

**MINUTES****North Dakota State Water Commission  
Bismarck, North Dakota****May 3, 1991**

The North Dakota State Water Commission held a meeting in the lower level conference room of the State Office Building, Bismarck, North Dakota, on May 3, 1991. Chairman, Lieutenant Governor Lloyd Omdahl, called the meeting to order at 8:30 AM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

**MEMBERS PRESENT:**

Lieutenant 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, State Engineer and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

**OTHERS PRESENT:**

State Water Commission Staff Members  
Approximately 20 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.

**APPROVAL OF AGENDA**

There being no additional items for the agenda, the Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

**CONSIDERATION OF MINUTES  
OF MARCH 13, 1991 MEETING -  
APPROVED**

The minutes of the March 13, 1991 meeting were approved by the following motion:

It was moved by Commissioner Byerly, seconded by Commissioner Rudel, and unanimously carried, that the minutes of the March 13, 1991 meeting be approved as circulated.

**INTRODUCTION OF  
CHARLES RYDELL,  
ASSISTANT STATE  
ENGINEER**

Assistant Secretary was reclassified to Assistant State Engineer.

Charles Rydell, Assistant State Engineer, was introduced. Mr. Rydell assumed the position on May 1, 1991, after nearly 16 years of employment with the State Health Department, serving most recently as Senior Environmental Engineer.

As Assistant State Engineer, Mr. Rydell will be the Director of the Administration Division of the Commission and will coordinate fiscal, records, and human resource management within the agency. He will also assume management of the State Water Commission in the absence of the State Engineer.

**AGENCY FINANCIAL STATEMENT**

Secretary Sprynczynatyk presented and discussed the Program Budget Expenditures and Programs/Projects Authorized, dated March 31, 1991. He said this reflects 87 percent of the current biennium.

**STATE WATER MANAGEMENT PLAN -  
PROJECT UPDATE  
(SWC Project No. 322)**

LeRoy Klapprodt, State Water Commission Planning and Education Division, reported on the second of four rounds of public involvement meetings conducted in early April. New water management issues and concerns were voiced by citizens at these meetings, which were held to gather input to help update the 1992 State Water Management Plan. Citizens Advisory Board (CAB) members and others attending the meetings developed statements for the Goals and Objectives for their region to be included in the 1992 Water Plan. They were also asked to begin the process of listing water-related problems or opportunities in their regions. Mr. Klapprodt said the planning process allows each

region to express its wishes so state government can better understand and respond to the unique needs of each region. The regions were established around watershed boundaries as closely as possible to best address water management needs in each basin.

Mr. Klapprodt said several state-wide issues were revealed after the Goals and Objectives were updated and compiled for each region. Water supply needs and ground water quality were two areas every region expressed an interest or concern. The continuing drought has stressed both ground water and surface water supplies, causing problems with the supply of water for drinking, irrigation, livestock and other uses. The growing public awareness of the need to prevent ground water contamination and concern over abandoned wells spurred many comments from the public on what the State Water Commission's role should be in protecting ground-water resources. Mr. Klapprodt said the CAB's in every region deleted all Goals and Objectives relating to transportation on the Missouri and other rivers. The need for an expansion of water-related education programs is also an important state-wide issue.

Mr. Klapprodt said that the CAB's are updating the list of 116 problems and 69 opportunities that were identified during the state-wide planning process in the early 1980's. CAB members are taking public comments in their areas and analyzing the 1983 list in order to better identify today's water development needs. Problems identified in the 1983 State Water Plan include flooding, erosion, poor water quality, low supply of quality water, need for more water-based recreation, inadequate wildlife habitat, and lake eutrophication.

The 1983 plan identified ways to solve the problems, but Mr. Klapprodt said the solutions must be able to be built and paid for, be acceptable to the people who live in the area, and be environmentally sound.

Mr. Klapprodt said once the current CAB members have reviewed and expanded the list of problems and opportunities, the State Water Commission staff will evaluate and analyze them. The Water Commission staff will then develop alternatives that either solve or lessen the severity of the problems. When the CAB's meet in September, board members will review the results of the problems and opportunities identification and evaluation process. The CAB's will then begin to set priorities for the projects and programs that will resolve their region's water problems.

Because of the critical situation in maintaining the multi-million dollar fishery in Devils Lake, efforts are underway to accelerate the Devils Lake Basin portion of the State Water Management Plan update process.

Mr. Klapprodt said this will enable the planning staff to coordinate with, and provide support to, a reconnaissance level study of the basin's water management needs being conducted by the Corps of Engineers. The Corps' reconnaissance study is expected to be followed by a feasibility study of specific projects and/or programs needed to resolve the lake water level and other problems. A special task force of local interests has been created to support the efforts of the Devils Lake Citizens Advisory Board. The group will produce the Devils Lake Basin Management Plan, which is intended to identify and describe concepts and methods by which agriculture, fish and wildlife, and recreation interests can incorporate workable solutions for the basin's water quantity and quality problems as well as promote peace and harmony among the interests.

Commissioner Vogel stated recently several people have expressed concern on the increased potential that ground water may become contaminated from pesticides with increased irrigation and chemigation units in North Dakota. She said protection of ground-water resources from pesticides contamination is a major responsibility of the Agriculture Department's pesticide division.

It was requested by Commissioner Vogel that a monthly list be sent to the Agriculture Department listing irrigation permits granted for that time period. She said this information will allow the Agriculture Department's pesticide field staff to contact the permit holders to prevent any environmental damage suffered through use of improper chemigation practices or equipment.

**STATE WATER MANAGEMENT PLAN -  
NORTH DAKOTA WATER STRATEGY  
TASK FORCE  
(SWC Project No. 1852)**

in support of the ongoing State Water Management Planning process, conducts the following:

- 1) Review funding options to implement existing water policies of the state and water-related political subdivisions;
- 2) Develop, by October 1, 1991, a water development program and a funding strategy for submission to a special session of the Legislative Assembly in late 1991; and

On April 26, 1991, Executive Order 1991-3 was signed by Governor Sinner establishing a 17-member North Dakota Water Strategy Task Force, which

- 3) Develop, by December 1, 1991, a plan for advocating a comprehensive state water policy to the Administration and to Congress.

Lt. Governor Lloyd Omdahl is chairman of the Task Force and Secretary Sprynczynatyk serves as its Vice Chairman. An agreement was entered into with Vernon Fahy to serve as the Executive Secretary and consultant to the Task Force.

The Task Force had its initial meeting on May 2, 1991. Governor Sinner gave a description of what he has perceived to be its general goals and objectives and said that water supply development funding, priorities and methods should be the focus of the Task Force activities. In his order creating the new Task Force, Governor Sinner said he was doing so "... in support of the ongoing water management planning process of the State Water Commission." Governor Sinner cautioned against writing a plan - the need is to implement a strategy that will meet current and long-term water needs of the state and to have a report containing recommendations available prior to the convening of a special Legislative Assembly in late 1991. The Governor urged the group to work toward development of a broad-based consensus on the recommendations to be included in the final report.

Chairman Omdahl indicated that if the Task Force is to be successful, a strategy must be developed to show the people the actual needs for water supply improvements and get them to support a strategy that will provide funds for its development. He said the Task Force must develop good cost estimates for use in generating widespread public support. Two rounds of public meetings will be held in various parts of the state to listen to citizen description of needs in each area.

Secretary Sprynczynatyk explained the purpose of the State Water Management Planning update is general in nature addressing all issues relating to water management. While in relationship to the planning process, the Water Strategy Task Force will focus its efforts to help generate public support and find ways to fund long-range water management and development. Secretary Sprynczynatyk said the Task Force's formation comes in the midst of an effort by citizen groups throughout the state to update the 1983 State Water Plan. The Commission staff is helping the Citizen Advisory Boards in eight regions around the state determine water management goals and directions for North Dakota. The Task Force will be coordinating with the Citizen Advisory Boards in setting priorities.

Commissioner Lardy complimented the State Administration for its efforts in water resource development and funding. He said "the State must take control and if progress is to continue, we must move forward without delay."

**STATE WATER COMMISSION  
PARTICIPATION IN ELK LODGE  
STUDENT GOVERNMENT DAY**

marck Elks Lodge. Secretary Sprynczynatyk introduced Brian Leingang, Student State Engineer. Brian is a senior at Century High School.

Brian Storhaug was introduced as the Student Agriculture Commissioner. Brian is also a senior at Century High School.

**SOUTHWEST PIPELINE PROJECT -  
PROJECT CONSTRUCTION UPDATE  
(SWC Project No. 1736)**

tions is nearly complete. The buildings and the structural concrete are finished and the pumps have arrived on site at Richardton. Mr. Fay said the piping manifolds inside the pump stations were the subject of a dispute with the manufacturer, however, this has been resolved and the manifolds are being manufactured. Although the construction schedules were affected, it does not appear the delay will be serious.

Mr. Fay reported the pipe installation in Dickinson is progressing well. The connection to previously installed pipe on the east end has been made and work on the west end has progressed into the water treatment plant yard. The entry into the water treatment plant will be made soon.

Plans and specifications for the telemetry system and for cathodic protection of the pipe from Richardton to Dickinson have been submitted to the Bureau of Reclamation for review. Plans and specifications for the pipe from Dickinson to Medora and the Belfield and Fryburg reservoirs will be submitted soon. Design work now focussed on revising the Dickinson West pump station into a combined (West-South-North) pump station and for routing and design of the pipeline going south to Mott.

For the past several years the State Water Commission has participated in Student Government Day sponsored by the Bis-

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Rural water sign-ups are progressing in the Belfield service area and efforts in the area between Dickinson and Mott and in the Dunn Center-Halliday-Dodge-Golden Valley area will be next.

Mr. Fay indicated the Governor signed HB 1376, formally creating the Southwest Water Authority. The Authority will be made up of 11 counties and will be patterned similar to the Garrison Diversion Conservancy District. He said it is the intent that the Southwest Water Authority will ultimately operate and maintain the Southwest Pipeline Project, so it is important that the Authority be involved in the development of the project. He said the Authority has indicated a willingness to do so.

**SOUTHWEST PIPELINE PROJECT -  
RURAL WATER FEES/  
CAPITAL REPAYMENT  
(SWC Project No. 1736)**

State Water Commission for the Southwest Pipeline Project. A draft rate structure, comparable to rates throughout the state, was developed and approved.

At the July 5, 1990 meeting, the Commission approved a procedure developed by the Southwest Water Authority to meet the criteria required by the

Tim Fay explained that the water service agreements we have with the communities define the amount to be paid for capital repayment and allow indexing of the capital repayment to the inflation rate as measured by the Consumer Price Index. Mr. Fay said this has not been done with the rural water rates, and he explained that if capital repayment is not defined it will end up being the difference between actual operation and maintenance costs and the amount billed to the users. It will decrease and eventually disappear as operating costs rise with time.

Mr. Fay presented a rural water fees/capital repayment proposal for the Commission's consideration that would set the capital repayment at \$20.00 per month for each standard rural user and index it to the inflation rate in the same way the city rates are. There would also be a \$5.00 meter fee and the use rate would be \$2.50 per thousand gallons. Mr. Fay said this results in a lower minimum fee, however, it will increase with inflation. The \$5.00 meter fee is intended to cover some of the fixed costs associated with serving each user. The \$2.50 per thousand rate is considered to be adequate for covering other operation and maintenance costs. Mr. Fay said this proposal has been endorsed by the Southwest Water Authority.

In discussion of the capital repayment proposal for rural water users, Secretary Sprynczynatyk stated the intent of the proposal is to establish an initial rate structure to provide for some repayment to the state for the costs of the project. The capital repayment will go back to the Resources Trust Fund allowing for future development of other projects.

Concerns were expressed relative to indexing the capital repayment to the inflation rate. Secretary Sprynczynatyk stated the water service agreement contains a provision whereby the State Water Commission has the discretion to make adjustments on an annual basis.

It was the recommendation of the State Engineer that the State Water Commission approve the modification of the rate structure for the Southwest Pipeline Project to reflect the proposal presented for rural water fees.

It was moved by Commissioner Lardy and seconded by Commissioner Vogel that the State Water Commission approve the modification of the rate structure for the Southwest Pipeline Project as follows:

The capital repayment shall be set at \$20.00 per month for each standard rural user. Indexing of the capital repayment to the inflation rate shall be the same as provided for in the water service agreements with the communities. There shall be a \$5.00 meter fee and the use rate shall be \$2.50 per thousand gallons.

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

**SOUTHWEST PIPELINE PROJECT -  
MODIFICATIONS TO WATER SERVICE  
AGREEMENT RELATING TO POINTS  
OF DELIVERY  
(SWC Project No. 1736)**

Tim Fay indicated that the existing water service agreements currently specify points of delivery. Some of these points are some distance from the actual use points of the community. With integration, the pipe will be installed as close to a farm home as construction techniques will allow. Mr. Fay said

in view of this, it is appropriate to consider treating communities the same way, which would mean bringing the pipeline to the community's actual use point instead of having them construct their own connecting facilities.

**It was moved by Commissioner Lardy and seconded by Commissioner Narlock that the State Water Commission approve modification of the Southwest Pipeline Project water service agreement to allow delivery of water to a location near the community's actual use point.**

**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.**

**SOUTHWEST PIPELINE PROJECT -  
DESIGN CAPACITIES  
(SWC Project No. 1736)**

Tim Fay said before these facilities are built, an attempt needs to be made to adapt the sizing criteria to current foreseeable conditions. He said this could be done by contacting each community to determine their actual water requirements from the pipeline. These demands would then be adjusted by peaking factors and growth projections and combined with the expected rural demand. The pipe and pumping plants would then be sized to supply that demand. Mr. Fay said this would substantially reduce the estimated total cost of the project.

The water service agreements were individually approved for each community; therefore, Mr. Fay said Commission action is required for modification of the water service agreement.

**It was moved by Commissioner Byerly and seconded by Commissioner Lardy that the State Water Commission approve modification of the water service agreement for a community relative to redetermining usage capacity for the Southwest Pipeline Project.**

In discussion of the motion, concern was expressed that reducing the raw water delivery capacity to meet municipal and rural requirements may have an effect on future economic flexibility.

Mr. Fay responded that the raw water delivery capacity allows for considerable economic flexibility. Proceeding to design the project as proposed with the realistic projection of demand allows the flexibility to increase the capacity in the future as required without overbuilding the project.

It was requested by Chairman Omdahl that staff provide information at a future meeting indicating current and projected future demands for each community so that the Commission members may better assess the raw water delivery capacity for the Southwest Pipeline Project.

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.

**SOUTHWEST PIPELINE PROJECT -  
DUNN CENTER WATER  
SERVICE AGREEMENT  
(SWC Project No. 1736)**

is one of the communities with a fluoride problem. Mr. Fay said their minimum requested purchase is 1,825,000 gallons per year and the maximum guaranteed flow rate is 6 gallons per minute.

It was the recommendation of the State Engineer that the State Water Commission approve the water service agreement for the City of Dunn Center.

It was moved by Commissioner Lardy and seconded by Commissioner Byerly that the State Water Commission approve the Southwest Pipeline Project water service agreement for the City of Dunn Center.

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.

**SOUTHWEST PIPELINE PROJECT -  
FEDERAL POWER PURCHASE CONTRACT  
(SWC Project No. 1736)**

A draft agreement with the Western Area Power Administration for purchase of federal power for operation of the pipeline was considered. Tim Fay briefed the Commission members on comments pertaining to some of the legal and technical aspects of the draft agreement, which he said have either been resolved or are in the process of being resolved.

It was moved by Commissioner Lardy and seconded by Commissioner Gust that the State Water Commission approve the contract with Western Area Power Administration for the purchase of federal power for operation of the Southwest Pipeline Project.

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.

**SOUTHWEST PIPELINE PROJECT -  
ELECTRIC SERVICE AGREEMENT  
(SWC Project No. 1736)**

Mr. Fay said this will provide wheeling service and complete a path for delivery of such electric power and energy for the State Water Commission from Western's points of delivery to the pumping substations near Richardson and Dodge.

Tim Fay distributed copies of the wheeling agreement entered into with West Plains Electric Cooperative on April 17, 1991.

**SOUTHWEST PIPELINE PROJECT -  
CONTINUED DISCUSSION RELATIVE  
TO WATER TREATMENT AGREEMENT  
(SWC Project No. 1736)**

The motion was approved contingent upon review of the draft agreement by the State Water Commission with the City of Dickinson.

At the March 13, 1991 meeting, the Commission approved the concept of Alternative E, Dickinson Treatment Plant, for the Southwest Pipeline Project.

A draft agreement to cover the treatment of water for the project by the City of Dickinson was distributed for the Commission's consideration. Tim Fay explained the principles used in developing the draft agreement and reviewed the terms. He stated the draft agreement has not been forwarded to the City of Dickinson or other communities.

Secretary Sprynczynatyk stated if the Commission approves the draft water treatment agreement, it would then be presented to the City of Dickinson and the Southwest Water Authority to receive input from the communities and the people in the area.

Commissioner Spaeth suggested a provision be included in the draft agreement relative to authority for establishing rates for treated water.

It was moved by Commissioner Lardy and seconded by Commissioner Gust that the State Water Commission tentatively approve the Southwest Pipeline Project Water Treatment Agreement, contingent upon favorable negotiations with the City of Dickinson.

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.

Commissioner Spaeth requested that the staff provide information for the Commission's discussion on the possibility of constructing a double pipeline of treated water versus untreated water for areas of the Southwest Pipeline Project.

**SOUTHWEST PIPELINE PROJECT -  
REPORT FROM SOUTHWEST  
WATER AUTHORITY  
(SWC Project No. 1736)**

reported the attitude relative to the delivery system and the overall project are positive.

Willie Mastel, Southwest Water Authority, reported numerous sign-up meetings have been held and the sign-up progress has been encouraging. Mr. Mastell

**GARRISON DIVERSION PROJECT -  
PROJECT UPDATE  
(SWC Project No. 1736)**

year 1992, which includes \$25 million for the Garrison Diversion Project. This does not include any money for irrigation development.

At the March 13, 1991 meeting, Secretary Sprynczynatyk briefed the Commission members on the President's proposal for Fiscal

Secretary Sprynczynatyk also briefed the Commission members on a meeting held March 11, 1991 with the Garrison Funding Committee, chaired by Lieutenant Governor Omdahl, reaching a consensus that the State request an increase of \$20 million in the President's proposal for FY '92 for the project, for a total FY '92 appropriation request of \$45 million. In discussion of the breakdown of the \$45 million federal funding proposal, Secretary Sprynczynatyk indicated approximately \$26 million would go toward the State's MR&I Program, with his tentative recommendation that approximately \$15 million of the total go toward the Southwest Pipeline Project to address the problem of fluorides in seven communities in southwestern North Dakota.

Secretary Sprynczynatyk indicated that the proposed budget was presented in Washington and said the Congressional delegation is supportive of the proposal and is working with the state representatives to try to get the additional money in the FY '92 budget.

Secretary Sprynczynatyk briefed the Commission members on a meeting of the Garrison Diversion Conservancy District. He said in discussing the proposed breakdown questions were asked relative to the \$15 million proposed for the Southwest Pipeline Project. Although it is the general feeling of the Garrison Diversion Conservancy District that the problems in southwest North Dakota need to be resolved, Secretary Sprynczynatyk said the District wants to proceed carefully as the MR&I Program is being expended. He said it will be necessary for the citizens in southwest North Dakota to work closely with the Conservancy District on the Southwest Pipeline Project, which is one of the high priority needs of the state. He said the Commission and the Legislature have recognized that fact.

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

Jeffrey Mattern, MR&I Water Supply Program Coordinator, reported there are 118 projects in the different phases of the MR&I Water Supply Program. This includes 46 projects in the initial application phase, 33 projects in the preliminary engineering phase, 20 in the feasibility phase, 2 in design and construction, 13 projects have been completed, and 4 applications have been withdrawn.

Mr. Mattern stated Ramsey County is planning to start Phase I of the regional water system in 1991. The evaluation of a regional water system involving Fort Totten Indian Reservation and the City of Devils Lake is still in progress and a final decision is expected in the near future.

Dale Frink, Director of the Water Development Division of the State Water Commission, briefed the Commission members on a meeting held May 2, 1991, with a rural water group in southern Dickey County that has expressed an interest in developing a rural water project. The group of 98 residents is proposing that the water supply would come from the WEB system in South Dakota. Mr. Frink explained the options that are available to the area residents. Mr. Frink said this new system may score relatively high points and become one of the top projects on the priority list.

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

to discuss the federal and state requirements for the cultural resource program required for the MR&I Program.

At the March 13, 1991 meeting, the State Engineer was directed to arrange for a meeting with the State Historical Society and the Bureau of Reclamation

Secretary Sprynczynatyk reported on a meeting he attended on April 3, 1991 with Commissioner Vogel, Andy Mork of the Missouri West Water Users, and representatives of the State Historical Society. He said it was determined that a meeting should be set up between the Bureau of Reclamation, State Water Commission, State Historical Society and Missouri West to clarify the cultural resource requirements for the MR&I Program. This meeting was held on April 16, 1991 and the main topic of discussion was a draft agreement between the Bureau of Reclamation, the Advisory Council on Historical Preservation and the North Dakota State Historical Preservation Officer. The agreement defines the responsibilities of the various parties to the agreement.

Secretary Sprynczynatyk said the agreement gives the State Historical Society added responsibilities during the early development stages of a project. MR&I project applicants will first make preliminary consultations with the State Historical Society during the preliminary engineering study phase. Upon receipt of that request, the State Historical Society would conduct a file search and recommend whether or not a cultural resource inventory needs to be conducted. This information will become part of the feasibility study that is submitted to the Bureau of Reclamation. Once the project is accepted into the MR&I Program, the project applicant will work with the Bureau of Reclamation. The agreement also includes a list of activities that do not require further cultural resource investigations, as well as other spec-

ific stipulations regarding the MR&I Program. Secretary Sprynczynatyk said it is anticipated this agreement will reduce the number of misunderstandings and reduce the potential for project delays.

**GARRISON DIVERSION PROJECT -  
CONSIDERATION OF REQUEST  
FOR FEDERAL GRANT FUNDS FOR  
MISSOURI WEST RURAL WATER  
(SWC PROJECT NO. 237-27)**

and archeological/historical survey work required before the project design may begin. MR&I Program funding assistance has been requested on the estimated costs of \$30,900. Mr. Mattern indicated that with a priority of 50 points, this project may be eligible to receive design funding from FY '91.

The request covers engineering, environmental and cultural resource information. The previous guidelines for feasibility studies included a 75 percent grant and would be \$23,175. The schedule for the project would involve completing this environmental work by late summer and completing the design by spring of 1992. Mr. Mattern indicated the Garrison Diversion Conservancy District approved this request at its April 4, 1991 meeting.

It was the recommendation of the State Engineer that the State Water Commission provide funding on eligible costs for the Missouri West Rural Water Project in the form of a federal MR&I grant of 75 percent, not to exceed \$23,175, contingent upon the availability of funds and the sponsor continuing to meet MR&I Program requirements.

It was moved by Commissioner Narlock and seconded by Commissioner Rudel that the State Water Commission approve MR&I Program funding for the eligible costs for the Missouri West Rural Water Project in the form of a federal grant of 75 percent, not to exceed \$23,175. This motion shall be contingent upon the availability of funds and that the sponsor continue to meet MR&I Program requirements.

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.

May 3, 1991

**GARRISON DIVERSION PROJECT -  
NORTH DAKOTA WATER SUPPLY  
DEVELOPMENT PROGRAM  
(SWC Project No. 237)**

criteria will be used to prioritize projects. Current federal and state MR&I requirements must also be met."

Jeffrey Mattern suggested that the word "will" be changed to "may" or "should". He said although the priority system is used as a guideline, this would provide more flexibility in prioritizing projects.

In discussion, Chairman Omdahl suggested that the sentence be amended as follows: "Current MR&I program criteria will, unless otherwise directed by the Commission, be used to prioritize projects. Current federal and state MR&I requirements must also be met."

**It was moved by Commissioner Byerly and seconded by Commissioner Kramer that the North Dakota Water Supply Development Program Policy No. 5 be amended as follows:**

5. Current MR&I program criteria will, unless otherwise directed by the Commission, be used to prioritize projects. Current federal and state MR&I requirements must also be met.

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

**GARRISON DIVERSION PROJECT -  
NORTHWEST AREA WATER SUPPLY  
INTEGRATION STUDY PROJECT  
UPDATE  
(SWC PROJECT NO. 237-4)**

struct a Northwest Area Water Supply project.

On April 4, 1991, SB 2357 was signed by Governor Sinner establishing the Northwest Area Water Supply Advisory Committee and authorizing the State Water Commission to develop and con-

Frank Johnson, Project Coordinator for the Northwest Area Water Supply Integration Study, briefed the Commission on project activities.

On March 20 and 21, 1991, representatives from the State met with the North Dakota Congressional Delegation and the Commissioner of the Bureau of Reclamation to brief them on the project. Senator Conrad has agreed to sponsor the federal legislation, which would originate in the Energy and Natural Resources Committee, and Senator Burdick would be a co-sponsor. Mr. Johnson said the project would probably be developed under the Bureau of Reclamation.

Mr. Johnson stated that to assist Senator Conrad's office in drafting of the legislation, staff of the State Water Commission met with Chairman Wilbur Wilkinson and other tribal representatives and staff on March 13 to document concerns of the Tribe. Staff toured the existing water supply facilities at Four Bears, Mandaree and Twin Buttes.

The final Northwest Area Water Supply Integration report mentions a savings through integration of approximately \$4.4 million. State Water Commission staff met with representatives of the Bureau of Reclamation and Houston Engineering to see what other benefits may be achieved through integration. Mr. Johnson said it was concluded that the project would provide significant long-term operation and maintenance savings to the Bureau, as the provider of operations and maintenance for the water systems on Fort Berthold.

Advisory Committee nominations for representatives from the county resource districts and the communities in the project area have been requested prior to June 21, 1991.

Mr. Johnson reported that the City of Garrison is requesting bids for their own water project and would like to hold several public awareness meetings after the bids are opened. The city has requested information on the Northwest Area Water Supply Integration project, including when the city could expect water. A city-wide vote may be held on whether to develop their own water supply system.

**GARRISON DIVERSION PROJECT -  
RECOMMENDATION OF SWC MEMBER  
TO NORTHWEST AREA WATER SUPPLY  
INTEGRATION PROJECT  
(SWC Project No. 237-4)**

It was recommended that Commissioner Lorry Kramer represent the State Water Commission on the Northwest Area Water Supply Integration Advisory Committee.

**It was moved by Commissioner Gust and seconded by Commissioner Spaeth that Commissioner Lorry Kramer be appointed to represent the State Water Commission on the Northwest Area Water Supply Integration Advisory Committee.**

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

**DROUGHT DISASTER LIVESTOCK  
ASSISTANCE PROGRAM  
(SWC Project No. 1851)**

which will become law on July 1, 1991. The State Water Commission is required to administer the program for the purpose of providing relief for livestock water supply problems caused by the drought. In order to be eligible for assistance under this program, an applicant must first apply for water cost-share assistance from the Agricultural Stabilization Conservation Service. If the cost-share assistance is denied by the Service, then the applicant may forward the application to the Commission for consideration. If the State Engineer approves an application, the applicant can receive up to 50 percent of the cost of the project, not to exceed \$3,500. Secretary Sprynczynatyk said that the Legislative Assembly did not provide an appropriation for this program.

Secretary Sprynczynatyk said Julie Krenz, Assistant Attorney General, researched the issue and found the Commission could use its general authority in Section 61-02-14(1)(j) and (m) to establish a program similar to what is provided for in SB 2359, and further that money from the Resources Trust Fund could be used for the program. To do so, the Commission would have to declare that the use of the money for the Drought Disaster Livestock Assistance Program would serve a public purpose. Secretary Sprynczynatyk explained the reason to do this is to insure that the reimbursement of funds to an applicant would not be considered an unconstitutional donation. The constitution prohibits the state from making loans, giving credit, or making donations to or in aid of an individual, association, or corporation.

Secretary Sprynczynatyk said he believes the Commission could declare the use of funds for the Drought Disaster Livestock Assistance Program a public purpose since the Program would appear to promote the general welfare and

prosperity of the residents of each of the townships and counties in which the drought has taken a significant toll on the water supply of ranchers. He said that if ASCS assistance cannot be made available to a rancher, then assistance from the Commission might be the only alternative available, other than selling down the livestock herd.

It was the recommendation of the State Engineer that if the Commission agrees a public purpose is served, the Commission begin to implement the program by establishing an advisory committee to determine eligibility criteria for the program and to direct the State Engineer to begin implementation of the program by allocating \$25,000 from the Contract Fund for program purposes.

It was the recommendation of the State Engineer that the advisory committee have five members, including representatives of the following agencies:

State Water Commission (Member)  
Office of the State Engineer (staff)  
Department of Agriculture  
North Dakota Stockmens Association  
North Dakota Association of Soil Conservation Districts

Julie Krenz, Assistant Attorney General, briefed the Commission members on research done on this issue. Ms. Krenz stated that the State Water Commission has authority under North Dakota Century Code 61-02-14(1)(j) and (m) to establish and administer such a program. Ms. Krenz said those provisions give the Commission the full and complete power, authority and general jurisdiction:

- 1) To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgement may be necessary or advisable:
  - j. To finance the construction, establishment, operation, and maintenance of public and private works, dams, and irrigation projects, which in its judgement may be necessary and advisable.
  - m. To provide water for stock.

Ms. Krenz said that the Resources Trust Fund could provide funding for a Drought Disaster Livestock Water Assistance Program established pursuant to North Dakota Century Code Chapter 61-02. North Dakota Century Code

57-51.1-07 provides that money in the Resources Trust Fund may be expended pursuant to Legislative appropriation and must be available to the State Water Commission for constructing water-related projects. Water-related projects are those that the State Water Commission has the authority to undertake and construct pursuant to North Dakota Century Code Chapter 61-02.

Ms. Krenz stated that the Commission has statutory authority under the Resources Trust Fund and North Dakota Century Code 61-02-14(1)(j) and (m) to provide funds for and to administer a Drought Disaster Livestock Water Assistance Program provided that the distribution of funds for this purpose does not violate ND Constitution Article X, Chapter 18. That provision prohibits the state from making loans, giving credit, or making donations to or in aid of an individual, association, or corporation. The North Dakota Supreme Court has held that an appropriation does not violate this constitutional provision if it serves a public purpose.

The North Dakota Supreme Court, in determining whether a particular use of public funds is an unconstitutional donation, has framed the primary question as whether the funds are to be used for a public or private purpose. If a public purpose justifies or serves as the primary basis for an expenditure, it will be constitutional even if the expenditure incidentally results in a private benefit. Ms. Krenz made reference to Supreme Court decisions and an Attorney General's opinion relating to the determination of public or private purposes.

Ms. Krenz stated based on her research of the issue, that if the State Water Commission determines that the use of public funds by individuals under a Drought Disaster Livestock Water Assistance Program serves a public purpose, the reimbursement would be proper.

Commissioner Vogel further explained the program, which is modeled after a program in South Dakota that has been in existence for approximately four years.

The issue of public versus private purpose for the Drought Disaster Livestock Assistance Program was discussed. Chairman Omdahl stressed the importance that the Commission must determine that a public purpose will be served by the program in order to declare the expenditure of funds. Chairman Omdahl indicated that based on the State Engineer's recommendation and the Assistant Attorney General's research on this issue, he is satisfied that it is within the jurisdiction of the State Water Commission to make the determination that this program is a public purpose since the

program would appear to promote the general welfare and prosperity of the residents of each of the townships and counties in which drought has taken a significant toll on the water supply of ranchers.

Michael Dwyer, Executive Vice President of the North Dakota Water Users Association, expressed the Association's support for the Livestock Water Assistance Program. Mr. Dwyer said the livestock industry has been the strongest component of North Dakota's agricultural industry over the last several years. North Dakota has experienced a severe drought over much of the state for the last few years, particularly in those areas which are primarily livestock areas. Mr. Dwyer said that in order to maintain this strong component of the State's agriculture industry, water supplies are necessary, and assistance should be available to every water user. He said water provides the primary ingredient for both economic development and quality of life, which applies to the livestock industry as well as any other segment of population.

South Dakota has recognized the importance of its livestock industry, and as a result initiated a program to support that industry through assistance in developing adequate water supplies. Mr. Dwyer said that the North Dakota Water Users Association feels that this state should do the same.

It was moved by Commissioner Vogel and seconded by Commissioner Narlock that the State Water Commission declare that the Drought Disaster Livestock Assistance Program serves a public purpose in promoting the general welfare and prosperity of the residents of each of the townships and counties in which drought has taken a significant toll on the water supply of ranchers. This declaration shall be incorporated into the Drought Disaster Livestock Assistance Program rules and regulations identifying a public purpose, including factors as the economic importance of the livestock industry to the State of North Dakota and the impact of the drought.

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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.

The issue of composition of an advisory committee to determine eligibility criteria for the program was discussed. It was suggested that in addition to the members recommended by the State Engineer, that the North Dakota Farm Bureau, the North Dakota Farmers Union, and the North Dakota Grazing Association be included on the advisory committee.

It was moved by Commissioner Rudel and seconded by Commissioner Byerly that the State Water Commission approve the Drought Disaster Livestock Assistance Program Advisory Committee with representatives of the following agencies:

State Water Commission (Member)  
Office of the State Engineer (Staff)  
Department of Agriculture  
North Dakota Stockmens Association  
North Dakota Association of Soil  
Conservation Service  
North Dakota Grazing Association  
North Dakota Farm Bureau  
North Dakota Farmers Union

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.

It was moved by Commissioner Rudel and seconded by Commissioner Narlock that the State Water Commission appoint Commissioner Joyce Byerly to represent the State Water Commission on the Drought Disaster Livestock Assistance Program Advisory Committee.

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.

The State Engineer's recommendation to begin implementation of the program by allocating \$245,000 from the Contract Fund for program purposes was discussed. Secretary Sprynczynatyk explained that there are two months remaining in the current fiscal biennium and an allocation of \$25,000 in this biennium would initiate the program. The Commission would then have to consider another allocation after July 1, 1991.

Commissioner Vogel indicated the administrative procedure for rules and regulations could take up to two months to finalize. The administrative procedure includes public hearings and as a result of the public hearings information will be available of what the ultimate demand may be. Commissioner Vogel suggested, and was concurred to by the Commission members, that the State Water Commission defer action at this meeting on the \$25,000 allocation from the Contract Fund for program purposes and that staff provide information for the Commission's consideration on the resources available in the 1992-1993 biennium for the Drought Disaster Livestock Assistance Program.

**DEVILS LAKE MANAGEMENT  
PROJECT UPDATE  
(SWC Project No. 1712)**

of funding problems, the federal appropriation has been reduced by 25 percent and the Corps of Engineers has deleted the water management plan from the reconnaissance plan of study.

Secretary Sprynczynatyk stated the Corps of Engineers is continuing work on the reconnaissance study on the stabilization of Devils Lake. Because

Secretary Sprynczynatyk reported on a meeting held with the Devils Lake Preservation Coalition. It was agreed that because of the critical situation in maintaining the multi-million dollar fishery in Devils Lake, efforts should be pursued to accelerate the Devils Lake Basin portion of the State Water Management Plan update process. Secretary Sprynczynatyk said this will enable the planning staff to coordinate with, and provide support to, a reconnaissance level study of the basin's water management needs being conducted by the Corps of Engineers. The Corps' reconnaissance study is expected to be followed by a feasibility study of specific projects and/or programs needed to resolve the lake water level and other problems. A special task force of local interests has been created to support the efforts of the Devils Lake Citizens Advisory Board. The group will produce the Devils Lake Basin Management Plan, which is intended to identify and describe concepts and methods by which agriculture, fish and wildlife, and recreation interests can incorporate workable solutions for the basin's water quantity and quality problems as well as promote peace and harmony among the interests.

May 3, 1991

UPPER MISSOURI RIVER BANK  
STABILIZATION REPORT  
(SWC Project No. 576)

ural Resources and Conservation, have completed a report on upper Missouri River bank erosion. The report reviews the history of the development of the Missouri River system, presents justifications for bank protection measures, itemizes erosion sites in North Dakota and Montana, and proposed a five-year plan to protect the most critical of the eroding sites.

Secretary Sprynczynatyk said the net loss land due to bank erosion along the upper Missouri River has increased substantially since the completion of the mainstem dams. The loss of land has adversely affected landowners, local and state governments, Indian reservations, recreation, wildlife, and the environment. The operations of the dams by the Corps of Engineers has caused an increase in land loss. The Water Resource Development Act of 1988 directed the Secretary of the Army to undertake such measures, including maintenance and rehabilitation of existing structures, which the Secretary determines are needed to alleviate bank erosion and related problems.

One hundred seventy-three (173) sites were identified in North Dakota and Montana. The estimated cost to protect all of the sites was approximately \$70.6 million. Of the 173 sites identified, 62 sites were in North Dakota and the cost estimate for the North Dakota sites was \$20 million. The sites were classified into three priorities: sites needing protection immediately, sites needing protection soon, and non-critical sites. There were 30 sites classified as needing protection immediately at an estimated cost of \$13.6 million; 80 sites were identified as needing protection soon at an estimated cost of \$35.9 million; and 64 sites were classified as non-critical sites at an estimated cost of \$21.1 million. All of the cost estimates in the report are preliminary in nature and were estimated to reflect the greatest probable cost.

There has not been an appropriation for bank protection under the Water Resources Development Act of 1988. The purpose of the report is to provide sufficient information to persuade the United States Congress to appropriate funds to alleviate the damage occurring along the Missouri River.

**MISSOURI RIVER UPDATE  
(SWC Project No. 1392)**

lawsuit will be gathered over the next nine months, and a trial has been scheduled for June 8, 1992. Secretary Sprynczynatyk said that if at all possible, the discovery (evidence and deposition) process will be expedited, which could mean an earlier conclusion to the lawsuit in any event.

Secretary Sprynczynatyk said the project will be a top priority project because of its significance to North Dakota and will require staff to be involved in preparing for the legal action.

**LEGISLATIVE REPORT**

lative report and indicated he was pleased with the actions taken on legislation of concern to the Commission. He said, as in the past, the Commission maintained an excellent rapport with the Legislature based on its reputation of professional creditability.

**CONTINUED DISCUSSION  
RELATIVE TO POLICY FOR  
REIMBURSEMENT FOR STATE  
WATER COMMISSION MEMBERS**

Secretary Sprynczynatyk briefly discussed the final legislative report and indicated he was pleased with the actions taken on legislation of concern to the Commission. He said, as in the past, the Commission maintained an excellent rapport with the Legislature based on its reputation of professional creditability.

At the March 13, 1991 meeting, the Commission suggested that a Committee be appointed to review and make recommendations on the policy for State Water Commission expenses.

On April 29, 1991, Chairman Omdahl, Commissioner Vogel, Commissioner Spaeth and Secretary Sprynczynatyk met to discuss the issue. Secretary Sprynczynatyk explained the background, which goes back to 1981, when the Commission was increased from seven to nine members by the Legislature. He said although the number of members was increased, the Legislature did not increase the budget accordingly, thus, the current budget and next biennium's budget allow for only two Commission member days per month. This equates to approximately \$22,600 for salaries and \$20,000 for travel.

Secretary Sprynczynatyk stated that Section 61-02-12 of the North Dakota Century Code provides the Commission members are to receive compensation while attending meetings of the Commission or otherwise engaged in official business of the Commission, including time of travel between home and the place at which such duties are performed.

Secretary Sprynczynatyk stated that Assistant Attorney General, Julie Krenz, has advised that a determination has to be made as to what constitutes official business and that members must receive both compensation and travel expenses because of the law.

After the Committee discussed the issue, the following recommendations were developed for the Commission's consideration:

- 1) The Commission should discuss the kinds of meetings that are legitimate and would be considered official business of the Commission;
- 2) In discussing the kinds of meetings, consideration should be given to regional meetings where the Commission member would serve as a representative of the Commission versus local meetings;
- 3) Prior approval should be given by the Commission including consideration of the number of members that would attend; and
- 4) Commission members shall be reimbursed for both time and travel as provided for in the law.

In discussing the Committee recommendations, it was the consensus of the Commission members that a policy be adopted that would allow members to attend regional water meetings in the state; the Commission would pre-approve meeting attendance and that Chairman Omdahl could decide attendance if the Commission was not scheduled to meet before an upcoming event; and, in making a decision on attendance at meetings, Commissioners would have to be considered official representatives of the Commission.

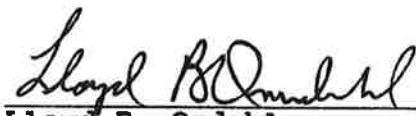
Chairman Omdahl requested that prior to the next State Water Commission meeting, Commission members provide the State Engineer's office with a list of meetings they consider to be legitimate and would be considered official business of the Commission.

**MEETINGS SCHEDULED FOR  
OCTOBER 21-23, 1991**

tively been scheduled for the annual joint convention of the North Dakota Water Users Association and the North Dakota Water Resource Districts Association, a State Water Commission meeting, a Garrison Diversion Conservancy District meeting, and the inaugural ceremony of the Southwest Pipeline Project.

Secretary Sprynczynatyk stated the dates of October 21-23, 1991 in Dickinson have tenta-

There being no further business to come before the State Water Commission, it was moved by Commissioner Lardy, seconded by Commissioner Narlock, and unanimously carried, that the State Water Commission meeting adjourn at 12:00 noon.



Lloyd B. Omdahl  
Lieutenant Governor-Chairman

SEAL



David A. Spivaczynty  
Chief Engineer-Secretary

May 3, 1991