

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 4, 1996

The North Dakota State Water Commission held a meeting at the Radisson Hotel, Bismarck, North Dakota, on December 4, 1996. Governor-Chairman, Edward T. Schafer, called the meeting to order at 9:45 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
Robert Thompson, Member from Page
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Harley Swenson, Member from Bismarck

OTHERS PRESENT:

State Water Commission staff
Approximately 75 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.

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 16, 1996 STATE
WATER COMMISSION MEETING -
APPROVED**

The minutes of the October 16, 1996
State Water Commission meeting
were approved by the following
motion:

*It was moved by Commissioner Ames, seconded by
Commissioner Olin, and unanimously carried, that the
minutes of the October 16, 1996 State Water Commission
meeting be approved as prepared.*

**FINANCIAL STATEMENT -
AGENCY OPERATIONS**

reflecting 67 percent of the 1995-1997 biennium.

Secretary Sprynczynatyk presented
and discussed the Program Budget
Expenditures, dated October 31, 1996,
SEE APPENDIX "A".

**FINANCIAL STATEMENT -
RESOURCES TRUST FUND**

Secretary Sprynczynatyk reviewed
and discussed the Contract Fund for
the 1995-1997 biennium. *SEE
APPENDIX "B"*.

**APPROVAL OF RESOURCES
TRUST FUND REQUEST**

“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 stated

Section 57-51.1-07.1 (2) of the North
Dakota Century Code requires that

Secretary Sprynczynatyk presented
for the Commission’s consideration the State Engineer’s request for funding from
the Resources Trust Fund for the 1997-1999 biennium. He explained that
revenues into the Resources Trust Fund for the base budget request assumes that
10 percent of the oil extraction tax is deposited into the Resources Trust Fund
along with other authorized revenues. Ten percent of the oil extraction tax is
what has gone into the Resources Trust Fund in most years prior to the current
biennium. During the current biennium, a temporary adjustment of 20 percent of
the oil extraction tax into the Resources Trust Fund was approved by the 1995
Legislature. This adjustment will expire on June 30, 1997.

The base budget revenues include
\$3,661,015 from the oil extraction tax revenue; \$1,083,000 from the Municipal,
Rural and Industrial water supply program loan repayments; \$1,600,000 from
the Southwest Pipeline Project repayments; \$1,100,000 from South Dakota for

enlarging certain segments of the Southwest Pipeline Project; and \$151,000 of interest income, for total new revenue of \$7,595,015. In addition, approximately \$2,000,000 of obligated funds for construction contracts will not be expended during the current biennium and will be carried into the 1997-1999 biennium. The base budget assumes total revenues into the Resources Trust Fund of approximately \$9.6 million. The following table shows three scenarios, 10 percent, 20 percent, and the estimated need suggested by the North Dakota Water Coalition:

**WATER FUNDING NEEDS
(1997-1999 Biennium)**

<u>Project/Region</u>	<u>Base Budget Request 10% RTF Oil Extraction Tax</u>	<u>20% RTF ** Oil Extraction Tax</u>	<u>North Dakota Water Coalition</u>
Obligated Carryover	\$ 2,000,000	\$ 2,000,000	
General Projects	432,575	938,590	
Devils Lake	1,000,000	2,000,000	\$ 14,893,500
James River			100,000
Red River Valley			4,600,950
Sheyenne River Basin:			10,465,000
Maple River	1,000,000	2,000,000	
Baldhill Dam Raise			
Northwest:			1,100,000
NAWS	50,000	50,000	
Nesson Valley Irrigation		1,000,000	2,950,000
South Central			125,000
Southwest:			
Southwest Pipeline	<u>2,700,000</u>	<u>2,700,000</u>	<u>7,435,000</u>
	<u>\$7,182,575</u>	<u>\$10,688,590</u>	<u>\$ 41,669,450</u>
Agency Operations	\$1,912,440	\$ 1,912,440	\$ 1,912,440
Hydrologic Studies	<u>500,000</u>	<u>655,000</u>	<u>655,000</u>
TOTAL	\$9,595,015	\$ 13,256,030	\$44,236,890

** Request if the current adjustment of 20 percent of the oil extraction tax into the Resources Trust Fund was extended beyond June 30, 1997.

It was the recommendation of the State Engineer that the State Water Commission approve the 10 percent base budget request for submittal to the Legislature. In the event the Legislature considers a 20 percent Resources Trust Fund level, it was the recommendation of the State Engineer that the State Water Commission approve the allocation as shown in the table on the previous page of these minutes.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission:

1) approve the recommendation of the State Engineer to request the Legislature to appropriate the 10 percent base budget of \$9,595,015 from the Resources Trust Fund for the 1997-1999 biennium for projects and programs as shown in the table on the previous page of these minutes.

2) If the Legislature considers a 20 percent Resources Trust Fund level, the State Water Commission approve the recommendation of the State Engineer to appropriate the 20 percent budget of \$13,256,030 from the Resources Trust Fund for the 1997-1999 biennium for projects and programs as shown in the table on the previous page of these minutes. The Resources Trust Fund report is attached hereto as APPENDIX "C".

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

**FINANCIAL STATEMENT -
1997-1999 BIENNIUM BUDGET**

The State Water Commission's 1997-1999 biennium budget reflects a 3 percent reduction in general funds for the agency, which amounts to a reduction of \$163,729 from the present biennium general funding level for the agency of \$5,457,627. Secretary Sprynczynatyk indicated that an optional adjustment request was developed for the budget submittal. A hearing on the agency's 1997-1999 biennium budget with the Office of Management and Budget was held on September 20, 1996. On December 5, 1996, Governor Schafer will present his budget message to the Legislature.

**NESSON VALLEY
IRRIGATION PILOT PROJECT
(SWC Project No. 1858)**

Paul Bauer, Executive Director of the Tri-County Economic Development Association, Williston, ND, provided a briefing on the Nesson Valley

Irrigation Pilot Project Feasibility Study, dated October 1, 1996. Expressing support for the development of this project, Mr. Bauer said, "projects such as this will enhance economic opportunities within the region. Implementation of this project will create badly needed jobs in the area. The Nesson Valley project represents infrastructure development building capacity within the region." He said the possibility of the irrigation district will present many new and valuable opportunities for the producers in the Nesson Valley. The increase in returns to management will enable each producer to augment their cash flows which, in turn, improves the economics within the community at large. Retail sales would also feel the effect. As the Nesson Valley project sets the example for the rest of the region, Mr. Bauer said the multiplying effect on the economy would be tremendous.

Secretary Sprynczynatyk informed the Commission members that a petition to establish an irrigation district has been received, and the procedure, as required by law, is being satisfied.

SOUTHWEST PIPELINE PROJECT - PROJECT UPDATE; CONTRACT AND CONSTRUCTION STATUS (SWC Project No. 1736) - Tim Fay, Project Manager for the Southwest Pipeline project, provided the following contract and construction status report:

Contract 2-4A/7-3: - Transmission Line and Rural Water Distribution in the Jung Lake Service Area: This contract is the only remaining active construction contract at this time. Two segments of the 2-4A transmission line have not been successfully pressure tested. The contractor is currently searching for leaks in the line. The pre-final inspection of the contract may be delayed until spring, however, it can be put into service as soon as the pressure testing, chlorination, pigging, and flushing are complete.

Contract 4-1A - Raw Water Facilities Upgrade: Warranty work on Contract 4-1A to repair the damaged check valves at the Richardton pump station is currently underway, and the new equipment will be available before it is needed next summer.

SOUTHWEST PIPELINE PROJECT - 1997 CONSTRUCTION (SWC Project No. 1736) - Tim Fay provided the construction plan for 1997, which is attached to these minutes as *APPENDIX "D"*. He said the plan is based on funding by both bonding and the USDA Rural Development grant and loan program. The quantities may change depending on developments between now and next spring, but in order to be ready for construction next year, design and planning for these components will proceed. No contract commitments are required until funding arrangements have been finalized and the pertinent legislation is in place.

**SOUTHWEST PIPELINE PROJECT -
RESERVE FUND FOR REPLACEMENT
AND EXTRAORDINARY MAINTEN-
ANCE FOR MAIN TRANSMISSION
AIR VALVES REPLACEMENT
(SWC Project No. 1736)**

At the June 19, 1996 meeting, the State Water Commission members were advised that due to the extended cold weather experienced in early 1996, the main transmission lines for the Southwest Pipeline experienced considerable damage to the air

valves. At that time, the Southwest Water Authority had not identified the total repair and replacement costs of the air valves, but it was estimated the costs would be in excess of \$10,000. The Southwest Water Authority requested to use the Southwest Pipeline project's reserve fund for replacement and extraordinary maintenance.

The State Water Commission passed a motion that the total cost of repairing and replacing the air valves be calculated by the Southwest Water Authority. Based upon the State Engineer's review, if the eligible items exceeded \$10,000, the State Water Commission authorized the expenditure of funds for the repair and replacement of the air valves from the reserve fund for replacement and extraordinary maintenance.

Tim Fay advised the Commission members that the Southwest Water Authority has identified the total cost for the repair and replacement of the main transmission line air valves to be in the amount of \$16,900, with authorization of the expenditure of funds from the Southwest Pipeline project's reserve fund for replacement and extraordinary maintenance.

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

Tim Fay reported that in October, 1996, Jim Schwartz, Assistant Administrator for the U.S. Department of Agriculture, Rural

Development, met with the Southwest Water Authority to discuss the critical water needs in the uncompleted areas of the Southwest Pipeline project.

Mr. Fay discussed possible future sources of funding for completion of the Southwest Pipeline project. In order to implement bonding as a source of funding, legislation has been drafted to clarify the State Water Commission's authority to issue bonds in excess of \$2 million, and to dedicate a portion of the project's capital repayment revenues to debt service for the term of the bond.

An application for funding the Southwest Pipeline project was submitted to the USDA Rural Development. Mr. Fay explained the application process, which includes a public hearing. In order to satisfy the public hearing requirement, this State Water Commission meeting

of December 4, 1996, was advertised as the date for the public hearing. Governor Schafer called for public comments on the USDA Rural Development application submitted by the State Water Commission. There were no comments voiced.

Mr. Fay said there are legislative changes necessary for the State Water Commission to participate in the USDA Rural Development program, which are being addressed by the legislation currently under consideration to allow commercial bonding.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT 7-1B
(SWC Project No. 1736)**

At its meeting on September 4, 1996 the State Water Commission passed a motion to proceed with non-binding mediation for Southwest Pipeline project contract 7-1B with Mainline Construction.

Tim Fay reported the mediation meeting has been scheduled for December 16 and 17, 1996 in Minneapolis before Philip Bruner.

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

Warren Jamison, Manager of the Garrison Diversion Conservancy District, provided a status report on the Garrison Completion Plan and

the proposed legislation. The November 15, 1996 working draft of the proposed legislation was provided to the Commission members.

Mr. Jamison briefed the Commission members on a meeting held November 18, 1996, in Washington, DC, with the Congressional Delegation and federal agencies to discuss the Garrison project. The Governor and the Congressional Delegation will host public hearings on December 18 and 19, 1996 in Fargo and Bismarck.

A status report was provided on the alternative engineering evaluation of the Benson, Pierce, All Seasons, and Langdon rural water systems. Ulteig Engineers has been retained to evaluate these rural water systems, all of which are in the planning stage to expand or for new construction of a rural water system. Each of the systems overlap or provide service to the same consumers as another system. The Garrison Diversion Conservancy District, the State Water Commission and the USDA Rural Development has a vested interest in the projects as they will provide assistance in the form of grants, loans, and permits. Mr. Jamison reviewed the objectives that have been developed that could apply to any rural water system. He said the goal of the evaluation is to determine if there is a way for the systems to satisfy the objectives. While moving forward to these objectives, he said we must provide the opportunity for input, discussions, and acknowledgement of local socio-economic

conditions. This information will be obtained from managers and engineers of the specific systems. State and federal regulations and assurances also need to be followed to ensure integrity.

Mr. Jamison made reference to a request from the Burleigh Water Users Cooperative for consideration to increase the proposed allocation for Phase 2 of its expansion project for Fiscal Year 1997.

The Commission members were provided a draft brochure relating to the economics of the Garrison proposal.

**GARRISON DIVERSION PROJECT -
APPROVAL OF RESOLUTION OF
SUPPORT FOR GARRISON
DIVERSION COMPLETION ACT
(SWC Project No. 237)
(SWC Resolution No. 96-12-474)**

Secretary Sprynczynatyk presented a draft resolution for the Commission's consideration to support the proposal for the State of North Dakota to assume responsibility for planning, construction, operation, and maintenance of the Garrison Diversion

principal water supply facilities. The resolution supports the establishment of an economic recovery water fund for municipal, rural, agriculture, industry, tourism, recreation, wildlife, aesthetics, and other water-related economic development projects. The Governor and the Congressional Delegation are urged to continue to work together to finalize and introduce legislation to complete the Garrison Diversion Project to secure a long-term water supply for the Red River Basin, the James River, Devils Lake, and other areas, and to assist in economic development for North Dakota.

Governor Schafer emphasized that a major change in the project is that the state is assuming the responsibility for the planning, construction, operation, and maintenance of the Garrison Diversion principal water supply facilities.

It was moved by Commissioner Olin, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission approve Resolution No. 96-12-474, Support for Garrison Diversion Completion Act. SEE APPENDIX "E".

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

Secretary Sprynczynatyk provided the following report:

All Seasons Water Users: The engineer has evaluated System I for expansions that may tie into the Pierce Rural Water service area and System IV that may tie into the Benson Rural Water service area. The cost estimates are \$1.5 million for System I and \$6 million for System IV. The engineer is working on a preliminary engineering report for requesting MR&I funding for the project.

Benson County Rural Water: The engineer has completed the feasibility study and Benson County has requested a 65 percent MR&I grant on the study costs of \$34,800. The MR&I committee recommended that a grant of \$22,600 be approved for the Benson feasibility study at the August 26, 1996 committee meeting. Ulteig Engineers is reviewing the project with the surrounding rural water systems of All Seasons, Langdon and Pierce on how the Benson system best ties in the water service areas.

Burleigh Water Users: The Phase 2 project design has been completed and construction is planned for 1997. The project is scheduled for a mid-December bid opening. The Burleigh Water Users has estimated that Phase 2 will cost \$7,650,000 and they need to find funding to cover an estimated shortage of \$496,000. Burleigh has requested a MR&I grant of \$250,000, which is in addition to the proposed Fiscal Year 1997 MR&I grant of \$3,590,000. The project does have some contingency funding in the estimate and would be reviewed after the bid opening. Burleigh wanted to know the funding options before opening bids, so a request for additional MR&I funding was made.

Dickey Rural Water Project: The water treatment plant is operating with final connection details being made for pumping water to the communities of Berlin, Edgeley, Ellendale, Fullerton, and up to 160 rural users. Work is continuing on the pipelines for the rural water distribution system until the weather stops construction. Any remaining construction will be completed in 1997.

Grand Forks Water Treatment: The city of Grand Forks is modifying the water treatment plant's existing clear wells by installing baffling to increase the contact time to meet the requirements of the Surface Water Treatment Rule.

Langdon Rural Water: The engineer has completed the preliminary engineering report for construction of Phase IV, the Munich service area. The estimated cost is \$9.6 million. The engineer is working with Ulteig Engineers on how the Munich area would work with the Benson Rural Water service area. The preliminary engineering report is part of a request for MR&I program funding for the project.

Missouri West Rural Water System: The system design is complete. The project is planning for phased construction, with the portion of the rural water system extending to St. Anthony scheduled for 1997.

North Valley Water Association/Walhalla-Neche Branch: The engineer is working on the feasibility study and the environmental assessment requirements. The project is planned for phased construction with the water treatment plant expansion and the connection to the city of Walhalla scheduled for 1997. North Valley has requested additional MR&I grant funds of \$580,000 to add the city of Neche to the expansion project. North Valley has also requested an additional grant of \$17,550 on \$27,000, which covers \$15,000 for an additional cultural resources survey for the environmental compliance on the total project and \$12,000 for engineering for adding Neche to the feasibility study.

Northwest Area Water Supply Project: See Northwest Area Water Supply project section in these minutes for complete status report.

Ransom-Sargent Rural Water Project: The engineer is working on the feasibility study and the environmental assessment requirements.

Southwest Pipeline Project: See Southwest Pipeline project section in these minutes for complete status report.

**GARRISON DIVERSION PROJECT -
MR&I FUNDING FOR FY 1997
(SWC Project No. 237-3)**

The Garrison Diversion Unit federal appropriation for Fiscal Year 1997 is \$23 million, which includes approximately \$10 million for the MR&I

Water Supply program, although the Bureau of Reclamation has recently indicated there could be approximately \$1.4 million less than anticipated for the MR&I program. There are approximately \$2.4 million of unallocated Fiscal Year 1996 and reprogrammable funds available for Fiscal Year 1997, for a total proposed federal appropriation for the MR&I program of \$12 million. Secretary Sprynczynatyk presented the following breakdown for the proposed funding budget for the Fiscal Year 1997 MR&I program for the Commission's consideration. The proposal was approved by the MR&I committee on November 26, 1996:

<u>Project</u>	<u>Activity</u>	<u>Proposed</u>
Burleigh Water Users	C	\$ 3,590,000
North Valley (Walhalla)	C	3,630,000
Missouri West Water	C	3,500,000
NAWS (Minot)	D	1,030,000
Benson Rural Water Feasibility Study		22,600
Other Feasibility Studies		77,400
Administration		<u>150,000</u>
		\$12,000,000

Funding

Fiscal Year 1996 Unallocated	\$ 2,400,000
Fiscal Year 1997 Unallocated	<u>9,600,000</u>
Total Available in Fiscal Year 1997	\$12,000,000

It was the recommendation of the State Engineer that the State Water Commission approve the proposed \$12 million Fiscal Year 1997 MR&I program budget, contingent upon the availability of funds and subject to future revisions, and with the understanding there may not be \$12 million available.

It was moved by Commissioner Ames and seconded by Commissioner Olin that the State Water Commission approve the recommendation of the State Engineer for the proposed \$12 million Fiscal Year 1997 MR&I program budget, contingent upon the availability of funds and subject to future revisions.

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

GARRISON DIVERSION PROJECT - APPROVAL FOR STATE ENGINEER TO CONSIDER REQUESTS ON USE OF RESERVE FUNDS FOR LOANS INVOLVED WITH MR&I GRANTS (SWC Project No. 237-3)

Secretary Sprynczynatyk stated that the State Water Commission has approved nine applications for MR&I grants and loans to political subdivisions and rural water systems. Section 2.08 of the grant and loan

agreement requires the borrower to establish an emergency and extension reserve fund. The borrower must receive approval from the State Water Commission to use the reserve funds as outlined in the agreement. He said the Commission can either continue to review these requests or authorize the State Engineer to approve or deny the requests on the use of reserve funds, which would provide for a timely review of the requests.

Commissioner Ames said it would be appropriate for the State Engineer to consider requests up to \$25,000 for use of the MR&I emergency reserve fund, but that requests over \$25,000 should be considered by the State Water Commission.

It was the State Engineer's recommendation that the State Water Commission authorize the State Engineer to approve or deny requests up to \$25,000 on the use of reserve funds for loans involved with Municipal, Rural and Industrial Water Supply program grants.

It was moved by Commissioner Ames and seconded by Commissioner DeWitz that the State Water Commission authorize the State Engineer to consider requests up to \$25,000 on the use of reserve funds for loans involved with the Municipal, Rural and Industrial Water Supply program grants. Requests for use of reserve funds over \$25,000 will be considered by the State Water Commission.

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

Secretary Sprynczynatyk said a request has been received from the Ramsey County Rural Utilities for use of \$25,000 from the emergency and extension reserve fund. The reserve money will be used as their local cost share match in the relocation of the rural water pipeline located on the Six-Mile Bay bridge at Devils Lake. The cost estimate for the water pipeline relocation is \$75,000. The remaining \$50,000 would be in the form of a Community Development Block Grant. The Department of Transportation is constructing a new bridge and the water line will need to be relocated.

GARRISON DIVERSION PROJECT -

**CONSTRUCTION CONTRACT
PROVISION FOR USE ON MR&I
PROGRAM PROJECTS
(SWC Project No. 237-3)**

At its meeting on August 26, 1996, the MR&I committee considered a contract provision that would allow the issuance of construction contracts beyond the annual MR&I federal funding, with a hold harmless withdrawal provision should MR&I funding not materialize from the annual federal appropriation. The provision would be used to bid the total project with the original contract listing the funding allocated for that project for the current fiscal year. Secretary Sprynczynatyk explained that the current fiscal year funding level is what the contractor would receive in the fiscal year for work completed, with the assumption that the remaining balance would be available in the next fiscal year, contingent upon adequate federal funding. If federal funds were not available, the contract may have to be terminated, depending on actual available funds.

The Bureau of Reclamation requires all MR&I project specifications to include a section that addresses this type of construction contract provision. A review of the Bureau's provision is being made by the Garrison Diversion Conservancy District's and the State Water Commission's legal counsels to determine if any modifications are required to ensure that both entities are covered if MR&I funding is not available for a project.

Secretary Sprynczynatyk explained that the projects bid using this provision would be ready for construction in a timely manner to match the construction season with the funding cycle and provide water to users in a most efficient manner. The MR&I committee recommended the use of a construction contract provision to be reviewed by the Manager of the Garrison Diversion Conservancy District and the State Engineer.

At its meeting on September 4, 1996, the State Water Commission passed a motion approving the inclusion of a construction contract provision on future MR&I program projects.

Secretary Sprynczynatyk provided a draft construction contract provision to the Commission members, which is being reviewed by the Garrison Diversion Conservancy District, the State Water Commission, the Associated General Contractors of North Dakota, the Bureau of Reclamation, and the USDA Rural Development.

GARRISON DIVERSION PROJECT -

**APPROVAL OF REQUEST FOR
ADDITIONAL \$17,550 FOR NORTH
VALLEY FEASIBILITY STUDY**

Secretary Sprynczynatyk discussed a request from the North Valley Rural Water Association for additional funding of a feasibility study for the

(SWC Project No. 237-4)

**inclusion of the cities of Walhalla and
Neché into their system. The city of**

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Walhalla is experiencing water quality problems, and the water treatment plant at the city of Neche needs to be upgraded. Additional funding is required for the cultural resources study.

At its meeting on July 19, 1995, the State Water Commission approved a 65 percent grant in the amount of \$52,650 to the North Valley Rural Water Association. The request before the State Water Commission is to consider additional funding of \$17,550 for the North Valley Rural Water Association. The request was approved by the MR&I committee at its November 26, 1996 meeting.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$17,550 to the North Valley Rural Water Association for its feasibility study. This would increase the MR&I funding grant to \$70,200.

It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve an additional \$17,550 of MR&I Water Supply program funding to the North Valley Rural Water Association for its feasibility study. This increases the MR&I funding grant for the North Valley Rural Water Association feasibility study to \$70,200. This motion is contingent upon the availability of funds.

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

**GARRISON DIVERSION PROJECT -
MR&I COMMITTEE REPORT
(SWC Project No. 237-3)**

Secretary Sprynzynatyk provided a summary report on the MR&I committee meeting held November 26, 1996.

**CITY OF GRAND FORKS
CHAMBER OF COMMERCE
WATER POLICY POSITION PAPER
(SWC Project Nos. 237-3 and AOC/RBB)**

Commissioner Hillesland stated that the Grand Forks Chamber of Commerce adopted a revised 1996 water policy position paper to assist and support the advancement of the comprehensive and progressive state water policy as adopted by that entity in 1992.

It was moved by Commissioner Hillesland, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission support the concept of the Grand Forks Chamber of Commerce's 1996 water policy position paper.

**DEVILS LAKE -
HYDROLOGIC UPDATE
(SWC Project No. 416)**

elevation 1438 next spring. The probability of continued rise next year still exceeds 90 percent, which means that the elevation of Devils Lake will likely exceed the 1867 record elevation of 1438.4. Estimates from the U.S. Geological Survey suggest that the lake level could rise as high as 1440 by July, 1997.

Secretary Sprynczynatyk reported the current level of Devils Lake at 1437.77. He said with the fall rain and winter inflow, the elevation will be near

**CORPS OF ENGINEERS
EMERGENCY OUTLET PLAN/
OPERATING PLAN FOR
DEVILS LAKE
(SWC Project No. 416-1)**

and demonstrates the degree to which an outlet would help moderate the rising lake levels. Reaching consensus of an emergency outlet plan could also expedite authorization for final design and construction of a permanent outlet as part of a comprehensive stabilization approach for Devils Lake.

The Corps of Engineers was directed to develop an emergency outlet study for Devils Lake. The plan, requested by the North Dakota Congressional Delegation, describes major features and costs of an outlet

The Devils Lake Emergency Outlet Plan was released on August 12, 1996. The Executive Summary was provided to the State Water Commission members. Preparation of the plan included a preliminary analysis of available information on topography, subsurface geology, real estate and engineering criteria. Information gathered from an ongoing feasibility study being conducted by the Corps of Engineers, the State Water Commission, and the Devils Lake Contingency Plan was used in preparing the outlet plan.

Secretary Sprynczynatyk stated that the emergency plan represents a consideration of key factors including cost, water quality, design and construction considerations, and environmental impacts. The plan describes a 12.8-mile channel project across the Spirit Lake Reservation with three holding dams and pump stations. The three-dams system is required to lift Devils Lake water nearly 60 feet until it reaches the natural basin divide and can then flow downhill to the Sheyenne River. The Corps of Engineers estimates the total cost of the emergency outlet project described in the plan to be \$21 million.

The Corps of Engineers, the State Water Commission, and the Devils Lake Emergency Management Committee conducted public meetings within the Devils Lake basin as well as downstream on the Sheyenne and Red Rivers to discuss the emergency outlet plan, to solicit the public's perception and concerns, and to develop a consensus regarding the outlet concept.

Secretary Sprynczynatyk said that the State Water Commission staff has been directed to develop the framework for an operating plan for the emergency outlet.

The State Water Commission members were provided the report titled "Devils Lake - Twin Lakes Inlet/Outlet Emergency Plan", dated November, 1996. Secretary Sprynczynatyk explained that the report summarizes several alternatives for an inlet/outlet to Devils Lake from the Sheyenne River. He said the information presented can be used to compare these alternatives to the plan presented in the Corps of Engineers Emergency Outlet Plan, however, he said the engineering conducted on the alternatives was not done to the level of the Corps' plan. Therefore, the cost estimates presented in this summary report have a higher degree of uncertainty than the cost estimates in the Corps' plan. He said the purpose of these cost estimates is to provide information to the decision-makers to assist them in determining if an alternative should be investigated further.

**CITY OF DEVILS LAKE
LEVEE PROJECT -
(SWC Project No. 416-2)**

The city of Devils Lake is currently protected by a series of levees constructed by the Corps of Engineers in the 1980s. These levees provide protection to elevation 1440 msl, with an additional five feet of freeboard. Secretary Sprynczynatyk explained that with the current level of Devils Lake, there is a reasonably good chance the lake could exceed 1440 msl in 1997. As a result, the Corps of Engineers has agreed to raise the levees five feet. The total cost of the project is currently estimated at \$7.5 million, although this cost could change due to various dike alignment alternatives which are being considered.

Secretary Sprynczynatyk stated that the project will be constructed in two stages. Stage 1 consisted of the key features that needed to be started last fall and are generally located in lower elevation areas. Stage 2 will be bid in early 1997.

Secretary Sprynczynatyk stated the total cost of Stage 1 is \$3,640,000. The Corps of Engineers will pay 75 percent of the costs, leaving a non-federal requirement of \$910,000. Secretary Sprynczynatyk explained that because of the lateness of the 1996 construction season, the Corps indicated it would not be able to complete Stage 1 in 1996; thus, the Corps

indicated \$350,000 for the right-of-way, design, and construction would be required in 1996. The state's share, based on a 50 percent cost share, was \$175,000. The balance of the state's share, assuming a \$7.5 million project, will be approximately \$760,000 which would be required in 1997.

At its August 22, 1996 meeting, the State Water Commission passed a motion to request approval of \$175,000 for the Devils Lake levee project from the state's contingency fund through the Emergency Commission, and to approve 50 percent cost sharing of the non-federal costs for 1996 for Stage 1 of the project, contingent upon action of the Emergency Commission. This request was approved by the Emergency Commission. The State Water Commission had also declared its intent to contribute the remaining state cost share in 1997 for the project, depending on the availability of funds.

Secretary Sprynczynatyk reported that the Corps of Engineers is progressing with the Devils Lake levee raise. The contractor for Stage 1 is Wanzek Construction, Inc. of Fargo. It is anticipated that bids will be let in February, 1997 for Stage 2. Efforts are being re-considered by the Corps of Engineers and the Ramsey County Water Resource District to include a subdivision south of the city of Devils Lake in the project.

**DEVILS LAKE EMERGENCY
RESPONSE PLAN -
UPPER BASIN STORAGE
(SWC Project No. 1882)**

Secretary Sprynczynatyk reported approximately 50 Available Storage Acreage Program (ASAP) sites that were applied for in 1996 were found to be feasible. Forty-six of the sites have been completed. The 46 sites inundate about 4,300 acres of land and initially stored approximately 8,000 acre-feet of water. He said since these holding sites evaporate and refill with subsequent rainfall, the net storage for these sites is greater than the 8,000 acre-feet it took to initially fill them. In addition, he said management of the Lake Irvine outlet and U. S. Fish and Wildlife Service efforts in the basin have included 5,500 acre-feet of storage, bringing the total volume of water held back to more than 13,500 acre-feet.

The State Water Commission has allocated funds in the amount of \$600,000 for the ASAP program, with an unallocated balance of \$190,102 as of August 28, 1996.

The current situation at Devils Lake shows the need to store water on the existing sites in 1997. The minimum cost to do this would be approximately \$347,000. According to the agreement with the landowners, March 15, 1997 is the last date to exercise the second-year option.

Sites deemed feasible from 1996 applications, but not implemented because of timing, were considered for implementation. Secretary Sprynczynatyk said the procedure to obtain new storage sites would be the same as in 1996. Applications will be taken, reviewed by the State Water Commission staff at the Devils Lake office, and an offer made to the landowner/renter. If accepted by both parties, the Commission staff will arrange for implementation of any facilities needed to accomplish the storage. Additional authority and funding will be necessary for new sites and to exercise the second-year option on existing sites. The funding requirement has not yet been determined.

At its meeting on September 4, 1996, the State Water Commission passed a motion to continue the Available Storage Acreage Program for 1997.

Secretary Sprynczynatyk indicated that water storage will be pursued throughout the fall and winter for storage in 1997. Additional water in the upper basin lakes will only be held during the summer to help reduce the annual peak on Devils Lake and to increase evaporative losses. Storage on the upper basin lakes may increase to 30,000 acre-feet in 1997. He said the total potential storage for 1997 through the ASAP program and the upper lakes basin is 53,500 acre-feet.

**DEVILS LAKE -
LAKE STABILIZATION
PROJECT UPDATE
(SWC PROJECT NO. 1712)**

Secretary Sprynczynatyk reported on the Corps of Engineers feasibility study that addresses the long-term stabilization of Devils Lake and basin-wide management. The plan addresses five general areas of interest set forth in Public Law 102-377, which directed the Corps of Engineers to initiate a feasibility study for Devils Lake. Those areas are: basin water management; lake stabilization; water quality; recreation; and enhancement and conservation of fish and wildlife. The feasibility study, as outlined in the scope of work, would be a three-year effort, at a cost of more than \$7 million.

On July 2, 1993, the State Water Commission approved the Phase 1 agreement of the Devils Lake Feasibility Study, and allocated \$500,000 from the Contract Fund. On July 19, 1995, the State Water Commission re-approved the unspent balance of \$423,488 for the Devils Lake long-term studies. Of this total, \$50,000 was previously obligated for Phase 1A of the feasibility study.

On February 23, 1996, the State Water Commission authorized the State Engineer to enter into an agreement for Phase 2A of the Devils Lake Feasibility Study, and approved the allocation of \$300,000 for the study from the funds presently allocated from the Contract Fund for the Devils Lake long-term studies. On April 29, 1996, the State Water Commission approved an additional allocation of \$35,500 for Phase 2A, which increased the total state contribution for Phase 2A of the study to \$335,500. Approximately \$38,000 of the \$423,488 remains unobligated.

Secretary Sprynczynatyk reported that the Corps of Engineers is continuing to address the Devils Lake stabilization efforts, but their current focus is on the flooding problems and the emergency outlet.

**DEVILS LAKE BASIN
WATER AUTHORITY
(SWC Project No. 416)**

Secretary Sprynczynatyk explained the proposed legislation to create the Devils Lake Basin authority. The Legislative Interim Water Resources

Committee approved the bill draft for recommendation to the Legislative Council at its meeting on October 8, 1996. He said if the legislation is passed, it would allow water management along hydrologic boundaries rather than county lines, and would provide for better management of the overall Devils Lake basin.

**DEVILS LAKE -
FEDERAL EMERGENCY
MANAGEMENT ASSOCIATION
INTERAGENCY TASK FORCE UPDATE
(SWC Project No. 1712)**

Secretary Sprynczynatyk briefed the Commission members on an Inter-agency Task Force effort underway through the Federal Emergency Management Association (FEMA). The effort involves identification of

the Devils Lake problems and to propose solutions to the various flooding impacts in the basin which could be implemented within five years.

The final report of the FEMA Devils Lake Interagency Task Force has been completed, and copies were provided to the Commission members. The report includes six tasks that should be done in order to lay the ground work for 18 action items to help alleviate flooding.

The task force continues to meet by telephone conference call meetings. Secretary Sprynczynatyk said regular meetings are held to ensure there is adequate coordination and communication at the federal, state, and local levels on the efforts to provide flood control at Devils Lake.

**DEVILS LAKE -
UNITED STATES-CANADA
JOINT TECHNICAL COMMITTEE
(SWC Project No. 416-1)**

Secretary Sprynczynatyk provided historical background on the Devils Lake basin, which has been considered a closed sub-basin of the Hudson Bay drainage for many

centuries. In the past, the Devils Lake chain of lakes overflowed through Stump Lake and Tolna Coulee to the Sheyenne River. A transfer of water from Devils Lake, via a constructed outlet to the Sheyenne River (Hudson Bay drainage) is one of the proposals being considered to relieve serious flooding concerns. Complicating the situation is a concern that hydrologic, water quality, and biological effects of a transfer could extend down the Sheyenne River into the Red River of the North and ultimately into Lake Winnipeg, potentially affecting Canadian interests throughout the Nelson River system.

The United States-Canada Joint Technical Committee (JTC), composed of federal, state, and provincial officials, has been investigating the technical aspects of potential impacts to Canada relative to the Boundary Waters Treaty of 1909.

In January, 1996, the JTC convened a 12-member United States-Canada working group to evaluate the hydrologic, water quality, and biological effects of a proposed outlet from Devils Lake, and the potential for various violations of Article IV of the United States-Canada Boundary Waters Treaty of 1909, which states "that water flowing across the boundary will not be polluted to the injury of health or property of the other country."

Secretary Sprynczynatyk reported the Devils Lake working group completed its efforts, and a report has been provided to the Joint Technical Committee.

The Canada and United States governments are continuing negotiations for the terms of reference to further guide the work of the Joint Technical Committee.

Secretary Sprynczynatyk said he is encouraged that the Joint Technical Committee has agreed to focus its efforts on the Corps of Engineers emergency outlet plan. The committee will submit its report to the governments in the near future.

**SWEETWATER-MORRISON
OUTLET PROJECT
(SWC Project No. 1746)**

Secretary Sprynczynatyk informed the Commission members that the Devils Lake Basin Joint Water Resource Board has agreed to sponsor and fund

a project to improve the control structure on the Morrison outlet in Ramsey County. The counties of Ramsey, Walsh, and Cavalier will be involved with the funding.

The Devils Lake Basin Joint Board requested technical assistance from the State Water Commission to proceed with engineering work to improve the control structure. Several alternatives have been considered by the Joint Board and the Ramsey County Water Resource District, with the preferred alternative to install a concrete weir using existing pilings for the foundation and to include stop logs for drawdown. The estimated cost of this alternative is \$43,000.

Secretary Sprynczynatyk stated the Commission's involvement in the project will not require financial assistance. An agreement is being negotiated with the Devils Lake Basin Joint Board for the Commission staff to provide engineering assistance for improvements to the control structure.

**DEVILS LAKE EMERGENCY
MANAGEMENT COMMITTEE
(SWC Project No. 416)**

Joe Belford, Co-Chairman of the Devils Lake Emergency Management Committee, appeared before the State Water Commission to

address the committee's activities in the Devils Lake and Red River basins. In conclusion, Mr. Belford, on behalf of the committee, expressed appreciation to the Governor and his staff, the State Water Commission, and the State Engineer and staff for their efforts and assistance in addressing the Devils Lake flood problems.

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

James Lennington, Project Manager for the Northwest Area Water Supply project, provided a briefing of a meeting held on October 21, 1996 with

representatives of the State Water Commission staff, the Garrison Diversion Conservancy District, and the Bureau of Reclamation to discuss payment for the use of the Garrison Diversion Unit facilities by the Northwest Area Water Supply project. The proposed intake location for the NAWS project is on Lake Audubon, which is maintained at an elevation of approximately 1849 by the Snake Creek pumping plant, which is a Garrison Diversion Unit project feature. Any use of a Garrison Diversion Unit facility will require repayment of reimbursable costs of the project. Mr. Lennington explained the process of negotiating repayment.

Mr. Lennington said locating the NAWS project intake in Lake Audubon could save the project as much as \$7 million because of its nearly constant water surface elevation. It would also have the added public benefit of utilizing the Garrison Diversion Unit facilities. Negotiating repayment for NAWS will also set the stage for future repayment negotiations for other uses of Garrison Diversion Unit project water such as in the Red River Valley.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF RECOMMENDATION
FOR SELECTION AND ENGAGEMENT
OF BOND COUNSEL FOR ISSUANCE
OF NORTH DAKOTA WATER
DEVELOPMENT REVENUE BONDS
(SWC Project No. 1885)**

On October 16, 1996, the State Water Commission adopted a resolution of intent to issue and sell North Dakota Water Development Revenue Bonds. The Commission also approved its authorized officers to issue a request for proposals for program development and general bond counsel services for the next four years.

On October 22, 1996, the Commission mailed requests for proposals to 10 bond counsel firms which have a recognized bond counsel practice. The 10 firms either have offices in North Dakota, have provided bond counsel services to the Industrial Commission in the past, or have indicated an interest in receiving North Dakota requests for proposals. The Commission received eight responses, seven of which were proposals from qualified bond counsel firms. The eighth response was a declination to offer a proposal.

The proposals were reviewed by a committee and based on the following criteria: 1) experience and demonstrated knowledge with North Dakota and with comparable financing; 2) expertise of personnel assigned to the Commission's bond issuance as both bond counsel and tax counsel; 3) service delivery capabilities; 4) responsiveness of proposal; and 5) fees. The top three firms ranked by the committee in order of priority are Beauclair & Cook, Dorsey & Whitney, and Arntson & Stewart.

Secretary Sprynczynatyk said that based on its review, including a general discussion of the proposals in light of the above criteria, the committee recommended that the State Water Commission direct and engage Beauclair & Cook as bond counsel for program development and general bond counsel services for the next four years for the North Dakota Water Development Revenue Bond program, and that the authorized officers begin negotiations with Beauclair & Cook for a contract for the proposed work. The committee also recommended that during the negotiations, the State Engineer be required to hold firm on an absolute upper limit for fees so that the Commission will know exactly the maximum fee for bond counsel.

*It was moved by Commissioner Olin and seconded by
Commissioner Ames that:*

- 1) the State Water Commission select and engage
Beauclair & Cook as bond counsel for program
development and general bond counsel for the
next four years for the North Dakota Water
Development Revenue Bond program;*

- 2) *the authorized officers begin negotiations with Beauclair & Cook for a contract for the proposed work; and*
- 3) *during the negotiations, the State Engineer be required to hold firm on an absolute upper limit for fees so that the State Water Commission will know exactly the maximum fee for bond counsel.*

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

James Lennington stated that on November 15, 1996, the Commission mailed requests for proposals to provide investment banking (underwriting) services to 10 firms which had expressed an interest to the North Dakota Bond Bank in the past. The due date for receiving the responses is December 4, 1996.

**CONSIDERATION AND APPROVAL
OF REQUEST FOR FISCAL YEAR
1996 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 Sprynzynatyk 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 (GDU) appropriation. The Fiscal Year 1996 GDU appropriation was \$24.9 million; therefore, the state commitment would be \$37,350. The State Water Commission's share is one-third of the \$37,350, or \$12,450.

Pam Dryer, Executive Director of the North Dakota Wetlands Trust, provided an explanation of the Wetlands Trust and its activities.

It was the recommendation of the State Engineer that the State Water Commission obligate \$12,450 for one-third of the state's Fiscal Year 1996 Wetlands Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

It was moved by Commissioner Bjornson and seconded by Commissioner Ames that the State Water Commission approve the obligation of \$12,450 for one-third of the state's Fiscal Year 1996 Wetlands Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
HIGH VALUE IRRIGATED CROPS
TASK FORCE FOR EXPENDITURE
OF \$2,000 TO SUPPORT ACTIVITIES
FOR 1997
(SWC Project No. 1389)**

A request was presented for the Commission's consideration from the High Value Irrigated Crops Task Force for cost sharing for 1997. The State Water Commission has supported the efforts of the task force during the past five years in the amount of \$2,000 each year.

The task force is made up of representatives of organizations from the public and private sector. They include rural electric cooperatives, investor-owned electric utilities, local economic development organizations, and governmental entities. Funds from organizations match a grant of approximately \$17,000 from the Agricultural Products Utilization Commission. These funds match funds from NDSU Extension Service one for one, which support one full-time coordinator position.

Through its coordinator, the task force has provided major assistance to several projects involving high value crops. Examples include the organization of the Central Dakota Growers; the AVIKO potato processing plant at Jamestown, which recently commenced operations; Northern Produce, a carrot packaging and storage cooperative at Hatton; and establishing the North Dakota Garlic Association.

In 1997, the task force will focus on developing opportunities in other vegetable production, principally carrots.

The diversification of the state's agricultural production base to high value crops and their processing is a significant component of economic development activities. Many of the acreage devoted to these crops will be irrigated. The creation of opportunities provides general information on water resources, water rights, and irrigation districts. The transfer of this information by the coordinator reduces the agency staff needed as projects go forward.

It was the recommendation of the State Engineer that because the activities of the task force are continuing to be successful in developing new opportunities in the development of the state's water resources and economy, the State Water Commission approve the expenditure of \$2,000 for 1997 from the Contract Fund.

It was moved by Commissioner Thompson and seconded by Commissioner Ames that the State Water Commission support the activities of the High Value Irrigated Crops Task Force, and approve the expenditure of \$2,000 for 1997 from the Contract Fund. This motion is contingent upon the availability of funds.

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

**APPROVAL OF ADDITIONAL
\$10,000 FROM CONTRACT FUND
FOR NORTH LEMMON LAKE
DAM SAFETY MODIFICATION
PROJECT IN ADAMS COUNTY
(SWC Project No. 543)**

On May 24, 1996, the State Water Commission passed a motion to approve cost sharing for the North Lemmon Lake Dam safety modification project in Adams County, in the amount of \$53,500, with \$23,000

considered in-kind services, and \$30,500 from the Contract Fund.

Bids were opened for the modification project at North Lemmon Lake Dam on August 20, 1996. The successful low bidder was the firm of Aggregate Construction, with a bid of \$119,800. The contract was awarded on August 28, 1996. The work involved correcting embankment and foundation seepage and stabilization of the downstream slope of the embankment. The work was completed on November 1, 1996.

Secretary Sprynczynatyk explained that the final project cost will be approximately \$150,000 as originally estimated. Since the State Water Commission's in-kind cost is less than estimated, \$13,000, an additional \$10,000 is needed from the Contract Fund to meet the State Water Commission's \$53,500 obligation for the project.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$10,000 from the Contract Fund for the North Lemmon Lake Dam safety modification project. Approval of the additional funds would increase the State Water Commission's commitment from the Contract Fund to \$40,500.

It was moved by Commissioner Olin and seconded by Commissioner Ames that the State Water Commission approve an additional \$10,000 from the Contract Fund for the North Lemmon Lake Dam safety modification project. This will increase the State Water Commission's commitment from the Contract Fund to \$40,500. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
MCKENZIE COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARING OF FEASIBILITY STUDY
OF DEVELOPING IRRIGATION IN
ELK, CHARBONNEAU, AND TIMBER
CREEK AREA
(SWC Project No. 1857)**

A request from the McKenzie County Water Resource District was presented for the Commission's consideration for cost sharing assistance to conduct a study to determine the feasibility of developing irrigation in the Elk, Charbonneau, and Timber Creek area.

Secretary Sprynczynatyk stated that based on the Natural Resources Conservation Service's soils survey, the landowners have identified approximately 8,000-10,000 acres of land that could be irrigated. Most of this land is conditional for irrigation, and although it may be possible to irrigate these conditional soils, additional soils work will be required.

The estimated cost of the feasibility study is \$50,000. Under the State Water Commission's policy and guidelines for cost sharing, 50 percent of the eligible project costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$25,000.

David Johnson, Chairman of the McKenzie County Water Resource District, provided information relative to the proposed feasibility study and requested the Commission's favorable consideration on the cost sharing request.

It was the recommendation of the State Engineer that the State Water Commission approve 50 percent cost sharing, not to exceed \$25,000 from the Contract Fund, to conduct a study to determine the feasibility of developing irrigation in the Elk, Charbonneau, and Timber Creek area. It was also recommended by the State Engineer that if the State Water Commission approves cost sharing, approval be contingent that the McKenzie County Water Resource Board use the process described in chapter 54-44.7 of the North Dakota Century Code to select the engineer to conduct the study.

It was moved by Commissioner Vogel and seconded by Commissioner Thompson that the State Water Commission approve cost sharing with the McKenzie County Water Resource District for 50 percent of the eligible costs, not to exceed \$25,000 from the Contract Fund, for a feasibility study of developing irrigation in the Elk, Charbonneau, and Timber Creek area. This motion is contingent upon the availability of funds, and that the McKenzie County Water Resource Board use the process described in chapter 54-44.7 of the North Dakota Century Code to select the engineer to conduct the study.

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

**DEFERRAL OF REQUEST FROM
RICHLAND COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARING ON RICHLAND COUNTY
DRAIN NO. 95 PROJECT
(SWC Project No. 1174)**

A request from the Richland County Water Resource District was presented for the Commission's consideration for cost sharing on the Richland County Drain No. 95 project.

The project includes cleaning and improving sectionline roads, and installing culverts and drop structures. There are approximately 10 miles of main drainage ditch, which eventually discharge into Antelope Creek.

Drain Permit No. 2756 has been applied for and has been approved by the Richland County Water Resource District. There are impacts to wetlands, which will require mitigation in order to be in compliance with Section 404 and the Farm Bill. This project is not of statewide or interdistrict significance. A permit for Section 404 of the Clean Water Act, administered by the Corps of Engineers, has been applied for and its approval is pending.

The estimated cost of the project is \$1,220,110, with eligible costs of \$925,435. Under the State Water Commission's policy and guidelines for cost sharing, 40 percent of the eligible project costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$370,200.

It was the recommendation of the State Engineer that due to the pending Corps of Engineers Section 404 permit, the State Water Commission defer action on the Richland County Drain No. 95 project.

It was the consensus of the State Water Commission that the State Engineer be directed to contact the Corps of Engineers in an effort to expedite the Section 404 permit process.

**DEFERRAL OF REQUEST FROM
STEELE COUNTY WATER RESOURCE
DISTRICT FOR COST SHARING ON
STEELE COUNTY DRAIN NO. 12
PROJECT
(SWC Project No. 1223)**

A request from the Steele County Water Resource District was presented for the Commission's consideration for cost sharing on the Steele County Drain No. 12 project.

The project includes cleaning and improving the sectionline road ditch, and installing culverts and a drop structure. There are approximately 2.5 miles of drain, which eventually discharges into a tributary of the Middle Branch of the Goose River.

Drain Permit No. 2786 has been applied for and has been approved by the Steele County Water Resource District. There are no impacts to any wetlands and this project is not of statewide or interdistrict significance. A permit for Section 404 of the Clean Water Act, administered by the Corps of Engineers, has been applied for and its approval is pending.

The engineer's cost estimate for the project is \$102,427, with eligible costs of \$84,065. Under the State Water Commission's policy and guidelines for cost sharing, 40 percent of the eligible project costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$33,626.

It was the recommendation of the State Engineer that due to the pending Corps of Engineers Section 404 permit, the State Water Commission defer action on the Steele County Drain No. 12 project.

It was the consensus of the State Water Commission that the State Engineer be directed to contact the Corps of Engineers in an effort to expedite the Section 404 permit process.

1997 LEGISLATION

Secretary Sprynczynatyk recommended the following bill drafts, which are under the authority of the State Water Commission and the State Engineer, for consideration to the 1997 Legislature:

State Water Commission:

- 1) A bill draft relating to meetings of the State Water Commission.
- 2) A bill draft relating to the purpose of the Contract Fund.

State Engineer:

- 1) A bill draft relating to issuing temporary permits for dikes, dams or other devices in cases of an emergency.
- 2) A bill draft relating to the definition of rural water systems and to the forfeiture of water rights held by rural water supply systems designed to serve regional needs.

Secretary Sprynczynatyk presented bill drafts relating to the capital costs and the issuance of bonds to finance the Southwest Pipeline Project. He stated he is working with area legislators for introduction of the bill drafts.

Commissioner Ames requested the State Engineer and the legal counsel to review possible legislation relating to an individual loan fund for development of irrigation projects in the state.

**NORTH DAKOTA
WATER COALITION**

The North Dakota Water Coalition was established in July, 1994 as an initiative of the Flagship Initiative #6 of the North Dakota Vision 2000 Report, which states, in part: "The North Dakota 2000 Committee recommends that North Dakota establish a "Coalition for Infrastructure Projects" to further develop three key elements of our state's infrastructure: water resources, telecommunications, and advanced air transportation." The Coalition is made up of approximately 30 entities, municipalities, and other groups from across North Dakota.

The mission of the North Dakota Water Coalition is to complete North Dakota's infrastructure for economic stability and growth, and quality of life.

The North Dakota Water Coalition goals are:

- 1) To provide an adequate water supply across North Dakota for manufacturing, industrial, energy bi-product utilization, agriculture, agricultural processing, recreation, wildlife, municipalities, and rural water systems which have an inadequate supply or quality of water:
 - Complete a workable and achievable Garrison Diversion project to provide a multiple-use water supply to central and eastern North Dakota, including the James, Sheyenne, and Red Rivers
 - Complete the Southwest Pipeline project
 - Stabilize Devils Lake
 - Undertake and complete the Northwest Area Water Supply project
 - Secure adequate funding for the MR&I program
 - Develop multi-use statewide water impoundments for recreation, wildlife, and fishing

- 2) To complete projects to control and alleviate floodwaters and damages, including such projects as increasing the flood control capacities of the Baldhill Dam and Reservoir, the Maple River Dam, and others.

In conjunction with the Interim Legislative Water Resources Committee's study, the Coalition has undertaken the task of establishing water priorities for the numerous water needs of North Dakota. On April 29, 1996, the Commission members were advised of the process of establishing the water priorities:

- 1) Identify inventory of statewide water needs and solutions
- 2) Establish consensus on inventory of water needs and solutions with regional and statewide organizations
- 3) Prioritize water needs and solutions
- 4) Establish consensus on water priorities with regional and state organizations
- 5) Present consensus of water priorities to the Interim Legislative Water Resources Committee, Governor, Legislative Leaders, Congressional Delegation, and 1997 Legislative Assembly

The final North Dakota Water Priorities report, dated November, 1996, was distributed to the State Water Commission members. Under the above outline of steps, funding of the state's share of North Dakota's water infrastructure can be considered by the Governor and the 1997 Legislature, with the united support of many statewide and regional groups.

INTERIM LEGISLATIVE WATER RESOURCES COMMITTEE

The 1995 Legislature passed Senate Concurrent Resolution No. 4033 directing the Legislative Council to study the financing and funding needs for development and completion of the state's water resources infrastructure and methods for development of a program to provide financing and funding of water supply facilities in the state. As a result of SCR 4033, the Legislative Council established a Water Resources Committee to study the state's water needs and possible funding. The interim study began on June 23, 1995.

The Legislature also passed Senate Concurrent Resolution No. 4053 directing the Legislative Council to study the state's water laws concerning their effect on the efficient use of water and their effect on the holders of senior water rights.

The Interim Legislative Water Resources Committee met on October 8, 1996 and approved the following bill drafts to be recommended to the Legislative Council:

A bill draft to provide for a statewide water development program and the reallocation of the Oil Extraction Tax Development Fund

A bill draft to provide for creation of the Devils Lake Basin Water Authority

A bill draft to provide a contingent plan for construction of an outlet from Devils Lake to the Sheyenne River

The Water Resources Committee passed a bill draft on November 8, 1996, relating to establishing a water supply for eastern North Dakota as a critical priority.

Secretary Sprynczynatyk said he was pleased with the efforts of the Interim Legislative Water Resources Committee relative to the water resource needs of the state. He said if the bills the committee is proposing are passed into law, it will have a significant impact on the future of water development in the state.

MISSOURI RIVER UPDATE (SWC Project No. 1392)

Secretary Sprynczynatyk reported that since May, 1995, the Missouri River Basin Association has been working with a team of consensus-building experts to reach agreement on issues that have divided the basin's states and tribes in the past. Various issues have been discussed in depth, papers have been presented which outlined the problems and possible solutions, and the aid of several agencies and committees have been enlisted.

In February, 1996, the Missouri River Basin Association directors decided to initiate a basin-wide monitoring program, which would document the current hydrological and biological conditions of the river system and would track the effectiveness of programs designed to improve the basin's fish and wildlife resources. The directors also decided to recommend that the Corps of Engineers drop the idea of a spring rise and acknowledge in the Master Manual that tribal water rights exist. The Association directors reached agreement on these issues and discussed various other issues as part of their continuing efforts to exert a stronger influence over water policy decisions by presenting a united front to the federal government. The Association directors plan to deliver a list of recommendations to the Corps and other federal agencies.

During the past several months, the Missouri River Basin Association has developed a planning process to recommend the best methods for maximizing basin water uses and interests.

The planning effort involves representation of the basin's primary water interests with state and tribal representatives in a search for ways to obtain maximum benefits for all water uses. The following goals have been identified to meet the needs of the water users and guide the management and operation of the Missouri River:

- **Recreation Goal.** Promote the stability and growth of recreational use of the river through water management, economic assistance, and recreational planning.
- **Navigation Goal.** Promote the stability and growth of navigation on the Missouri River system through water management, economic assistance, and transportation planning.
- **Water Supply Goal.** Enhance water supply in the basin for municipal, rural, industrial, irrigation, and agricultural use.
- **Habitat Goal.** Identify a comprehensive set of programs, both new and existing, that can enhance habitat within the basin.
- **Bank and Shoreline Integrity Goal.** Maintain the integrity of river banks and lake shoreline where appropriate throughout the system to protect present and future water uses.
- **Flood Control Goal.** Operate the Missouri River system to maintain or enhance flood control benefits.
- **Hydropower Goal.** Maintain or enhance hydropower production with consideration for equitable distribution of the benefits among the tribes and states.
- **Future Depletion Goal.** Develop a mechanism for equitable allocation among the basin states and tribes of the risks of future depletions.
- **Monitoring Goal.** Develop a monitoring system that provides adequate information to characterize and understand the existing system and evaluate the impacts of changes.

As part of the Association's planning process, representatives of the basin's water interests were invited to join task force discussions on recreation, navigation, water supply, habitat, bank/shoreline/flood control, and hydropower on June 13-14, 1996 in Bismarck. The charge to the task forces were to identify ways to reach the stated goals of obtaining maximum benefits for all water users in each of the six interest areas in a manner that reflects a basin-wide perspective.

Secretary Sprynczynatyk said there was general consensus among the conference participants of the need for a Missouri River Basin authority to manage the Missouri River rather than the federal government. The strong spirit of basin-wide cooperation at the conference indicates a basic change in the way water management issues will be addressed along the Missouri River. He said we are trying to overcome the decades of confrontational politics that have dominated the decision-making in the basin, and come up with new ways of decision-making that will work better for all of us who live in the basin and depend on the river system.

The ideas proposed from the conference were reviewed by the Association directors. At its December 2, 1996 meeting, the Association considered draft recommendations, with eventual presentation to the Corps of Engineers and other federal agencies. Secretary Sprynczynatyk said the recommendations include a timeframe for completion of issues, and he said he is hopeful "that many of the problems can be addressed and alleviated in the management of the Missouri River."

**RED RIVER BASIN BOARD
STATUS REPORT
(SWC No. AOC/RBB)**

The Red River Basin Board was organized to develop and cause to be implemented, a comprehensive water management plan for the Red River basin and to facilitate and pursue the resolution of inter-jurisdictional issues. The board of directors is comprised of five members each from Minnesota and North Dakota; seven members from Manitoba; two members from South Dakota; and two members from the tribal/aboriginal reservations in Minnesota, North Dakota, and Manitoba. The first meeting of the Board will be held on or about April 1, 1997.

The Red River Basin Board was organized to develop and cause to be implemented, a comprehensive water management plan for the Red River

Secretary Sprynczynatyk reported on the Red River Basin Land and Water International Summit conference held in Winnipeg, Manitoba on November 13-15, 1996. A conference resolution was passed endorsing the activation of the Red River Basin Board. Material presented at the conference is attached hereto as *APPENDIX "F"*.

**TWELVE-MILE AND TRAUX
TOWNSHIPS (T&T) PIPELINE
PROJECT IN WILLIAMS COUNTY
(SWC Project No. 1315)**

Secretary Sprynczynatyk briefed the Commission members relative to a proposed project involving the Twelve-Mile and Traux Townships (T&T) Pipeline in Williams County. The project will provide a safe and reliable water source for agricultural use, especially livestock water. Currently, the lack of an adequate water supply and a distribution system exists in the project area. Poor livestock and water distribution, caused primarily by lack of water sources, results in over-grazing of areas close to water and under utilization of remote areas. The project will allow

Secretary Sprynczynatyk briefed the Commission members relative to a proposed project involving the Twelve-Mile and Traux Townships (T&T) Pipeline in Williams County.

better management of pasture and rangeland by providing watering sites. This will improve the rangeland and pastureland conditions and increase forage production on these lands ensuring long-term sustainability of the grass resource and on-farm income.

The project area consists of 80 square miles in Williams County. Twelve livestock producers have signed contracts with the Natural Resources Conservation Service to participate in the project. Additional producers may be interested depending on the cost of the project.

Replacement of dams, dugouts and springs with water from the project would not only improve grassland conditions and increase livestock production, but would improve surface water quality in the project area and downstream.

Secretary Sprynczynatyk stated that the Williams County Water Resource District has requested cost sharing from the State Water Commission. No action on the cost sharing request was taken by the Commission at this meeting.

**APPROVAL OF RESOLUTION
NO. 96-12-473, IN APPRECIATION
TO SARAH VOGEL
(SWC Resolution No. 96-12-473)**

Secretary Sprynczynatyk presented a draft resolution of appreciation to Sarah Vogel, Commissioner of Agriculture, for the State Water Commission's consideration.

It was moved by Governor Schafer, seconded by Commissioner DeWitz, and unanimously carried, that the State Water Commission approve Resolution No. 96-12-473, In Appreciation to Sarah Vogel. SEE APPENDIX "G".

**AMERICAN CRYSTAL SUGAR
LAWSUIT AGAINST STATE
WATER COMMISSION AND
STATE ENGINEER**

Secretary Sprynczynatyk informed the Commission members that on November 22, 1996, American Crystal Sugar brought a lawsuit against the State Water Commission and the State Engineer to determine whether American Crystal Sugar has a right to store water behind Baldhill Dam in Lake Ashtabula. The complaint alleges that when Baldhill Dam was built in the 1940s, American Crystal Sugar contracted with the State Water Commission and agreed to contribute private funds for building Baldhill Dam in exchange for a right to water stored in Lake Ashtabula. American Crystal Sugar alleges that in consideration for its contribution, American Crystal Sugar was granted a reserved right in the water stored in the

reservoir and alleges that the State Engineer has breached the agreement between the State Water Commission and American Crystal Sugar by not recognizing American Crystal Sugar's right to its allocation of stored water.

Secretary Sprynczynatyk stated that American Crystal Sugar, as well as other companies and some municipalities, did contribute to the original construction of Baldhill Dam. In order to obtain a water right, however, he said all contributors were required to obtain a water permit from the state. The position of the State Engineer's office has been that because American Crystal Sugar never filed or received a conditional water permit to appropriate the water from Lake Ashtabula it has not acquired a water right.

The State Water Commission and the State Engineer are required to file an answer by December 12, 1996. Secretary Sprynczynatyk stated the legal counsel for the State Water Commission and the staff are in the process of reviewing the file for preparation of the answer.

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

/S/ Edward T. Schafer _____
Edward T. Schafer
Governor-Chairman

SEAL

/S/ David A. Sprynczynatyk _____
David A. Sprynczynatyk
State Engineer, and
Chief Engineer-Secretary

