November 25, 1998, representatives from the Three Affiliated Tribes, the Standing Rock Sioux Tribe, and the Bureau of Indian Affairs

expressed concern that they had received the proposed bill draft the day prior to the Commission's teleconference meeting and, therefore, needed more time for a review and analysis. The tribal representatives also requested an opportunity to meet with representatives of the other tribes to discuss the proposed legislation prior to final consideration by the Commission before the December 10, 1998 deadline for submission of legislation to the Legislative Council.

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At the request of Governor Schafer, the State Water Commission deferred action on the proposed bill draft at its November 25, 1998 meeting to allow the tribes time to review and provide comments on the proposed bill draft. Governor Schafer requested a telephone conference call be scheduled prior to the December 10, 1998 deadline for agency pre-filing of bills for further consideration of the proposed bill draft.

Secretary Sprynczynatyk informed the Commission members that on December 9, 1998, a meeting was held with representatives of the Indian tribes regarding the Indian reserved water rights legislation. A copy of the most recent draft legislation was distributed and discussed at the meeting. ~~SEE (APPENDIX "A")~~ A representative of the Turtle Mountain Band of Chippewa Indians indicated the Tribal Council intends to reconsider its request for negotiation of water rights at a meeting scheduled for December 16, 1998 and, therefore, he said it is likely that the earlier request from the Turtle Mountain Band of Chippewa Indians for water rights negotiations will be rescinded.

It was the recommendation of the State Engineer that based on conversations with representatives of the tribes, no action be taken to introduce the Indian water rights legislation until after the tribal meeting on December 16, 1998 to address the issue. It was also the State Engineer's recommendation that if the Turtle Mountain Band of Chippewa Indians Tribal Council acts to rescind its request for negotiations, no legislation should be introduced. If the Council acts to continue negotiations, legislation can then be introduced by a legislator.

Christopher Quale, Legal Counsel for the Three Affiliated Tribes, expressed appreciation to Governor Schafer, the State Water Commission, the State Engineer, legal counsel, and others for their efforts in developing and considering the bill draft on behalf of the state and the tribes.

The State Water Commission concurred with the State Engineer's recommendation and, therefore, no action relative to the Indian reserved water rights negotiations proposed bill draft was taken at this meeting.

Floodplain Management Legislation:

Secretary Sprynczynatyk stated that in the wake of the 1997 floods, Governor Schafer indicated the need to refine the state's floodplain management policies and consider possible statutory changes for the 1999 legislative session. The State Water Commission, as part of the 1999 State Water Management Plan, held eight public input meetings and discussions with various local, state, and federal officials to determine potential changes.

floodplain. This requirement already exists for plats for subdivisions of towns.

- 4) Specifying that the comprehensive plan adopted by zoning authorities may be designed to provide for "emergency management". The plan would provide for the development and maintenance of an effective capability to mitigate, prepare

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for, respond to and recover from, known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or the environment.

- 5) Requiring all communities to be enrolled in the National Flood Insurance Program. Failure to do so would make them ineligible to receive state disaster funds.
- 6) Allowing the State Engineer to establish a base flood elevation for lakes.

It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission support the concept of the bill draft pertaining to floodplain management, with the inclusion of the suggestions stated in issues 1) and 2), for submittal to the 1999 Legislature. SEE APPENDIX "B"

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

Water Appropriations - Permit Proceedings:

At its meeting on November 25, 1998, the State Water Commission passed a motion to support the concept relating to water appropriations permit proceedings contained in a bill draft. The bill draft would eliminate the need to hold a hearing on water permit applications when no one filed an objection to the application and no one requested a hearing. The bill draft also authorized the staff person who evaluates the application to recommend to the State Engineer whether the application should be approved.

During discussion of the bill draft, Governor Schafer stressed the importance of the public's opportunity to

request a hearing even though the bill draft eliminates the need to hold a hearing unless requested. He indicated this information is to be clearly outlined in the notice to the applicants within the one-mile radius of the water appropriation site(s).

Secretary Sprynczynatyk explained the intent of the legislation is not to diminish anyone's right or opportunity to a hearing, but to streamline the water permit application process and to reduce the cost to the state. Based on the discussion during the November 25, 1998 Commission meeting, Secretary Sprynczynatyk stated the bill draft was refined prior to submission to the Legislative Council.

APPENDIX "C"

Under the Authority of the State Water Commission

State Water Commission Participation in the State's
Revolving Loan Fund:

Secretary Sprynczynatyk

presented draft legislation relating to the State Water Commission's participation in the Municipal Bond Bank's Drinking Water State Revolving fund. He explained that under current law, the Commission cannot utilize the North Dakota Municipal Bond Bank since it is not a political subdivision of the state and it is not listed as an eligible agency under subsection 6 of section 6-09.4-03 of the North Dakota Century Code. In order for the Southwest Pipeline Project, the Northwest Area Water Supply Project and other Commission-sponsored water supply projects to be an eligible project to receive funds from the State Health Department's Revolving Loan fund, the Commission must be eligible to borrow funds from the North Dakota Municipal Bond Bank. The legislation under discussion would authorize the State Water Commission's eligibility for participation in the state's revolving loan fund.

It was the recommendation of the State Engineer that the State Water Commission approve the proposed bill draft relating to the State Water Commission's participation in the state's revolving loan fund.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the bill draft relating to the State Water Commission's participation in the North Dakota Municipal Bond Bank's Drinking Water State Revolving fund for submittal to the 1999 Legislature.
SEE APPENDIX "D"

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

1999-2001 BUDGET

On December 10, 1998, Governor Schafer released his executive budget recommendations during the 1999-2001 biennium. Secretary Sprynczynatyk stated the executive budget is very favorable for the State Water Commission and, if approved by the Legislature, it will allow enhancement of the agency's operations in some areas.

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NEXT STATE WATER
Water
COMMISSION MEETING

The next meeting of the State
Commission is scheduled for
December 21, 1998 in Bismarck,
North Dakota.

There being no further business to
come before the State Water Commission, Governor Schafer adjourned the
telephone conference call meeting at 2:00 PM.

Schafer_____

/S/ EdwardT.

Edward T. Schafer
Governor-Chairman

SEAL

Sprynczynatyk_____

/S/ DavidA.

David A. Sprynczynatyk
State Engineer, and
Chief Engineer-Secretary

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