

MINUTES

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

December 7, 1994

The North Dakota State Water Commission held a meeting at the Doublewood Inn, Bismarck, North Dakota, on December 7, 1994. Governor-Chairman, Edward T. Schafer, called the meeting to order at 9:00 AM, and requested State Engineer and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
David Sprynczynatyk, State Engineer and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 50 people interested in agenda items
(The attendance register is on file with the official minutes.)

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

**COMMISSIONER FLORENZ BJORNSON -
RECIPIENT OF GOVERNOR'S
COMMODORE AWARD IN NORTH
DAKOTA MYTHICAL NAVY**

The Governor's Commodore Award in the North Dakota Mythical Navy was presented to Florenz Bjornson, Commission member, for her commitment, leadership and dedicated service to water management in North Dakota.

CONSIDERATION 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 OCTOBER 14, 1994 -
CORRECTED AND APPROVED**

The minutes of the October 14, 1994, State Water Commission meeting were considered. Secretary Sprynczynatyk called

attention to a typographical error on page 18 in the proposed Fiscal Year 1994 MR&I program budget. The total in the "Change" column should read \$1,600,000, rather than \$1,625,000. The minutes were approved, as corrected, by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Thompson, and unanimously carried, that the minutes of the October 14, 1994, State Water Commission meeting be approved as corrected.

**FINANCIAL STATEMENT -
AGENCY OPERATIONS**

Charles Rydell, Assistant State Engineer, presented and discussed the Program Budget Expenditures, dated October 31, 1994, and reflecting 66.7 percent of the 1993-1995 biennium. *SEE APPENDIX "A"*.

**FINANCIAL STATEMENT -
CONTRACT FUND; AND RESOURCES
TRUST FUND REVENUE UPDATE**

Dale Frink, State Water Commission's Water Development Division, reviewed and discussed the Contract Fund expenditures for the 1993-1995 biennium. *SEE APPENDIX "B"*.

The Office of Management and Budget last reviewed the revenues into the Resources Trust Fund in November, 1994. The revised biennium forecast for oil and gas revenues was estimated at \$3,154,000, representing a \$1.4 million shortfall. The current unallocated balance in the Resources Trust Fund remains at \$400,000.

Mr. Frink indicated there are several high priority projects in various stages of development and, traditionally, the State Water Commission holds about \$250,000 as unallocated through the spring snowmelt period of the second year of the biennium for emergency repair projects.

It was the recommendation of the State Engineer that the State Water Commission continue to defer approving cost share requests from the Contract Fund, except high priority requests, until such time as revenue forecasts show that adequate funds will be available.

**CONSIDERATION AND APPROVAL
OF RESOURCES TRUST FUND
REQUEST**

Secretary Sprynczynatyk stated Section 57-51.1-07.1(2) of the North Dakota Century Code requires that "every legislative

bill appropriating moneys from the Resources Trust Fund, pursuant to subsection one, must be accompanied by a State Water Commission report."

Secretary Sprynczynatyk presented for the Commission's consideration the State Engineer's request for funding from the Resources Trust Fund for the 1995-1997 biennium. He said it is estimated that new revenues into the Resources Trust Fund for the 1995-1997 biennium will be approximately \$5.4 million. This includes \$3,450,000 from the oil extraction tax revenues; \$1,000,000 from MR&I loan repayments; \$950,000 from the Southwest Pipeline Project repayments; and \$100,000 of interest income. In addition, he said approximately \$1.5 million of presently obligated funds for construction contracts in place will not be expended during the current biennium but will be carried over into the 1995-1997 biennium. The total funds available from the Resources Trust Fund for the next biennium would be \$6.9 million.

Secretary Sprynczynatyk said that in addition to several projects under construction, there are several other projects that are close to implementation and are projected to need funding during the 1995-1997 biennium. He said the total revenue needed greatly exceeds the anticipated revenues.

Secretary Sprynczynatyk stated that in the past the Legislature has recognized the importance of funding water development projects and has given the State Water Commission additional spending authority if funds in the Resources Trust Fund exceeds 10 percent. The Commission members stressed the importance of identifying the estimated water needs in the state and directed the State Engineer to include this information in the Resources Trust Fund report to the Legislature:

Resources Trust Fund

<u>Project or Funding Requirement</u>	<u>State Water Commission Recommendation</u>
Contract Fund:	
General Projects	\$ 2,252,000
Hydrologic Studies	432,000
Southwest Pipeline Project	950,000
State Water Commission Operations	1,766,000
Contract Fund Carryover Projects:	1,500,000
Maple River Dam	
Southwest Pipeline Project	
Devils Lake Flood Control	
Riverside Dam	
Baldhill Dam	
Mount Carmel Dam	
General Projects	
 Total	 \$ 6,900,000

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It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission approve the recommendation of the State Engineer to request the Legislature to appropriate \$6.9 million from the Resources Trust Fund for the 1995-1997 biennium for projects and programs. In addition, the list of the total amount needed for projects would be provided to the Legislature for information purposes. The State Water Commission also requests the Legislature to provide additional spending authority if the revenues to the Resources Trust Fund exceeds \$6.9 million. The Resources Trust Fund report is attached hereto as APPENDIX "C".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**FINANCIAL STATEMENT -
1995-1997 BUDGET UPDATE**

Secretary Sprynczynatyk informed the Commission members that the State Water Commission's budget hearing has been scheduled on January 11, 1995, before the Senate Appropriations Committee.

**FUNDING FOR WATER
DEVELOPMENT PROJECTS
SWC Project No. 322)**

At the October 14, 1994, meeting, the State Water Commission directed the State Engineer to schedule a meeting with interest groups that look toward the state and federal governments for funding water resource projects to discuss the current status of several water projects and the outlook for future funding for water development projects.

Secretary Sprynczynatyk briefed the Commission members on the meeting held November 18, 1994, with approximately 20 individuals and entities interested in water resource issues and funding. The topics of discussion included the status of State Water Commission project development; the estimated funding needs for water management projects; the anticipated funding shortfalls; and options that may be feasible to meet the water management and development needs of North Dakota.

The meeting provided the opportunity to identify and discuss water management and project development needs with the entities that will be affected by the projected revenue shortfall. Secretary Sprynczynatyk stated the result was a great deal of open and frank discussions on trying to solve the problem by identifying and discussing options that are reasonable and feasible to pursue.

Secretary Sprynczynatyk stated it was the general intent of the meeting participants that the draft legislative amendments enabling the bonding of water projects be pursued so that if the option of bonding is desired for either the Northwest Area Water Supply Project or the Southwest Pipeline Project neither project would be delayed because legislative changes were not enacted in the 1995 Legislative Session. It was recommended that the draft legislation involving amendments to the North Dakota Century Code Chapter 61-02 be submitted by the State Water Commission as a bill draft to the Legislative Council prior to December 9, 1994, so that it can be presented to the 1995 Legislative Assembly.

Secretary Sprynczynatyk briefed the Commission members on a subsequent meeting held on December 1, 1994, with individuals and entities interested in water resource issues to continue discussions concerning the funding of water resource projects in the state. An overview of the anticipated \$10 million revenue shortfall for the 1995-1997 biennium was presented, as well as an overview of funding options that may be reasonable to pursue.

The meeting provided a good forum for discussion and Secretary Sprynczynatyk indicated it was useful in providing the opportunity for individuals interested in North Dakota's water resource management and development to share thoughts and ideas on the best approach to be used in addressing the anticipated revenue shortfall in meeting the revenue requirements of the most immediate water project needs. He said the group was able to identify avenues that should be considered to obtain the needed revenue to fund the long-term water resource needs of the state.

The group discussed the options in detail and concurrence was reached on the following short- and long-term recommendations:

Short-Term Recommendations:

- 1) The draft legislation, associated with amendments to the North Dakota Century Code 61-02, updating the State Water Commission's bonding authority should be submitted to the 1995 State Legislature.

2) The State Water Commission's 1995-1997 budget request to the 1995 State Legislature should include a request for funds for the estimated \$10 million shortfall that is required to meet the state's 1995-1997 water resource needs.

3) The remaining 80 percent of the Oil Extraction Tax should be dedicated to water resource development and management. This would require draft legislation submitted to the 1995 State Legislature.

The Commission members discussed at length the short-term recommendations. Affirmative action was taken by the Commission at this meeting on recommendation 1) under the Northwest Area Water Supply Project discussion. The Commission did not act on the short-term recommendations 2) and 3).

Long-Term Recommendations:

1) An interim study resolution to identify long-term funding solutions for North Dakota's water resource revenue needs should be presented to the 1995 State Legislature. This could possibly be accomplished through the Garrison Diversion Unit Overview Committee. However, the group cautioned that the study resolution must not be presented too early in the session because the Legislature should be able to work through the process. As a result, the Legislature may be able to find some funds to reduce the \$10 million shortfall.

2) The State Water Commission should evaluate the concept of a statewide water use fee for all water uses including municipal, rural water systems, industrial and agricultural uses. The study should be conducted simultaneously with the legislative interim study.

3) The water community's support base must be broadened. A coalition should be developed with education. Education has been fairly successful in presenting their case to the public regarding the funding needs of education. As a result, an education/water alliance could provide a portion of the proposed education sales tax increase to fund water resources.

4) In general, the group agreed that all options, including combinations of options, must be assessed further to determine what will be feasible and realistic to pursue including a dedicated sales tax, a water use fee, and bonding of water resource projects.

The Commission members discussed at length the long-term recommendations. It was the consensus of the Commission that it support a legislative interim study resolution to identify funding avenues for the long-term needs of water resource projects. The Commission members did not act on the long-term recommendations, identified as 2), 3) and 4).

It was moved by Commissioner Vogel and seconded by Commissioner Olin that the State Water Commission support an interim study resolution to be considered by the 1995 State Legislature identifying the long-term funding solutions for North Dakota's water resource revenue needs.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Denise Bjornson, Director of the North Dakota Water Coalition, informed the Commission members that the Water Coalition passed a motion at its meeting on December 5, 1994, recommending to the 1995 Legislature that it consider a legislative interim study resolution identifying the long-term funding solutions for North Dakota's water resource revenue needs.

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE AND
CONTRACT/CONSTRUCTION STATUS
(SWC Project No. 1736)**

Tim Fay, Manager of the Southwest Pipeline Project, provided a status report on the following contracts:

Contract 2-7C - Transmission Line from Taylor to the Cities North of the Knife River: This contract had its pre-final inspection on November 29, 1994, and the contract is completed. The cities of Dunn Center, Halliday, Dodge and Golden Valley are now receiving water from the pipeline, bringing the total to 11 cities, as well as the Assumption Abbey and the Sacred Heart Monastery that are currently being served with pipeline water. All cities cited for fluoride violations in 1991 are now receiving water from the pipeline.

Contract 4-3 - Dickinson Triple Pump Station: This contract consists of three contracts: general, electrical, and mechanical. The 32-hour pump test was completed. One pump for the west zone was found to have excessive vibration and was returned to the factory for repairs or replacement. Since the west zone is not currently in service, this causes no operational problem. The remainder of the pumps were satisfactory and the station has been placed in operation.

Contract 7-1B - Rural Distribution System in New Hradec, Davis Buttes and Taylor Areas: The contractor has completed approximately 300 services required to meet the intermediate completion date, and approximately 100 users are receiving service. The contractor has recently produced a number of disagreements over various issues, the largest of which deals with rock excavation. Discussion are proceeding with the contractor in an attempt to resolve the disputes without litigation.

Contract 8-1 - New Hradec and Halliday Reservoirs: The Halliday tank is assembled and the sealant is curing. The disinfection testing will be completed this week, and the construction activity on-site is essentially completed. The foundation for the New Hradec tank is complete, however, the contractor is delaying assembly of the tank until spring, which will not cause any problems.

Taylor Watershed Project, Soil Conservation Service PL-566: The project is progressing well. At this time, it is not known if, or how many users will be served this year. The final contract completion is scheduled for next summer.

Mr. Fay discussed future development for the project. Contract 2-5, the transmission line from Dickinson to Belfield, has been approved by the Bureau of Reclamation and the State Health Department. He said it appears that funding is adequate to bid this contract, so the process of advertising this contract will begin soon. In order to bring the Belfield area into service, the rural distribution system and a reservoir are also required. Mr. Fay said the costs of these components are being evaluated and they will be advanced to the extent funding allows.

**SOUTHWEST PIPELINE PROJECT -
FUTURE PROJECT FUNDING
(SWC Project No. 1736)**

Mr. Fay briefed the Commission members on options that are being considered for future funding for the Southwest Pipeline Project. He said a funding plan will be developed and presented to the State Water Commission for consideration at a later date.

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**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF RURAL WATER RATE
ADJUSTMENTS OF \$26.95 MINIMUM,
\$2.50 PER THOUSAND GALLONS FOR
UP TO 10,000 GALLONS, AND \$2.00
PER THOUSAND GALLONS ABOVE 10,000
(SWC Project No. 1736)**

At the May, 1991, meeting, the Commission adopted the following rates for rural water users for the Southwest Pipeline Project:

- A) An operation and maintenance rate, applied as a cost per thousand gallons, which is \$2.50. This amount is deposited in the Operation and Maintenance account for the project.
- B) A meter fee of \$5.00, which is deposited in the Resources Trust Fund to recover some of the fixed costs for serving each user.
- C) A capital repayment rate of \$20.00 per month, which was set in July, 1991, and is to be adjusted annually for inflation.

Tim Fay indicated that the Southwest Pipeline Project is about to begin service to a large number of rural users. Because of inflation, he said the capital repayment rate of \$20.00 per month requires adjustment. The Consumer Price Index in May of 1991 was 136.2, and it is currently 149.5, indicating an inflation of 9.765 percent. Applying this increase to the \$20.00 per month capital repayment rate produces an increased capital repayment rate of \$21.95 per month per user. Adding the \$5.00 meter fee results in a monthly minimum payment of \$26.95.

It was the recommendation of the State Engineer that the State Water Commission increase the capital repayment rate to \$21.95 per month per user. Applying the \$5.00 meter fee results in an increase in a monthly minimum payment of \$26.95.

It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve the following rates for rural water users for the Southwest Pipeline Project:

- A) An operation and maintenance rate of \$2.50 per thousand gallons for up to 10,000 gallons. For water used in excess of 10,000 gallons per month, the rate shall be \$2.00 per thousand gallons;*
- B) A meter fee of \$5.00 per month;*

C) A capital repayment rate of \$21.95 per month per user, which shall be adjusted annually for inflation; and

D) The minimum monthly rate shall be the sum of B) and C) above, or \$26.95 per user.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

SOUTHWEST PIPELINE PROJECT -
APPROVAL TO AMEND WATER
SERVICE CONTRACT FOR CITY
OF GOLDEN VALLEY TO PROVIDE
FOR SOLE-SOURCE SERVICE
(SWC Project No. 1736)

Tim Fay presented a request for the Commission's consideration from the City of Golden Valley to amend its water service contract to provide for sole-source service from the Southwest Pipeline Project.

Mr. Fay stated the capacity is available and amending their water service contract will simplify service since Golden Valley's contract was originally for more than their annual usage.

It was the recommendation of the State Engineer that the State Water Commission approve amending the City of Golden Valley's water service contract to provide for sole-source service.

It was moved by Commissioner Vogel and seconded by Commissioner Ames that the State Water Commission approve amending the City of Golden Valley's water service contract to provide for sole-source service from the Southwest Pipeline Project. SEE APPENDIX "D".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

SOUTHWEST PIPELINE PROJECT -
APPROVAL OF RAW WATER SERVICE
CONTRACT FOR ROBERT JURGENS
(SWC Project No. 1736)

Tim Fay presented a request for the Commission's consideration from Robert Jurgens for a five-year raw water service contract to purchase 500,000 gallons of water per year from the Southwest Pipeline Project.

It was the recommendation of the State Engineer that the State Water Commission approve a five-year raw water contract for Robert Jurgens to purchase 500,000 gallons of water per year from the Southwest Pipeline Project.

It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve a five-year raw water service contract for Robert Jurgens to purchase 500,000 gallons of water per year from the Southwest Pipeline Project.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
TRANSFER OF MANAGEMENT,
OPERATIONS AND MAINTENANCE
RESPONSIBILITIES FROM SWC
TO SOUTHWEST WATER AUTHORITY
(SWC Project No. 1736)**

A draft agreement for the transfer of management, operations, and maintenance responsibilities for the Southwest Pipeline Project from the State Water Commission to the Southwest Water Authority was

presented for the Commission's information. Secretary Sprynczynatyk stated that the draft agreement will be forwarded to the Southwest Water Authority for their consideration.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
STATUS REPORT; AND
WATER SERVICE CONTRACTS
(SWC Project No. 237-4)**

James Lennington, Project Coordinator, for the Northwest Area Water Supply Project, reported 15 of the 41 cities participating in the Northwest Area Water Supply pre-final

design placed measures on their November 8, 1994, ballots to authorize their respective city councils to enter into a water service contract. In 11 of the cities, the measure passed, and the city councils must decide whether to sign the NAWS contract by the deadline of December 31, 1994; in 3 of the cities, the measure failed; and there was 1 tie. Of the remaining 26 cities, 11 have declined further participation in the project; 5 have home rule and have yet to decide on their participation; 4 have no distribution systems and will be served project water by rural water systems; 2 will hold special elections; 1 is undecided; and 3 are served by the Ray-Tioga water system which is considering the project water contract.

Mr. Lennington indicated that all four of the existing rural water associations have yet to decide whether they will enter into the contracts. The five planned rural water associations in the area will be allowed to enter into the contracts at a later date.

When the number and location of the cities and rural water associations committed to purchasing water from the project is known, the project will be reconfigured to accommodate any changes in pipeline routing and capacity which are appropriate to provide water in the most efficient manner.

Mr. Lennington presented the revised NAWS water service contract. He explained a provision relative to project expansion, which is to be accomplished by mutual consent of all communities and rural water associations which have signed water service contracts with the Commission.

Mr. Lennington also explained provisions relating to termination of the contract. Either party may terminate the contract effective upon delivery of written notice to the other party under the following conditions:

If the final report of the Defense Base Closure and Realignment Commission is published before December 31, 1995, and the Minot Air Force Base is designated for closure. (If the final report is published after December 31, 1995, there can be no termination of the contract because of closure of the Minot Air Force Base.)

Commissioner Vogel leaves the meeting. Roger Johnson, State Department of Agriculture, represents Commissioner Vogel.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF
ADMINISTRATIVE RULES
(SWC Project No. 237-4)**

At the December 8, 1993 meeting the Commission voted to initiate the process the promulgating Administrative Rules for the NAWS project. A public hearing on the Administrative Rules was held on August 8, 1994.

Mr. Lennington discussed comments received from Lyle Palmer, owner of Palmer's Mobile Home Park in Ruthville, relative to eligibility restrictions in the Administrative Rules. Resolution of this issue is being addressed.

It was the recommendation of the State Engineer that the State Water Commission approve the NAWS Administrative Rules as drafted.

It was moved by Commissioner Ames and seconded by Commissioner Olin that the Northwest Area Water Supply Administrative Rules be approved as drafted. SEE APPENDIX "E".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Roger Johnson representing Commissioner Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
CHLORAMINATION TESTING
OF WATER FROM LAKE AUDUBON
AND LAKE SAKAKAWEA
(SWC Project No. 237-4)**

At the October 14, 1994 meeting the Commission voted to approve the addition of a specific authorization, not to exceed \$250,000, to the Northwest Area Water Supply Agreement for Engineering Services for

testing the effectiveness of chloramination of raw water from Lake Audubon and Lake Sakakawea. The chloramination testing is essential to satisfy the disinfection requirements of the Environmental Protection Agency in order for the state to continue developing the concept of treating Missouri River water for the East NAWS system in Minot. Funding for the specific authorization will be provided by federal funds, or the Garrison Diversion Conservancy District's MR&I Water Supply program interest account, as appropriate.

James Lennington informed the Commission members that the first sample of lake water was collected on November 7, 1994, and testing has begun.

Secretary Sprynczynatyk explained that the Garrison Diversion Conservancy District approved the specific authorization with the intent to seek federal funding for the chloramination testing under the 1986 Garrison Reformulation Act. Language in the Reformulation Act specifically states that the federal government is responsible for added costs for treatment that is required to meet the Boundary Waters Treaty of 1909 for the delivery of water from the Sheyenne and Red Rivers. Secretary Sprynczynatyk stated that the Conservancy District's attorney has drafted a letter to the federal government requesting federal funding for the chloramination testing for the NAWS project. If federal funding is not available, funding will be provided by the Garrison Diversion Conservancy District's MR&I interest account.

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**NORTHWEST AREA WATER
SUPPLY PROJECT -
PROJECT FUNDING
(SWC Project No. 237-4)**

Secretary Sprynczynatyk discussed cost estimates and options for funding for the Northwest Area Water Supply project. He said that up until now, it has been assumed that the Garrison Diversion MR&I Water Supply program would be the source of funding for 75 percent of the project costs. The cost estimate for NAWS, assuming all cities and rural water associations in the pre-final design sign water service contracts, is \$163.9 million. With a 75 percent cost share, approximately \$122.9 million would be required from the MR&I program.

Secretary Sprynczynatyk stated that several years ago, \$76 million of the \$200 million authorized for the MR&I program was designated for NAWS by the State Engineer and the Garrison Conservancy District Manager. At a 75 percent cost share, the \$76 million would translate into a \$101 million NAWS project.

Secretary Sprynczynatyk stated it is not expected all of the NAWS cities and rural water associations will enter into water service contracts; in fact, the November 8, 1994, election indicates that 20 to 25 cities will participate. Therefore, he said it is expected that the project cost will be about \$120-\$140 million, with the federal share more than the \$76 million available from the MR&I program. He commented that hopefully the collaborative process to refocus the Garrison Diversion Project now underway will be successful in increasing the authorization of the MR&I program such that adequate funding will be available to fully develop the NAWS project.

Issuing revenue bonds to fund the non-federal share of construction costs for the NAWS project has been examined by the State Water Commission staff for several months and appears to be a possibility. Secretary Sprynczynatyk explained the proposal, stating that bonds would be issued at three times during the construction of the project. The total amount bonded for the first phase of the project is estimated at \$45 million. Users of project water would pay approximately \$1.28 per thousand gallons for bond repayment. The actual cost for bond repayment will depend on how much of the project is built and inflation. During the first five years of construction before water is delivered to Minot, interest on the bonds would have to be paid from some other source of revenue. He said it is estimated that interest on the bonds during the first five years would total about \$5 million. Secretary Sprynczynatyk stated that interest payments for the first two years of construction, \$1.4 million, have been included in the State Water Commission's budget request for optional adjustments for the next biennium.

It was the recommendation of the State Engineer that the State Water Commission seek legislative approval for issuing revenue bonds to finance the local share of the construction costs of the Northwest Area Water Supply project.

The Commission members discussed at length the Northwest Area Water Supply project and the recommendation for issuing revenue bonds to finance the non-federal share of the construction costs. Concerns regarding uncertainties of the project, and a reluctance to move forward with revenue bonding were expressed by the Commission members. The Commission members also discussed the MR&I program and had concerns relative to the statewide distribution of the federal funds for water development projects.

Tom Tudor, North Dakota Municipal Bond Bank, explained that a review of existing revenue bond legislation was conducted to determine if bonding of water resource projects is possible under current law. He said it was determined that the State Water Commission does have the authority to issue revenue bonds for water resource development projects. It was also determined that existing legislation must be updated to make sure it is consistent in the way bonds are issued and repaid. Mr. Tudor said that since some of the legislation became law in 1935, several things have changed in bond financing and incorporating these changes into the legislation will assure that the language is in order to do the bonding within constitutional constraints. Mr. Tudor reviewed the proposed amendments to North Dakota Century Code Chapter 61-02.

Bob Schempp, Chairman of the Northwest Area Water Supply Advisory Committee, and Minot City Manager, addressed the Commission members providing technical information relative to the project and the funding strategy.

It was moved by Commissioner Ames that the State Water Commission:

1) approve a bill draft associated with amendments to North Dakota Century Code Chapter 61-02 relative to the State Water Commission's general water development bonding authority;

2) request a specific authority from the Legislature to proceed with the Northwest Area Water Supply project and seek legislation relating to water development revenue bonds for the Northwest Area Water Supply project; and

3) concur with the State Water Commission's budget request of \$1.4 million for the 1995-1997 biennium for the first two-year's estimated interest payments on the bonds for the Northwest Area Water Supply project.

The Chairman called for a second on the motion. The motion died due to lack of a second.

It was moved by Commissioner Ames and seconded by Commissioner Hillesland that the State Water Commission approve a bill draft associated with amendments to North Dakota Century Code Chapter 61-02 relative to the State Water Commission's general water development bonding authority. SEE APPENDIX "F".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Roger Johnson representing Commissioner Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve a bill draft to be presented to the Legislature for an Act to amend and reenact section 61-24.6-01 of North Dakota Century Code, relating to water development revenue bonds for the Northwest Area Water Supply project.

(The bill draft would request the following amendment to the 1993 authorization for the Northwest Area Water Supply project: "In furtherance of this public purpose, the industrial commission may issue bonds in accordance with chapter 61-02 to finance the costs of the project.") SEE APPENDIX "G".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Thompson, Roger Johnson representing Commissioner Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Governor Schafer leaves the meeting; the chair is assumed by Commissioner Olin.

**CONSIDERATION AND APPROVAL
OF ALLOCATION FOR FISCAL
YEAR 1995 CORPS SECTION 22
RED RIVER UNET MODEL
(SWC Project No. 1730)**

The State Water Commission has participated with the St. Paul District Corps of Engineers in the Section 22 program for several years. Section 22 provides Corps technical assistance to the states. Dale Frink indicated that initially the program was 100 percent federally funded, but a 50 percent non-federal cost share is now required. As a result, he said the number of Section 22 projects that North Dakota participates in has decreased.

Mr. Frink stated that one project the state is still supporting is the hydraulic modelling studies on the Red River north of Grand Forks. This area was involved in significant legal action concerning the construction of agricultural dikes in 1975 on both sides of the river. The State of Minnesota is also participating in this effort; therefore, the cost share arrangement is 50 percent federal and 25 percent each from the two states.

Significant progress has been made towards developing a detailed computer model in this very complex area. In the Corps' Fiscal Year 1994, the model was modified to better describe some of the physical relationships between the river and the floodplain and parts of the computer program, UNET, were re-coded to better accommodate the special situations on the Red River of the North. In Fiscal Year 1995, the Corps will develop hydrologic data for several past flood events, develop levee profile data for the present levee alignment and one other alignment to be submitted by the states, run the model, and provide a final report. The Corps estimates the total cost for Fiscal Year 1995 to be about \$46,400. As a result, Mr. Frink said North Dakota's share would be \$11,600.

It was the recommendation of the State Engineer that the State Water Commission approve an allocation of \$11,600 from the Contract Fund for Fiscal Year 1995 Section 22 UNET work by the Corps of Engineers.

It was moved by Commissioner Bjornson and seconded by Commissioner Hillesland that the State Water Commission approve an allocation of \$11,600 from the Contract Fund for Fiscal Year 1995 Section 22 UNET work by the Corps of Engineers. This motion is contingent upon the availability of funds.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Swenson, Thompson, Roger Johnson representing Commissioner Vogel, and Chairman Olin voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION AND APPROVAL
OF REQUEST FOR FISCAL YEAR
1994 ALLOCATION TO NORTH
DAKOTA WETLANDS TRUST
(SWC Project No. 1826)**

In 1986, the Garrison Diversion project was reformulated by Congress. Two new features of the project were the Municipal, Rural, and Industrial (MR&I) Water Supply program and the

Wetlands Trust. Both features are widespread programs benefitting much of the state.

Secretary Sprynczynatyk explained that the Wetlands Trust is a program that provides for the preservation, enhancement, restoration and management of wetlands and associated wildlife habitat in the state. The Wetlands Trust operates off the interest from a trust fund that will eventually reach \$13.2 million. Of the \$13.2 million, \$12 million is to come from the federal government and \$1.2 million from the state.

In 1993, the Garrison Diversion Conservancy District, the State Water Commission, and the North Dakota Game and Fish Department entered into a memorandum of agreement in which the three entities agreed to share equally the state commitment in accordance with terms set out in a February 14, 1991, agreement between the State of North Dakota, the Bureau of Reclamation, and the North Dakota Wetlands Trust. That agreement provides that the state's share shall be based on 0.15 percent of the federal Garrison Diversion Unit appropriation. Secretary Sprynczynatyk stated the Fiscal Year 1994 GDU appropriation was \$30 million; therefore, the state's commitment would be \$45,000. The State Water Commission's share is one-third of the \$45,000, or \$15,000.

It was the recommendation of the State Engineer that the State Water Commission obligate \$15,000 for one-third of the state's Fiscal Year 1994 Wetlands Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the State Game and Fish Department.

It was moved by Commissioner Hillesland and seconded by Commissioner Swenson that the State Water Commission approve the obligation of \$15,000 for one-third of the state's

Fiscal Year 1994 Wetlands Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department, and contingent upon the availability of funds.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Swenson, Thompson, Roger Johnson representing Commissioner Vogel, and Chairman Olin voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION AND APPROVAL
OF REQUEST FROM NORTH DAKOTA
WATER EDUCATION FOUNDATION
FOR COST SHARING IN AMOUNT
OF \$18,000 TO NORTH DAKOTA
WATER MAGAZINE**

The North Dakota Water Education Foundation has assumed a leadership role for water education in the State of North Dakota. Their magazine, North Dakota Water, has not only received critical acclaim, but

it has already effectively communicated to several thousand North Dakotans some sense of the important role water plays in their lives.

Secretary Sprynczynatyk presented a request from the North Dakota Water Education Foundation for the Commission's consideration to obligate \$18,000 during 1995 to cover the costs associated with including the "Oxbow" and "Water Primer" sections in the North Dakota Water magazine and to help underwrite the cost of publishing North Dakota Water.

It was the recommendation of the State Engineer that the State Water Commission obligate to the North Dakota Water Education Foundation \$18,000 during 1995 to cover the costs associated with including the "Oxbow" and the "Water Primer" sections in the North Dakota Water magazine and to help underwrite the cost of publishing North Dakota Water.

It was moved by Commissioner Thompson and seconded by Commissioner Ames that the State Water Commission approve the allocation of \$18,000 during 1995 to the North Dakota Water Education Foundation to cover the costs associated with including the "Oxbow" and the "Water Primer" sections in the North Dakota Water magazine and to help underwrite the cost of publishing North Dakota Water.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Swenson, Thompson, Roger Johnson representing Commissioner Vogel, and Chairman Olin voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION AND DEFERRAL
OF REQUEST FROM RAMSEY COUNTY
WATER RESOURCE DISTRICT FOR
COST SHARING ON STARKWEATHER
COULEE DRAIN IMPROVEMENT PROJECT
(SWC Project No. 1298)**

A request from the Ramsey County Water Resource District was presented for the Commission's consideration for cost sharing on the Starkweather Coulee Drain Improvement Project.

Dale Frink presented the request. The purpose of the project is to improve hydraulic characteristics of the watercourse to reduce flooding and crop damage in the area of the watershed. The project consists of cleaning out and widening the coulee with some channel alignment. The overall project will be divided into phases and completed over a period of several years. The cost estimate for Phase I of the project is \$159,000, which covers clearing and grubbing, excavation, seeding and engineering, all of which are considered eligible. At 40 percent cost sharing of eligible items, the cost to the State Water Commission would be \$63,600.

It was the recommendation of the State Engineer that due to the revenue situation for the Resources Trust Fund that the State Water Commission defer action on the request for cost sharing on the Starkweather Coulee Drain Improvement Project in Ramsey County.

It was moved by Commissioner Bjornson and seconded by Commissioner Thompson that the State Water Commission defer action on the request for cost sharing on the Starkweather Coulee Drain Improvement Project in Ramsey County.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Swenson, Thompson, Roger Johnson for Commissioner Vogel, and Chairman Olin voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Commissioner Bjornson recommended that when funds become available from the Resources Trust Fund to reconsider the deferred cost sharing requests, priority be given to those projects where construction has begun.

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

Warren Jamison, Manager of the Garrison Diversion Conservancy District, provided a status report on the Garrison Project.

The North Dakota Water Management Collaborative process efforts to refocus the direction of the Garrison Diversion project were discussed. Mr. Jamison commented that it appears that the arguments against completion of the Garrison Diversion Unit are shifting from a concern for environmental impacts to a challenge of the economics. He said most people now realize that economic growth and good stewardship of the natural ecosystem are interdependent. They are not independent where one can happen without the other, but now they are exclusive of each other where if one objective is achieved, it must be at the expense of the other. He said "the logic and wisdom of the win-win objective is one of the reasons we are able to continue the collaborative process and make the progress that we have."

The Executive Steering committee of the North Dakota Water Management Collaborative process was reconvened on October 22, 1994. Mr. Jamison reported that after consideration to changes in the process, the committee decided to consider four studies:

- 1) MR&I - Indian Reservations
- 2) Red River Valley/Eastern North Dakota MR&I Needs Assessment
- 3) Statewide MR&I
- 4) Turtle Lake Irrigation and Development Area

The next meeting of the Executive Steering committee has been scheduled for December 16, 1994, in Bismarck, ND.

The Garrison Diversion Conservancy District board of directors met on December 2, 1994. Affirmative actions taken by the Board included the authorization of continued cost sharing on the Devils Lake coordinator position; and renewal of the Will & Muys contract under the reformed company name of Will & Carlson.

Mr. Jamison reported that solicitation efforts are ongoing in an attempt to fill the Communications Director position. He discussed the duties of the position, which include developing a strategy for communicating the issues of the Garrison Diversion project at the state and national levels.

Mr. Jamison advised the Commission members that the Garrison Diversion Overview committee will be considering a resolution of support for the collaborative process that will be presented to the Legislature.

**GARRISON DIVERSION PROJECT -
MR&I FUNDING FOR FY 1994
(SWC Project No. 237-5)**

Secretary Sprynczynatyk stated that the Bureau of Reclamation has indicated that year-end funds of \$675,000 are available

for the MR&I Water Supply program. The Southwest Pipeline project would use funding for the New England and Belfield service areas. The following proposed budget was recommended by the State Engineer to account for the increase of \$675,000 in the Fiscal Year 1994 funding:

	<u>Approved</u>	<u>Proposed</u>	<u>Changed</u>
Ramsey County Rural Water	\$ 197,518	\$ 197,518	\$ 0
Langdon Water Treatment	452,335	452,335	0
Grand Forks Water Treatment	944,611	944,611	0
Southwest Pipeline Project	6,106,966	6,756,966	650,000
Dickey Rural Water	3,380,000	3,380,000	0
Fargo Water Supply	2,352,070	2,352,070	0
Administration	<u>166,500</u>	<u>191,500</u>	<u>25,000</u>
Total	\$13,600,000	\$14,275,000	\$675,000

It was moved by Commissioner Ames and seconded by Commissioner Hillesland that the State Water Commission approve the proposed Fiscal Year 1994 MR&I Water Supply program budget as recommended by the State Engineer. This motion is contingent upon the availability of funding.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Swenson, Thompson, Roger Johnson for Commissioner Vogel, and Chairman Olin voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**GARRISON DIVERSION PROJECT -
MR&I FUNDING FOR FY 1995
(SWC Project No. 237-3)**

The Garrison Diversion Unit federal appropriation for Fiscal Year 1995 is \$32 million which includes \$14,500,000 for the MR&I Water Supply program.

The State Engineer presented and recommended tentative approval of the following projects that qualify for Fiscal Year 1995 funding, contingent upon approval of a federal Fiscal Year 1995 appropriation for the Garrison Diversion project and subject to future revisions:

	<u>Approved</u>	<u>Proposed</u>	<u>Changed</u>
Dickey Rural Water, Phase II	\$ 7,800,000	\$ 7,800,000	\$ 0
Northwest Area Water Supply	500,000	500,000	0
Southwest Pipeline Project	6,100,000	5,425,000	(675,000)
Missouri West, Phase II	0	150,000	150,000
Burleigh Water Users	0	187,000	187,000
Unallocated Funding	0	260,000	260,000
Feasibility Studies	25,000	25,000	0
Administration	<u>150,000</u>	<u>153,000</u>	<u>3,000</u>
Total	\$14,575,000	\$14,500,000	\$ (75,000)

Greg Tschider, representing the Burleigh County Water Users, stated that the project was initially designed for approximately 700 users. The project is currently serving 915 users, and approximately 600 additional requests have been received for service. Mr. Tschider said it is obvious the project has expanded beyond its capability, and many users are now accepting a restrictive flow. The Association is negotiating with the City of Bismarck for the purchase of water.

The feasibility study for an expansion project is being reviewed by the State Water Commission staff. The project design engineering is expected to begin in Fiscal Year 1995, with construction to start in Fiscal Year 1996.

Mr. Tschider expressed appreciation to the State Water Commission for its project support and funding and requested the Commission's continued assistance.

Andy Mork, Chairman of the Missouri West Rural Water Association, provided additional comments on the Missouri West, Phase II project. He expressed appreciation to the Commission for its project support and requested continued assistance.

It was moved by Commissioner Bjornson and seconded by Commissioner Hillesland that the State Water Commission approve the State Engineer's recommendation for tentative approval of the Fiscal Year 1995 Garrison MR&I Water Supply program budget. This motion is contingent upon the approved federal Fiscal Year 1995 appropriation for the Garrison Diversion Unit project and is subject to future revisions.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Swenson, Thompson, Roger Johnson for Commissioner Vogel, and Chairman Olin voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**GARRISON DIVERSION PROJECT -
ORGANIZATION OF RED RIVER
VALLEY WATER COALITION
(SWC Project No. 237)**

At the October 22, 1994, meeting of the Executive Steering committee of the North Dakota Water Management Collaborative process, the committee decided to consider four studies, which were previously mentioned in these minutes under the Garrison Diversion project update. One of the study area's proposed is the Red River Valley/Eastern North Dakota MR&I needs assessment.

Ken Vein, City Engineer for Grand Forks, appeared before the State Water Commission to provide information on the recently organized Red River Valley Water Coalition. He said the initial meeting of the Coalition included representatives from the cities of Grand Forks, Fargo, West Fargo, Grafton, Drayton, and the Minnesota communities of East Grand Forks and Moorhead. He indicated it is hoped that the Coalition will expand to include entities in the entire Red River Valley area. The Coalition developed a mission statement and goals, which were addressed by Mr. Vein, and attached hereto as **APPENDIX "H"**.

Mr. Vein stated, "the Coalition understands the need for a statewide consensus for the development of water projects and, without such a consensus, water development in the state could be hindered." Therefore, he requested the Commission consider the Coalition's goals at a future meeting.

Secretary Sprynczynatyk explained that the 1986 Garrison Reformulation Act authorized a separate appropriation for the Red River water supply to provide water to communities along the Red River. The Red River Valley/Eastern North Dakota MR&I Needs Assessment study will be addressed in the North Dakota Water Management Collaborative process. He stressed the importance of the local entities and the state working together to fully implement that section of the federal law.

It was moved by Commissioner Bjornson, seconded by Commissioner Hillesland, and unanimously carried, that the State Water Commission commend the organization of the Red River Valley Water Coalition and acknowledge receipt of the Coalition's Mission Statement and Goals.

**DEVILS LAKE STABILIZATION
PROJECT
(SWC Project No. 1712)**

At July 27, 1994, meeting, Secretary Sprynczynatyk informed the Commission members that he had directed the staff to

develop an emergency flood contingency plan for Devils Lake, and to coordinate planning with other appropriate state agencies as well as the US Fish and Wildlife Service and the US Environmental Protection Agency. The Commission members were provided with copies of the report, "Assessment of Potential Devils Lake Flood Damages, October, 1994."

Secretary Sprynczynatyk briefed the Commission members on a meeting held November 22, 1994, in Devils Lake to present the information in the report and to discuss the potential for continued flooding and emergency measures at Devils Lake in the spring of 1995.

Information in the report indicates flood damages begin to occur when Devils Lake is at elevation 1427.5. Therefore, the Devils Lake Joint Board has recommended that elevation 1427.5 be identified as the flood stage for Devils Lake.

Secretary Sprynczynatyk reiterated that the state needs to continue to expeditiously pursue the stabilization of Devils Lake and, in doing so, the state will continue to work closely with the people in the Devils Lake area as well as the federal agencies involved with the lake, and continue to pursue all alternatives and schemes to protect the area.

On December 6, 1994, the Devils Lake Joint Board held a special meeting. Ben Varnson, Chairman of the Board, reported the Board has decided to proceed to identify water retention potentials in the Devils Lake Basin. Mr. Varnson presented and discussed the following plan of action:

- 1) Survey the upper basin area to identify potential water storage sites and storage capacity on public and private land;
- 2) Identify sites that can provide temporary or long-term water storage, including the structural measures required to store water;
- 3) Identify and pursue funding mechanisms to compensate landowners for voluntarily storing water on private land;
- 4) Establish groups of landowners in each subbasin to work with the people in their area in establishing water retention sites;
- 5) Quantify the costs and funding sources to implement sufficient flood storage to significantly benefit the local area and the region; and

- 6) Quantify the benefits that can be realized by downstream landowners.

Mr. Varnson said, "this is a very ambitious undertaking and will require technical and other resources beyond the Board's capability." Therefore, he requested that the State Water Commission and the State Engineer provide and coordinate assistance in accomplishing the tasks identified above.

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

Secretary Sprynczynatyk provided a status report on the Corps of Engineers draft Environmental Impact Statement for the Missouri River Master Water Control Manual review and update.

A series of public meetings were held in September and October, 1994, in each of the Missouri basin states on the Preferred Alternative. Secretary Sprynczynatyk commented on the meetings held in North Dakota and said the largest meeting was held in Bismarck on October 17 at which approximately 650 people attended. The Corps has extended the public comment period on the Preferred Alternative to March 1, 1995.

In discussion of the Preferred Alternative, the Commission members reiterated their concerns regarding the spring rise being proposed by the Corps at the start of the downstream navigation season, and the impact those flows could have on areas in North Dakota.

The Missouri River Basin Association met on December 2, 1994, in Minneapolis. Secretary Sprynczynatyk reported that the Association agreed to move forward with a collaborative process to develop a consensus on as much of the revised Master Manual as possible to present to the Corps for its consideration in developing a final plan. He said if the Association is successful, litigation with the Corps and the lower basin states may be avoided.

**DICKINSON DAM AND
BASCULE GATES UPDATE
(SWC Project No. 263)**

At the October 14, 1994 meeting the Commission members were advised the City of Dickinson is interested in assuming ownership and responsibility of the Dickinson Dam and Patterson Lake from the Bureau of Reclamation. Charles Rydell stated the city owes the Bureau approximately \$3 million. Presently, the State Water Commission gives the city credit for 75 percent of the debt under the Southwest Pipeline project's water service contract. The credit amounts to approximately \$12,000 per month for seven more years.

In September, the State Engineer, Mr. Rydell and Dickinson city officials met with the congressional delegation in Washington, DC regarding this issue. Mr. Rydell stated Senator Dorgan has agreed to introduce legislation next spring that will allow for this transfer. Senator Dorgan requested the state take the lead and work with the City of Dickinson in developing a plan that addresses the issues associated with such a transfer. The plan is expected to be completed by January, 1995, and will be used by his office in drafting the necessary legislation.

Representatives of the State Water Commission and the City of Dickinson met in October and identified the issues to be addressed by the plan. The State Water Commission has drafted an initial plan, which has been forwarded to the city and the Bureau for their review and comments. The city will be providing additional information to the plan regarding the financial impacts they expect to incur as a result of the transfer.

Mr. Rydell indicated that the State Water Commission is also working with the City of Dickinson, local organizations in the Dickinson area, and the North Dakota State Department of Health and Consolidated Laboratories in identifying sponsors at the local level for a sediment and nutrient budget study of the Patterson Lake watershed. The results of the study are intended to be used by the locals to obtain federal funds to support the implementation of the Patterson Lake watershed management plan. Issues regarding the sponsors for the study and the watershed management plan are expected to be resolved in December, 1994.

**CANNONBALL RIVER BASIN
COOPERATIVE STUDY UPDATE
(SWC Project No. 322-1)**

Linda Weispfenning, State Water Commission's Planning and Education Division, provided a status report on the Cannon-

ball River Basin Study, which is attached hereto as **APPENDIX "I"**.

**NORTH DAKOTA COMPREHENSIVE
WETLANDS CONSERVATION PLAN
PROJECT UPDATE
(SWC Project No. 1489-5)**

Leroy Klapprodt, State Water Commission's Planning and Education Division, provided the Commission members with a status report on the Fiscal

Years 1993 and 1994 Wetlands Conservation grants the US Environmental Protection Agency has awarded to the State Water Commission to aid in the development of the North Dakota Comprehensive Wetlands Conservation Plan, attached hereto as **APPENDIX "J"**.

**STATE ASSUMPTION OF
SECTION 404 PROGRAM
(SWC Project No. 1855)**

Secretary Sprynczynatyk briefed the Commission members on state assumption of the Section 404 program. The status report is attached as **APPENDIX "H"**.

1995 LEGISLATION

The following bill drafts which are under the authority of the State Water Commission and the State Engineer were presented for consideration to the 1995 Legislature:

State Water Commission:

- 1) A bill draft to transfer the operation, maintenance and replacement funds of the Southwest Pipeline project to the Southwest Water Authority. The bill draft also transfers equipment that was purchased to operate and maintain the project.
- 2) A bill draft which allows the transfer of title of land no longer needed for the Southwest Pipeline project back to the original owners.
- 3) A bill draft which would allow transferring or selling land acquired for the Southwest Pipeline Project that is no longer needed without going to the legislature for approval.

State Engineer:

- 1) A bill draft that would allow the refunding of water permit application fees.
- 2) A bill draft to reduce the number of times the Sovereign Lands Advisory Board must meet.
- 3) A bill draft that would change the number of votes members of irrigation districts that receive water from federal irrigation projects are entitled to.
- 4) A bill draft addressing the effective date of state assumption of the Section 404 program.

It was moved by Commissioner Bjornson, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission approve the bill drafts recommended by the State Engineer for consideration by the 1995 legislature. SEE APPENDIX "L".

Secretary Sprynczynatyk informed the Commission members that January 31, 1995, has been designated as "Water Day" at the Legislature, sponsored by the North Dakota Rural Water Association.

**NEXT MEETING OF STATE
WATER COMMISSION**

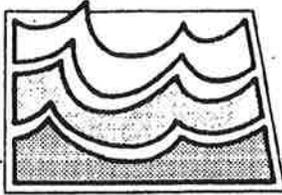
The next meeting of the State Water Commission is scheduled for February 9, 1995, in Bismarck, ND.

There being no further business to come before the State Water Commission, it was moved by Commissioner Thompson, seconded by Commissioner Swenson, and unanimously carried, that the State Water Commission meeting adjourn at 1:00 PM.


Edward T. Schafer
Governor-Chairman

SEAL


David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary



North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-224-2750 • FAX 701-224-3696
328 328

Meeting To Be Held At
Doublewood Inn - East Heritage Ballroom
Bismarck, North Dakota

December 7, 1994
9:00 AM, Central Standard Time

PRELIMINARY AGENDA

- A. Roll Call
- B. Consideration of Agenda
- C. *Consideration of Minutes of October 14, 1994, Meeting* **
- D. Financial Statement:
 - 1) Agency Operations **
 - 2) Resources Trust Fund:
 - a) Update **
 - b) *Resources Trust Fund Request* **
 - 3) 1995-1997 Budget Update
- E. Funding for Water Development Projects:
 - 1) Water Funding Meeting Report **
- F. Consideration of Following Requests for Cost Sharing:
 - 1) *Corps Section 22 Red River UNET Model* **
 - 2) *North Dakota Wetlands Trust* **
 - 3) *North Dakota Water Magazine* **
 - 4) *Starkweather Coulee Improvement (Ramsey County)* **
- G. Southwest Pipeline Project:
 - 1) Status Report **
 - 2) *Water Service Contracts* **
 - 3) Transfer of Operations: Draft Agreement **
- H. Northwest Area Water Supply Project:
 - 1) *Project Update* **
- I. Garrison Diversion Project:
 - 1) Project Update: Collaborative Process
 - 2) *Fiscal Year 1994 Funding* **
 - 3) *Fiscal Year 1995 Funding* **
- J. Devils Lake Stabilization Update

GOVERNOR EDWARD T. SCHAFER
CHAIRMAN

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

PRELIMINARY AGENDA - PAGE 2

- K. Missouri River Update
- L. Dickinson Dam and Bascule Gates Update **
- M. Cannonball River Basin Study Update **
- N. Comprehensive State Wetlands Conservation Plan Update **
- O. State Assumption of Section 404 **
- P. 1995 Legislation **
- Q. Other Business
- R. Adjournment

* * * * *

** MATERIAL PROVIDED IN BRIEFING BINDER

** *ITALICIZED, BOLD-FACED ITEMS REQUIRE SWC ACTION*

If auxiliary aids or services such as readers, signers, or Braille material are required, please contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505; or call (701) 328-4940 at least seven (7) working days prior to the meeting. TDD telephone number is (701) 328-2750.

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE December 7, 1994 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Dave Koland	Bismarck	ND Rural Water Systems
HANK TRANGSDORF	FARGO	HOUSTON ENGINEERING
Milt Lochow	1530 - Skyline Dr Jamestown, 58401	GDCD
Ken Leininger	Bismarck 58416	GDCD
Patrick Evans-Cory	Bismarck	SWC
Ken Vein	Grand Forks	City of Grand Forks
Bob Schamp	Minot	NAWS Advisory Comm.
Warren Johnson	CARRINGTON	GDCD
DEVIDE BJORNSON	BISMARCK	N.D. WATER ED. FOUNDRY
CHARLES VEIN	GRAND FORKS	ADVANCED ENGR.
Julie King	Bis	Water Comm / AG
CARY BACKSTRAND	BISMARCK	SUC/SE
MERLE HUNTER	DEVILS LAKE	RAMSEY CO WRD
Don Lee	Devils Lake	Ramsey Co WRB
Jessie Robby	Harvey	GDCD

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
RON FRENCH	DEVILS LAKE, ND	MIDWEST ENGINEERING
Don Flynn	SCRANTON, N.D.	S.W. P.P.
Russ DUSHINSKE	DEVILS LAKE	CTCO
Chas. Richter	New Rockford	SDCO
Willie Mastel	Pickens	SWPP
Tom Tudor	Bismarck	ND Municipal Bond Bank
ALAN M. WALTER	MINOT	CITY of MINOT
Bill Hanson	Fis	Burlingh Water Users Group
Ben Vanson	Lakota	Nelson Co Devils Lake Basin J.B.
LOREN ZIMMER	Kenmare	WARD CO WATER RES Bd.
Arden Haner	Douglas ND	ND WRD
ALFRED UNDERDAK	HEBRON	SOUTH WEST WATER DIST
JAMES ODELMANN	Belfield, ND	SWA Public Information
Greg Tschieder	Bismarck	Burlingh Water Users Coop
Loan My	Taylor	SWA

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Fran Stewart	Bismarck	Burlingh Water Users Coop
JEROLD BACKES	BISMARCK	BARTLETT & WEST/BOYLE ENG
Doug Neibauer	Bismarck	Burlingh Water Users Coop
Andy Mork	Mandan	Morton WRD
Dave Long	Starling	Dave Long water
JOE BRIDLER	BISMARCK	BARTLETT & WEST ENG.
C Poppe Johnson	Bis	Ag Dept -
Jim Lindseth	Bismarck	SE/SWC
Jeffrey Volk	West Fargo	Mease Eng Inc
Jerry Weiss	3630 Alkova av. Bis	Burlingh Water Users Coop
Joe LaFave	1700 - 84th NW Bis	" " " "
Walter D. [unclear]	1100 INDUSTRIAL DRIVE	AMERICAN ENGINEERING
Robert [unclear]	801 12th E. West Fargo	S/E Comm. Co. Water Res.
Mike McKenna	100 Bismarck Expressway	ND Game & Fish
Jim Fay	Bismarck	SWC Staff
Lae Kipprecht	"	"

APPENDIX "A"

December 7, 1994 - 187

STATE WATER COMMISSION
PROGRAM BUDGET EXPENDITURES OCTOBER 31, 1994
BIENNIAL TIME 66.7%

FINANCIAL STATEMENT
SWC File ACT/FIN
11-14-1994

AGENCY PROGRAM	SALARIES & WAGES	INFORMATION SERVICES	OPERATING EXPENSE	EQUIPMENT	CONTRACTS	PROGRAM TOTAL
Administration						
Budget	\$633,590	\$75,792	\$293,465	\$3,000	\$0	\$1,005,847
Expended	\$401,165	\$47,133	\$182,802	\$0	\$0	\$631,100
Percent	63	62	62	0	0	63
Water Education						
Budget	\$624,858	\$0	\$142,264	\$12,750	\$25,000	\$804,872
Expended	\$380,213	\$0	\$80,844	\$11,763	\$24,335	\$497,154
Percent	61	0	57	92	97	62
Water Appropriation						
Budget	\$2,178,891	\$3,955	\$408,500	\$33,000	\$660,000	\$3,284,346
Expended	\$1,458,892	\$300	\$221,088	\$6,690	\$334,977	\$2,021,947
Percent	67	8	54	20	51	62
Water Development						
Budget	\$2,486,884	\$2,500	\$316,700	\$57,100	\$8,612,509	\$11,475,693
Expended	\$1,665,904	\$0	\$167,949	\$21,354	\$3,123,022	\$4,978,229
Percent	67	0	53	37	36	43
Atmospheric Resources						
Budget	\$393,452	\$2,500	\$1,700,701	\$10,500	\$3,050,000	\$5,157,153
Expended	\$256,166	\$1,425	\$748,990	\$8,245	\$657,606	\$1,672,432
Percent	65	57	44	79	22	32
Southwest Pipeline						
Budget	\$727,047	\$9,000	\$4,617,020	\$110,000	\$26,600,000	\$32,063,067
Expended	\$431,052	\$5,963	\$2,337,369	\$11,578	\$10,319,853	\$13,105,815
Percent	59	66	51	11	39	41
Contract Carryover						
Budget	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Expended	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Percent	0	0	0	0	100	100
Agency Totals						
Budget	\$7,044,722	\$93,747	\$7,478,650	\$226,350	\$39,447,509	\$54,290,978
Expended	\$4,593,392	\$54,821	\$3,739,041	\$59,629	\$14,959,793	\$23,406,676
Percent	65	58	50	26	38	43
FUNDING SOURCE:	APPROPRIATION	EXPENDITURES	BALANCE	FEDERAL FUND REVENUE:	\$11,427,141	
General Fund	\$5,532,084	\$2,900,529	\$2,431,555	SPECIAL FUND REVENUE:	\$7,338,302	
Federal Fund	\$32,775,404	\$13,605,341	\$19,170,063	GENERAL FUND REVENUE:	\$10,799	
Special Fund	\$15,983,490	\$6,900,806	\$9,082,684	TOTAL:	\$18,776,241	
TOTAL	\$54,290,978	\$23,406,676	\$30,584,302			

STATE WATER COMMISSION
1993 - 1995 Grants/Contract Fund

Page 1
21-Nov-94

FUNDING SOURCES						
	RTF	General Funds	Federal Funds	Other Funds	Carryover	Totals
Inter Basin Transfer	\$0	\$25,000				\$25,000
Hydrologic Investigation	\$600,000			\$60,000		\$660,000
HR&I Program	\$3,106,110				\$500,000	\$3,606,110
EPA Wetlands Grant	\$0		\$399,299			\$399,299
NAKS	\$50,000					\$50,000
Devils Lake	\$500,000					\$500,000
Maple River Dam	\$326,610					\$326,610
Southwest Pipeline	\$1,525,678					\$1,525,678
General Projects	\$2,582,811	\$0	\$26,000	\$96,000		\$2,704,811

SWC Grants Totals	\$8,691,209	\$25,000	\$425,299	\$156,000	\$500,000	\$9,797,508

PROGRAM COMMITMENTS

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
SWC	1828	Inter Basin Transfer		\$25,000	\$18,876	\$6,124
SWC	1395	Hydrologic Investigations		\$656,000	\$264,794	\$391,206
SWC	1389	USGS Data Collections: FY '94 & FY '95 High Value Irrigated Crop Development		\$4,000	\$2,000	\$2,000
HYDRO SUBTOTAL				\$660,000	\$266,794	\$393,206

MR&I Program						
SWC	237-5	Ramsey Co Rural Water	9-15-92	\$1,094,259	\$1,012,749	\$81,510
SWC	237-27	Missouri West	9-15-92	\$1,473,949	\$1,268,626	\$205,323
SWC	237-36	Stanley	10-21-91	\$513,672	\$280,004	\$233,668
SWC	237-42	Garrison Rural Water	9-15-92	\$524,230	\$504,983	\$19,247
MR&I SUBTOTAL				\$3,606,110	\$3,066,363	\$539,747

EPA WETLANDS GRANT						
SWC	1489-5	Wetlands Education	9-15-92	\$65,821	\$65,821	\$0
		Technical Services		\$8,873	\$8,873	\$0
		Water Quality Analysis		\$14,325	\$14,325	\$0
		Grand Harbor		\$57,587	\$57,587	\$0
		Private Lands		\$26,955	\$26,955	\$0
		Devils Lake Basin (Conservation Plan)		\$22,738	\$22,738	\$0
		Adopt-A-Pothole		\$25,000	\$25,000	\$0
	1489-9	Devils Lake Basin (Midwest Flood)		\$50,000	\$49,823	\$177
	1489-7	Health Dept		\$27,000	\$9,312	\$17,688
		Water Education Fundation		\$50,000	\$50,000	\$0
		Game & Fish (CRP)		\$17,000	\$6,064	\$10,936
		Game & Fish (Private Lands)		\$34,000	\$13,118	\$20,882
EPA SUBTOTAL				\$399,299	\$349,615	\$49,684

SWC	237-4	NAMS	2-04-92	\$50,000	\$0	\$50,000

SWC	416	Devils Lake Flood Control	2-04-92	\$438,000	\$25,250	\$412,750
SWC	1712	Frequency Analysis Devils Lake	10-26-93	\$62,000	\$17,450	\$44,550
DEVILS LAKE SUBTOTAL				\$500,000	\$42,700	\$457,300

SWC	1344	Maple River Flood Control	2-04-92	\$326,610	\$48,163	\$278,447

SWC	1736	Southwest Pipeline Project	2-04-92	\$1,525,678	\$226,860	\$1,298,818

PROGRAM COMMITMENTS

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
		Shortfall		\$1,359,343	\$0	\$1,359,343
SWC	237	Garrison Consultant (91-93)	8-22-91	\$7,842	\$7,842	(\$0)
SWC	1803	Belfield Flood Control (Stark)	12-20-91	\$38,800	\$0	\$38,800
SWC	1346	Mount Carmel (Cavalier)	4-02-92	\$4,395	\$0	\$4,395
SWC	662	Park River Snagging & Clearing (Walsh)	4-02-92	\$10,117	\$0	\$10,117
SWC	662	Park River #2 Snagging & Clearing (Walsh)	5-23-92	\$4,625	\$0	\$4,625
SWC	1496	Lake Elsie (Richland) (F)	8-05-92	\$11,500	\$2,811	\$8,689
SWC	1292	Willow Road Floodway (Norton)	8-26-93	\$32,641	\$32,641	\$0
SWC	300	Baldhill Dam (Barnes)	9-15-92	\$184,000	\$60,000	\$124,000
SE	1311	Bingham CAT (Traill)	9-15-92	\$4,900	\$0	\$4,900
SE	1311	Elm CAT (Traill) (F)	9-15-92	\$5,590	\$5,590	\$0
SWC	237	Garrison Coalition	12-09-92	\$10,000	\$10,000	\$0
SWC	1815-4	Sheyenne River Snagging & Clearing (Ransom)	12-09-92	\$4,836	\$0	\$4,836
SWC	1842-4	Wild Rice Snagging & Clearing (Richland)	12-09-92	\$725	\$0	\$725
SE	1751-H	Lower Forest River FP (Walsh)	1-26-93	\$5,200	\$0	\$5,200
SE	1751-C	Williston Floodplain (Williston)	2-24-93	\$1,000	\$1,000	\$0
SWC	1804	Grand Harbor #1 (Ramsey)	4-06-93	\$20,640	\$0	\$20,640
SWC	237	Garrison Consultant (93-95)	7-02-93	\$40,000	\$30,704	\$9,296
SWC	1832	Hammer - Sullivan (Ramsey)	7-02-93	\$21,231	\$0	\$21,231
SWC	1840	North Loma (Cavalier)	7-09-93	\$7,960	\$0	\$7,960
SE	543	North Lemmon Lake Dam (Adams)	7-08-93	\$9,933	\$9,933	(\$0)
SE	263	Patterson Lake Management (Stark)	8-24-93	\$500	\$500	\$0
SE	266	Tolna Dam (Nelson)	9-28-93	\$2,000	\$0	\$2,000
SWC	1588-1	International Coalition	10-26-93	\$10,000	\$10,000	\$0
SE	1392	Missouri River Master Manual Review	10-20-93	\$1,413	\$1,413	\$0
SWC	1865	Belfield Dam (Stark)	11-19-93	\$62,000	\$59,122	\$2,878
SE	1577	Langdon Floodplain Management Study (Cavalier)	12-20-93	\$4,100	\$0	\$4,100
SWC	1245	Nelson Drain (Traill)	12-08-93	\$37,627	\$0	\$37,627
SWC	1826	Wetlands Trust	12-08-93	\$3,330	\$3,330	\$0
SWC	1545	Drain #72 (Richland)	12-08-93	\$10,017	\$0	\$10,017
SE	1816-5	Sheyenne River Snagging & Clearing (Barnes)	01-19-94	\$8,500	\$0	\$8,500
SE	1868-4	Wild Rice Snagging & Clearing (Case)	01-25-94	\$5,875	\$0	\$5,875
SWC	1346	Mt Carmel Dam (Cavalier)	03-09-94	\$250,000	\$0	\$250,000
SWC	222	Buford-Tranton Irrigation (Williams)	04-07-94	\$39,240	\$0	\$39,240
SE	1270	Hay Creek Watershed (Burleigh)	04-22-94	\$9,750	\$0	\$9,750
SE	1875	Castle Rock (Nettinger)	05-03-94	\$6,000	\$0	\$6,000
SE	820	Oak Creek Snagging & Clearing (Bottineau)	05-17-94	\$475	\$0	\$475
SE	1701-2	Red River UNET Study (Walsh)	05-23-94	\$6,250	\$0	\$6,250
SWC	1614	Lower Mauvais Coulee (Benson-Ramsey)	07-27-94	\$41,800	\$0	\$41,800
SE	1272	Wanegeler WPA (Cavalier)		\$2,000	\$0	\$2,000
SE	1730	Sec 22 COB St Paul (Phase I)	10-05-94	\$5,200	\$5,200	\$0
SWC	1588-1	International Coalition	10-14-94	\$10,000	\$0	\$10,000
SE	870	Crown Butte Dam (Norton)	11-09-94	\$6,838	\$0	\$6,838
APPROVED GENERAL PROJECTS SUBTOTAL				\$948,850	\$240,087	\$708,764
Unallocated Balance (Total-Approved-Shortfall)				\$396,618		

SWC GRANTS TOTALS \$5,797,508 \$4,259,457 \$5,538,052

REQUEST FOR FUNDING
FROM THE
RESOURCES TRUST FUND
FOR THE
1995-97 BIENNIUM

DECEMBER 7, 1994
NORTH DAKOTA STATE WATER COMMISSION

Section 57-51.1-07.1(2) of the North Dakota Century Code requires that "every legislative bill appropriating moneys from the Resources Trust Fund, pursuant to subsection one, must be accompanied by a State Water Commission report."

It is estimated that new revenue into the Resources Trust Fund for the 1995-97 biennium will be approximately \$5.4 million. This includes \$3,350,000 from oil extraction tax revenue; \$1,000,000 from MR&I loan repayments; \$950,000 from Southwest Pipeline Project repayments; and \$100,000 of interest income. In addition, approximately \$1.5 million of presently obligated funds for construction contracts underway will not be expended during the current biennium, but will be carried over into the 1995-97 biennium. The total in the Resource Trust Fund for the next biennium is estimated to be \$6.9 million. The State Water Commission requests that the Legislature provide \$6.9 million for project funding. The State Water Commission also requests that the Legislature provide additional spending authority if revenue to the Resources Trust Fund exceeds \$6.9 million.

In addition to projects under construction, there are other projects that are close to implementation and are projected to potentially be ready for funding during the 1995-97 biennium. The total revenue needed for all projects greatly exceeds the anticipated revenues.

The following table summarizes the available funds and the likely allocations of those funds and compares those amounts with the overall estimated need. Background information and other data required to satisfy law are included in this report.

FUNDING

Project or Program	Anticipated Amount Available	Estimated Need
I. Contract Fund		
General Projects	\$2,252,000	\$ 4,000,000
Hydrology Studies	432,000	600,000
Devils Lake	0	700,000
Baldhill Dam	0	1,000,000
Maple River Dam	0	3,500,000
II. Southwest Pipeline Project	950,000	1,600,000
III. Northwest Area Water Supply	0	1,400,000
IV. Contract Carryover <u>1/</u>	1,500,000	1,500,000
V. SWC Operations	<u>1,766,000</u>	<u>1,766,000</u>
Total	\$6,900,000	\$16,066,000
<u>1/</u> Currently obligated		

I. STATE WATER COMMISSION CONTRACT FUND

A. Project Description and Related Engineering Studies:

The State Water Commission's contract fund is used to cost-share with local sponsors on engineering construction projects and on the hydrologic data collection program. The engineering construction projects include flood control projects, water supply projects, recreation projects, irrigation projects, and drainage projects. Engineering studies and extraordinary maintenance are also cost-shared. Depending on the project type, 25 to 50 percent is provided by the State Water Commission. The contract fund has been used as the state's primary water resource development fund since 1943.

Based on a survey of the 64 water resource districts in the state, it was determined that over \$82.3 million of projects potentially could be developed in the next biennium. Following State Water Commission cost-share policies, the state's share would be \$25.1 million.

An expression of authority and willingness to partially fund the water supply for the corn wet milling plant, if it is located in North Dakota, has been made. If the project is located in the state, it is anticipated that up to \$2 million would be applied to the project for a water supply, which would have to come from the contract fund for general projects and is included in the estimated need.

The contract fund also supports the State Water Commission's US Geological Survey Cooperative Program. The hydrologic data collection part of the program consists of the stream flow gaging network and monitoring ground water levels and quality. This program is an essential element in the ongoing process of managing the state's water resources. The program is cost-shared with the US Geological Survey on a 50-50 basis. The state request to support this program is \$432,000. This is a 28 percent reduction from current funding levels, requiring the elimination of several stream gages and observation wells across the state.

Contract services to support hydrologic investigations include test drilling and related work, surveying, water level measurements, stream gage measurements, soil classifications, and other services as may be required.

In 1992, the State Water Commission made a \$500,000 commitment for a Corps of Engineers feasibility study of an inlet-outlet for Devils Lake. The Corps of Engineers elected to complete additional pre-feasibility studies on this project due to their concerns regarding economic feasibility. The pre-studies are underway and require an expenditure of \$150,000 of nonfederal funds, leaving \$350,000 available for further study. The cost of a complete feasibility study will exceed \$2 million, according to the Corps. A 50 percent nonfederal match is required. As a result, additional nonfederal funds will be required beyond the original \$500,000 estimate. Local interests would have extreme difficulties in providing the difference.

Modifications to Baldhill Dam are currently underway for dam safety purposes. However, a raise of the flood pool of the dam is also proposed. The total cost of the pool raise is estimated at \$15 million with about \$4 million required from nonfederal sources. The Sheyenne River Joint Water Resource District was formed in 1994 to serve as the local sponsor. The State Water Commission guidelines would allow up to a 50 percent cost-share for nonfederal eligible items, or \$2 million. The current construction schedule would require \$1 million during the 1995-97 biennium and \$1 million during the 1997-99 biennium.

The Maple River Dam is a proposed flood control project located on the mainstem of the Maple River. The total cost of the Maple River Dam is estimated at \$13 million, with about \$6 million potentially eligible for a state cost-share. A 2-to 3-year construction period is anticipated. Approximately \$3.5 million of state funds would be required during the 1995-97 biennium.

B. State Water Plan:

The majority of the potential water management projects are included in the State Water Plan. The State Water Commission does review the projects individually, as specific requests are made, to determine whether the projects are compatible with water management plans.

C. Description of Project Need:

As previously indicated, the contract fund is used to cost-share on all types of water resource projects in the state. The 64 water resource districts have several projects that are ready for development, and many more in the preliminary development stage. These projects individually are not extremely comprehensive or costly, but the projects are very important to specific areas and often have a higher benefit-to-cost ratio than larger projects.

D. Alternative Funding Sources:

Alternative funding sources for the smaller projects funded from the contract fund are generally nonexistent. Federal funding through the Game and Fish Department is often available as a one-third match, depending upon project type. Many projects are funded on a basis of one-third local, one-third State Water Commission (contract fund), and one-third Game and Fish. Without state assistance, the locals would not be able to develop the small projects.

E. State Water Commission Recommendation:

The State Water Commission requests \$2.252 million for general contract fund projects, and \$432,000 for hydrologic investigations.

II. SOUTHWEST PIPELINE PROJECT

A. Project Description and Related Engineering Studies:

The Southwest Pipeline Project is a water supply system to furnish Missouri River water to 26 cities and over 2,000 farms in southwestern North Dakota. Water is being diverted from Lake Sakakawea, at Basin Electric Cooperative's intake structure, located on Renner Bay northwest of Beulah. The project began serving raw water to the city of Dickinson in October 1991 and is currently serving Dickinson, Richardton, Taylor, Gladstone, Mott, Golden Valley, Dodge, Halliday, Dunn Center, New England, and Regent. It is estimated that 900 rural farms will also be receiving Southwest Pipeline water by late 1995.

Funding for the project is a combination of federal MR&I dollars and state funds mostly from the Resources Trust Fund. The majority of the state funds were appropriated before 1985. However, the federal MR&I program requires all projects to provide at least a 25 percent nonfederal match, and larger appropriations will be required for the pipeline if the project is to be completed.

B. State Water Plan:

The Southwest Pipeline Project is an integral part of the State Water Plan. The State Water Plan was developed on the assumption that the Southwest Pipeline Project would meet the water needs of 27 cities, and the surrounding rural areas in southwestern North Dakota. Of those 27 cities, 24 have executed water service contracts.

C. Description of Project Need:

The need for the project is well documented. The area's surface water supplies are erratic and cannot be relied upon as a dependable water supply. The ground water aquifers are extremely limited, and those that do exist, contain water of very poor quality. Many cities obtain their water supplies from wells 1,000 to 1,500 feet deep. Many farms obtain their water from lignite coal aquifer seams that yield water of a dark brown color resembling coffee. Many other farms and ranches are forced to haul water often at distances of 15 to 20 miles.

Seven communities in southwestern North Dakota were informed by EPA that the fluoride levels in the current water supplies exceed the primary drinking water standards. EPA has indicated that large fines would be imposed if the fluoride problem is not corrected. As a result, the State Water Commission modified the pipeline's construction schedule in order to provide Southwest Pipeline water to these communities as soon as funding allows. These communities will be served by late 1994.

D. Local Sponsorship:

The state legislature authorized the Southwest Water Authority in 1991. The Authority consists of elected representatives of the counties in the service area and serves as the local sponsor for the project.

It is envisioned that with legislative approval, the completed portions of the Southwest Pipeline Project will be turned over to the Southwest Water Authority for operation and maintenance, beginning in 1996. The State Water Commission will remain responsible for constructing the uncompleted phases of the project and would turn over the phases to the Authority as they are completed. The State Water Commission would retain ownership of the project and the Southwest Water Authority would be responsible to meet all of the terms required in the water service agreements.

E. Alternative Funding Sources:

Future construction of the Southwest Pipeline Project is at a crossroads. The Southwest Pipeline Project has received approximately \$60 million of federal MR&I funds. The entire MR&I program includes \$200 million for the entire state. In order to provide funds to other state projects, such as NAWS, the State Water Commission and Garrison Diversion Conservancy District have suggested limiting the portion allocated to the Southwest Pipeline Project to approximately \$62 million until the \$200 million current authorization is increased. Since the Southwest Pipeline Project is very close to this limit, it is possible that construction will be discontinued for a 2- to 4-year period until the federal authorization ceiling is increased. There is also no guarantee that Congress will approve raising the current limits of the MR&I program. As a result, the State Water Commission is evaluating an alternative to include bonding, Farmers Home Administration (FmHA) loans, and other sources of revenue.

F. State Water Commission Recommendation:

The State Water Commission requests \$950,000 for the Southwest Pipeline Project, which is the estimated repayment of the users of the Southwest Pipeline Project.

III. NAWS

A. Project Description and Related Engineering Studies:

The Northwest Area Water Supply (NAWS) project is proposed to furnish Missouri River water to 10 northwestern North Dakota counties. Forty-one cities and 9 existing or proposed rural water associations (RWA's) participated in the NAWS prefinal design which has just been completed. Missouri River water is proposed to be distributed from three separate intakes, two on Lake Sakakawea and one on Lake Audubon near the Snake Creek embankment. Cities with public water systems and RWA's are now considering water service contracts incorporating an estimated cost of water from the project.

State law requires cities without home rule to hold an election before entering into a contract for a water supply. To date, 11 cities have rejected participation in the project and did not hold an election. Fifteen cities held elections on November 8th, with 11 passing measures authorizing their city councils to enter into a contract; three rejected measures, and there was one tie vote. Two cities plan on holding special elections on the NAWS issue in December 1994. Five cities have home rule and have not yet decided on the contracts. Four cities have no distribution systems and may be supplied with rural water from NAWS. Three other cities are served by the Ray-Tioga water system which is considering the NAWS contract, and one city is undecided.

The total cost of supplying all 41 cities and 9 rural water systems is estimated at \$161.8 million. Once the final number of cities to be served is known, the project and cost will be adjusted.

The proposed funding for the project is a combination of 75 percent federal MR&I dollars and revenue bonds for the remaining 25 percent. Interest and principal payments on the bonds will be paid back by project water users through water use fees. The current project schedule calls for construction of the first phase, the water pipeline to Minot, to commence in the summer of 1996. It is anticipated that construction of this phase of the project could require 5 years. Revenue will not be generated by the sale of water until the Minot phase is completed. During this 5-year period, about \$5 million in interest payments on the bonds will have to be paid from another funding source. The \$1.4 million estimated need for the NAWS project is the first 2 years interest payments on the bonds.

B. State Water Plan:

The NAWS project is an integral component of the State Water Plan. The 1992 State Water Plan, developed when the NAWS project was at a very preliminary stage, includes construction of the NAWS project to supply domestic water supplies to northwestern North Dakota. NAWS is now envisioned to supply 15 to 20 cities, and several rural water associations in the 10 northwestern North Dakota counties.

C. Description of Project Need:

Most cities and small communities, as well as farms and ranches in northwestern North Dakota, are obtaining their water supplies from ground water sources which can be of poor quality and limited quantity. With the exception of the Missouri River, surface water supplies are also considered marginal from the standpoint of both quality and quantity. The residents of many cities and farms in the area haul drinking water from sources which can be a distance of many miles.

D. Local Sponsorship:

The state legislature authorized the State Water Commission to develop the NAWS project in 1991. The legislation also created a NAWS Advisory Committee of local representatives. The committee includes one representative from each of the following: the city of Minot, city of Williston, small towns, Garrison Diversion Conservancy District, Water Resource Districts, Rural Water Associations, State Water Commission, Three Affiliated Tribes, and one at large member.

It is anticipated that an operating entity will be created some time to manage and operate the portions of the project after they are constructed. The State Water Commission will remain responsible for constructing the uncompleted portions of the project and would transfer operation and management responsibilities to the entity as they are constructed. This entity would be required to meet all of the obligations required in the NAWS Water Service Contracts.

E. Alternative Funding Sources:

The current proposal is to fund the local share of the construction costs of the project by issuing revenue bonds. The bonds will be paid back with project water user fees, but interest on the bonds during the first 5 years of construction will have to be paid from another source. The \$1.4 million estimated need for the NAWS project is the first 2 years interest payments on the bonds. Alternative funding sources could include an area-wide sales tax, an area-wide water use fee, or possibly borrowing the funds from another source.

IV. CONTRACT CARRYOVER

A. Project Description:

It is estimated that approximately \$1.5 million of 1993-95 biennium projects will not be completed by June 30, 1995. Therefore, the funding for these projects must be carried over into the 1995-97 biennium.

These projects will be in various stages of development and construction on June 30, 1995. The individual projects include Baldhill Dam safety modification, Maple River Dam planning and engineering, Southwest Pipeline Project, Devils Lake feasibility studies, and several small projects.

B. State Water Plan:

The majority of these projects are included in the State Water Plan.

C. Alternative Funding Sources:

Alternative funding sources for the smaller projects funded from the contract fund are generally nonexistent; therefore, the local sponsor would be required to pay the entire costs. This would be particularly difficult for carryover projects since construction may be underway, and it would be difficult for the locals to terminate the project.

D. State Water Commission Recommendation:

The State Water Commission requests \$1.5 million for projects approved by the State Water Commission during the 1993-95 biennium, but which will not be completed by June 30, 1995.

V. STATE WATER COMMISSION OPERATIONS

Beginning with the 1991-93 biennium, a portion of the State Water Commission's operations budget has been funded from the Resources Trust Fund. This \$1,766,000 request is an estimate of the agency's operations costs that are related to water development and management activities. The operations costs of the State Water Commission are detailed in the agency's budget.

SOUTHWEST PIPELINE PROJECT

APPENDIX "D"

December 7, 1994 - 190

WATER SERVICE CONTRACT

CONTRACT NO. SWC-1736-19

WATER USER ENTITY City of Golden Valley

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I. PARTIES

This contract is by and between the North Dakota State Water Commission, a state agency and public corporation created and existing pursuant to Chapter 61-02, North Dakota Century Code, hereinafter called the Commission, acting through the North Dakota State Engineer; and the City of Golden Valley, duly incorporated and existing as a municipality pursuant to the laws of the State of North Dakota, hereinafter referred to as the City.

II. INTRODUCTION

1. Under the authority of the Act of the North Dakota Legislative Assembly of 1981 (1981 N.D. Sess. Laws 613, §3), the Commission was directed to develop preliminary designs for a water supply pipeline facility for supplementation of the water resources of Dickinson and the area of North Dakota south and west of the Missouri River for multiple purpose, including domestic, rural water district, and municipal users. This water pipeline facility is known as the Southwest Pipeline Project.

2. It is the recommendation of the Commission that the Southwest Pipeline Project be authorized by the North Dakota Legislative Assembly, substantially in accordance with Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project No. 1736, dated September, 1982; and that the Southwest Pipeline Project be constructed, operated, and maintained by the Commission pursuant to such authorization.

3. The Commission has the authority, pursuant to Chapter 61-02, North Dakota Century Code, to enter into water service contracts for the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.

4. The City desires to enter into a water service contract, pursuant to the laws of the State of North Dakota, for a water supply from the Southwest Pipeline Project for distribution by the City to its customers, for which the City will make payment to the Commission at the rates and pursuant to the terms and conditions set forth in this contract.

5. This water service contract contains a condition precedent, which is the authorization of the Southwest Pipeline Project by the North Dakota Legislative Assembly, substantially in accordance with Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project File #1736, dated September, 1982, and consistent with the terms of this contract.

NOW, THEREFORE, in consideration of the mutual covenants contained in this contract, it is mutually agreed by and between the parties to this contract as follows:

III. DEFINITIONS

1. "Additional water" means water purchased by the City in addition to its minimum annual water purchase.
2. "Base consumer price index" means the consumer price index, as defined herein, as of July 1, 1981.
3. "Capital costs" means all costs incurred by the Commission which are properly chargeable, in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, and essential legal, administrative and financial work in connection therewith.
4. "Consumer price index" (CPI) means the consumer price index for all urban consumers, which is a monthly statistical measure of the average change in prices in a fixed market basket of goods and services. The consumer price index is based on the prices of food, clothing, shelter, fuel, drugs, transportation fares, doctors and dentists fees, and other goods and services that people buy for day to day living.
5. "Estimated water rate for operation, maintenance, and replacement" means the estimated rate per each one thousand (1,000) gallons of water for the operation and maintenance of the Project and for the accumulation and maintenance of a reserve fund for replacement purposes. This rate is determined by dividing total costs the Commission estimates it will incur during a year for operation, maintenance, and replacement by the total number of one thousand gallon units of water which the Commission estimates it will sell to water user entities during the same year.
6. "Manager" means the person employed by the Commission to be in charge of and supervise the operation and maintenance of the Project.
7. "Maximum flow rate" means the maximum number of gallons of water which may be delivered through the Project by the Commission to a water user entity during any one minute time period.
8. "Minimum annual water purchase" means the minimum gallons of water which a water user entity agrees to purchase and pay for during a year.
9. "Operation, maintenance and replacement costs" means all operation costs incurred by the Commission, including all energy costs incurred by the Commission for pumping water

through the Project, for the treatment of water, for the maintenance and administration of the Project, and for any amounts that the Commission determines are necessary to establish reserve funds to meet anticipated replacement costs and extraordinary maintenance of Project works. Operation, maintenance and replacement costs shall be referred to in this contract as OM & R costs.

10. "Project" means Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project File #1736, dated September, 1982. Authorization of the Southwest Pipeline Project by the Legislative Assembly, substantially in accordance with Plan B of such Engineering Report, as recommended by the Commission, shall constitute the "Project" as it is defined herein.

11. "Qualifying water supply facilities" means water supply facilities determined by the Commission to qualify for a credit against payments for water by the City for capital costs and shall include such things as surface water reservoirs, wells, raw water pumps, water transmission pipelines from the source to the distribution system, water treatment plants, and pipelines and controls necessary to connect the City's distribution system to the delivery point for Project water.

12. "Total annual water sales" means the summation of all of the actual annual water deliveries, or the minimum annual water purchases, whichever is greater, for the water user entities which have executed a water service contract.

13. "Unallocated capacity" means the capacity of the pipeline which is not allocated and contractually committed to individual water user entities by virtue of water service contracts.

14. "Water rate for capital costs" means the rate per each 1,000 gallons of water to be paid by water user entities for capital costs of the Project.

15. "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the Commission for the purchase of water from the Project.

16. "Year" means the period from January 1 through December 31, both dates inclusive.

IV. TERM OF CONTRACT

1. Effective Date. This contract shall become effective, and the mutual obligations and terms of this contract shall be binding on the parties to this contract, upon the satisfaction of the condition precedent to this contract. This contract shall

remain in effect for forty (40) years after the date of the first water delivery to the City.

2. Renewal. Under terms and conditions mutually agreeable to the parties to this contract, renewals of this contract may be made for successive periods not to exceed forty (40) years each.

V. CONDITION PRECEDENT

This contract shall not be effective, nor shall the terms and obligations of this contract be binding on either party, unless the Project is approved and authorized by the North Dakota Legislative Assembly, substantially in accordance with Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project #1736, dated September, 1982, and consistent with the terms of this contract. It is agreed that authorization and approval of the Project, or authorization and approval of any modification of the Project, which does not require amendment of this contract, will satisfy the condition precedent to this contract, and the contract will become effective and binding. It is further agreed that if any segment of the Project is not constructed for whatever reason, even though authorized, thereby preventing delivery of water to the City, the Commission and the City shall be relieved of all obligations under this contract.

VI. WATER SERVICE: DELIVERY OF WATER

The Commission and the City agree that water will be delivered to the City in accordance with the following terms and provisions:

A. Quality of Water. All water delivered to the City pursuant to this contract, or any renewal, extension, or modification thereof, shall be potable treated water which meets applicable water quality standards of the North Dakota Department of Health.

B. Quantity of Water and Flow Rate.

1. Minimum Annual Water Purchase. The City hereby agrees to purchase and make payment for not less than 5,000,000 gallons per year (minimum annual water purchase) during the entire term of this contract.

2. Maximum Flow Rate. The maximum flow rate to be provided by the Commission to the City shall not exceed 15.5 gallons per minute.

C. Point of Delivery and Pressure. The Commission will furnish water to the City at a pressure range of 69 psi to 132 psi at a point located at Highway 200 and county road at N $\frac{1}{4}$ corner of Section 15-144-90.

If greater pressure than the range specified herein at the point of delivery is required by the City, the cost of providing such greater pressure shall be borne by the City.

D. Additional Water. The Commission will deliver to the City any additional water which the City desires to purchase, at a flow rate not to exceed the flow rate specified in this contract. If there is unallocated capacity in the Project to the City's point of delivery, the Commission may allow delivery of water at a flow rate greater than the maximum flow rate specified in this contract. The City shall have no contractual right to any unallocated capacity which it purchases as additional water, and delivery of such additional water shall not contractually or in any other way obligate the Commission to deliver water at a greater flow rate than the maximum flow rate specified in this contract. If the City desires to secure a contractual right to a greater maximum flow rate than specified in this contract, this contract must be amended to provide a greater minimum annual water purchase.

E. Water Shortages.

1. No Liability for Shortages. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from any water shortages or other interruptions in water deliveries resulting from accident to or failure of Project works and facilities, whether or not attributable to negligence of officers, agents, or employees of the Commission, or from any other cause. The contractual obligations of the City under this contract shall not be reduced or altered by reason of such shortages or interruptions.

2. Proportional Sharing of Water Shortage. The Commission shall have the right during times of water shortage from any cause to allocate and distribute the available water supply to water user entities on a proportionate basis with respect to the proportion that the minimum annual water purchase of each water user entity bears to the total minimum annual water purchase of all water service contracts for the Project.

F. Curtailment of Delivery for Maintenance Purposes. The Commission may temporarily discontinue or reduce the amount of water to be furnished to the City for the purpose of maintaining, repairing, replacing, investigating or inspecting any of the facilities and works necessary for the furnishing of water to the City. To the extent possible, the Commission will give to the City reasonable notice in advance of any such temporary discontinuance or reduction. No advance notice will be required to be given in the case of an emergency. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from such temporary discontinuance or reduction for maintenance and repair purposes.

G. Measurement of Water. The Commission shall furnish, install, operate, and maintain, at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the City. If the City believes the measurement of water delivered to the City to be in error, it shall present a claim of error, in writing, to the manager of the Project, either in person or by mailing by certified mail to the address of the manager. Upon presenting its claim of error in the measurement of water, the Commission will cause the meter to be calibrated, upon payment to the Commission by the City the actual cost of the calibration. However, if the meter is found to over-register by more than two percent (2%) of the correct volume, the City's payment for the cost of calibration will be refunded to the City. A claim of error presented after a claim has become delinquent shall not prevent discontinuance of service as provided in this contract. The City agrees to continue to make payments for water service after a claim of error has been presented, however, it may do so under protest, and such payments will not prejudice the City's claim of error.

If the calibration of any meter establishes that the previous readings of such meter over-registered by more than two percent (2%) the correct volume of water delivered to the City, the meter readings for that meter shall be corrected for the twelve (12) months previous to the calibration by the percentage of inaccuracy found in such tests. The amount of any overpayment by the City because the meter over-registered the amount of water delivered to the City, for the period of time for which the correction is applied, shall be applied first to any delinquent payments for water service, and any remaining amounts shall, at the option of the City, be refunded to the City or credited upon future payments for water service by the City in the ensuing years. If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Commission and the City shall agree upon a different amount. An appropriate official of the City shall have access to the meter at all reasonable times for the purpose of verifying its readings.

H. Responsibility for Distribution and Use of Water. The City shall be responsible for the control, distribution, and use of all water delivered to the City by the Commission under this contract, beyond the point of delivery, and all services, maintenance, and repair of the City's distribution system. The City shall hold the Commission, its officers, agents, employees and successors and assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, distribution, and use of water delivered under this contract, and the operation, maintenance and replacement of the City's distribution system. The City's distribution system

includes all works extending from the point of delivery of water to the City by the Project.

VII. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER

The City agrees to make payment for water and water service in accordance with the following terms and conditions:

A. Notice of First Delivery of Water and Beginning of Water Service Payments. Ninety (90) days prior to completion of the Project to the point of delivery to the City, the Commission shall notify the City, in writing, by certified mail, the date when water will be first available to the City. The City will make payments for water and water service, in accordance with the terms of this contract, beginning at the expiration of the ninety (90) day notice, or beginning at such time when water is available to the City, whichever is later in time. The minimum payment for water for the first payment shall be pro-rated on a per day basis over a one month period, ending on the last day of the month in which water is first available to the City.

B. Payment for Water Service. The City's water service payment for each month shall equal the sum of the following:

1. The City's proportionate share of the operation, maintenance and replacement costs; plus
2. The City's payment for capital costs.

C. Minimum Annual Water Purchase: Minimum Payments. The City will make payment for the minimum annual water purchase specified in this contract in accordance with the rates and terms for payment of water specified in this contract, regardless of whether or not the City actually uses the minimum annual water purchase.

D. Payment for Operation, Maintenance and Replacement (OM & R). The City will make monthly payments to the Commission for its share of the OM & R for the Project. The amount of such payment will be determined as follows:

1. Prior to December 1 of each year, the Commission shall establish and adopt a budget for O M & R for the Project for the immediate ensuing year. The Commission shall have the authority to include in such budget for each year an amount to be accumulated and maintained in a reserve fund for the purpose of replacement and for extraordinary maintenance of project works. The reserve fund shall be accumulated and maintained in an amount to be determined by the Commission. The reserve fund shall be deposited and maintained in a separate account in accordance with the laws of the State of North Dakota.

2. The Commission will then estimate the total annual water sales for the immediate ensuing year, and calculate the

"estimated water rate for operation, maintenance, and replacement" for the Project by dividing the amount of the estimated budget for OM & R for the immediate ensuing year by the estimated total annual water sales for such ensuing year.

3. The monthly payment to be made by the City to the Commission for OM & R shall be determined by multiplying the amount of water actually delivered to the City for each month, or the monthly minimum water purchase (minimum annual water purchase divided by 12) whichever is greater, times the estimated water rate for OM & R.

4. At the end of each year, the Commission shall prepare a statement of the actual total cost for OM & R for that same year.

5. The Commission will then determine the adjustment to be applied to the City's payment for OM & R for the previous year. The adjustment shall be calculated by first dividing the amount of water actually delivered to the City by the Commission during the previous year, or the minimum annual water purchase, whichever is greater, by the previous year's total annual water sales, to determine the City's proportionate share (fraction) of the OM & R costs for the previous year. This fraction shall then be multiplied times the actual total cost for OM & R for the previous year, which shall be the amount of the City's proportionate share of OM & R costs for the previous year. The Commission shall then subtract the total amount of the City's proportionate share of OM & R costs for the previous year from the total amount actually paid by the City for OM & R during the previous year, which shall be the adjustment to be applied to the City's water service payments for the next ensuing year.

If the City's proportionate share of OM & R costs for the previous year is greater than the total amount actually paid by the City during the previous year for OM & R, the difference shall be owed by the City to the Commission. The amount due and owing to the Commission by the City as a result of such adjustment shall be applied to and added to the City's monthly payments for water for the next four (4) months of the immediate ensuing year in equal monthly installments.

If the City's proportionate share of OM & R costs for the previous year is less than the total amount actually paid by the City during the previous year for OM & R costs, the difference shall first be applied to any delinquent payments of the City for water service, and the remaining sum, if any, shall be credited against the City's monthly payments for water service for the next four (4) months of the immediate ensuing year in equal monthly credits.

E. Payment for Capital Costs. The City will pay to the Commission a water rate for capital costs of the Project. The revenues realized from this water rate shall be deposited by the Commission as directed by the Legislative Assembly.

1. Base Water Rate for Capital Costs. The base water rate for capital costs shall be forty-four cents (\$0.44) per each one thousand (1,000) gallons of water.

2. Adjustment of Water Rate for Capital Costs. The Commission shall have the authority to adjust the water rate for capital costs annually in accordance with the increase or the decrease in the consumer price index (CPI). The formula for determining the adjustment to the water rate for capital costs for each year is as follows: The CPI for September 1 of each year shall be divided by the base CPI of two hundred seventy four and four tenths (274.4). The result of this calculation shall be reduced by one (1), and then multiplied by the base water rate for capital costs. The product of this formula is the adjustment to the water rate for capital costs, and shall be added to the base water rate for capital costs to determine the water rate for capital costs for the next year. Notwithstanding the foregoing basis for adjusting the water rate for capital costs, the Commission shall have the authority to decrease the adjustment to the water rate for capital costs, as it deems appropriate and necessary, after considering data on changes to the median incomes of project water users, substantial increases in OM & R costs, or other factors.

3. Monthly Water Payment for Capital Costs. The amount of payment each month by the City to the Commission for capital costs shall be calculated by multiplying the water rate for capital costs times the amount of water actually delivered to the City each month, or the monthly minimum water purchase (minimum annual water purchased divided by 12), whichever is greater, minus any credits approved by the Commission pursuant to paragraph 4 of this section.

At the end of each year, if the amount of water actually delivered to the City is less than the amount of water for which the City has paid for during that year, but greater than the minimum annual water purchase, the City shall receive a refund in the amount equal to the difference between the amount of water actually delivered to the City and the amount of water actually paid for by the City during that year multiplied times the water rate for capital costs. The refund shall first be applied to any delinquent payments of the City for water service, and the remaining sum, if any, shall be credited against the City's monthly payments for water service for the next four (4) months of the immediate ensuing year in equal monthly credits.

4. Credit for Qualifying Water Supply Facility Debt Service Cost. A credit for debt service costs of the City's qualifying water supply facilities shall be applied to the monthly water payment for capital costs, upon approval by the Commission. The amount of such monthly credit shall be determined by dividing seventy-five percent (75%) of the total annual debt service cost for "qualifying water supply facilities" in the immediate ensuing year by twelve (12). However, in no event shall any credit

exceed the total monthly water payment for capital costs, nor can any credit be transferred or assigned to any other water user entity. In order to receive a credit as provided herein, the City must submit a request for credit, with supporting documentation, to the Commission, no later than December 1 of the year preceding each year in which a credit is to be applied. The Commission will terminate all credits ten (10) years after first delivery of water to the City.

F. Billing Procedure. The Commission will furnish to the City, at the address shown on the signature page of this contract, not later than the first day of each month, an itemized statement of the payment due from the City for water service for the preceding month. The metering equipment at the point of delivery to the City shall be read monthly.

G. When Payments are Due. All payments for water service under this contract, for operation, maintenance, and replacement, and for capital costs, shall be made no later than the fifteenth day of each month. Payments not made by such date shall be considered delinquent and in default.

H. Delinquent Payments and Default: Suspension of Water Service. The City shall cause to be levied and collected all necessary taxes, assessments, and water charges, and will use all of the authority and resources available to it to meet its obligations under this contract, and will make in full all payments to be made pursuant to this contract on or before the date such payments become due. In the event of any default by the City in making payments as required under this contract, the Commission in its discretion may suspend delivery of water to the City through the project during the time when the City is in default. During any period when the City is in default, the City shall remain obligated to make all payments required under this contract. Any action of the Commission pursuant to this section shall not limit or waive any remedy provided by the contract or by law for the recovery of money due or which may become due under this contract.

In the event of any default by the City in the payment of any money required to be paid under this contract, the City shall levy, in accordance with the laws of the State of North Dakota, a special ad valorem tax on all of the property taxable or subject to assessment by the City. The tax shall be levied only at a rate sufficient to raise the amount delinquent, and shall be used only to reduce the liability of the City under this contract.

I. Penalty for Late Payment. Upon every payment of money required to be paid by the City to the Commission under this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one percent (1%) per month of the amount of such delinquent payment from and after the date when the same becomes due and payable,

provided that no penalty shall be chargeable against any adjustment made pursuant to Section VI, Subsection G, of this contract.

J. Refusal of Water. The City's failure or refusal to accept delivery of water to which it is entitled under this contract shall in no way relieve the City's obligation to make payments to the Commission as provided in this contract.

VIII. GENERAL PROVISIONS

A. Rules and Regulations. The Commission shall have the authority to develop and adopt such rules and regulations as the Commission may deem proper and necessary to carry out this contract and to govern the administration of this contract. Such rules and regulations shall not be inconsistent with this contract. The City agrees to comply with such rules and regulations.

B. Access to and Inspection of Books and Records. Each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

C. Remedies Not Exclusive. The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

D. Amendments. This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing and executed by the parties.

E. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

F. Notices. All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be signed for the Commission and for the City by such officers as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

G. Assignment. The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the Commission. The Commission shall not approve any assignment or transfer to any water user entity unless and until the water user entity to which it is proposed that this contract be transferred or assigned has the necessary ability to satisfy the obligations of this contract. It is intended by the parties that, when appropriate, upon agreement by the City and upon application by a rural water cooperative in the Project service area, and upon proof of ability and authority to satisfy the requirements and obligations of this contract, this contract will be assigned to such rural water cooperative.

Prior to approval of such assignment, the Commission shall approve any contract or subcontract entered into by and between the City and a rural water cooperative.

H. Unallocated Capacity. The Commission agrees that municipal, domestic, and rural water needs shall be given first preference before executing water service contracts for delivery of unallocated capacity to water user entities for other uses.

I. Validation. Promptly after the execution and delivery of this contract, the commission shall file and diligently prosecute to a final decree in a court of competent jurisdiction a proceeding in mandamus or other appropriate proceeding or action for the judicial examination, approval, and confirmation of the proceedings of the Commission and the City leading up to and including the making of this contract and the validity of the provisions thereof.

IN WITNESS WHEREOF, the parties execute this contract on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION

Address: Bismarck, ND

By: ✓ Vernon J. Lohy

Title State Engineer

Date November 14, 1983

Approved and entered into by resolution of the State Water Commission this 6th day of December, 1982.

Vernon J. Lohy
Secretary and Chief Engineer

CITY OF Golden Valley, ND

Address: P.O. Box 87

By: Ewin Jassmann

Title Mayor

Date 11-7-83

Golden Valley Approved and entered into by resolution of the City of this 7 day of Nov, 1983.

Edmund E. Prudhomme

SOUTHWEST PIPELINE PROJECT
WATER SERVICE AGREEMENT AMENDMENT
GOLDEN VALLEY
CONTRACT NO. 1736-19

Notwithstanding the provisions of Sections VII c, D.3, and E.3, if the City uses water from no other source than the Southwest Pipeline during the course of the year, the City will make payment based on the actual amount of water used, and the monthly payment shall be based on the actual amount used in the respective month.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard
Bismarck, N. Dak. 58505

By: *R. D. Spurgeon*
Title: STATE Engineer
Date: 12/1/94

Approved and entered into by resolution of the State Water Commission this 7th day of December, 1994.

Secretary and State Engineer

CITY OF Golden Valley
Address: P.O. Box 98
By: Ervin Jassmann
Title: Mayor
Date: Nov. 7, 1994

Approved and entered into by resolution of the City of Golden Valley this 7th day of November, 1994.

Ervin Jassmann

ARTICLE 89-__

NORTHWEST AREA WATER SUPPLY PROJECT

Chapter

89-__-__

Northwest Area Water Supply Project

CHAPTER 89-__-__

NORTHWEST AREA WATER SUPPLY PROJECT

Section

89-__-01-01

Definitions

89-__-01-02

Statement of Project Purpose and Intent

89-__-01-03

Eligibility

89-__-01-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Agreement of intent" means an agreement between the entity operating or desiring to operate a distribution system and the state water commission whereby the entity agrees to consider entering into a water service agreement for delivery of water from the northwest area water supply project and the state water commission agrees to include the water requirements of the distribution system in the prefinal design of the project.
2. "Distribution system" means a system for the provision to users of potable water, if such system has at least fifteen service connections or regularly serves at least twenty-five users.
3. "Prefinal design" means the engineering analysis of the project layout incorporating distribution systems of all entities that have entered into an agreement of intent.
4. "Project" means the northwest area water supply project authorized by North Dakota Century Code chapter 61-24.6
5. "User" means households, businesses, and farmsteads that use water.
6. "Water service agreement" means an agreement to purchase water from the northwest area water supply project based upon the results of the prefinal design and projected development of the project.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-24.6-04

89-__-01-02. **Statement of project purpose and intent.** The purpose of the project is to ensure a dependable, long-term supply of good quality water to users of existing and planned distribution systems in northwestern North Dakota that have entered into a northwest area water service agreement with the state water commission.

The support of existing rural water associations and cities that are supplying water to other distribution systems in the project area is very important to the success of the project. Therefore, it is the intent of the project advisory committee to preserve existing water supply relationships in the project area.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-24.6-04

89-__-01-03. **Eligibility.**

1. Any distribution system or portion of a distribution system may enter into an agreement of intent or a water service agreement except for:
 - (a) A distribution system, or portion thereof, that received water from a rural water association, city, or other distribution system in the project area at any time prior to the effective date of this rule if the distribution system that supplied the water has entered into an agreement of intent or a water service agreement; or
 - (b) A distribution system, or portion thereof, that enters into an agreement to receive water from a rural water association, city, or other distribution system after the effective date of this rule, if the distribution system that supplied or is supplying water has entered into an agreement of intent or a water service agreement.
2. Any receiving distribution system, or portion thereof, that was receiving water from a supplying distribution system may enter into an agreement of intent or a water service agreement if the supplying distribution system terminates the agreement to provide water to the receiving distribution system.
3. A receiving distribution system purchasing water from a supplying distribution system which has entered into an agreement of intent or a water service agreement is eligible to enter into a agreement of intent or a water service agreement for the purpose of expansion into

areas not served by project water from the supplying
distribution system.

History: Effective

General Authority: NDCC 28-32-02

Law Implemented: NDCC 61-24.6-04

Fifty-fourth
Legislative Assembly
of North Dakota

December 7, 1994 - 192

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to create and enact a new subsection to section 61-02-02
2 and section 61-02-67.1 of the North Dakota Century Code, relating to
3 definitions and revenues and funds available to pay water development revenue
4 bonds; to amend and reenact sections 61-02-46, 61-02-47, 61-02-48, 61-02-51,
5 61-02-52, 61-02-53, 61-02-54, 61-02-55, 61-02-56, 61-02-57, 61-02-58,
6 61-02-59, 61-02-61, 61-02-62, 61-02-63, 61-02-64, and 61-02-64.1 of the North
7 Dakota Century Code, relating to water development revenue bonds; and to
8 repeal sections 61-02-66, 61-02-67, and 61-02-68 of the North Dakota Century
9 Code, relating to bond funds and payments.

10 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

11 SECTION 1. A new subsection to section 61-02-02 of the 1993 Supplement
12 to the North Dakota Century Code is created and enacted as follows:

13 "Industrial commission" shall mean the industrial commission of
14 North Dakota.

15 SECTION 2. AMENDMENT. Section 61-02-46 of the North Dakota Century
16 Code is amended and reenacted as follows:

17 61-02-46. ~~Commission~~ Industrial commission may issue bonds - ~~Principal~~
18 ~~and interest~~ ~~How paid~~ Legislative authorization - Payment restricted.

19 1. The industrial commission may provide by resolution, at one time or
20 from time to time, for the issuance of state water ~~commission~~
21 development revenue bonds for the purpose of paying the cost of any
22 one or more of the works authorized by this chapter ~~and for the~~

Fifty-fourth
Legislative Assembly

1 ~~purpose of acquiring lands and preparing and developing the same~~
2 ~~for irrigation. The principal and interest of such bonds shall be~~
3 ~~payable from the accounts established by the commission in the~~
4 ~~funds provided for in this chapter. The industrial commission may~~
5 ~~refund and refinance its bonds from time to time as often as it is~~
6 ~~advantageous and in the public interest to do so.~~

7 2. Before the industrial commission may issue bonds under this chapter
8 to finance the cost of any works, the commission must first approve
9 the construction of the works and request the industrial commission
10 to issue the bonds. If the principal amount of bonds to be issued
11 for any one works pursuant to this chapter will exceed in the
12 aggregate two million dollars, no bonds may be issued to finance
13 that works unless the legislative assembly authorizes the works and
14 declares the works to be in the public interest.

15 3. ~~The bonds~~ Bonds issued under this chapter shall not be in any way
16 a debt or liability of this state and shall not constitute a loan
17 of the credit of this state or create any debt or debts, liability
18 or liabilities on behalf of this state, or be or constitute a
19 pledge of the faith and credit of this state, but all such bonds
20 shall be payable solely from funds or revenues pledged or available
21 for their payment as authorized in this chapter. ~~Such~~ The bonds
22 shall not constitute a charge, lien, nor encumbrance, legal or
23 equitable, upon any property of the industrial commission or the
24 commission, other than funds or revenues pledged for their payment.
25 Each bond shall recite in substance that the bond, including
26 interest thereon, is payable solely from the funds or revenues
27 pledged to the payment thereof and the funds, if any, to be
28 appropriated by the legislative assembly, and that the bond does
29 not constitute a debt of this state or of the industrial commission

1 or the commission within the meaning of any constitutional or
2 statutory limit.

3 SECTION 3. AMENDMENT. Section 61-02-47 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 61-02-47. When bonds to mature - Callable before maturity. The bonds
6 which may be issued by the industrial commission shall mature at such time or
7 times, either serially or at one time, in not more than forty years from
8 their date, or dates, as may be fixed by the resolution of the industrial
9 commission, but may be made callable before maturity, if so stated in the
10 resolution and on the face of each bond.

11 SECTION 4. AMENDMENT. Section 61-02-48 of the North Dakota Century
12 Code is amended and reenacted as follows:

13 61-02-48. ~~Commission~~ Industrial commission to determine interest rate,
14 form, denomination, and execution of bonds. The industrial commission shall
15 determine the rate of interest bonds issued under this chapter shall bear,
16 the time or times of payment of such interest, the form of the bonds ~~whether~~
17 ~~registered or coupon~~, and the manner of executing the bonds ~~and coupons, if~~
18 ~~any~~, and shall fix the denomination or denominations of the bonds and the
19 place or places of payment of principal and interest thereon, which may be at
20 any bank or trust company within or without this state, including the Bank of
21 North Dakota. The bonds shall be sold by the industrial commission at public
22 sale or private sale and at such price or prices as the industrial commission
23 shall determine.

24 SECTION 5. AMENDMENT. Section 61-02-51 of the North Dakota Century
25 Code is amended and reenacted as follows:

26 61-02-51. How bonds may be secured. The bonds provided for in this
27 chapter may be secured by works or lands, ~~as the case may be~~, and the income
28 derived therefrom, and other funds as the industrial commission or the
29 commission may pledge, and the funds received from the sale or disposal of

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1 water and from the operation, lease, sale, or other disposition of the works,
2 lands, property, and facilities to be acquired out of the proceeds of such
3 the bonds and as provided in this chapter.

4 SECTION 6. AMENDMENT. Section 61-02-52 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 61-02-52. ~~Commission~~ Industrial commission may provide for
7 registration of bonds. Provision may be made by the industrial commission
8 for the registration of any of the bonds ~~in the name of the owner as to the~~
9 ~~principal alone or as to both principal and interest~~ as provided by chapter
10 21-03.1.

11 SECTION 7. AMENDMENT. Section 61-02-53 of the North Dakota Century
12 Code is amended and reenacted as follows:

13 61-02-53. Issuance and sale of bonds - Proceeds from sale - Use. The
14 bonds authorized under this chapter may be issued and sold from time to time,
15 and in amounts determined by the industrial commission and the commission.
16 The industrial commission may, subject to the provisions of section 61-02-48,
17 sell the bonds in such manner and for such price as it may determine to be
18 for the best interests of the state. The proceeds of the bonds shall be used
19 solely for the payment of the cost of works authorized by this chapter ~~or the~~
20 ~~cost of acquiring lands and preparing or developing such lands for~~
21 ~~irrigation, as the case may be~~ plus costs of issuance, interest during
22 construction, and any reasonably required reserve funds, and shall be paid
23 out in such manner and under such restrictions as the industrial commission
24 and the commission may provide. ~~The bonds may be sold at private sale~~
25 ~~without notice or at public sale after publication of the notice of sale by~~
26 ~~the commission.~~

27 SECTION 8. AMENDMENT. Section 61-02-54 of the North Dakota Century
28 Code is amended and reenacted as follows:

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1 61-02-54. Resolution providing for issuance of bonds ~~—Separate series~~
2 ~~of bonds.~~ Each resolution providing for the issuance of bonds provided for
3 in this chapter shall set forth the purpose or purposes for which the bonds
4 are to be issued, the provisions for the payment of the bonds, and the
5 revenues or other funds pledged to secure the payment of the bonds. The
6 ~~bonds authorized by each such resolution shall constitute a separate series.~~
7 ~~The revenues from works or projects and such other funds as the commission~~
8 ~~may determine, may be pledged to secure one or more series of bonds. The~~
9 ~~bonds of each series shall be identified by a series of letters, and may be~~
10 ~~sold and delivered at one time or from time to time.~~

11 SECTION 9. AMENDMENT. Section 61-02-55 of the North Dakota Century
12 Code is amended and reenacted as follows:

13 61-02-55. Issuance of temporary bonds ~~in lieu of definitive bonds.~~
14 Prior to the preparation of definitive bonds, the industrial commission may
15 issue temporary bonds, ~~in registered or coupon form,~~ exchangeable for
16 definitive bonds when the definitive bonds have been executed and are
17 available for delivery. Temporary bonds may be issued without any other
18 proceedings or the happening of any other condition or thing specified and
19 required by this chapter, except that if legislative authorization will be
20 required for the issuance of the definitive bonds pursuant to section
21 61-02-46, the authorization must be received before the temporary bonds may
22 be issued.

23 SECTION 10. AMENDMENT. Section 61-02-56 of the North Dakota Century
24 Code is amended and reenacted as follows:

25 61-02-56. ~~Guarantying and insuring the payment of interest and~~
26 ~~principal on revenue bonds~~ Bond guaranty or insurance - Method. Whenever the
27 industrial commission shall find it necessary to insure or ~~guaranty~~ guarantee
28 the payment of all or a part of the principal or interest of any series of
29 ~~water commission revenue bonds, in order to sell or market such bonds,~~ it may

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1 enter into an agreement to ~~pledge, hypothecate, obligate,~~ place under trust
2 indenture, or agree to deposit in a trust fund, moneys now or hereafter
3 appropriated, to ~~guaranty~~ guarantee and insure the payment of the interest on
4 and principal of ~~state water commission revenue~~ the bonds. From and with
5 moneys thus appropriated, the industrial commission may ~~guaranty~~ guarantee or
6 insure, or agree to pay, or pay the interest on and principal of ~~such~~ the
7 bonds. The appropriation of such funds, and the use thereof by the
8 industrial commission to ~~guaranty~~ guarantee or insure the payment of any of
9 its bonds, shall not be construed to be pledging the credit of the state of
10 North Dakota nor the ~~guarantying~~ guaranteeing by the state of any ~~water~~
11 ~~commission revenue~~ bonds. The industrial commission may also enter into an
12 agreement with a private bond insurer or with a bank or other credit
13 enhancement provider, including the Bank of North Dakota, for bond insurance,
14 a guaranty, a letter of credit, or any other credit enhancement which the
15 industrial commission may find to be advantageous or necessary to insure or
16 guarantee the payment of the interest on or the principal of the bonds. The
17 cost of any credit enhancement may be paid with bond proceeds or other funds
18 available for that purpose.

19 SECTION 11. AMENDMENT. Section 61-02-57 of the North Dakota Century
20 Code is amended and reenacted as follows:

21 61-02-57. Moneys appropriated to pay interest and principal of bonds
22 available as a revolving fund. Moneys appropriated to enable the ~~state water~~
23 industrial commission to ~~guaranty~~ guarantee the payment of the interest or
24 principal of its bonds shall be available to the industrial commission as a
25 continuing revolving fund, and moneys so appropriated, and any unexpended
26 balances thereof, including interest on such moneys and unexpended balances,
27 shall not revert to the state general fund at the end of any biennial fiscal
28 period but shall be available for use by the industrial commission to insure
29 and ~~guaranty~~ guarantee the payment of, or pay, to the extent provided in this

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1 chapter, the ~~payment of~~ interest and principal of its bonds until otherwise
2 required by law.

3 SECTION 12. AMENDMENT. Section 61-02-58 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 61-02-58. Lien upon bond proceeds. All moneys received from bonds of
6 any series issued pursuant to ~~the provisions of~~ this chapter shall be placed
7 ~~in a separate account in the construction fund and shall be used solely for~~
8 the purpose of paying the cost of the works or projects for the construction
9 of which ~~such~~ the bonds have been issued, ~~or for the purpose of acquiring~~
10 ~~lands and preparing and developing the same for irrigation, or for the~~
11 purpose of paying costs of issuance, interest during construction, and
12 establishing any reasonably required reserve funds. There shall be a lien
13 upon such moneys, until so used in favor of the holders of the bonds or the
14 trustee provided for in this chapter in respect to ~~such~~ the bonds.

15 SECTION 13. AMENDMENT. Section 61-02-59 of the North Dakota Century
16 Code is amended and reenacted as follows:

17 61-02-59. Series of bonds may be secured by trust indenture. In the
18 discretion of the industrial commission, any series of bonds may be secured
19 by a trust indenture by and between the industrial commission and a corporate
20 trustee, which may be any trust company or bank having the powers of a trust
21 company within or outside of the state, including the Bank of North Dakota.

22 SECTION 14. AMENDMENT. Section 61-02-61 of the North Dakota Century
23 Code is amended and reenacted as follows:

24 61-02-61. Resolution or indenture may contain provisions protecting
25 bondholders - Expenses incurred in carrying out indenture. Either the
26 resolution providing for the issuance of bonds or the trust indenture may
27 contain such provisions for protecting and enforcing the rights and remedies
28 of the bondholders as may be reasonable and proper, ~~not in violation of law,~~
29 ~~including covenants setting forth the duties of the state and the commission~~

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1 ~~in relation to the acquisition, construction, improvement, maintenance,~~
2 ~~operation, repair, and insurance of the works, and the custody, safeguarding,~~
3 ~~and application of all moneys, and may provide that the works shall be~~
4 ~~acquired, constructed, or partly acquired and partly constructed and paid for~~
5 ~~under the supervision and approval of consulting engineers employed or~~
6 ~~designated by the commission. Such resolution or indenture may set forth the~~
7 ~~rights and remedies of the bondholders and trustee, restricting the~~
8 ~~individual claims for relief of bondholders as is customary in trust~~
9 ~~indentures, deeds of trust, and mortgages securing bonds.~~ No enumeration of
10 particular powers granted may be construed to impair any general grant of
11 power contained in this chapter. All expenses incurred in carrying out ~~such~~
12 the provisions of the resolution or trust indenture may be treated as a part
13 of the cost of maintenance, operation, and repair of the works affected by
14 ~~such~~ the resolution or trust indenture.

15 SECTION 15. AMENDMENT. Section 61-02-62 of the North Dakota Century
16 Code is amended and reenacted as follows:

17 61-02-62. Powers of industrial commission and commission in issuance
18 of bonds. In connection with the issuance of any bonds for the purpose of
19 paying in whole or in part, or as supplemented by a grant from the United
20 States or any instrumentality or agency thereof, the cost of any works or
21 project, or in order to secure the payment of ~~such~~ the bonds, the industrial
22 commission and the commission may:

- 23 1. Pledge all or any part of the income, profit, and revenue of ~~such~~
24 the works or project, and all moneys received from the sale or
25 disposal of water, use of water, water storage, or other service,
26 and from the operation, lease, sale, or other disposition of all or
27 any part of ~~such~~ the works or project, or other funds as the
28 industrial commission or the commission may determine ~~and may~~

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- 1 ~~covenant to pay such income, profit, revenue, and funds into the~~
2 ~~revenue bond payment fund.~~
- 3 2. Covenant against pledging all or any part of the income, profit,
4 and revenue of ~~such~~ the works or project and all moneys received
5 from the sale or disposal of water, use of water, water storage, or
6 other service, and from the operation, lease, sale, or other
7 disposition of all or any part of ~~such~~ the works or project.
- 8 3. Covenant against mortgaging all or any part of ~~such~~ the works or
9 project or against permitting or suffering any lien thereon.
- 10 4. Covenant to fix and establish such prices, rates, and charges for
11 water and other services made available in connection with ~~such~~ the
12 works or project as to provide at all times funds together with
13 other funds the industrial commission or the commission may pledge
14 which will be sufficient:
- 15 a. To pay all costs of operation and maintenance of ~~such~~ the works
16 or project together with necessary repairs thereto;
- 17 b. To meet and pay the principal and interest of all ~~such~~ the
18 bonds as they severally become due and payable; and
- 19 c. To create such reserves for the principal and interest of all
20 ~~such~~ the bonds and for the meeting of contingencies in the
21 operation, repair, replacement, and maintenance of ~~such~~ the
22 works or project as the industrial commission or the commission
23 shall determine.
- 24 5. Make such further covenants as to ~~such~~ prices, rates, and charges
25 as the industrial commission or the commission shall determine.
- 26 6. Create special funds, in addition to those required by this
27 chapter, for the meeting of contingencies in the operation and
28 maintenance of ~~such~~ the works or project and to determine the
29 manner in which, and the depository or depositories in which, ~~such~~

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- 1 the funds shall be deposited and the manner in which the same shall
2 be secured. Any bank or trust company incorporated under the laws
3 of this state, including the Bank of North Dakota, may act as ~~such~~
4 the depository and shall furnish such indemnifying bonds or pledge
5 such securities as may be required by the industrial commission or
6 the commission on all deposits exceeding the sum of five thousand
7 dollars.
- 8 7. Provide for the replacement of lost, destroyed, or mutilated bonds.
- 9 8. Covenant against extending the time for the payment of the
10 principal or interest on any of ~~such~~ bonds, directly or indirectly,
11 by any means or in any manner.
- 12 9. Prescribe and covenant as to the events of default and the terms
13 and conditions upon which any or all of ~~such~~ the bonds shall
14 become, or may be declared, due before maturity, and as to the
15 terms and conditions upon which ~~such~~ a declaration and its
16 consequences may be waived.
- 17 10. Covenant as to the rights, liabilities, powers, and duties arising
18 upon the breach by it of any covenant, condition, or obligation.
- 19 11. Vest in a trustee or trustees the right to enforce any covenant
20 made to secure or to pay ~~such~~ the bonds, or to foreclose any trust
21 indenture in relation thereto, provide for the powers and duties of
22 ~~such~~ the trustee, or trustees, and limit the liabilities thereof,
23 and provide the terms and conditions upon which the trustee or
24 trustees or the holders of bonds or any proportion of them may
25 enforce any ~~such~~ covenant or exercise the right of foreclosure.
- 26 12. Make covenants and do any and all such acts and things as may be
27 necessary or convenient or desirable in order to secure ~~such~~ the
28 bonds, or, in the absolute discretion of the industrial commission
29 and the commission may, to make such the bonds more marketable,

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1 notwithstanding that such covenants, acts, or things may not be
2 enumerated or expressly authorized in this chapter.

3 13. Do all things in the issuance of ~~such~~ the bonds, and in providing
4 for their security, that may not be inconsistent with the
5 Constitution of North Dakota.

6 SECTION 16. AMENDMENT. Section 61-02-63 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 61-02-63. Mortgage of industrial commission or commission - Contents -
9 Purchaser at foreclosure sale - Rights. ~~In the discretion of the commission,
10 any trust indenture executed by it as security for a series of bonds issued
11 by it may contain provisions for conveying in trust or mortgaging the works,
12 the project, or any part of such works or project, including all water
13 rights, which are a part thereof, constructed with the proceeds of such bonds
14 or with such proceeds as supplemented by the proceeds of a grant to aid in
15 financing such construction from the United States of America, or any
16 instrumentality or agency thereof, or any other revenues or funds, and may be
17 in such form, and with such rights, remedies, and provisions as is customary
18 in trust indentures, deeds of trust, and mortgages securing bonds. Any
19 purchaser at any sale of any works or project pursuant to a judgment or
20 decree in an action to foreclose a trust indenture conveying in trust or
21 mortgaging any works or project financed with bonds issued by the industrial
22 commission as authorized by this chapter shall obtain title to ~~such~~ the works
23 or project free from any trust or other obligation of the industrial
24 commission or the commission, the state of North Dakota, or the public
25 thereof, as to its operation, maintenance, use, or disposition except the
26 obligation to use all water impounded in ~~such~~ the works or project for sale,
27 rental distribution, or other beneficial use.~~

28 SECTION 17. AMENDMENT. Section 61-02-64 of the North Dakota Century
29 Code is amended and reenacted as follows:

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1 61-02-64. ~~Funds~~ Fund created by commission - Depository. The
2 commission shall have ~~three funds~~ a fund to be known as the "contract fund",
3 ~~the "construction fund", and the "revenue bond payment fund"~~. The moneys in
4 ~~each such~~ the contract fund shall be deposited in the state treasury. ~~Each~~
5 The contract fund shall have such accounts as the commission may determine.
6 The use or disposition of such accounts, including the pledging thereof for
7 the security of and payment on one or more series of bonds, shall be
8 determined by the commission.

9 SECTION 18. AMENDMENT. Section 61-02-64.1 of the 1993 Supplement to
10 the North Dakota Century Code is amended and reenacted as follows:

11 61-02-64.1. Contract fund - Purpose - Reimbursements to be deposited
12 with the state treasurer. All contractual obligations of the commission,
13 including obligations with respect to any works financed with bonds issued by
14 the industrial commission as authorized by this chapter, and excepting
15 salaries and expenses of commission employees and the cost of any supplies,
16 materials, and equipment not related to works financed with bonds, shall be
17 paid from the contract fund. The moneys in the contract fund shall be paid
18 out or disbursed in such manner as may be determined by the commission. Any
19 moneys paid to the ~~state water~~ commission by any department, agency, or
20 political subdivision of this or another state or of the United States or any
21 person, corporation, or limited liability company to meet its part of the
22 cost of a water project, shared with the commission on a matching basis, and
23 as determined by a contract entered into with the commission, shall be
24 deposited with the state treasurer and are hereby appropriated out of the
25 state treasury, and shall be credited to the contract fund or held pursuant
26 to the terms of the resolution or trust indenture of the industrial
27 commission adopted or entered into under this chapter.

28 SECTION 19. Section 61-02-67.1 of the North Dakota Century Code is
29 created and enacted as follows:

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1 61-02-67.1 Revenues and funds available to pay bonds. Bonds issued by
2 the industrial commission under this chapter are payable solely from:

- 3 1. Revenues to be received by the industrial commission or the
4 commission from the operation of a works financed with the bonds.
5 2. Funds appropriated by the legislative assembly.
6 3. Any other revenues available to the industrial commission or the
7 commision.

8 SECTION 20. REPEAL. Sections 61-02-66, 61-02-67, and 61-02-68 of the
9 North Dakota Century Code are repealed.

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December 7, 1994 - 193

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to amend and reenact section 61-24.6-01 of the North Dakota
2 Century Code, relating to water development revenue bonds for the northwest
3 area water supply project.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 61-24.6-01 of the 1993 Supplement to
6 the North Dakota Century Code is amended and reenacted as follows:

7 **61-24.6-01. Findings and declaration of policy.** It is hereby found
8 and declared by the legislative assembly that many areas and localities in
9 northwestern North Dakota do not enjoy safe drinking water, and that the
10 water in these areas and localities contains iron, sulfates, alkali, salt,
11 nitrates, fluoride, and other hazardous and discoloring substances. It is
12 also found and declared that other areas and localities in northwestern North
13 Dakota do not have sufficient quantities of water to ensure a dependable,
14 long-term supply. It is further found and declared that supplementation of
15 the water resources of northwestern North Dakota with water supplies from the
16 Missouri River, utilizing a pipeline transmission and delivery system, may be
17 the only alternative to provide northwestern North Dakota with a safe, good
18 quality, dependable source, and adequate quantity of water.

19 It is further declared that effective development and utilization of
20 the land and water resources of this state; the opportunity for greater
21 economic security; the protection of health, property, enterprise, and the
22 preservation of the benefits from the land and water resources of this state;

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1 and the promotion of the prosperity and general welfare of all of the people
2 of North Dakota involve, necessitate, and require the exercise of the
3 sovereign powers of the state and concern a public purpose. Therefore, in
4 order to accomplish this public purpose, it is hereby declared necessary that
5 a project be pursued that would supply and distribute water to the people of
6 northwestern North Dakota through a pipeline transmission and delivery system
7 for purposes including domestic, rural water districts, municipal, livestock,
8 light industrial, mining, and other uses, with primary emphasis on domestic,
9 rural water district, and municipal uses. In furtherance of this public
10 purpose, the industrial commission may issue bonds in accordance with chapter
11 61-02 to finance the costs of the project.

12 The provisions of this chapter may not be construed to abrogate or
13 limit the rights, powers, duties, and functions of the state water commission
14 or the state engineer, but must be considered supplementary to those rights,
15 powers, duties, and functions.

RED RIVER VALLEY WATER COALITION
November 28, 1994

APPENDIX "H"

December 7, 1994 - 194

MISSION STATEMENT

To ensure a long-term water supply for communities along the Red River.

NOTE: Water supply is defined as an adequate quantity of quality water that is affordable to acquire, treat, and distribute.

GOALS

1. To develop a consensus on a vision for meeting present and future water supply needs for communities along the Red River.
2. To proceed with the Red River Valley MR&I Needs Study as revised by the Red River Valley Water Coalition. Further, that the Coalition have technical input during the study and that the study have consensus from the Coalition prior to being finalized.
3. To pursue the development of a Red River Basin Water Coalition in which the Red River Valley Water Coalition would be an active participant.
4. To provide direction and develop a consensus concerning the content of the proposed GDU State MR&I Program Study.
5. To promote a new comprehensive statewide water supply needs assessment with the results incorporated into the proposed GDU State MR&I Program Study.
6. To prompt a return to the concept of using quantity and quality problems as a basis to justify water supply projects rather than simply the concept of regionalization.
7. To develop a consensus on a new point system used to prioritize projects under the existing and any new Garrison MR&I programs.
8. To recommend a discontinuation of Garrison MR&I expenditures until the new state-wide needs assessment and prioritization system can be completed.
9. To require funding of Garrison MR&I projects based on life cycle costs.
10. To allow all projects funded by the Garrison MR&I Program the same grant percentage.
11. To expand the industrial element within the Garrison MR&I program.
12. To require studies be completed in a timely manner.
13. To communicate our needs to applicable state agencies, elected officials, Collaborative Process Executive Steering Committee and the public.

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Office of the State Engineer

MEMORANDUM

TO: Governor Edward T. Schafer
North Dakota State Water Commission Members

FROM: *David* David A. Sprynczynatyk, State Engineer

SUBJECT: Cannonball River Basin Study Status

DATE: November 21, 1994

The following is a progress report involving the Cannonball River Basin Water Management Study:

The draft questionnaire survey has been completed and a copy has been sent to all study participants for their review and comment. The comments will be incorporated into the survey and the survey will be sent next month to a random number of residents in the basin. The survey results will be analyzed, interpreted and shared with the Study Review Team and the public at the public meeting to be held within a few months.

The Standing Rock Sioux Tribe has been invited to participate on the Study Review Team. The Study Review Team consists of the water resource districts, the soil conservation districts and other interests in the basin. The group will help facilitate the public involvement in the off Reservation portion of the basin. We feel this will provide an excellent opportunity to share thoughts and ideas among everyone in the basin. The Tribe had indicated in previous meetings that they are interested in conducting their own public involvement process on the Reservation. It is expected that the Tribe will soon be beginning that process.

Questions surrounding the use of the HYDROSS hydrologic model have been resolved. The Bureau's Bismarck office is working out the contact arrangements with the Bureau's Denver office to house the HYDROSS hydrologic model in the Bureau's Bismarck office. This will allow the State Water Commission to have access to the model over the internet computer system. The benefits to the State Water Commission include not having to budget for model computer software maintenance and software upgrades. The Bureau, as database manager, would be responsible for maintenance and upgrading of the HYDROSS model. The Bureau will also provide technical support and staff training involving model use. For purposes of the Cannonball

Study and in the short term, this is the most cost effective way for the State Water Commission to use the HYDROSS model.

The Bureau's staff continues to work on incorporating various water and related land resource data into a Geographic Information System for the Cannonball Basin. The hydrologic unit maps for the basin have already been digitized. The US Geological Survey is developing the hydrologic data (quantity and quality) that will be required for the hydrologic model development. It is expected that this will be completed within a few months. The information generated will be incorporated into the HYDROSS model.

The Socio-economic Existing Condition Report has been distributed for review and comment. Comments will be incorporated into the final report.

DAS:LW:dp/322-1

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Office of the State Engineer

M E M O R A N D U M

TO: Governor Edward T. Schafer
North Dakota State Water Commission Members

FROM: *David* David A. Sprynczynatyk, State Engineer

SUBJECT: State Wetland Conservation Plan, FY93 EPA Grant

DATE: November 21, 1994

This memo is provided to give you an update on the FY 93 and FY 94 Wetland Conservation Grants EPA has awarded the State Water Commission to aid development of a state wetland conservation plan. I will also touch on our plans to seek continued support from EPA in FY 95.

FY 93 Grant

Work supported by the FY 93 grant will:

- * expand North Dakota's wetland education program development;
- * enhance geographic information system and further develop capabilities to administer state wetland management programs aimed at conserving these resources;
- * establish and field test North Dakota wetland water quality standards;
- * advance North Dakota's private lands initiative program; and
- * advance prioritization of existing Conservation Reserve Program tracts to identify those most critical to wetland watershed protection and migratory birds.

The FY 93 grant budget totals \$253,334 with a requirement for a 75/25 cost share. Cost share is being provided by the State Water Commission, North Dakota Water Education Foundation, Department of Health and Consolidated Laboratories, and the Game and Fish Department for their respective portions of the grant.

Status of FY 93 project:

All elements of this grant are on track with most tasks already completed. The wetland water quality agreement with the Health Department has been extended to the spring of 1995 to allow adequate time for field sampling and analysis. A regular six-month status report will be developed and sent to EPA in December.

FY 94 grant

The FY 94 grant will support the following tasks:

- * expanded Wetland Education and Outreach programs through the North Dakota Water Education Foundation's Wetland Institute;
- * continued development and application assessment of the Water Commission's GIS capability by assessing wetland management objectives in the Devils Lake Basin;
- * expanded work by the Game and Fish Department to prioritize CRP tracts important to wetland watershed protection and development of the Private Lands Initiative Program; and
- * continuation of the Devils Lake Coordinator position.

The FY94 grant budget totals \$292,500, \$234,000 federal to be matched by \$58,500 non-federal cash or in-kind services.

Status of FY 94 project:

Our agreement with EPA concerning the FY 94 grant has been finalized and work is just beginning. Contracts agreements have been worked out between the Wetland Institute, the Game and Fish Department and Mr. Ray Horne, the Devils Lake Coordinator.

Status of FY 95 proposal:

In looking towards printing and promoting the new wetland plan we submitted a proposal to EPA for a FY 95 grant. The cover letter that went with our proposal is attached. The letter does a pretty good job of highlighting what we intend to do in the proposal. The budget for the FY 95 proposal totals \$497,475 with the EPA contributing \$397,980 and the balance of \$99,495 provided by the state in dollars and in-kind services. Participants in the proposal include the State Water Commission, State Game and Fish Department, State Health Department, State Agriculture Department, Wetland Institute, Adopt-a-Pothole and others.

Should there be any questions regarding this status report or any of the work called for in our agreements, please contact me or Lee Klapprodt, the grant administrator, at your convenience.

DAS:LK:dp/1489-5



Office of the State Engineer

November 14, 1994

Mr. John Peters
Environmental Protection Agency
999 18th Street, Suite 500
Denver, CO 80202-2405

Dear Mr. Peters:

Under cover of this letter, please find enclosed North Dakota's proposal for furthering our ability to protect our wetland resources. Specifically, the enclosed proposal includes both development of new programs and refining existing programs to protect and enhance wetland resources in North Dakota. This proposal for funding includes the following components:

1. Printing and outreach activities for North Dakota's state wetland conservation plan, and refinement and further development of an effective geographical information system for wetlands.
2. Wetland education and outreach programs and activities, including federal, state, local and private coordination, wetland demonstration field days, local wetland workshops for water managers, county commissioners, other local officials, and natural resource professionals.
3. Private Land Initiatives and Partnerships.
4. Watershed Protection Coordination and Demonstration Projects and Activities, Devils Lake Basin.
5. Project Safe Send outreach development.

During the FY '95 grant period, North Dakota will have completed a state wetland conservation plan. One of the major components of the plan is Section 404 state assumption. Even though enabling legislation is already in place, several obstacles must be resolved and will determine whether North Dakota ultimately assumes responsibility for Section 404. The State Water Commission is pursuing partial assumption of Section 404 until remaining issues are addressed.

John Peters
November 14, 1994
Page 2

An aggressive education and outreach program must be continued, particularly for the completed state wetland conservation plan. Workshops, information sessions, and communication with local officials will be necessary. Previous efforts in this area have paid significant dividends for North Dakota's cooperative efforts to provide effective wetland protection in our state, and the enclosed proposal also provides additional opportunities for wetland education and outreach.

Our capability to protect wetlands will also be significantly enhanced by having a wetland inventory system in place. The wetland inventory system we are developing will also be extremely helpful for watershed protection programs. Wetland inventory and mapping is an important and necessary component of effective state wetland conservation strategies.

Private landowner initiatives and partnerships have become an essential component of our state wetland protection efforts. Since many of North Dakota's 2.5 million acres of wetlands are located on private lands, failure to undertake private land initiatives would render our state wetland conservation plan incomplete.

Another important component of our wetland protection strategies is development of wetland water quality standards. It is our goal to develop scientifically based, defensible, water quality standards for wetlands. To attain this goal the state's strategy requires a detailed data collection and interpretation phase.

We also would like to demonstrate the effectiveness of our state wetland conservation plan within identified watersheds. One of the goals of the National Wetlands Policy Forum involves eventual net gain in acreage and function of wetlands. Within the Devils Lake Basin, we are proposing a combination of private land initiatives, wetland restoration, and coordination. Our GIS inventory and mapping program is an important part of applying our state wetland conservation plan to the Devils Lake Basin.

Finally, we are proposing to develop informative outreach materials for Project Safe Send to improve the participation rate in North Dakota's unusable pesticide collection program.

Wetland issues in North Dakota are complex. We have discovered that there are no easy solutions most of the time, and in order to achieve results a long term commitment to finding solutions is necessary. Your assistance has been extremely helpful in this regard, and the enclosed proposal will enable significant additional steps to be taken to increase North Dakota's ability to protect and manage its wetland resources.

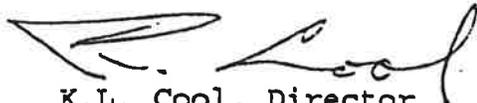
John Peters
November 14, 1994
Page 3

Enclosed is standard form SF-424 application for federal assistance, which has been completed. Thank you very much for your support of our wetland initiatives in the past, and for considering this application.

Sincerely,



David A. Sprynczynatyk
State Engineer



K.L. Cool, Director
North Dakota Game and Fish

Enclosure

December 7, 1994 - 197



North Dakota State Water Commission

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

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MEMORANDUM

TO: Governor Edward T. Schafer
State Water Commission Members

FROM:  David A. Sprynczynatyk, State Engineer

SUBJECT: State Assumption of Section 404

DATE: November 22, 1994

At the July 27th State Water Commission meeting, the Commission approved continuation of the process of promulgating rules for the state 404 program. The Commission also approved development of draft legislation to assume the 404 program based upon cost-sharing with the federal government under provisions of the reauthorized Clean Water Act. Since the reauthorization of the Clean Water Act was not acted on this year, and may not be until late 1995 or some time in 1996, the State Water Commission approved at their October 14th meeting in Grand Forks, the following motion:

1. The State Water Commission complete the final draft of the rules following the public hearing scheduled for October 18, 1994;
2. The formal assumption of the 404 program be delayed until a source of funding can be identified; and
3. The State Water Commission pursue the possibility of a state general permit with the Corps of Engineers to allow the state to work with the Corps in administering portions of the 404 program in North Dakota.

Since the October 14th State Water Commission meeting, the public hearing on the 404 rules was held. The hearing was attended by representatives from the Mining Industry, the Water Users, and the Department of Transportation. Julie Krenz acted as the hearing officer. At the conclusion of the public hearing, Julie indicated that the record would be held open for agencies and interested parties until November 18, 1994, and that the hearing record would remain open to receive comments from the Environmental Protection Agency (EPA) until April 18, 1995. The only written comments received prior to the public hearing were from the North Dakota Farm Bureau. After the hearing, we received comments from the ND Water Resource Districts' Association and the ND Association of Builders, both supporting state assumption of 404. These comments have been part of the official record. After April 18, 1995, the deadline for EPA comments, the final draft will be developed.

GOVERNOR EDWARD T. SCHAFFER
CHAIRMAN

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

Memorandum
Page 2
November 22, 1994

Preliminary contact has been made with the Corps of Engineers, Bismarck Regulatory Office, concerning the possibility of developing a state general permit that would allow the state to work with the Corps in administering portions of the Section 404 program in North Dakota. You will be kept informed as this process develops.

DAS:CB:dm/1855

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to create and enact four new sections to chapter 61-24.5 of
2 the North Dakota Century Code, relating to the operation and maintenance fund
3 and the replacement fund of the southwest authority; to amend and reenact
4 sections 61-24.3-14, 61-24.3-15, 61-24.3-16, and 21-24.3-17 of the North
5 Dakota Century Code, relating to the operation and maintenance fund and
6 reserve fund for replacement for the southwest pipeline project; to provide
7 for the transfer of equipment; to provide an appropriation; and to provide an
8 effective date.

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

10 SECTION 1. AMENDMENT. Section 61-24.3-14 of the North Dakota Century
11 Code is amended and reenacted as follows:

12 61-24.3-14. Operation and maintenance fund To identify and
13 distinguish the revenues received by the commission from water user entities
14 for operation and maintenance of the southwest pipeline project, there shall
15 be maintained, as a part of the moneys of the state received and kept by the
16 state treasurer, a fund to be designated as the southwest pipeline project
17 operation and maintenance fund. All moneys received by the state treasurer
18 from the commission, whether from payments made by water user entities for
19 operation and maintenance of the southwest pipeline project or otherwise,
20 which shall be by law or by other authoritative designation made applicable
21 to the payment of operation and maintenance of the southwest pipeline
22 project, shall be kept by the state treasurer in such fund distinct from all

1 other moneys and shall be disbursed by ~~him~~ the state treasurer only for the
2 particular purpose or purposes for which the moneys were received, and no
3 other appropriations shall ever be made of the moneys in said fund. This
4 section shall not be construed as preventing the state treasurer from
5 depositing the moneys in the Bank of North Dakota.

6 SECTION 2. AMENDMENT. Section 61-24.3-15 of the North Dakota Century
7 Code is amended and reenacted as follows:

8 61-24.3-15. Revenues for operation and maintenance - Deposit - Use.
9 Money derived and received by the commission from water user entities for
10 operation and maintenance of the southwest pipeline project shall be
11 deposited by the commission in the operation and maintenance fund, and shall
12 be used for no purposes other than to pay for costs and expenditures for
13 operation and maintenance of the southwest pipeline project.

14 SECTION 3. AMENDMENT. Section 61-24.3-16 of the North Dakota Century
15 Code is amended and reenacted as follows:

16 61-24.3-16. Reserve fund for replacement. To identify and distinguish
17 the revenues received by the commission from water user entities for
18 replacement and extraordinary maintenance of the southwest pipeline project,
19 there shall be maintained, as a part of the moneys of the state received and
20 kept by the state treasurer, a fund to be designated as the southwest
21 pipeline project reserve fund for replacement. All moneys received by the
22 state treasurer from the commission, whether from payments made by water user
23 entities for replacement and extraordinary maintenance of the southwest
24 pipeline project or otherwise, which shall be by law or by other
25 authoritative designation made applicable to replacement of the southwest
26 pipeline project, shall be kept by the state treasurer in such fund distinct
27 from all other moneys and shall be disbursed by ~~him~~ the state treasurer only
28 for the particular purpose or purposes for which the moneys were received,
29 and no other appropriations shall ever be made of the moneys in the fund.

1 This section shall not be construed as preventing the state treasurer from
2 depositing the moneys in the Bank of North Dakota.

3 SECTION 4. AMENDMENT. Section 61-24.3-17 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 61-24.3-17. Revenues for replacement - Deposit - Use. Money derived
6 and received by the commission from water user entities for replacement and
7 extraordinary maintenance of the southwest pipeline project shall be
8 deposited by the commission in the reserve fund for replacement, and shall be
9 used for no purposes other than to pay for replacement or extraordinary
10 maintenance of works which are part of or associated with the southwest
11 pipeline project.

12 SECTION 5. A new section to chapter 61-24.5 of the North Dakota
13 Century Code is created and enacted as follows:

14 Operation and maintenace fund. To identify and distinguish the
15 revenues received by the southwest water authority from water user entities
16 for operation and maintenance of the southwest pipeline project, there shall
17 be maintained by the southwest water authority a fund to be designated as a
18 southwest pipeline project operation and maintenace fund. All moneys
19 received by the southwest water authority, whether from payments made by
20 water user entities, or otherwise, for operation and maintenance of the
21 southwest pipeline project shall be by law or by other authoritative
22 designation made applicable to the payment of operation and maintenance of
23 the southwest pipeline project, shall be kept in such fund distinct from all
24 other moneys, and shall be disbursed only for the particular purpose or
25 purposes for which the moneys were received.

26 SECTION 6. A new section to chapter 61-24.5 of the North Dakota
27 Century Code is created and enacted as follows:

28 Revenues for operation and maintenance - Deposit - Use. Money derived
29 and received by the southwest water authority from water user entities for

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Legislative Assembly

1 operation and maintenace of the southwest pipeline project shall be deposited
2 by the southwest water authority in the operation and maintenance fund and
3 shall be used for no purpose other than to pay for costs and expenditures for
4 operation and maintenance of the southwest pipeline project.

5 SECTION 7. A new section to chapter 61-24.5 of the North Dakota
6 Century Code is created and enacted as follows:

7 Reserve fund for replacement. To identify and distinguish the revenues
8 received by the southwest water authority from water user entities for
9 replacement and extraordinary maintenance of the southwest pipeline project,
10 there shall be maintained a fund to be designated as the southwest pipeline
11 project reserve fund for replacement. All moneys received by the southwest
12 water authority, whether from payments made by water user entities, or
13 otherwise, for replacement and extraordinary maintenance of the southwest
14 pipeline project, which shall by law or by other authoritative designation
15 made applicable to replacement of the southwest pipeline project, shall be
16 kept by the southwest water authority in such fund distinct from all other
17 moneys and may be disbursed only for the particular purpose or purposes for
18 which the moneys were received.

19 SECTION 8. A new section to chapter 61-24.5 of the North Dakota
20 Century Code is created and enacted as follows:

21 Revenues for replacement - Deposit - Use. Money derived and received
22 by the southwest water authority from water user entities for replacement and
23 extraordinary maintenance of the southwest pipeline project shall be
24 deposited by the southwest water authority in the reserve fund for
25 replacement and may be used for no purpose other than to pay for replacement
26 or extraordinary maintenance of works which are part of or associated with
27 the southwest pipeline project.

1 **SECTION 9. TRANSFER OF EQUIPMENT TO THE SOUTHWEST WATER AUTHORITY.**

2 The commission may transfer all or a part of the equipment acquired by the
3 state for the southwest pipeline project to the southwest water authority.

4 **SECTION 10. TRANSFER AND APPROPRIATION.** The ending balances in the
5 operation and maintenance fund established pursuant to section 61-24.3-14 and
6 the reserve fund for replacement established pursuant to section 61-24.3-16
7 are hereby appropriated and may be transferred to the southwest water
8 authority. Upon notification from the state engineer, the state treasurer
9 shall transfer the amount, not to exceed the amount appropriated, designated
10 by the state engineer from these funds to the southwest water authority.

11 **SECTION 11. EFFECTIVE DATE.** Sections 9 and 10 of this Act become
12 effective on the date the state engineer certifies to the state treasurer
13 that the southwest pipeline project has been transferred to the southwest
14 water authority.

56403.0000

Fifty-fourth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to amend and reenact section 61-24.3-10 of the North Dakota
2 Century Code, relating to the authority of the water commission to sell land
3 not needed for the southwest pipeline project.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. AMENDMENT. Section 61-24.3-10 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 61-24.3-10. Commission to construct, operate and maintain southwest
8 pipeline project - Rules made by commission. The commission shall have the
9 authority to:

- 10 1. Construct the southwest pipeline project as provided in this
11 chapter.
- 12 2. Operate and maintain, or provide for the operation and maintenance
13 of the southwest pipeline project.
- 14 3. Exercise all express and implied rights, powers, and authorities,
15 including all powers and authorities granted in chapter 61-02,
16 necessary to carry out the provisions and purposes of this chapter.
- 17 4. Make and enforce orders, rules, and bylaws for the operation and
18 maintenance of the southwest pipeline project.
- 19 5. Sell, transfer, or exchange property acquired for the southwest
20 pipeline project provided the commission determines the property is
21 not necessary for the operation, maintenance, or construction of
22 the southwest pipeline project. Sections 54-01-05.2 and 54-01-05.5

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Legislative Assembly

- 1 do not apply to the sale, transfer, or exchange of property
- 2 pursuant to this subsection.

56405.0000

Fifty-fourth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to authorize the water commission to transfer title and
2 convey certain land acquired for the southwest pipeline.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. Water commission land transfer authorized. The water
5 commission may transfer title and convey the following property to Virginia
6 Hecker, or her heirs or assigns:

7 A tract of land in the northeast quarter of section twenty-seven,
8 township one hundred forty-two north, range ninety-seven west,
9 fifth principal meridian, Dunn County, North Dakota, bounded and
10 described as follows: beginning at a point two hundred twenty feet
11 south and one thousand one hundred fifty feet west of the northeast
12 corner of said northeast quarter, said point being the northeast
13 corner of said tract, and the true point of beginning; thence due
14 south two hundred thirty feet; thence due west two hundred feet;
15 thence due north one hundred thirty feet; and thence in a
16 northeasterly direction along the south right of way line of the
17 county road two hundred twenty-three and six-tenths feet more or
18 less to the point of beginning. Said tract contains eighty-two
19 hundredths of an acre, more or less.

20 SECTION 2. Water commission land transfer authorized. The water
21 commission may transfer title and convey the following property to Norman

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Legislative Assembly

1 Kruckenberg and Madella Kruckenberg, husband and wife, or their heirs or
2 assigns:

3 A tract of land located in the northeast quarter of section
4 sixteen, township one hundred forty-four north, range ninety-one
5 west, fifth principal meridian, Dunn County, North Dakota, being
6 more specifically described as follows: beginning at the northeast
7 corner of said quarter; thence north eighty-eight degrees,
8 fifty-two minutes, thirty-four seconds west along the north line of
9 said quarter, one hundred fifty feet; thence south one degree,
10 eight minutes, forty-four seconds west and parallel with the east
11 line of said quarter, two hundred feet; thence south eighty-eight
12 degrees, fifty-two minutes, thirty-four seconds east and parallel
13 with the north line of said quarter, one hundred fifty feet to the
14 east line of said quarter; thence north one degree, eight minutes,
15 forty-four seconds east along the east line of said quarter, two
16 hundred feet to the point of beginning. Said tract contains
17 sixty-nine hundredths of an acre, more or less.

18 **SECTION 3. Water commission land transfer authorized.** The water
19 commission may transfer title and convey the following property to William
20 Kohler, Jr. and Irene Kohler, husband and wife, or their heirs or assigns:

21 A tract of land located in the southwest quarter of section
22 fifteen, township one hundred thirty-nine north, range ninety-six
23 west, fifth principal meridian, Stark County, North Dakota, being
24 more specifically described as follows: a portion of lot one,
25 block one, Kohler addition to the city of Dickinson being south
26 twenty-four and eighty-one hundredths feet of the west one hundred
27 feet of said lot; also a portion of lot two, block one, Kohler
28 addition being the north seventy-five feet of the west one hundred

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Legislative Assembly

1 feet of said lot. Said tract contains twenty-three hundredths of
2 an acre, more or less.

3 Subject to mineral reservations, mineral conveyances, mineral
4 leases, and easements of record.

5 **SECTION 4.** The provisions of sections 54-01-05.2 and 54-01-05.5 do not
6 apply to the transfers authorized by this Act.

56401.0000

Fifty-fourth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the State Engineer)

1 A BILL for an Act to create and enact a new section to chapter 61-04 of the
2 North Dakota Century Code, relating to the authority of the state engineer to
3 make refunds of water permit application fees.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. A new section to chapter 61-04 of the North Dakota Century
6 Code is created and enacted as follows:

7 Refund of water permit application fees. The state engineer may refund
8 a water permit application fee, upon the request of the applicant, if the
9 application is withdrawn by the applicant; and:

- 10 1. The state engineer has not published notice of the application; or
- 11 2. The state engineer determines other good and sufficient cause
- 12 exists to refund the application.

56407.0000

Fifty-fourth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to amend and reenact subsection 3 of section 61-33-09 of
2 the North Dakota Century Code, relating to meetings of the sovereign lands
3 advisory board.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. AMENDMENT. Subsection 3 of section 61-33-09 of the 1993
6 Supplement to the North Dakota Century Code is amended and reenacted as
7 follows:

8 3. The board shall meet at least ~~four times~~ once a year, or at the
9 call of the state engineer, at the office of the state engineer, or
10 at any other place decided upon by the board.

56411.0000

Fifty-fourth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to amend and reenact section 61-05-03 of the North Dakota
2 Century Code, relating to votes of electors of irrigation districts.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 61-05-03 of the North Dakota Century
5 Code is amended and reenacted as follows:

6 **61-05-03. Votes of electors - Number permissible.** Any elector owning
7 twenty acres [8.09 hectares] or less but not less than five acres [2.02
8 hectares], subject to assessments for construction or other costs within a
9 proposed or existing district, shall have one vote. Any elector owning more
10 than twenty acres [8.09 hectares] subject to such assessments within any
11 irrigation district which will receive all or a portion of its water supply
12 from a federal reclamation or irrigation project shall have one additional
13 vote for each additional twenty acres [8.09 hectares] or major fraction
14 thereof, ~~but no elector shall be entitled to cast~~ provided, however, that the
15 total votes any such elector is entitled to must be determined based on the
16 number of acres the elector is entitled to irrigate pursuant to the
17 Reclamation Reform Act of 1982 [Pub.L. 97-293; 96 Stat. 1263; 43 U.S.C.
18 390aa et seq.] and may not exceed more than eight thirty-five percent of the
19 total votes in any district election regardless of the number of acres
20 [hectares] of land owned by the elector in the district. Any elector owning
21 more than twenty acres [8.09 hectares] subject to assessments within any
22 existing or proposed irrigation district which does not receive any of its

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Legislative Assembly

1 water supply from a federal reclamation or irrigation project shall have one
2 additional vote for each additional twenty acres [8.09 hectares] or major
3 fraction thereof, but no elector shall be entitled to cast more than
4 thirty-five percent of the total votes eligible to be cast in any district
5 election regardless of the number of acres [hectares] of land owned by
6 elector in the district.

56408.0000

Fifty-fourth
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to amend and reenact section 12 of chapter 594 of the 1993
2 Session Laws, relating to the effective date clause of the section 404
3 program of the Clean Water Act.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 12 of chapter 594 of the 1993 Session
6 Laws is amended and reenacted as follows:

7 **SECTION 12. EFFECTIVE DATE.** This Act becomes effective on the date
8 the state engineer certifies to the governor and the secretary of state that
9 the state has received ~~approval from the United States environmental~~
10 ~~protection agency to assume the program under section 404 of the Clean Water~~
11 ~~Act and that adequate funds have been made available~~ from the federal
12 government or other sources to fund the program established pursuant to this
13 Act, as determined by the state engineer and approved by the emergency
14 commission. The secretary of state shall forward a copy of the state
15 engineer's certification to the legislative council, with a notation
16 indicating the effective date of this Act.