



FROM THE NORTH DAKOTA STATE WATER COMMISSION

## Corps revokes Clinton-era wetland rules

On March 18, 2002, replacement nationwide permits will take effect only a few months after the Bush administration revoked requirements imposed on developers that previously required them to restore or create an acre of wetland for every acre they fill or destroy. Under the new requirements, developers will now be able to acquire revised "nationwide permits" (or NWPs) that are expected to improve the efficiency at which permits are approved if the expected impacts to streams or wetlands are considered minimal.

"Overall, the permits are undergoing several small but important changes," said John Studt, Chief of the U.S. Army Corps of Engineers Regulatory Branch. "The revised permits will do a better job of protecting aquatic ecosystems while simplifying some administrative burdens for the regulated public. The changes also reinforce and clarify the Corps' commitment to the 'no net loss' of wetlands goal."

"Nationwide permits are general permits that authorize categories of activities which the Corps has determined will have minimal impacts on the aquatic environment, individually and cumulatively, when conducted in accordance with the permit conditions," Studt explained. "However, the Corps will continue to require an individual permit for any project, whether covered by a general permit or not, which it determines would have more than minimal environmental impacts." The NWP acreage threshold has been reduced from three acres to only one-half acre.

As a result of input from public

hearings in August 2001, several changes were made to the reissued NWPs including:

**1) A greater emphasis on protecting the "no net loss" of wetlands standard** - The reissued NWPs require the Corps regulatory offices to meet and measure their success regarding the "no net loss" goal programmatically. While Corps districts are not required to provide a one-for-one replacement for impacted acreage for each individual project, they must meet or exceed that goal for their entire program. This allows districts to make more flexible decisions to issue timely permits while ensuring protection of the aquatic ecosystem on a watershed basis.

For NWPs in calendar year 2000, the Corps authorized impacts to 4,374 acres of waters (which include wetlands and open waters) and required 4,261 acres of mitigation. Nationally, the latest Corps statistics show that in fiscal year 2001, 25,000 acres of wetlands were filled, while 43,000 acres of wetlands were either created, restored, or enhanced to compensate for those impacted.

**2) Strengthened protection for streams** - The August proposal would have waived a previous prohibition of no more than 300-linear-foot impacts for perennial and intermittent streams. The reissued

permits make a distinction between intermittent and perennial (more established, permanent) streams, and allow the waiver for intermittent streams only. To receive a NWP for work that impacts a perennial stream, the applicant cannot fill more than 300 linear feet of that stream. Anything greater than 300 linear feet would be considered more than a minimal impact and could not be authorized with a nationwide permit.

**3) Strengthened protection for mining-related permits** - The reissued permits call for re-evaluating NWP 21, which permits activities associated with surface coal mining. This will come following the completion of an environmental impact statement being jointly prepared by the Corps, the State of West Virginia, the U.S. Environmental Protection Agency, and other federal agencies.

In the meantime, the reissued permits will maintain the additional environmental protections in the proposal. These protections enhance the mitigation and case-by-case review requirements for using NWP 21. Corps districts will require full mitigation beyond what is required by a state under the project's coal mining permit. The Corps will also require case-by-case review of all projects seeking to use this permit to ensure that any adverse impacts of the permitted activity are no more than minimal, both individually and cumulatively. ■

Information from: U.S. Army Corps website.

### NOTE:

Check our our website: [www.swc.state.nd.us](http://www.swc.state.nd.us) for the latest issue of *Eye on Washington*, a newsletter provided by Will & Calson, Inc., our contact in Washington.



North Dakota State Water Commission  
Dale L. Frink, State Engineer  
900 East Boulevard • Bismarck, ND 58505 • (701)328-2750  
<http://www.swc.state.nd.us/>

Patrick Fridgen, Editor

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# COMMISSION MEETING MINUTES

The North Dakota State Water Commission (Commission), chaired by Governor John Hoeven, acted on several items of business and was given status reports on continuing water management projects at the December 7 meeting in Bismarck.

The Commission's appropriation bill specifically included \$200,000 for projects authorized under Section 319 of the Federal Water Pollution Control Act. Since there were several potential 319 projects with needs exceeding \$200,000, the Commission approved funding for only seven. They include: Prairie West Livestock Facility Assistance Program, Mirror Lake Watershed, Lower Sheyenne Education/Assessment Watershed, Lower Pipestem Creek Watershed, NPS Best Management Practices Team, James River Headwaters - Rocky Run Watershed, and the Phase III Upper Sheyenne Watershed.

With regard to rural flood control, the Commission approved \$26,296 for two Richland County drain number 31 ring dikes and approved ten new rural ring dike cost-share policy criteria recommendations (see related article).

The Commission received a cost-share request from the North Dakota Natural Resources Trust (formerly the North Dakota Wetlands Trust) for FY 2001 funding. In response, the Commission approved \$14,774 for the Trust. The Game and Fish Department and the Garrison Diversion Conservancy District also contributed the same amount to the Trust.

With the Southwest Pipeline Project (SWPP), the Commission transferred ownership of a segment of SWPP contract 2-6A to the City of Mott. The Commission also transferred ownership of the water distribution system in the Maryville subdivision, which is three miles west of Dickinson, to the Commis-

sion. The system will now be incorporated into SWPP contract 7-2A.

State Water Commission engineering assistance has been provided to the Devils Lake region for several years through cost-share arrangements with the Devils Lake Basin Joint Water Resources Board. James Landenberger of the Water Development Division currently provides that assistance. The Commission approved an extension of the current Devils Lake engineering services contract from January 1, 2002, through December 31, 2002.

The Commission also approved extensions to the Devils Lake Outlet

Awareness Project Manager and Devils Lake Joint Water Resource Board Manager positions through December 31, 2002. The Outlet Awareness position is currently held by Joe Belford, while the Board Manager position is occupied by Mike Connor.

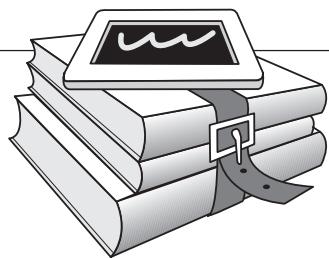
In their final action item, the Commission passed a resolution of condolence to the family of Brett Hovde, a Commission employee who lost a difficult battle with cancer. The Commission expressed their heartfelt sympathy to Brett's wife, Michelle, and children, Wyatt and Halle, for the untimely loss of her husband and their father. ■

## New rural ring dike cost-share policies

At their December 7, 2001 meeting in Bismarck, the North Dakota State Water Commission approved ten new rural ring dike cost-share policy criteria recommendations. The state's rural ring dike cost-share policy was discussed at length at a Commission meeting late last fall. In response to concerns by several Commission members, Governor Hoeven appointed a special committee consisting of Commissioners Hillesland, Swenson, and Thompson to work with Commission staff and others to develop recommendations.

In response to Governor Hoeven's directive, the committee met November 20. The resulting recommendations were approved by the Commission December 7 and include:

- Expand the current rural ring dike cost-share policy to include all existing occupied rural homes, including those in rural subdivisions.
- Allow participation by land-owners threatened by flooding from either natural or man-made sources.
- For homes constructed after April 2002, provide cost-share assistance only to those participants whose homes are in compliance with local floodplain ordinances. If no local floodplain ordinances apply, an engineer or land surveyor must certify that the house is not located within a 100-year floodplain or is elevated at least one foot above the 100-year floodplain elevation.
- Require that a professional engineer design or endorse any deviation from approved design standards, including the installation of floodwalls.
- Consider eligible for cost-share assistance only that portion of a ring dike that is necessary to meet approved minimum design standards.
- Require information on the value of the home protected and limit state funding to the value of the home, or \$25,000, whichever is less.
- Require owners of ring dikes to sign waivers stating that they are entirely responsible for maintenance of the dike and are liable for any resulting damages.
- Allow incorporation of a roadway into a ring dike only when permission has been obtained from the entity having jurisdiction over the road and when the roadway section is at a height of at least two feet above the elevation of either the 100-year flood or the 1997 flood, whichever is higher.
- Require that all applicants request cost-share prior to any construction.
- Priority will be given to project proposals submitted to the Commission prior to June 1 of each year. ■



# THE WATER PRIMER

## Looking to explore North Dakota's water resources? . . .

. . . Then maybe you should consider:

### Lewis and Clark's Big Muddy Missouri River Cultural History Institute

Experience some of North Dakota's great historical and cultural sites and cultural history presenters at Lewis and Clark's Big Muddy Missouri River Cultural History Institute. Special presentations, on-site tours, hands-on activities, journaling, and games will expose participants to the life and times of the American Indian, Lewis and Clark, military, and Euro-American settlement periods. Set on the Missouri River at the Western 4-H camp near Washburn, North Dakota, there is no better opportunity to learn about the significance of the Lewis and Clark expedition and other Missouri River cultural history. The institute is also a great opportunity to help prepare you for the upcoming Lewis and Clark bicentennial observation.

The Lewis and Clark's Big Muddy Institute is worth four graduate credits through Minot State University and has been correlated to the North Dakota Content Standards in Mathematics, Science, Social Studies, and Language Arts. There is a \$40 fee payable to Minot State for the credits, and an additional \$200 fee for room, board, materials, and instructors. Participants are encouraged to apply for a full \$200 fee scholarship from their local county water resource district, their school for Eisenhower funds, or their local soil conservation district. The Lewis and Clark's Big Muddy Institute is scheduled for June 23-28, 2002.

### Summer Water Quality Institute

Experience and explore all aspects of North Dakota's water resources (wetland, groundwater, stream, and lake environments) at the Western 4-H camp on the Missouri River near Washburn. Participants will sample and analyze water quality and quantity variables, including computer based lab water quality testing. They will also learn about watersheds and watershed management and will be instructed in the use of Global Positioning Systems (GPS).

Participants will see North Dakota's major watersheds, water resources, and water users unfold before their eyes in a North Dakota rope map; search the Internet for water education materials; and participate in many hands-on activities that demonstrate how water quality education can be incorporated into all areas of curriculum. The summer of 2002 is the last time the Water Quality Institute will be offered, so don't miss this final opportunity to sign up.

The Water Quality Institute is worth three graduate credits through Minot State University, and like the Big Muddy Institute, has been correlated to the North Dakota Content Standards in Mathematics, Science, Social Studies, and Language Arts. A fee of \$40 is charged by Minot State for the three credits, and an additional \$150 is charged for room, board, materials, and instructors. Like the Big Muddy, scholarships for the entire \$150 fee are available from water resource and soil conservation districts, and school Eisenhower funds.

COMING SUMMER 2003 . . .

THE ALL NEW

### Explore Your Missouri River Watershed Institute

This new program, worth four graduate credits, will focus on contemporary Missouri River water management and use, and on watershed quality issues and concerns. The Institute will include visits and tours to major Missouri River water use and water issue sites. Participants will experience modern Missouri River hands-on activities, tours, presentations, and discussions (i.e., flood control, water storage, irrigation, fisheries, endangered species, bank stabilization, recreational, regulatory, water quality, etc.).

Additionally, participants will explore, sample, and analyze water quality and water quantity variables; use computer based labs; and receive instruction in the use of Global Positioning Systems (GPS).

The Explore Your Missouri River Watershed Institute is scheduled for the last week in July, 2003. Fee information is not yet available.

To enroll or for additional information on any of the multi-credit summer institutes, contact:

Bill Sharff,  
Director, ND Project WET  
ND State Water Commission  
900 East Boulevard Avenue,  
Dept 770  
Bismarck, ND 58505-0850  
Phone (701) 328-4833  
e-mail: bsharff@swc.state.nd.us ■