

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

March 15, 1985

The North Dakota State Water Commission held a meeting on March 15, 1985, at the Old State Office Building in Bismarck, North Dakota. Governor-Chairman, George A. Sinner, called the meeting to order at 10:00 a.m. and requested Secretary, Vernon Fahy, to present the agenda.

MEMBERS PRESENT:

George A. Sinner, Governor-Chairman
Florenz Bjornson, Member from West Fargo
Alvin Kramer, Member from Minot
Ray Hutton, Member from Oslo, Minnesota
Bernard Vculek, Member from Crete
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBERS ABSENT:

Kent Jones, Commissioner, Department of Agriculture, Bismarck
Guy Larson, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 30 persons in attendance interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official copy of minutes).

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

CONSIDERATION OF MINUTES
OF DECEMBER 5, 1984 MEETING -
APPROVED

The minutes of December 5, 1984 were considered, and approved by the following motion:

It was moved by Commissioner Kramer, seconded by Commissioner Hutton, and unanimously carried, that the minutes of the December 5, 1984 meeting be approved as circulated.

CONSIDERATION OF COOPERATIVE
AGREEMENT FOR CORRECTIVE PLAN
FOR AGRICULTURAL LEVEES ON
THE RED RIVER
(SWC Project No. 1638)

Dakota against various Minnesota landowners, associations and corporations responsible for construction of dikes along the Red River in Minnesota. A memorandum summarizing these events is attached hereto as APPENDIX "A".

David Sprynczynatyk, Director of Engineering for the State Water Commission, used several maps to assist in recapping the events since 1975 leading up to the initiation of a lawsuit by the State of North

Rosellen Sand, Assistant Attorney General for the State Water Commission, explained a proposed settlement of the lawsuit, which is also detailed in APPENDIX "A".

Mr. Sprynczynatyk discussed and explained the technical details of a draft Cooperative Agreement for the formulation of a corrective plan for agricultural levees between river mile 236 and 287 of the Red River of the North. The draft Cooperative Agreement is attached hereto as APPENDIX "B". Mr. Sprynczynatyk stated that the Corrective Plan is a necessary step in the completion of a compact which presently exists between the States of Minnesota and North Dakota and would set up a technical committee of four members (two from each state). The committee would evaluate the effects of various items (including roadways, bridges, railroad crossings, drainage, etc.) upon a 43,000 cubic feet per second evaluation agreed upon by the parties to the agreement (Minnesota Department of Natural Resources, North Dakota State Water Commission, Middle River-Snake River Watershed District, Walsh County Water Resource District and the Grand Forks County Water Resource District). The committee would then make findings concerning the allowable elevations and locations of the dikes on the Minnesota side of the Red River based on 43,000 cubic feet per second evaluation. The intent is that the dikes on the Minnesota side would be at the 43,000 cubic feet per second level. The North Dakota dikes would be one foot below the elevation of the Minnesota dikes.

Mr. Sprynczynatyk stated that the technical information provided by the Corps of Engineers indicates that the Corrective Plan would lower the dikes on the Minnesota side an average of 2½ to 3 feet and some of the remaining North Dakota dikes would be lowered and some could be raised. The Plan would not require that dikes be built if landowners did not want them.

Commissioner Bjornson expressed concern if there is a long-range implication that North Dakota will continue on a process of water storage in order to make this equitable for the North Dakota side of the river.

Mr. Sprynczynatyk responded to the concern that in 1976 the states of North Dakota and Minnesota entered into a compact that addressed the problems within the dike area and the two states agreed to work together to develop criteria that would address the problem. In 1980, the two states and local entities entered into an

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amendment to that compact which spelled out the criteria that would be used for construction of the dikes and the amendment stated that once the dike issue is resolved by the development of a corrective plan, the two states would continue to work together to resolve other issues, such as storage in the watershed, roadways, bridges, railroad crossings, etc.

In discussing the Corrective Plan, Rosey Sand indicated that the 1976 Compact does require that a Corrective Plan be developed. She said from a legal standpoint the adopting of the Plan will greatly decrease the litigation time and expense and greatly increase the ease with which North Dakota can enforce the agreement reached.

Mr. Charles Zahradka, Chairman of the Walsh County Water Resource Board, stated that after ten years of negotiating this is the best proposed plan that is available. His board is willing to go along with the Plan. He said the county cannot finance the lawsuit any further. On March 13, 1985, the Walsh County Water Resource Board adopted a resolution agreeing to enter into the Cooperative Agreement for the formulation of a corrective plan, contingent upon the condition that each of the other proposed parties to the agreement also execute the agreement; and, that the executing of this proposed agreement is entered only on behalf of the Walsh County Water Resource District and it is not the intent of this resolution to in any way compromise the rights, remedies or action of individual Walsh County farmers that are or may be parties in future lawsuits seeking damages on account of said dikes.

Mr. Vincent Reed, Secretary-Treasurer of the Grand Forks County Water Resource Board, expressed some of the diking concerns of the local farmers. He indicated that the Grand Forks County Water Resource Board did approve the acceptance of the Cooperative Agreement, but somewhat reluctantly. He noted this does effect the second law suit that is against the Grand Forks County Water Resource District and several farmers along the Red River that have dikes, and the Board would like to see them all disposed of. He said the Board does not want to be responsible in any way for the Walsh County dikes.

Mr. Daniel Twichell, Attorney, commented on the proposed Cooperative Agreement indicating this has been discussed in detail with the Attorney General and feels this is the best possible solution to the problems. Mr. Twichell concluded his comments by recommending adoption of the Cooperative Agreement.

Mr. Dan Narlock, President of the Grand-Walsh Flood Control Association, indicated there are approximately 200 members in the organization representing about 25,000-40,000 acres of land, which was organized as a result of the 1975 flood to develop a formality for the construction of dikes to save North Dakota farmland should a similar flood of 1975 occur. He gave the Commission members an opportunity to view pictures of damages taken during the 1978 flood. He said ring dikes are absolutely essential. The members of Grand-Walsh are not 100 percent in support of the proposed agreement but feel at the time this is the best possible solution and the organization will support the agreement.

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Mr. Gary Babinski, member of Board of Directors of Grand-Walsh Flood Control Association, and a farmer in Walsh and Grand Forks Counties, stated that the organization agrees that it does not seem fair to North Dakota that the North Dakota dikes should be one foot lower than the Minnesota dikes. After many years, the proposed agreement appears to be the best solution and supports the adoption of the agreement. He indicated that in his personal situation, in 1978 he had sand bags three feet high around his home to keep the water out and in 1979 he was forced out of his home for four weeks. He said if the elevation could be maintained at 43,000 cfs he won't have any water in his yard although his farmland will be flooded.

Commissioner Hutton indicated that he does agree with most of the comments that have been expressed but noted there are differences in the valley and it depends on how far downstream you live. He expressed concern that the proposed agreement may lock the State into a fixed position. He asked about the degree of protection that can be afforded the farmers in the event a similar flood such as 1975 occurs.

Secretary Fahy indicated this is one of the areas that will be evaluated by the technical committee that will be set up if the Corrective Plan is adopted.

Mr. Nick Spaeth, Attorney General, indicated he has reviewed the proposal that is being considered and feels it is the best position North Dakota has been in for ten years. He referred to two risks if the agreement is not signed: 1) if the agreement is not signed by all of the parties the only recourse is to go ahead with the litigation that has already been commenced; and 2) if the matter goes to court, there is the possibility of floods similar to the 1975 flood occurring before the matter is resolved by the courts. He said once the agreement is signed it sets forth a process of finite time limits that will go forward and the staffs of the Attorney General and the State Water Commission will be directed to watch very closely to make certain that it is implemented. If there is any indication of bad faith on the other side, action will be taken. Mr. Spaeth stated this is not going to be a situation where something is signed and then forgotten.

Governor Sinner questioned if there are any given points in time whereby the parties to the agreement will review the agreement, and do all parties have to agree if the agreement is to be amended?

Mr. Spaeth replied that any point in time the parties to the agreement want to alter the agreement, they may do so provided all parties agree to the alteration. There would not be a valid change in the agreement until all of the parties have agreed to the change.

Commissioner Hutton stated since the proposed Cooperative Agreement was only distributed at this meeting and the Commission members have not had an opportunity to review it, he suggested that the Commission postpone action at this meeting and place it on the agenda for the next meeting.

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Secretary Fahy stated that the following schedule has been developed for the proposed agreement: March 20, 1985 the Attorney General and State Water Commission staff members will meet with the Minnesota defendants, and in another meeting the same day with the North Dakota landowners. The Middle River-Snake River Watershed District will meet on or before March 25 to act on the proposed corrective plan. On March 27, all parties to the plan will meet in Grand Forks to execute the agreement if all parties have agreed to sign.

Governor Sinner indicated that it appears from this schedule that it will be necessary for the State Water Commission to take action on the proposed Cooperative Agreement for a corrective plan for the agricultural levees on the Red River prior to March 27. The Governor suggested, and it was agreed to by the Commission members, that a telephone conference call meeting be scheduled for March 25, 1985, at 12:45 p.m. to further consider and take action on the proposed Cooperative Agreement.

It was moved by Commissioner Hutton, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission postpone action on the proposed Cooperative Agreement for a corrective plan for the agricultural levees on the Red River, and that a telephone conference call meeting be scheduled for March 25, 1985, at 12:45 p.m. for further discussion and to take action on the proposed Cooperative Agreement.

CONTINUED DISCUSSION ON SHEYENNE
RIVER FLOOD CONTROL STUDY -
PROPOSANTS TO REQUEST STATE
ASSISTANCE IN COORDINATING
EFFORTS OF LOCAL BENEFICIARIES
TO SATISFY REQUIREMENTS FOR
MEETING NON-FEDERAL COST
SHARING OF PROJECT
(SWC Project No. 1344)

tion it can get to eliminate that is to have proper flood control for the city.

Senator Clayton Lodoen, West Fargo, appeared before the Commission and stated that since 1952 the City of West Fargo and the eastern area of the state have been trying to solve the flooding problems. He said that 75 percent of the City of West Fargo is in the floodplain and are paying high rates for flood insurance premiums and the only protec-

Senator Lodoen discussed the Corps of Engineers recommended plan for Sheyenne River flood control which consists of three major components for federal implementation: 1) 13.1 miles of levees and a 4.0 mile diversion channel at West Fargo/Riverside; 2) 7.6 miles of flood diversion channel from Horace to West Fargo; and, 3) a five-foot raise of the Baldhill Dam flood control pool. He noted that the Sheyenne Diversion Committee has been studying this project for approximately eight years to determine what the ultimate results should be. Although the recommended diversion channel at West Fargo/Riverside was not the city's first priority that was the final recommendation of the Committee. He said this component will be a considerable expense to both cities.

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In order for Congress to proceed with consideration for funding of the entire plan for the Sheyenne River Flood Control project, it is essential to have a local sponsor agree to pay the non-federal costs associated with the project. Senator Lodoen requested that the State Water Commission consider being the project sponsor.

Secretary Fahy explained that the project sponsorship will be handled differently from the usual Corps of Engineers projects because the State cannot become liable for expenditures it does not have in its budget. He stated that the proposed Corps of Engineers project is estimated to cost \$40.4 million and could be under construction as early as 1988. The non-federal costs of the project would be approximately \$14.2 million. Secretary Fahy said that if the Commission were to approve the request made by Senator Lodoen to become involved in project sponsorship, the procedure would be that the staff would begin to coordinate agreements with local entities for total assumption of the non-federal obligations for the project and once this was completed the State Water Commission would then use these agreements as instruments to satisfy the Corps of Engineers claims for non-federal cost sharing. He noted that local entities may include the City of West Fargo, City of Riverside, Southeast Cass Water Resource District, Cass County Commission, Upper Sheyenne River Joint Water Resource District, Red River Joint Water Resource District, and others. Secretary Fahy said the agreement with the local entities could be considered sub-agreements to the "project sponsorship" agreement with the Corps of Engineers and the sub-agreements would satisfy all of the obligations required of the State by the Corps of Engineers.

Colonel Raap from the St. Paul Corps of Engineers, updated the Commission members on the Corps's proposed project for the Sheyenne River Flood Control, and concluded by saying it is absolutely essential for the project to move forwards and in order for Congress to proceed with consideration for funding that an overall project sponsor be designated. He urged the State Water Commission to consider assuming this sponsorship.

Mr. Roger Larson, representing the Harwood Area Water Management Association, stated this Association was organized to keep area residents informed of what was going on with the Sheyenne River Flood Control project. He noted that the project, as proposed, will not benefit the residents and landowners north of Harwood, but it will definitely benefit the City of West Fargo. Mr. Larson filed a petition with the Commission which expressed area residents concern and objection to the authorization, undertaking and completion of a Sheyenne River Flood diversion project around the cities of West Fargo and Riverside without a firm commitment, plan and authorization to develop dams and projects on the Maple and Sheyenne Rivers in North Dakota which will reduce substantially the flooding in the lower Maple and Sheyenne Rivers' floodplain.

Mr. Larson stated that the Association agrees that dams and proposals for other structures to restrict the flow of the waters, therefore preventing flooding, will be a better way to spend the \$40 million tax payers dollars and will benefit all of the

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people in the lower Sheyenne and Maple River valleys as well as the cities of West Fargo and Riverside. He said these proposals could also benefit the people on the Red River to the north. He said there are now proposals for tributary dams and one main stem dam on the Maple River alone that would greatly benefit the lower Maple and Sheyenne River valleys and there are many probable areas for dams on the Sheyenne River tributaries and also the once proposed main stem dam in the Sand Hill area of eastern North Dakota.

The Harwood Area Water Management Association expressed in their petition the fact that some serious thought should be given to the restoration of wetlands such as reimbursing the people that do this. Everyone should be educated to the fact that water stored on otherwise useless land restores subsoil moisture in the close surrounding area as well as replenishing the ground-water aquifers, therefore, benefitting everyone.

Mr. Larson concluded his presentation by saying there is a great deal of opposition to the West Fargo diversion proposal and until there is more consideration given to the area north of West Fargo and Riverside they cannot support the project as proposed.

Mr. Fred Selberg, Chairman of the Southeast Cass Water Resource board, stated they have met with the Congressional Delegation and have been assured everything possible will be done to appropriate funds for a dam on the mainstem of the Maple River, which according to the engineers would reduce flooding in the area by 30 percent. Mr. Selberg said construction of this dam would be of considerable help to his farmland which is located along the Sheyenne River and he has lost hundreds of thousands of dollars throughout the years trying to attempt to farm these lands.

Mr. Selberg said since 1975 he has been a member of several boards which have all studied this problem and is definitely a priority matter. He said it is a matter of cooperating to get the dam on the Maple River built to protect the people north of West Fargo, and stated that the West Fargo diversion project is also essential.

Mr. Jake Gust, West Fargo City Commissioner, indicated that West Fargo's position on this issue is that the city supports the Corps of Engineers proposal in its entirety including all three of the components. He said that the proposed dam on the Maple River is not a part of the plan that the Corps is presenting, however, he did not feel there would be any problem in getting the City of West Fargo to support that kind of flood protection for the people downstream of West Fargo.

Colonel Raap responded to discussion relative to the proposed dam on the Maple River in that the Corps has not been asked to become involved in this project and at this time does not know what the benefit-cost ratio would be. He said that in the Fargo-Moorhead Urban Study recently completed it was recommended that several small flood control projects for the area were feasible and that the study recommended these projects be pursued.

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Mr. Twichell indicated that flood control for the Maple River area needs to be addressed and said funding has been implemented for the engineering for a proposed dam on the Maple River. They are attempting to work with the Congressional Delegation to see if there is any way that they can get funds that can be used locally for this proposed project.

Mr. Keith Monson, representing the Upper Sheyenne River Joint Board, said a number of studies have been done in the Baldhill Dam area. He discussed alternatives that area residents are looking at in their opposition to one of the three components of the Corps of Engineers recommended plan for Sheyenne River flood control of raising the flood control pool of Baldhill Dam five feet. One of the alternatives discussed by Mr. Monson included a dam on Baldhill Creek.

Mr. Dan Olmstead, a member of the Harwood Area Water Management Association, expressed concern for flood protection in this area.

Roberta Johnson, Harwood Area Water Management Board, indicated her concern relative to priority and the timing of the three components and said the area where she lives needs flood protection while the other components are being completed.

Mr. Fred Selberg indicated he feels the attitude in the area has changed and reiterated the need for cooperation with all parties concerned.

It was moved by Commissioner Bjornson, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission proceed with the arrangements to coordinate the agreements with local entities for total assumption of the non-federal obligations for the Sheyenne River Flood Control Project. When this has been completed, the State Water Commission would then use these agreements to satisfy the required non-federal obligations to the U.S. Army Corps of Engineers.

CONSIDERATION OF REQUEST FROM
CITY OF ENDERLIN FOR FINANCIAL
ASSISTANCE IN MEETING NON-FEDERAL
COSTS OF FLOOD CONTROL PROJECT
(SWC Project No. 1657)

Project. He said the city has indicated they have been informed by the Corps that there was a need for additional non-federal funds for the project.

Dave Sprynczynatyk stated that the City of Enderlin has requested additional participation from the State Water Commission in the non-federal costs for the Corps of Engineers Enderlin Flood Control

Mr. Sprynczynatyk said that initially it was estimated that the non-federal costs for the project would be approximately \$144,000. The State Water Commission received a request from the city for assistance in meeting the non-federal costs in February,

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1984, and on February 21, 1984 the Commission did grant \$72,000 toward that project. In October, 1984, the Corps informed the city that the revised non-federal costs for the project would now be approximately \$300,000 which was an increase of \$158,000 over the earlier amounts. The main reason for this is the increased bid prices over the Corps earlier engineering estimates.

Mr. Sprynczynatyk said in November, 1984, the State Water Commission received a letter from the city requesting that the State Water Commission consider providing an additional \$40,000 for this project. Since the letter was received from the city in November, the Corps has revised the project in order to reduce the non-federal costs at this time. The Corps has deleted some of the features for the project and has indicated the city will have to do these in the future on their own.

Secretary Fahy stated that since this project is vital to providing flood control for the City of Enderlin, it is the recommendation of the State Engineer that the Commission grant an additional \$39,000 towards the Enderlin Flood Control Project, contingent upon the availability of funds. In total, this would bring the State's contribution for this project to \$111,000.

Mr. Ed Morrow, Mayor of the City of Enderlin, discussed the entire project and explained the reasons for the city's request for the additional funding from the State Water Commission in the amount of \$39,000. He said this is the final stage and the key to the whole project. He urged the Commission's favorable consideration for an additional \$39,000 for the Enderlin Flood Control Project.

It was moved by Commissioner Bjornson, seconded by Commissioner Vculek, and unanimously carried, that the State Water Commission approve an additional \$39,000 for the Enderlin Flood Control Project, contingent upon the availability of funds.

CONSIDERATION OF REQUEST FROM
CITY OF FARGO FOR FINANCIAL
PARTICIPATION IN COSTS OF
FLOODPLAIN MANAGEMENT STUDY
(SWC Project No. 1751-F)

A request has been received from the City of Fargo for the Commission's consideration for cost sharing towards the Floodplain Study of the Red River of the North in Fargo.

Dave Sprynczynatyk stated that in March, 1983, discussions began regarding a re-evaluation of the floodway and floodplain on the Red River in Fargo, North Dakota, and Moorhead, Minnesota. These discussions were between representatives of the two cities, the State of North Dakota, State of Minnesota, and the Corps of Engineers. The reason for consideration of the re-evaluation was that everyone agreed that the 1972 data now being used for floodplain management was no longer valid. In June, 1983, a verbal request was received from the City of Fargo to cost share with them and the Corps of Engineers in a re-evaluation of the Red River Floodplain. At that time, the State Engineer

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indicated to the city that the State Engineer's authority for floodplain management would allow the state to share in the cost. No agreement was finalized then, because of the need for the Corps to develop its plan of study.

Mr. Sprynczynatyk indicated that since that time the Corps has further developed its scope of work and recently indicated that the total cost of the study would be \$70,000. They indicated that the non-federal cost to North Dakota would be approximately \$9,800, and the study would be completed by the Corps by April 30, 1985.

It was the recommendation of the State Engineer that in view of the need for adequate data for floodplain management and the inclusion of floodplain management funds in the Contract Fund, that the State Water Commission now cost participate in this floodplain study in an amount not to exceed \$7,350, or 75 percent of the non-federal costs of the study, contingent upon the availability of funds.

It was moved by Commissioner Kramer, seconded by Commissioner Vculek, and unanimously carried, that the State Water Commission approve cost participation towards the Floodplain Study of the Red River of the North in Fargo in an amount not to exceed \$7,350, contingent upon the availability of funds.

CONSIDERATION OF REQUEST FROM
SOUTHEAST CASS WATER RESOURCE
BOARD FOR COST SHARING ON
SNAGGING AND CLEARING OF
SHEYENNE RIVER
(SWC Project No. 720)

A request has been received by the State Water Commission from the Southeast Cass Water Resource Board to cost share in the snagging and clearing of a portion of the Sheyenne River within Cass County involving about 50 miles of the river

for purposes of reducing flood stages.

Mr. Sprynczynatyk indicated the request was brought to the attention of the Commission at its December 4, 1984 meeting, and at that time the project sponsors indicated that they wished to proceed with the project this winter because of the desirability of completing the project on ice. Because of the status of the Contract Fund, action was deferred until the next meeting.

Mr. Sprynczynatyk said presently there is an agreement between the State of North Dakota and Cass County for the county to maintain the Sheyenne River as a part of its commitment towards the Corps of Engineers flood control project at the Baldhill Dam. In 1947, the State Water Commission agreed to serve as the project sponsor for the Baldhill Dam project. In 1965, Cass County, Richland County and Barnes County agreed to assume these responsibilities for the State. The agreement states that the county will maintain the channel and the county shall be responsible for the costs.

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Secretary Fahy indicated that snagging and clearing river channels is an expensive annual maintenance problem and even after major snagging and clearing projects are undertaken it is necessary to go back every few years and re-do the work. Thus, it may be reasonable to expect local entities to request the State to share in the cost of projects like this even after agreements such as the one in 1965 have been entered into. Secretary Fahy stated the project has been completed and the final cost provided by the project sponsor totals \$95,860. The cost sharing policy has been that 25 percent of the construction costs of a project such as this be paid by the State Water Commission, which in this case would be \$23,965.

It was the recommendation of the State Engineer that the State Water Commission cost share in an amount not to exceed \$23,965 towards the snagging and clearing of the Sheyenne River within the Southeast Cass Water Resource District, contingent upon the availability of funds.

Mr. Fred Selberg, Chairman of the Southeast Cass Water Resource Board, indicated that the project has been completed and the farmers in the area are very pleased with the results. He explained the procedure used in the snagging and clearing project and urged the State Water Commission to approve cost sharing.

Secretary Fahy said that on a delayed snagging and clearing project, counties can see that if annual maintenance work was done the costs would be considerably less, and urged that the local county water resource boards will see fit to watch very closely to keep the channel clean and not let it build up as experienced in this project.

It was moved by Commissioner Kramer, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission approve \$23,965 towards the snagging and clearing of the Sheyenne River within the Southeast Cass Water Resource District, contingent upon the availability of funds.

CONSIDERATION OF AGENCY FINANCIAL STATEMENT

bers the projects authorized listing, through February 28, 1985.

Matt Emerson, Assistant Secretary for the State Water Commission, reviewed with the Commission mem- and the program budget expenditures

Governor Sinner requested an updated geographic breakdown of the projects authorized.

PROGRESS REPORT ON SOUTHWEST PIPELINE PROJECT (SWC Project No. 1736)

current biennium was the completion of the Interim Study for the project, final design for the project, and to acquire the necessary easements,

Dave Sprynczynatyk updated the Commission members on the progress of the Southwest Pipeline Project noting that the main thrust during the

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lands, right-of-way, etc. In regards to the engineering for the project, Mr. Sprynczynatyk stated progress is on schedule and is approximately 70 percent complete. Relative to land easements and right-of-way, the lands have been acquired that will be purchased in fee title for the pumping plants, treatment plant, etc. Approximately one-third of the easements for the right-of-way for the pipeline have been acquired, and it looks very promising that most all of the easements will be obtained in the current biennium.

STATUS REPORT ON GARRISON
DIVERSION PROJECT
(SWC Project No. 237)

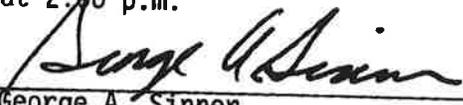
Governor Sinner and Secretary Fahy updated the Commission members on the status of the Garrison Diversion Project activities, and commented on the status of legislation in Congress to approve what the Garrison Diversion Unit Commission has recommended. The Governor said we must move forward and insist that the Commission's findings be accepted.

He said there appears to be a general acceptance of North Dakota's municipal and industrial proposal. Secretary Fahy indicated that he has received a request from Congressman Dorgan's office for staff to develop an administrative plan to see how the North Dakota proposal for municipal and industrial requirements would work, and if they are satisfied with the plan they may write that as part of the legislation. Governor Sinner requested that when this plan has been completed copies be forwarded to the Commission members.

STATE WATER COMMISSION
PROFESSIONAL STAFF CONCERNS

Secretary Fahy briefed the Commission members on the recent resignations of four staff professionals not because of agency dissatisfaction but because firms and organizations have offered these professionals increases of from 26 to 48 percent in salary and fringes. He said there exists and will continue to exist a very high demand for hydrologists and Water Resource Engineers with the kinds of skills which we develop within the State Water Commission. He said he is working with the North Dakota Personnel Board to try and get them to examine these disciplines that are in high demand and at least compare them to disciplines within our region, rather than to psychologists, librarians and purchasing agents. He said we must find a way to examine realistically the need for meeting market demands for professional employees or live with the consequences of not doing so.

It was moved by Commissioner Bjornson, seconded by Commissioner Schank, and unanimously carried, that the meeting adjourn at 2:00 p.m.


George A. Sinner
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer

March 15, 1985

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE March 15, 1985 PLACE Bismarck, N. Dak.

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Roberta Johnson	RR 2, Box 172, Fargo	Harwood Area Water Mng Board
Kay Lindblad	RR 2 Box 171 Fargo	Harwood Area Water Mng Board
Charles E. Mummery	R+5 Bismarck, N.D.	USDA - SCS
J. T. Fay	523 N. 11 th Bismarck	SWC Staff
Don Simpson	Bismarck	US Fish & Wildlife Service
Vern Carlson	Park River ND	Walsh Co. W.R.D.
Hilary Feltman	Montez, N. D.	Walsh Co. W. R. D.
Charles Ahradak	Lantern, No. Wahki	Wahki Co. W. R. D.
E. Johnson	Enderlin, N.D.	City
Witch B. Rapp	Enderlin, N.D.	City
David M. Weiss	West Fargo	S.E. - CASS W. R. D.
David Spry	Bismarck	State Water Comm.
Paul Sand	"	SWC
John J. Cichy	"	SWC
Cary Backstrand	"	"

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Vincent T. Reed	211 Tinton Ave Grand Forks, N.D. 58201	Grand Forks County Water Resource District
Don J. Marlock	Oslo, Minn.	Pres. Grand Walsh
Carl L. Osowski	West Oslo, Minn.	Div. Grand Walsh
Gary Babinski	Minto, ND.	Director Grand Walsh
Fred Helberg	Harwood ND	S.E. Cass Resource Dist
Robert H. Brostvang	RT 3, Fargo	S.E. Cass Resource Dist
John Gust	814 Delores Dr.	West Fargo Commission
Kip Moore	West Fargo	Moore Engineering
Louis Kowalski	U.S. Army Corps of Engs St. Paul, MN	St Paul District
Col Ed. Rapp	St Paul MN	USAED St. Paul
Don Olmstead	RT 2 Box 170 Fargo ND	Harwood Area Water
Chris Larsen	RT 2 Box 174 Fargo, ND	HARWOOD AREA WATER MANAGEMENT BOARD
Roger Larsen	RT 2 Box 174 FARGO, ND.	HARWOOD AREA WATER MANING Bd
L. Andy Moore	821 E. Interstate Ave, Bis.	U.S. GEOLOGICAL SURVEY - WRD



North Dakota State Water Commission

GOVERNOR GEORGE SINNER
CHAIRMAN

VERNON FAHY
SECRETARY & STATE ENGINEER

MEMO TO: Governor Sinner, Chairman, and State Water Commission Members
FROM: State Water Commission Staff
RE: Red River Dikes - Chronology of Events; Background of Proposed
Corrective Plan - SWC Project #1638
DATE: March 13, 1985

This memorandum summarizes the events leading up to the initiation of a lawsuit by the State of North Dakota against various Minnesota landowners, associations and corporations responsible for construction of dikes along the Red River in Minnesota. Further, it explains the proposed Corrective Plan and a proposed settlement of the lawsuit (Exhibits A and B).

1. First of farm dikes constructed in 1975.
2. Corps of Engineers prepared Preliminary Analysis of farm dikes - published in 1975.
3. North Dakota and Minnesota entered into joint and cooperative agreement November 1976. Joint management and regulation, adoption of criteria, and removal of non-conforming dikes as expressed in agreement were considered to be essential for health, safety, and welfare of citizens on both sides of the Red River.
4. Development of diking criteria began after execution of 1976 agreement and continued through 1977.
5. Corps of Engineers published report entitled "Red River of the North - Main Stem - Hydrologic Data" in October 1977.
6. North Dakota and Minnesota brought the criteria which had been developed to public hearing, April 1978.
7. Minnesota hearing examiner ruled, July 1978, that dike criteria could be legally promulgated, and that the criteria were reasonable and necessary. Recommended an 18-month stay of enforcement of criteria to existing dikes.

8. State Engineer Vern Fahy expressed objection, October 3, 1978, to the 18-month stay recommended by the Minnesota hearing examiner.
9. Minnesota indicated by response, October 18, 1978, that it would consider the State Engineer's objection to the recommended 18-month stay.
10. Governor Link requested a meeting with Governor Quie to discuss Red River situation. Meeting held on June 8, 1979.
11. On June 8, 1979, Governor Link and Governor Quie agreed to issue Executive Orders to:
 - a) Develop new criteria in conjunction and cooperation with local officials by August 15, 1979.
 - b) Develop procedures for addressing existing dikes by August 15, 1979.
 - c) Impose moratorium on reconstruction of any breached dikes pending adoption of new criteria.
12. Meetings held on June 20, July 2, July 12, and July 17 to discuss criteria. New criteria developed.
13. Governor Link and Governor Quie met in Minnesota to hear progress reports. Governors express approval of new dike criteria.
14. NDSWC officially adopted dike criteria on August 25, 1979.
15. Minnesota Department of Natural Resources officially promulgated and published dike criteria in September 1979.
16. August 1979 through January 19, 1980. Negotiations to amend joint and cooperative agreement underway.
17. First Amendment to the Joint and Cooperative Agreement signed by Governor Link and Governor Quie in February 1980. The amendment required local water management agencies to develop a corrective plan for those areas with existing dikes.
18. Corps of Engineers completed a sensitivity analysis to determine what effect loss of storage has on river flows, in May 1980.
19. Corps of Engineers completed an analysis of the modifications to the existing dikes that would limit stage increases to $\frac{1}{2}$ foot for the 1 percent chance flood (100 year).
20. Local water management agencies (Walsh County Water Management District, Grand Forks County Water Management District, and Middle River-Snake River Watershed District) and representatives from the North Dakota State Water Commission and Minnesota Department of Natural Resources held meetings on July 2, July 22, August 27, September 24, October 9, December 18, 1980 and February 10, 1981.

21. On August 18, 1980, engineers representing the local water management agencies, North Dakota State Water Commission and Minnesota Department of Natural Resources, met with the Corps of Engineers in St. Paul, Minnesota, to discuss problems concerning the calibration of the computer model, overbank capacity and differences in field data.
22. At the February 10, 1981 meeting, the Grand Forks and Walsh County Water Management Boards passed a resolution calling for dike elevations of 1 foot above the 1975 observed high water line. The Middle River-Snake River Watershed Board indicated that they may be agreeable to a dike elevation that would provide Minnesota with protection up to 43,000 cfs by strategically locating spillways that would allow spill over on the Minnesota side. What elevation that would be is yet to be determined.
23. At the March 10, 1981 meeting, the Middle River-Snake River Watershed District presented a position paper listing six areas that they felt should be part of any corrective plan. Paragraph #2 stated, "the corrective plan should allow both sides the option of constructing levees to provide protection up to a discharge of 43,000 cfs, assuming both sides will at some future date have equal protection". The North Dakota Water Management Districts rejected this concept and requested that 35,000 cfs protection be analyzed.
24. At the March 26, 1981 meeting, the latest Corps of Engineers computer runs were reviewed. They included 43,000 and 35,000 cfs protection for both sides of the river and the same degree of protection for the Minnesota side only. The Middle River-Snake River Watershed District still favored a corrective plan that would provide 43,000 cfs protection for both sides of the river, a plan that has been rejected by the North Dakota boards. The Middle River-Snake River boards suggested that they may be agreeable to a dike elevation on the Minnesota side at the 1978 observed flood level if assurances were given that the North Dakota dikes were not to be raised or new ones constructed. This would give Minnesota approximately 55,000 cfs protection. This plan was also rejected by the North Dakota boards as unreasonable. The meeting ended without any agreement by the boards. The North Dakota boards agreed to a statement they feel reflects a compromise and calls for 39,000 cfs protection for Minnesota with no further dike construction on the North Dakota side.

After the North Dakota boards adopted this statement, Minnesota refused to move from its position of 43,000 cfs protection on both sides of the river. In May and June of 1982 the lawsuit mentioned above was initiated in State District Court. It was removed to Federal District Court by the defendants. Since April of 1983 we have been negotiating

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with the defendants to try to reach an acceptable compromise and thereby avoid the expense of litigating the lawsuit. In May of 1983 we made our first offer to the defendants. Basically, that offer would have allowed the Minnesota dikes to be maintained at the elevation allowed by the compact. This was unacceptable to the defendants and they countered with an elevation giving them 43,000 cfs protection assuming equal dikes on the North Dakota side of the river. We then countered with the 43,000 cfs elevation assuming no dikes on the North Dakota side and later, 43,000 cfs assuming North Dakota dikes one foot lower than the Minnesota dikes. A question arose as to how the elevations would be established, what criteria would be used, what setbacks would be necessary, etc. Thus an amendment to the North Dakota-Minnesota compact was proposed. It was later determined that an interagency agreement among the Minnesota Department of Natural Resources, North Dakota State Water Commission, Middle-Snake Watershed District, Grand Forks County Water Resource District, and Walsh County Water Resource District.

The interagency agreement, except for time frames, is the same as the amendment to the compact initially proposed by the plaintiffs (North Dakotans). Basically, it would set up a technical committee to evaluate and determine the elevation of the dikes at a 43,000 cfs flow; determine any exceptions (e.g., Holterville) to the elevations or realignment; consider the effect of drainage, bridges, roadways, etc.; and develop a plan and a time frame for implementation. The technical committee would consist of four engineers, two from Minnesota and two from North Dakota. Agreement on any finding by any three would be binding upon the parties to the agreement. This agreement would not lead to a renegotiation of

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dike levels as occurred in the late 70s and early 80s. Under this agreement the dike levels would be determined using the 43,000 cfs elevation as a standard.

Coupled with the execution of the corrective plan is a stipulation between the parties to the North Dakota v. Minnesota lawsuit. The stipulation would eliminate all damage claims by North Dakotans and would limit their remedy to enforcement of the corrective plan.

The injunctive portion of the lawsuit would remain and the court would retain jurisdiction until the corrective plan was determined and implemented. This would allow us to return to the court if Minnesota did not implement its portion of the corrective project within the allowable time limits.

We have spoken to each of the county boards and they have expressed a willingness to enter the agreement. The Grand Forks County Board has expressed some reservations because they believe the corrective plan "opens up the door for future problems". They did not state what those problems were, however.

Representatives of the boards are present if you have any questions concerning the feelings of the local people with regard to the proposal before you.

We have met with the Minnesota Governor, Senate Majority Leader, Department of Natural Resources, and representatives from the Middle-Snake Watershed District and they appear committed to resolving this situation. All indications, barring some unforeseen difficulty with their local people, are that the Minnesota signatories will agree to sign the agreement.

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Our schedule is as follows: The Attorney General will meet with the Minnesota defendants and later with North Dakota landowners on March 20 in Oslo and Manvel. The Middle-Snake Watershed District will then meet to consider the corrective plan. Finally, all signatories to the agreement will meet in Grand Forks on March 27 to sign the agreement.



Rosellen M. Sand
Assistant Attorney General



David A. Sprynczynatyk, P.E.
Director of Engineering

RMS:sh

COOPERATIVE AGREEMENT FOR THE FORMULATION OF A March 6, 1985
CORRECTIVE PLAN FOR AGRICULTURAL LEVEES DRAFT
BETWEEN RIVER MILE 236 AND 287
OF THE RED RIVER OF THE NORTH

PREAMBLE

WHEREAS, the present provisions of the Compact between the States of North Dakota and Minnesota provides an umbrella for formulation of workable solution to the problems of the dike existing between River Mile 236 and River Mile 287 of the Red River of the North; and

WHEREAS, both states and local water management agencies desire to finally resolve the issue of existing dikes by providing a working mechanism to resolve the present disputes on existing dikes; and

WHEREAS, both states and local water management agencies desire to work together in a joint effort to alleviate flooding of the Red River of the North and the damages resulting therefrom; and

WHEREAS the agreement between the two states provides in (k)(3) that "Corrective Plans - The local water management agencies shall utilize the technical assistance provided by the State Water Commission and the Department of Natural Resources, and in consultation with the affected property owners, expeditiously develop a corrective plan that will mitigate to the maximum extent possible the adverse impacts to the floodplain and will be in compliance or substantial compliance with the adopted criteria. The corrective plan shall include, among other things, an implementation schedule. Factors that will be considered, among other things, in the development of the corrective plan shall be increase in flood stage, increase of flood stage at existing city dikes, increase in stream velocity, environmental effects, utilization of farmsteads, property lines, existing roads, cost of dike modifications, and the amount of the reduction of the adverse impact in the floodplain that can be achieved in a reasonable manner."

NOW THEREFORE, the North Dakota State Water Commission, the Walsh County Water Management District, the Grand Forks County Water Management District, the Minnesota Department of Natural Resources and the Middle River- Snake River Watershed District agree to the following provisions and process towards development and implementation of a corrective plan.

I. TECHNICAL COMMITTEE

A technical committee is established comprised of 4 engineers or hydrologists competent in hydrology and hydraulics. The Minnesota Department of Natural Resources, the Middle River-Snake River Watershed District, the North Dakota Water Commission, and the Grand Forks and Walsh County Water Management Districts acting together, shall each appoint a technical representative to serve on the committee within 10 days of the execution of this agreement. The technical committee may use the United States Army Corps of Engineers for advisory and technical assistance. The function of the committee will be to determine the locations and maximum allowable elevations of dikes in Minnesota and North Dakota between River Mile 236 and River Mile 287 of the Red River of the North. Agreement of three of the four members of the technical committee on any finding shall make the finding binding on the technical committee. In arriving at the locations and maximum allowable elevations of dikes in Minnesota and North Dakota between River Mile 236 and River Mile 287 of the Red River of the North, the Technical Committee shall consider historical recorded data, the affect of roads including built-up roads and other structures including bridges of all types, effect of approaches to highways and railroads and effects of flood control projects and drainage improvement projects.

II. TECHNICAL COMMITTEE RESPONSIBILITIES

The committee shall specifically make the following findings in the order set out below. After each finding has been agreed upon, the committee shall set out the finding in writing and all members of the technical committee in agreement shall sign his or her name to the finding. After the finding has been executed by at least three members the committee may proceed to discuss the next finding. If the technical committee cannot agree on a finding, the committee shall immediately refer that matter to the arbitrator and proceed to discuss the next finding.

- (1) A standard point of elevation to use in determining the elevations of the dikes;
- (2) The computer models or other methods or formulas which the technical committee determines accurately provides information as to water surface profiles (levels) which shall be used in the making of findings number five (5) and six (6);
- (3) The setbacks or actual locations of the dikes to Minnesota and North Dakota so as to eliminate where possible dikes following too closely to the meandered loops of the Red River of the North. In setting the locations the committee should attempt to set the locations so as to comply with Alignment C set out in the Red River of the North Mainstem Technical Report of the United States Army Corps of Engineers report. The committee may vary from Alignment C where the negative impact of not complying with Alignment C is offset by the benefits provided by the variance. In establishing the setbacks or actual locations of the dikes, the Technical Committee shall take into consideration the need for ingress and egress to existing farmsteads.
- (4) The location and elevation of dikes providing protection to Holterville;
- (5) The profile between River Mile 236 and River Mile 287 showing water surface elevations of a flow of 43,000 cfs, assuming infinitely high dikes in Minnesota and assuming dikes in North Dakota one foot below the 43,000 cfs profile;
- (6) The final determination of the Technical Committee as to the maximum allowable elevations of dikes in Minnesota and North Dakota between River Mile 236 and River Mile 287 of the Red River of the North. In reaching its final determination the committee shall use Finding No. 5 as the height of the Minnesota dikes, with the North Dakota dikes set one foot below that elevation, and any deviation from those elevations shall be based on the following factors: increases in flood elevations, increases in stream velocities, resulting damages, environmental affects of the proposed elevations, elevations of natural terrain, sound engineering judgement, accepted dike design

standards, increase in flood stage at existing city dikes, freeboard to the extent determined necessary by the Technical Committee, and degree of protection provided to both states;

- (7) A plan of implementation setting forth specific dates, or number of days by which certain steps must be completed. The plan of implementation shall be such that the necessary adjustments in dike locations and elevations should take place as soon as feasible.

III. PROCESS FOR FORMULATION

- (1) The Technical Committee shall immediately proceed and shall submit its report containing all the above findings within 120 days. This time frame can only be extended by the written agreement of 3 of the 4 members of the Technical Committee. The extension shall be only for 30 days and can only be extended for a like period again by written agreement of 3 of the 4 members of the committee, except that a third 30 day extension can be authorized by written agreement of all 4 members of the committee.
- (2) If at least three of the four members of the technical committee cannot reach agreement on any or all findings 1 through 5 within the time frame established above, the matter shall be submitted to the arbitrator who shall make his findings within 45 days of its submission to him. Each member of the committee shall provide the arbitrator with his or her written recommendation as to that finding within 10 days of the submission of the matter to the arbitrator. Findings of the Arbitrator shall be binding on the technical committee.
- (3) If at least three of the members of the technical committee cannot agree on Finding No. 6 within the time frame established above each committee member shall submit to the State of North Dakota and the State of Minnesota his or her own recommendations in writing immediately. Even if the committee cannot agree on Finding No. 6, they shall make Finding No. 7 taking into consideration the differing recommendations on Finding No. 6. If the committee cannot agree of Finding No. 7 it shall be submitted to the arbitrator in the same manner as Findings No. 1 through 5, and the arbitrator's decision shall be binding on the technical committee.

- (4) The arbitrator, if one is required, shall be selected by the Technical Committee in the following manner: If three out of four members of the Technical Committee agree as to the designation of an arbitrator, the selection of an arbitrator under this paragraph shall be complete. If three out of four members of the Technical Committee are unable to agree on the selection of an arbitrator, then, and in that event, the Technical Committee shall submit a list of four, accompanied by a resume of the qualifications of those included on the list, to the United States District Court for the District of North Dakota, Northeastern Division, from which list the District Court shall designate an arbitrator. The cost of the arbitrator, if any, shall be split evenly between the States of Minnesota and North Dakota.
- (5) The findings of the Technical Committee, or the arbitrator if the Technical Committee cannot agree, shall be binding on the North Dakota Water Commission and the Minnesota Department of Natural Resources and the local water management agencies, with the exception of Finding No. 6. If at least three members of the Technical Committee agree in writing to Finding No. 6, such a finding shall be binding on the States of North Dakota and Minnesota and the local water management agencies. If three out of four members of the Technical Committee sign their names to a finding for No. 6, that finding shall be construed automatically as a part of the compact without the necessity for further action on the part of either state or any other entity.

If three out of four members cannot agree on Finding No. 6, the parties shall submit the question of the determination of Finding No. 6 to binding arbitration pursuant to the rules of the American Arbitration Association in effect as of the date of this Agreement. Arbitrators shall be selected as follows: the Minnesota Department of Natural Resources and the North Dakota Water Commission shall each select an arbitrator. The two so chosen shall select a third arbitrator, which three arbitrators shall decide the issue.

