

MINUTES

**North Dakota State Water Commission
Bismarck, North Dakota**

February 4, 1992

The North Dakota State Water Commission held a meeting in the lower level conference room of the State Office Building, Bismarck, North Dakota, on February 4, 1992. Chairman, Lieutenant Governor, Lloyd Omdahl, called the meeting to order at 10:00 AM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. Due to inclement weather conditions, Commissioners Gust and Spaeth did not arrive at the meeting until 1:00 PM. 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
Marjorie Farstveet, Member from Beach
Jacob Gust, Member from West Fargo
Daniel Narlock, Member from Grand Forks
Norman Rudel, Member from Fessenden
Jerome Spaeth, Member from Fargo
David Sprynczynatyk, State Engineer and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Lorry Kramer, Member from Minot

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 25 people 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 DECEMBER 20, 1991 MEETING -
APPROVED**

The minutes of the December 20, 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 December 20, 1991 meeting be approved as circulated.

AGENCY FINANCIAL STATEMENT

Charles Rydell, Assistant State Engineer, presented and discussed the Program Budget Expenditures, dated December 31, 1991, reflecting 25 percent of the current biennium.

**CONSIDERATION OF REQUEST
FOR FUNDING OF DUES FOR
INTERNATIONAL COALITION
(SWC Project No. 1588-1)**

The International Coalition is a public interest group founded by the citizens of the Red River Basin in North Dakota, Minnesota and Manitoba to promote the wise use and management of the Basin's water and related land resources.

The International Coalition (TIC) was organized in 1979 and has focused primarily on grassroots involvement; transboundary dialogue; education; policy development; and, stewardship. Gene Krenz, Director of the State Water Commission's Planning and Education Division, indicated that TIC provides important linkage that does not currently exist between governments. He said it has become clear over the past several years that TIC is in the unique position of being a catalyst for interaction between local, state, provincial, and federal groups and agencies throughout the Red River Basin. Mr. Krenz said it is vitally important that North Dakota participate in that process.

Currently, both the Province of Manitoba and the State of Minnesota pay annual dues of \$10,000 to the Coalition. Other members include 20 municipalities in Manitoba and 12 counties in Minnesota and North Dakota. Approximately, 30 cities, towns and villages on both sides of the Red River are members and nearly 70 watershed boards, water resource districts, conservation districts, businesses and organizations belong to the Coalition.

North Dakota paid dues of \$10,000 to the Coalition in 1990 as a consequence of action taken by the State Water Commission in December, 1990. Mr. Krenz said

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those dues were used to develop, review and publish a Communications Plan for the North Dakota portion of the Red River Basin. The State Health Department has agreed to share in paying North Dakota's dues to The International Coalition; therefore, the State Water Commission's assessment for 1991 is reduced to \$5,000.

It was the recommendation of the State Engineer that the State Water Commission authorize the expenditure of 50 percent of the total International Coalition dues assessment for calendar year 1991, not to exceed \$5,000 from the Contract Fund; and, that the Coalition provide certain services to the Commission as a consequence of payment of such dues. Secretary Sprynczynatyk said the specific services to be provided by TIC are the development, review and publication of a Communications Plan for the Devils Lake Basin, together with expansion of work done in 1990 on the Red River Basin to include additional consideration of water quality. The planning process to be used is one developed by the Water Commission's Division of Planning and Education.

It was moved by Commissioner Byerly and seconded by Commissioner Rudel that the State Water Commission approve the expenditure of 50 percent of the total International Coalition dues assessment for calendar year 1991, not to exceed \$5,000 from the Contract Fund. This motion shall be contingent upon the availability of funds. The International Coalition shall provide specific services to the Commission as a consequence of payment of such dues to include the development, review, and publication of a Communications Plan for the Devils Lake Basin, together with expansion of work done in 1990 on the Red River Basin to include additional consideration of water quality.

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

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**CONSIDERATION OF FUNDING
FOR DEVELOPMENT OF STATE
WATER MANAGEMENT
COMMUNICATIONS PLAN
(SWC Project No. 1864)**

Gene Krenz presented for the Commission's consideration a proposal to develop and publish a State Water Management Communications Plan, which is attached hereto as APPENDIX "A". Mr.

Krenz explained the proposal and the process used to prepare the plan, which is designed to sharpen perceptions of actual communications needs and to use dollars dedicated to various information/education activities more effectively and efficiently. He indicated that completion of the work plan assures that certain results are available to be used in preparing the Commission's next biennial budget proposal.

Mr. Krenz said development of the proposal would utilize a combination of existing staff resources and the services of an independent consultant to act as project coordinator and would be responsible for the analysis of identified communications deficiencies. The total project costs are estimated to be \$15,000, exclusive of services provided by the Commission staff. The time frame for completion of the project is from commencement in early February, 1992 to July 31, 1992.

It was the recommendation of the State Engineer that the State Water Commission approve the expenditure of \$15,000 from the Contract Fund, contingent upon the availability of funds, for the development of a State Water Management Communications Plan.

It was moved by Commissioner Rudel and seconded by Commissioner Narlock that the State Water Commission approve the expenditure of \$15,000 from the Contract Fund for the development of a State Water Management Communications Plan. This motion is contingent upon the availability of funds.

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

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE AND
SERVICE STATUS
(SWC Project No. 1736)**

Tim Fay, Manager of the Southwest Pipeline Project, reported that since delivery of water to Dickinson began in October, 1991, a total of 106,898,000 gallons have been delivered to Dickinson.

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

is currently installing the permanent control system, which upon completion of the system, will allow for control of the raw water supply line from the operations and maintenance headquarters building in Dickinson.

Mr. Fay provided the Commission members with a project construction status report. He said the telemetry contractor

**SOUTHWEST PIPELINE PROJECT -
CONTRACT STATUS
(SWC Project No. 1736)**

Mr. Fay indicated that the potential contracts for the coming construction season are in various stages as follows:

Contract 2-3E - Main transmission line from Dickinson to the New England reservoir. Estimated construction cost is \$4.5 million. This contract is to be advertised in late January, 1992.

Contract 2-3F - Main transmission line from New England reservoir to the junction of Highways 21 and 22. Estimated construction cost is \$2.5 million. This contract is to be advertised in late January, 1992.

Contract 3-1B - Second Zap reservoir. This is a duplicate of the existing tank north of Zap. Operating the pipeline as a raw water line requires the Zap reservoir to be in use to prevent surges. A second tank will allow one to be taken out of service for cleaning and maintenance. Estimated cost is \$500,000. This contract may be advertised in March, 1992.

Contract 2-7A - Main transmission line to Davis Buttes reservoir. This will be the first piece of transmission line to be built according to the new hybrid standards. Estimated cost is \$600,000. This contract may be advertised in March, 1992.

Contract 5-13 - Davis Buttes reservoir. This is a steel tank located on top of Davis Buttes. Estimated cost is \$600,000. This contract may be advertised in April, 1992.

Contract 5-3 - New England reservoir. This is a steel tank located on the Stark-Hettinger county line. Estimated cost is \$500,000. This contract may be advertised in April, 1992.

Contract 4-3 - Dickinson triple pump station. This is the combined pump station which will deliver water

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to the south, west, and northeast branches of the system. Estimated cost is \$2.8 million. This contract may be advertised in July, 1992.

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

Mr. Fay indicated that a review of the likely demands on the south branch of the transmission system indicates that a design flow of 2200 gallons per minute would be adequate. The flow that has been used to date is 2700 gallons per minute.

Mr. Fay explained that a design safety factor was not determined with the previously adopted hybrid standards. He said that with PVC pipe, the safety factor affects the useful life span. A safety factor of 2.5 gives an adequate life, reasonable construction cost and adequate flow capacity.

**SOUTHWEST PIPELINE PROJECT -
WATER SERVICE CONTRACT
BILLING PROCEDURE
(SWC Project No. 1736)**

Tim Fay explained the water service contract provision for the monthly water use billing procedure. He said each month the city can either be billed for the amount of water actually used or for 1/12 of the amount of water the city purchased. Mr. Fay explained that there are bookkeeping problems with this procedure and noted that the cities have expressed concern that the billing could affect its cash flow. Mr. Fay indicated staff is in the process of drafting an amendment to this provision in the water service contract, which would allow a city to be billed on a monthly basis for the amount of pipeline water actually used.

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

At the May 3, 1991 meeting, the State Water Commission adopted modifications to the rural water rates. Tim Fay said this modification identified part of the rural water fee which was to go towards capital repayment, established a fixed "meter fee", and indexed the capital repayment portion to the cost of living. The May 3, 1991 motion approved by the Commission is as follows:

"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:

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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."

Mr. Fay explained that the previous rates before they were modified by the Commission's motion had included a declining block - up to 10,000 gallons per month would be charged \$2.50 per thousand gallons, and use over that amount would be charged \$2.00 per thousand gallons. Mr. Fay said the action taken by the Commission on May 3, 1991 eliminated the declining block.

Mr. Fay stated that the Southwest Water Authority had relied on the declining block in its sign-up campaigns and prefers to retain it. Since this feature only affects the operation and maintenance fee, and since it only applies after 10,000 gallons per month have been used, Mr. Fay said it is appropriate for the State Water Commission to clarify its action of May 3, 1991 to recognize the declining block for high water use.

It was moved by Commissioner Narlock 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 up to 10,000 gallons per month shall be charged \$2.50 per thousand and use over 10,000 gallons shall be charged \$2.00 per thousand.

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

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**SOUTHWEST PIPELINE PROJECT -
REQUEST FOR DELIVERY OF
PROJECT WATER TO SOUTH DAKOTA
(SWC Project No. 1736)**

and residents in that state interested in service from the Southwest Pipeline Project have been encouraged to contact their state officials.

Tim Fay indicated interest in serving South Dakota users has been active recently. Contacts have been established with state officials in South Dakota

**SOUTHWEST PIPELINE PROJECT -
PILOT PROGRAM WITH SOIL
CONSERVATION SERVICE TO
CONSTRUCT LIVESTOCK WATERING
SYSTEMS WITHIN PROJECT AREA
(SWC Project No. 1736)**

Southwest Pipeline Project service area. Several meetings have been held in an attempt to coordinate Southwest Pipeline Project rural water systems with such a program.

Tim Fay informed the Commission members that the Soil Conservation Service is developing a pilot program under their existing Public Law 566 authority to construct livestock watering systems within the

**GARRISON DIVERSION PROJECT -
PROJECT UPDATE
(SWC Project No. 237)**

included \$30 million for the Garrison Diversion Project. He said this is very encouraging and that state and tribal officials will meet to determine if this is an adequate amount to address the needs to be accomplished on the Garrison Diversion Project next year.

Secretary Sprynczynatyk informed the Commission members that the Administration's proposed budget for Fiscal Year 1993 has

Secretary Sprynczynatyk reported that he recently accompanied Governor Sinner to Washington, DC to meet with officials on the Garrison Diversion Project. He said the meetings were productive, the ideas were well received, and that he is optimistic some progress was made on moving the project ahead, providing North Dakota is able to do more, especially by cost sharing in the project. A package and strategy to consider for the project is being developed.

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

Mr. Mattern commented that project construction is limited at this time due to winter conditions. He reported that Garrison Rural Water, Missouri West Rural Water and Ramsey County Rural Water have been active in obtaining sign-ups.

Jeffrey Mattern, MR&I Water Supply Program Coordinator, provided a progress report on the MR&I Water Supply Program.

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Southern Pierce County Rural Water is the newest application to the MR&I Water Supply Program.

**GARRISON DIVERSION PROJECT -
CONSIDERATION AND APPROVAL OF
ADDITIONAL \$129,500 FOR 1992
MR&I PROGRAM ADMINISTRATION
(SWC Project No. 237-3)**

The Garrison Diversion Conservancy District and the State Water Commission approved \$172,500 of federal grant funds for 1992 MR&I Program administration expenses.

Jeffrey Mattern indicated that completion of a federal audit of the MR&I Program recommended changes in the accounting procedures. As a result, the Garrison Diversion Conservancy District will require an additional \$129,500 for past administration expenses.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$129,500 of federal MR&I Program funds for past administration expenses.

The Garrison Diversion Conservancy District considered and approved the additional funds for administration expenses on January 2, 1992.

It was moved by Commissioner Byerly and seconded by Commissioner Vogel that the State Water Commission approve the expenditure of an additional \$129,500 of federal MR&I grant funds for MR&I program administration. The total amount approved for 1992 MR&I Program administration expenses would be \$302,000.

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

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

LeRoy Klapprodt, State Water Commission Planning and Education Division, reported that the Water Resource Districts and the Joint Water Resource Districts have been requested to identify the projects and programs they anticipate being funded in the 1993-1995 biennium. Mr. Klapprodt indicated this information will be used in preparing the early action portion of

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the State Water Management Plan that will be used in developing the State Water Commission budget for the 1993-1995 biennium. The deadline for receiving this information is February 29, 1992.

Mr. Klapprodt said the staff has been concentrating its efforts on developing solutions and alternatives to address the problems and opportunities identified by the eight public citizen advisory boards. The Bureau of Reclamation is providing technical engineering analysis on potential projects.

Information has been requested from the federal and state natural resource agencies by the end of February, 1992, concerning their future plans for development and management of North Dakota's water resources.

Guidelines are being developed for the draft report of the State Water Management Plan. Mr. Klapprodt commented the 1992 State Water Management Plan report will contain limited background information on North Dakota's water resources and will concentrate primarily on the implications and funding alternatives for the final recommendations in the report.

A draft of the Future Without Plan scenario will be presented to the State Water Management Plan Steering Committee at the end of February, 1992 for review.

The fourth round of public meetings of the Citizens Advisory Boards will be scheduled for the end of March, 1992.

**NA CHIIN HUUN -
DAKOTA PROJECT UPDATE
(SWC Project No. 237-4)**

Frank Johnson, Project Coordinator for the Na chin Huun - Dakota Project, reported that hearings in Washington, DC before the Energy and Natural Resources Committee are being planned for the last week in February, 1992. Field hearings in the project area are being planned for the week of March 9, 1992 in Williston, Fort Berthold and Minot.

Mr. Johnson reported that counsel for both the Majority and Minority representatives on the Energy and Natural Resources Committee were provided with copies of the Northwest Area Water Supply Study and the Northwest Area Water Supply/Fort Berthold Integrated Study in December, 1991. To date, no comments or questions have been received.

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Governor Sinner has written to Representative Byron Dorgan asking that he introduce the Na chiin Huun - Dakota Project legislation in the US House of Representatives.

Mr. Johnson indicated that a list of questions is being compiled that could possibly be asked during the in-state hearings in order that they may be adequately addressed. One of the items of concern that is a change from the legislation as originally drafted is the condition that the project purchase all of its electrical service from cooperatives that purchase power from Western Area Power Administration. Mr. Johnson stated there are portions of the project area and planning project facilities that are within the service territory of investor-owned utilities. These areas will have to be identified and satisfactory agreements entered.

A draft copy of Na chiin Huun - Dakota Project letterhead stationary was distributed for the Commission's information and review.

**STATE WATER COMMISSION AND
ATMOSPHERIC RESOURCE BOARD**

At the December 20, 1991 State Water Commission meeting, a motion was passed supporting Governor Sinner's recommendation relating to the enhancement of the operations of the State Water Commission and the Atmospheric Resource Board.

The Atmospheric Resource Board appointed a subcommittee at its December 19, 1991 meeting to meet with the State Engineer to develop a workable policy from an administrative standpoint to enhance the operations of the State Water Commission and the Atmospheric Resource Board.

On January 24, 1992 the Atmospheric Resource Board considered and adopted the policy statement recommendations of the subcommittee.

Bruce Boe, Director of the Atmospheric Resource Board, reported that he has met with the State Engineer and the Assistant State Engineer to explore areas where administrative staff functions might be improved. To identify areas where routine efforts might be streamlined, the staff involved are currently engaged in preparing a listing of their respective duties and functions. From these lists, a matrix will be prepared and areas of potential collaboration and/or cooperation will be identified.

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Mr. Boe indicated that plans are being developed that would allow the Atmospheric Resource Board computer network to be interfaced with that of the State Water Commission. This will allow the direct exchange of electronic mail and data as well as sharing of hardware and software.

Tom Stine, Chairman of the Atmospheric Resource Board, expressed concerns relative to responsibilities and liabilities in the delegation of authorities.

Secretary Sprynczynatyk responded to the concerns expressed by Mr. Stine that by law and the Attorney General's opinion the State Water Commission would provide guidelines to the Atmospheric Resource Board. In the event there is a transfer of responsibility, the liability would then be an action of the State Water Commission.

Commissioner Byerly reviewed the policy statement recommendations adopted by the subcommittee. She commented that the intent of the subcommittee was that the Atmospheric Resource Board continue to maintain the functions, responsibilities and decision-making authorities related to operational cloud seeding programs and research. Commissioner Byerly said the other subcommittee recommendations comply with the North Dakota Century Code.

The Commission meeting was recessed at 12:00 noon and reconvened at 1:00 PM. Commissioners Gust and Spaeth were present at meeting.

**CONSIDERATION OF REALLOCATION
OF RESOURCES TRUST FUND FOR
1991-1993 BIENNIUM**

At the October 21, 1991 meeting the State Water Commission approved the allocation of projected revenues from the Resources Trust Fund based on the March, 1991 forecast. Secretary Sprynczynatyk said this forecast is updated approximately four times each biennium. He said, unfortunately, the December, 1991 forecast was \$1,706,973 lower than the March, 1991 forecast, due to lower oil production, lower oil prices, and lower interest rates. Secretary Sprynczynatyk said this amounts to a 24 percent reduction in new revenues and, therefore, warrants a reallocation of the Resources Trust Fund.

Secretary Sprynczynatyk provided explanation and recommended that the \$1.7 million reductions be taken from the following projects:

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1) Maple River Dam	\$500,000
2) Devils Lake Feasibility Study	300,000
3) Na chiin Huun - Dakota Project	100,000
4) General Projects	807,000

Secretary Sprynczynatyk presented for the Commission's consideration, the following reallocation request for funding from the Resources Trust Fund for the 1991-1993 biennium:

Garrison MR&I Water Supply Program	\$ 4,000,000
Maple River Dam	500,000
Devils Lake Feasibility Study	500,000
Na chiin Huun - Dakota Project	50,000
Drought Disaster Livestock Program	250,000
Hydrologic Investigations	556,446
State Water Commission Operations	1,546,776
Southwest Pipeline Project	2,500,000
Souris River Flood Control Project	1,637,924
General Projects	806,973

Actual Available in Resources Trust Fund for 1991-1993 Biennium	\$12,348,119
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Fred Selberg, Chairman of the Southeast Cass Water Resource Board, appeared before the State Water Commission to discuss and express support for the Maple River Dam project.

It was moved by Commissioner Byerly and seconded by Commissioner Spaeth that the State Water Commission approve funding reallocations from the Resources Trust Fund for the 1991-1993 biennium as recommended by the State Engineer. (SEE APPENDIX "B")

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

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**CONSIDERATION OF REQUEST
FOR COST SHARING FROM
CONTRACT FUND FOR CORPS OF
ENGINEERS SECTION 22
(SWC Project No. 1708)**

22 Program. He said the Federal Water Resources Development Act of 1990 authorized the Corps of Engineers to establish fees to recover a portion of the cost of providing Section 22 planning assistance to states. The fees are being phased in over a three-year period from 1991 to 1993. In 1991, the state's share of the program costs was 10 percent; in 1992, the state's share is 30 percent; and, in 1993 and beyond, the state's share will be 50 percent. The program allocation for North Dakota for FY '92 is \$150,000.

Mr. Frink explained that the Section 22 program provides North Dakota with the experience, technical expertise and investigative resources of the Corps of Engineers. Current items the Corps is assisting us with include the development of a computer program to facilitate integrated water management planning on the Souris River and a continuing effort to develop flood control measures in the Red River Valley.

The Souris River management model currently being developed by the Corps incorporates water rights, backwater effects on reservoir operations, multiple year operating plans, and international apportionment of flows into the Corps HEC-5 computer program. The development of this model was broken into three phases, which were to be completed in three successive years. Phases I and II have already been commenced by the Corps and only Phase III work remains. The estimated cost of Phase III, which involves multiple year operations and international apportionment of flows is \$32,800.

Mr. Frink said the states of North Dakota and Minnesota have been seeking a solution to the flooding problems in the Red River Valley for many years. The two states are currently using the Section 22 program to develop an unsteady flow computer model of the area between Grand Forks and Drayton. It is hoped that this computer model will provide us with the means to analyze the effects of various flood control alternatives both on the Red River itself and its tributaries. Continued development and implementation of this model in 1993 is estimated to cost \$150,000, with that amount divided evenly between Minnesota and North Dakota. The state's 30 percent share of the costs is \$22,500.

The Section 22 program allocation for North Dakota for FY '92 is \$150,000. The estimated cost of the work items currently underway is \$107,800,

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leaving \$42,200 of the state's allocation unused. The state's 30 percent share of the items underway is \$32,340.

It was the recommendation of the State Engineer that the State Water Commission approve \$32,340 from the general projects fund for Section 22 cost share for continued development of the Souris River HEC-5 model and the Red River UNET model.

It was moved by Commissioner Rudel and seconded by Commissioner Vogel that the State Water Commission approve cost sharing of 30 percent of eligible costs, in an amount not to exceed \$32,340 from the general projects fund, for the Corps of Engineers Section 22 Program for continued development of the Souris River HEC-5 model and the Red River UNET model. This motion is contingent upon the availability of funds.

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

**CONSIDERATION OF REQUEST
FOR COST SHARING FROM
CONTRACT FUND FOR PHASE III
OF WILD RICE RIVER SNAGGING
AND CLEARING IN RICHLAND COUNTY
(SWC Project No. 1842)**

A request was presented for the Commission's consideration from the Richland County Water Resource District for cost sharing in Phase III of the snagging and clearing project along the Wild Rice River.

Cary Backstrand, Chief of the State Water Commission's Regulatory Section, stated that the project will snag and clear approximately 22.6 river miles, will consist of four reaches starting at I-29 in Section 21, Township 131 North, Range 94 West, and proceeding upstream.

The cost estimate indicates construction costs of \$148,000 and engineering costs of \$8,000, for a total project cost of \$156,000. Mr. Backstrand indicated all costs are eligible for 25 percent cost sharing, which would amount to \$39,000. Engineering and inspection will be done by the State Water Commission staff and those costs would be considered part of the State Water Commission share. The amount required from the Contract Fund would be \$31,000.

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It was the recommendation of the State Engineer that the State Water Commission approve cost sharing in Phase III of the Wild Rice River snagging and clearing project in 25 percent of the eligible costs, not to exceed \$39,000, of which \$31,000 would be from the Contract Fund and \$8,000 of be for in-kind staff engineering services.

It was moved by Commissioner Vogel and seconded by Commissioner Gust that the State Water Commission approve 25 percent cost sharing of the eligible items for Phase III of the Wild Rice River snagging and clearing project in Richland County, not to exceed \$39,000, of which \$31,000 would be from the Contract Fund and \$8,000 would be for in-kind staff engineering services. This motion is contingent upon the availability of funds.

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

**CONSIDERATION OF REQUEST
FOR COST SHARING FROM
CONTRACT FUND FOR HYDROLOGIC
STUDY OF DEVILS LAKE
(SWC Project No. 1822)**

A request was presented for the Commission's consideration recommending cost sharing for the continuation of the Devils Lake Study.

Dale Frink indicated that the study has been funded through the State Water Commission - United States Geological Survey Cooperative Program since 1986. The total study cost for FY '92 is \$30,000, of which \$15,000 will be funded by the USGS. Mr. Frink explained that the State Water Commission does not have funds available through the SWC-USGS Cooperative Program for funding the project for FY '92. Therefore, it was recommended that funds be allocated from the general projects fund so this study may be continued.

Mr. Frink said the data that has been collected as part of the study since 1986 has been extremely beneficial in the development of an energy budget model for Devils Lake. Continuation of the study will provide additional data that will refine the water requirements for a stabilization project at Devils Lake. He said the information gained through the study will also have transfer value to other surface water bodies in North Dakota. The cost of the study will

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go towards the installation and removal of equipment to record the various parameters necessary for the development of the energy budget and mass transfer models, bi-weekly field checks and calibration, data compilation and quality control, evaporation computations, and to run a thermal model to determine evaporation. The amount of money required from the general projects fund for the continuation of this project is \$15,000.

It was the recommendation of the State Engineer that the State Water Commission approve 50 percent cost participation of the total study costs, not to exceed \$15,000, for the continuation of the hydrologic study of Devils Lake.

It was moved by Commissioner Gust and seconded by Commissioner Vogel that the State Water Commission approve 50 percent cost participation, not to exceed \$15,000 from the Contract Fund, for the continuation of the hydrologic study of Devils Lake. This motion is contingent upon the availability of funds.

Commissioners Byerly, Farstveet, Gust, 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 RAMSEY COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARING FROM CONTRACT FUND
FOR RECONSTRUCTION OF LAKE
IRVINE CONTROL STRUCTURE
(SWC Project No. 1802)**

A request was presented for the Commission's consideration from the Ramsey County Water Resource District for cost participation in the Lake Irvine outlet structure.

Cary Backstrand stated that during the past few years there have been a number of discussions concerning structural measures to efficiently pass flows through the Chain Lake system. One project, he said, which has been considered a high priority by a number of agencies, is the reconstruction of the control structure at the downstream end of Lake Irvine. The existing control structure, which is presently not operative, was constructed with State Water Commission cost share funds in the early 1950's. Mr. Backstrand said it has been suggested on numerous occasions that the outlet structure be reconstructed and that an operation plan be initiated.

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In September, 1991, the State Water Commission completed the preliminary engineering report entitled "Chain Lakes Improvements". This report recommended the reconstruction of the Lake Irvine control structure and included a preliminary design and cost estimate.

On December 11, 1991, a letter was received from the Ramsey County Water Resource District requesting technical assistance and cost sharing to construct a new control structure at the outlet of Lake Irvine, as recommended in the State Water Commission Chain Lakes report. The District indicated that the roadway bridge at this same location will be replaced as part of the Department of Transportation bridge replacement program. A bid letting has been scheduled for May 22, 1992, which includes the removal of all existing structures including the control structure.

On January 28, 1992, a request was received from the Ramsey County Water Resource District requesting cost sharing in construction of a water control structure. The Board has requested \$30,000 in state funds for construction and engineering costs. A new preliminary cost estimate was included, which indicates total project costs at \$58,000. Of that amount, \$4,265 are estimated as contract administration costs, which are not normally eligible for State Water Commission cost sharing. The eligible costs, using the latest water resource district cost estimate, is \$53,735, of which 50 percent would be approximately \$26,900.

Mr. Backstrand indicated this project will require a Section 404 permit from the Corps of Engineers and a State Engineer permit to modify the control structure.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing in 50 percent of the eligible items for the reconstruction of the Lake Irvine outlet structure, not to exceed \$26,900, contingent upon the availability of funds and securing the necessary permits.

Robert Garske, Chairman of the Ramsey County Water Resource Board, and John Olson, Midwest Engineering, commented on the specific details of the reconstruction project and requested favorable action by the Commission for funding.

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It was moved by Commissioner Gust and seconded by Commissioner Narlock that the State Water Commission approve 50 percent cost sharing of the eligible project items, not to exceed \$26,900 from the Contract Fund, for the reconstruction of the control structure portion of the bridge project for Lake Irvine. The motion is contingent upon the availability of funds and securing the necessary permits.

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

**NORTH DAKOTA WATER USERS
ASSOCIATION INITIATED TAX
MEASURE UPDATE
(SWC Project No. 1852)**

At the December 20, 1991 State Water Commission meeting, the members were informed that on November 26, 1991, the North Dakota Water Users Association

voted to sponsor an initiated measure for a 1/2 cent sales tax for water development. Secretary Sprynczynatyk said, if successful, the tax would be in force from 1993 through 1999 and would raise about \$20 million per year. This money would go toward the projects and programs identified by the Governor's Water Strategy Task Force, including, but not limited to, Mid-Dakota Reservoir, stabilization of Devils Lake, Southwest Pipeline Project, Na chin Huun - Dakota Project, MR&I, Contract Fund, and other features of the Garrison Diversion Project.

Secretary Sprynczynatyk said approximately 13,000 signatures are required on the petition for the initiated measure, which could be placed either on the June primary ballot or on the November general election ballot. The Water Users Association received approval from the Secretary of State in late January, 1992, and the petitions are currently being circulated.

Secretary Sprynczynatyk discussed a memorandum prepared by Julie Krenz, Assistant Attorney General, relative to whether the State Water Commission can campaign for the initiated measure proposing a tax for water-related projects. Ms. Krenz's memorandum, dated January 30, 1992, is attached hereto as APPENDIX "C".

Secretary Sprynczynatyk summarized and read the following, in part, from Ms. Krenz's memorandum relating to the Commission's authority:

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"It definitely could be argued that the implied powers and duties of the Water Commission necessary to carry out the expressly provided powers and duties would include being able to express the Commission's views on matters involving financing for the development of water projects in the state. Whether the Water Commission chooses to express its views on these subjects is a matter that lies within the sole and exclusive discretion of the Commission and will not be reviewed by the courts or any other executive branch officer, including the Attorney General. First American Bank v. Ellwein, 198 N.W.2d 107 (N.D. 1972).

Based on the opinion letter to Representative Diane Larson, it also appears that as long as the provisions of N.D.C.C. 16.1-10-02 are not being violated, the Water Commission could campaign for the initiated measure at state expense. That section prohibits the use of state services or property for political purposes. Political purposes is defined to refer only to activities by or on behalf of candidates for office, political parties, political committees, or organizations. It does not refer to initiative or referendum measures, nor does it include activities undertaken in the performance of the duty of a state office."

A draft resolution expressing the State Water Commission's endorsement and support for implementation of the water projects outlined by Governor Sinner's Water Strategy Task Force, and support of the efforts of the water coalition and others involved in the Initiated Measure for Water Development was distributed for the Commission's consideration.

It was moved by Commissioner Rudel and seconded by Commissioner Narlock that the State Water Commission approve Resolution No. 92-2-447, Endorsement and Support for the Initiated Measure for Water Development. (SEE APPENDIX "D").

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

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**GOVERNOR'S WATER STRATEGY
TASK FORCE UPDATE
(SWC Project No. 1852)**

Chairman Omdahl requested that the State Water Commission consider the expenditure of funds to publish a tabloid summary of the Governor's Water Strategy Task Force Final Report for public distribution. Chairman Omdahl said the summary would be very beneficial in providing information to the public explaining the water development program.

It was moved by Commissioner Narlock and seconded by Commissioner Byerly that the State Water Commission authorize the expenditure of funds to publish a tabloid summary of the Governor's Water Strategy Task Force Final Report for public distribution.

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

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

Dale Frink reported that the State Water Commission recently received a draft copy of the Reconnaissance Report for the Devils Lake Study by the Corps of Engineers. Mr. Frink explained the staff has not had sufficient time to thoroughly review the contents of the report, but the draft does indicate that there is at least one feasible alternative, therefore, a feasibility study is justified. Mr. Frink said this conclusion is based upon the St. Paul District's efforts and is currently being reviewed by higher headquarters in Chicago and Washington, DC.

The Reconnaissance Report addressed the needs of the Devils Lake Basin for water management, stabilized lake levels, water supply, water quality, recreation, water pollution, abatement, and enhancement and conservation of fish and wildlife. Mr. Frink said the report focused on the stabilization of Devils Lake using treated Missouri River water supplied through features of the Garrison Diversion Unit and it evaluated alternatives for the authorized delivery of 100 cubic feet per second of Missouri River water to the Sheyenne River.

Mr. Frink explained two main alternatives that are being considered:

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Plan 1 - would bring treated water via pipeline from the New Rockford Canal to the Minnewaukan Flats area of Devils Lake. The pipeline could be designed to flow in both directions and act as both an inlet and outlet. Two different alignments for the pipeline were investigated. A pipeline to east Minnewaukan Flats was estimated to cost \$151,230,000 and a pipeline to west Minnewaukan Flats was estimated to cost \$164,504,000.

Plan 2 - is a canal that flows from the New Rockford Canal, through a siphon under the Sheyenne River, and to Mission Bay on Devils Lake. The outlet is the one recommended by the Corps of Engineers in the 1988 feasibility report. The outlet includes pumping floodwater through a series of short pipelines up to a series of lakes and small reservoirs and then a channel from Peterson Coulee to the Sheyenne River. The cost estimate for this alternative is \$126,325,000.

Mr. Frink explained the cost estimates include necessary maintenance and operational costs from the Snake Creek Pumping Plant to the McClusky Canal, a biota treatment plant on the McClusky Canal, a small re-regulation reservoir on the Sheyenne River, a pumping plant to New Rockford Canal, completion of the New Rockford Canal, a canal or pipeline connection from the New Rockford Canal to Devils Lake, and an outlet back to the Sheyenne River.

The report also includes several alternatives to connect the McClusky and New Rockford Canals including a small re-regulation reservoir and pumping plant to the New Rockford Canal.

The Reconnaissance Report also addressed the conceptual management plan for the Devils Lake Basin. The basin-wide plan focused on the need to reduce the inflow of nutrients into the lake and the consequent acceleration of the eutrophication process.

Secretary Sprynczynatyk stated that before the project can be moved into the feasibility study phase, the Corps of Engineers requires a letter of intent from an appropriate entity in North Dakota to become the non-federal sponsor for the project. The main requirement of the sponsor at this time is the provide for 50 percent of the total cost of the feasibility study, of which 25 percent can be cash. The \$500,000 allocation from the Resources Trust Fund was earmarked for this purpose.

It was the recommendation of the State Engineer that the State Water Commission give the State Engineer authority to provide a letter of intent to the Corps of

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Engineers, which will provide assurances that the State Water Commission understands the financial requirements and has expressed intent to become the local sponsor or find an appropriate local sponsor from the Devils Lake Basin. The responsibilities for becoming the local project sponsor will include an intent to commit cost sharing on the feasibility study, project construction and operation, and maintenance subject to appropriate legislative approval.

It was moved by Commissioner Rudel and seconded by Commissioner Narlock that the State Water Commission hereby authorizes the State Engineer to provide a letter of intent to the Corps of Engineers to proceed with the feasibility study for the Devils Lake Basin. The letter of intent shall provide the assurances that the State Water Commission understands the financial requirements and expresses the intent to become the local sponsor, or find an appropriate local sponsor from the Devils Lake Basin.

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

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

Secretary Sprynczynatyk reported that Congressman Dorgan and Senator Conrad requested the General Accounting Office to review whether in 1988, 1989 and 1990 the Corps of Engineers followed a drought contingency plan and whether the plan reduced the amount of water released; and, to identify how the Corps set operating priorities for this plan.

The General Accounting Office has completed its report "Corps Management of Ongoing Drought in the Missouri River Basin". The Executive Summary of the report states, in part, as follows:

"The Corps followed a drought contingency plan in 1988, 1989, and 1990 in releasing water from the reservoir system. Acting consistently with the plan, the Corps reduced winter release rates, shortened navigation seasons on the Missouri River, and reduced water levels in the navigation channel. As a result, 17 percent less water was released during the three-year period

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than would have been released under normal operating conditions. The drought and the Corps' response to it adversely impacted all of the purposes served by the reservoirs except flood control.

The Corps' drought contingency plan, however, is based on assumptions about the amount of water needed for navigation and irrigation made in 1944 that are no longer valid, and the plan does not reflect the current economic conditions in the Missouri River Basin. The Corps' ongoing comprehensive study of its operation of the reservoir system is expected to address these issues. Notwithstanding the results of its study, the Corps maintains on the basis of its interpretation of the authorizing legislation that unless it obtains congressional approval to change existing operating priorities, it must continue to give recreation a lower operating priority than other authorized purposes even if this lower priority results in decreased system benefits. GAO sees no appropriate basis for the Corps' view. A lawsuit filed in federal court by three upper basin states questions the legality of the Corps' position on recreation.

On the basis of its interpretation of Section 9 of the Flood Control Act of 1944, which authorized construction of the Missouri River system, the Corps believes that each authorized purpose is either primary or secondary. The Corps also believe that secondary purposes, which it says includes recreation, must be relegated to a lower operating priority than primary purposes. As a result, according to the Corps, recreational use of the reservoirs was not a factor in the Corps' major water release decisions during the drought. Corps officials said they would not give priority to recreation over other purposes even if their analysis showed that the change in priority could increase total system benefits because of the Corps' position on primary and secondary purposes. They said that congressional approval would be needed to change existing operating priorities."

Secretary Sprynczynatyk indicated that the lawsuit filed by the three upper basin states, North Dakota, South Dakota and Montana, challenged the Corps' policy of categorizing a project's authorized purposes as primary and secondary. He said the outcome of this court case could have far-reaching implications because the Corps' policy is applicable agencywide. He said that, in essence, the states argue that

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because recreation is an authorized purpose of the Missouri River system, it is not a secondary purpose that receives only water that is left over after other uses are satisfied.

The Executive Summary states, in part:

"Because its review did not reveal a statutory scheme for regarding authorized purposes as primary or secondary, GAO sees no appropriate basis for the Corps' view. The lawsuit may ultimately settle the legal question. However, in the absence of a court decision adverse to the Corps' position, the Corps will continue to relegate recreation to a low priority, even if the lower priority results in decreased system benefits, unless it is directed by the Congress to establish operating priorities for all authorized purposes on the basis of economic and other benefits to be derived from all authorized purposes."

Secretary Sprynczynatyk commented that the GAO report is very encouraging and, "in summary, recommends what we've been asking the Corps to do all along, and that is to establish new operating policies that recognize the economic, social and environmental realities on the Missouri River today. North Dakota deserves fair treatment from the Corps of Engineers and the GAO report should help us achieve that goal."

**BALDHILL DAM SAFETY
MODIFICATIONS
(SWC Project No. 300)**

At the December 20, 1991 meeting, the Commission members were provided with an update on the safety modifications of

Baldhill Dam. The dam was built by the Corps of Engineers in the late 1940's on the Sheyenne River directly upstream of Valley City. The dam is a high hazard dam due to its closeness to Valley City and it was constructed in accordance with Corps of Engineers design standards of the 1940's. Today's standards have greatly increased the spillway and other requirements of dams, and Baldhill Dam no longer meets these new standards. The Corps of Engineers estimates it will cost \$33 million to make the necessary dam safety modifications.

The Assistant Secretary of the Army has contracted with Don Dillon to work with the Commission and locals regarding Baldhill Dam. State Water Commission staff meet with Mr. Dillon on December 18, 1991, and Mr. Dillon will provide a report to the Assistant Secretary of the Army.

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Secretary Sprynczynatyk said the State Water Commission has always been supportive of completing the dam safety modifications. A draft letter was considered, and approved by the Commission, directing the State Engineer to contact the entities of the Eastern North Dakota Water Development Association informing them of the recent negotiations with the Corps of Engineers and stating that the major beneficiaries, those that share in the water allocation from Lake Ashtabula, may have to contribute to this project.

**EPA WETLAND PROTECTION
DEVELOPMENT PROGRAM
(SWC Project Nos. 1489-3&4)**

On August 24, 1989, the State Water Commission approved a three-year proposal for a North Dakota wetlands education and policy development project in collaboration with the North Dakota Water Users Association. A proposal for first-year funding of \$40,000 was submitted to the Environmental Protection Agency Region VIII in Denver. In July, 1990, the EPA approved the \$40,000 grant, which also included \$15,000 and \$5,000 in-kind matching funds by the Water Users Association and the North Dakota Wetlands Trust. The grant period was from July 1, 1990 through September 30, 1991.

Because of the high interest generated through the first-year wetlands education program and policy development program and the need to expand the program to additional individuals, organizations and areas within North Dakota, a second-year grant was submitted to the EPA. In September, 1991, the EPA approved a \$65,000 second-year grant, including a \$15,000 indirect and \$10,000 direct cost matching by the Water Users Association and other local and private sources, for a total project cost of \$90,000.

Secretary Sprynczynatyk indicated the final document of the EPA Wetland Protection Development Program for the second-year program has been completed, and the major goals include: 1) the broad implementation of North Dakota's no-net loss of wetland program and the state's wetlands policy; and 2) the ability to develop projects that meet the needs of water management, profitable agriculture, and wetlands protection.

Commissioner Vogel indicated that the Department of Agriculture submitted comments opposing the proposed revisions that were published in the Federal Register to the "1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands". She provided the Commission members with a copy of a letter to the Environmental Protection Agency which reiterated the previous comments expressed by the Department of Agriculture opposing the proposed regulations published in the December 19, 1991 Federal Register.

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

129 projects approved. Total project costs are estimated at \$544,000, while cost sharing approved to date is \$203,000. To date, the State Water Commission has paid out \$141,000 to livestock producers.

Cary Backstrand provided an update on the Drought Disaster Livestock Water Assistance Program. He reported 139 applications have been received, with

**MULTI-LEVEL GOVERNMENT
COOPERATION ON SMALL SCALE
FLOODWAY ACQUISITION PROJECT
FOR STANLEY TOWNSHIP, CASS
COUNTY, ND
(SWC Project No. 1751)**

people with land use consisting of residential subdivisions and farmland. The township has very level topography and receives pressure to build homes along native riverine woodlands. The Forest River subdivision platted in 1960, experienced numerous flood events during the 1970's. In April, 1989, spring snowmelt and rainfall caused a 25-year flood event on the Red River at the Forest River Subdivision. As a result of damages from this flood, a presidential disaster was declared for eastern North Dakota and western Minnesota.

Cary Backstrand indicated that Stanley Township is a rural township in eastern North Dakota lying south of Fargo bordering the Red River and Minnesota. The township population is approximately 2000

Mr. Backstrand said later in 1989, the township pursued a Federal Emergency Management Agency Section 1362 acquisition project which removed two damaged houses from the floodway. The project was completed by September, 1990.

Stanley Township sponsored the project with very limited financial resources to devote to the effort. The township enlisted a variety of human and financial resources to compliment FEMA's acquisition assistance.

Federal, state, county, city and township resources combined to remove substantially and repetitively damaged residential structures from the floodway. Stanley Township was able to blend its location within a Statistical Metropolitan Area with its rural character to complete the project. The project, neither large or unique, accomplished what initially appeared beyond the capability of the township. The commitment of a motivated local official organized cooperative teamwork to make the project a success.

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Mr. Backstrand indicated the State Water Commission provided a construction crew and equipment for site restorations. There are potential plans for this site to become a park as the city expands.

Mr. Backstrand presented a certificate of appreciation from the Federal Emergency Management Agency to the State Water Commission "in recognition of its outstanding contribution on behalf of the Stanley Township, North Dakota, flood damage property acquisition project".

There being no further business to come before the State Water Commission, it was moved by Commissioner Spaeth, seconded by Commissioner Rudel, and unanimously carried, that the State Water Commission meeting adjourn at 2:45 PM.



Lloyd B. Omdahl
Lieutenant Governor-Chairman

SEAL



David A. Sprynczyk
State Engineer and
Chief Engineer-Secretary

February 4, 1992

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE February 2, 1992 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Tim Fay	Bismarck	SWC Staff
Lisa Mosler	Bismarck	AG Office
Dale Friel	"	SWC Staff
Jeffrey Mattson	"	SWC
Bruce F McCollom	"	BW/BEC Engineers
Gene Krenz	"	SWC
Carter Wood	"	Tri B
Dave Koland	"	ND Rural Water Systems
Sheila Peterson	"	OMB
Fletcher Poling	"	Basin Electric Power Corp
John Olson	Devils Lake	Midwest Engineering
Garland Hoistad	Churchs Ferry, ND	"
Robert Mause	PO Box Webster, ND	BCWRD
LEE RAGAN	BISMARCK	U.S. FISH & WILDLIFE SERVICE
Steve Dyke	Bismarck	N. D. Game + Fish Dept.

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE February 4, 1992 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
CHARLES VEIN	GRAND FORKS	ADVANCED ENGINEERING
Brian Kramer	Box 505 Turtle Lake	ND Farm Bureau
Richard Rogers	Dewils Lake	Dewils Lake Basin Ch.
Selicia R. Fisher Day	P.O. Box 128 NewTOWN	MET / Three Affiliated Tribes
CHUCK FIDELL	BISMARCK	ND SWC - STAFF
Jeffrey Volk	W. Fargo	Grass Co JUMP
Kin BERTSCH	904 Divide Ave	ND Farm Bureau
ARUY SMITH	600 E. Blvd.	OMTB
Tim Roby	CAPITAL PRESS ROOM	Forum Forum

COMMUNICATIONS PLAN FUNDING PROPOSAL

I. SUMMARY

Based on the following background information and rationale, it is proposed that the State Water Commission undertake the development of a State Water Management Communications Plan utilizing a combination of existing staff resources and the services of an independent consultant to act as project coordinator and to be responsible for the analysis of identified communications deficiencies. Total project costs are an estimated \$15,000, exclusive of services provided by Commission staff. The time frame for completion of the project is from commencement in early February 1992 to June 30, 1992. The cost estimate and the timeframe for completion are based on the detailed work plan attached to this proposal.

II. BACKGROUND

Prompted by findings of the 1983 State Water Plan Update, The State Water Commission pioneered a state Water Education for Teachers (WET) program which serves as the prototype for the Montana Wet program and a national WET program currently being developed. The WET program serves North Dakota teachers through approximately twenty workshops annually and, while it has become more directed and focused over the years, efforts continue to make it a better, more effective program. The Commission, in fact, is currently re-evaluating North Dakota WET, and it is possible that the program will be modified slightly based on an internal review by Commission staff using what is learned from special teacher/facilitator seminars and other means. Like any good program, it is in a state of flux.

North Dakota WET represents an important, initial component in a comprehensive state water information/education program. A second component will focus on the water and related land resources information needs of the state's adult population, and the basis for such an adult education program would be the state-wide communications plan alluded to above.

The success or failure of any adult education program hinges on the agency's ability to determine as precisely as possible what communications needs actually exist within the population in general and within the water community in particular. It does not suffice for government to assume what information citizens should be supplied. That is shortsighted, perhaps even a bit arrogant and all too likely to result in the dissemination of what is available rather than what is needed. Casual dissemination of information geared to meeting some undefined or poorly define need and directed at no particular audience is certain to produce only marginal results and, in the process, waste not only the limited financial resources available but a lot of time for a lot of people as well.

A more directed approach—one which systematically evaluates a set of precisely defined communications deficiencies—provides a much more tenable, cost-efficient foundation upon which to build an adult information/education program. **The results of this analysis constitute a communications plan, and the purpose of such a plan is to identify those instances where a lack of communications and/or ineffective com-**

munications are believed to be impeding implementation of a project or program or are in some manner obstructing the decision-making process.

People lose interest quickly when information looks complicated or lengthy. Their "skimming" of something written may cause them to miss the point completely. Or they may put reading a particular piece of information "on hold," intending to read it later. Either way, the result is the same. The message doesn't get through. The same general principle applies equally to other communications techniques, including those where no reading is required. That fact is that to communicate, to make an actual "connection" with people's thought processes, it is necessary to discover what various audiences feel they need to know to participate effectively in the water management decision-making process whether that consists of attending an area meeting, acting as a member of a local water resources board, or casting a ballot during an election.

III. THE PROCESS

The process envisioned for determining what people want to know to make them more comfortable participants in the decision-making process, and one what has recently been used on a pilot study basis for the North Dakota portion of the Red River Basin, involves securing answers—sequentially—to the following questions:

- (1) What is the nature and extent of the communications deficiency?**
- (2) What specific communications objectives are appropriate for correcting the deficiency?**
- (3) Which audience(s) should be targeted for each objective?**
- (4) What specific messages should be communicated?**
- (5) What specific media should be used to reach target audience(s)?**
- (6) What specific strategies will be employed?**
- (7) Within what timeframe should specific strategies be implemented?**
- (8) What specific tasks should be undertaken by the State Water Commission? (A detailed definition)**
- (9) What are the estimated direct costs to the State Water Commission?**
- (10) In what ways might other entities be involved in addressing the communications deficiency? (Non-detailed description)**
- (11) What measures can be employed to determine if communications efforts have had the desired effects?**
- (12) What are some of the available related resources?**

The first critical step in the process outlined above is that of determining exactly what communications deficiencies exist from the perspective of a broad cross-section of people within and outside government. In the case of the communications planning effort undertaken for the North Dakota portion of the Red River Basin by The International Coalition (May 1991), the deficiencies were found in the conference directives, policy positions, and action plans of the Coalition. Various materials published in connection with eight annual Coalition conferences contained a wealth of information and insights into the specific needs of citizens for information.

Because no comparable source of information is readily available for the remainder of the state, it will be necessary to devise a system for acquiring information needs. This would be accomplished under this proposal by using the expertise present on the SWC staff coupled with input from other agencies such as the Health Department (Water Quality), the North Dakota Water Users Association, the North Dakota Water Resource Districts Association, the Garrison Diversion Conservancy District, and others.

Additionally, and of great importance, a multi-faceted inventory process consisting of random mail surveys, personal contacts, the State Water Planning Process public involvement program, and other components yet to be determined would be employed to document communications deficiencies and information/education needs from the point-of-view of a cross-section of North Dakota Citizens.

It is anticipated that such an inventory system would not only identify communications deficiencies but would also begin the process of defining them to a degree never attempted before by any agency or group engaged in water resources management in North Dakota.

IV. PRODUCTS

Implementation of the proposal made in Section I would result in the creation of four (4) products which do not now exist. They are as follows:

(1) **A standing communications "think tank" committee.** This committee, made up of individuals from within and outside of government, would be formed at the outset. Its initial charge would be to evaluate and outline a series of steps to be taken to assess communications needs on a statewide basis. A second charge would be to examine the results of such an assessment in a context of the ongoing activities of the principal governmental and private groups currently engaged in information/education activities.

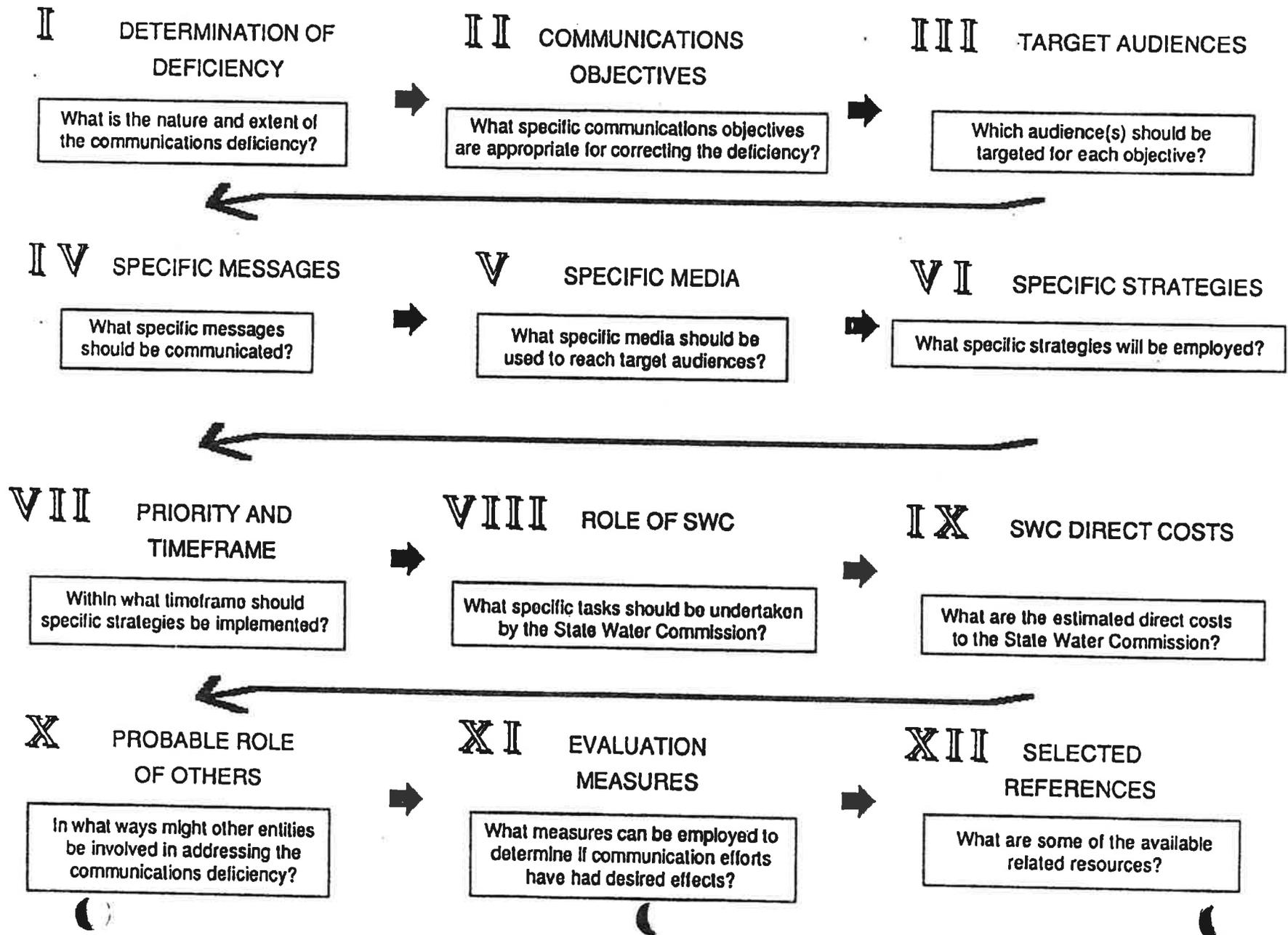
(2) **A comprehensive information/education "strategy."** The collective information/education initiatives of the several parties currently involved in water resources management and development in North Dakota are largely uncoordinated, sometimes duplicative, and frequently of only marginal value because they are undertaken without considering communications needs as expressed by a constituency or audience which is known to have an interest in learning more and becoming better informed about the water sector decision-making process. A strategy would provide a framework for determining near-, intermediate- and long-term components and would provide guidance in setting priorities.

(3) A flexible, information/education "program" responsive to systematically evaluated communications needs. This product of the communications planning process represents a framework within which the agency's information/education initiatives are implemented. It clearly states goals and objectives, outlines timeframes and priorities, identifies primary and secondary implementation responsibility, defines feedback mechanisms, and assigns personnel and funding requirements.

(4) A substantive information/education budget proposal. Work performed early in the process by the above committee and a consultant would provide the basis for a substantive budget proposal for implementation of a comprehensive information/education program during the next biennium.

FIGURE 1.

COMMUNICATIONS DEFICIENCY IDENTIFICATION AND EVALUATION PROCESS



COMMUNICATIONS PLAN WORK PROGRAM

I. CHRONOLOGY

Work activities associated with implementation of the Communications Plan Funding Proposal are defined as work tasks and categorized by phase.

Phase I. Tasks to be performed during Phase I include the following:

(1) **Formation of Communications Planning Committee.** This working group would meet several times and would be responsible for developing a "first cut" communications strategy. The Committee would be chaired by the Director of the SWC's Division of Planning and Education and would include the following members: Executive Vice President, North Dakota Water Users/Water Resource Districts Association; one member from each Association; Program Manager for the State Water Plan Update Process; Manager, North Dakota WET project; a Garrison Conservancy District staff representative; State Department of Health and Consolidated Laboratories; North Dakota Water Resources Research Institute, North Dakota Rural Water Systems Association, North Dakota Extension Service, and two members at large.

(2) **Development of a Communications Deficiency Inventory System.** The Consultant with input and guidance from the Committee would develop a "draft" Inventory System to include (a) the selection of major techniques such as mail surveys, personal interviews, random sampling, etc., (b) the evaluation of strengths and weakness of each under certain circumstances, and (c) the identification of who the "major players" are likely to be.

(3) **Preparation of Plan Component Cost Information Including Personnel Requirements.** This task to be completed by SWC staff involves the identification of a variety of communications techniques to be used in addressing communications deficiencies identified by the inventory process together with the development of pertinent cost information for each as well as information regarding optional tools, degree of effectiveness, appropriate feedback mechanisms, direct and indirect agency costs, costs to others, and personnel requirements.

Phase II. Tasks to be performed in Phase II include the following:

(1) **Implementation of the Inventory System.** Involves the actual implementation of the inventory system which will likely employ several communications techniques. The specific "mix" of techniques will be dictated by audiences to be addressed and to some extent by the availability of funding and personnel resources. The nature and extent of participation by SWC staff will depend on the availability of staff resources, but the primary responsibility for completion of this task is that of the Consultant. It is anticipated that SWC will play a larger role in evaluating the information garnered through the inventory process than in administering the process itself, and it is expected that several members of the Communications Committee will be asked to conduct some of the personal interviews and contact work.

(2) **Development of a "framework" Information/Education Program in suffi-**

RESOURCES TRUST FUND

<u>Project</u>	<u>Resources Trust Fund (1991-93)</u>	<u>Resources Trust Fund Carryover (1989-91)</u>	<u>Federal SWPP Reimbursement</u>	<u>Total</u>
MR&I	\$ 4,000,000	\$	\$1,219,490	\$ 5,219,490
Maple River Dam	500,000			500,000
Devils Lake	500,000			500,000
Na chiin Huun - Dakota	50,000			50,000
Drought Livestock Program	250,000			250,000
Hydrologic Investigations	556,446			556,446
SWC Operations	1,546,776			1,546,776
Southwest Pipeline Project	2,500,000	1,859,536	2,384,219	6,743,755
Souris River Flood Control	1,637,924			1,637,924
General Projects	<u>806,973</u>	<u>269,132</u>		<u>1,076,105</u>
Totals	\$12,348,119	\$2,128,668	\$3,603,709	\$18,080,496

MEMORANDUM

TO: Dave Sprynczynatyk, State Engineer

FROM: Julie Krenz, Assistant Attorney General JK

RE: Whether the State Water Commission can Campaign for the Initiated Measure Proposing a Tax for Water Related Projects

DATE: January 30, 1992

With regard to this issue, a similar issue was addressed by the Attorney General in a letter to Representative Diane Larson. That issue was whether the Governor or any other elected or appointed official could campaign for or against an issue at state expense. A copy of this opinion is attached. The Attorney General limited his discussion to the Governor. The analysis used was to examine the authority provided to the Governor and to determine whether the Governor's implied powers to carry out his or her express duties included campaigning for or against issues at state expense.

That opinion first noted the duties of the Governor and stated that there is no expressly granted authority to the Governor to express his views on measures pending before the public; however, as the state's chief executive officer, the Governor does possess implied powers and duties to carry out expressly provided duties. Those duties included serving as the state's chief executive officer. The Attorney General stated that "I cannot conclude as a matter of law that the state's chief executive officer is unable to express his views on matters involving the state, its fiscal affairs, or the manner in which its business is conducted."

A similar analysis would apply to determine whether the Water Commission could campaign for or against an issue at state expense. First, the duties of the Water Commission should be reviewed.

N.D.C.C. § 61-02-01 provides that the general welfare and protection of the lives, health, property, and rights of all people of the state require the conservation, management, development, and control of waters in the state and the authority to exercise the sovereign powers of the state in this regard is vested in the State Water Commission. N.D.C.C. § 61-02-14 provides that the Commission has full and complete power, authority, and general jurisdiction to investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgment it deems necessary or advisable. The North Dakota Supreme Court, in the United Plainsmen Ass'n v.

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North Dakota State Water Conservation Comm'n, 247 N.W.2d 457 (N.D. 1976) held that the public trust doctrine requires at a minimum that the appropriate state agencies and officers make a determination of the potential effect of the allocation of water on the present water supply and future water needs of the state, that this determination involved planning responsibility, and that the development and implementation of some short and long-term planning capability is essential to the effective allocation of resources without detriment to the public interest in lands and waters remaining.

It definitely could be argued that the implied powers and duties of the Water Commission necessary to carry out the expressly provided powers and duties would include being able to express the Commission's views on matters involving financing for the development of water projects in the state. Whether the Water Commission chooses to express its views on these subjects is a matter that lies within the sole and exclusive discretion of the Commission and will not be reviewed by the courts or any other executive branch officer, including the Attorney General. First American Bank v. Ellwein, 198 N.W.2d 107 (N.D. 1972).

Based on the opinion letter to Representative Diane Larson, it also appears that as long as the provisions of N.D.C.C. § 16.1-10-02 are not being violated, the Water Commission could campaign for the initiated measure at state expense. That section prohibits the use of state services or property for political purposes. Political purposes is defined to refer only to activities by or on behalf of candidates for office, political parties, political committees, or organizations. It does not refer to initiative or referendum measures, nor does it include activities undertaken in the performance of the duty of a state office.

The letter you gave me from the Attorney General to Mike Dwyer inquires as to whether there was any prohibition which would prohibit the use of water resource district associations' funds to support a constitutional measure. The letter states that although the original source of the money in question is from public tax funds, once the money is paid to the association the funds lose their public character. Consequently, the funds held by the association are not public funds and may be expended to support passage of the measure if the association is not otherwise prohibited from expending money for this purpose. This seems to imply that funds which are public funds cannot be expended to support passage of a measure. In this respect, the North Dakota Constitution provides that all public monies be deposited in the state treasury and paid out and dispersed only pursuant to an appropriation made by the Legislative Assembly.

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Based on this reasoning, it could be argued that since there is no authority for the expenditure of funds to promote passage of initiated measures, the Water Commission could not use public funds to campaign for the initiated measure. The letter to Representative Diane Larson appears to contain an exception to that rule if campaigning for a measure is a power implied from the powers expressly granted to the Water Commission.

Although it is not entirely clear to what extent the Water Commission could campaign for an initiated measure at state expense, a practical consideration to keep in mind is what the public opinion would be with regard to such action.

rp
Attachment

16. 1-10-02V
54-07-01

ATTORNEY GENERAL

701-224-2210

STATE OF NORTH DAKOTA
State Capitol
Bismarck, North Dakota 58505

Nicholas J. Spaeth
ATTORNEY GENERAL

July 7, 1989

Capitol Offices
Consumer Fraud
and Antitrust Division
701-224-3404
800-472-2600
Toll Free in ND

Criminal Justice
Training and
Statistics Division
701-224-2594

Fire Marshal
701-224-2434

Gaming Division
701-224-4848

Licensing Division
701-224-2219

Division Offices
Bismarck, ND 58502
Bureau of Criminal
Investigation
P.O. Box 1054
701-221-6180
800-472-2185
Toll Free in ND

Drug Enforcement
Unit
P.O. Box 993
701-221-6188
800-472-2185
Toll Free in ND

Honorable Diane Larson
State Representative
District 52
413 Cambridge
Bismarck, ND 58504

Dear Representative Larson:

Thank you for your May 8, 1989, letter asking whether the Governor or any other elected or appointed official may campaign for or against an issue at state expense.

The powers and duties of public officers are prescribed by the state constitution and by state statutes. Generally speaking, public officials have only such authority as the constitution and statutes expressly give them, together with those powers and duties that are necessarily implied from those express grants of authority. American Federation of State, County and Mun. Employees, Council No. 95 v. Olson, 338 N.W.2d 97 (N.D. 1983). In North Dakota the rule of law is that where the performance of the legal duty involves the exercise of judgment and discretion, the courts will not interfere with such an exercise nor will they direct the manner in which discretion is to be exercised. First American Bank v. Ellwein, 198 N.W.2d 107 (N.D. 1972).

Your letter questions the ability of all public officers to speak out on measures pending before the public. It is not possible to attempt to identify each and every public official in North Dakota, to examine the authority provided to each official, and to reach a conclusion as to each officials' implied powers to carry out his or her express duties and responsibilities. Because your letter specifically mentions the Governor, I will restrict my response to that officer.

The executive power of the state of North Dakota is vested in the Governor. N.D. Const. art. V, § 1. The constitution also provides that the Governor shall see that the laws are faithfully executed. N.D. Const. art. V, § 5. N.D.C.C. § 54-07-01 describes the Governor's other powers and duties.

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Concededly, there is no express grant of authority to the Governor to express his views on measures pending before the public. However, as the state's chief executive officer, the Governor does possess implied powers and duties to carry out his expressly provided duties. I cannot conclude as a matter of law that the state's chief executive officer is unable to express his view on matters involving the state, its fiscal affairs, or the manner in which its business is conducted. Whether the Governor chooses to express his view on these subjects is a matter that lies within the sole and exclusive discretion of the Governor and will not be reviewed by the courts or any other executive branch officer, including the Attorney General.

Your letter mentions the statements of public officials at state expense concerning measures pending before the public. There is one statute that arguably applies in such a situation. N.D.C.C. § 16.1-10-02 prohibits the use of state services or property for political purposes. However, "political purpose" is statutorily defined to refer only to activities by or on behalf of candidates for office, political parties, political committees, or organizations. N.D.C.C. § 16.1-10-02(2)(a). "Political purpose" does not refer to initiative or referendum measures nor does it include activities "undertaken in the performance of a duty of state office." N.D.C.C. § 16.1-10-02(2)(a).

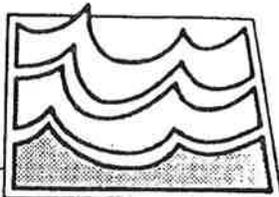
In summary, so long as the provisions of N.D.C.C. § 16.1-10-02 are not being violated, I cannot conclude that the Governor as the state's chief executive officer is unable to express his views on measures pending before the public involving the state's fiscal affairs or operation of state government in general.

I hope this information is helpful to you.

Sincerely,


Nicholas J. Spaeth

ja



North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-224-2750 • FAX 701-224-3696

RESOLUTION NO. 92-2-447

Endorsement and Support for the Initiated Measure for Water Development

WHEREAS, the Missouri River is a high quality, reliable source of water representing 96 percent of North Dakota's total surface supply; and

WHEREAS, North Dakota desperately needs statewide distribution of Missouri River water to satisfy water quality and quantity needs throughout the state; and

WHEREAS, North Dakota must demonstrate clear intentions and physical progress in developing the Missouri River to legally protect the state's fair share of that water under prior appropriation doctrine; and

WHEREAS, Governor Sinner's Water Strategy Task Force has developed, with substantial public input, a plan for distributing Missouri River water through a number of projects which will address North Dakota's most pressing contemporary and long-term water supply needs; and

WHEREAS, the water development plan prepared by the Water Strategy Task Force was endorsed through a resolution adopted by the North Dakota State Legislature meeting in special session in November, 1991; and

WHEREAS, the water coalition is advancing an Initiated Measure which, if approved by the people, will enhance North Dakota's claim to Missouri River water, and provide for the long-term protection and development of North Dakota's water resources helping to achieve improved economic development and quality of life.

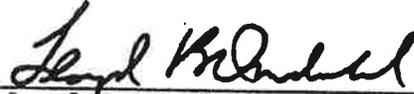
NOW, THEREFORE, BE IT RESOLVED that the North Dakota State Water Commission, at a meeting held on February 4, 1992 in Bismarck, North Dakota, hereby continues its endorsement and support for implementation of the water projects outlined by Governor Sinner's Water Strategy Task Force; and

GOVERNOR GEORGE A. SINNER
CHAIRMAN

DAVID A. SPRYNCZYNATYK, P.E.
SECRETARY & STATE ENGINEER

BE IT FURTHER RESOLVED that the North Dakota State Water Commission hereby endorses and supports the efforts of the water coalition and others involved in the Initiated Measure for Water Development.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:



Lloyd B. Omdahl
Lieutenant Governor-Chairman

SEAL



David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary