

# North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850  
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

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

**July 30, 2012  
3:00 P.M., CDT**

## 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. ***Nelson County Road Settlement*** \*\*
- D. Western Area Water Supply (WAWS) Project:
  - 1) Project Update
  - 2) ***Consideration of WAWS Overall Plan*** \*\*
- E. ***State Engineer's Salary*** \*\*
- F. Other Business
- G. 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**

**July 30, 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 July 30, 2012. Governor Jack Dalrymple, Chairman, called the meeting to order at 3:00 p.m., and requested Todd Sando, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Dalrymple announced a quorum was present.

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

Governor Jack Dalrymple, Chairman  
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck  
Arne Berg, Member from Starkweather - via telephone at 3:30 p.m.  
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 - via telephone

#### **STATE WATER COMMISSION MEMBER ABSENT:**

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  
Jennifer Verleger, Assistant Attorney General, Office of Attorney General, Bismarck  
Andrea Travnicek, Office of the Governor, Bismarck  
Dave Koland, Garrison Diversion Conservancy District, Carrington  
Robert Humann, Bank of North Dakota, Bismarck  
Brad Thompson, Bank of North Dakota, Bismarck  
Robert Harms, Independent Water Providers, Bismarck  
Mike Forman, Independent Water Providers, Williston  
Senator Rich Wardner, District 37, Dickinson - via telephone  
Mary Massad, Southwest Water Authority, Dickinson - via telephone  
Dale Wetzel, Associated Press, Bismarck

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 July 30, 2012 State Water Commission audio conference call meeting was presented; there were no modifications to the agenda.

***It was moved by Commissioner Foley, seconded by Commissioner Thompson, and unanimously carried, that the agenda be accepted as presented.***

***IMPACTS ON NELSON COUNTY ROADS RESULTING FROM CONSTRUCTION OF EAST DEVILS LAKE OUTLET AND TOLNA COULEE CONTROL STRUCTURE - APPROVAL OF FUNDS (\$300,000) (SWC Project No. 416-15)***

The construction of the East Devils Lake outlet and the Tolna Coulee control structure damaged roads in Nelson county. Although there was continual maintenance and repairs during project construction, additional work is required to bring the roads to their original condition prior to the project construction.

As a result of negotiations between the State Water Commission staff and representatives from Nelson county, it was agreed that \$300,000 in compensation to the county would be adequate for remaining damages from the traffic resulting from construction of the Devils Lake projects.

It was the recommendation of Secretary Sando that the State Water Commission approve funding not to exceed an allocation of \$300,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020), to Nelson county as compensation for the remaining road damages resulting from the construction of the East Devils Lake outlet and the Tolna Coulee control structure.

The State Water Commission members were in concurrence with the funding recommendation contingent that Nelson county provide certification that the allocation of state funds are expended specifically for repairs to road damages that occurred during the construction of the East Devils Lake outlet and the Tolna Coulee control structure projects.

***It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve funding not to exceed an allocation of \$300,000 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020), to Nelson county as compensation for the remaining road damages that resulted during the construction of the East Devils Lake outlet and the Tolna Coulee control structure projects. This action is contingent upon the availability of funds, and that Nelson county provide certification that the funds are expended specifically for repairs to damaged roads to bring the roads to their original condition prior to the construction of the East Devils Lake outlet and the Tolna Coulee control structure projects.***

***Commissioners Foley, Goehring, Hanson, Olin, Swenson, Thompson, and Governor Dalrymple voted aye. (Commissioner Berg was not available for the vote.) There were no nay votes. Governor Dalrymple announced the motion unanimously carried.***

**WESTERN AREA WATER SUPPLY  
(WAWS) PROJECT UPDATE  
(SWC Project No. 1973)**

2011 House Bill 1206 created the Western Area Water Supply (WAWS) project, under chapter 61-40 of the North Dakota Century Code, to develop

a regional water system for northwest North Dakota.

On June 21, 2011, the State Water Commission passed a motion to approve the Western Area Water Supply project, Phase I, an allocation not to exceed \$25,000,000 authorized in 2011 House Bill 1206 from the funds appropriated to the State Water Commission in the 2011-2013 biennium for project construction, and that the Commission staff be delegated to review the specific plans and specifications. In order for the Authority to access the remaining loans of \$85,000,000, the Bank of North Dakota's letter of conditions, dated September 16, 2011, required the State Water Commission's approval of Phase II, Tier I. On December 9, 2011, the State Water Commission approved the Western Area Water Supply project, Phase II - Tier I projects, up to a total plan approval of \$100,000,000.

Based on 2011 House Bill 1206, on March 7, 2012, Governor Dalrymple directed the Secretary to the Commission to draft policy of the State Water Commission focusing on the legislative intent, and issues including liability and indemnification, minimizing impacts on private water providers, and public availability of water. On June 13, 2012, the State Water Commission approved the water supply cost share policy.

The Western Area Water Supply project status report was provided, which is detailed in the staff memorandum, dated July 23, 2012, and attached hereto as **APPENDIX "A"**.

Governor Dalrymple emphasized the importance of communication among the groups to resolve issues as the project proceeds. Governor Dalrymple offered suggestions for resolution, which included the services of a certified mediator and trained by the federal government, to assist in attaining resolution to the issues of conflict.

**WESTERN AREA WATER SUPPLY (WAWS) PROJECT - APPROVAL OF ADDITIONAL STATE FUNDS (\$10,000,000); AND APPROVAL OF WILLIAMS RURAL WATER WEST EXPANSION PROJECT, PHASE I, FOR AN TOTAL OVERALL PLAN APPROVAL OF \$119,000,000 (SWC Project No. 1973)**

On June 21, 2011, the State Water Commission passed a motion to approve the Western Area Water Supply project, Phase I, not to exceed an allocation of \$25,000,000 authorized in 2011 House Bill 1206 from the funds appropriated to the State Water Commission in the 2011-2013 biennium for project construction, and that the

Commission staff be delegated to review the specific plans and specifications. In order for the Authority to access the remaining loans of \$85,000,000, the Bank of North Dakota's letter of conditions, dated September 16, 2011, required the State Water Commission's approval of Phase II, Tier I. On December 9, 2011, the State Water Commission approved the Western Area Water Supply project, Phase II - Tier I projects, up to a total plan approval of \$100,000,000.

Phase I (approved on June 21, 2011)

included the following projects:

- Eleven miles of 16" to 30" pipeline on the west and north side of Williston;
- One 5 million gallon reservoir northwest of Williston;
- Twenty-six miles of 14" pipeline heading west and then north from Wildrose to Crosby; and
- Approximately 200 miles of 2" to 6" pipeline in McKenzie county around Alexander.

Phase II - Tier I (approved on December

9, 2011) included the following projects:

- Williston water treatment plant expansion from 10 million gallons per day (MGD) to 14 MGD;
- Thirty miles of 20" to 24" pipeline heading north and east of Williston to Ray;
- Thirty-two miles of 16" to 20" pipeline from south of Williston heading south and east to Watford City;
- Three 500,000 gallon reservoirs and two 2 million gallon reservoirs;
- Four pump stations, which includes a 6 million gallon reservoir near 13 mile corner, a 3 million gallon reservoir at the Ray water treatment plant, and two 4.5 million gallon reservoirs along the pipeline heading south from Williston; and

- Approximately 8 industrial water depots are included in this phase and will range in size from 2 to 6 fill points, with a fill point averaging delivery of 200 gallons per minute over a 24-hour period.

A request from the Western Area Water Supply Authority was presented for the State Water Commission's consideration for an increase in the overall plan from \$100,000,000 (approved on December 9, 2011) to \$119,000,000. The overall plan requires the Commission's approval, and the individual plans and specifications are subject to approval by the Commission's staff. The project's authorizing legislation (2011 House Bill 1206) outlined state funding of \$110,000,000. The Authority has evaluated the project's cash flow and anticipates using project revenues to fund all costs above the outlined state funding in the authorizing legislation.

The project's revised cost estimate is a result of the proposed Williams Rural Water West Expansion project, at an estimated cost of \$4,700,000, an increase in pipeline size from 12" to 14" for the line to Crosby, an increase in pipeline portions from Williston to the R&T Water System, increase in pipelines from Williston to Watford City to meet immediate domestic demands, and further evaluation of the proposed water treatment plant expansion after rejection of the bids. Negotiations with Basin Electric Cooperative for a cost share of up to \$2,000,000 toward the construction of the expansion project are being finalized. The request before the State Water Commission is that the available funding from the Bank of North Dakota be increased an additional \$10,000,000 up to \$110,000,000 as authorized in 2011 House Bill 1206; and, that the Commission approve the proposed Williams Rural Water West Expansion project for construction, for a total overall plan approval of \$119,000,000.

Governor Dalrymple referenced 2011 House Bill 1206, whereby state funding authority was provided to the State Water Commission and the Bank of North Dakota for the purpose of providing loans to the Western Area Water Supply Authority, not to exceed \$110,000,000 in the 2011-2013 biennium, for project construction. The Authority will repay the loans for the project from revenues from the project. Governor Dalrymple stated that the request being considered by the Commission is appropriate at this time, but should not be perceived as a precedent that the Commission would approve subsequent proposals prior to the 2013 Legislative Session.

It was the recommendation of Secretary Sando that the State Water Commission approve an additional allocation not to exceed \$10,000,000 authorized in 2011 House Bill 1206 from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) for the Western Area Water Supply project construction, for a total of \$110,000,000 as authorized in 2011 House Bill 1206; and that the State Water Commission approve the Williams Rural Water West Expansion project, for a total overall plan approval of \$119,000,000.

***It was moved by Commissioner Hanson and seconded Commissioner Foley that the State Water Commission approve an allocation not to exceed an additional \$10,000,000, authorized in 2011 House Bill 1206, from the funds appropriated to the State Water Commission in the 2011-2013 biennium (S.B. 2020) for the Western Area Water Supply project construction, for a total state funds allocation of \$110,000,000 authorized in 2011 House Bill 1206; and, that the State Water Commission approve the Williams Rural Water West Expansion project, for a total overall Western Area Water Supply project plan approval of \$119,000,000. This action is contingent upon the availability of funds; and, that the Bank of North Dakota conduct a financial review of the \$119,000,000 project in relation to supporting repayment of the state loans.***

***Commissioners Foley, Goehring, Hanson, Olin, Swenson, Thompson, and Governor Dalrymple voted aye. (Commissioner Berg was not available for the vote.) There were no nay votes. Governor Dalrymple announced the motion carried.***

#### **STATE ENGINEER'S SALARY**

The Office of the State Auditor completed its biennial audit of the State Water Commission for the period ending June 30, 2011. A recommendation was made to ensure compliance with the North Dakota Century Code 61-03-01 in that the State Water Commission is setting the State Engineer's salary.

In the past, the State Water Commission has not approved the State Engineer's salary adjustments. The Commission did take action at its meeting on December 7, 2007, reaffirming "that the State Engineer has the authority to determine administrative decisions regarding all State Water Commission staff." Because this would include setting salaries, and the State Engineer also serves as the secretary and chief engineer to the State Water Commission, it was the opinion of the Commission staff that the authority approved on December 7, 2007 was in compliance with the North Dakota Century Code.

The Office of the State Auditor's concerns were not adequately addressed, therefore, the State Water Commission was requested to address the State Engineer's salary.

Governor Dalrymple explained the salary compensation process for agency directors, which normally includes the increments established by the Legislature for state employees, and equity increases are addressed in the agency's biennial budget request. Governor Dalrymple stated it is appropriate for the State Water Commission to address the State Engineer's compensation at this time.

***It was moved Commissioner Swenson and seconded by Commissioner Foley that the State Water Commission approve the State Engineer's annual salary at \$130,000, effective July 1, 2012.***

There was considerable discussion resulting in the Commission's concurrence that it would be appropriate to approve the legislative state employee increments of three percent for each year of the 2011-2013 biennium, effective July 1, 2012, and solicit the assistance of the Office of Management Budget in the preparation of an analysis of comparable salaries of state agency directors for the Commission's consideration at its next meeting. Based on the Commission's discussion, Commissioners Swenson and Foley withdrew their motion.

***It was moved by Commissioner Swenson and seconded by Commissioner Foley that the State Engineer's compensation be increased based on the Legislature's salary increments for state employees of three percent for each year of the 2011-2013 biennium, effective July 1, 2012; and, that the State Water Commission solicit the assistance of the Office of Management Budget in the preparation of an analysis of comparable salaries of state agency directors for the Commission's consideration at its next meeting.***

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

The State Water Commission did not act on the procedure for establishing future compensation for the State Engineer at its July 30, 2012 meeting.

**STATE WATER COMMISSION MEETINGS** The State Water Commission members requested the necessity for frequently scheduled meetings, approximately every two months, to appropriately address the issues that come before the Commission. Governor Dalrymple responded that his staff scheduler would work with the Commission staff to address the request.



There being no further business to be considered by the State Water Commission, Governor Dalrymple adjourned the audio conference call meeting at 3:50 P.M.

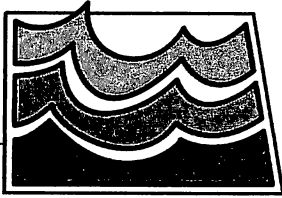


---

Jack Dalrymple, Governor  
Chairman, State Water Commission

---

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



## North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850  
701-328-2750 • TTY 800-366-6888 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

---

### MEMORANDUM

**TO:** Governor Jack Dalrymple  
Members of the State Water Commission  
**FROM:** Todd Sando, P.E., Chief Engineer-Secretary  
**SUBJECT:** Western Area Water Supply – Update  
**DATE:** July 23, 2012

The issues between the Western Area Water Supply Authority (Authority) and the Independent Water Providers (IWP) continue, and the effects of the dispute are causing concern with other water users in the state. Both sides have tried to pull in regulators into their dispute, which creates a level of uncertainty that adversely affects water supply development in our state from our largest source of water supply. The effect is both entities desiring to be the major source of water supply for industrial use in the region to the detriment of the other party. This memo is to provide an awareness of the issues being presented and the recent request to the State Engineer's Office and the U.S. Army Corps of Engineers to forego the issuance of any permits for private water development within McKenzie County without engaging the regional water system in discussion for each permit requested.

The most recent issue is related to federal protection that typically prevents encroachment of drinking water systems within municipalities from expanding into rural water systems that have loans with the U.S. Department of Agriculture that need to keep the customers in their region so the loans can be repaid. This is referred to as "1926(b)", which is the federal code.

The first attached letter from the North Dakota Water Users expresses their concern with the dispute affecting development of Missouri River water for the beneficial uses in North Dakota. The second and third attached letters are from the McKenzie County Water Resource District using 1926(b) to assert that new larger private development plans are too extensive and they should not be allowed to proceed, and urges the State Engineer's Office and the U.S. Army Corps of Engineers to forego the issuance of permits without engaging them in the discussion. The fourth letter from the Authority to the IWP states their members have exclusive franchises to provide water sales within their territories.

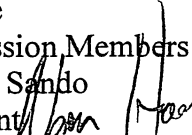
At this point the 1926(b) claim has not been legally supported, and until the support for the claim can be provided for review, the State Engineer's Office intends to follow our normal process for issuing permits.

TS:MK:1973



Michael A. Dwyer  
Executive Vice President  
701-223-4615  
701-223-4645 (Fax)

PO Box 2254 • Bismarck, ND 58502-2254

MEMO: July 24, 2012  
TO: Governor Dalrymple  
State Water Commission Members  
State Engineer Todd Sando  
FROM: Norm Haak, President 

This is to address a matter of grave concern that has arisen concerning the development of Missouri River water for beneficial uses in North Dakota. North Dakota has long held firm to a policy that we need to develop as much water as possible from the Missouri River to protect our rights to the use of that water. Whether it be industrial, agricultural, energy, municipal and rural, irrigation, or any other uses, the Missouri River is our primary source of surface water in North Dakota, and we need to develop and perfect as much use to Missouri River water as possible. We have recently developed irrigation projects as part of Garrison Diversion, we have significant energy plants, we have major regional water distribution projects (Southwest Pipeline, Northwest Water Supply, South Central Regional Water, and Western Area Water Supply), and many other uses by both private and public entities to develop Missouri River water in North Dakota.

Recently, McKenzie County Water Resource District (MCWRD) sent letters to both the State Engineer and the Corps of Engineers asking them to “forego the issuance of any permits for private water development” based on its assertion that 1926(b), Section 7 of the U.S.C.A., gives MCWRD a franchise right to provide water in MCWRD’s service area (essentially most of McKenzie County).

This position is completely adverse to long standing water policy and long standing efforts to develop North Dakota’s right to the Missouri River. There has been a conflict between the Independent Water Providers and the WAWS board over the providing of water to the oil industry. That conflict needs to be settled, and the State Water Commission has been attempting to work with both parties in that regard. Hopefully that can be worked out. We strongly support the WAWS project, and rural water systems, and want these projects to move forward with us much urgency as possible. However, we do not believe it is good for North Dakota for MCWRD to seek an exclusionary claim for water from the Missouri River.

We have not done legal research as to whether this is an appropriate assertion of 1926(b). MCWRD provides water for municipal and rural water, and water systems that provide water for oil development, are not similar uses. We support developing Missouri River water in North Dakota for all uses by all parties, and we are concerned that the letters forwarded by the MCWRD to the State Engineer and the Corps of Engineers is a serious challenge to the development of Missouri River water in North Dakota.

We urge the Governor and the State Water Commission to take appropriate steps concerning these letters, and continue North Dakota’s long term efforts to develop North Dakota’s rights to the use of the Missouri River. Thank you for your consideration.



# MCKENZIE COUNTY, NORTH DAKOTA

## Water Resources District Board

205 6th St. NW - (Mailing addr.) 201 5<sup>th</sup> ST. NW, Suite 1456  
Watford City, ND 58854  
Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman  
PO Box 927  
Watford City, ND 58854-0927  
701-444-6484 work  
701-842-3081 home  
dentonz@dakotawestcu.org

Gene Veeder, Vice-Chairman  
PO Box 699  
Watford City, ND 58854-0699  
701-444-2804  
gveeder@co.mckenzie.nd.us

Lee Tjelde, Board Member  
14984 HWY 200  
Cartwright, ND 58838  
701-828-3008  
glaseyes@yahoo.com

Leif Jellesed, Board Member  
10561 HWY 1806 E  
New Town, ND 58763-9084  
701-675-2490  
jellesed@restel.net

Lane Haugen, Board Member  
14914 Hwy 68  
Alexander, ND 58831  
701-828-3555 home  
406-489-1704 cell

Clint Hecker  
Assistant Manager  
Watford City, ND 58854  
701-842-2821  
701-290-6791 cell  
checker@co.mckenzie.nd.us

July 5, 2012

Todd Sando, P.E., State Engineer  
State Water Commission  
900 East Boulevard Avenue  
Bismarck, ND 58505

Re: Private Water Permits within McKenzie County

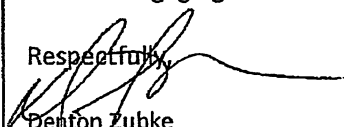
Dear Mr. Sando:

The McKenzie County Water Resource District (MCWRD) is informed of various permit applications and current intentions by private parties who intend to divert water from the Missouri River and create an extravagant pipeline system to sell significant amounts of water to the oil industry within McKenzie County. In some instances, this information has been coupled with demands by the independent water provider community for MCWRD and the Western Area Water Supply Authority to reduce their water sales at water depots so as not to compete with the private water sellers. While MCWRD has historically not objected to the development of isolated private water sellers to meet the demands of the oil industry, the more recent private development plans are simply too extensive to allow to proceed given MCWRD's significant investment in infrastructure and need to generate income to repay its federal loan obligations as well as the state loan obligations authorized in House Bill 1206 during the last legislative session.

MCWRD is requesting the information from these private water sellers, out of concern that these entities may be encroaching on the MCWRD water franchise area. Federal law is very protective of a rural water system's water sales territory if the rural water system is indebted to the Federal government through a federal loan for the water system's infrastructure. See 7 U.S.C.A. 1926(b). MCWRD has outstanding federal Rural Development loans through the USDA and qualifies for the franchise protection of Section 1926(b).

MCWRD believes that the grant of water appropriation permits by the State Engineer's Office or the access permits and easements by the Corps would constitute governmental action that will provide a private water franchise to develop within the MCWRD jurisdiction. The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from further encroachment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested.

Respectfully,

  
Denton Zubke  
Chairman of MCWRD



## MCKENZIE COUNTY, NORTH DAKOTA

### Water Resources District Board

205 6th St. NW • (Mailing addr.) 201 5<sup>th</sup> ST. NW, Suite 1456  
Watford City, ND 58854  
Tel: 701-842-2821 ext. 7 • Fax: 701-842-2822

Denton Zubke, Chairman  
PO Box 927  
Watford City, ND 58854-0927  
701-444-6484 work  
701-842-3081 home  
dentonz@dakotawestcu.org

Gene Veeder, Vice-Chairman  
PO Box 699  
Watford City, ND 58854-0699  
701-444-2804  
gveeder@co.mckenzie.nd.us

Lee Tjelde, Board Member  
14984 HWY 200  
Cartwright, ND 58838  
701-828-3008  
glaseyes@yahoo.com

Leif Jellesed, Board Member  
10561 HWY 1806 E  
New Town, ND 58763-9084  
701-675-2490  
jellesed@restel.net

Lane Haugen, Board Member  
14914 Hwy 68  
Alexander, ND 58831  
701-828-3555 home  
406-489-1704 cell

Clint Hecker  
Assistant Manager  
Watford City, ND 58854  
701-842-2821  
701-290-6791 cell  
checker@co.mckenzie.nd.us

July 5, 2012

Jo Ellen Darcy,  
Assistant Secretary of the Army, Civil Works  
108 Army Pentagon  
Washington, DC 20310-0108

Re: Private Water Permits within McKenzie County

Dear Assistant Secretary Darcy

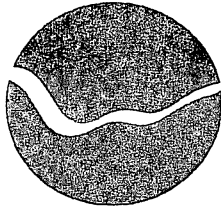
The McKenzie County Water Resource District (MCWRD) is informed of various permit applications and current intentions by private parties who intend to divert water from the Missouri River and create an extravagant pipeline system to sell significant amounts of water to the oil industry within McKenzie County. In some instances, this information has been coupled with demands by the independent water provider community for MCWRD and the Western Area Water Supply Authority to reduce their water sales at water depots so as not to compete with the private water sellers. While MCWRD has historically not objected to the development of isolated private water sellers to meet the demands of the oil industry, the more recent private development plans are simply too extensive to allow to proceed given MCWRD's significant investment in infrastructure and need to generate income to repay its federal loan obligations as well as the state loan obligations authorized in House Bill 1206 during the last legislative session.

MCWRD is requesting information from these private water sellers, out of concern that these entities may be encroaching on the MCWRD water franchise area. Federal law is very protective of a rural water system's water sales territory if the rural water system is indebted to the Federal government through a federal loan for the water system's infrastructure. See 7 U.S.C.A. 1926(b). MCWRD has outstanding federal Rural Development loans through the USDA and qualifies for the franchise protection of Section 1926(b).

MCWRD believes that the grant of water appropriation permits by the State Engineer's Office or the access permits and easements by the Corps would constitute governmental action that will provide a private water franchise to develop within the MCWRD jurisdiction. The purpose of this letter is to advise you that MCWRD intends to protect its franchise territory from further encroachment by private water sellers, and to request that you forego the issuance of any permits for private water development within McKenzie County without engaging MCWRD in discussion for each permit requested.

Respectfully,

Denton Zubke  
Chairman of MCWRD



# WESTERN AREA WATER SUPPLY AUTHORITY

JUL - 9 2012

July 5, 2012

Bob Harms  
The Harms Group  
815 N. Mandan St.  
Bismarck, ND 58501

VIA EMAIL AND USPS  
robert@harmsgroup.net

Re: WAWSA Response to June 20, 2012 letter on behalf of IWP

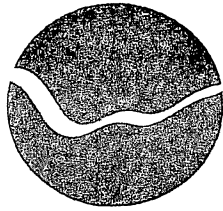
Dear Bob,

The WAWSA considered your June 20, 2012 letter and presentation requesting further reduction in the WAWSA industrial water sales at WAWSA water depots. The Board has repeatedly considered the location of the IWP depots when siting the locations for WAWSA depots. WAWSA has significantly curtailed the number of water depots it intended to build, based in part on the consideration of IWP water sales potential in certain areas. Your recent letter raises no new issues with the depot locations, but solely focuses on WAWSA depot operations and volume of water sales at WAWSA depots. The legislation very plainly allows WAWSA to control its operations and the requirement to minimize impacts to private water sellers refers solely to the selection of locations for the WAWSA depots. In short, while WAWSA is more than willing to continue discussions with IWP regarding consideration of delayed development of additional water depot locations, WAWSA will not consider limiting water sales at its currently planned depots to only 2 ports.

As you know, WAWSA is selling water at depots in order to finance a large, domestic water supply for the region. This water supply project is expensive and WAWSA takes the repayment of its loan obligations very seriously. A reduction of all WAWSA depots to only 2 ports would jeopardize the ability of WAWSA to repay its debts, which would not only jeopardize a large regional water system's ability to function, but it would also put the State coffers at risk. WAWSA is simply unwilling to do so.

In your letter and presentation, you threatened to sue WAWSA over the House Bill 1206 "minimizing impacts" language. Before embarking on any litigation against the project, you should be advised that many stakeholder members of WAWSA have existing USDA Rural Development loans outstanding. As such, these members have exclusive franchises to provide water sales within their territories. See 7 U.S.C.A. 1926b. Federal courts interpreting this statute generally hold that the franchise territory of indebted rural water systems is sacrosanct and will be free from encroachment by other public or private water sellers since competing water sales may impact the water system's ability to repay federal loan obligations. To date, the WAWSA Member water systems have not taken action to curtail the private water developers that existed within their jurisdictions when House Bill 1206 was passed. The WAWSA member systems were committed to allowing the private water developers to continue their existing operations at that time.

Your letter suggests that it is intended to alert WAWSA of some issues of legal concern that may motivate WAWSA to meet the IWP's demands. In the interest of full disclosure, WAWSA similarly thought it was time to raise this issue that should be a significant concern to the IWP members and encourages the IWP members to halt their threatened political and legal campaign against the WAWSA project. WAWSA has not interfered with private water development to date, but that position may have to change given the constant political objections from your IWP members coupled with a new surge of interest in larger water development within WAWSA members' exclusive franchise areas that might jeopardize the financial success of the project. WAWSA and its



# WESTERN AREA

WATER SUPPLY AUTHORITY

member systems are learning of new and significant expansions of various private water suppliers at a level that could jeopardize the various stakeholder's abilities to repay their federal debt obligations. WAWSA simply cannot allow additional development on a scale that will jeopardize the financial stability of the WAWSA project.

WAWSA continues to be willing to listen to and consider the IWP's concerns and demands. Per your request for a meeting with the full Board, I invited the entire WAWSA Board to attend a meeting with the IWP on the morning of July 18<sup>th</sup>. We would be willing to set aside from 10:00am to noon to meet with you. One of the recurring questions from Board members and their constituents is who exactly is being represented by IWP. We would appreciate it if you would bring that information to the meeting with the Board on July 18<sup>th</sup> so they get a better sense of who is behind these requests.

Respectfully,

A handwritten signature in cursive script, appearing to read "Denton Zubke".

Denton Zubke

Cc: Governor Jack Dalrymple  
SWC Members  
WAWSA Board

1425051.1