MINUTES

North Dakota State Water Commission
Jamestown, North Dakota

December 9, 1987

The North Dakota State Water Commission held a meeting on December 9, 1987, at the Gladstone Inn in Jamestown, North Dakota. Lt. Governor-Chairman, Lloyd Omdahl, called the meeting to order at 9:00 a.m., and requested State Engineer and Secretary, Vernon Fahy, to call the roll and present the agenda.

MEMBERS PRESENT:
Lt. Governor Lloyd Omdahl, Chairman
Joyce Byerly, Member from Watford City
Jacob Gust, Member from West Fargo
William Guy, Member from Bismarck
William Lardy, Member from Dickinson
Daniel Narlock, Member from Oslo, MN
Jerome Spaeth, Member from Bismarck
Vernon Fahy, State Engineer and Secretary, North Dakota State Water Commission, Bismarck

MEMBERS ABSENT:
Governor George A. Sinner
Kent Jones, Commissioner, Department of Agriculture, Bismarck
Richard Backes, Member from Glenburn

OTHERS PRESENT:
State Water Commission Staff Members
Approximately 25 persons interested in agenda items

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

CONTINUED DISCUSSION OF MINUTES OF SEPTEMBER 8, 1987 MEETING

The following was adopted as a clarification of the September 8, 1987 minutes amending the State Water Commission - Garrison Diversion Conservancy District Joint Powers Agreement:

> The amendment to the Joint Powers Agreement adopted on September 8, 1987, was adopted to insure that projects sponsored by a governmental entity, political subdivision, or private organization would be eligible for consideration for assistance under the program and may make application. However, if State funds are involved, financial assistance could only be provided to a governmental entity or political subdivision.

This clarification was made to assure that all would understand that private organizations would be eligible to participate in the program if state funds would not be used.

CONSIDERATION OF MINUTES OF OCTOBER 21, 1987 MEETING - APPROVED

It was moved by Commissioner Narlock, seconded by Commissioner Lardy, and unanimously carried, that the minutes of October 21, 1987 be approved as circulated.

UPDATE ON SOUTHWEST PIPELINE PROJECT (SWC Project No. 1736)

Dale Frink, Manager of the Southwest Pipeline Project, referred to progress memorandum of the project, dated November 25, 1987.

The bid opening for Contract 2-2F was held on December 3, 1987 and the low bidder was BRB Contractors, Inc., Topeka, Kansas. The bid amount was $3,236,970, which is approximately six percent lower than the estimate of $3,468,670. The contract will be for construction of an 11-mile, 30-inch pipeline ending near Richardton, ND. Mr. Frink further stated that the survey work normally done by the pipeline consultants was bid separately in order to determine if a savings in costs could be made. Discussion was held regarding contractor reliability and five-year warranty contract bonding.

It was moved by Commissioner Gust and seconded by Commissioner Lardy that Contract 2-2F for the Southwest Pipeline Project be awarded to BRB Contractors, Inc., Topeka, Kansas, for a bid of $3,236,970.

Commissioners Byerly, Gust, Guy, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Mr. Frink also reviewed funding projections for Fiscal Year 1988 and noted that funding by the Bureau of Reclamation for MR&I projects could be about $6.4 million, of which $2.25 has been received. Federal legislation for funding depends upon the results of a joint U.S. House - U.S. Senate Conference Committee regarding appropriations for North Dakota projects.

STATUS REPORT ON DEVILS LAKE OUTLET PROJECT (SWC Project No. 1712)

Secretary Fahy reviewed the formulation and work of the Devils Lake Outlet Committee appointed by Governor Sinner.

David Sprynczynatyk, Director of Engineering for the State Water Commission, reported on draft committee recommendations. The preferred plan for solving the potential flooding problems in and around the City of Devils Lake will be the Corps of Engineers recommended plan in addition to three amendments adopted by the Committee. The State-preferred plan would consist of a 200 cfs channel with pumping stations from the West Bay of Devils Lake to the Sheyenne River, a 50 cfs gravity flow connecting channel from East Devils Lake to East Stump Lake, a 50 cfs outlet with one pumping station from East Stump Lake to the Sheyenne River, removal of low-lying structures around Devils Lake, regulation of future development around the lake, and regulation of future drainage in the Devils Lake Basin. The 50 cfs outlet channel from East Stump Lake would be operated so it would not violate North Dakota water quality standards or interfere with the operation of the west end outlet. Devils Lake would have a target elevation of 1430.0 msl and the Stump Lakes would be at 1400.0 msl with the stipulation that they could be raised if Devils Lake reaches its natural overflow or additional water became available to the basin.

Secretary Fahy discussed the need to maintain water quality to satisfy the fishery needs of the lake.

Commissioner Spaeth, a member of the Devils Lake Outlet Committee, commented on the recommended plan and noted two items which may be controversial. The target elevation for lake levels may need to be set at a range of 1427.0 to 1430.0 msl instead of the 1430.0 msl mentioned in the report. Another concern is the regulation of future drainage in the Devils Lake Basin. Upper basin representatives are requesting clarification of the regulation.

Commissioner Guy leaves the meeting to attend a previously scheduled commitment.

GARRISON DIVERSION PROJECT - STATUS REPORT ON GARRISON MR&I PROGRAM (SWC Project Nos. 237-3, 237-5, 237-7, 237-8, 237-9 & 237-10)

David Sprynczynatyk reviewed a memorandum concerning repayment of the 25 percent non-federal share of MR&I projects if funds were loaned to the project sponsor. The loan proposal is that the 25 percent non federal portion of the project costs would be repaid by the project sponsor through a repayment agreement between the project sponsor and either the State Water Commission or the Garrison Diversion Conservancy District, depending on the source of the funds. The interest rates used would be the same as used by the Farmers Home Administration for water facility loans. Three different interest rates are used based on median household income. As of January 1, 1987, the interest rates used by the FmHA are as follows: poverty rate - 5 percent; intermediate rate - 6.5 percent; and, market rate - 7.975 percent.

Mr. Sprynczynatyk referred to a map marked to show the location of entities which made application for MR&I funding. A summary of 60 applications and their status was circulated.

Five projects were presented for consideration for funding from the federal MR&I Program. The requested amounts represent 75 percent of the cost of the feasibility study for each project. The remaining 25 percent is to be funded by the project sponsor. The total request is $52,200, as follows:

Creel Domestic Utilities	--	$18,750
City of St. John	--	$ 5,250
City of Minto	--	$15,000
City of Towner	--	$ 6,750
City of Sawyer	--	$ 6,450

It was moved by Commissioner Byerly and seconded by Commissioner Narlock that the State Water Commission approve funding in an amount not to exceed $52,200 from the Garrison Diverison MR&I Program, contingent upon the availability of funds, and to be distributed as follows:

Creel Domestic Utilities	--	$18,750
City of St. John	--	$ 5,250
City of Minto	--	$15,000
City of Towner	--	$ 6,750
City of Sawyer	--	$ 6,450

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

GARRISON DIVERSION PROJECT - NORTHWEST AREA WATER SUPPLY STUDY (SWC Project No. 237-4)

At the October 21, 1987 State Water Commission meeting a motion was passed to proceed in the development of a reconnaissance study of the Northwest Regional System and that detailed information relative to the study and costs be provided for the Commission's consideration at its December meeting.

David Sprynczynatyk discussed a Plan of Study which outlined the proposed reconnaissance level study of a regional water supply system in northwestern North Dakota. The study objectives would be to determine the needs and interest in development of a water supply system and develop a preliminary study of development of water resources within the study area.

Mr. Sprynczynatyk stated that in compliance with State law, an engineering selection committee had been appointed to assist in the selection of an engineering firm to prepare the study. The selection committee has forwarded a request for proposals, which included the Plan of Study, to various engineering firms. The committee also published a legal notice of solicitation for engineering services in the daily newspapers in Williston, Minot, Grand Forks, Fargo, Bismarck and Dickinson. Proposals received were not evaluated at the time

of the Commission meeting, however, Mr. Sprynczynatyk estimated the costs between $125,000 and $150,000. The federal funding could supply 75 perent of the cost. It was the recommendation of the State Engineer that the other 25 percent of the costs, not to exceed $37,500, be granted by the Commission from the Contract Fund.

It was moved by Commissioner Byerly and seconded by Commissioner Narlock that the State Water Commission approve 25 percent of the Northwest Area Water Supply Study costs, not to exceed $37,500, from the Contract Fund. This motion is contingent upon the availability of funds.

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

GARRISON DIVERSION PROJECT - CONTINUED DISCUSSION RELATIVE TO FINANCING ALTERNATIVES FOR LOCAL SHARE OF PROJECT COSTS UNDER MR&I PROGRAM (SWC Project No. 237-3)

The Commission members discussed financing alternatives for assisting in the non-federal share of project costs under the Garrison MR&I Program. The alternatives discussed were funding from the Resources Trust Fund and the State Water Commission Contract Fund that would assist entities to make repayment of the non-federal share if they were unable to provide their share at the beginning of a water supply project.

Rosellen Sand, Assistant Attorney General for the State Water Commission, reviewed a memorandum regarding the use of the Contract Fund for loans to provide financial assistance to water projects. Ms. Sand indicated that it appears sufficient loan authority is in place. The processing of loans and repayment administration was discussed. It was agreed that funds paid back to the state will have to be appropriated by the Legislature to be re-used for other water resource projects.

CONTINUED DISCUSSION RELATIVE TO REQUEST FROM CITY OF GRAND FORKS FOR COST SHARING FOR NON-FEDERAL SHARE FROM RESOURCES TRUST FUND IN GRAND FORKS RIVERSIDE PARK DAM (SWC Project No. 520-2)

At the Commission's October 21, 1987 meeting action was deferred on a request from the City of Grand Forks for a loan from the Resources Trust Fund for the non-federal cost share in the Grand Forks Riverside Park Dam Project. The Commission requested this item be placed on the December agenda for further consideration.

Mr. Sprynczynatyk summarized the State Water Commission's involvement with the City of Grand Forks from 1977 through 1987 and cost sharing actions in the form of inspections,

investigations and repairs to the Grand Forks Riverside Park Dam Project. The Commission further discussed the request and deferred action until a future meeting.

CONSIDERATION OF REQUEST FROM RAMSEY COUNTY WATER RESOURCE DISTRICT FOR COST SHARING IN MORRISON LAKE OUTLET PHASE V PROJECT (SWC Project No. 1746)

A request was received from the Ramsey County Water Resource Board and presented to the State Water Commission for its consideration in cost sharing in the construction of Morrison Lake Outlet Phase V Project.

David Sprynczynatyk indicated the project is located southeast of Webster in Ramsey County. The purpose is to help control the lake level and reduce localized flooding. He explained Phase V of the project consists of constructing an outlet control structure, a new outlet channel, and reconstructing a portion of the existing channel. The total estimated cost of Phase V is $156,910 with all costs being eligible for cost sharing.

In 1985, the District originally requested funding on the Morrison Lake Outlet Project which involved three segments, with the total cost estimate of $319,283. Mr. Sprynczynatyk stated that due to unfavorable weather and insufficient funding the project has now been separated into five phases. Phases I and II have been completed with $63,165 in funding from the State Water Commission. Phases III and IV were being completed and in June, 1987, the State Water Commission obligated $13,207 for these phases.

It was the recommendation of the State Engineer that the State Water Commission grant 40 percent of the eligible costs, not to exceed $62,764, towards the construction of Morrison Lake Outlet Phase V, contingent upon the availability of funds and that the plans meet with the permit conditions.

It was moved by Commissioner Gust and seconded by Commissioner Lardy that the State Water Commission grant 40 percent of the eligible costs, in an amount not to exceed $62,764, for the construction of Morrison Lake Outlet Phase V. This motion is contingent upon the availability of funds and that the plans meet with the permit conditions.

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST FROM WELLS COUNTY WATER RESOURCE DISTRICT FOR ADDITIONAL COST SHARING IN OAK CREEK WATERSHED MANAGEMENT PROJECT (SWC Project No. 1775)

A request was received from the Wells County Water Resource Board on November 16, 1987, and presented to the State Water Commission for its consideration for additional funding on the construction of the Oak Creek Watershed Management Project. The project is south of New Rockford in the counties of Wells, Eddy and Foster, and involved improvements and controls made to Oak Creek and Rocky Run Creek, a tributary to the James River. The project was completed in the fall of 1987 with a total cost of $641,224.

David Sprynczynatyk stated the original estimate of project costs was $529,000 with eligible costs of $393,158. The State Water Commission approved 40 percent funding of $157,263 on February 18, 1986. Mr. Sprynczynatyk stated the completed project has eligible costs of $447,118, with 40 percent of the eligible costs being $178,847. The request before the State Water Commission for its consideration is to cost share in the additional costs of $21,584. Mr. Sprynczynatyk stated the increased costs are a result of administrative, legal, land, easement, engineering, and construction costs. The increased eligible cost of $53,960 is a result of two major items; one, being a low estimate in the engineering and survey costs; and second, site specific improvements needed on both Oak Creek and Rocky Run Creek. The improvements were mainly on Rocky Run Creek involving crossings, cleanouts, and diking. These problem areas were not in the original plans but were identified as the project progressed.

It was the recommendation of the State Engineer that the State Water Commission grant 40 percent of the eligible additional costs in an amount not to exceed $21,584. If additional funds are approved, Secretary Fahy stated the total State share for this project would be $178,847.

It was moved by Commissioner Spaeth and seconded by Commissioner Byerly that the State Water Commission approve an additional 40 percent of the eligible items for the Oak Creek Watershed Management Project, not to exceed $21,584. This motion is contingent upon the availability of funds, and the total State cost sharing for this project shall not exceed $178,847.

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST FROM SOUTHEAST CASS WATER RESOURCE DISTRICT FOR COST SHARING IN SHEYENNE RIVER CHANNEL CLEANING PROJECT (SWC Project No. 1813)

A request was received from the Southeast Cass Water Resource Board and presented to the State Water Commission for its consideration in cost sharing of the Sheyenne River channel cleaning project in Cass County.

David Sprynczynatyk stated the project consists of the clearing and grubbing of approximately 60 miles of channel from the mouth of the Sheyenne River at the confluence of the Red River in Harwood Township to the Cass-Richland County line in Normanna Township. The total cost of the project is $100,000, of which $95,000 is eligible for cost participation under the present State Water Commission guidelines. The State Water Commission policy is to cost share in up to 25 percent of the eligible costs of snagging and clearing projects. Twenty-five percent of the eligible costs for this project is $23,750.

It was moved by Commissioner Lardy and seconded by Commissioner Narlock that the State Water Commission approve cost sharing in 25 percent of the eligible costs, in an amount not to exceed $23,750, for the Sheyenne River Channel Cleaning Project. This motion is contingent upon the availability of funds.

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

STATUS REPORT ON RED RIVER DIKING (SWC Project No. 1638)

David Sprynczynatyk stated that on December 2, 1987 a request was received from the Walsh County Water Resource District asking consideration of payment for dike modification work for farmers that had not previously signed Agreements with the State Water Commission. The request came as a result of a meeting on November 25, 1987 between the Attorney General and his staff, representatives of the State Water Commission staff and representatives of landowners in the area.

Mr. Sprynczynatyk explained that at the November 25, 1987 meeting, the terms of the Agreement previously approved by the State Water Commission were discussed. It was agreed that two sections, the easement section and the indemnification section, could be modified without significant change to the overall intent of the Agreement. The easement section was changed to exclude ring dikes that are not tied into other dikes and roads and to require reasonable notice before the state could inspect the dikes. The indemnification section was narrowed in scope to only address lawsuits and claims made as a result of the modification of the dikes. Mr. Sprynczynatyk stated that it was the Attorney General's opinion that the changes made to the Agreement would be legally acceptable to the State.

Secretary Fahy stated that if the State Water Commission approves the revised Agreement then it must consider payment to farmers that are willing to sign the Agreement for work done in 1986 and 1987, which would include the forgiving of assessments totalling $20,222.42. These assessments have already been given to the County Auditor and are scheduled to be on the 1987 taxes. Secretary Fahy noted the State Water Commission has already paid out this amount to the contractors that performed the work.

Secretary Fahy indicated that in addition there may be approximately $12,160 in claims for work done by landowners in 1986 and up to $20,000 for work done in 1987. He said invoices have not been received for all of the work done by farmers this year. Summaries of the assessments and costs received to date were distributed for the Commission members' consideration.

Secretary Fahy stated if the State Water Commission approves the revised Agreement and the farmers are willing to sign and if the State Water Commission agrees to cover the assessments and costs incurred, it may have to expend up to an additional $52,000 from the Contract Fund, of which $20,000 may be recoverable from tax assessments. He said if agreements can be reached with all landowners, this issue should be resolved.

Mr. Sprynczynatyk distributed a listing to the Commission members which indicated landowners who are involved and the cost of the dike modification at each site. There was considerable discussion regarding claims by landowners in the diking area and the assessments made when some dike removal was completed.

Chairman Omdahl suggested that the Commission establish a time limit for response so that this longstanding controversy can be finally resolved.

It was moved by Commissioner Gust and seconded by Commissioner Narlock that the State Water Commission approve the revised Agreement, effective until February 1, 1988, to allow payment of dike modification work for farmers that had not previously signed an Agreement with the State Water Commission.

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

It was moved by Commissioner Lardy and seconded by Commissioner Spaeth that the State Water Commission authorize the expenditure of funds from the Contract Fund, not to exceed $52,000,

for landowner claims for Red River diking modification under the new Agreements and for construction claims not yet received under present Agreements.

Commissioners Byerly, Gust, Lardy, Narlock, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF AGENCY FINANCIAL STATEMENT

Matt Emerson, Assistant Secretary for the State Water Commission, reviewed the Program Budget Expenditures through October 31, 1987, and the Projects Authorized through November 30, 1987.

It was moved by Commissioner Narlock, seconded by Commissioner Lardy, and unanimously carried, that the State Water Commission meeting adjourn at 2:30 p.m.

George A. Sinner
Governor-Chairman

ATTEST:

Vernon Fahy
State Engineer and Secretary