

MINUTES

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

June 8, 1994

The North Dakota State Water Commission held a telephone conference call meeting in the Governor's Conference Room, State Capitol, Bismarck, North Dakota, on June 8, 1994. Chairman, Governor Edward T. Schafer, called the meeting to order at 2:15 PM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Jeff Weispenning, representing Sarah Vogel, Commissioner,
Department of Agriculture, Bismarck
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
David Sprynczynatyk, State Engineer and Chief Engineer-
Secretary, North Dakota State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Dave Koland, North Dakota Rural Water Systems, Bismarck
Julie Krenz, Attorney General's Office, Bismarck
(The attendance register is on file with the official minutes.)

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

Since this was a special meeting of the State Water Commission, Secretary Sprynczynatyk made reference to North Dakota Century Code chapter 61-02-08 relating to meetings of the Commission. Chapter 61-02-08 states, in part:

Notice of any meeting of the commission shall be given by written notice sent to each member of the commission at least three days before the meeting. No notice shall be necessary for any member who has personally signed an admission of notice and consent to holding the meeting.

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Because written notice was not provided three days prior to June 8, 1994, Chairman Schafer asked each member to consent verbally, and in writing, that prior to the meeting he or she was verbally notified of the meeting and consented to holding the meeting. (The Commission members consented verbally, and written consent forms are on file with the official minutes of this meeting for each Commission member.)

CONSIDERATION OF AGENDA

There being no additional items for the agenda, the Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

**CONSIDERATION AND APPROVAL
OF PETITION TO VACATE THAYER
AVENUE IN BISMARCK, ND
(SWC Project No. 682)**

Secretary Sprynczynatyk presented a request for the Commission's consideration to join a petition to vacate Thayer Avenue, which is an undeveloped street along the northern edge of the State Water Commission's property in southeast Bismarck.

Secretary Sprynczynatyk stated that in order for the Bismarck City Commission to consider the petition, the State Water Commission, as an adjacent property owner, must be in compliance with the North Dakota Century Code.

It was the recommendation of the State Engineer that the State Water Commission join the petition for the following reasons:

- 1) The State Water Commission has no monetary investment in the right-of-way that is affected by the vacation.
- 2) The landowners both north and south of Thayer Avenue and to the east of the State Water Commission property have joined the petition to vacate and the city will honor their request. If the State Water Commission objects, Thayer Avenue would still be a dead end at the east property line.
- 3) The petitioner wants to vacate the street so that he can incorporate the land into commercial planning. The city requires a 51 percent majority support of any request to open or vacate a street.
- 4) If Thayer Avenue is developed, the special assessment cost to the State Water Commission could exceed \$100,000.

5) It could be observed that the State Water Commission may be losing frontage on Thayer Avenue. While this may be true, we have to acknowledge that any frontage gained was a result of another party dedicating the street right-of-way.

6) The State Water Commission's land is in a commercial area where storage and customer parking are necessary. Any loss in value to the State Water Commission's property as a result of Thayer Avenue being vacated would be speculative at best, and in all likelihood having commercial property with a depth of 300 feet would be more valuable than splitting it into two 150-foot lots.

Commissioner Swenson provided background information relative to the request. He expressed concurrence with the State Engineer's recommendation; however, because he has an interest in adjacent property on the tract of land being considered, Commissioner Swenson abstained from voting.

It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission join a petition to vacate Thayer Avenue in Bismarck, ND.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Thompson, Jeff Weispfenning for Commissioner Vogel, and Chairman Schafer voted aye. There were no nay votes. Commissioner Swenson abstained from voting. The Chairman declared the motion carried.

**GARRISON DIVERSION PROJECT -
APPROVAL TO ENTER INTO SHARED
SECURITY AGREEMENT FOR NORTH
VALLEY WATER ASSOCIATION, INC.
(SWC Project No. 237-4)**

North Valley Water Association is a rural water system serving approximately 1140 users in Cavalier and Pembina Counties and the communities of St. Thomas, Cavalier, Mountain,

Milton and Osnabrock. North Valley has three sub-systems: (1) Gardar System, serving the southwest corner of Pembina County and the southeast corner of Cavalier County; (2) Akra System-Neche Branch, serving the north half of Pembina County; and (3) Akra System-South, serving the south half of Pembina County.

Secretary Sprynczynatyk indicated that North Valley Water Association is proposing to make improvements to the Gardar System to improve the water quality and reliability of service, which includes the installation of pre-treatment and additional filtration capacity at the Gardar water

treatment plant, upgrading the existing pump station, and construction of additional reservoir pump stations. The estimated cost is \$1,389,555. Project funding will be provided by FmHA through a grant of \$950,000 and a loan of \$439,555.

The State Water Commission has an existing loan with North Valley for an expansion project completed on the Akra System-South. The loan requires approval of future North Valley Association expansion projects.

Secretary Sprynczynatyk explained that FmHA requires first security interest in any portion of the project that they fund. Thus, there is a conflict between the State Water Commission's existing loan and FmHA's requirements for obtaining future funding.

In order to resolve the conflict between the State Water Commission's existing loan and FmHA's requirements for obtaining future funding, it was the recommendation of the State Engineer that the State Water Commission enter into an agreement to permit shared security interest on the expansion of the North Valley Project, which would allow the State Water Commission and FmHA to proportionately divide any collateral upon liquidation of the North Valley Association system.

It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission enter into an agreement to permit shared security interest in the expansion of the North Valley Project, which would allow the State Water Commission and FmHA to proportionately divide any collateral in the expansion upon liquidation of the North Valley Association system.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Jeff Weispfenning for Commissioner Vogel, and Chairman Schafer voted aye. There were no nays. The Chairman declared the motion unanimously carried. The Agreement To Permit Shared Security Interest is attached hereto as APPENDIX "A".

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for July 27, 1994, in Oakes, North Dakota. Tentative arrangements include a joint meeting of the State Water Commission and the Garrison Diversion Conservancy District Executive Board.

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Secretary Sprynczynatyk indicated the cities of Dickinson and Grand Forks have extended meeting invitations to the State Water Commission.

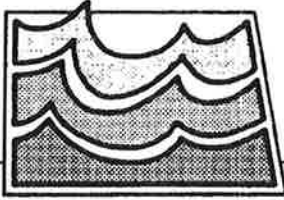
There being no further business to come before the State Water Commission, it was moved by Commissioner Hillesland, seconded by Commissioner Olin, and unanimously carried, that the State Water Commission telephone conference call meeting adjourn at 2:30 PM.


Edward T. Schafer
Governor-Chairman

SEAL


David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary

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North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-224-2750 • FAX 701-224-3696

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

June 8, 1994
2:15 PM, Central Standard Time

AGENDA

- A. Roll Call
- B. Consideration of Agenda
- C. *Consideration of Petition to Vacate Thayer Avenue* **
- D. *North Valley Water Association Shared Security Agreement* **
- E. Other Business
- F. Adjournment

* * * * *

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

If auxiliary aids or services such as readers, signers, or Braille material are required, please contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505; or call (701) 224-4940 at least seven (7) working days prior to the meeting. TDD telephone number is (701) 224-3696.

GOVERNOR EDWARD T. SCHAFER
CHAIRMAN

DAVID A. SPRYNCZYNYATYK, P.E.
SECRETARY & STATE ENGINEER

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Edward T. Schafer, Chairman, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.


Edward T. Schafer, Chairman

9 June 94
Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Sarah Vogel, Commissioner of Agriculture, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.



Sarah Vogel
Commissioner of Agriculture



Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Mike Ames, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.



Mike Ames



Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING


I, Florenz Bjornson, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.


Florenz Bjornson

6-13-94
Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Judith DeWitz, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.



Judith DeWitz



Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Elmer Hillesland, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.


Elmer Hillesland

6-12-94
Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Jack Olin, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.



Jack Olin



Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Harley Swenson, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.


Harley Swenson

6-14-94
Date

ADMISSION OF NOTICE AND CONSENT TO HOLD MEETING

I, Robert Thompson, received notice of the meeting of the North Dakota State Water Commission held on June 8, 1994, prior to the meeting and consented to holding the meeting.

Robert Thompson
Robert Thompson

June 13, 1994
Date

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**AGREEMENT TO PERMIT
SHARED SECURITY INTEREST**

THIS AGREEMENT, made and entered into by and among NORTH VALLEY WATER ASSOCIATION, INC. (*North Valley*) of P. O. Box 419, Cavalier, North Dakota 58220; the BANK OF NORTH DAKOTA as Trustee for the North Dakota Bond Bank (*Trustee*); the State of North Dakota acting through the BANK OF NORTH DAKOTA (*BND*), P. O. Box 5509, Bismarck, North Dakota 58502-5509; the FARMERS HOME ADMINISTRATION of the United States Department of Agriculture (*FmHA*), P. O. Box 280, Devils Lake, North Dakota 58301; NORTH DAKOTA STATE WATER COMMISSION, State Capitol, Bismarck, North Dakota 58505; and CAPITAL GUARANTY INSURANCE COMPANY (*Capital*);

WHEREAS, North Valley has made application to FmHA for a loan of \$1,389,556.00, said loan to be repaid over a 40-year period with interest calculated at a rate of no greater than 5.00% per annum; and has tentative received a grant in the amount of \$950,000.00, reducing the amount of the loan required to \$439,556.00; and

WHEREAS, North Valley has obtained prior financing through the Bond Bank and has given Bond Bank a prior security interest in accounts, fixtures and other collateral (collectively *Collateral*); and

WHEREAS, North Valley has obtained prior financing through the North Dakota State Water Commission and has given the North Dakota State Water Commission a prior security interest in accounts, fixtures and other collateral (collectively *Collateral*); and

WHEREAS, North Valley has obtained prior financing through the Bank of North Dakota and has given the Bank of North Dakota a prior security interest in accounts, fixtures and other collateral (collectively *Collateral*); and

WHEREAS, BND and FmHA have requested that North Valley grant them a first security interest in the *Collateral* as a condition for funding the above-described loan; and

WHEREAS, North Valley has executed a certain Loan and Security Agreement with Bond Bank dated March 15, 1989, in which North Valley agrees that it will enter into a written agreement with any future secured party whereby the future secured party will agree that all proceeds realized from the *Collateral* when liquidated or otherwise disposed of will be divided ratably with the Bond Bank based upon the respective amounts due and owing by North Valley to Bond Bank and the holder of the additional security interest at the time of liquidation or disposal; and

WHEREAS, North Valley has executed certain other Loan and Security Agreements with other of the above-named security holders on September 1, 1991; and

WHEREAS, the Bond Bank has assigned its security interest in the *Collateral* to the Trustee pursuant to a Trust Indenture (*Indenture*) between the Bond Bank and the Trustee dated March 1, 1989; and

WHEREAS, Capital is the insurer of the bonds issued under the *Indenture*; and

WHEREAS, the Lease and Security Agreement provides that North Valley will not grant any security interest in the Collateral without the written consent of Capital and the Bond Bank;

NOW, THEREFORE, the parties hereto, in consideration of the premises set forth herein, do agree as follows:

1. The BND, the Trustee, North Dakota State Water Commission and FmHA agree that all proceeds realized from liquidation or other disposal of the Collateral will be divided ratably based on the respective amounts due and owing by North Valley to the Bond Bank, BND, North Dakota State Water Commission and FmHA at the time of the respective liquidation or disposal.
2. If any party demands or accelerates repayment of any amount due from North Valley or declares any loan to North Valley to be in default, or exercises the rights and remedies accorded under any agreement with North Valley, it shall notify the other parties in writing of the intent to make such a declaration and shall offer to sell to the other parties its interest in any loan. The receiving parties shall, as expeditiously as possible, but in any event within 20 days, respond to such notice. In the event a receiving party, or parties, determine to purchase such interest or if the receiving party or parties have not indicated that they will or will not purchase such interest by the end of the 20-day period: (a) Each party shall promptly declare their loans to be immediately due and payable; and (b) shall [upon compliance with whatever prerequisites, if any, including those which exist for foreclosure under applicable law] diligently proceed to realize upon the Collateral in such manner as the parties shall agree.
3. So long as all parties have maintained perfected security interests in the Collateral, all payments received due to liquidation of the Collateral or on account of condemnation [or similar government action], shall be applied in the following order:
 - a) First, to the payment ratably, based on the remaining unpaid principal balance of the loans prior to the application of payments under this Agreement, of all reasonable costs and expenses [including attorney fees and legal costs paid or incurred by the parties which in any way relate to or arise out of this Agreement or any action taken under this Agreement.
 - b) Second, to the payment ratably of accrued and unpaid interest on each of the loans.
 - c) Third, to the payment ratably of the remaining unpaid principal balance of the loans.
 - d) Finally, any surplus shall be paid to North Valley.
4. This Agreement may be executed in any number of counterparts, which shall together constitute one agreement.
5. This Agreement shall be binding upon the respective successors and assignees of the parties hereto and shall remain in effect until the credit agreements

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between North Valley and any party have terminated in accordance with their terms.

- 6. All notices shall be in writing and shall be sent or delivered by Telex, facsimile, certified or express mail or by personal hand delivery to the parties at the addresses set forth above.
- 7. This Agreement shall be governed and construed in accordance with North Dakota law.

DATED this 3rd day of March, 1994.

NORTH VALLEY WATER ASSOCIATION, INC.

BY: W. Ross Brown
W. Ross Brown, Its President

(CORPORATE SEAL)

BY: W. K. Voorhees
W. K. Voorhees, Its Secretary

DATED this _____ day of March, 1994.

BANK OF NORTH DAKOTA AS TRUSTEE

BY: _____
Nancy Glass, Trust Manager

DATED this _____ day of March, 1994.

BANK OF NORTH DAKOTA

BY: _____
Duane Wagner, Special Loans Officer

DATED this _____ day of March, 1994.

FARMERS HOME ADMINISTRATION

BY: _____
Title:

DATED this _____ day of March, 1994.

NORTH DAKOTA STATE WATER COMMISSION

BY: _____
Title: _____

DATED this 24 day of ^{May} ~~March~~, 1994.

Consented to by:
CAPITAL GUARANTY INSURANCE COMPANY

BY: Robert M. Koles
Title: Senior Vice President

BY: Paul Scott
Title: Assistant Secretary

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