

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

June 9, 1999

The North Dakota State Water Commission held a meeting at the State Capitol, Roughrider Room, Bismarck, North Dakota, on June 9, 1999. 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
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

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.

June 9, 1999

**CONSIDERATION OF MINUTES
OF MARCH 24, 1999 STATE
WATER COMMISSION MEETING -
APPROVED, AS CORRECTED**

will be considered feasible in which less than 50 percent of

The minutes of the March 24, 1999 State Water Commission meeting were considered. It was noted on page 13, paragraph 2, the first sentence should read, "No service area

It was moved by Commissioner Olin, seconded by Commissioner DeWitz, and unanimously carried, that the minutes of the March 24, 1999 State Water Commission meeting be approved, as corrected.

**FINANCIAL STATEMENT -
AGENCY PROGRAM BUDGET
EXPENDITURES**

cent of the 1997-1999 biennium. **SEE APPENDIX "A"**

Dale Frink, Assistant State Engineer, presented and discussed the Program Budget Expenditures for the period ending April 30, 1999, reflecting 92 per-

**FINANCIAL STATEMENT -
RESOURCES TRUST FUND**

revenues into the Resources Trust Fund showing an increase of approximately \$230,000 from the previous projection. Dale Frink stated the total collections for the biennium are currently estimated at \$9,367,000. This results in an unobligated balance in the Resources Trust Fund of \$450,000. **SEE APPENDIX "B"**

On June 8, 1999, the Office of Management and Budget provided an updated projection of oil extraction

Mr. Frink stated the carryover balance into the 1999-2001 biennium is \$6.7 million. The State Water Commission budget for the next biennium includes a carryover balance of \$4.3 million, therefore, an additional \$2.4 million of carryover will be requested. He said that, traditionally, water projects require several years to implement due to delays in obtaining permits and/or to obtain full funding. A listing of the projects and the estimated starting balance in the Resources Trust Fund on July 1, 1999 are provided in the table on the following page:

Project July 1, 1999 Estimated Balance

| | |
|----------------------------|--------------|
| Maple River Dam | \$ 2,025,975 |
| Nesson Valley | 1,500,000 |
| Southwest Pipeline Project | 500,000 |
| Hydrologist Investigations | 90,000 |

| | |
|-----------------------------|---------|
| Devils Lake: | |
| ASAP | 900,000 |
| Starkweather Coulee | 45,000 |
| Levee Raise | 67,000 |
| Prairie Wetland Restoration | 40,000 |
| COE Feasibility Study | 60,000 |
| Misc. Devils Lake | 60,000 |

| | |
|-------------------------------|---------|
| General Projects: | |
| Twelve-Mile Pipeline | 87,800 |
| Cass County | 45,000 |
| Baldhill Dam | 31,000 |
| Walsh County Ring Dikes | 175,000 |
| North Cass County Ring Dikes | 162,500 |
| Cass County Drain #13 | 150,000 |
| Buford-Trenton Reconstruction | 36,000 |
| Missouri River CRMP | 30,000 |
| Homme Dam | 28,000 |
| Horsehead Irrigation Study | 75,000 |
| Tri-County Flood Control | 47,000 |
| Miscellaneous | 53,000 |

Unobligated (May 20, 1999) 450,000

TOTAL \$ 6,658,275 (\$6.7 Million)

**CONTRACT FUND
PROJECT REQUESTS
(SWC FILE ACT/RES)**

The State Water Commission has received cost share requests for various projects across the state. Todd Sando, State Water Commission

Water Development Division Director, presented an overview of the cost share requests, which is detailed in the summary memorandum and attached hereto as **APPENDIX "C"**.

**APPROVAL OF REQUEST FROM
TRAILL COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARE IN CONSTRUCTION OF
TRAILL COUNTY DRAIN NO. 57A
(SWC Project No. 1903)**

A request from the Traill County Water Resource District was presented for the Commission's consideration for cost share in the construction of the Traill County Drain No. 57A project.

Todd Sando presented the request, which was deferred by the Commission at its January 27, 1999 meeting due to the revenue situation for the Resources Trust Fund in the 1997-1999 biennium.

The engineer's project cost estimate is \$723,661, of which \$642,669 is eligible for cost share to construct approximately 9 miles of the drain. Under the State Water Commission's policy and guidelines for cost share, 35 percent of the eligible costs qualify for cost share in the amount of \$224,934. The current guidelines also limits the amount of cost share per biennium to 5 percent of new funding available for general projects not to exceed \$150,000 from the Contract Fund. The request before the State Water Commission is to cost share in the amount of \$150,000.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 35 percent of the eligible items, not to exceed \$150,000 from the Contract Fund, for the Traill County Drain No. 57A project, contingent upon the availability of funds. The remaining portion eligible for cost share is recommended for deferral until the next biennium.

It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission approve cost share of 35 percent of the eligible items, not to exceed \$150,000 from the Contract Fund, for construction of the Traill County Drain No. 57A project. This motion is contingent upon the availability of funds. The remaining portion eligible for cost share shall be deferred for consideration until the 1999-2001 biennium.

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

**APPROVAL OF REQUEST FROM
CAVALIER AND PEMBINA
COUNTIES WATER RESOURCE
DISTRICTS FOR COST SHARE
FOR CONSTRUCTION OF
WALHALLA DRAIN NO. 2
AND LATERAL A
(SWC Project No. 1905)**

in Fremont Township in Cavalier County and Walhalla Township in Pembina County.

A request from the Cavalier and Pembina Counties Water Resource Districts was presented for the Commission's consideration for cost share in the construction of the Walhalla Drain No. 2 and Lateral A. Drain Permit 2878 was approved by the State Engineer covering the areas involved in the joint assessment drain

The engineer's project cost estimate is \$282,317, of which \$272,317 is eligible for cost share to construct approximately 15 miles of drain improvements. Under the State Water Commission's policy and guidelines for cost share, 35 percent of the eligible costs qualify for cost share. The request before the State Water Commission is to cost share in the amount of \$95,311.

Todd Sando explained that construction of the proposed project will result in significant increased flows into Canada. The water resource districts and the Province of Manitoba have verbally discussed the proposal and the Province of Canada has agreed to improve the channel in their portion of the watershed to allow for the increased flows. The border crossing is also being improved in stages to allow the province to increment their improvements. Mr. Sando stated that, to date, an executed memorandum of understanding has not been received from the Province of Manitoba.

Secretary Sprynczynatyk informed the Commission members he discussed the proposal with Steve Topping, Director of the Manitoba Natural Resources, and Mr. Topping indicated his willingness to work with the state and the counties to satisfy the requirements by October 1, 1999 to move the project forward.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 35 percent of the eligible costs, not to exceed \$95,311 from the Contract Fund, for the Walhalla Drain No. 2 and Lateral A, contingent upon an executed memorandum of understanding between the water resource districts and the Province of Manitoba by October 1, 1999; and, contingent upon the availability of funds.

William Hardy, Chairman of the Cavalier County Water Resource District, provided historical background information relating to the project. He stated for the record that the State Engineer's recommendation is acceptable, and urged the State Water Commission's favorable consideration of the funding request.

It was moved by Commissioner Johnson and seconded by Commissioner Hillesland that the State Water Commission approve cost share of 35 percent of the eligible items, not to exceed \$95,311 from the Contract Fund, for the Walhalla Drain No. 2 and Lateral A. This motion is contingent upon an executed memorandum of understanding between the Cavalier and Pembina Counties Water Resource Districts and the Province of Manitoba by October 1, 1999; and, contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
CAVALIER AND PEMBINA
COUNTIES WATER RESOURCE
DISTRICTS FOR COST SHARE
FOR CONSTRUCTION OF
WALHALLA DRAIN NO. 3
(SWC Project No. 1904)**

Township in Cavalier County and Walhalla
County.

A request from the Cavalier and Pembina Counties Water Resource Districts was presented for the Commission's consideration for cost share in the construction of Walhalla Drain No. 3. Drain Permit 2879 was approved by the State Engineer for the joint assessment drain in Fremont and St. Joseph Townships in Pembina County.

The engineer's project cost estimate is \$157,972, of which \$149,972 is eligible for cost share to construct approximately 11 miles of drain improvements. Under the State Water Commission's policy and guidelines for cost share, 35 percent of the eligible costs qualify for cost share. The request before the State Water Commission is to cost share in the amount of \$52,490.

Similar to the construction project for the Walhalla Drain No. 2 and Lateral A previously approved by the Commission, Todd Sando explained that construction of the proposed project will result in significant increased flows into Canada. The water resource districts and the Province of Manitoba have verbally discussed the proposal and the Province of Manitoba has agreed to improve the channel in their portion of the watershed to allow for the increased flows. The border crossing is also being improved in stages to allow the province to increment their improvements. Mr. Sando stated that, to date, an executed memorandum of understanding has not been received from the Province of Manitoba.

In discussions with Steve Topping, Director of the Manitoba Natural Resources, Secretary Sprynczynatyk reiterated Mr. Topping's willingness to work with the state and the counties to satisfy the requirements by October 1, 1999 to move the project forward.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 35 percent of the eligible costs, not to exceed \$52,490 from the Contract Fund, for the Walhalla Drain No. 3, contingent upon an executed memorandum of understanding between the water resource districts and the Province of Manitoba by October 1, 1999; and, contingent upon the availability of funds.

William Hardy, Chairman of the Cavalier County Water Resource District, provided historical background information relating to the project. He reiterated that the State Engineer's recommendation is acceptable, and urged the State Water Commission's favorable consideration of the funding request.

It was moved by Commissioner Johnson and seconded by Commissioner Hillesland that the State Water Commission approve cost share of 35 percent of the eligible items, not to exceed \$52,490 from the Contract Fund, for the Walhalla Drain No. 3. This motion is contingent upon an executed memorandum of understanding between the Cavalier and Pembina Counties Water Resource Districts and the Province of Manitoba by October 1, 1999; and, contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
MOUNTRAIL COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARE OF FEASIBILITY STUDY
FOR IRRIGATION PROJECT
(SWC Project No. 1293)**

A request from the Mountrail County Water Resource District was presented for the Commission's consideration for cost share of a feasibility study for an irrigation project in Mountrail County. The study will expand upon the areas in Mountrail

County that were determined suitable for irrigation in the reconnaissance study. The State Water Commission approved cost share for the reconnaissance study in the amount of \$7,500 on July 22, 1997. The study was completed in February, 1999.

The reconnaissance study found a potential irrigable area of 28,550 acres. In addition to this area, there are more irrigable acres available within the county at much higher development costs which may prove feasible as the markets develop for high value crops.

The feasibility study will explore using the Missouri River system as a possible water source, a crop analysis, an economic feasibility and impact review, power requirements, and an estimated total cost of the project. To ensure landowner participation, landowners are being asked to provide a \$1.00 per acre contribution toward the feasibility study. To date, 11,000 acres have been committed to the feasibility study; this money is part of the local commitment of \$12,000.

The estimated cost of the feasibility study is \$70,750. Cost share will be provided by the Agricultural Product Utilization Commission - \$30,000, and the local commitment is \$12,000. The request before the State Water Commission is to cost share in the amount of \$28,750, which is approximately 40 percent of the eligible cost share items.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 40 percent of the eligible costs, not to exceed \$28,750 from the Contract Fund, for the feasibility study of an irrigation project in Mountrail County.

It was moved by Commissioner Johnson and seconded by Commissioner Bjornson that the State Water Commission approve cost share of 40 percent of the eligible costs, not to exceed \$28,750 from the Contract Fund, for the feasibility study of an irrigation project in Mountrail County. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR COST
SHARE FOR DIGITAL AERIAL
SURVEY FOR FLOODPLAIN
MAPPING FOR RED RIVER
AREA SOUTH OF FARGO
(SWC Project No. 1751)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for cost share associated with obtaining digital aerial survey data for floodplain mapping for the Red River area south of Fargo. The Federal Emergency Management Agency has contracted with Houston

Engineering to do a flood insurance restudy of the area, however, the restudy does not include new survey or aerial work in the overbank areas necessary to complete the hydraulic modeling and floodplain mapping portions of the flood insurance restudy.

Local engineers have documented errors in the present floodplain maps and, therefore, it was decided to develop the mapping to a one foot contour level to allow for completion of the flood insurance restudy.

Negotiations have been initiated with Horizons, Inc., Rapid City, SD, a laser terrain mapping and imaging company, to do the aerial mapping work for the entire area. The project cost estimate is \$166,000, of which the State of Minnesota has agreed to provide a cost share of \$37,000. The request before the State Water Commission is to provide a 35 percent cost share of the eligible items in the amount of \$45,150.

It was the recommendation of the State Engineer that the State Water Commission approve a 35 percent cost share of the eligible costs, not to exceed \$45,150 from the Contract Fund, for costs associated with obtaining digital aerial survey data for floodplain mapping the Red River area south of Fargo, contingent upon the availability of funds.

It was moved by Commissioner Bjornson and seconded by Commissioner Johnson that the State Water Commission approve a 35 percent cost share of the eligible costs, not to exceed \$45,150 from the Contract Fund, for costs associated with obtaining digital aerial survey data for floodplain mapping the Red River area south of Fargo. This motion is contingent upon the availability of funds.

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

Governor Schafer and Secretary Sprynczynatyk exited the Commission meeting to participate in a telephone conference call meeting with the Corps of Engineers relative to Devils Lake. The presiding gavel was turned over to the Vice Chairman, Commissioner Jack Olin.

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

On November 10, 1997, the North Dakota congressional delegation introduced legislation in the United States Senate and House of Representatives (S. 1515 and H.R. 3012) that will re-focus and complete the Garrison Diversion Project. The bills were introduced as amendments to the Garrison Diversion Reformulation Act of 1986, which is an amendment to the 1965 Act. The "Dakota Water Resources Act of 1997" is the final product of years of negotiations and represents broad, bipartisan consensus on the future of the project.

Field hearings on the Dakota Water Resources Act of 1997 were held February 19, 1998 in Fargo, ND, and on August 11, 1998 in Minot, ND. The hearings were convened to receive testimony from interested parties in North Dakota and the region on the legislation to complete the Garrison Diversion Project.

The Dakota Water Resources Act of 1997 was heard before the Subcommittee on Water and Power of the U.S. Senate Committee on Energy and Natural Resources on July 14, 1998 in Washington, DC. The Act was heard before the Subcommittee on Water and Power of the U.S. House of Representatives Committee on Resources on September 29, 1998.

On March 16, 1999, the Dakota Water Resources Act of 1999 was reintroduced in Congress (S. 623 and identical bill H.R. 1137). The Garrison Diversion Conservancy staff and others have worked closely with the elected leadership for introduction and for ultimate passage of the Act in 1999.

The Dakota Water Resources Act of 1999 was heard before the Subcommittee on Water and Power of the U.S. Senate Committee on Energy and Natural Resources on May 27, 1999 in Washington, DC. The testimony of Governor Schafer to the Committee is attached hereto as **APPENDIX "D"**.

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

Jeffrey Mattern, Coordinator for the MR&I Water Supply program, provided the following program report:

All Seasons Rural Water: The project will provide water to 24 rural users and the city of Bisbee, and will involve a reservoir/pump station, pipelines, and in-line booster stations. The construction contracts were awarded to Ronald Peterson Construction for the pipeline and to Wanzek Construction for the reservoir.

Langdon Rural Water Users - Munich Expansion: The Langdon Rural Water Users received MR&I grant funding towards the feasibility study for the Munich service area. The study has an estimated cost of \$50,000, with a 65 percent grant being \$32,500. The project would expand the existing rural water system from the city of Langdon to service the community of Munich and the surrounding rural users. The project would be developed to ensure the expansion matched with All Seasons Water Users to the west. The estimated project cost is \$9.6 million and would serve 350 users.

Missouri West Rural Water, Phase II: The construction contract is scheduled to be completed in the summer of 1999.

Northwest Area Water Supply, Phase I (Rugby Component): The project is anticipated to be completed in August, 1999.

Northwest Area Water Supply, Phase II (Minot Component): The project is being reviewed for compliance with the National Environmental Policy Act.

North Valley Water Association/Walhalla-Neche Branch: The project reclamation is anticipated to be completed in the summer of 1999.

Ramsey County Rural Water: The project engineer is working on the feasibility study of the proposed rural water expansion project into Eddy and Foster Counties. The estimated project cost is \$3.3 million.

Ransom-Sargent Rural Water: The Fingal/Cogswell Phase was bid May 25, 1999. Construction is anticipated to begin in June, 1999, with the major work completed in October, 1999. The next project phase includes a water treatment plant expansion in Lisbon, a new well field, and a raw water transmission pipeline. The well field area potentially impacts 94 acres of western fringed prairie orchid habitat and 24 acres of wetlands habitat. The Bureau of Reclamation and the U.S. Fish and Wildlife Service are working on the mitigation measures. The environmental assessment process is scheduled for completion in June, 1999.

Southwest Pipeline Project: Potential funding for the Mott-Elgin phase is being discussed with the USDA, Rural Development. The statewide water development legislation is being reviewed for project funding.

Mr. Mattern reported the Tri-County Water Users and the Barnes Rural Water Users have petitioned the State Engineer to convert from a non-profit corporation to a water district in order to obtain tax-exempt financing to allow for a lower interest rate on loans made by a system. The hearings are scheduled for June 10, 1999 in Bismarck.

**GARRISON DIVERSION PROJECT -
PROMISED PAYMENT PLAN (PPP)
FOR WATER PROJECTS
(SWC Project No. 237-03)**

Dave Koland, Executive Director, North Dakota Rural Water Systems Association, presented the Promised Payment Plan (PPP) for MR&I water supply projects to the State Water Commission at its December 21, 1998 meeting. Under the PPP, a four-year construction schedule and MR&I budget would be developed based on the \$53 million federal MR&I commitment. If, in any one year of the proposed budget, the federal payment fell short of the budgeted amount, the state would promise to cover the shortage until the federal dollars were received. The project sponsors would then be able to plan their projects to take full advantage of North Dakota's short construction season. The PPP program would advance funds to allow for expedited project construction and water delivery. No action was taken by the State Water Commission at its December 21, 1998 meeting.

At its meeting on January 27, 1999, the State Water Commission continued its discussion on the PPP concept. A memorandum to the State Water Commission members and attachments providing technical and support information relative to the PPP program was

presented by Secretary Sprynczynatyk. John Hoven, President of the Bank of North Dakota, and Tom Tudor, North Dakota Municipal Bond Bank, provided technical information relating to the bond programs offered by their respective institutions, benefits and problems foreseen with the PPP concept, as well as outlining a process for the concept to become viable.

At the State Water Commission meeting on January 27, 1999, a motion failed that would have allowed the State Engineer and staff to further explore and develop a plan to utilize the Promised Payment Plan concept for MR&I water supply projects scheduled to be constructed within the remaining \$53 million of MR&I funding.

On March 24, 1999, the State Water Commission passed a motion to reconsider the vote on the motion that failed on January 27, 1999 to allow the State Engineer and staff to further explore and develop a plan to utilize the Promised Payment Plan concept for MR&I water supply projects scheduled to be constructed within the remaining \$53 million of MR&I funding.

Dale Frink explained that the PPP concept is intended to address the lag in the MR&I program grant funding. Therefore, water supply projects need to be phased because of limited annual appropriations resulting in more costly projects and a delay of water delivery. The State Water Commission has the statutory authority to implement the PPP concept under current law, and an enhanced authority under House Bill 1281, which will become law on August 1, 1999.

HB 1281 allows the State Water Commission to guarantee evidences for indebtedness issued or other obligations taken for establishing a pool program or other financing programs for owners of water projects. The guarantee is authorized by resolution of the Commission and evidenced by a written agreement. The pledge of revenue would be the security for a guarantee or note. The bill also addresses the reserve fund to handle the funding.

Mr. Frink addressed the need for a PPP program based on estimated project construction schedules and alternatives to the program, which are outlined in a memorandum attached hereto as **APPENDIX "E"**. Projects scheduled to receive the remaining MR&I funds include Benson Rural Water, Pierce Rural Water, Ransom-Sargent Rural Water, and the Northwest Area Water Supply Project (Minot and Rugby Phases).

Senator Ken Solberg, District 7, Rugby, ND, and a member of the 1999 Legislative Senate Appropriations Committee, addressed the State Water Commission and explained the legislative intent of SB 2188. The passage of the bill established legislative goals for comprehensive statewide water development, authorized the issuance of bonds for

critical water projects, and allocated a portion of the tobacco settlement funds for water development. Senator Solberg also referenced HB 1475, which established a special Water Development Trust Fund to finance water projects with money from the state's tobacco settlement. The total amount of bonds authorized for construction during the 1999-2001 biennium is \$84.8 million.

Governor Schafer and Secretary Sprynczynatyk returned to the State Water Commission meeting following completion of the telephone conference call meeting with the Corps of Engineers relative to Devils Lake.

**GARRISON DIVERSION PROJECT -
APPROVAL OF CONTINUATION
OF CONTRACT WITH WILL &
CARLSON, WITH COST SHARE
UP TO \$25,000 FROM CONTRACT
FUND, THROUGH JUNE 30, 1998
(SWC Project No. 237-03)**

Secretary Sprynczynatyk presented a request from the Garrison Diversion Conservancy District to continue participation in support of the Will & Carlson contract in the amount of \$25,000. Since 1991, the State Water Commission has pledged financial support of \$155,000 for the consulting

services of Peter Carlson, Will & Carlson, in Washington, DC.

The Dakota Water Resources Act is requiring a major effort in Washington to obtain Congressional approval. Will & Carlson is assisting to provide extra support for this effort.

It was the recommendation of the State Engineer that the State Water Commission approve up to \$25,000 from the Contract Fund to continue the Will & Carlson contract for the period July 1, 1998 through June 30, 1999. The funds requested for this time period have been expended and were used to cost share with the Garrison Diversion Conservancy District.

Commissioner Johnson made reference to the contract time period being considered by the Commission for funding (July 1, 1998 through June 30, 1999). He voiced concern that the funds were expended for services prior to the State Water Commission considering the continuation of the contract and funding. He also requested Will & Carlson provide monthly reports to the State Water Commission on its activities in Washington affecting water issues important to the mission and goals of the State Engineer and the State Water Commission.

Dale Frink responded that the Garrison Conservancy District will be notified that it should submit future funding requests at the beginning of the biennium for the Commission's consideration for the continuation of the Will & Carlson contract.

It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve continuation of the Will & Carlson contract for the period July 1, 1998 through June 30, 1999, up to \$25,000 from the Contract Fund. This motion is contingent upon the availability of funds.

Commissioners Ames, Bjornson, DeWtiz, Hillesland, Olin, Swenson, Thompson, and Chairman Schafer voted aye. Commissioner Johnson voted nay. The recorded vote was 8 ayes; 1 nay. The Chairman announced the motion carried.

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

James Lennington, Project Manager for the Southwest Pipeline Project, provided the following contract, construction and project status report:

Contracts 2-3H and 7-5A - Transmission Pipeline to Hebron and Glen Ullin and the Rural Distribution Systems in the East Taylor Service Area: Contract 2-3H is essentially complete with the exception of reclamation work and punch-list items. Under this contract, water service started for the city of Glen Ullin on April 5, 1999.

Under contract 7-5A, the contractor is proceeding with the installation of rural lines. The contract will add 95 rural users to the project. Approximately 35 miles of pipeline and 37 services have yet to be installed. To date, 23 users have been turned over to the Southwest Water Authority, and 35 additional services have been installed but are waiting for pressure testing and chlorination before they are turned over the Authority for service. The contract completion date is September 4, 1999.

Contract 4-4 - Jung Lake Pump Station: The Jung Lake station contract is complete and became operational last November. The Southwest Water Authority has experienced some problems with the variable frequency drive (VFD) motors for the pumps and the manufacturer has been to the site in an effort to troubleshoot the problems. The manufacturer has agreed to delay the start of the one-year warranty period for the VFDs until the problems have been resolved.

Contract 5-4 - Jung Lake Reservoir: The Jung Lake reservoir contract is complete. Last fall, the contractor was unable to complete painting the exterior of the steel tank atop the concrete pedestal. The interior of the tank was painted and the reservoir was operational. The completion date of the

contract was extended until May 22, 1999 due to high winds experienced at the site during erection of the concrete pedestal. The contractor returned to the site in April and was able to complete the reservoir on May 20, 1999.

Contract 7-4/7-3A - Bucyrus and Three Pocket Service Area Rural Distribution: The Bucyrus and Three Pockets Service areas rural distribution system has been completed with the exception of punch list items, reclamation, and change orders which added users. The contractor is currently working on the punch-list items found during last fall's prefinal inspection and the East Rainy Butte Pocket No. 2, which was added by change order last October. Two more small pocket areas are being added to this contract, which will add an additional 11 users and 2 users have been added in the East Rainy Butte Pocket No. 2. With these additions, the final completion date for this contract will be extended until sometime in September, 1999.

Mr. Lennington reported the final inspection of the Dodge chloramination facility was held on April 22, 1999. During the construction of the facility, it became apparent that moving the chlorine and ammonia injection points outside of the Dodge pump station building would be desirable. The piping associated with these injectors has had a tendency to leak. Chlorine gas is highly corrosive and could destroy the electrical and telemetry equipment in the pump station within a short time if there was a significant leak. Moving the injection points outside the pump station would remove this danger and can be done fairly easily. Authority staff and equipment will be used to make these modifications this summer. The chloramination facility will also be added to the project's telemetry system.

Preliminary engineering work for the Mott-Elgin phase is underway. The environmental assessment will be completed by June 9, 1999, as will the preliminary cultural resource surveys. Plans and specifications have been completed for contract 5-14, the Hebron reservoir, and have been submitted to the North Dakota Department of Health for review. Plans and specifications for contract 2-6B, the main transmission pipeline from Mott to New Leipzig and Elgin, should be ready for review in mid-June, 1999.

SOUTHWEST PIPELINE PROJECT - SB 2188 CERTIFICATION; AND APPROVAL TO PROCEED WITH DEVELOPMENT OF FINANCIAL PACKAGE TO PROVIDE \$4.5 MILLION IN STATE FUNDING FOR PROJECT UNDER AUTHORITY IN SB 2188 (SWC Project No. 1736)

The passage of SB 2188 this past legislative session added a new section to North Dakota Century Code 61-01, which established statewide water development goals. The new section states, in part, that the legislative assembly will support, to the extent funds are available from the Water Development Trust Fund, \$6 million

in state funding for the 1999-2001 biennium and a total of \$22.2 million as the state's share for the completion of the Southwest Pipeline Project as identified in the 1999 State Water Management Plan.

The bill created chapter 61-02.1 to the North Dakota Century Code, which authorizes the State Water Commission to issue bonds in an amount providing for \$4.5 million in construction funding for the Southwest Pipeline Project, plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. Subsection 6 of section 61-02.1-01 states, in part, that, "The commission may only issue bonds under this chapter for continued construction of the southwest pipeline project when it is determined that the Perkins County water system will not make payment to the state water commission in the amount of \$4.5 million or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on the bonds issued for continued construction of the southwest pipeline project, as provided in subsection 2 of section 61-01.1-04."

James Lennington explained that the authority of the State Water Commission to issue bonds, as provided for in subsection 2 of section 61-02.1-01 becomes effective on the date the State Engineer certifies to the State Water Commission that the Perkins County Rural Water System will not make a payment to the State Water Commission in the amount of \$4.5 million or January 1, 2000, whichever occurs earlier.

SB 2188 further states that it is the intent of the legislature that a total \$6 million in funding be provided to the State Water Commission for the Southwest Pipeline Project through a combination of funding sources, which must include payment from the Perkins County Rural Water System, bonds issued by the State Water Commission, or other available sources.

Section 4 of SB 2188 stipulates that "The bank of north dakota shall extend a line of credit, not to exceed \$84,800,000, which is hereby appropriated for the biennium, beginning July 1, 1999, and ending June 30, 2001, to the state water commission for the purpose of interim financing until bonds are issued under 61-02.1. Advances on the line of credit may be made only when a source of repayment has been identified and determined to be available."

Section 61-02.1-05 of the Water Development Trust Fund states, in part, that, "Moneys received by the state pursuant to the 1998 settlement agreement with tobacco product manufacturers, or any successor agreement, and any earnings on these moneys, must be deposited in the water development trust fund in the state treasury for use in paying for bonds issued as provided for in this chapter and for other water projects as provided for in 1999 House Bill No. 1475."

The principal and interest on the bonds issued for the Southwest Pipeline Project under subsection 6 of section 61-02.1-01 are payable from transfers from the Water Development Trust Fund, transfers from revenues in the Resources Trust Fund, appropriations of other available revenues, or from payments by the Perkins County Rural Water System, and then from any other revenues the State Water Commission makes available during the biennium for that purpose. If sufficient funds from these sources are not available, payments are made from transfers from the current biennial earnings of the Bank of North Dakota.

Mr. Lennington stated that federal legislation authorizing funding for the Perkins County Rural Water System was introduced last fall and reintroduced this spring. The legislation includes a limited amount of funding for Fiscal Year 1999 for the engineering study and NEPA compliance. Construction is planned to start with replacement of water lines in the city of Lemmon, South Dakota, after which the transmission pipeline connecting the system to the Southwest Pipeline will be built. Repayment to North Dakota will not occur until after the transmission line has been completed. A letter from the Perkins County Rural Water System was received in the Office of the State Engineer on May 5, 1999 describing the status of the legislation and repayment to North Dakota. Mr. Lennington said it is likely to be several years before repayment to North Dakota can be expected.

Secretary Sprynczynatyk stated that based on review of the information received from the Perkins County Rural Water System relative to the status of legislation and repayment of \$4.5 million to North Dakota, and to satisfy the certification requirements of section 8 of SB 2188, he made the following certification to the State Water Commission:

I, David A. Sprynczynatyk, serving as the North Dakota State Engineer, and Chief Engineer-Secretary to the North Dakota State Water Commission, do hereby certify to the State Water Commission that the Perkins County, South Dakota, Rural Water System will not make a payment to the State Water Commission in the amount of \$4.5 million by January 1, 2000.

Mr. Lennington reported that staff is currently working with the USDA, Rural Development to develop a financing package for the Mott-Elgin phase of the Southwest Pipeline Project. The initial application to USDA, Rural Development for assistance to Mott-Elgin was for a \$13.6 million project. The project has since been refined and it appears, at this time, that the financing package will total \$13 million. Of this amount, the state's share is \$6 million. The \$4.5 million in bonds issued under the authority given to the Commission by SB 2188 would provide the majority of the state's share, while the remaining \$1.5 million could come from revenue bonds issued under the existing authority in North Dakota Century Code 61-02 and 61-24.3 using the

existing Southwest Pipeline Project's General Bond Resolution. Revenue bonds totaling \$10.33 million have been issued under the existing authority, which has a limit of \$15 million.

To keep costs to a minimum, Mr. Lennington stated the line of credit extended to the State Water Commission under SB 2188 can be used until the total amount to be borrowed for all projects is in the range of \$20 million. Borrowed money could also be repaid from the tobacco settlement funds deposited in the Water Development Trust Fund.

Portions of the Mott-Elgin phase are currently being designed and will be ready for bidding this summer and fall. These include contract 5-14, the Hebron reservoir, and contract 2-6B, the main transmission pipeline from Mott to New Leipzig and Elgin. Plans could also be ready for bidding this fall for the Burt reservoir and the rural water distribution systems for the Southeast Jung Lake and South Hebron pockets. Mr. Lennington discussed the projected 1999 initial development time table for the Mott-Elgin phase. As the project is developed and funding has been approved, the Commission will be provided with an expanded time table to include all of the contracts in this phase.

It was the recommendation of the State Engineer that the State Water Commission proceed with the development of a financial package providing \$4.5 million in state funding for the Southwest Pipeline Project, under the authority provided for by SB 2188, which would allow for the Mott-Elgin phase to begin construction this summer. The initial funding for these contracts will be the line of credit extended to the State Water Commission by SB 2188 and subsequently, as needed, bonds authorized by SB 2188, or tobacco settlement funds deposited in the Water Development Trust Fund.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission proceed with the development of a financial package providing for \$4.5 million in state funding under the authority provided by Senate Bill 2188 for the Southwest Pipeline Project.

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AMENDMENTS TO
DICKINSON WATER TREATMENT
AGREEMENT RELATING TO WATER
TREATMENT COSTS AND PROCEDURE
FOR ESTABLISHING COSTS
(SWC Project No. 1736)**

City and the Commission, but portions have been transferred to the Southwest Water Authority when the transfer of operations and maintenance responsibilities occurred. The committee has proposed several changes to the agreement which relate to the determination of the city's cost for treating water and resolving differences.

At its meeting on March 24, 1999, the State Water Commission was informed the Southwest Water Authority and the city of Dickinson had created a joint committee to address changes to the Southwest Pipeline Project Water Treatment Agreement. This agreement was originally between the

James Lennington provided an explanation of the proposed revisions to the Southwest Pipeline Water Treatment Agreement, which are attached hereto as **APPENDIX "F"**. The City and the Authority have approved the revisions to the agreement. A legal review of the treatment agreement indicates there are other portions which need to be updated at a later date.

Mr. Lennington explained additional language for paragraph 3 on page 3 of 4, which was not included in the memorandum provided to the Commission at an earlier date:

- f. Notify the City within 30 days of the Authority's receipt of the City's report or notice of adjustment, submitted under paragraph 2(h), of any disagreement with changes to tabulated costs as identified in the audit report. The Commission and the Authority agree that any disagreement with the notice of adjustment not submitted within 30 days of receipt of the notice each year will not be reimbursed by the City.

The existing language in section 19 on page 4 of 4 was deleted and replaced with new language titled "Potential Reversion to Commission" (see **APPENDIX "F"** for new language).

It was the recommendation of the State Engineer that the State Water Commission approve the revisions to the Southwest Pipeline Project Water Treatment Agreement relating to water treatment rates and the procedure for establishing costs.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve the revisions to the Southwest Pipeline Project Water Treatment Agreement relating to water treatment rates and the procedure for establishing costs, as presented.

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF ADDITIONAL
\$100,000 FROM RESERVE FUND
FOR REPLACEMENT AND EXTRA-
ORDINARY MAINTENANCE FOR
CLEANING OF EAST SLUDGE
POND AT DICKINSON WATER
TREATMENT PLANT
(SWC Project No. 1736)**

The Southwest Water Authority collects and maintains a reserve fund for "replacement and extraordinary maintenance". This fund exists because over the life of the project there will occur replacement and maintenance items that will exceed annually budgeted amounts. These items need to be pre-funded. The expenditures from this fund are to be approved by the State Water Commission.

At its meeting on January 27, 1999, the State Water Commission passed a motion to approve up to \$300,000 from the Southwest Pipeline Project's reserve fund for replacement and extraordinary maintenance for cleaning of the east sludge pond at the Dickinson water treatment plant. The Commission also approved a commitment of an additional \$100,000 from either construction funds or the reserve fund for replacement and extraordinary maintenance, which was to be determined at a later date.

James Lennington explained that last fall a technical review of the sludge pond cleaning issue revealed that the ponds met design standards at the time the plant began to treat Southwest Pipeline Project water. At that time, in the fall of 1991, the east pond was completely full and the west pond was approximately 60 percent full. He said that cleaning out a portion of the east pond equivalent to the amount of sludge produced since the plant began to treat project water would be an operations and maintenance cost. When the cleanout is undertaken, the entire pond should be cleaned out and not just a portion of it.

Sludge removal from ponds is an ongoing maintenance item and the proposed full cleaning of the east pond could be seen as creating capacity for future sludge generation as an operations and maintenance cost. Mr. Lennington said funding for continued construction of

the Southwest Pipeline Project is becoming increasingly difficult to secure. In 1997, the state was able to develop a revenue bonding program to construct the Bucyrus and Three Pockets Service areas. This committed a large portion of the future capital repayments by project water users to repayment of revenue bonds. Application for USDA, Rural Development funding for construction of the Mott-Elgin phase of the project has been pursued, in which it has been projected that a large portion of the future capital repayments would be dedicated to repayment of bonds issued for this phase. Additionally, construction needs totalling several hundred thousand dollars over the next five years have been identified at the Dickinson water treatment plant, as well as an expansion of the project's O&M building. He said it is clear that in order to address the future construction needs and repayment of the bonds for the Mott-Elgin phase, it is necessary to scrutinize every construction expenditure to ensure it is the most beneficial use of construction funding.

Based on a review of the Mott-Elgin funding, other project needs, and the technical review of the sludge pond issue, Mr. Lennington said it has been determined appropriate that the reserve fund for replacement and extraordinary maintenance be used to pay all of the costs of cleaning out the east sludge pond, other than those already committed to by the city of Dickinson.

It was the recommendation of the State Engineer that the State Water Commission approve the expenditure of an additional \$100,000 from the Southwest Pipeline Project's reserve fund for replacement and extraordinary maintenance for cleaning of the east sludge pond at the Dickinson water treatment plant. This would increase the total expenditure from the reserve fund for replacement and extraordinary maintenance to \$400,000. This contribution of funds will be beyond those funds already committed by the city of Dickinson.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve an additional \$100,000 from the Southwest Pipeline Project's reserve fund for replacement and extraordinary maintenance for cleaning of the east sludge pond at the Dickinson water treatment plant.

This action will increase the total expenditure from the reserve fund for replacement and extraordinary maintenance to \$400,000 for cleaning of the east sludge pond at the Dickinson water treatment plant. This contribution of funds will be beyond those funds already committed by the city of Dickinson.

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF SOLE SOURCE
SERVICE AMENDMENTS TO
HALLIDAY AND NEW LEIPZIG
WATER SERVICE CONTRACTS
(SWC Project No. 1736)**

The cities of New Leipzig and Elgin are scheduled to be the next cities connected to the Southwest Pipeline Project as part of the Mott-Elgin phase of development. Neither city has a sole source amendment to its water service agreement. Under sole

source service, a user agrees to use pipeline water for all of its needs. In exchange, the provisions in the water service agreement requiring purchase of a minimum amount of water each year are waived. The user is billed for the actual amount of water used each month.

James Lennington informed the Commission members that the city of New Leipzig approved the sole source amendment to its water service contract on June 7, 1999. The city of Elgin deferred action on a sole source amendment to its water service contract on June 3, 1999.

The city of Halliday began service from the Southwest Pipeline Project on December 1, 1994. Mr. Lennington said that in 1993, all of the cities with contracts, including the city of Halliday, were contacted regarding sole source service from the project. A review of the State Water Commission minutes indicated that a sole source service amendment had not been approved by the Commission for the city of Halliday. The city approved a sole source amendment on June 7, 1999.

It was the recommendation of the State Engineer that the State Water Commission approve sole source amendments to the water service contracts for the cities of New Leipzig and Halliday.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve sole source service amendments to the Southwest Pipeline Project water service contracts for the cities of New Leipzig and Halliday. SEE APPENDIX "G"

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

**SOUTHWEST PIPELINE PROJECT -
1998 ANNUAL OPERATING REPORT
(SWC Project No. 1736)**

The Southwest Water Authority presented the 1998 Annual Operating Report of the Southwest Pipeline Project (SWPP). Following is a summary of the report:

The SWPP used funds provided by USDA, Rural Development to complete the Hettinger-Reeder phase. USDA, Rural Development also provided funds for the Jung Lake tank and Jung Lake pump station south of New England. The project was able to serve an additional 340 farms and ranches. The 1997 North Dakota State Legislature authorized the State Water Commission to bond to match the USDA, Rural Development funding.

The Garrison Diversion Municipal, Rural and Industrial (MR&I) Water Supply program provided funding for the Hebron-Glen Ullin phase. Hebron received water service in November, 1998. Glen Ullin received water service in April, 1999. The SWPP will provide potable water service to an additional 90 farms and ranches in this area this year. The Hebron-Glen Ullin phase completes the use of MR&I funds for the SWPP unless Congress passes the Dakota Water Resources Act.

The capital repayment fees paid by users of water service from the SWPP are used to repay the bonds, principal and interest, and to reimburse the State's Resources Trust Fund.

The SWPP now serves 19 cities as bulk users: Belfield, Dickinson, Dodge, Dunn Center, Gladstone, Glen Ullin, Golden Valley, Halliday, Hebron, Hettinger, Manning, Mott, New England, New Hradec, Reeder, Regent, Richardton, South Heart, and Taylor. The SWPP serves individual users in Lefor, Bucyrus and Haynes. The Assumption Abbey and the Sacred Heart Monastery also receives potable water service. The SWPP delivers raw water to the Taylor Nursery, Sacred Heart Monastery, Jurgens Farms, and new in 1998, the Assumption Abbey.

The SWPP delivered over 923,300,000 gallons of water in 1998. Water service is provided to approximately 28,500 people.

The 1999 North Dakota Legislature approved state funding for the SWPP Mott-Elgin phase. These funds will be matched with a loan and grant from USDA, Rural Development for construction in 1999-2001.

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

James Lennington reported that the revised *Biota Transfer Control Facilities and Criteria* report, a draft Finding of No Significant Impact, and a

proposed final Environmental Assessment were distributed to the Garrison Joint Technical Committee (GJTC) on September 18, 1998. The GJTC held a meeting on November 20, 1998 to discuss these documents.

The Canadian section of the committee presented a list of issues and concerns they have with the project as it is proposed. The committee agreed to draft a joint letter of finding to the Garrison United States-Canada Consultative Group. The Bureau of Reclamation, as the responsible federal agency, provided a statement of its intentions concerning the National Environmental Policy Act (NEPA) decision document, as well as a draft copy of the document. According to the 1986 Garrison Diversion Reformulation Act, construction may begin after the project has received clearance from the United States section of the Consultative Group assuring that the Administrator of EPA and the Secretaries of State and Interior have determined that the project will meet the requirements of the Boundary Waters Treaty of 1909.

Mr. Lennington reported the letter was executed by the United States and the Canada Garrison Joint Technical Committee co-chairs on February 1, 1999 and was forwarded to the United States-Canada Consultative Group requesting that a meeting be scheduled at the earliest possible time. The letter included a status of the NAWS project and the findings of the Garrison Joint Technical Committee. Also included with the letter were a statement of intention and a draft Record of Decision from the Bureau of Reclamation. These steps are consistent with the approved process developed by the Garrison Joint Technical Committee and provided to the Consultative Group in April, 1997. He said it is possible that if a decision of the Consultative Group can be obtained in the next month or two, that construction on the project could begin in the summer of 1999.

Several differences remain between the United States and Canadian sections of the Joint Technical Committee concerning biota transfer issues associated with NAWS. Mr. Lennington indicated that a summary of the outstanding issues, requiring further direction from the Consultative Group, was also included with the letter. A meeting of the Garrison Joint Consultative Group is scheduled for July 8, 1999 in Washington, DC.

The draft plans and specifications were sent to the Garrison Joint Technical Committee on May 27, 1999 as discussed in the NAWS project approval process developed by the committee in

1997. Information was received from the State Department the week of May 23-29, 1999 that a diplomatic note was expected from Canada concerning the NAWS project by the end of that week. Mr. Lennington reported the diplomatic note has not been received to date.

The first phase of construction will involve approximately 7.4 miles of pipeline from the Minot water treatment plant to a pressure reducing valve located along U.S. Highway 83. The estimated cost of this first segment is approximately \$5.5 million. A land value appraisal report has been prepared for the chosen route, indicating that the property crossed by the project has an appraised value ranging from \$750 per acre for the cropland south of Minot to \$2.00 per square foot for business property next to the bypass. The estimated cost of acquiring easements for the first contract is about \$170,000. Acquiring these easements can be deferred until more information has been obtained relative to the project's NEPA approval. Mr. Lennington made reference to areas within the city of Minot where negotiations continue to obtain easements that will be required for the project.

Mr. Lennington stated construction is progressing on the expansion and upgrade of the NAWS, Phase I, Rugby water treatment plant. The contractor, Swanberg Construction, Valley City, ND, is constructing the addition to the water treatment plant and is approximately six weeks ahead of the contract schedule. When the addition is completed and operational, the rehabilitation of the existing portions of the plant will commence. It is anticipated the contract will be completed in August, 1999.

**DEVILS LAKE
HYDROLOGIC UPDATE
(SWC Project No. 416-02)**

Secretary Sprynczynatyk reported the current level of Devils Lake is 1446.08, which is the highest level ever recorded. Since January 1, 1999, the volume of water in the lake has increased by approximately 331,000 acre-feet, which is the third largest volume increase on record; 1997 and 1995 are larger. Since April 1, 1999, the volume of Devils Lake has increased by 296,000 acre-feet. On May 14, 1999, the National Weather Service raised the forecast for Devils Lake from 1447-1447.5 to 1447.5-1448.0.

**CORPS OF ENGINEERS DEVILS
LAKE EMERGENCY OUTLET
(SWC Project No. 416-01)**

Secretary Sprynczynatyk reported the St. Paul District Corps of Engineers and their consultant, Barr Engineering, have completed the engineering documentation on the proposed emergency outlet for Devils Lake. The proposed outlet will follow the Peterson Coulee corridor and will consist of a pump station located on the shore of the west bay south of Minnewaukan, approximately 13 miles of pipeline, and an energy dissipation structure located adjacent to the Sheyenne River. The pipeline will have a maximum pumping

capacity of 300 cubic feet per second, but the flow will be controlled to maintain the 450 mg/l sulfate standard and 600 cubic feet per second channel capacity in the Sheyenne River. The State Water Commission staff continues to work with the Corps and Barr Engineering to discuss the state's interests in the design of the outlet.

The final draft scoping document will include the details of the process used to determine the scope of the issues that will be included in the Environmental Impact Statement (EIS) for the project. Future milestones in the EIS process for the emergency outlet are currently set as:

| | |
|-----------------|---------------------------------|
| September, 1999 | Draft EIS out for public review |
| October, 1999 | Public review meetings |
| February, 2000 | Final EIS distributed |
| May, 2000 | Record of Decision |

The Corps of Engineers has completed a draft Interim Report to Congress describing an outlet from the west end of Devils Lake to the Sheyenne River. The draft report was submitted to the Corps' Division and headquarters offices for review proposing a gravity flow channel from the Pelican Lake area to a pump station near the intersection of Highways 19 and 281. Flows would be conveyed through a pipeline to a control reservoir at the high point of the alignment. An open channel would be constructed from the reservoir to the Sheyenne River.

**DEVILS LAKE TO STUMP
LAKE EMERGENCY OUTLET
(SWC Project No. 416-01)**

If Devils Lake reaches an elevation of 1446.6 feet msl, it will begin to spill into Stump Lake. (Based upon subsequent field surveys, it was determined

that the actual spill elevation is 1447.01 feet msl; the difference is because of a differential in elevation between two federal benchmarks established in 1949 and 1963). In an effort to reduce or delay flood damages around Devils Lake and to provide time for the Peterson Coulee outlet to be constructed, the State Water Commission staff investigated the possibility of an emergency plan to move up to four feet of floodwater from Devils Lake to Stump Lake. The intention is to raise Stump Lake to an elevation between 1441 and 1448 feet msl, depending on the inflow to Devils Lake over the next several years.

The project will require compensating landowners around Stump Lake whose land will be inundated by the project. To establish the cost of the land, appraisals were conducted, and a

contract with Reilly Appraisals Consultants, Inc., was executed by the State Engineer on August 31, 1998. The contract called for appraisals of three tracts of land for the Devils Lake to Stump Lake emergency outlet including: 1) a tract along the channel; 2) a large tract on West Stump Lake consisting of a farmstead cropland and hayland; and 3) a wooded tract on East Stump Lake. The contract was completed October 12, 1998.

A preliminary cost estimate of \$8 million was developed for the project, based upon a preliminary project design, an estimate of project mitigation requirements, a county-wide average of land values, and \$2 million to raise State Highway 1 east of Stump Lake.

At its meeting on December 21, 1998, Secretary Sprynczynatyk informed the Commission members that on December 11, 1998, a response was received from Roger Hollovoet, District Manager, U.S. Fish and Wildlife Service, Devils Lake, ND, addressing the request of refuge compatibility in the proposed plan to move water from Devils Lake to Stump Lake where the Stump Lake National Wildlife Refuge is located. In part, the letter stated:

“The solicitor’s opinion determined that your proposal is a refuge compatibility issue. Therefore, we have to determine if the proposed action will interfere with or detract from the mission of the National Wildlife Refuge System or the purposes of the individual National Wildlife Refuge. Stump Lake NWR was established under Executive Order 296A by President Theodore Roosevelt on March 9, 1905 for the purpose of a preserve and breeding grounds for native birds.

We are mandated to carry out the mission of the National Wildlife Refuge System and the purpose of Stump Lake NWR. Your proposal will inundate the Refuge for several years and will not allow the refuge to carry out its designed purpose, therefore, it is determined that this proposed action is not compatible. This decision is based on the Refuge’s purpose, the National Wildlife Refuge Administration Act and the National Wildlife Refuge Improvement Act. After various discussions, I have also determined that we cannot mitigate or negotiate the loss of an entire Refuge unless Congress requires us to do so.”

Secretary Sprynczynatyk stated the Commission staff prepared a reconnaissance level report titled, “Draft, Devils Lake Emergency Response Alternatives, May 1999,” describing 17 representative responses to the Devils Lake flooding crisis. Based upon this report, Governor Schafer proposed a three-part action plan:

- 1) Pursue the construction of a channel from Devils Lake to Stump Lake that could provide up to three feet of flood relief for Devils Lake. Devils Lake has risen to a level where a natural flow to Stump Lake is

imminent, but without a channel, only limited natural flows from Devils Lake to Stump Lake are expected unless Devils Lake exceeds 1448. These limited natural flows are not expected to have a significant effect on the projected peak level for Devils Lake. Constructing a channel between the two lakes would increase the flow at lower Devils Lake levels reducing the surcharge on the lake and reducing or delaying additional flood damage around Devils Lake.

- 2) Pursue a temporary emergency outlet in the vicinity of Twin Lakes, allowing expedited movement of water into the Sheyenne River.
- 3) Increased pressure on the Corps of Engineers to implement a permanent west end outlet.

Secretary Sprynczynatyk reported that Devils Lake is approaching the point where it will begin to spill into Stump Lake. The Commission staff worked with the National Guard, the Department of Transportation, and the counties to remove artificial obstructions in the channel between the two lakes. The National Guard removed approximately 50 feet of a section line trail across the channel to reestablish the natural flow path in that area. The possibility of removing sediment, which has been naturally deposited within the channel, is also being reviewed. Nelson County is adding culverts to the road on the county line to allow water to pass more efficiently.

**DEVILS LAKE AVAILABLE
STORAGE ACREAGE PROGRAM
(SWC Project No. 1882-01)**

On December 21, 1998 the State Water Commission passed a motion to approve the reallocation of up to \$950,000 from the previous Available

Storage Acreage Program (ASAP) contingency fund, from money earmarked to Devils Lake projects, and from the general projects fund, as needed, to the ASAP program to continue the program through 1999.

Letters were sent to the 1998 participants following the Commission's approval of funding the program into 1999 to inform them of the status of their site and the state's intentions of continued storage in 1999. Of last year's 231 participants, 33 were not given the opportunity to participate in the ASAP program because of their proximity to the lake and the potential for the lake to flood their sites. Many of these landowners will hold water on their sites with the understanding that if there proves to be a benefit to the lake, some level of compensation will be made under the program.

After the removal of the questionable sites, 198 people were asked to continue storing water in 1999. To date, 174 have agreed to continue storage with approximately 8,881 acres of land to be inundated that will hold approximately 15,100 acre-feet of water.

Water storage contracts were mailed to the 174 participants expressing an interest in continuing their water storage in 1999. To date, 154 signed contracts have been returned, and 117 of those contracts have been completed. The 37 contracts that have been received, but not completed, are waiting for other members of the site to return their contracts (100 percent participation is required before a site can go forward).

Interest is being received from the larger participants who generally wait to see how much water their land receives before committing to the program. There has also been interest in new sites.

**DEVILS LAKE -
SWEETWATER/MORRISON
LAKES WATER STORAGE PROJECT
(SWC Project No. 1746)**

In an effort to reduce the amount of runoff entering Devils Lake, the Ramsey County Water Resource District, the Devils Lake Joint Water Resource Board, and the State Water Commission are pursuing construction of the outlet structure on Sweetwater/Morrison Lakes. The reconstruction will allow Sweetwater/Morrison Lakes to be held 0.5 feet higher than its normal overflow elevation of 1459 during the summer months. The 0.5 foot rise will store 3,500 acre-feet of water, thus reducing the yearly peak of Devils Lake that normally occurs in June or July. The project will increase the surface area of the lakes, increasing the amount of water lost to evaporation. The new structure will also provide for better water management capabilities, reducing flooding in the Sweetwater/Morrison Lakes area.

Secretary Sprynczynatyk said that in order to allow for the additional storage, the Ramsey Board obtained five-year flood agreements from 32 landowners affected by the lakes' rise. A one-time payment of \$27,750 to compensate landowners for the approximately 277.5 acres affected will be paid to the Ramsey Board through the ASAP program. The Ramsey Board will then make the payments to the landowners for the five-year agreements. The Joint Board obtained the necessary permits and will cost share in 50 percent of the reconstruction. The State Water Commission's contribution of 50 percent will consist of construction crew labor, with no cash contribution expected.

**DEVILS LAKE
LANDOWNERS LAWSUIT
(SWC Project No. 416)**

Secretary Sprynczynatyk stated that on May 27, 1999, the State of North Dakota, the State Water Commission, the State Engineer, and the water resource districts in the Devils Lake Basin were served with the Complaint of Devils Lake landowners regarding the rise of Devils Lake. The state has until July 9, 1999 to respond to the Complaint. The landowners are alleging the following causes of action, and are bring the suit as a class action:

- 1) an unconstitutional takings;
- 2) that the drainage is an unreasonable use of the landowners' property;
- 3) that the drainage is unauthorized because flowage easements were not obtained to adversely affect or flood the landowners' land;
- 4) nuisance;
- 5) trespass; and
- 6) negligence.

North Dakota Century Code § 44-04-

19.1. Open records and open meetings - exemptions for attorney work product and attorney consultation, states, in part:

That portion of a meeting of a public agency during which an attorney consultation occurs, may be closed by a majority vote of the public agency in an open meeting, for the purpose of having the attorney consultation. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.

“Attorney consultation” means any discussion between a public agency and its attorney in instances in which the public agency seeks or receives the attorney’s advice concerning pending civil or criminal litigation or pending adversarial administrative proceedings.

It was the recommendation of the State Engineer that because this portion of the meeting will involve attorney-client consultation, the State Water Commission go into executive session.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that under the provisions of § 44-04-19.1 of the North Dakota Century Code, the State Water Commission proceed into executive session for the purposes of attorney-client consultation regarding the Devils Lake landowners lawsuit.

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

Following the State Water Commission executive session for the purposes of attorney-client consultation relative to the Devils Lake landowners lawsuit, Chairman Schafer re-opened the State Water Commission meeting.

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

The draft final report of the 1999 State Water Management Plan was provided to the Commission members for review prior to printing and distribution, which is scheduled for July 1, 1999. The report is an elaboration of the 1999 State Water Management Plan Executive Summary approved by the Commission in December, 1998. The plan includes full potential project listings, watershed level visions for the future, full policy study recommendations, and a variety of special topic sections.

SENATE BILL 2188

Secretary Sprynczynatyk stated that passage of Senate Bill 2188 by the North Dakota 56th Legislative Assembly represents a landmark in water management and water development. He said the new law not only recognizes the state's critical water needs, but creates a framework and the means for addressing those needs well into the 21st century.

Based upon the 1999 State Water Management Plan, SB 2188 addressed implementation of specific projects in the 1999-2001 biennium and clearly stated North Dakota's intent to meet identified water needs in future bienniums.

The Legislature's commitment is further depicted in the passage of House Bill 1475, which established a special Water Development Trust Fund. This fund will finance water projects with money from the state's tobacco settlement. The total amount of bonds authorized for construction during the 1999-2001 biennium is \$84.8 million.

Secretary Sprynczynatyk provided a summary listing memorandum of the water projects funding and the legislated requirements that must be met as a condition to issuing the bonds. The memorandum and SB 2188 are attached hereto as **APPENDIX "H"**.

A management requirement of SB 2188 is that the State Engineer must report periodically to the budget section, any other interim committee designated by the Legislative Council, and to the North Dakota Senate and House of Representatives standing committees on Natural Resources and Appropriations regarding the implementation of the comprehensive statewide water development and state water management plan and the issuance of bonds to finance the construction of flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program during the 1999-2001 biennium. The report must include information on the funding sources used to repay any bonds issued under the authority of SB 2188. Secretary Sprynczynatyk informed the Commission members that he provided an update on SB 2188 before the Budget Section of the Legislative Council on June 9, 1999.

**GRAND FORKS FLOOD
CONTROL PROJECT
(SWC Project No. 830)**

Ken Vein, Grand Forks Director of Public Works/City Engineer, provided a status report on the permanent flood protection project for the cities of

Grand Forks and East Grand Forks. The estimated project cost is \$350 million, with a non-federal share of approximately \$115 million. In December, 1998, Governor Schafer recommended a \$52 million state contribution during the 1999-2001 biennium for the project through the sale of bonds. The status report provided by Mr. Vein is attached is hereto as **APPENDIX "I"**.

At its meeting on January 27, 1999, the State Water Commission passed resolution No. 99-1-482 recognizing that the current plan proposed by the Corps of Engineers is the most cost effective means to provide flood control to the cities of Grand Forks and East Grand Forks. The resolution supported the city of Grand Forks in its efforts to provide flood control for its citizens, endorsed the city's selected plan, and urged expedient implementation to include state funding of a portion of the non-federal cost share.

Secretary Sprynczynatyk referenced the passage of SB 2188 by the North Dakota 56th Legislative Assembly that provides funding for the 1999-2001 biennium for the Grand Forks project through the sale of bonds for the non-federal cost share requirements of flood control projects.

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

In 1994, the U. S. Army Corps of Engineers circulated a draft Environmental Impact Statement (EIS),

which identified a preferred alternative for the future operation of the Missouri River mainstem reservoir system. As required by the National Environmental Policy Act, the draft EIS was subject to a full public review. In response to the public comments, the Corps agreed to conduct additional technical studies, re-initiate the alternative analysis, and prepare a revised draft EIS. The Corps agreed that the revised draft EIS would present a preferred alternative for public review and comment.

Current efforts of the Missouri River Basin Association and other interest groups have shown considerable progress in regard for the potential for consensus building in the basin. To maximize the potential for consensus building regarding the operation of the reservoir system, the Corps of Engineers elected to prepare and circulate a preliminary revised draft EIS, which does not present a preferred alternative, but presents data on eight alternatives that represent the range of interests in the basin. At its August 13, 1998 meeting, the Commission members were provided the "Summary of the Preliminary Revised Draft Environmental Impact Statement Master Water Control Manual Missouri River", dated August, 1998.

A six-month public coordination period followed the release of the preliminary revised draft EIS, with a series of public workshops held throughout the Missouri River basin. The public workshops were held in North Dakota in September, 1998 at New Town, Williston, Garrison and Bismarck. Informational material, prepared by the Commission staff relative to North Dakota's perspective, was made available at the workshops. The preliminary revised draft EIS is part of the Corps' effort to build consensus to facilitate the identification of a preferred alternative. State agencies developed the official state's position to ensure that North Dakota's interests are considered in the new Master Manual. When a preferred alternative has been identified and the revised draft EIS completed, the Corps of Engineers will hold public hearings, currently scheduled for October, 1999 through March, 2000.

The Missouri River Basin Association held a conference in Kansas City, Missouri, on December 14 and 15, 1998. Approximately 150 Missouri River constituents participated in the conference to address the Corps of Engineers Master Manual review for the operations of the Missouri River system. Secretary Sprynczynatyk commented that it was a positive conference, and that the Missouri River Basin Association continues to review the recommendations. The goal of the Missouri River Basin Association was to make a final recommendation to the Corps of Engineers by May 31, 1999. Because of unresolved issues with the downstream states, Secretary Sprynczynatyk said the Association was unable to provide a final recommendation to the Corps of Engineers by May 31, 1999.

Secretary Sprynczynatyk commented that he is continuing the discussions with the State of Missouri Department of Natural Resources director relative to the Missouri River Master Manual.

The next meeting of the Missouri River Basin Association is scheduled for August 2, 1999 in Denver, Colorado.

**NORTH DAKOTA WATER
EDUCATION FOUNDATION -
1999 WATER TOURS
(SWC File AOC/WEG)**

The North Dakota Water Education Foundation is planning to facilitate 7 water tours in 1999. Tour participants will have an opportunity to tour the central Dakota area, Devils Lake, Missouri River, and the Red River Valley. The water tours will provide an opportunity to show state officials and the general public the significant investment that has been made in North Dakota's water infrastructure and the critical need for water development. The tours empower participants to make informed decisions concerning water development in North Dakota.

The Water Education Foundation has set a \$25,000 goal to facilitate the tours. The State Water Commission received a request to be a tour partner and to contribute \$2,500 to be used to facilitate the tours. Secretary Sprynczynatyk said it was his intent to support the request and to cost share up to \$2,500 in facilitation of the 1999 tours. He encouraged the State Water Commission members to participate in the tours.

There being no further business to come before the State Water Commission, the Chairman adjourned the meeting at 4:30 PM.

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

SEAL

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