

## **MINUTES**

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

**June 28, 2004**

The North Dakota State Water Commission held an audio conference call meeting in the Governor's conference room, Bismarck, North Dakota, on June 28, 2004. Governor-Chairman, John Hoeven, called the meeting to order at 10:45 AM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

#### **STATE WATER COMMISSION MEMBERS PRESENT:**

Governor John Hoeven, Chairman  
Jeff Olson, representing Roger Johnson, Commissioner,  
North Dakota Department of Agriculture, Bismarck  
Charles Halcrow, Member from Drayton  
Larry Hanson, Member from Williston  
Elmer Hillesland, Member from Grand Forks  
Curtis Hofstad, Member from Starkweather  
Jack Olin, Member from Dickinson  
Harley Swenson, Member from Bismarck  
Robert Thompson, Member from Page  
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **OTHERS PRESENT:**

State Water Commission Staff  
Matthew Sagsveen, Assistant Attorney General, Bismarck  
Dave Koland, Manager, Garrison Diversion Conservancy District, Carrington  
Don Barsness, AWBW Architects, Bismarck  
Paul Breiner, AWBW Architects, Bismarck  
Tom Fischer, North Dakota Senate, District 46, Fargo  
Dan Twichell, Cass County Joint Water Resource District, West Fargo  
Jeffry Volk, Moore Engineering, Inc., West Fargo  
Scott McLeod, Ducks Unlimited, Bismarck (by telephone)  
Roger Smith, Ducks Unlimited, Bismarck (by telephone)  
Gordon Johnson, Richland County Water Resource District, Mooreton (by 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 proposed Maple River Dam project was included on the agenda.

A request for an additional state cost share participation for construction of

**CONSIDERATION OF FINAL DRAFT  
MINUTES OF MAY 28, 2004 STATE  
WATER COMMISSION AUDIO  
CONFERENCE CALL MEETING -  
APPROVED**

The final draft minutes of the May 28, 2004 State Water Commission audio conference call meeting were approved by the following motion:

***It was moved by Commissioner Hofstad, seconded by Jeff Olson representing Commissioner Johnson, and unanimously carried, that the final draft minutes of the May 28, 2004 State Water Commission audio conference call meeting be approved as prepared.***

**STATE WATER COMMISSION  
MAINTENANCE BUILDING -  
EXPENDITURE APPROVAL OF  
\$100,000 TO DEVELOP SITE AND  
UTILITIES AT NEW LOCATION  
(SWC File SHOP)**

authorization directed that the cost of the land and construction of the building shall not exceed \$977,100.

In accordance with the State Water Commission budget for the 2003-2005 biennium, House Bill 1023 authorized the Commission to sell its property at the corner of 26th Street and Broadway Avenue and to use the proceeds to build a new maintenance building. The

The State of North Dakota has deeded approximately 4.3 acres north of the North Dakota Penitentiary and east of the North Dakota Department of Health and Consolidated Laboratories in southeast Bismarck to the State Water Commission for the purpose of constructing a new maintenance building. In March, 2004, the Commission entered into a contract with the architectural firm of AWBW, Bismarck, to develop plans and specifications for a new building.

The North Dakota Game and Fish Department is constructing a maintenance facility on land immediately to the east of the Commission's property. The state is currently constructing a new mortuary on the Health Department property. This construction would allow the Commission to cost share in the development of the site and utilities with these agencies, of which the Commission's share would be approximately \$100,000.

On June 6, 2004, bids were opened for developing the utilities at the new location. There were four bids received, and no bids were rejected for non-compliance with the bidding documents. Based on the bids received, the apparent low bidder for the contract was Cofell's Plumbing and Heating, Inc., Bismarck, ND, with a bid of \$106,924.

On June 23, 2004, bids were opened for the construction of a new maintenance building. The project was bid using a base bid for the main building and site work. In addition to the base bid, the bidders supplied costs for additional features to be selected by the Commission.

Secretary Frink informed the Commission members that the apparent low general, mechanical and electrical construction bids, the alternate features required for a functional maintenance building, and the State Water Commission's cost share for development of the site and utilities exceed the funding limit of \$977,100 authorized by the Legislature under House Bill 1023. Land sale issues involving the current property owned by the State Water Commission and options for a functional new maintenance building were discussed. The State Engineer and the Commission staff were directed to re-evaluate these issues prior to moving forward.

It was the recommendation of the State Engineer that the State Water Commission approve an expenditure not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium to cost share with the North Dakota Department of Health and the North Dakota Game and Fish Department for development of the site and utilities at the location which has been designated for a new State Water Commission maintenance building.

***It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve an expenditure not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium to cost share with the North Dakota Department of Health and the North Dakota Game and Fish Department for development of the site and utilities at the location which has been designated for a new State Water Commission maintenance building. This motion is contingent upon the availability of funds.***

***Commissioners Halcrow, Hanson, Hillesland, Hofstad, Olin, Jeff Olson representing Commissioner Johnson, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**NORTH DAKOTA DEVILS LAKE  
OUTLET PROJECT - APPROVAL OF  
ELECTRIC SERVICE AGREEMENT  
WITH NORTHERN PLAINS ELECTRIC  
COOPERATIVE, CANDU, ND  
(SWC Project No. 416-07)**

An agreement with Northern Plains Electric Cooperative, Cando, ND, to construct the facilities necessary and provide electrical power and energy to the Round Lake and Josephine pumping stations for the North Dakota Devils Lake outlet project was presented for

the State Water Commission's consideration. The agreement provides that Northern Plains will construct, own, operate and maintain the electric facilities necessary to supply power to the pump stations including the substations. The State Water Commission will reimburse Northern Plains for the cost of these facilities at an estimated cost of \$2,400,000.

The Commission discussed the proposed power rates, which may be adjusted based on documented cost increases in wholesale power supplied to Northern Plains and changes to the average annual operation and maintenance cost of Northern Plains transmission facilities. In order to minimize the costs, it is the state's intent to use interruptible power for the pumps. For interruptible power, the monthly demand charge is \$2.00 per KW and the energy charge is 2.22 cents per KWH. Additionally, there is a \$22.00 per month facility charge as well as a transmission/substation facility charge of \$1,113 per month. The facility charge will be reduced by 0.183 cents per KWH purchased annually.

Commissioner Thompson referenced the Electric Service Agreement, Attachment C, and requested that paragraph 4 be amended as follows: "The above power rates are based on the ability of Northern Plains to control (interrupt) the operation of the pumps as required to reduce peak loading. Interruptions should not exceed reasonable time periods." (underlining is additional language)

At 100 cubic feet per second, the pumping plants will each draw 2,500 KW for a total of 5,000 KW, and the pumps will be operated for up to seven months each year. If the outlet is operated at maximum capacity for the entire seven months, the cost for electricity will be approximately \$630,000. Given the constraints of the water quality discharge permit, Secretary Frink said it is unlikely that the outlet will be operated to this level. If the outlet is not operated, Northern Plains would be paid \$13,620 per year.

It was the recommendation of the State Engineer that the State Water Commission approve the Electric Service Agreement for the North Dakota Devils Lake Outlet Project with Northern Plains Electric Cooperative, Cando, ND. The agreement provides for the expenditure of \$2,400,000 (approved by the State Water Commission on March 5, 2003) for construction of the facilities necessary to provide electrical power and energy to the Round Lake and Josephine pump stations, pursuant to the terms and conditions of the agreement.

***It was moved by Commissioner Thompson and seconded by Commissioner Swenson that the State Water Commission approve the Electric Service Agreement for the North Dakota Devils Lake Outlet Project with Northern Plains Electric Cooperative, Cando, ND, which shall include the following amendment to Attachment C, paragraph 4, of the Electric Service Agreement:***

***4. The above power rates are based on the ability of Northern Plains to control (interrupt) the operation of the pumps as required to reduce peak loading. Interruptions should not exceed reasonable time periods.***

***The Electric Service Agreement provides for the expenditure of \$2,400,000 (approved by the State Water Commission on March 5, 2003) for construction of the facilities necessary to provide electrical power and energy to the Round Lake and Josephine pump stations, pursuant to the terms and conditions of the agreement. SEE APPENDIX "A" (executed agreement)***

***Commissioners Halcrow, Hanson, Hillesland, Hofstad, Olin, Jeff Olson representing Commission Johnson, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

Secretary Frink informed the State Water Commission members that a notice of intent to file a legal challenge was received on June 13, 2004 from The People to Save the Sheyenne, Peterson Coulee Outlet Association, National Wildlife Federation, Minnesota Conservation Federation, Minnesota Center for Environmental Advocacy, and the Government of the Province of Manitoba. The notice challenges that the State of North Dakota and the U.S. Army Corps of Engineers are in violation of the Clean Water Act Section 404 discharge permit for the North Dakota Devils Lake outlet project.

***APPROVAL OF REQUEST FROM STEELE COUNTY WATER RESOURCE DISTRICT FOR STATE COST PARTICIPATION FOR LYNCH DAM REPAIR (SWC Project No. 247)***

A request from the Steele County Water Resource District was presented for the State Water Commission's consideration for state cost participation for the repair of Lynch Dam. The district's request is subsequent to Ducks Unlimited NAWCA

partner contribution statement executed by the State Engineer in March, 2003, indicating the state's intent to contribute cash or in-kind services in the amount of \$28,000 for construction and professional services for the repair of Lynch Dam, pending approval by the State Water Commission. The repair of the dam will alleviate safety concerns, future flooding problems, and improve the habitat conditions for waterfowl.

Lynch Dam, also referred to as Finley Dam, is located in the NW1/4 of Section 8, Tier 146 North, Range 56 West (Easton Township) in Steele county. The dam is located on an unnamed intermittent stream that contributes to a series of tributaries above the Middle Branch of the Goose River. The dam was constructed in 1932 by the North Dakota Game and Fish Department, with subsequent improvements and repairs undertaken as CWA, FERA, and WPA projects. The WPA project easements were transferred to the State of North Dakota and, by statute, the responsibility for the structure was transferred to the Steele County Water Resource District.

Scott McLeod and Roger Smith, Ducks Unlimited, were in attendance via telephone to provide technical information relative to the project, and request the State Water Commission's favorable consideration for state cost participation. Ducks Unlimited has designed and will oversee construction of the project. The design report proposes to repair the breached area, install a primary spillway through the dam adjacent to the main channel, and excavate an emergency spillway. The reconstructed embankment will have a top width of 12 feet and 3:1 side slopes, the top of the dam will be at a height of 22 feet, and the impoundment will cover 14.16 acres and store 90.65 acre-feet of water. State Water Commission permit 2021 authorizes the construction, and the Commission staff is currently reviewing a water use permit.

The project engineer's cost estimate is \$125,666, which includes \$55,377 for construction, \$56,705 for engineering, and \$13,584 for indirect costs. The engineering costs exceed the construction costs due to the project having been redesigned. Funding contributions to the project include the North Dakota Natural Resource Trust, U.S. Fish and Wildlife Service, North Dakota Game and Fish Department, City of Finley, Finley Job Authority, Finley Wildlife Club, Lake Agassiz RC&D, and NAWCA funds. The request before the State Water Commission is for state cost participation in the amount of \$28,000.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation for the Lynch Dam repair project, not to exceed \$28,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, contingent upon the availability of funds, and satisfaction of all required permits.

***It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation for the Lynch Dam repair project, not to exceed \$28,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds, and satisfaction of all required permits.***

**Commissioners Hanson, Hillesland, Hofstad, Olin, Jeff Olson representing Commissioner Johnson, Thompson, and Governor Hoeven voted aye. Commissioners Halcrow and Swenson voted nay. Recorded vote was 7 ayes; 2 nays. Governor Hoeven announced the motion carried.**

**APPROVAL OF REQUEST FROM RICHLAND COUNTY WATER RESOURCE DISTRICT FOR COST SHARE PARTICIPATION IN RICHLAND COUNTY DRAIN NO. 14 RECONSTRUCTION PROJECT (SWC Project No. 1331)**

A request from the Richland County Water Resource District was presented for the State Water Commission's consideration for state cost participation to reconstruct and improve a portion of Richland County Drain No. 14. The purpose of the reconstruction is to bring the channel up to present day standards

and improve the stability of the channel. A two-mile portion to the north of this site was reconstructed to the drain outlet in 1998.

The design of the proposed project is a cooperative effort between the Natural Resources Conservation Service (NRCS), Richland County Highway Department, and Interstate Engineering, Inc., the District's consulting engineers. The channel portion of the project was designed as two phases by NRCS, of which Phase I is complete. This project is a continuation of the effort to reconstruct the channel.

The proposed project consists of reconstructing approximately 2 miles of the existing channel located in Sections 11 and 15, Tier 135 North, Range 51 West. Two deteriorating timber bridges will be removed and one will be replaced. Side inlet culverts will be replaced along the length of the channel. The existing channel was constructed with 2:1 or steeper side slopes that have experienced failures and slides over the last several years. The proposed channel will be constructed with 4:1 side slopes and a 12 to 16-foot channel bottom. Because the channel is adjacent to a township gravel road for most of its length, the bottom of the channel will be moved away from the road and the in-slope of the road filled to create the 4:1 slope. This method was chosen versus moving the road as it would result in less cost due to the multiple utilities that would require relocation on the east side of the road.

The NRCS has indicated that a wetland will be impacted in the northeast corner of Section 11, Tier 135 North, Range 51 West, and will require mitigation. It was also determined that any existing sediment in the drain bottom will remain in place and be covered by embankment to fill the old channel and build the side slopes adjacent to the road.

The district indicated that the work will be financed with drain maintenance funds. The Corps of Engineers has issued a Section 404 permit, and the preliminary engineering plans and the application to drain are currently being reviewed by the Commission staff. Under the State Water Commission's policy, conditional approval of rural flood control drainage projects will be allowed, subject to a six-month time limit for issuance of the required state permit, and receipt/approval of the project's final design. Construction is anticipated to be completed by the fall of 2004.

The project engineer's cost estimate is \$323,436, of which \$297,120 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$103,992). The request before the State Water Commission is for a 35 percent cost share in the amount of \$103,992.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$103,992 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Richland County Drain No. 14 reconstruction project.

***It was moved by Jeff Olson representing Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$103,992 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Richland County Drain No. 14 reconstruction project. This motion is contingent upon the availability of funds, satisfaction of state permit requirements, and approval of the project's final design.***

***Commissioners Halcrow, Hanson, Hillesland, Hofstad, Jeff Olson representing Commissioner Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**APPROVAL OF REQUEST FROM  
CASS COUNTY JOINT WATER  
RESOURCE DISTRICT FOR  
ADDITIONAL STATE COST PAR-  
TICIPATION FOR CONSTRUCTION  
OF MAPLE RIVER DAM PROJECT  
(SWC Project No. 1878)**

Representatives of the Cass County Joint Water Resource District gave a presentation on the proposed Maple River Dam and requested state cost participation on the project. The purpose of the dam is to reduce the duration of flooding along the Maple, Sheyenne, Rush and Red Rivers in eastern North Dakota.

The proposed Maple River Dam will be located in the NE1/4 of Section 14, Tier 137 North, Range 54 West, in Cass County. The project is located in a rural area approximately 7 miles east and 4 miles south of the city of Enderlin. The watershed area for the Maple River Dam comprises 901.8 square miles, or 577,152 acres. The project consists of the construction of an earthen embankment, a principal spillway, and two emergency spillways. The embankment will be constructed to an elevation of 1063 feet msl with a 25-foot top width, 3:1 upstream side slopes protected with riprap, and 4:1 downstream side slopes.

Tom Fischer, North Dakota Senate, District 46, and Jeffrey Volk, Moore Engineering, West Fargo, ND, provided technical information relating to the project features and downstream benefits, projected schedule, and the proposed project funding. The proposed funding sources includes the State of North Dakota (50 percent), Red River Joint Water Resource District (25 percent), and a local cost share (25 percent). The establishment of a special assessment district is contingent upon the results of a mail-in vote from the property owners who will be assessed according to the benefits they will receive from the project. After many years of working with the Omaha District Corps of Engineers, the Joint Board received a Section 404 permit for the project on May 17, 2004. The Commission staff is currently reviewing the construction and water use permits. Mr. Volk explained that the Section 404 permit has a three-year window for which construction must be completed. To meet this schedule, the Joint Board is planning to begin construction on the project in the fall of 2004, which would allow the project to be operational by the winter, 2005-2006, and construction completion anticipated in 2008. To proceed with this schedule, the State Water Commission was requested to consider additional state cost participation.

Previously approved cost share actions by the State Water Commission for costs incurred and reimbursed under the previous Maple River Dam Study Project include: May 26, 1992 - \$500,000; December 8, 2000 - \$500,000; and March 5, 2003 - \$500,000 (\$1,500,000 total approved state contribution). The total estimated cost for construction of the Maple River Dam is \$22,500,000. Of this amount, \$18,800,000 is considered to be eligible for conditional state cost participation as a rural flood control project at 50 percent of the eligible costs (\$9,400,000), less the

approved previous amount for other costs (\$1,500,000). The remaining unfunded balance of \$7,900,000 is considered eligible for state cost participation. The ineligible costs of \$3,700,000 are for the estimated administration expenses (\$750,000) and land rights (\$2,950,000).

Secretary Frink explained that the State Water Commission's appropriation for the 2003-2005 biennium earmarks \$3,500,000 for the Maple River Dam. Because of 2003-2005 biennial budget constraints, and that the State Water Commission cannot approve funding obligations beyond the current biennium, Secretary Frink suggested that \$4,500,000 be provided from the funds appropriated to the State Water Commission in the 2003-2005 biennium, and that the unfunded eligible balance (\$3,400,000) be considered from the funds appropriated to the State Water Commission in the 2005-2007 biennium. Secretary Frink explained that this approval would reduce the funds earmarked for the Fargo Flood Control project.

***It was moved by Commissioner Halcrow and seconded by Commissioner Thompson that the State Water Commission conditionally approve additional state cost participation of 50 percent of the eligible costs, not to exceed \$4,500,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for construction of the proposed Maple River Dam project. This motion is contingent upon the availability of funds, issuance of the required construction and water use permits, and approval of the final engineering plans. Assurance shall hereby be provided that the State Water Commission is obligated to consider the unfunded eligible balance (\$3,400,000) from the funds appropriated to the State Water Commission in the 2005-2007 biennium.***

***This action increases the total approved state cost share contribution to \$6,000,000 for the Maple River Dam project.***

***Commissioners Halcrow, Hanson, Hillesland, Hofstad, Olin, Jeff Olson representing Commissioner Johnson, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the audio conference call meeting at 12:15 AM.

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John Hoeven, Governor  
Chairman, State Water Commission

SEAL

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Dale L. Frink  
North Dakota State Engineer, and  
Chief Engineer-Secretary to the  
State Water Commission