

MINUTES**North Dakota State Water Commission
Bismarck, North Dakota****June 7, 1989**

The North Dakota State Water Commission held a meeting on June 7, 1989, at the Doublewood Ramada Inn in Bismarck, North Dakota. Chairman, Lt. Governor Lloyd Omdahl, called the meeting to order at 9:00 a.m., and requested Acting State Engineer, David Sprynczynatyk, to call the roll and present the agenda.

MEMBERS PRESENT:

Lt. Governor Lloyd Omdahl, Chairman
 Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
 Joyce Byerly, Member from Watford City
 Jacob Gust, Member from West Fargo
 Lorry Kramer, Member from Minot
 William Lardy, Member from Dickinson
 Daniel Narlock, Member from Oslo, MN
 Norman Rudel, Member from Fessenden
 Jerome Spaeth, Member from Bismarck
 David Sprynczynatyk, Acting State Engineer and Secretary, North Dakota State Water Commission, Bismarck

OTHERS PRESENT;

State Water Commission Staff Members
 Approximately 25 people 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 MAY 10, 1989 MEETING -
 APPROVED**

The minutes of the May 10, 1989 meeting were approved by the following motion:

It was moved by Commissioner Narlock, seconded by Commissioner Lardy, and unanimously carried, that the minutes of the May 10, 1989 meeting be approved as circulated.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM UPDATE
(SWC Project No. 237-3)**

Acting Secretary David Sprynczynatyk indicated efforts are continuing to increase the Fiscal Year 1990 federal appropriation from \$8.7 million. If the federal appropriation is finally approved for \$8.7 million, Mr. Sprynczynatyk said there will be only limited funds available for MR&I projects in 1990 and the money that might be available will probably be used to complete smaller projects that have been started this year.

Randall Binegar, MR&I Water Supply Program Coordinator, reported a total of 104 communities have made application to date for funds from the Garrison MR&I Water Supply Program. The most recent application was received from the City of Crary. Of the 104 applications, 66 of the applicants have submitted preliminary engineering reports; 32 projects have received approval from the State Water Commission for MR&I funding.

A dedication ceremony has been scheduled for June 13, 1989 at 2:00 p.m. for the Langdon Rural Water Supply Project Phase I, which is the first MR&I project to be in operation. The dedication ceremony for the new Riverside Park Dam in Grand Forks has been scheduled for June 22, 1989, at 1:30 p.m.

In discussion of the MR&I Water Supply Program, Chairman Omdahl expressed concern relative to the future uncertainty of the federal funding for the Garrison Project and stressed the importance of advising the communities applying for MR&I funding of their responsibility to develop a sufficient capital construction fund to handle their water supply systems in the future.

Randall Binegar responded that when staff meets with each community which has applied for MR&I funding, the issue of whether a reserve account sufficient to handle their water supply systems is addressed. If they do not have one then it is strongly recommended to the community they begin some type of surcharge.

**GARRISON DIVERSION PROJECT -
CONSIDERATION OF REQUEST FROM
CITY OF MINTO FOR COST SHARING
FROM RESOURCES TRUST FUND FOR
NON-FEDERAL DESIGN AND
CONSTRUCTION COSTS
(SWC Project No. 237-7)**

Randall Binegar presented a request for the Commission's consideration which was received from the City of Minto, requesting the State Water Commission to cost participate in the non-federal share of the design and construction costs of the Minto Water Supply Project.

June 7, 1989

At the March 9, 1989 meeting, a request was considered by the State Water Commission to grant MR&I funding for the design and construction phase of the Minto Water Supply Project. The city was considering two alternatives for replacing the existing water supply. Alternative No. 1 provides water to Minto through the City of Grafton. Alternative No. 2 provides water service to Minto through the development of a well field in the Fordville Aquifer. Mr. Binegar stated upon evaluating the two alternatives, it was found that Alternative No. 1 provided reasonably comparable water at only slightly higher costs to the user, but at a much reduced total project cost. Therefore, MR&I Program funding was recommended and approved by the State Water Commission, not to exceed \$580,500, or 75 percent of the estimated project costs for Alternative No. 1, the Grafton supply.

Mr. Binegar stated the amount of MR&I Program funding provided for the Minto Project depended upon a determination on the necessity for trihalomethane treatment. According to Environmental Protection Agency requirements, the City of Minto is not required to monitor for trihalomethanes at the present time and, therefore, trihalomethane treatment is not necessary. The funding for the project is based on a project which does not provide for this treatment.

It was the recommendation of the Acting State Engineer the State Water Commission provide a 50 percent grant through the MR&I allocation of the Resources Trust Fund for the non-federal share of the project costs, not to exceed \$96,750, based upon the costs associated with Alternative No. 1, Grafton supply. Approval would be contingent upon the availability of funds.

John Schanilec, Mayor of Minto, said the city is currently in the process of purchasing land for the purpose of drilling test wells to determine the availability of water. He requested the Commission's favorable consideration of its request for MR&I funding of the non-federal share of the design and construction costs.

It was moved by Commissioner Lardy and seconded by Commissioner Narlock that the State Water Commission approve a 50 percent grant through the MR&I allocation of the Resources Trust Fund for the non-federal share of the design and construction costs for Alternative No. 1, the Grafton supply, not to exceed \$96,750, for the City of Minto Water Supply Project. This motion shall be contingent upon the availability of funds.

June 7, 1989

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

**GARRISON DIVERSION PROJECT -
RED RIVER MUNICIPAL
WATER SUPPLY STUDY
(SWC PROJECT NO. 1828)**

LeRoy Klapprodt, Water Resource Planner for the State Water Commission, briefed the members on the status of the Red River Municipal Water Supply Study.

A major purpose for conducting the study is to determine the long-term adequacy of the 100 cfs diversion to the Red River authorized in the Garrison Reformulation Act. A Technical Committee including representatives from the major cities has been organized. Study goals and objectives have been determined. Mr. Klapprodt indicated the Technical Committee has had three meetings to date. In the course of the study the committee will project the Red River Valley's municipal water needs 50 years into the future. Staff from the North Dakota Economic Development Commission will be involved to help determine the study areas's industrial growth potentials. Professors from North Dakota State University will use that information in developing economic and population projections. Mr. Klapprodt indicated the Committee intends to consider the effects on economic growth and development without water supply as a constraint.

In discussion, Commissioner Lardy reiterated concerns he had expressed at a previous Commission meeting regarding the use of water to encourage economic development. Even though this study relates to the Red River Valley, Commissioner Lardy said the social, economic and environmental impacts of water development in other areas of the state need to be determined. The state and the nation both benefit from the diversity of economic development made possible through water development projects.

Acting Secretary Sprynczynatyk stated North Dakota State University has been requested to develop economic and population projections to the year 2040. The estimated cost of the study is \$6,950. It was the recommendation of the Acting State Engineer the State Water Commission concur to proceed with the study and cost share in the amount of 12 1/2 percent of the costs using money from the MR&I needs assessment fund that was set aside to undertake such studies. The Garrison Diversion Conservancy District Executive Board of Directors approved this same recommendation at its meeting on June 6, 1989.

June 7, 1989

It was moved by Commissioner Rudel and seconded by Commissioner Vogel that the State Water Commission authorize the State Engineer and staff to enter into a contract with the North Dakota State University to conduct a study of the economic and population projections for the Red River Municipal Water Supply Study; and, approve cost sharing from the Garrison MR&I needs assessment fund not to exceed 12 1/2 percent of the total study costs, contingent upon the availability of funds.

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

**CONSIDERATION OF REQUEST
FROM NELSON COUNTY WATER
RESOURCE DISTRICT FOR
ADDITIONAL COST PARTICIPATION
IN NELSON COUNTY LEGAL DRAIN
#4 (LAKOTA DRAIN)
(SWC Project No. 1557)**

A request received from the Nelson County Water Resource District was presented for the Commission's consideration for additional cost participation in the construction of the extension of Nelson County Legal Drain No. 4 (Lakota Drain). The

Commission approved funding on September 8, 1987. Since that time the Board's engineer determined additional work was needed on the south side of Lakota and in the original Drain #4.

Cary Backstrand, Chief of the Regulatory Section for the State Water Commission, stated Drain #4 was constructed in 1980 at a cost of \$67,785, with the Commission funding \$27,114. Agricultural land is the main beneficiary of the drain. The city receives minor benefits. The additional work consisted of excavation along US Highway #2 and deepening a portion of Legal Drain #4. The total project cost is \$77,435; \$48,184 of which is eligible. Forty percent of the eligible costs is \$19,274, which is \$6,344 over the original Commission approval. The project is complete at this time and will operate under the same operation plan as the original project. Engineering is \$5,825, or 11.2 percent of the costs.

It was the recommendation of the Acting State Engineer that the State Water Commission approve an additional \$6,344 for the Nelson County Drain #4. This would be 40 percent of the total eligible costs, not to exceed \$19,274, and contingent upon the availability of funds.

June 7, 1989

Ben Varnson, Chairman of the Nelson County Water Resource Board, commented on the project and on Swampbuster. He said they have had a very good relationship with the ASC people regarding this project, the wetland concerns have been addressed, and a favorable commencement determination made. Mr. Varnson said the Board is working with the State Health Department to update its permit for the removal of clay from the wetlands. He commented this is a very good project and the local people are satisfied.

It was moved by Commissioner Narlock and seconded by Commissioner Byerly that the State Water Commission approve an additional \$6,344 for Nelson County Drain #4, which would be 40 percent of the total eligible project costs, not to exceed \$19,274. This motion shall be contingent upon the availability of funds.

Commissioners Byerly, Gust, Kramer, Lardy, Narlock, Rudel, Spaeth, Vogel, 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
ADDITIONAL COST PARTICIPATION
IN SNAGGING AND CLEARING OF
SHEYENNE RIVER IN SOUTHEAST
CASS COUNTY
(SWC Project No. 1813)**

25 percent of the eligible costs, not to exceed \$23,750, which was based on a project estimate of \$100,000. The project consists of Reaches 1 through 5, which is approximately 60 miles of channel from the Sheyenne River at the confluence of the Red River to the Cass-Richland County line in Normanna Township.

A request received from the Southeast Cass Water Resource District was presented for the Commission's consideration for additional cost participation in the snagging and clearing of the Sheyenne River in Southeast Cass County. On December 9, 1987, the Commission approved

Cary Backstrand stated the District has completed Reaches 1 through 4 at a project cost of \$106,711, with eligible costs of \$104,912. Twenty-five percent of those costs are \$26,228. Mr. Backstrand indicated this type of project is best performed after freeze-up occurs and Phase 5 is scheduled for the winter of 1989. It is estimated that Phase 5 will cost an additional \$40,000, with \$10,000 for engineering and contingency. Mr. Backstrand stated this will require an

June 7, 1989

additional \$10,000 under the current Commission policy of 25 percent for snagging and clearing projects. The additional Commission cost would be \$12,478. The engineering is estimated to be \$40,000, which is approximately 27.6 percent of the total costs.

It was the recommendation of the Acting State Engineer that the State Water Commission approve an additional \$12,478 for the Southeast Cass County Sheyenne River Snagging and Clearing Project, for 25 percent of the local eligible costs, not to exceed \$36,228, and contingent upon the availability of funds.

Robert Brodshaug, Vice Chairman of the Southeast Cass Water Resource Board, discussed the snagging and clearing project and problems the county is having with Dutch Elm disease.

It was moved by Commissioner Spaeth and seconded by Commissioner Lardy that the State Water Commission grant an additional \$12,478 for the Southeast Cass County Sheyenne River Snagging and Clearing Project, for 25 percent of the local eligible costs, not to exceed \$36,228. This motion shall be contingent upon the availability of funds.

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

**CONSIDERATION OF REQUEST
FROM NORTH CASS WATER RESOURCE
DISTRICT FOR ADDITIONAL
COST PARTICIPATION AND CARRYOVER
FUNDING FOR RC&D CRITICAL AREA
TREATMENT SITE #31C
(SWC Project No. 1649)**

A request received from the North Cass Water Resource District was presented for the Commission's consideration for additional assistance and re-appropriation of approved carryover funding for the RC&D Critical Area Treatment Site

#31C. The project is located approximately eight miles from Gardner, ND. Its purpose is to reduce severe erosion occurring between the Red River and the east side of Cass County Road 31.

Cary Backstrand stated the project consists of improving a ditch area, installing a 60-inch drop structure, and the installation of a field crossing. The

June 7, 1989

project does not drain or divert any additional water but facilitates more orderly flow of water, therefore, no permits are required.

On February 13, 1987, the Commission approved 40 percent of eligible costs, not to exceed \$7,144. Mr. Backstrand explained this funding was carried over to the current biennium, but due to engineering constraints and scheduling, the Soil Conservation Service has not been able to complete the design until now. The bid opening is scheduled for June 26, 1989. The project is scheduled to be completed in 1989. Since the funding cannot be carried over to the next biennium, the Board has requested that the Commission approve funding from this biennium. The total estimated cost is \$80,025, with eligible costs being \$20,588. Forty percent of the eligible costs would be \$8,235. Mr. Backstrand said this would require an additional \$1,091 above the current approval.

It was the recommendation of the Acting State Engineer that the State Water Commission approve 40 percent of the non-federal local costs for the construction of the North Cass RC&D Critical Area Treatment Project #31C, not to exceed \$8,235. Approval would be contingent upon the availability of funds.

It was moved by Commissioner Rudel and seconded by Commissioner Lardy that the State Water Commission approve cost participation in 40 percent of the non-federal local costs for the construction of the North Cass RC&D Critical Area Treatment Project #31C, not to exceed \$8,235. This motion shall be contingent upon the availability of funds.

Commissioners Byerly, Gust, Kramer, Lardy, Narlock, Rudel, Spaeth, Vogel, 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 PARTICIPATION
AND REAPPROPRIATION OF
APPROVED CARRYOVER FUNDING
FOR HEIMDAL DRAIN
(SWC Project No. 1738)**

A request received from the Wells County Water Resource District was presented for the Commission's consideration for additional assistance and reappropriation of approved carryover funding for Heimdal Drain, which is located northeast of Manfred, ND. The purpose of

June 7, 1989

the project is to improve agricultural drainage in the watershed. The project will consist of a main channel, improvement of field and road crossings, and control gates. The project has been approved under Drain Permit No. 1422.

On June 6, 1986, the Commission approved 40 percent of eligible costs, not to exceed \$55,964, for the project. Cary Backstrand explained this funding was carried over to the current biennium, but due to the necessity of using the condemnation process for obtaining downstream flood easements, the project has been delayed until the present time. The project is scheduled for this fall. Since the funding cannot be carried over to the next biennium, the Board has requested that the Commission approve funding from this biennium. The new estimated cost is \$215,000, with eligible costs being \$166,124. Forty percent of the eligible costs is \$66,450. Mr. Backstrand indicated a payment of \$7,635 for project costs has been made, leaving a balance of \$58,815 to complete the project.

Norman Remboldt, Chairman of the Wells County Water Resource Board, was present to discuss the project. He said the District is moving forward with the project and it is anticipated the condemnation procedures for downstream flowage easements will be completed in July, 1989.

Michael Gunsch, engineering consultant for the Wells County Water Resource District, was present to elaborate on the impacts of Swampbuster on the Heimdal Drain project.

It was the recommendation of the Acting State Engineer that the State Water Commission grant 40 percent of the eligible costs for the construction of Heimdal Drain, not to exceed \$58,815, contingent upon the availability of funds.

It was moved by Commissioner Gust and seconded by Commissioner Spaeth that the State Water Commission approve cost sharing of 40 percent of the eligible costs for the construction of Heimdal Drain in Wells County, not to exceed \$58,815. This motion shall be contingent upon the availability of funds.

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

June 7, 1989

Acting Secretary Sprynczynatyk commented that the Commission's actions approving funds for the above-stated projects obligates essentially all the funds appropriated in the Contract Fund for the 1987-1989 biennium.

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE REGARDING
JOHNSON CONSTRUCTION, INC.
(SWC Project No. 1736)**

At the May 10, 1989 meeting, the Commission members were informed of financial problems Johnson Construction was having believed to be due to the asphalt paving part of the company. Johnson Construction is the contractor for contracts 2-3A and 2-3B for the Southwest Pipeline Project. At that time, little was known by the State about the situation, but the attorneys for the State Water Commission were researching administrative and legal concerns in the matter. Because an attorney experienced in bankruptcy does not begin employment with the North Dakota Attorney General's office until July 1, 1989, Sheldon A. Smith has been hired to assist in this matter.

Rosellen Sand, Assistant Attorney General for the State Water Commission, indicated on May 19, 1989, Johnson Construction filed Chapter 11 bankruptcy. Ms. Sand discussed in detail meetings that have been held relative to this matter and the bankruptcy court's decision of June 2, 1989, preventing Johnson Construction from maintaining the existing bonds. The terms of the Southwest Pipeline Project contracts 2-3A and 2-3B require maintenance of both a performance and payment bond. Ms. Sand said Johnson Construction has also assigned all responsibilities and rights to these contracts to St. Paul Fire and Marine Insurance Company.

Ms. Sand said Johnson Construction is in violation of provisions of the terms of both contracts 2-3A and 2-3B. Contracts 2-3A and 2-3B allow a ten-day period to correct the violations. On June 6, 1989, notice was mailed to Johnson Construction, Inc., attorney for Johnson Construction, Inc., and St. Paul Fire and Marine Insurance Company informing them Johnson Construction has ten days from June 6, 1989 to correct the violations. Ms. Sand said if the violations are not corrected within the ten-day period, the State Water Commission will then turn to Johnson Construction's surety, St. Paul Fire and Marine Insurance Company, to complete the project as set forth in contracts 2-3A and 2-3B documents and the project bonds. Ms. Sand also informed the Commission members a Notice to Suspend Work on Contracts 2-3A and 2-3B was issued on June 6, 1989.

June 7, 1989

Ms. Sand presented a status report on the legal events which have occurred to date on this matter, and alluded to several issues which must be resolved. The issues are: 1) termination of the contract with Johnson Construction, Inc. in accordance with the procedural requirements of the contract; 2) the attorney for Johnson Construction has suggested that the interest of St. Paul Fire and Marine Insurance Company would be substantially harmed by the State Water Commission going through the ten-day period, as opposed to doing something without the ten-day notice; 3) the insistence by St. Paul Fire and Marine Insurance Company that the State Water Commission contract with Barnard Construction, Inc.; 4) the sums of money held by the State Water Commission on the two contracts involving Johnson Construction; and 5) the threat by St. Paul Fire and Marine Insurance Company that it will "pull" the bonds if the State Water Commission does not handle the matter in the format suggested by St. Paul Fire and Marine.

Following a lengthy discussion, it was the recommendation of the Acting State Engineer that the State Water Commission authorize the State Engineer to negotiate with St. Paul Fire and Marine Insurance Company to reach an agreement which both protects the State Water Commission interests and assures completion of the Southwest Pipeline Project contracts 2-3A and 2-3B.

It was moved by Commissioner Narlock and seconded by Commissioner Vogel that the State Water Commission authorize the State Engineer to negotiate with the St. Paul Fire and Marine Insurance Company to reach an agreement which both protects the State Water Commission interests and assures completion of the Southwest Pipeline Project contracts 2-3A and 2-3B.

In discussion of the motion, Commissioner Lardy expressed concern the State Water Commission be advised of the terms of the negotiated agreement prior to acceptance and, therefore, offered the following amendment to the motion:

It was moved by Commissioner Lardy and seconded by Commissioner Byerly that prior to the acceptance of any negotiated agreement, the State Water Commission shall meet by telephone conference call, or at an upcoming meeting, to consider the negotiated agreement.

June 7, 1989

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

The motion, as amended, is as follows:

It was moved by Commissioner Narlock and seconded by Commissioner Vogel that the State Water Commission authorize the State Engineer to negotiate with the St. Paul Fire and Marine Insurance Company to reach an agreement which both protects the State Water Commission interests and assures completion of the Southwest Pipeline Project contracts 2-3A and 2-3B; and, that prior to the acceptance of any negotiated agreement, the State Water Commission shall meet by telephone conference call, or at an upcoming meeting, to consider the negotiated agreement.

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

Commissioner Lardy requested the State Engineer and staff to periodically review the laws governing the bidding process to determine if legislative changes are necessary to protect the state.

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE REGARDING
FEDERAL POWER & DISTRIBUTION
(SWC Project No. 1736)**

Acting Secretary Sprynczynatyk stated since the Commission approved the construction agreement for providing electrical power for the Lake Sakakawea intake pumps for the Southwest Pipeline Project, the Oliver-Mercer Electric Cooperative has approved the agreement and Bureau of Reclamation approval has been requested. Negotiations are continuing with both Oliver-Mercer and West Plains Electric regarding wheeling federal power to the project.

June 7, 1989

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE REGARDING
ARCHEOLOGICAL STUDIES
(SWC Project No. 1736)**

On April 20, 1989 the State Water Commission approved a \$95,396 contract to Larson-Tibesar Associates, Inc. for federally required cultural resource studies along the raw water line. Acting Secretary Sprynczynatyk briefed the Commission members on difficulties encountered with the Advisory Council on Historic Preservation to approve the work to be performed by this contract, which have caused the cultural work to be discontinued at the present time. He said it is hoped the matter can be resolved and that the cultural resource work can restart around June 1, 1989.

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE REGARDING
FUTURE FINANCING CONCERNS
(SWC Project No. 1736)**

Because of the uncertainty of federal funding for the Garrison Diversion Project. Chairman Omdahl requested the State Engineer and staff to prepare a draft of financing alternatives for the Southwest Pipeline Project which the Commission could consider at a future meeting.

**SOUTHWEST PIPELINE PROJECT -
CONTINUED DISCUSSION RELATIVE
TO INTEGRATION STUDY OF
SOUTHWEST RURAL WATER SYSTEMS
AND SOUTHWEST PIPELINE PROJECT
(SWC Project No. 1736)**

Acting Secretary Sprynczynatyk stated a memorandum was received from the Chairman of the West River Joint Water Resource Board discussing the integration of the Southwest Rural Water Systems and the Southwest Pipeline Project. This item will be placed on the next meeting of the State Water Commission for continued discussion.

**CONSIDERATION OF RESOURCES
TRUST FUND REALLOCATION
OF FUNDS**

Acting Secretary Sprynczynatyk indicated that on May 10, 1989 the State Water Commission approved a reallocation of the Resources Trust Fund appropriation. The Commission also approved a release of \$858,692 of 1985-1987 carryover funds for the Souris River Flood Control Project and authorized an additional amount as 1987-1989 funds, which will allow the funds to be carried over into the 1989-1991 biennium.

On April 26, 1989, the Office of Management and Budget provided an update revenue projection of \$7,483,778 for the 1987-1989 biennium. The final figures will be provided in July, 1989, after the oil extraction tax and interest income revenues are known. The final amount will also increase due to an estimated \$197,924 turnback in 1985-1987 carryover

June 7, 1989

money from the Contract Fund. Acting Secretary Sprynczynatyk said as a result, it is estimated that the total revenue to the Resources Trust Fund will be \$8,540,394 for the 1987-1989 biennium.

Acting Secretary Sprynczynatyk said to use these funds for projects, it is necessary to either spend or commit the funds prior to June 30, 1989. A review has been made of the various projects and programs. It was the recommendation of the Acting State Engineer the Resources Trust Fund appropriation be adjusted as follows, and depending upon the final revenue for the biennium the final approved amounts be adjusted proportionally to reflect the final revenue:

Southwest Pipeline Project	\$1,669,251
Garrison MR&I Program	1,135,125
SWC Contract Fund	1,519,078
Sheyenne River Flood Control Project	2,358,248
Souris River Flood Control Project	<u>1,858,692</u>
Total	\$8,540,394

It was moved by Commissioner Lardy and seconded by Commissioner Byerly that the State Water Commission approve the recommendation of the Acting State Engineer for the reallocation of the Resources Trust Fund appropriation as stated above.

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

**CONSIDERATION OF RELEASE
OF EASEMENT IN BURKE COUNTY**

Patrick Stevens, Assistant Attorney General, presented for the Commission's consideration

a request to release an easement received from a prospective purchaser and the owner of a parcel of land. The west half (W 1/2) of Section 2, Township 163 North, Range 94 West, in Burke County, North Dakota, is under an easement held by the state. Mr. Stevens said the easement sought to be released was granted in 1934 and is for the construction and maintenance of a dam. The dam was washed out in 1972 and was never replaced. It does not appear the dam will be reconstructed.

June 7, 1989

It was the recommendation of the Acting State Engineer that the State Water Commission release the above described easement pursuant to 61-02-14.1 of the North Dakota Century Code.

Roger Cymbaluk, Real Estate Agent, was present to elaborate on the information provided and to request the Commission's favorable consideration of the request.

It was moved by Commissioner Byerly and seconded by Commissioner Kramer that the State Water Commission approve the release of easement on a parcel of land located in the west half (W 1/2) of Section 2, Township 163 North, Range 94 West, in Burke County, North Dakota, pursuant to Section 61-02-14.1 of the North Dakota Century Code.

Commissioners Byerly, Gust, Kramer, Lardy, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried. SEE APPENDIX "A".

**DEVILS LAKE FLOOD CONTROL
PROJECT UPDATE AND
PRESENTATION BY THE CORPS
OF ENGINEERS
(SWC Project No. 1712)**

Louis Kowalski, Chief, Planning Division of the St. Paul Corps of Engineers, updated the Commission members on the status of the Devils Lake Flood Control Project. Mr. Kowalski

indicated the Corps of Engineers is reevaluating the draft flood control plan for the Devils Lake Basin that was described in the draft feasibility report and environmental impact statement dated April, 1988. The reevaluation is in response to concerns by the Corps of Engineers headquarters, the public and other agencies after review of the draft report.

Mr. Kowalski summarized the principal concerns and some possible modifications to the project. He said serious concerns have been raised regarding the outlet channel from East Stump Lake to the Sheyenne River. This feature is locally preferred for water quality purposes but not required for the flood control project. Mr. Kowalski said it will be eliminated from the federal plan to focus the federal project more on flood control, which is the primary objective of this study.

June 7, 1989

Mr. Kowalski said another important proposed change to the draft plan is the addition of phased construction that would be triggered if and when specific high lake levels actually occur. The phased project would first involve non-structural measures including drainage regulation, floodplain management and floodplain evacuation, a west end outlet, and a connecting channel between East Devils Lake and the Stump Lakes. The exact trigger mechanisms are yet to be formulated. The phased construction is in response to concerns that there is presently no standard procedure to evaluate the probability of future high lake levels. Other proposed modifications include the regulation of future upstream drainage, regulation of future lakeshore development below elevation 1440, and the voluntary evacuation of residential structures below elevation 1435.

Mr. Kowalski stated the St. Paul District Corps of Engineers is requesting preliminary views and comments by June 12, 1989. After the comments have been received, the Corps will prepare a scope of studies that are needed for reevaluation of the feasibility study. If the Corps of Engineers headquarters concurs in the scope of studies a new draft feasibility report and draft environmental impact statement will be completed and published for comment.

After lengthy discussion, it was recommended by Chairman Omdahl, and agreed to by the Commission members, that a meeting be scheduled with the State Water Commission, State Health Department and the State Game and Fish Department, and others who may be interested in the project, to discuss and review the Corps of Engineers proposal and provide comments.

**LAKE SAKAKAWEA-LAKE OAHE
SURPLUS LAND**

Acting Secretary Sprynczynatyk briefed the Commission members on a proposal by the U.S. Army Corps of Engineers to dispose of surplus land along Lake Sakakawea and Lake Oahe. The land being considered is on the Standing Rock Reservation and Fort Berthold Reservation and was acquired at the time Garrison Dam and Oahe Dam were built. Under current criteria for land acquisition, this land would not have been purchased. The Corps of Engineers has identified 386 acres on the Standing Rock Reservation and 5891 acres on the Fort Berthold Reservation that falls into this category. The intent is to give the land to the two Tribes.

June 7, 1989

The Corps of Engineers recently held a series of workshops in the state on the proposal, and is receiving comments until June 30, 1989. Copies of the summaries of the reports outlining the proposed action were distributed to the Commission members for their information.

Acting Secretary Sprynczynatyk commented on the proposal. He said the proposal has merit but should also include the area off the reservation. Unfortunately, it does not. Other issues include the cost to dispose of the land will equal the value of the land; some land identified for disposal has also been set aside as mitigation land; some land to be given to the tribes was acquired from non-Indians; public access areas for recreation areas will be impacted; parcels of land might be land locked without public access; and, in some areas there could be future erosion problems.

Rich Schilf, representing the Three Affiliated Tribes, was present to explain in detail historical data and the purpose of the special assessment study conducted by the Corps of Engineers.

In discussion, it was recommended and agreed to by the Commission members that there are elements beside water involved in the proposal and that the State Outdoor Recreation Inter-Agency Council (SORIC) be requested to consider the proposal and provide comments prior to June 30, 1989 from an inter-agency point of view.

**CONSIDERATION OF AGENCY
FINANCIAL STATEMENT**

Program Budget Expenditures,
Programs/Projects Authorized report, dated May 31, 1989.

Matt Emerson, Assistant Secretary for the State Water Commission, discussed the agency's Program Budget Expenditures, dated April 30, 1989; and the Programs/Projects Authorized report, dated May 31, 1989.

**CONSIDERATION AND APPROVAL
OF RESOLUTION OF APPRECIATION
TO VERN FAHY, STATE ENGINEER
AND CHIEF ENGINEER-SECRETARY
OF THE STATE WATER COMMISSION
(SWC Resolution No. 89-6-433)**

Chairman Omdahl read a draft resolution of appreciation to Vern Fahy for his efforts as State Engineer-Chief Engineer of the State Water Commission.

It was moved by Commissioner Byerly, seconded by Commissioner Narlock, and unanimously carried, that Resolution No. 89-6-433, In Appreciation to Vern Fahy, be approved. SEE APPENDIX "B".

June 7, 1989

**SOURIS RIVER FLOOD
CONTROL PROJECT UPDATE
(SWC Project No. 1408)**

At the May 10, 1989 meeting, the Commission members were informed a lawsuit was filed against the Rafferty-Alameda Dam Project by Saskatchewan and Canadian Wildlife Federation. The argument in the lawsuit is that the project impacts federal lands and, therefore, there is a requirement for a federal environmental review even though there is no federal money involved in the project. In April, 1989, the Saskatchewan Court ruled that before the project can proceed the requirements of the federal environmental laws in Canada must be satisfied. Because of the lawsuit, the Rafferty-Alameda Dam Project is on hold until the environmental review requirements have been satisfied.

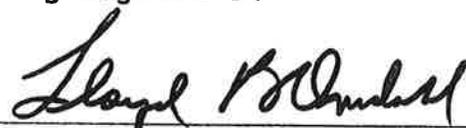
Acting Secretary Sprynczynatyk distributed copies of the draft summary of the initial evaluation of the Rafferty-Alameda Dam Project for the Commission's information. Environment Canada is requesting comments on the evaluation and have scheduled a series of public meetings in Saskatchewan, Manitoba and North Dakota. The public meeting in North Dakota is scheduled for June 27, 1989 in Minot, at which time State Water Commission staff members will provide comments.

**STATE WATER COMMISSION
AND GARRISON DIVERSION
CONSERVANCY DISTRICT
JOINT MEETING SCHEDULED
FOR JULY 6 AND 7, 1989**

Acting Secretary Sprynczynatyk stated the Garrison Diversion Conservancy District has invited the State Water Commission to hold a joint meeting on July 6 and 7, 1989, at Camp Grafton near Devils Lake, ND. The two groups will meet jointly on July 6 for the purpose of both groups becoming familiar with the authorities and functions of the other and to discuss issues common to the two groups. The State Water Commission will meet separately on July 7.

It was moved by Commissioner Narlock, seconded by Commissioner Spaeth, and unanimously carried, that the State Water Commission meeting adjourn at 12:10 p.m.

SEAL



George A. Sinner
Governor of North Dakota

ATTEST:


David A. Sprynczynatyk
Acting State Engineer
and Secretary

June 7, 1989

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE June 7, 1989 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Pat Potte	P.O. Box 1215 Bismarck	Melroe Company
CHARLIE VEIN	GRAND FORKS	KBM INC.
Robert L. Bushy	Fargo	S/E Case Water
Jim Johnson	1600 E. Interstate Bismarck, ND 58501	Lewis: Clark Regional Council
RONALD FRENCH	GRAND FORKS	KBM INC.
Bruce F McCollon	BISMARCK	BW/BRC
Ben Varusa	Lakota	Meles Co. WRB.
VERN FANTY	Bism	
Randall Binegar	Bismarck	State Water Commission
Roger Gymbalak	Williston	
Shirley Massey	Bismarck	Basin Electric Power Coop.
Louis Kowalski	St. Paul, MN	Corps of Engineers
O. J. Gould, Sr.	Fat Totten, N.D.	Devils Lake Sioux Tribe
Rob Tarrir	AP	BIS
John H. Schomke	Minto, N.D.	City of Minto

RELEASE OF EASEMENT

The State of North Dakota, acting by and through the Governor and Secretary of State, and upon the approval of the North Dakota State Water Commission, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby grants, releases and surrenders all right and interest granted to the State of North Dakota under an "Easement and Dedication" described below:

An Easement and Dedication covering the west half (W1/2) of Section 2, Township 163 North, Range 94 West, Burke County, North Dakota, for the construction and maintenance of a dam, as executed by Conrad Berg and the State of North Dakota, and recorded in the Register of Deeds Office, Burke County, North Dakota, at 3:30 p.m. on February 26, 1935, in Book 12 of Miscellaneous, pages 366 and 367.

This easement has been abandoned since at least 1972 and the release of the easement has been determined to be in the best interests of North Dakota by the State Water Commission.

IN WITNESS WHEREOF, the State of North Dakota has caused the release to be executed in its name by the Governor and attested by the Secretary of State, and the seal of the State affixed this ____ day of June, 1989.

STATE OF NORTH DAKOTA

By _____
George A. Sinner
Governor of North Dakota

ATTEST:

James Kusler
Secretary of State

RESOLUTION NO. 89-6-433

IN APPRECIATION
VERN FAHY

WHEREAS, Vern Fahy has retired as the North Dakota State Engineer and Chief Engineer-Secretary to the State Water Commission; and

WHEREAS, Vern provided excellent service and leadership for the management and development of North Dakota's water resources for nearly seventeen years; and

WHEREAS, his experience as an Engineer, City Manager, and Water Manager provided a valuable background for his service as State Engineer; and

WHEREAS, his interest in and concern for the future of water resource management and development in this State and Region were clearly evident throughout his tenure as State Engineer; and

WHEREAS, Vern has been recognized locally and nationally as the Chief Water Spokesperson for North Dakota; and

WHEREAS, his leadership, advice, friendship and counsel as State Engineer will be missed by the members of the State Water Commission and their staff.

NOW, THEREFORE, BE IT RESOLVED that the North Dakota State Water Commission; Governor George A. Sinner, its Chairman; Lt. Governor Lloyd Omdahl; and the staff of the State Water Commission and State Engineer, at a meeting held on June 7, 1989, do hereby express their thanks and appreciation to Vern Fahy for his service as State Engineer from 1973 to 1989; and

BE IT FURTHER RESOLVED that we wish Vern and his wife, Margaret, the best of health and happiness in their future endeavors.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:

SEAL


George A. Sinner
Governor-Chairman

ATTEST:


David A. Spryndzynatyk
Acting State Engineer