



## Office of State Engineer to develop new sovereign land management plan for ND

By Patrick Fridgen

An Attorney General Opinion that was released in January 2005, focused on the ability of land developers to construct wildlife habitat on sovereign lands for mitigation requirements. In that opinion, the Attorney General's Office stated, among other things, that "the state may allow land developers to construct wildlife habitat on Missouri River sandbars to satisfy federal mitigation requirements provided the state permit is issued under a comprehensive river management plan."

In response to that opinion, and following several discussions with members of the Attorney General's staff, the State Engineer determined it to be in the best interest of the state to pursue the development of a comprehensive statewide sovereign lands management plan – since no such plan currently exists.

So what land throughout the

state is going to be impacted by this plan, or what is meant by "sovereign lands"? Generally speaking, North Dakota's sovereign lands are those lands, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams. As part of the ongoing planning process, the state's inventory of navigable lakes and streams is being reevaluated. Thus, with the plan's release, a more definitive list of North Dakota's navigable waters, subject to regulation, will be available.

Also, as part of the planning process to develop a new sovereign land management plan, the State Engineer has established a technical working group, consisting of several state agency representatives. The idea being that in order to write a plan that adequately addresses all of the issues and resources that are impacted by the State Engineer's management of sovereign lands, it is important to bring in expertise from a wide range of perspectives. For example, on the

Missouri River alone, decisions affecting sovereign lands may, in many cases, also have impacts to endangered or threatened species, cultural resources, water supplies, and a bustling recreation industry.

With regard to the technical workgroup membership, state agencies currently involved include the: Water Commission, Office of State Engineer, Game and Fish, Health Department, Historical Society, Parks and Recreation, Garrison Diversion, Land Department, and the Attorney General.

The plan document itself is currently in the beginning stages of development. And, though changes may occur in the coming months, it is expected that the overall purpose of the plan will be to:

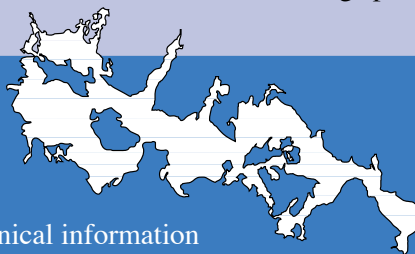
- 1) Satisfy the requirements outlined in the Attorney General's opinion;
- 2) Provide greater consistency in the management of sovereign lands and administration of regulations;
- 3) Serve as a supplement to the state's Administrative Rules concerning sovereign land management; and
- 4) Generally improve management of the state's sovereign lands for present and future generations.

A final draft of the plan is expected to be released this coming spring.

## Look for information about Devils Lake....

The State Water Commission has recently updated its website with a great deal of information on Devils Lake. Contained in the website are reports, maps, technical information about hydrology and water quality facts about the state's outlet, and many other types of water resource management information pertinent to the Devils Lake basin. Also contained is a thorough overview of the biota transfer issue, not only as it relates to North Dakota water projects, but to the entire region.

You can access the new and improved Devils Lake webpage at: <http://www.swc.state.nd.us/projects/devilslake.html>



## Additional repairs are expected for Sweetbriar Creek Dam

By Patrick Fridgen

In early October 2005, the Water Commission, in cooperation with the North Dakota Game and Fish Department and the Morton County Park Board, began the process of hiring a consulting firm to perform an in-depth analysis of Sweetbriar Creek Dam, located in Morton County – just west of Bismarck-Mandan. In general, the selected consulting firm will be asked to: conduct a geotechnical exploration and an engineering analysis of the current structure, identify and evaluate rehabilitation alternatives, prepare cost estimates, and assist in the design (or possibly completely design) the rehabilitation of Sweetbriar Creek Dam.

So why is this in-depth analysis

happening at Sweetbriar? Actually, the answer to that question can best be found by looking at what happened to a dam a couple hundred miles away, in the northeast corner of North Dakota.

In the spring of 2003, Mount Carmel Dam, in Cavalier County, experienced a relatively substantial failure that required months of reconstruction – including the installation of a new concrete chute spillway. Recognizing that the design of the structure was likely one of the key factors that lead to the March 2003 incident, the State Water Commission began the process of taking a closer look at other dam structures with similar designs throughout the state. One such structure is Sweetbriar Creek Dam.

During the course of the last couple decades, the Water Commission has documented many of the chronic problems that exist with Sweetbriar Dam today. But, as recently as last year, investigations by GEI Consultants found that embankment material was eroding through several areas of the dam. As a result, the Water Commission implemented several short-term emergency measures last December. However, because of the importance of the location of Sweetbriar Creek Dam, where Interstate 94 passes over the top of the embankment, more permanent solutions are necessary. For that reason, the Commission and its cooperating partners, have opted to pursue this most recent effort, to ensure that Sweetbriar Creek Dam continues to operate as safely as possible.

## Lemmon celebrates the arrival of Southwest Pipeline water

By Jim Lennington

On October 12, 2005, the city of Lemmon, South Dakota, rejoiced in the availability of Southwest Pipeline Project (SWPP) water through the Perkins County Rural Water System (PCRWS). Readers may ask, “How is it that a South Dakota community is receiving water from a North Dakota regional water project, that was funded with North Dakota tax revenues?” A little background answers this question.

The SWPP’s 1981 authorizing legislation provided for service to South Dakota, as long as the South Dakota users paid for the total additional costs of increasing the capacity of the pipeline to provide that service.

The PCRWS entered into a water purchase contract with the SWPP in 1996, after being in the planning stages for many years.

That contract provided the

PCRWS with 400 gallons of water per minute, and required them to pay the State of North Dakota \$4.5 million. This would compensate North Dakota for the additional pipeline into South Dakota, and also for the changes in the pipeline and infrastructure necessary to increase capacity for additional users.

In 1998 and 1999, the PCRWS paid the State of North Dakota a little more than \$866,000 for the increased capacity of pipelines in the Hettinger area as they were constructed. The PCRWS was finally approved for construction in 2001 and funding began in 2002.

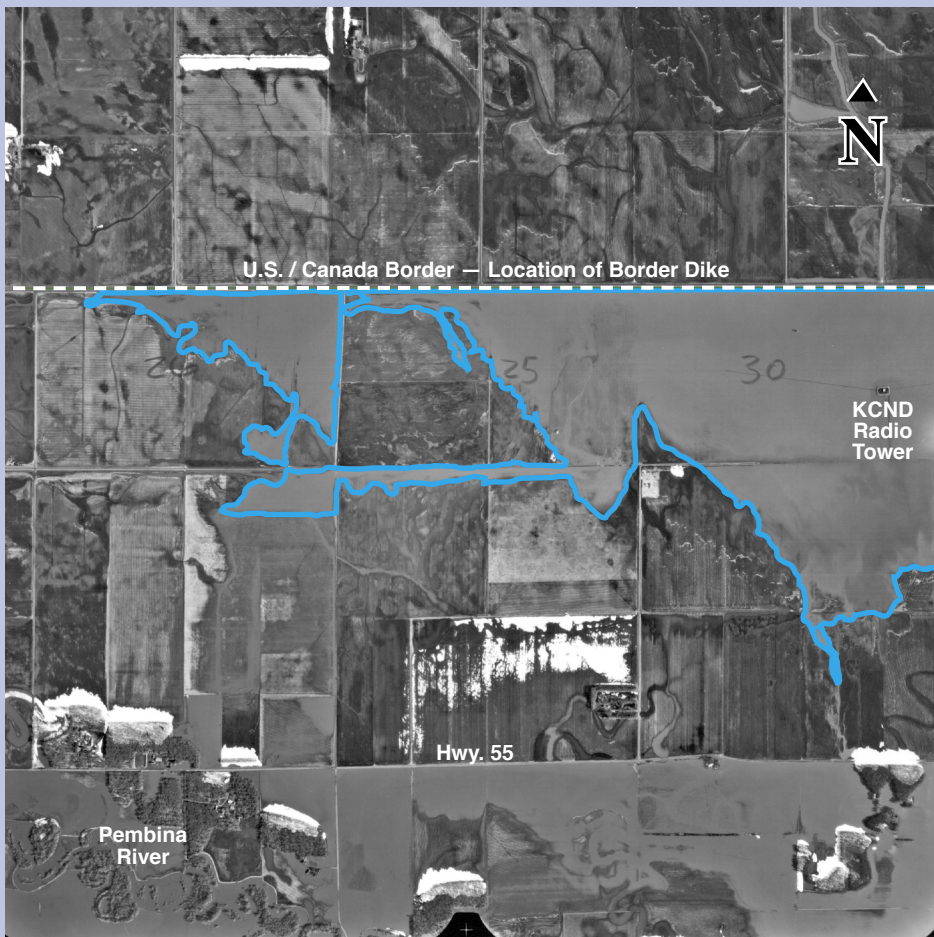
The State Water Commission (SWC) recognized that allowing the PCRWS to pay in installments while building their project as if they had paid the full amount up front, would eliminate a full year of construction time for the PCRWS. As a result, the SWC approved an amendment of the PCRWS water service contract,

allowing them to pay 22 percent of their federal appropriations each year until the \$4.5 million was paid. From 2002 through 2004, the PCRWS paid the State of North Dakota \$1,672,000 of the \$4.5 million debt.

In 2003, the PCRWS paid \$92,000 for a meter vault and piping extending the SWPP to the connection point right at the border between the states. By August of 2004, construction of the PCRWS had progressed to the point where people in South Dakota began using water from the SWPP.

As of August of 2005, water use by PCRWS has increased to about 900,000 gallons per month.

With the addition of Lemmon, population 1,398, water use should increase to about 5 million gallons per month and will undoubtedly increase as the PCRWS continues to develop, providing clean water to grateful South Dakotans.



This aerial photograph, taken on May 5, 1997, shows water (outlined in blue) being impounded by the border dikes. The location of this picture is approximately halfway between Neche and Pembina, North Dakota.

## Resolution sought for Pembina dikes issue

By Michael Noone

A decades-old water dispute between North Dakota and Manitoba appears to be making progress towards resolution.

At issue, is a dike built over 60 years ago, north of Pembina County, North Dakota, just across the Manitoba border, which government of-

icials in Manitoba consider to be simply a road.

Essentially, the problem is this: the slope of the land in this region is generally from southwest to northeast, and the construction of the dike in 1944, along with a series of lengthening and raising over the years, cuts right across this natural gradient, creating a serious flood-

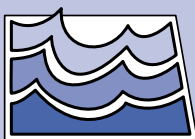
ing problem for landowners on the North Dakota side of the border. In wet years, and after heavy winters, the dike can back up floodwaters for miles into North Dakota. As you would imagine, this situation has caused protest on the part of officials and landowners in North Dakota.

Over the years, while the dike has been periodically raised and lengthened to where it is now almost 30 miles long, there have been numerous discussions between county officials, landowners on both sides of the border, the Governor's office, the Water Commission, and Manitoban government officials. The International Joint Commission (IJC) was also asked to review the situation, but that request was denied.

In 1956, a large drain to relieve flooding was jointly constructed through the dike by the Water Commission and the Rural Municipality (Canadian equivalent of a U.S. county). However, in 1964, that drain was unilaterally filled in by the Rural Municipality, leaving only small culverts that did little to reduce flooding south of the border.

In 2002, an agreement was reached between North Dakota and Manitoba to enlarge the culverts at the two western-most crossings to encourage more natural flow in the area. The culverts at one crossing were completed in 2003, but construction of the second was delayed until August 2005. Nevertheless, this still left the flooding problems along the eastern 25 miles of the dike.

As a result, in 2004, Pembina County pursued a lawsuit in Manitoba to have the dike completely removed or at least breached in critical locations. Pembina County is also asking for reimbursement of legal expenses.



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