

MINUTES

North Dakota State Water Commission Bismarck, North Dakota August 10, 2023

The ND State Water Commission (Commission or SWC) held a meeting in the Lewis and Clark Room, Bank of North Dakota, 1200 Memorial Highway, Bismarck, ND, and via phone conference on August 10, 2023. Lt. Governor Miller called the meeting to order at 1:00 PM. A quorum was present. The board opened the meeting by reciting the Pledge of Allegiance.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Miller, Acting Chairman
Doug Goehring, Commissioner, ND Dept. of Agriculture
Michael Anderson, Lower Red River Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Connie Ova, James River Basin
Gene Veeder, Upper Missouri River Basin
Jay Volk, Lower Missouri River Basin
Jason Zimmerman, Mouse River Basin
April Walker, Upper Red River Basin

OTHERS PRESENT:

John Paczkowski, State Engineer, ND Dept. of Water Resources (DWR) and Acting Commission Secretary
DWR Staff
Jennifer Verleger, General Counsel, Attorney General's Office
Approximately 72 people present online and in person.

CONSIDERATION OF AGENDA

It was moved by Commissioner Anderson, seconded by Commissioner Veeder, and carried unanimously the agenda for the August 10, 2023, Commission meeting was approved as presented.

CONSIDERATION OF DRAFT MEETING MINUTES

It was moved by Commissioner Veeder, seconded by Commissioner Anderson, and carried unanimously the minutes of the June 8, 2023, Commission meeting be approved as written.

It was moved by Commissioner Odermann, seconded by Commissioner Ova, and carried unanimously the minutes of the July 13, 2023, Pre-Commission meeting be approved as written.

COMMISSION SECRETARY UPDATE

John Paczkowski, Acting Secretary, introduced the newest State Water Commissioner representing the Devils Lake basin, Jeff Frith. Frith stated he was honored and humbled to be a part of the Commission and looks forward to representing the Devils Lake basin. Frith added he is currently the Chairman of the Ramsey County Commission, manager of the Devils Lake

Basin Joint Water Resource board, and serves on several other state, regional, and local boards. Lt. Governor Miller congratulated Frith on his appointment and welcomed him to the Commission.

Paczkowski introduced Abigail Franklund as the new Cost-Share Program Manager. Franklund stated she has been with DWR for nine (9) years as a Hydrologist and the last four (4) of them she has worked as a Hydrologist Manager. She is looking forward to her new adventure.

Paczkowski noted the public comment period for the Dam Safety Standards ends August 14, additional meetings will be set up between DWR, BND, and the Department of Agriculture to discuss potential changes to irrigation as it relates to cost-share, comments are due from the working group on the asset inventory work by August 18, and the October 12 SWC meeting is scheduled to be held in Grand Forks at the City Hall with a ribbon cutting and tour of the water treatment plant in the morning.

FINANCIAL REPORT

The Glossary of Terms, allocated program expenditures, and financial reports were presented by Chris Kadrmaz, DWR Administration Division Director (**APPENDIX A**).

The oil extraction tax deposits into the Resources Trust Fund (RTF) total \$501,022,761 estimated through July 2023 for the 2021-23 biennium, which is \$179,911,342 over projected biennium revenue of \$321,111,419. Funds available above projection will be transferred to the Water Project Stabilization Fund (WPSF). \$151,784,727 was transferred to the WPSF and all transfers were complete by March 2023. All transfers to the WPSF sunset February 28, 2023. Excess revenues deposited after February 28, 2023, remain in the RTF.

The 68th Legislative Assembly estimates oil extraction tax deposits for the 2023-2025 biennium to total \$449,860,000 through June 2025. It also provided for the transfer of oil extraction tax deposits in excess of the legislative forecast for the 2023-2025 biennium to be transferred quarterly to the water projects stabilization fund.

CONFLICTS OF INTEREST POLICY/GUIDELINES

Jennifer Verleger, General Counsel, Attorney General's Office, discussed the Conflicts of Interest Guidelines with the Commission (**APPENDIX B**). The policy addresses disclosure procedures, the Natural Reviewer, some common occurrences, and key definitions. Verleger stated the guidelines developed for the reporting of potential conflicts of interest by Water Commissioners align with the Ethics Commission guidance presented to the SWC in November 2022.

There was no discussion, and the following motion was made:

It was moved by Commissioner Walker and seconded by Commissioner Veeder the Commission adopt the Conflicts of Interest Policy (SWC_02.2023) with an effective date of the next Commission meeting, October 12, 2023.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

NORTHWEST AREA WATER SUPPLY (NAWS)

Appointment of NAWS Authority Board Members

Tim Freije, NAWS Project Manager, stated during the most recent legislative session, House Bill 1218 was passed. The House Bill elevates the NAWS Advisory Committee to an Authority and puts it in line with the other regional systems in the state as the delivery of Lake Sakakawea water to the project area is expected soon and the NAWS project progresses towards completion.

The City of Minot provided a letter with recommendations of Mayor Thomas Ross, Utilities Director Jason Sorenson, Finance Director Dave Lakefield, and former City Manager Bob Schempp as their representatives. North Prairie Regional Water recommended their General Manager, Teresa Sundsbak. All Seasons Water Users District recommended their General Manager, Daniel Schaefer. Upper Souris Water District recommended their Board President, Shawn Raap. The Garrison Diversion Conservancy District recommended Kenny Rogers as their representative. The State Water Commission's representative is Commissioner Jason Zimmerman, who resides in the Souris River basin. A recommendation has not been received by the Turtle Mountain Band of Chippewa. The representative for the cities receiving direct service from the project, other than Minot, is to be elected at the League of Cities annual meeting in September.

It was moved by Commissioner Odermann and seconded by Commissioner Volk the Commission appoint Thomas Ross, Jason Sorenson, David Lakefield, and Bob Schempp to represent the City of Minot, Teresa Sundsbak to represent North Prairie Regional Water, Shawn Raap to represent Upper Souris Water District, Daniel Schaefer to represent All Seasons Water Users District, Kenny Rogers to represent the Garrison Diversion Conservancy District, and Commissioner Jason Zimmerman to represent the State Water Commission on the NAWS Authority.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Memorandum of Agreement—Biota Water Treatment Plant Operations, Maintenance, and Replacement

Freije explained the costs associated with the operations, maintenance, and replacement of the Biota Water Treatment Plant (WTP) is a federal responsibility as the Biota WTP is required for the Boundary Water Treaty compliance. Freije presented a draft Memorandum of Agreement (**APPENDIX C**) between Bureau of Reclamation, the State Water Commission, and the City of Minot defining roles and responsibilities for the operation, maintenance, and replacement of the NAWS Biota Water Treatment Plant.

It was moved by Commissioner Anderson and seconded by Commissioner Zimmerman the Commission authorize the Secretary to approve and execute the final version of the Memorandum of Agreement.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

BURLEIGH COUNTY WRD: HOGUE ISLAND BANK STABILIZATION

John Paczkowski, State Engineer, stated the Burleigh County Water Resource District (BCWRD) was notified of significant erosion and bank failure along the Missouri River on Hogue Island north of Bismarck in late January 2023. The erosion occurred between four (4) hardpoints that were installed between 1977 and 1981 as part of the United States Army Corps of Engineers (USACE) Section 32 – Demonstration Projects. BCWRD is recommending a project that will stabilize the four (4) hardpoint revetments and to install rip-rap between the hardpoints. Per Water Commission policy, bank stabilization projects that are intended to protect private property are not eligible for cost-share. However, the Water Commission did sign an agreement in 1976 with the BCWRD that establishes costs would be split 50 percent for maintenance related to the hardpoint revetments. Therefore, project costs related to the hardpoint revetments would fall under the 1976 agreement, and bank protection efforts between the hardpoints would be a local responsibility.

It was moved by Commissioner Walker and seconded by Commissioner Zimmerman the Commission authorize the Secretary to participate with the Burleigh County Water Resource District for 50% of the costs related to Section 32 hardpoint revetments, with the total state share not to exceed the Secretary's authorized approval threshold of \$100,000.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

CONSENT AGENDA

The Consent Agenda included the following cost-share projects with requested funding amounts for approval:

Flood Control

- I1. Valley City: Permanent Flood Protection - \$0

Water Supply (Municipal/Regional)

- J1. Drayton: Improvement District 2023 - \$168,000
- J2. Mandan: Water Treatment Plant Phase III - \$347,400

Water Supply (Rural)

- K1. Dakota RWD: WTP and Service to Hannaford - \$415,280

There were no questions, and the following motion was made:

It was moved by Commissioner Ova and seconded by Commissioner Veeder the Commission approve the Consent Agenda items as presented.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

STATE COST-SHARE REQUESTS

FLOOD CONTROL

Julie Prescott, DWR Engineer Manager, presented the following requests for flood control projects.

Jamestown: Emergency 96-inch CMP Replacement - \$1,490,222 (SWC Project No. 1309)

The City of Jamestown is requesting cost-share for their Emergency 96-inch CMP Replacement – Construction project. The construction costs include the replacement of 400 feet of collapsed underground pipe within the city that has resulted in a sinkhole in the area of failure. The collapsed pipe is a portion of an underground system that serves to route runoff from predominantly rural sources through Jamestown, under US Highway 281, and ultimately discharging to a natural drainage on the north side of Interstate 94. Approximately 93.4% of the contributing watershed originates from rural sources, resulting in a modified cost-share of 56 percent. The city is addressing the failed portion only at this time for reasons of public safety and plans to replace the remainder of the system at a later date. Under current cost-share policy, the Commission can consider projects submitted in the first six (6) months of a biennium that were not identified in the Water Development Plan if an emergency directly impacting human health and safety exists.

This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Ova the Commission approve the request from the City of Jamestown for state cost-share participation in the Emergency 96-inch CMP Replacement— Construction project at 56 percent of eligible costs not to exceed \$1,490,222. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

WATER SUPPLY (MUNICIPAL/REGIONAL)

Prescott presented the following requests for municipal and regional water supply projects.

Napoleon: System Improvements - \$1,488,988 (SWC Project No. 2050NAP)

The City of Napoleon is requesting cost-share for construction costs to replace seven (7) blocks of aging cast iron water main and associated gate valves, water services, and curb stops. The project also includes road construction costs associated with trenching the water main. Napoleon will be applying for USDA Rural Development loan and grant funding.

This project meets requirements of the Water Commission's cost-share policy for municipal water supply projects. There were no questions, and the following motion was made:

It was moved by Commissioner Veeder and seconded by Commissioner Walker the Commission approve the request from the City of Napoleon for state cost-share participation in the Water Systems Improvement 2023 project in the amount of \$1,488,988 or 60 percent of eligible costs, for a total cost-share not to exceed \$1,652,388. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

**St. John: Water Tower Replacement - \$1,668,899
(SWC Project No. 2050STJ)**

The City of St. John is requesting construction cost-share for replacing their existing 50,000-gallon water tower with a 100,000-gallon water tower. The existing water tower has experienced problems with freezing and is not capable of meeting the peak daily demand of 109,000 gallons per day. St. John is experiencing an increased water demand due to increased middle and high school student enrollment.

This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Zimmerman and seconded by Commissioner Walker the Commission approve the request from the City of St. John for state cost participation in the St. John Water Tower Replacement project in the amount of \$1,668,899 or 60 percent of eligible costs, for a total cost-share not to exceed \$1,743,899. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

**Underwood: Water Tower and Water Main Replacement - \$2,285,534
(SWC Project No. 2050UND)**

The City of Underwood is requesting construction cost-share for replacement of their 65,000-gallon water tower with a 100,000-gallon water tower, replacement and upgrade of the high service pumps from 350 GPM (gallons per minute) to 550 GPM, and replacement of 2,200-feet of distribution water main from the existing 4-inch and 8-inch asbestos cement and cast-iron pipe to 10-inch polyvinyl chloride (PVC) pipe.

Underwood's records indicate in August 2016 there was a peak daily demand of 173,000 gallons. Their highest usage over the past five (5) years in June averages a peak daily demand of 132,000 gallons. Since the city has existing storage of 400,000 gallons, exceeding their peak daily demand, any costs for additional water storage would be considered ineligible for cost-share under current policy.

Discussion took place during the July 13, 2023, Pre-Commission meeting that an alternative involving pump upgrades and a new pump house using the existing 400,000 gallons of in-ground storage would be eligible for cost-share per Commission policy. The Commission also requested that the sponsor provide cost estimates associated with a pumping alternative. Detailed costs for the pump station option indicate that it is a lower cost alternative than the elevated storage project. However, the pump station alternative has not been fully designed and is not bid-ready, and the sponsor's preference is for the elevated storage option. The sponsor's representative indicated that if cost-share is approved for the pump-station alternative, they plan to request a change of scope to the 100,000-gallon elevated storage alternative, which would fall outside the current policy guidelines. The water main portion of the cost-share request is eligible for cost-share under current policy. The project was bid August 3rd for the water tower alternative only. The recommendation for the pump station is based on detailed costs provided by the sponsor. The pump station and water main improvement components meet the requirements of the Water Commission's cost-share policy.

Commissioner Odermann expressed his concerns of Underwood changing the scope of the project, therefore being in violation of the cost-share policy and asked what the recourse would be. Commissioner Goehring noted the cost-share program does not provide the funds up front, so if something is ineligible it will not be reimbursed. Commissioner Walker asked if the SWC could cap their dollars at the least cost alternative and let the city allocate it towards something they prefer. Paczkowski stated the decision is not being made on the least cost alternative but based upon SWC policy of sufficient storage capacity and only paying up to peak demand.

Tom Klabunde, Moore Engineering, stated without the water tower the city's water system would be inoperable due to pressure issues. Klabunde added the 400,000 gallons of storage is useless without the tower or pumping station, and the city prefers the tower alternative; therefore, justifying the city's request to use the cost-share dollars from the pump station for the water tower.

Commissioner Volk asked what part of the policy commission considers the operations of the system to meet the needs of the stakeholders and if the stakeholder is getting the best return. Commissioner Walker questioned why the commission could not deviate from policy and allow the city to move forward with the tower if they are willing to pay the costs above and beyond the pumping station. Paczkowski noted caveats were given at the pre-commission meeting in March stating the sponsor was aware the policy was changing, and the water tower may not be eligible for cost-share moving forward. Commissioner Ova added the Underwood community needs to be fully aware they are most likely not going to get the cost-share amount if they go with the tower. Klabunde stated the city did not ask for the pump station but asked for the tower. Commissioner Zimmerman noted it comes down to policy and it is clear within the policy what is eligible and what is non-eligible; adding, the policy was put in place to make these discussions a little more efficient.

After discussion, the following motion was made:

It was moved by Commissioner Zimmerman and seconded by Commissioner Odermann the Commission approve the request from the City of Underwood for state cost participation at 60 percent of eligible costs for the pump station and water main improvement alternative in the amount of \$2,285,534, for a

total cost-share not to exceed \$2,430,734. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioners Volk and Walker voted nay. The motion carried.

Garrison Diversion Conservancy District: Red River Valley Water Supply Project 2023-2025 - \$180,000,000 (SWC Project No. 325)

The Garrison Diversion Conservancy District is requesting \$180,000,000 in cost-share for the Red River Valley Water Supply project. This request is for construction costs of the 5C, 5D, 6A transmission pipelines; final design costs for transmission pipelines 4A, 4B, 7; and preliminary design costs for the McClusky Intake and Pump Station, the Biota Water Treatment Plant, and storage tanks. The local share of \$60,000,000 through two (2) separate loans will be considered from the Water Infrastructure Revolving Loan Fund through BND in a subsequent request.

Section 13 of Senate Bill 2020, the Department of Water Resources appropriation bill, specifies funding for the project, and states \$180,000,000 is provided from the resources trust fund for the period beginning with the effective date of the Act and ending June 30, 2025. This project meets the requirements of the Water Commission's cost-share policy. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Odermann the Commission approve the request by the Garrison Diversion Conservancy District for state cost participation in the Red River Valley Water Supply Project at 75 percent of eligible costs, not to exceed \$180,000,000. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Garrison Diversion Conservancy District: Red River Valley Supply Project—Water Infrastructure Revolving Loan - \$60,000,000 (SWC Project No. 325)

Garrison Diversion Conservancy District is requesting two (2) separate loans totaling \$60,000,000 from the Water Infrastructure Revolving Loan Fund (WIRLF) through the Bank of North Dakota (BND) to be used towards their 25 percent local share of the Red River Valley Supply Project.

BND performed an initial review of the district's loan request, and based on that review it appears the project will have the demonstrated debt service capacity to service both existing debts and the current amount being requested. As required by House Bill 1431, passed by the 2021 Legislature, the Water Commission is responsible for reviewing WIRLF loan requests.

It was moved by Commissioner Goehring and seconded by Commissioner Anderson the Commission approve the request from Garrison Diversion Conservancy District to pursue two (2) loans totaling \$60,000,000 from the Water Infrastructure Revolving Loan Fund through the Bank of North Dakota

at an interest rate of two (2) percent and a modified repayment term of 40 years, to be used toward the Red River Valley Water Supply Project.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Tim Mahoney, Mayor of Fargo, thanked the SWC, BND, and Legislators for supporting the Red River Valley Water Supply Project.

WATER SUPPLY (RURAL)

Prescott presented the requests for the rural water supply projects.

Stutsman Rural Water District: Wellfield Expansion - \$2,953,000 (SWC Project No. 2050STU)

The Stutsman Rural Water District is requesting construction cost-share to install four (4) miles of pipeline from a previously installed groundwater well to their water treatment plant, which is located approximately 11 miles southeast of Jamestown. The project also includes completion of the well, control system improvements, and modifications at the water treatment plant. The Stutsman Rural Water District is experiencing increased demand during peak usage periods from agricultural spraying, livestock, and the addition of 1,225 users since 2011.

This project meets requirements of the Water Commission's cost-share policy for rural water supply projects. There were no questions, and the following motion was made:

It was moved by Commissioner Goehring and seconded by Commissioner Odermann the Commission approve the request by the Stutsman Rural Water District for state cost participation in the Wellfield Expansion project in the amount of \$2,953,000, or 75 percent of eligible costs, for a total cost-share not to exceed \$3,203,000. This approval is contingent on available funding.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

PROJECT UPDATES

DWR staff provided brief updates on the following projects:

- Tim Freije, NAWS Project Manager: NAWS.
- Sindhuja S. Pillai-Grinolds, DWR Water Development Division Director: Devils Lake and SWPP.
- Laura Ackerman, Water Resource Engineer: Mouse River.
- Clay Carufel, Missouri River Engineer: Missouri River.
- Steve Best, Water Resource Planner: Drought Disaster Livestock Water Supply Program.

LEGAL UPDATE

Jennifer Verleger, General Counsel, Attorney General's Office, provided a brief update on current legal matters involving the SWC and DWR.

**EXECUTIVE SESSION UNDER AUTHORITY OF NDCC § 44-04-19.1(9) FOR ATTORNEY
CLIENT CONSULTATION REGARDING SWPP - INTAKE, CONTRACT 1-2A**

It was the recommendation of Lt. Governor Miller that the discussion relating to the SWPP/Fowler Intake to be held in Executive Session, under the provisions of NDCC § 44-04-19.1(9), for the purpose of attorney consultation. The Commission invited the following to participate in the Executive Session:

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Miller, Acting Chairman
Michael Anderson, Lower Red River Basin
James Odermann, Little Missouri, Upper Heart, and Upper Cannonball River Basins
Connie Ova, James River Basin
Gene Veeder, Upper Missouri River Basin
Jay Volk, Lower Missouri River Basin
April Walker, Upper Red River Basin
Jason Zimmerman, Mouse River Basin

OTHERS PRESENT:

John Paczkowski, State Engineer, ND Dept. of Water Resources (DWR) and Acting Commission Secretary
Jennifer Verleger, General Counsel, Attorney General's Office
Sindhuja S.Pillai-Grinolds, DWR Water Development Division Director
Abby Ebach, DWR Policy Advisor
Chris Kadrmas, DWR Administrative Services Director
Shana Brost, DWR Executive Assistant
Ben Gehrig, DWR Data & Technology Services
John Reiten, Policy Advisor, Governor's Office
Ryan Norrell, General Counsel, Governor's Office

It was moved by Commissioner Goehring and seconded by Commissioner Walker that under the provision of NDCC § 44-04-19.1(9), the Commission proceed into Executive Session on August 10, 2023, at 3:01 PM for the purpose of attorney consultation relating to the Southwest Pipeline Project/Fowler Intake—Contract 1-2A.

Commissioners Anderson, Odermann, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. There were no nay votes. The motion carried.

Following attorney consultation regarding the Southwest Pipeline Project/Fowler Intake, Contract 1-2A, Lt. Governor Miller reconvened the open session of the Commission meeting at 3:10 PM.

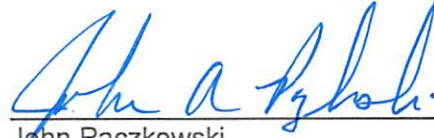
It was moved by Commissioner Goehring and seconded by Commissioner Walker the Commission approve \$180,000 in additional funds be allocated and approved from the SWPP's professional services account for mediation expenses.

Commissioners Anderson, Ova, Veeder, Volk, Walker, Zimmerman, Goehring, and Lt. Governor Miller voted aye. Commissioner Odermann abstained. There were no nay votes. The motion carried.

There being no further business to come before the Commission, Lt. Governor Miller adjourned the August 10, 2023 meeting at 3:12 PM.



Tammy Miller, Lt. Governor
Acting Chairman, State Water Commission



John Paczkowski
State Engineer, DWR, and Acting Secretary
to the State Water Commission