



North Dakota State Water Commission

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June 21, 2006

Dennis Breitzman, Area Manager
Bureau of Reclamation
PO Box 1017
Bismarck, ND 58502-1017

Re: Water Rights Behind Baldhill Dam

Dear Mr. Breitzman,

The State Water Commission and the State Engineer's office have been integrally involved in the Red River Valley Water Supply Project (Project) study process. I was recently briefed on the Bureau of Reclamation's (Bureau) modeling assumptions for proposed Project water releases from Baldhill Dam. The State Engineer's office has concerns about the basis of the Bureau's assumptions. The purpose of this letter is to apprise the Bureau of the water rights currently held behind Baldhill Dam and to request that the Bureau modify the assumptions on which the modeling is based.

It is my understanding that in modeling the water releases from Baldhill Dam for the Project, the Bureau is not allocating the water according to the water law system in place in North Dakota. North Dakota water law is based upon the prior appropriation doctrine, commonly described as, "first in time, first in right." If there is inadequate water available from a source to satisfy all the existing water rights, then the user who holds the most senior water right would have first claim to the available water.

In an extended drought period, it is possible that the reservoir would not fill resulting in there being less water in storage than has been permitted for use downstream. In such a case, the State Engineer would have the responsibility of accounting for the quantities used by the various permit holders and providing for the orderly and equitable use of the stored water.

At present, the State Engineer's Office has issued water permits for the appropriation of 63,916 acre-feet annually from Lake Ashtabula. A plan for apportioning the water in Lake Ashtabula, called the Thompson Acker plan, configured a formula for local water users to pay for the local portion of construction costs of Baldhill Dam. The plan also recommended apportioning the water based in part on the amount of money contributed, and in part on the populations of the municipalities at that time. Based on the plan recommended apportionment, water permit applications were filed, were granted to contributing entities in an amount proportional to each entity's financial contribution to the local share of construction costs.

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Accordingly, if less than 63,916 acre-feet of water exists annually behind Baldhill Dam, the existing water is allocated by priority date, which is as follows:

City	Allocated Acre-Feet	Priority Date	Beneficial Use Date
Grand Forks	20,023	January 23, 1960	July 1, 1967
West Fargo	954	July 25, 1961	July 1, 2001
Fargo	35,880	June 27, 1963	December 31, 1972
Valley City	6,686	July 1, 1963	July 1, 1980
Lisbon	373	October 14, 1982	December 1, 2007
Total	63,916		

The current water permits entitle permit holders to a maximum annual amount of water stored behind Baldhill Dam. The existing water permits and priority dates are fundamental to the Bureau's analysis of which communities will run out of water and the timing for requests for releases of supplemental water in the modeling. This could cause the amount of supplemental water needed to vary widely, which would also impact the size of pipelines incorporated into the alternatives. Further, the incorporation of priority dates may impact some communities' decisions to participate in a RRVWSP and at what level of water need, so the accurate modeling of the senior water rights behind Baldhill Dam is imperative.

In closing, I appreciate the Bureau's consideration of my concerns and your efforts in assisting North Dakota provide a reliable water supply for its citizens.

Sincerely,



Dale L. Frink
State Engineer

DLF:mb

Cc: Dave Johnson, Garrison Diversion Conservancy District, Carrington, ND