



North Dakota State Water Commission

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**Telephone Conference Call Meeting
Governor's Conference Room - Ground Floor
State Capitol
Bismarck, North Dakota**

**December 20, 2012
9:00 A.M., CST**

AGENDA

- A. Roll Call
- B. Consideration of *Agenda* - *Information pertaining to the agenda items is available on the State Water Commission's website at <http://www.swc.nd.gov>*
- C. ***East Devils Lake Outlet Pumping Plant Condemnation Partial Settlement*** **
- D. Other Business:
 - 1) ***Additional Funding Authorization to Conduct Performance Audit of State Engineer's Regulation of Industrial Water Use in North Dakota*** **
- E. Adjournment

** ***BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION***

To provide telephone accessibility to the State Water Commission meeting for those people who are deaf, hard of hearing, deaf and/or blind, and speech disabled, please contact Relay North Dakota, and reference ... TTY-Relay ND ... 1-800-366-6888, or 711.

MINUTES

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

December 20, 2012

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 December 20, 2012. Governor Jack Dalrymple, Chairman, called the meeting to order at 9:00 a.m., and announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor Jack Dalrymple, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Robert Thompson, Member from Page
Harley Swenson, Member from Bismarck

STATE WATER COMMISSION MEMBERS ABSENT:

Arne Berg, Member from Starkweather
Douglas Vosper, Member from Neche

OTHERS PRESENT:

Todd Sando, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff

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 agenda for the December 20, 2012 State Water Commission audio conference call meeting was presented; there were no modifications to the agenda.

It was moved by Commissioner Olin, seconded by Commissioner Swenson, and unanimously carried, that the agenda be accepted as presented.

**DEVILS LAKE EAST END OUTLET -
NORTH DAKOTA STATE WATER
COMMISSION V. SKIPPER COOK
AND DENNIS LUNSKI - APPROVAL
OF PARTIAL SETTLEMENT IN
CONDEMNATION CASE (\$117,500)
(SWC Project No. 416-15)**

Ramsey County, North Dakota in September, 2011, pursuant to North Dakota Century Code 61-02-23.1, and Article 1, Section 16 of the North Dakota Constitution.

In 2011, the State Water Commission condemned 5.09 acres from Dennis Lunski and Skipper Cook for the intake and pump site on the Devils Lake East End Outlet project. The Commission's appraisal valued the land and crop damages at \$30,550.50, which was deposited with the Clerk of District Court of

Mr. Lunski and Mr. Cook had another appraisal completed, which valued the 5.09 acres at just under \$1,000,000, considering its "highest and best use" as developed recreational lake lots. Claims were also filed for damages for increased costs to construct the planned boat ramp and lagoon. Construction on these features began in 2012, which are partially complete.

A tentative agreement for a partial settlement of \$117,500 to compensate for the additional costs incurred to construct the boat ramp and the lagoon was reached during mediation on December 12, 2012 on the North Dakota State Water Commission v. Skipper Cook and Dennis Lunski condemnation case, contingent upon approval of the State Water Commission. The defendants reserved for trial the issue of just compensation for the taking of a 5.09 acre tract; the trial is scheduled for January 15-17, 2013 in Devils Lake.

It was the recommendation of Secretary Sando that the State Water Commission approve an allocation not to exceed \$117,500 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020), for the partial settlement agreement in the North Dakota State Water Commission v. Skipper Cook and Dennis Lunski condemnation case.

It was moved by Commissioner Foley and seconded by Commissioner Thompson that the State Water Commission approve an allocation not to exceed \$117,500 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020), for the partial settlement agreement in the North Dakota State Water Commission v. Skipper Cook and Dennis Lunski condemnation case. This action is contingent upon the availability of funds.

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

**REGULATION OF INDUSTRIAL
WATER USE IN THE STATE OF
NORTH DAKOTA - APPROVAL
OF ADDITIONAL ALLOCATION
(\$50,000) TO EXPAND SCOPE
OF PERFORMANCE AUDIT
(SWC Project No. 2021)**

On September 17, 2012, the State Water Commission passed a motion to approve an allocation not to exceed \$99,700 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) to KPMG LLP, Minneapolis, MN to conduct a performance audit of the Office of the

State Engineer's regulation of industrial water use in North Dakota.

On December 9, 2012, the Legislative Audit and Fiscal Review Committee met to discuss an expansion of the previously authorized performance audit of the State Engineer's regulation of industrial water use in the state. The expanded audit was requested by the North Dakota State Auditor's office following consultation with the firm conducting the audit stating they may be able to provide suggestions for improving the water permitting process, which would be in addition to the scope of the original performance audit.

The cost to expand the scope of the performance audit is estimated at \$50,000, which would be an expenditure to the State Water Commission. The scope and timeline for completion of the additional audit work by KPMG LLP would be determined by the State Auditor's office.

It was the recommendation of Secretary Sando that the State Water Commission approve an allocation not to exceed an additional \$50,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020), to KPMG LLP, Minneapolis, MN to expand the scope of the authorized performance audit of the Office of the State Engineer's regulation of industrial water to include the water permitting process. The Commission's affirmative action on this request would increase the total State Water Commission's financial allocation to \$149,700.

It was moved by Commissioner Hanson and seconded by Commissioner Olin that the State Water Commission approve an allocation not to exceed an additional \$50,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020), to KPMG LLP, Minneapolis, MN to expand the scope of the authorized performance audit of the Office of the State Engineer's regulation of industrial water to include the water permitting process. This action is contingent upon the availability of funds.

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

This action increases the total State Water Commission's financial allocation to \$149,700 for the performance audit of the Office of the State Engineer's regulation of industrial water and the expansion of the audit scope to include the water permitting process.

There being no further business to come before the State Water Commission, Governor Dalrymple adjourned the audio conference call meeting at 9:30 a.m.



Jack Dalrymple, Governor
Chairman, State Water Commission

Todd Sando, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary
to the State Water Commission