

LAKE AGASSIZ WATER AUTHORITY

**SPECIAL MEETING
BOARD OF DIRECTORS**

**City Commission Chambers
Fargo, North Dakota
March 1, 2024**

A special meeting of the Lake Agassiz Water Authority (LAWA) board of directors was held at the City Commission Chambers, Fargo, ND, on March 1, 2024. The meeting was called to order by Chair Mahoney at 10 a.m.

MEMBERS PRESENT

Chair Timothy Mahoney
Vice Chair Ken Vein
Director LaVonne Althoff
Director Rick Bigwood
Director Ann Broussard
Director Bill Bohnsack
Director Dave Carlsrud
Director Tom Erdmann
Director Mark Johnson
Director Keith Nilson
Director Jim Schmaltz
Alternate Marc Pritchard for Director Travis Schmidt
Associate Member Bernie Dardis
Secretary Duane DeKrey

MEMBERS ABSENT

Associate Member Brett Lambrecht
Associate Member Jim Moe
Associate Member Carol Siegert

Garrison Diversion staff and others attended. A copy of the registration sheet is attached to these minutes as Annex I.

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

APPROVAL OF AGENDA

**Motion by Director Carlsrud to approve the following changes to the meeting agenda:
1) move Item V, LAWA & Garrison Diversion Cooperation Agreement, up to Item III and
2) add User Outreach Meeting Update as Item VI. Second by Director Johnson. Upon voice vote, motion carried.**

LAWA & GARRISON DIVERSION COOPERATION AGREEMENT

John Shockley, Onhstad/Twichell, reviewed the current Cooperation Agreement between Garrison Diversion and LAWA, which was negotiated in 2018/2019 when the RRVWSP was in the feasibility phase. There was a desire by LAWA to have a role in decision making related

to the project. The concept was for it to be an interim agreement regarding how the parties would cooperate in making decisions regarding the planning, feasibility, financing and technical development of the project, and it would eventually be replaced by the Project Participation Agreement (PPA).

Mr. Shockley said the issues to talk about today are decision making for engineering services and financial matters, which are addressed on page nine, Section 4.02, Consultant Participation, of the Cooperation Agreement.

Mr. Shockley commented the overall concept of the cooperation agreement is that Garrison Diversion is ultimately the owner of the project and will be responsible for designing and constructing the project with the consultation of LAWA. The decision making process outlined in the agreement quantifies what level of decisions and what level of information LAWA will be involved in.

Mr. Shockley stated there was recognition that LAWA, representing the end users, has a vested interest in making sure the project is constructed and implemented as the end users would want with a focus toward controlling the costs.

Mr. Shockley said Section 4.02 indicates LAWA can hire its own consultants, which it has done hiring him as legal counsel. If LAWA has a desire to hire other consultants, they can do that. LAWA consultants do not have authority to direct Garrison Diversion consultants or contractors.

Mr. Shockley added there is recognition in Section 4.02 that Black & Veatch is Garrison Diversion's primary engineer for the RRVWSP, and there is no specific requirement that Garrison Diversion use any specific subconsultant pursuant to the existing project agreement. This language was included in order to make sure there was no pressure on Black & Veatch to use any specific subconsultant. Black & Veatch should be utilizing who they deem, in their best engineering judgement, as subconsultants.

There is a provision within Section 4.02 stating if Garrison Diversion seeks to change an engineering consultant for the project or hire other engineering, financial or legal consultants, Garrison Diversion will follow the decision making protocol identified in Section 3.05 to obtain LAWA's input or agreement.

Mr. Shockley commented Section 3.05 talks about a decision making protocol, and for most decisions that do not have a substantial impact on the RRVWSP, it is to inform LAWA of the decision. It specifically states Garrison Diversion will consult with, inform and receive input from LAWA on issues involving project status, budgets and work plans among other things identified in this and future agreements. For decisions having more impact on the RRVWSP, there is an elevated decision making process. Those decisions are decisions that cause an increase of \$300,000 or more in the project, results in a delay in project construction of three

or more months, has more than a five percent increase in OMR of the project or as otherwise agreed in future agreements relating to other specific matters.

Mr. Shockley remarked tasks like hiring subconsultants, if they do not reach their threshold, is more of input and advice rather than elevated decision making protocol. If there is a desire to have more input in the decision making process, that is something LAWA can certainly ask for and work through in the PPA draft because that is intended to be the final agreement.

Mr. Shockley concluded saying he wanted to go through LAWA's role with decisions regarding engineering consultants and conflict of interest policies as adopted relating to the RRVWSP, stating it is more to inform and perhaps get concurrence from LAWA.

Chair Mahoney said the topic today is about communication. In some ways, what has happened is Black & Veatch has gone through some consultants and were opening up civil engineers. The LAWA Board needs to look at that and see what they think of it and decide what they want to do. They may want to have the LAWA Technical Advisory Committee (TAC) review it, and the TAC may agree and say it is okay and they are fine with it. The communication of the two systems, Garrison Diversion and LAWA, is to agree on the path being taken.

Chair Mahoney said what Mr. Shockley has outlined is if LAWA has a conflict, the issue can be raised. The contracts for the subconsultants have not been let, but LAWA would like to move things forward. He is recommending the TAC review this and, if they concur, it would come back to the board in March, and they probably would approve it all. He wants to make sure the LAWA Board has some say in this.

GARRISON DIVERSION CONFLICT OF INTEREST POLICY & WAIVER

Mr. Shockley referred to Garrison Diversion's Consultant Conflict of Interest Policy and Waiver recently approved by its board of directors, which is included with meeting materials. This relates to the selection of engineering services.

Mr. Shockley stated the North Dakota Administrative Code provides a generic disclosure requirement for engineering firms. If there is a conflict with the engineering firm working for two parties, they are supposed to disclose that information. Garrison Diversion was attempting to put together a conflict of interest policy that would codify what is in the administrative code. From LAWA's perspective and his perspective, it is not unusual to have a conflict of interest policy for engineers.

Mr. Shockley said there is nothing unusual with the policy proposed by Garrison Diversion. The RRVWSP is a very large project with a large quantum of value and a large amount of engineering work, as well as a lot of end users. You may have engineering firms that are doing work for both Garrison Diversion and for LAWA, and they might be doing work for some of the end users. It is entirely appropriate to have the engineer disclose they are working on both sides. He proposes forming a committee with LAWA and Garrison Diversion representatives where the engineering firm would disclose they are working for both sides, and then the committee would provide input on whether or not to accept the disclosure and waive any potential conflict.

Paul Boersma, Black & Veatch, said the Garrison Diversion Board has requested Black & Veatch implement a conflict of interest policy and they concur. It is not unusual nor is it difficult for them to do so. The policy is consistent with a number of contracts they have with other organizations, and it is consistent with the requirements of North Dakota Professional Engineering as well. The essence is for firms to disclose where there may be a potential conflict of interest with another client.

Mr. Boersma said Black & Veatch is implementing this policy. To date, they have had 15 different firms, mostly smaller contracts, who have been sent the conflict of interest policy. Each firm has been asked if they anticipate submitting a request for a waiver. Twelve of the

15 firms are saying no, at this time, they do not anticipate submitting a waiver. Three firms, Black & Veatch, Advanced Engineering and Burian & Associates will submit a request for waiver.

Two firms are involved in the project and have direct contracts with the project participants. They are Burian & Associates and Advanced Engineering. Black and Veatch is subcontracted through Advanced Engineering to both Fargo and Grand Forks. Because of this, they would anticipate submitting a request for a waiver as well.

The next step is each firm will submit a request for waiver. A committee between Garrison Diversion and LAWA will evaluate the requests and make a determination whether or not to grant the waivers.

Chair Mahoney stated LAWA will appoint members to be a part of the joint committee (6-10 people), and Garrison Diversion will also appoint members. The members would then meet to go over the waivers so that each organization has a say in the situation.

Motion by Director Carlsrud to approve forming a joint committee of LAWA and Garrison Diversion representatives to review the conflict of interest waivers. Second by Director Johnson. Upon roll call vote, the following directors voted aye: Althoff, Bigwood, Bohnsack, Broussard, Carlsrud, Erdmann, Johnson, Mahoney, Nilson, Schmaltz and Vein. Alternates voting aye: Pritchard. Those voting nay: none. Motion carried.

BLACK & VEATCH SUBCONSULTANTS

Mr. Boersma said some time ago Garrison Diversion asked Black & Veatch and its engineering team to explore ways of expanding its consultant pool.

Mr. Boersma presented a PowerPoint showing the total amount of money that has been spent on engineering fees for the RRWSP. Approximately \$48 million has gone toward various types of engineering fees. The table illustrates the split of the work that has happened from 2015 to mid-2023 between Black & Veatch, Advanced Engineering and other firms.

YEAR	BV	AE2S	OTHER (KLJ, MTS, BURIAN & ASSOCIATES)	TOTAL
TOTAL	\$ 22,444,960	\$ 19,680,757	\$ 5,819,609	\$ 47,945,326

Mr. Boersma reviewed what has been done in this biennium with the use of other engineering firms:

LATE 2022: Board Initiated Discussions about Expanding Team

EARLY 2023: Black & Veatch advertised a Request for a Statement of Interest
Received 16 responses indicating interest

MID-2023: Biennium funding was secured

LATE 2023: Black & Veatch advertised a Request for Qualifications
6 firms responded

The Request for a Statement of Interest was sent out to dozens of North Dakota based firms. This was not an offer for work it was stating the types of projects anticipated over the next several years and asking who might be interested in participating in these projects at some level.

The Request for Qualifications was different than the Statement of Interest in that the Request for Qualifications listed three to four different types of work to be done in the next two years and asking if they would be interested in and, more importantly, qualified to do this type of work. Six engineering firms responded to the Request for Qualifications, and two of the engineering firms, Stantec and Moore, said they were interested in the construction inspection services. Four responses were received from engineering firms interested in providing some of the design services. HDR indicated interest in all services, Houston Engineering had interest in the hydraulic break tanks only, Apex and Barr Engineering each expressed interest in most services.

Black & Veatch evaluated the Statement of Qualifications and resumes of the individuals that would be proposed, as well as the corporate resumes of the types of work the firms have done.

Black and Veatch then came back to Garrison Diversion's board with a recommendation for four firms: 1) Moore be hired to provide additional construction inspectors, 2) Stantec to also provide construction inspectors, 3) Houston be engaged in break tank design and 4) Apex provide pump station assistance.

Mr. Boersma said in looking ahead, the estimates for a potential split of work for this biennium is projected as follows:

BV	AE2S	OTHER (KLJ, MTS, BURIAN & ASSOCIATES)	NEW	TOTAL
\$16.6M – 18.5M	\$7.4M – 9.2M	\$3.5-4M	\$5.5 – 7.4M	\$37M
45-50%	20-25%	10%	15-20%	

There has been about \$37 million worth of engineering services awarded to Black & Veatch. The table roughly shows the work that will be done and the amounts by each of the engineering firms. The column titled new would be the other engineering firms that have been mentioned.

Mr. Boersma said he feels confident that he is making a recommendation to the Garrison Diversion board and, by extension, to LAWA of a plan for engineering where you will be receiving engineering firms that are qualified, can do the work, have shown the ability to do the work and, at the same time, achieving the objective of widening the pool of North Dakota based engineering firms to be involved in the RRVWSP.

Alan Walter, Chairman, Garrison Diversion, added the state legislature has expressed the desire to have more engineering firms involved in the RRVWSP. The state legislature is paying for 75 percent of the project. It behooves us to listen and to adhere to their desires.

Vice Chair Vein said per Chair Mahoney's intent for this to go to the LAWA TAC, we can get into more specific questions about engineering subconsultants. One of his concerns is who is most qualified. He would also like to look at how the workload is distributed and percentages and how it affects Black & Veatch and their volume of work compared to what is kept local.

Chair Mahoney asked the board if it was alright to utilize the TAC to advise the board on the subconsultant contracts and consider the committee's recommendation at the next board meeting. He said he did not know if anything would change, but at least the board would know the issue has been reviewed.

Chair Mahoney added LAWA and Garrison Diversion will be more conscientious with communication going forward. The RRVWSP is spending a large amount of money now, and we want to make sure the money is well spent.

USER OUTREACH MEETING UPDATE

Steve Burian, Burian & Associates, provided an update on the user outreach meeting process. The ultimate goal has been to have as many PPAs signed as possible ahead of the next legislative session. The leadership team has made a lot of progress preparing for the user outreach meetings.

Mr. Burian reviewed a list of the work that has gone into meeting preparation. This included 40 letters from Chair Mahoney to potential users in four different users groups, which were followed up with phone call to these users verifying the letters were received and that the

users were interested in more project information. From that point, emails were sent to the users from Secretary DeKrey with a financial summary, regional map, project update and information on future regional meetings. A series of calls are now being made to schedule 13 regional meetings with presentations tailored to each particular region. These meetings will involve user representatives from each of the 13 regions as well as LAWA, Garrison Diversion and Project Team representatives.

Information to be presented at the regional meetings include project overview and update, past user engagement and nominations, regional capacity and service approach, 2024 system financial summary and continued user participation.

Mr. Burian reported for the northeast portion of the state, because their issues are so different and distinct, it was suggested having a rural water meeting and a municipal meeting followed by an overall regional water meeting with the communities and rural water districts.

Vice Chair reiterated at some point in time, the user list needs to be finalized. The RRVWSP is under construction, and there is more importance and urgency to this round of user meetings than any that have been held. Who wants to be a part of the project and who does not need to be determined.

Director Erdmann said a user meeting is scheduled for March 1 in Carrington. Carrington's pipeline is located in the Stutsman Rural Water District. If they both continue to make a nomination, and an industry was to locate near Carrington, who gets to serve that? The same question applies to Greater Ramsey Water District, which is just north of Carrington. This causes a bit of a gray area in regard to Carrington's participation. The answer could impact Carrington's decision.

Vice Chair Vein said, for the record, he wanted to speak to a public comment that was made regarding his vote against the Conflict of Interest Policy at a Garrison Diversion board meeting. The minutes are clear showing he voted against the policy. He said it was not that he was against conflict of interest, but there was a desire that the LAWA board and Garrison Diversion board get together and collaborate on the document before it was voted on. It was eluded he was against conflict of interest. He is a professional engineer, and he abides by all conflicts of interest. He certainly supports conflict of interest, and it was wrong to say that he was against it.

Chair Mahoney added LAWA and Garrison Diversion will work together and move forward. It is critical to work together and any difficulties that come up, we will have a way to solve them. Communication is the key so that everyone is properly informed.

Motion by Director Johnson to adjourn the meeting. Second by Director Schmaltz. Upon voice vote, motion carried. The meeting ended at 10:47 a.m.

Timothy Mahoney, Chair

Duane DeKrey, Secretary