

## **MINUTES**

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

**September 11, 1997**

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on September 11, 1997. Governor-Chairman, Edward T. Schafer, called the meeting to order at 1:30 PM, 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  
Roger Johnson, Commissioner, Department of Agriculture, Bismarck  
Florenz Bjornson, Member from West Fargo  
Jack Olin, Member from Dickinson  
Harley Swenson, Member from Bismarck  
Robert Thompson, Member from Page  
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **MEMBERS ABSENT:**

Mike Ames, Member from Williston  
Judith DeWitz, Member from Tappen  
Elmer Hillesland, Member from Grand Forks

#### **OTHERS PRESENT:**

State Water Commission Staff  
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.

#### **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 JULY 22, 1997 STATE WATER**

The minutes of the July 22, 1997 State Water Commission meeting were

**COMMISSION MEETING -  
APPROVED**

approved by the following motion:

*It was moved by Commissioner Swenson, seconded by Commissioner Olin, and unanimously carried, that the minutes of the July 22, 1997 State Water Commission meeting be approved as prepared.*

**FINANCIAL STATEMENT -  
AGENCY OPERATIONS**

Secretary Sprynczynatyk presented and discussed the Program Budget

Expenditures for the period ending July 31, 1997, reflecting 4 percent of the 1997-1999 biennium. *SEE APPENDIX "A"*

The 1997 legislature approved the reclassification of a vacant Administrative Secretary II position in the Administrative and Accounting Support Services Division to an Accounting Manager II position to meet increasing accounting and budgetary requirements. Sharon Heap, who was hired for the position, effective August 19, 1997, was introduced to the Commission.

**FINANCIAL STATEMENT -  
RESOURCES TRUST FUND**

The legislature approved \$13,473,548 of spending authority from the Resources Trust Fund, including \$2

million of obligated carryover. Secretary Sprynczynatyk explained the revenue projections will be less due to a lower beginning balance and lower Southwest Pipeline Project capital repayment revenues. The revenue projection for the Resources Trust Fund for the 1997-1999 biennium is attached as *APPENDIX "B"*.

Secretary Sprynczynatyk reviewed and discussed the Contract Fund for the 1997-1999 biennium. The Contract Fund receives funds from several sources, including the Resources Trust Fund, the general fund, federal funds, and miscellaneous other funds. A summary of the funding sources and the State Water Commission's recommendation to the 1997 legislature of projects that are eligible for funding is attached as *APPENDIX "C"*. The State Water Commission has the discretion of allocating these funds based on project need. The unallocated balance in the Resources Trust Fund is \$10,092,362.

**COST SHARING POLICY  
FOR DRAINAGE PROJECTS  
(SWC File AS/SWC/POL)**

At the July 22, 1997 State Water Commission meeting, the policy and guidelines on cost sharing for drainage projects were discussed.

Secretary Sprynczynatyk explained the current availability of funding, and he said in order to ensure that funds are available for eligible projects throughout the state, it is necessary to re-visit the State Water Commission's policy and guidelines for cost sharing on drainage projects.



The State Water Commission's guidelines on cost sharing for drainage projects is recorded in a 1982 document titled State Water Commission Cost Sharing Guidelines for Water Related Works and Facilities. These guidelines were revised in 1985. A summary of the policy and guidelines prepared by the State Water Commission staff, and the 1985 revised policy are attached as *APPENDIX "D"*.

Secretary Sprynczynatyk explained the water resource districts' involvement on cost sharing for projects. In order to have local input to the review of the cost share policies, the North Dakota Water Resource Districts Association has been invited to nominate three to five people to work with the Commission members and staff to further review the cost share policies and recommend possible changes to the Commission for consideration. The procedure as recommended by the State Engineer received the Commission's unanimous concurrence.

**STATE WATER COMMISSION  
INDEMNIFICATION POLICY  
(SWC File AS/SWC/POL)**

explained that, in the past, the Commission has required the entity it contracts with to indemnify the Commission from any and all claims, including expenses and attorney's fees which may arise out of the agreement.

The State Water Commission enters into several contracts with political subdivisions each year on various projects. Secretary Sprynczynatyk

The 1997 legislature revised the State Tort Claims Act to require that a contract between the state and a political subdivision may not contain a provision that requires one party to assume the liability of the other or the liability of a third party, or to bear the cost of defense in actions against the other or against a third party unless the agreement is entered into in good faith and is set forth in a separate writing signed by both parties and supported by adequate consideration which must be stated in the agreement.

The legislative intent represented in this revision of the Act is that the state and political subdivision should not attempt to transfer liability or associated defense costs to each other as a routine matter in contracts between them. Such transfers are not prohibited, but they are not intended to be used indiscriminately.

Secretary Sprynczynatyk said in accordance with this legislative intent, the Risk Management Division of the Office of Management and Budget has recommended that contracts between state agencies and political subdivisions use a limited indemnification form in most instances.

**The limited indemnification language recommended requires each party to assume its own liability and expenses, such as defense and investigation costs, relating to its own acts. Risk Management also recommended that for certain unique agreements between a state agency and a political subdivision that each party assume liability for its own acts, but the agreement requires one party to be responsible for expenses, including defense and investigation costs, for the joint liability of the parties. Risk Management refers to this as the intergovernmental form of indemnification. Examples of unique cases would be when the state agency determines that 1) the benefit to the contracting political subdivision is much greater than to the state; 2) it would be an appropriate use of state taxpayers' funds to pay costs associated with claims arising from the agreement; or 3) the state has no control over the activities of the political subdivision or its agents related to the agreement. According to Risk Management, funds passing through contracts are not considered unique. The law does not prohibit the contract from requiring contractors hired by the state or political subdivisions to indemnify the state or the political subdivision, or both, for all claims resulting from the contract.**

**Risk Management recommended that if the state enters into contracts with political subdivisions that the political subdivision be required to keep commercial general liability insurance covering claims which may arise out of the agreement. Minimum limits recommended are \$250,000 per person and \$500,000 per occurrence. If unique circumstances exist, then the minimum limits of liability recommended are \$250,000 per person and \$1 million per occurrence, with the state endorsed on the policy as an additional insured which would cover the costs of defense in cases where the state is sued.**

**It was the recommendation of the State Engineer that the State Water Commission utilize the limited indemnification language in routine contracts with political subdivisions and the intergovernmental form in unique cases as it may determine. The State Engineer also recommended that Commission contracts with political subdivisions require the political subdivisions to be insured as recommended by Risk Management.**

***It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission:***

***1) utilize the limited indemnification language in routine contracts with political subdivisions and the intergovernmental form in unique cases as it may determine; and***

*2) contracts with political subdivisions require the political subdivisions to be insured as recommended by the Risk Management Division of the Office of Management and Budget.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nays. The Chairman declared the motion unanimously carried.*

**APPROVAL OF REQUEST FROM STEELE COUNTY WATER RESOURCE DISTRICT FOR COST SHARING ON STEELE COUNTY DRAIN NO. 8**

**(SWC Project No. 1891)**

A request from the Steele County Water Resource District was presented for the Commission's consideration for cost sharing in the construction of the Steele County Drain

No. 8 assessment project.

The project involves cleaning and improving sectionline road ditches, installing culverts, and three drop structures. Approximately 2.25 miles of main drain and four laterals discharge into the South Branch Goose River about 8 miles southwest of Portland, North Dakota.

Drain Permit No. 2819 was approved by the Steele County Water Resource District. It was determined the project is not of statewide or of interdistrict significance.

The engineer's cost estimate for the project is \$290,603, of which \$215,477 is eligible for cost sharing. Under the State Water Commission's policy and guidelines for cost sharing, 40 percent of the eligible costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$86,200.

Donald Elston, Chairman of the Steele County Water Resource District, provided information relative to the project, and requested the Commission's favorable consideration of the cost share request.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing of 40 percent of the eligible costs, not to exceed \$86,200 from the Contract Fund, for Steele County Drain No. 8.



*It was moved by Commissioner Thompson and seconded by Commissioner Olin that the State Water Commission approve cost sharing in 40 percent of the eligible costs, not to exceed \$86,200 from the Contract Fund, for Steele County Drain No. 8. This motion is contingent upon the availability of funds.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**APPROVAL OF REQUEST FROM  
TRAILL COUNTY WATER  
RESOURCE DISTRICT FOR COST  
SHARING ON TRAILL COUNTY  
DRAIN NO. 55  
(SWC Project No. 1893)**

A request from the Traill County Water Resource District was presented for the Commission's consideration for cost sharing on construction of Traill County Drain No. 55.

The project consists of excavation of a drainage channel and resizing and placement of culverts. Traill County Drain No. 55 is approximately four miles in length, and is an assessment drain that outlets into the Elm River approximately four miles east of Clifford, North Dakota.

Drain Permit No. 2820 has been approved by the Traill County Water Resource District. It was determined the project is not of statewide or of interdistrict significance.

The engineer's cost estimate for the project is \$193,170, of which \$162,220 is eligible for cost sharing. Under the State Water Commission's policy and guidelines for cost sharing, 40 percent of the eligible costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$64,888.

Raymond Kraling, Traill County Water Resource District board member, provided information relative to Traill County Drain No. 55, and requested the Commission's favorable consideration of the District's cost share request.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing of 40 percent of the eligible costs, not to exceed \$64,888 from the Contract Fund, for Traill County Drain No. 55.

*It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve cost sharing in 40 percent of the eligible costs, not to exceed \$64,888 from the Contract Fund, for Traill County Drain No. 55. This motion is contingent upon the availability of funds.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**APPROVAL OF REQUEST FROM  
TRAILL COUNTY WATER  
RESOURCE DISTRICT FOR COST  
SHARING ON TRAILL COUNTY  
DRAIN NO. 56  
(SWC Project No. 1893)**

A request from the Traill County Water Resource District was presented for the Commission's consideration for cost sharing in the construction of Traill County Drain No. 56.

The project consists of the excavation of drainage channels and resizing and placement of culverts. Traill County Drain No. 56 is approximately three miles in length and is located on both sides of highway 200A. This is an assessment drain that outlets into the north branch of the Elm River approximately five miles northeast of Blanchard, North Dakota.

Drain Permit No. 2780 has been approved by the Traill County Water Resource District. It was determined the project is not of statewide or of interdistrict significance.

The engineer's cost estimate for the project is \$71,771, of which \$59,999 is eligible for cost sharing. Under the State Water Commission's policy and guidelines for cost sharing, 40 percent of the eligible costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$24,000.

Raymond Kraling, Traill County Water Resource District board member, provided additional information relative to Traill County Drain No. 56, and requested the Commission's favorable consideration of the cost share request.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing of 40 percent of the eligible costs, not to exceed \$24,000 from the Contract Fund, for Traill County Drain No. 56.

*It was moved by Commissioner Johnson and seconded by Commissioner Bjornson that the State Water Commission approve cost sharing in 40 percent of the eligible costs, not to exceed \$24,000 from the Contract Fund, for Traill County Drain No. 56. This motion is contingent upon the availability of funds.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**APPROVAL OF COST SHARING  
FOR NORTH DAKOTA CLOUD  
MODIFICATION PROJECT  
(SWC Files ACT/RES & AS/SWC/ARB)**

In considering the funding needs for North Dakota water projects, the 1997 legislature identified \$125,000 within the Resources Trust Fund in the 1997-1999 biennium to meet, in part,

the state's cost share of the North Dakota Cloud Modification project (NDCMP). The NDCMP is an operational summertime cloud seeding program designed to increase rainfall and decrease hail damage. Counties presently participating in the program are Bowman, McKenzie, Mountrail, Slope, Ward and Williams.

Local funds for the program are generated through county tax levies. Matching state funds have, in the past, been appropriated from the general fund. In the 1997-1999 biennium, like amounts were appropriated from the general fund and the Resources Trust Fund to generate the cost share dollars required for the five counties then participating. Williams County was new to the program in 1997. The local share of the multi-county program is 75 percent.

Independent evaluations of the cloud seeding program indicate an increase in rainfall on the order of 15 percent (about one inch over a typical growing season), and decreases in crop-hail damage of 45 percent. Studies by the North Dakota State University have estimated the benefit-to-cost ratio of the program at greater than 22:1.

In order to indicate concurrence with the intent of the 1997 legislature, it was the recommendation of the State Engineer that the State Water Commission approve funding from the Resources Trust Fund, not to exceed \$125,000, for the North Dakota Cloud Modification project.

*It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve funding from the Resources Trust Fund, not to exceed \$125,000, for the North Dakota Cloud Modification project. This motion is contingent upon the availability of funds.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nays. The Chairman declared the motion unanimously carried.*

**APPROVAL OF REQUEST FROM  
NESSON VALLEY IRRIGATION  
DISTRICT FOR COST SHARING  
FOR CONSTRUCTION OF  
IRRIGATION SUPPLY WORKS IN  
NESSON VALLEY AREA -  
WILLIAMS COUNTY  
(SWC Project No. 1858)**

A request from the Nesson Valley Irrigation District was presented for the Commission's consideration for cost share assistance for construction of irrigation supply works in the Nesson Valley area of Williams County.

The total estimated cost of the project is \$9.34 million. The estimated cost of the supply works (pump station and distribution network) is \$7.225 million. The request before the State Water Commission is to cost share in 40 percent of the eligible costs in the amount of \$2.89 million.

The Commission staff conducted the initial reconnaissance study of the area. On July 19, 1995, the State Water Commission approved 50 percent cost sharing, not to exceed \$32,500, for the feasibility study of irrigation development in the Nesson Valley area. The Nesson Valley Irrigation District was formed based on the information in the feasibility study. The project, as currently planned, would provide water to irrigate 7,596 acres. A water permit for 15,138 acre-feet has been applied for and is being processed.

*(Note: The State Engineer approved a conditional water permit to the Williams County Water Resource District on September 24, 1997. The priority date for the water permit is November 29, 1996.)*

On December 4, 1996, the State Water Commission approved the State Engineer's recommendation to the 1997 legislature for funding projects and programs from the Resources Trust Fund for the 1997-1999 biennium. The recommendation included \$1 million for the Nesson Valley Irrigation project, which was approved by the legislature.

The Nesson Valley Irrigation District requested 40 percent cost sharing (\$2.89 million), which Secretary Sprynczynatyk said is the typical cost share for agriculture projects. He said if the State Water Commission provides \$1 million in cost share, the District has indicated it may need to consider a phased implementation of the project by constructing part of the project in the near future and defer a portion of the project until additional funds become available. The District may also construct the entire project and request additional funds at a later date.



It was the recommendation of the State Engineer that the State Water Commission approve cost sharing with the Nesson Valley Irrigation District in the construction of the irrigation supply works in the amount of \$1 million, not to exceed 40 percent of the eligible costs, and contingent upon the availability of funds. The State Engineer also recommended that the Commission staff continue to work with the District to determine ways for the project to move forward and, if necessary, to request additional funds from the Commission in the future.

The following were in attendance representing the project: District No. 1 House of Representatives Earl Rennerfeldt; Dale Haugen and Chris Brostuen, Mountrail-Williams REC; Paul Bauer, Tri-County Economic Development; Bryan Beggs, Kadrmas, Lee & Jackson; and C. Wayne Vance and Earl Hartsoch representing the Nesson Valley Irrigation District. The technical project information provided in the attached letter, labeled as *APPENDIX "E"*, was reiterated by the project's representatives.

Earl Hartsoch provided information relative to the future expansion plans for Montana's Holly Sugar plant, which will provide for additional acreage under their contract in 1999. Mr. Hartsoch said in order for the District to bid for Holly Sugar's additional acreage in 1999, it is critical that the Nesson Valley irrigation project be operational by 1999. The time table for the Nesson project was discussed, which is attached hereto as *APPENDIX "F"*. Mr. Hartsoch said because of Holly Sugar's plans, the time table for the Nesson project has been revised and it is approximately one year ahead of the original schedule. Therefore, Mr. Hartsoch said it is imperative that the State Water Commission give their support to this project so that the constituents can get this project started in the most cost effective manner. On behalf of the District, Mr. Hartsoch requested the Commission's favorable consideration to cost share in 40 percent of the costs of the distribution system and pump station, which is \$2.9 million.

District No. 1 House of Representatives Earl Rennerfeldt addressed the Commission. Comments of legislative support and economic development were expressed. He said irrigation in the Nesson Valley area can be the basis of economic development by making the production of high value crops possible in northwest North Dakota. Irrigation will also provide a reliable source of forage crops to sustain the livestock industry in dry years. Representative Rennerfeldt requested the Commission's favorable consideration of the cost share request.

Secretary Sprynczynatyk read a letter from State Water Commission member Mike Ames, dated September 10, 1997, attached hereto as *APPENDIX "G"*. Mr. Ames, representing himself as a landowner within the Nesson Valley Irrigation District, expressed concerns relative to the project. He requested that the Commission postpone a decision until the concerns have been satisfied.

Secretary Sprynczynatyk informed the Commission members he discussed Commissioner Ames's concerns with him, and it appears that most of the concerns can be addressed in the final design of the project.

In discussion of cost sharing for the project, Secretary Sprynczynatyk explained the basis for the State Engineer's recommendation to approve \$1 million at this meeting and to continue to work with the District as the project moves forward. The recommendation was based on the 1997 legislative approval to earmark \$1 million for the project in the 1997-1999 biennium which, he said, is appropriate to obligate now. He indicated the State Engineer's recommendation versus the District's request was discussed with representatives of the District.

Due to the impacts the timing changes will have on the project, the Commission members discussed the allocation of funds beyond the \$1 million earmarked for the project. Secretary Sprynczynatyk said if the Commission approves additional funds for the project during this biennium, those funds would come from the agency's contract fund allocation for general projects. He expressed concern that because it is early in the biennium, it is difficult to determine the needs for funds throughout the state during the course of the 1997-1999 biennium.

Commissioners Bjornson and Thompson expressed concerns relative to future funding for the Maple River Dam, which is estimated to cost \$13 million, and which will require at least \$4.5 million of state funding. The legislature has earmarked \$2 million for the flood control project in the current biennium.

*It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission:*

- 1) approve cost sharing of 40 percent of the eligible costs, in the amount of \$1.5 million, for the construction of the irrigation supply works for the Nesson Valley irrigation project in Williams County. This motion is contingent upon the availability of funds; and*
- 2) staff continue to work with the Nesson Valley Irrigation District to determine ways for the project to move forward and, if necessary, to request additional funds from the Commission in the future.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

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

Warren Jamison, Manager of the Garrison Diversion Conservancy District, provided information relative to alternatives being considered

that would deliver 100 cubic feet per second of water to Fargo. Alternative 1 consists of using the existing Garrison facilities to pipe water to the Sheyenne River. Alternative 2 consists of a pipeline from Bismarck to Fargo. The material Mr. Jamison made reference to is attached as *APPENDIX "H"*.

Mr. Jamison reported the District's staff continues to provide input to the state's negotiating team on the draft amendments to the Garrison legislation, and related matters including wetlands mitigation and ground-water recharge.

The draft engineering report for the Ransom-Sargent and Dickey Rural Water Users rural water system evaluation, which was prepared by Ulteig Engineers, Inc., was discussed. Mr. Jamison provided a briefing of the August 18, 1997 meeting at which the evaluation recommendations were presented.

**GARRISON DIVERSION PROJECT -  
MR&I WATER SUPPLY PROGRAM  
(SWC Project No. 237-03)**

Secretary Sprynczynatyk provided the following MR&I Water Supply Program report:

**Benson County Rural Water:** Ulteig Engineers has completed its review of the project with surrounding rural water systems of All Seasons, Langdon and Pierce on how the Benson system best ties in the water service areas. The engineering report goals and objectives were to minimize areas of multiple coverage, ensure that rural water systems would be economically viable for the future, and endeavor to serve the most users with the best practical methods with the highest quality of water. A meeting was held on August 18, 1997 to discuss the engineering report. It was determined the water service options for the northern area of the project require more detail on available water, system management arrangements, and costs.

**Burleigh Water Users, Phase 2:** Northern Improvement Company is working on distribution pipelines with 150 new water users to date. Advanced Tank and Construction has completed the Driscoll elevated tank located east of Sterling, the majority of the work on the Apple Creek tank southeast of the city of Lincoln, and the foundation work for the Hay Creek tank northeast of the city of Bismarck.

**Dickey Rural Water:** The water treatment plant has been supplying water to the communities of Berlin, Edgeley, Ellendale, and Fullerton. The remaining rural water pipeline construction is anticipated to be completed in 1997. The Southeast Water Users are doing the operation and maintenance of the Dickey water system.

**Grand Forks Water Treatment:** The contractors have completed the work on modifying the water treatment plant's existing clear wells and control system. The controls were damaged during the flood and will be repaired with FEMA funding.

**Missouri West Rural Water, Phase 2:** Northern Improvement will start construction on the water distribution system with completion in 1998. The construction contract was awarded for Schedules 1, 4, 6 and 7. Additional funding of \$2,116,646 is needed to award the remaining construction Schedules 2, 3 and 5.

**North Valley Water Association/Walhalla-Neche Branch:** The project is planned for phased construction, with Phase 1 being the water treatment plant expansion and the connection to the city of Walhalla in 1997. Peterson Construction has installed the large diameter pipeline to Walhalla and is working on the various crossings. L.T.P. Enterprises, Inc. installed 22 new wells and is installing the power and control components. Wick Construction, Inc. is installing the new water reservoirs and pump stations. Phase 2 is the addition of the city of Neche and the rural water users, at an estimated cost of \$3.5 million.

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

**Ransom-Sargent Rural Water:** 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 status report.

**SOUTHWEST PIPELINE PROJECT -  
PROJECT UPDATE; CONTRACT**

Tim Fay, Project Manager for the Southwest Pipeline Project, provided

**AND CONSTRUCTION STATUS  
(SWC Project No. 1736)**

the following contract and construction status report:

**Contract 2-4B - Transmission Line to Reeder and Hettinger:** The contractor has made considerable progress on the pipe installation and is within several miles of Hettinger. Discussions are underway to select a route for the final two miles to avoid a number of crossings



of Flat Creek. It is anticipated the pre-fabricated pump station, meter vaults, and pressure reducing vault will be delivered in late September. A portion of the line into Reeder has been pressure tested and is ready for service. Projected completion of the contract is October, 1997.

**Contract 4-4 - Jung Lake Pump Station:** This segment of the project was advertised for bids on September 10, 1997. It is anticipated that the bids will be opened in early October.

**Contract 5-4 - Jung Lake Reservoir:** This contract is ready for award of bid, which will be considered under a separate item at this meeting.

**Contract 5-5 - Bucyrus Reservoir:** Contract progress is on schedule, with a projected completion date of November, 1997.

**Contract 7-4/7-3A - Bucyrus Service Area Rural Water Line:** The contract has been awarded, but limited construction is anticipated this season.

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF AWARD OF BID  
FOR CONTRACT 5-4, JUNG LAKE  
RESERVOIR, TO LANDMARK  
STRUCTURES, FORT WORTH, TX  
(SWC Project No. 1736)**

On August 20, 1997, bids were opened for Southwest Pipeline Project Contract 5-4, the Jung Lake reservoir. Two alternates were bid: one for a steel multi-leg tank, and the other for a "composite" tank, which consists of a steel tank atop a concrete riser.

Tim Fay reported that three bids were received. Landmark Structures of Fort Worth, Texas, bid on only the composite tank; Caldwell Tanks of Louisville, Kentucky, bid on the multi-leg; and Pitt-Des Moines of Clive, Iowa, offered a bid on both alternates.

The apparent low bid was received from Landmark Structures, at a bid price of \$878,000 for a composite tank. Mr. Fay said the bidding documents allowed contractors to offer a deduct in price to allow them to shop-prime the steel. Shop-priming is favored by the contractors, however, there is a high potential for field damage to the shop-applied priming, and it is necessary to somehow verify at the factory that the priming was correctly applied. Landmark's deduct was \$10,000. Mr. Fay said it does not appear that this deduct is adequate to offset the additional inspection costs and uncertainty. Therefore, shop-priming is not recommended on this tank. The engineer has reviewed the bid, and the bid is found to be responsive, and satisfactory for award.

It was recommended by the State Engineer that the State Water Commission award Southwest Pipeline Project Contract 5-4 to Landmark Structures of Fort Worth, Texas.

*It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the award of Southwest Pipeline Project Contract 5-4, the Jung Lake reservoir, to Landmark Structures of Fort Worth, Texas.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**SOUTHWEST PIPELINE PROJECT -  
PRESENTATION OF POSTSALE  
ANALYSIS OF 1997 SERIES A BONDS  
(SWC Project No. 1736)**

Katherine Kardell, Vice President of Evensen Dodge, Inc., Minneapolis, Minnesota, presented the Postsale Analysis that was prepared in conjunction with the State Water

Commission's sale of the \$6,830,000 Water Development Revenue Bonds, Series 1997 A, for the Southwest Pipeline Project. This report is on file at the State Water Commission.

**NORTHWEST AREA WATER  
SUPPLY PROJECT  
(SWC Project No. 237-04)**

James Lennington, Project Manager for the Northwest Water Supply Project, reported the process for review and approval of the Northwest

Area Water Supply Project by the Garrison Joint Technical Committee was incorporated into the National Environmental Policy Act (NEPA) approval process. The draft environmental assessment was distributed on June 9, 1997, with a 45-day public comment period ending on July 25, 1997. A two-week extension was requested by the U.S. Department of Agriculture, the Canadian section of the Garrison Joint Technical Committee, and the Environmental Protection Agency. The extension was granted, which ended on August 8, 1997. The main comments of concern were received from Manitoba Environment, the Canadian section of the IJC, and the EPA. Their comments can be summarized as a recommendation that the Commission reconsider full treatment within the Missouri River basin and the need for a monitoring and contingency plan as was discussed in the environmental assessment.

The State Water Commission staff is monitoring and evaluating the water quality of Lake Audubon and Lake Sakakawea. The results will be used in determining the treatment costs, operation of the system, and the selection of an intake location.

On July 9, 1997, the Garrison Joint Technical Committee met in Winnipeg to discuss the environmental assessment and other issues. The Canadian representatives requested the compilation of all monitoring and contingency plans into a supplementary document to the environmental assessment. Mr. Lennington explained the environmental assessment review process. Following the public comment period, the final NEPA document and the supplementary document will be prepared and provided to the committee. The committee will then provide its recommendation to the United States-Canada Consultative Group.

The NAWS engineering team is currently preparing the requested information in a report that will be submitted to the GJTC for its review prior to the next meeting, which is expected to be held in late October, 1997.

Mr. Lennington reported an expansion and upgrade of the city of Rugby's water treatment plant and supply works is included in the NAWS project. The project will address the water supply needs in the city and in the rural area around the city through the proposed Pierce County rural water system. The firm of Advanced Engineering and Environmental Services, Inc. of Grand Forks is preparing the final design for the Rugby phase of the project.

Final design plans for the city of Rugby's water treatment plant should be ready for bidding in January, 1998, with construction to follow in the spring.

The current cost estimate for the Rugby phase totals about \$4.6 million, with \$2.9 million in construction scheduled for 1998. Several options are being explored for financing the non-federal share of the construction costs in Rugby through revenue bonds.

**SAFE DRINKING WATER ACT  
AND ROLE OF STATE WATER  
COMMISSION  
(SWC File No. AS/HEA)**

Jack Long, North Dakota Department of Health, presented a report relative to the Safe Drinking Water Act and the role of the State Water Commission.

The Drinking Water State Revolving Loan Fund was authorized by Congress in 1996 under the Safe Drinking Water Act with the intention of assisting public water systems in complying with the Act. It provides funding in the form of loans and is administered by the Environmental Protection Agency through the states. North Dakota anticipates receiving federal capitalization grants totalling \$19.7 million for fiscal years 1997 and 1998. When including the 20 percent match by the state generated through the sale of bonds, approximately \$23.6 million will be provided to the fund for the first two years.

The North Dakota Department of Health has received applications from 33 public water systems which represent 46 projects totaling approximately \$132.3 million in needs (attached as *APPENDIX "I"*). The Department is presently prioritizing these projects for inclusion in the Intended Use Plan, which will be completed in advance of public hearings to be held September 29 in Bismarck and October 1 in Fargo.

In addition, the Department is party to a group established by a memorandum of understanding to "establish greater communication and coordination between the parties on water supply development funding in North Dakota." Members of this group include representatives from the Department, Bureau of Reclamation, Rural Development, Garrison Diversion Conservancy District, State Water Commission, and the Municipal Bond Bank.

Following the hearings, it is the Department's intention to appear before the Commission at its next meeting for the Commission's consideration of its approval of the project's priority list.

The priority ranking system for financial assistance through the program was discussed, which is attached hereto as *APPENDIX "J"*.

**DEVILS LAKE  
HYDROLOGIC UPDATE  
(SWC Project No. 416-01)**

Secretary Sprynczynatyk reported the current level of Devils Lake is 1442.6. The lake has receded approximately 4 inches since the first of August,

1997. The lake is expected to rise after the first hard frost and after the evapo-transpiration lessens. Graphical information and current and long-term hydrograph information relative to Devils Lake were provided.

Secretary Sprynczynatyk briefed the Commission members on the efforts of the three-part solution to control record Devils Lake flooding which includes water storage, the construction of an outlet to allow the water to flow out of the lake into the Sheyenne River and eventually into the Red River, and to provide for infrastructure for protection around the lake.

**CITY OF DEVILS LAKE  
LEVEE PROJECT  
(SWC Project No. 416-02)**

On August 22, 1996, the State Water Commission passed a motion to approve a 50 percent cost share of the non-federal costs for the 1996 Stage 1

city of Devils Lake levee raise project. The state cash contribution was \$175,000. Stage 1 was completed in the fall of 1996.

The project raised and extended the existing dikes around the city of Devils Lake by five feet and provides protection to

a lake elevation of 1445. The dikes currently protected the city to elevation 1440. The total cost of the project was estimated at \$7.2 million. The Corps of Engineers provided a 75 percent federal cost sharing, leaving a non-federal requirement of \$1.8 million.

On March 26, 1997, the State Water Commission passed a motion to allocate \$409,000 from the Contract Fund and approved the transfer of title of two gator pumps for a credit of \$67,680 towards the state's remaining contribution for the city of Devils Lake levee raise project. A Community Development Block Grant of \$249,000 was also approved for the project. The Corps of Engineers advertised for the remainder of the project and awarded the bid in April, 1997. Construction is scheduled to be completed in 1997.

On June 12, 1997, President Clinton signed the 1997 Emergency Supplemental Appropriations Act (Public Law 105-18), which provides for funds to expedite a raise of the levee at the city of Devils Lake beyond elevation 1445. The bill has provisions to allow a further raise of the levee to provide protection from a lake level of 1450, with a top of levee elevation of 1457. The Corps intends to have the entire levee system raised to elevation 1454 by freeze-up. The remainder of the work won't be completed until the summer of 1998. The Corps has indicated that at all times the integrity of the levee protection for the city of Devils Lake from the high lake levels will be maintained.

Secretary Sprynczynatyk reported the contract for Stage 1 of the levee raise, which includes levee raises from ND Highway 19 to Ramsey County Road #1, is nearly complete. This stage currently provides protection for a lake elevation of 1445 in the area. The contract for Stage 2 of the levee raise, which includes levee raises from ND Highway 20 to US Highway 2, is scheduled for completion in October, 1997. When completed, this stage will provide protection for a lake elevation of 1445 in this area as well.

Ramsey County and Creel Township have requested the Corps to evaluate a west end extension of the Stage 1 levee to provide protection to several areas outside of the city of Devils Lake. An economic analysis of the west end extension conducted by the Corps found the alternative to be feasible, and the city of Devils Lake and Ramsey County are developing the necessary agreements to allow construction of the west end extension to proceed.

The total cost for the additional raise of the Devils Lake levee to provide protection to elevation 1450 (1457 top of levee) is estimated to be \$44 million. This includes the cost of the west end extension. The non-federal portion of the cost is approximately \$11 million. Ramsey County and the city of Devils Lake have committed \$7 million in HUD grant money towards the project. The remaining \$4 million of the non-federal cost will be provided by the State of North Dakota. Discussions are underway between the city of Devils

Lake, the Corps of Engineers, and the State Water Commission concerning the necessary amendments to the Project Cooperation Agreement for the increase in costs.

Secretary Sprynczynatyk explained that the city of Devils Lake levee raise is an important part of the infrastructure protection. He said that in addition to the levee raise, a considerable amount of federal, state and local expense has been incurred in the efforts to provide infrastructure protection.

#### **CORPS OF ENGINEERS**

On July 22, 1997, the State Water

#### **EMERGENCY OUTLET**

Commission endorsed the Peterson

#### **(SWC Project No. 416-01)**

Coulee outlet route from Devils Lake to the Sheyenne River, and the

preliminary plan using a combination of pumped storage, pipeline, and open channel components, with a design flow capacity of 300 cubic feet per second.

Secretary Sprynczynatyk reported that the Corps of Engineers is continuing work on the pre-construction engineering and design of an emergency outlet from Devils Lake to the Sheyenne River via Peterson Coulee. The Corps has contracted with Barr Engineering to conduct a technical review of the Peterson Coulee outlet alternatives. Preliminary findings by Barr show a high pressure 84-inch diameter concrete pipe could introduce a substantial savings over the multiple ductile iron pipe sections that were included in the preliminary evaluations by the Corps. Barr also evaluated the addition of a hydropower unit to recapture some of the energy from the water as it drops into the Sheyenne River valley to offset the electrical demands for operating the pump stations. This was not found to be a cost effective option.

The Corps hopes to begin construction on the outlet during 1998, with operation beginning in late 1999 or early 2000. An appropriation of \$5 million was included in the U.S. Senate Energy and Water Committee appropriations bill to begin construction of a Devils Lake emergency outlet in 1998. This money was not included in the House Energy and Water Committee appropriations bill, however, it is hoped this money will be retained when the final version of the bill is produced.

The Corps of Engineers has begun the scoping process to comply with the National Environmental Policy Act requirements. The Corps is working with the Council on Environmental Quality to expedite the procedure.

The Corps hosted an aerial and ground tour of the Peterson Coulee outlet route on July 30, 1997. In attendance at the tour were representatives from Barr Engineering, State Water Commission staff, representatives from Ramsey and Benson Counties, representatives from the Spirit Lake Nation, and landowners from along the outlet route.



On September 12, 1997, Barr Engineering will present the current status of their technical review on the Peterson Coulee outlet alternatives to the Corps of Engineers and the State Water Commission staff.

**DEVILS LAKE UPPER  
BASIN MANAGEMENT -  
APPROVAL TO CONTINUE  
AVAILABLE STORAGE  
ACREAGE PROGRAM  
(ASAP) IN 1998**

**(SWC Project No. 1882-01)**

Secretary Sprynczynatyk reported the development of additional Available Storage Acreage Program (ASAP) sites is coming to a close as summer progresses. Approximately 70 sites have been completed and are holding water. The contracts have been signed by the participants and the State Engineer, and the participants have received full payment for their water storage.

The total volume of water stored in 1997 is approximately 22,000 acre-feet. Included in this 22,000 acre-feet is 8,000 acre-feet of water that was contracted for storage in 1996. Approximately \$1,150,000 was spent to store water in 1997. Since ASAP's beginning, it has stored about 30,000 acre-feet for a cost of \$1,578,000.

The State Water Commission has the second year option of storing about 7,500 acre-feet of water. The 14,500 acre-foot balance is comprised of the expiring 1996 two-year contracts and the one-year contracts. If the participants with the expiring contracts would sign extensions and the second-year option was exercised on the 1997 contracts, ASAP could again hold back 22,000 acre-feet of water from entering the lake. The cost of this storage would again total about \$1.15 million.

Secretary Sprynczynatyk said as the lake continues to rise, it will begin to impact some of the ASAP sites. If early lake level forecasts call for a significant rise in Devils Lake for 1998, those ASAP sites that no longer provide a storage benefit for the rest of the lake will no longer be used. The loss of these sites will reduce the program's funding requirements.

Secretary Sprynczynatyk said currently the ASAP program is the program with the largest impact on the level of Devils Lake. It is important to continue the ASAP program, along with work toward the emergency outlet to show local citizens, the federal government, and the conservation community that the state is doing what it can to control flooding.

It was the recommendation of the State Engineer that the second year option be exercised on the 1997 ASAP



contracts and that the current ASAP participants with expiring contracts be allowed to sign extensions into 1998. Approval of this action would be contingent on the availability of funds, and the storage benefit the site provides.

*It was moved by Commissioner Johnson and seconded by Commissioner Olin that the second year option be exercised on the 1997 Available Storage Acreage Program (ASAP) contracts and that current ASAP participants with expiring contracts be allowed to sign extensions into 1998. This motion is contingent upon the availability of funds, and the storage benefit the site provides.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**DEVILS LAKE BASIN JOINT  
WATER RESOURCE BOARD  
MANAGER POSITION APPROVED  
(SWC Project No. 416)**

On June 25, 1997, the Devils Lake Joint Water Resource Board took action to hire a full-time manager. The need for the manager arises from the increasing complexity of

water management. The past years of flooding have demonstrated water projects can have a serious implication beyond the immediate project area. A basin manager would be useful to oversee water management activities in the basin and to work with residents, subbasin boards, county water resource boards, and others to ensure the consequences of water projects, programs and policies are known and accepted.

At its August 13, 1997 meeting, the board reviewed a draft job description and approved to proceed with advertising to fill the position. The job description calls for a person well experienced in natural resource management projects and programs, knowledgeable in local, state and federal water laws and regulations, and possessing advanced communication skills.

Secretary Sprynczynatyk said it is important that the board have someone working in a full-time capacity to advance as quickly as possible the development and implementation of a basin water management plan. A manager, working for the board, will help ensure their interests are represented at the myriad of meetings held to address the basin's water management problems and potential solutions. A basin manager is vitally important for the development of subbasin plans which are critical to upper basin management.

The budget developed by the board to support this position was reviewed. Secretary Sprynczynatyk said, in addition, he has expressed the State Water Commission's support for this position by offering to cost share on a 60 percent board/40 percent State Water Commission basis. A State Water Commission contribution of \$23,000 will bring the Board's total funds available to \$57,400 to cover the salary, benefits, travel and office for one year.

The relationship between the new Joint Board manager position and the current State Water Commission water resource engineer manager was reviewed. Secretary Sprynczynatyk said after discussion with the board and internally, he has proposed to relocate the State Water Commission's staff engineer back to the Bismarck office, but to continue to work full-time on Devils Lake projects such as ASAP and the design of subbasin water management features. He said it is important that the staff engineer be located in Bismarck to improve the interaction with the several state and federal agencies who are also working on Devils Lake projects including the Department of Health, State Game and Fish Department, U.S. Geological Survey, U.S. Bureau of Reclamation, and the U.S. Fish and Wildlife Service.

The proposal was presented to the Joint Board at its August 24, 1997 meeting. The board agreed to retain the State Water Commission's water resource engineer with full-time commitment to Devils Lake projects, and to provide \$9,000 per year to cost share in this position.

It was the recommendation of the State Engineer that the State Water Commission approve funding of \$23,000 for one year for a full-time manager position for the Devils Lake Basin Joint Water Resource Board for water management work within the Devils Lake basin.

It was also recommended by the State Engineer that the State Water Commission relocate its staff water resource engineer back to the Bismarck office and enter into an annual agreement with the Devils Lake Basin Joint Water Resource Board in which they have agreed to contribute \$9,000 per year to retain the engineer's full-time commitment to Devils Lake water projects.

*It was moved by Commissioner Thompson and seconded by Commissioner Johnson that the State Water Commission:*

- 1) approve funding in the amount of \$23,000 for one year for a full-time manager position for the Devils Lake Basin Joint Water Resource Board for water management work within the Devils Lake basin. This motion is contingent upon the availability of funds; and*

- 2) *relocate the State Water Commission staff water resource engineer back to the Bismarck office and enter into an annual agreement with the Devils Lake Joint Water Resource Board in which they have agreed to contribute \$9,000 per year to retain the engineer's full-time commitment to the Devils Lake water projects.*

*Commissioners Bjornson, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**DEVILS LAKE OUTLET ADVISORY  
MANAGEMENT COMMITTEE  
(SWC Project No. 1712-01)**

The Devils Lake Outlet Advisory Management Committee was created with the passage of Senate Bill 2239 in the 1997 legislature. This bill, which became law on August 1, 1997, established a committee including the State Engineer who is the committee chair, one representative of the Red River Joint Water Resource Board, one representative of the Devils Lake Joint Water Resource Board, one county commissioner each from Benson and Ramsey counties, a representative of the Spirit Lake Nation, and three downstream representatives to be appointed by the Governor.

The Devils Lake Outlet Advisory Management Committee was created with the passage of Senate Bill 2239 in the 1997 legislature. This bill, which

Secretary Sprynczynatyk said the committee's primary responsibility is to develop an annual operating plan for a Devils Lake outlet. This operating plan is to be submitted to the State Water Commission. The Commission may approve, recommend changes, or make changes to the annual operating plan.

The committee's first meeting will likely be held in late September or early October, at which time the committee will be briefed on the status of the Devils Lake flooding and all outlet studies and plans. Anticipated implementation timelines will be presented, and all available information on outlet options will be provided to the committee.

*(Note: The Devils Lake Outlet Advisory Management Committee meeting is scheduled for October 20, 1997 in Devils Lake.)*

**ILLEGAL DRAINAGE IN  
DEVILS LAKE BASIN  
(SWC Project No. 1882-05)**

On June 5, 1997, Governor Schafer issued a press release directing the State Water Commission to identify illegal drainage in the Devils Lake basin and to work with the water resource boards to close the drains.

**Secretary Sprynczynatyk briefed the Commission members on the agency's efforts to inventory drainage on a township by township basis in the Devils Lake basin to identify illegal drainage under state law which have a watershed of greater than 80 acres since 1957 that are not permitted by law.**

**Section 61-32-07 of the North Dakota Century Code requires unauthorized drains to be closed. Secretary Sprynczynatyk explained that the closing of illegal drains is a part of the effort to properly manage the water in the Devils Lake basin on a watershed basis. As the inventory is completed, the water resource boards in the basin will be requested to investigate the drains, which are identified as being built after 1957 and having a watershed of greater than 80 acres, so that a final determination of legality can be made by the water resource boards in the basin.**

**Secretary Sprynczynatyk reported the State Water Commission staff is continuing its investigation on possible illegal drainage in the Devils Lake basin. To date, 5 of the 145 townships have been completed and 9 more are near completion. Townships completed include two in Ramsey County, two in Towner County, and one in Cavalier County. A total of 58 drains have been identified as possible illegal in these five townships. The water resource districts are reviewing their records and doing a follow-up investigation to determine a course of action.**

**A letter received from the Chairman of the Ramsey County Water Resource District states, in part:**

**"The Ramsey County Board of Water Managers has reviewed and discussed the information, and staff has been working on checking county records as to filing of permits. It is the Board's intention to continue research on the drains and to make field checks this coming fall after crops are removed and there is better and drier access to the fields."**

**Governor Schafer emphasized "that any drainage that is occurring illegally must be stopped. The challenge is to identify the illegal drains, many of which have been overlooked by the water resource boards for years or have perhaps developed gradually over time. The issue is not storage. The point is that we are in the midst of one of the most complex and damaging natural disasters ever to occur in our state. We cannot ask for cooperation from Minnesota, Canada and neighbors downstream if we are overlooking or ignoring illegal activity that potentially compounds the problem."**

**DEVILS LAKE  
DEBRIS REMOVAL  
(SWC Project No. 1882-04)**

The 1997 legislature enacted Senate Bill 2260 authorizing the State Engineer to order removal, modification, or destruction of dangers in, on the bed of, or adjacent to a navigable lake. Devils Lake is a navigable lake, and since the bill became law on April 3, 1997, the State Engineer has ordered five individual landowners to remove structures and debris on their property which has been inundated by the raising water of Devils Lake. These orders have been issued because the individual landowner did not remove, in a timely manner, all or parts of submerged trailer houses, storage sheds, and one individual's junk yard which included old tires, fuel tanks, a metal transmission tower, and other assorted debris. The order gives the landowner 20 days in which to comply and clean up their debris.

Secretary Sprynczynatyk indicated the State Water Commission staff is working with the Lake Region District Health Unit in identifying which property owners are not following orders from the District Health Unit by removing their debris in a timely manner and then requiring an order from the State Engineer. The District Health Unit is monitoring whether the property owner is acting upon the order issued by the State Engineer.

To date, 15 sites have been reviewed and 8 orders have been issued by the State Engineer. The State Engineer's office provides a 20-day period to remove the structure and/or debris. The order also affords the opportunity for a hearing or a time extension for good cause. Of the 15 sites reviewed, clean-up has been completed at 6 sites. Two of the six sites involved orders from the State Engineer, and the remaining four were cleaned up without the necessity of an order from the State Engineer.

Secretary Sprynczynatyk said it is very difficult and costly to remove homes and buildings that have been inundated. In some cases, he said it may be necessary to wait until freeze-up to remove the structures.

**SPIRIT LAKE NATION INDIANS,  
ET. AL. V STATE OF NORTH  
DAKOTA, CITY OF DEVILS LAKE,  
AND NORTH DAKOTA STATE  
WATER COMMISSION -  
WATER PERMIT LAWSUIT UPDATE  
(SWC Project No. 416)**

The State and the city of Devils Lake were sued on June 27, 1997, by four members of the Spirit Lake Nation Tribe on behalf of the tribe and themselves. The complaint requested the court to prohibit the removal of water from the Warwick aquifer, a portion of which underlies the boundaries of the reservation. It also seeks damages for losses suffered by the tribe as a result of the removal of water.

**Julie Krenz, Assistant Attorney General for the State Water Commission, indicated the State filed a motion to dismiss in response to the complaint based on eleventh amendment immunity, which bars claims of a tribe and its members against a state in federal court, and on grounds that the Tribe and individual members have not suffered any personal injury which would give them standing to bring this suit.**

**The plaintiffs' response to the State's motion to dismiss was due on August 30, 1997. The plaintiffs received an extension to file the response until September 3, 1997, and made a second request to extend the time to file a response until September 16, 1997. Ms. Krenz reported a response to the State's motion to dismiss was received from the plaintiffs. Ms. Krenz and the Commission staff are reviewing the response.**

**The plaintiffs also filed a motion to amend their complaint naming the Governor, the Mayor of Devils Lake, and the Commissioner of Agriculture in their individual and official capacities as parties rather than the State, State Water Commission, and the city of Devils Lake. The State's motion to dismiss was based on grounds that the State is immune from suits. Sovereign immunity does not extend to state officials in their individual capacities. The State resisted the motion to amend the complaint because even if the complaint is amended it does not cure the other deficiencies in the complaint. Even if new defendants are named, there is not a case or controversy over which the court can exercise jurisdiction. The Spirit Lake Nation is still not a party, the Spirit Lake Nation has not authorized the action, and the plaintiffs have not suffered any personal injury to give them standing.**

**RED RIVER BASIN BOARD  
(SWC File AOC/RBB)**

**management plan for the Red River basin addressing the needs on a watershed basis 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 Red River Basin Board was organized to develop and cause to be implemented, a comprehensive water**

**The organizational meeting of the Red River Basin Board was held on July 24, 1997 in Pembina, North Dakota. The board met on September 4, 1997 in Grand Forks, at which time Morris Lanning, Mayor of Moorhead, Minnesota, was elected to chair the board. Secretary Sprynczynatyk reported that of the 21-member board, 16 members have been identified. The board's next meeting is scheduled for October 2, 1997 in Devils Lake.**

**On July 22, 1997, the State Water Commission passed a motion to approve the expenditure of \$15,000 as the non-federal cost share of the Red River Basin Board coordinator position for 1997-1998.**

**Secretary Sprynczynatyk said that subsequent to the July 22, 1997 State Water Commission meeting, it was learned that the Red River Basin Board would likely not hire a staff. Therefore, by memo to the State Water Commission dated July 30, 1997, the State Engineer expressed his interest to allow the funds allocated to the Red River Basin Board, by the July 22, 1997 State Water Commission motion, to be used by the Board at its discretion to carry out the goals of the Board and, at the same time, address wetlands conservation. Secretary Sprynczynatyk reported he did not receive any opposition from the Commission members. The contract was executed on September 9, 1997 between the North Dakota State Water Commission and the Red River Basin Board. This will allow the release of funds from Minnesota to the Basin Board.**

#### **INTERNATIONAL JOINT**

#### **COMMISSION RED RIVER BASIN TASK FORCE**

**(SWC Project No. 1431-08)  
(SWC File AOC/RRB)**

**make recommendations to the two governments by the end of 1998 on the means of reducing future risks from flooding. The International Joint Commission is a bi-national United States-Canada organization established by the Boundary Waters Treaty of 1909 and assists the governments in managing waters along the border for the benefit of both countries. It has built its reputation by producing cooperation among a variety of interests on both sides of the border.**

**The federal governments of the**

**United States and Canada have formally requested the International**

**Joint Commission to examine and report on the causes and effects of the flooding in the Red River basin and to**

**Secretary Sprynczynatyk reported that a task force has been appointed consisting of five members each from the United States and Canada. The task force members representing the United States are Donald Herndon, Corps of Engineers, Vicksburg, Mississippi, Co-Director; Secretary Sprynczynatyk; Kent Lokkesmo, Minnesota Department of Natural Resources; Professor Jay Leitch, North Dakota State University; and Craig Wingo, Federal Emergency Management Agency, Washington, DC.**

**The task force met on September 8 and 9, 1997 in Washington, DC. Efforts of the task force will focus on flood forecasting, flood controls, emergency preparedness, land use practices, and related issues. The task force will submit an interim report to the International Joint Commission at the end of 1997, and the final report is anticipated at the end of 1998.**



**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 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 first to the Governors of the states, and then to the Corps of Engineers and other federal agencies.

**The Missouri River Basin**

Association developed a planning process to recommend the best methods for maximizing basin water uses and interests. The planning effort involved 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 were 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 was 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 indicated a basic change in the way water management issues 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, and a draft Summary of Suggestions was developed. The Association is continuing its review of the draft with eventual presentation first to the Governors of the states and then to the Corps of Engineers and other federal agencies. The Association requested the task forces throughout the basin to continue discussions in their area on specific issues of dispute between the upper and lower basin states. Secretary Sprynczynatyk said the suggestions 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.

Secretary Sprynczynatyk reported the Association made progress on the unresolved issues at its September 8 and 9, 1997

meeting. A conference call is scheduled for September 25, 1997 to continue discussion of the unresolved issues between the upper and lower basin states relating primarily to recreation and navigation.

#### **The Missouri River Basin**

Association has scheduled a conference of the interested river users on November 3 and 4, 1997 in Kansas City, Missouri. The Summary of Suggestions will be provided to the conference participants in advance of the meeting.

#### **CANNONBALL RIVER BASIN WATER MANAGEMENT STUDY STATUS REPORT (SWC Project No. 322-01)**

Secretary Sprynczynatyk provided a status report on the Cannonball River Basin Water Management Study. The informational memorandum prepared by State Water Commission staff is attached hereto as *APPENDIX "K"*.

#### **1999 STATE WATER PLAN (SWC Project No. 322)**

The Planning and Education Division of the State Water Commission has begun the initial steps in developing

the 1999 State Water Plan. Work on the plan will begin during the last part of 1997 and is scheduled to be completed by the end of 1998. The plan will be available for the 1999 legislative session.

Secretary Sprynczynatyk said the 1999 State Water Plan will focus on water management for the 21st century. It will outline current and future management policies and will help serve as a guide for decision-makers. It is intended to be a realistic vision of water management with emphasis on regional and local projects that are appropriate to the plan's goals and objectives.

The plan will include the following

elements and strategies:

Similar to 1992, the 1999 State Water Plan will include a strong public involvement process. There will be, however, some restructuring of the process to increase the quality of input from both the general public and other agencies within state government. General public input will likely be gathered through a combination of surveys and public meetings. Agency involvement will be gathered through an intergovernmental committee with representation from all natural resource management agencies.

Geographically, water development and management will be evaluated on a watershed basis. Unlike the 1992 plan, the natural watershed boundaries, rather than political, will be used. The current water

development and management situation, as well as likely future needs will be analyzed for the state and each watershed.

Goals and objectives based on current and future needs will form the basis for the future vision of the plan. This vision will not be a listing of projects, per se, rather recommendations on how the state and individual watersheds can meet future water needs that are consistent with the goals and objectives of the State Water Plan.

In addition to recommendations, the plan will record and evaluate all appropriate water management policies in the state. This will include surface water, ground water, and a special emphasis on financial and cost share policies. The new plan may recommend changes in the current policies and the development of appropriate future policies.

An appendix to the plan will contain an update of potential water development projects based on the 1992 plan and a special issue section to cover areas of special concern and the water education program.

**1997 FLOOD -  
STATE WATER COMMISSION  
AFTER ACTION REPORT  
(SWC Project No. 1431-08)**

Recovery operations from the 1997 spring flood were discussed. Major General Murray Sagsveen was appointed by Governor Schafer as the state's representative in the flood

recovery operations. The Governor's office is compiling an After Action Report for the state agencies who were involved in the flood efforts.

Secretary Sprynczynatyk summarized the support provided by the State Water Commission staff during the 1997 flood. He commented that "nearly all of the agency's employees were involved with and contributed significantly to the flood relief efforts." The State Water Commission's After Action Report, which was submitted to the Governor's office, is attached hereto as *APPENDIX "I"*.

**NEXT STATE WATER  
COMMISSION MEETING**

The next State Water Commission meeting is scheduled for October 29, 1997, in Bismarck, beginning at 1:30 PM.

**There being no further business to come before the State Water Commission, Governor Schafer adjourned the meeting at 4:15 PM.**

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

**SEAL**

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



