

LAKE AGASSIZ WATER AUTHORITY

BOARD OF DIRECTORS

**Ramkota Inn
Bismarck, North Dakota
December 8, 2010**

A meeting of the Lake Agassiz Water Authority (LAWA) was held at the Ramkota Inn of Bismarck, North Dakota, on December 8, 2010. The meeting was called to order by Acting Chair Burley at 10:30 a.m.

MEMBERS PRESENT

Acting Chair Keith Burley
Director Rick Bigwood
Director Clark Cronquist
Director Winston Johnson
Alternate Steven Hansen for Director LaVonne Althoff
Alternate Troy Hall for Director Kelli Poehls
Secretary Dave Koland

MEMBERS ABSENT

Director Kenneth Evenson
Chair Bruce Furness
Director Curt Kreun
Director Carol Siegert

OTHERS PRESENT

Staff members of the Garrison Diversion Conservancy District were present along with others. The registration sheet is attached to the original minutes.

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

APPROVAL OF AGENDA

The agenda stood approved as presented.

CONSIDERATION OF THE MINUTES

Motion by Director Cronquist to approve the September 14, 2010, minutes as distributed. Second by Alternate Hansen. Upon voice vote, motion carried.

CONSIDERATION OF COMMUNICATIONS

Minnesota Department of Natural Resources - - Dave Koland, Secretary, called attention to the letter received from the Minnesota Department of Natural Resources containing their comments on the Red River Valley Water Supply Project (RRVWSP) Draft Operational Plan. This is provided for the board's information. A copy of the letter is attached to these minutes as Annex I.

COMMITTEE REPORTS

None

FINANCIAL REPORT

Mr. Koland referred to the LAWA financial statement for the period of January 1 to November 30, 2010, a copy which is attached to these minutes as Annex II.

LAWA's bank balance as of November 30 was \$10,071.

Total income as of November 30 was \$28,236 with expenses \$168,711.

Motion by Director Bigwood to accept the financial statement for the period of January 1, 2010, to November 30, 2010. Second by Director Cronquist. Upon roll call vote, the following directors voted aye: Bigwood, Burley, Cronquist and Johnson. Alternates voting aye: Hall and Hansen. Those voting nay: none. Absent and not voting: Evenson, Furness, Kreun and Siegert. Motion carried.

Bills Paid - - Mr. Koland reviewed bills paid since last quarter. This included \$4,184 for water sampling.

Unpaid Bills - - Mr. Koland referred to and reviewed the two unpaid bills, totaling \$141,241, from Garrison Diversion for the users' 10 percent share of expenditures on the RRVWSP pre-final design phase. Upcoming bills include Water Coalition dues, Rural Water Association dues, water sampling and RRVWSP Development costs.

2011 LAWA Budget - - Mr. Koland also referred to the 2011 Budget and reviewed the proposed income and expenses with the board members, a copy which is attached to these minutes as Annex III.

Pat Zavoral, city of Fargo, asked Mr. Koland to address possible state contributions and the status of the Record of Decision (ROD).

Mr. Koland said we are clearly at a decision-making point for the RRVWSP. Are we going to stop working and wait for a ROD or move forward with the project? The course has been to move forward. LAWA and Garrison Diversion have waited patiently for a ROD and explored numerous formal and informal avenues in an effort to obtain the ROD. He shared some of these efforts with the board.

Mr. Koland stated that the next course of action is being discussed, and LAWA's voice is important in that. Discussions will also include the Garrison Diversion board, the State Water Commission, governor and congressional delegation.

Mr. Koland said he believes that we should move forward with the project and do what we can afford to do and discuss what the legal options are. We may be at a point where we need to look to the courts to give us some relief on this issue. We need to get past the ROD and get the administrative record closed.

RED RIVER VALLEY WATER SUPPLY PROJECT UPDATE

Mr. Koland referred to the RRVWSP Status Report dated November 19, 2010, included in the meeting packet and reviewed recent project activities. A copy is attached to these minutes as Annex IV.

UNFINISHED BUSINESS

None

NEW BUSINESS

Draft 2011-2013 RRVWSP Work Plan - - Mr. Koland referred to the 2011-2013 RRVWSP Work Plan. A \$20 million funding request for the next biennium has been proposed to the Water Coalition.

The work plan includes working with the legislative session, completing final design efforts, exercising right-of-way options, completing the financial package, continued efforts to obtain the ROD, road/railroad boring package, constructing discharge facilities, supporting the congressional delegation to obtain authorization and supporting LAWA. A copy of the work plan is attached to these minutes as Annex V.

Mr. Koland said if we start now and do \$10 or \$20 million in the next biennium and follow with the big pieces in the following bienniums, the soonest water could be delivered to the Valley is 2020.

The funding proposal to the State Water Commission is \$20 million. Governor Hoeven's charge was to continue taking steps forward. The governor's budget was presented this morning, and it is believed to include an amount for the RRVWSP.

Mr. Koland said in looking at the \$20 million, it is likely that we would propose doing about half of that. The user's share of that amount would be \$1 million.

Dan Boyce, East Grand Forks, commented that he is trying to determine which is the biggest challenge or obstacle. The ROD is needed and also authorization for getting water from the Missouri River, which is separate from the funding issue. If we were willing to pay for the whole thing, the ROD would still be needed to move the project forward. Even if we said we were tired of waiting for the federal government, and we are going to do it like the municipal power agencies do and provide our own funding, we would still need the ROD.

Mr. Koland said he raises some good points. That is why he started by saying we are going to look to the courts to get a ROD because the administrative record has to be closed in order to move forward. He is also a firm advocate that the federal government does not have the right to tell the state of North Dakota whether or not it can use Missouri River water to deal with its needs.

Mr. Zavoral said let's assume that the governor and State Water Commission's budget included \$5 million for the project. Ten percent of that is \$500,000 over two years. LAWA would have to come up with \$250,000 in 2011. In addition, there are the unpaid and upcoming bills so the total is approximately \$390,000 for the coming year.

Mr. Zavoral asked if the formula used for the special assessment could be used for everyone to pay into this or is there another method that should be pursued. The other question is do we want to pursue anything.

Mr. Zavoral said from the city of Fargo's perspective, flood control is their number one priority. On the other hand, they recognize the importance of this project long term and are still committed locally to assist in funding whatever they can to move this project forward.

Al Grasser, city of Grand Forks, asked how legal action would fit into the 2011-2013 work plan.

Mr. Koland said it would be a separate category of expenses, and it may not be LAWA that would be pursuing legal action.

Mr. Grasser asked if not having a ROD will cause a problem if we have to go to condemnation.

Mr. Koland said approximately 76 percent of the land is under option agreements at this time. There is the possibility, when we get to that point, that we may not have to go to condemnation. We have been able to work with landowners, and that is the advantage of doing the work ahead of time. By accommodating some of the landowners' requests, he feels it will work to our advantage in the final step of the easement process.

Tami Norgard, Vogel Law Firm, stated that the lack of a ROD does not preclude going forward with condemnation. She pointed out that the option agreements are for five years. Depending on how long it takes to obtain the ROD, we might have to renew the options. Renewing the options should also not be a problem because most of the landowners were willing to sign off on the agreements. It will, however, require another payment.

Acting Chair Burley said he believes securing all the options should be a priority in this work plan.

Mr. Koland said \$5 million will secure the easements.

Acting Chair Burley questioned whether we could go to court before the options are exercised.

Ms. Norgard said to secure everything, we could go after the landowners who have not signed the option. We could get the easement on these properties and then hold the options until close to the expiration of the five-year option period, then mail your letter and exercise those options.

Jerry Blomeke, Cass Rural Water, asked if the amount of money that would need to come from each participant would be on the order of the 2008 Special Assessment.

Mr. Koland said yes, it would be in that magnitude.

Mr. Blomeke said in his opinion, for that level of money over a two-year period of time, we should continue to go forward.

Mr. Koland said this is an important discussion because we are at the start of the legislative session. LAWA needs to be committed in a course of action, and we need to convey that to the legislators.

Mr. Zavoral asked Mr. Koland to put together a couple of funding scenarios and hold a board meeting in January to discuss what he comes up with.

Director Cronquist said this is a good idea. He added that we should not quit now. LAWA should move ahead as much as we can with things that make reasonable sense.

Acting Chair Burley said the board will wait to act on the 2011-2013 Work Plan at the January board meeting.

OTHER

Next Meeting - - The next board meeting will be on January 20, 2011, in Bismarck.

There being no further business to come before the board, the meeting adjourned at 11:30 a.m.

Keith Burley, Acting Chair

Dave Koland, Secretary