

MINUTES

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

April 5, 2010

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 April 5, 2010. Governor John Hoeven, Chairman, called the meeting to order at 1:30 P.M., and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, 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:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Lance Gaebe, Office of the Governor, Bismarck
Jennifer Verleger, Assistant Attorney General, Office of Attorney General, Bismarck
Dave Thompson, Prairie Public Radio, Bismarck
Pat Zavoral, City Administrator, Fargo (via telephone)
April Walker, City of Fargo (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

There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

FARGO-MOORHEAD FLOOD PROTECTION PLAN - APPROVAL OF STATE COST PARTICIPATION FOR ADDITIONAL STUDY (\$300,000) (SWC Project No. 1928)

The Corps of Engineers has determined the federal interest National Economic Development (NED) plan in a comprehensive Fargo-Moorhead flood protection plan should be a 20,000 cubic feet per second (cfs) diversion on the

Minnesota side of the Red River of the North. A Metro Flood Study Work Group, composed of elected representatives of Fargo-Moorhead, Cass-Clay counties, and watersheds encompassing these two cities, recommended that the Locally Preferred Plan (LPP) be the North Dakota 35,000 cfs diversion plan.

The Corps of Engineers will continue to study and analyze if increasing the NED plan in Minnesota can meet the federal objectives. The \$2,600,000 study effort will be done by the Corps of Engineers and the proposed funding is as follows: \$1,300,000 - Corps of Engineers; \$300,000 - State Water Commission; \$300,000 - City of Fargo; \$300,000 - Southeast Cass Water Resource District; and \$400,000 - Moorhead/Minnesota.

The final NED plan approved by the Corps of Engineers includes a provision that will allow the federal funding share (65 percent) to be transferred to the eligible LPP if such plan is deemed acceptable by the Corps. In order for the LPP to be deemed acceptable, the Corps must undertake additional studies on the technical merits of intersecting a diversion with natural rivers and streams and environmental issues related to the river crossings. It is anticipated that a decision on the final NED plan could occur in May, 2010, with a decision on the North Dakota LPP recommendation in late summer or early fall, 2010.

A request from the City of Fargo was presented for the State Water Commission's consideration for state cost participation in the amount of \$300,000 for the Corps of Engineers' study of the North Dakota 35,000 cfs diversion option for the Fargo-Moorhead flood protection plan (\$300,000).

Pat Zavoral, Fargo City Administrator, provided an update on the federal, state, and local efforts for the Fargo-Moorhead flood protection plan, and requested the State Water Commission's favorable consideration for funding assistance for the study.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation not to exceed an allocation of \$300,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B 1020), to the City of Fargo for the Corps of Engineers study on the Fargo-Moorhead flood protection plan.

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission approve state cost participation not to exceed an allocation of \$300,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B 1020), to the City of Fargo for the Corps of Engineers study on the Fargo-Moorhead flood protection plan. This action is contingent upon the availability of funds.

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

***CITY OF LISBON 2010 ENGINEERING
FEASIBILITY STUDY FOR IDENTIFYING
FUTURE FLOOD CONTROL LEVEE
ALIGNMENTS - APPROVAL OF STATE
COST PARTICIPATION (\$30,000)
(SWC Project No. 1299)***

A request from the City of Lisbon was presented for the State Water Commission's consideration for state cost participation for an engineering feasibility study to identify future flood control levee alignments. The city needs to make a decision of whether or not to

utilize FEMA property buyout funds available under FEMA's Hazard Mitigation Grant program for buying several properties that were flooded in the spring of 2009. FEMA buyout properties must be held in public ownership for perpetuity, for open space, and no structures (including levees) may be placed on the property. If the city utilizes FEMA monies for buyouts, those properties will no longer be available for use for the construction of flood control levees. The city needs to determine the location of future flood control levee alignments so that it can take advantage of FEMA monies where appropriate and identify properties that will be required for future levee construction.

The Corps of Engineers completed a Section 205 report in 1987 which determined that a federally-constructed levee system for the city of Lisbon was not feasible. A Section 205 study is pending completion in 2011. If a federally-constructed project is again determined not feasible, the city would like to evaluate non-federal alternatives. The engineering feasibility study will provide the information required to determine the levee alignment concepts so that alternatives could be created. The project engineer's cost estimate for the engineering feasibility study is \$60,000. The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$30,000.

Secretary Frink explained that the State Water Commission's cost share policy, procedure, and general requirements considers state cost participation on 60 percent of the eligible construction costs of a project. Engineering services (including soils investigations) are considered ineligible items for state cost share. The engineering feasibility study request before the Commission includes costs for the soils investigation and stability analysis (\$25,000) that would not normally be considered an eligible item for cost share. However, Secretary Frink explained that engineering is required to determine the actual levee alignment. It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as an engineering feasibility study at 50 percent of the eligible costs (\$35,000) not to exceed an allocation of \$17,500 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020). The soils investigation and stability analysis costs of \$25,000 would be considered ineligible for cost share. Secretary Frink also stated that although the project is under \$20,000 allowing the State Engineer's approval, it is being presented to the Commission members for awareness purposes of the Commission's support of flood mitigation and control efforts and project land needs.

The Commission's cost share policy, procedure, and general requirements were reviewed relating to the eligible/ineligible construction costs and engineering services. The cost share request before the Commission was further addressed, and possible solutions/alternatives for a non-federal project were discussed. Governor Hoeven reminded the Commission members that although a cost share policy is in place, the policy allows the Commission to consider exceptions on an individual basis. Governor Hoeven alluded to the city of Lisbon's history of flooding, and stressed the importance that the state focus its efforts to provide financial support and long-term solutions that will result in the safety and protection to the citizens of North Dakota.

It was moved by Commissioner Thompson and seconded by Commissioner Goehring that the State Water Commission approve state cost participation as an engineering feasibility study at 50 percent of the eligible costs not to exceed an allocation of \$30,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the City of Lisbon to support an engineering feasibility study to identify future flood control levee alignments. This action is contingent upon the availability of funds.

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

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
NAWS WATER SERVICE CONTRACTS
237-4-8, WEST RIVER WATER & SEWER
DISTRICT, AND 237-4-10, CITY OF
BURLINGTON, AND AMENDMENT I
TO CONTRACTS
(SWC Project No. 237-04)**

Northwest Area Water Supply Project Water Service Contract 237-4-8, West River Water & Sewer District, and Contract 237-4-10, City of Burlington, were presented for the State Water Commission's consideration. The main water service contract provides the terms of the long-term water service contract when water is available from

Lake Sakakawea. The proposed amendments (Amendment I) to the contracts were also presented, which allows for an interim period during which the State Water Commission will provide water service supplied by the City of Minot. The NAWS project has construction contract 2-2E awarded to provide water service to the City of Burlington and the West River Water & Sewer District as early as June 1, 2010, which is the substantial completion date.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the Commission to finalize and execute Northwest Area Water Supply Project Contract 237-4-8, West River Water & Sewer District, and Contract 237-4-10, City of Burlington, and the proposed Amendment I to the contracts, which provides the terms for the interim water supply and initial water use.

It was moved by Commissioner Foley and seconded by Commissioner Thompson that the State Water Commission authorize the secretary to the Commission to finalize and execute Northwest Area Water Supply Project Water Service Contract 237-4-8, West River Water & Sewer District, and Water Service Contract 237-4-10, City of Burlington, and the proposed Amendment I to each contract, which provides the terms for the interim water supply and initial water use. SEE APPENDIX "A" - NAWS Water Service Contract 237-4-8, West River Water & Sewer District; and APPENDIX "B" - NAWS Water Service Contract 237-4-10, City of Burlington, and Amendment I to each contract

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

**2008 FARM BILL, WETLANDS
RESERVE PROGRAM IN DEVILS
LAKE BASIN
(SWC Project No. 416-10)**

affected by high water and negate future conservation opportunities on those lands. Secretary Frink responded that a letter is being developed that will be acceptable to federal and state interests addressing sovereign land issues in the Devils Lake basin.

Commissioner Berg alluded to issues in the 2008 Farm Bill under the Wetlands Reserve Program allocation for North Dakota that could affect compensation to landowners on land adversely

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

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the audio conference



John Hoeven, Governor
Chairman, State Water Commission

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