

MINUTES

North Dakota State Water Commission Devils Lake, North Dakota

August 15, 2002

The North Dakota State Water Commission held a meeting at the City Commission Chambers, Devils Lake, North Dakota, on August 15, 2002. Governor-Chairman, John Hoeven, called the meeting to order at 1:40 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present. Prior to the meeting, the Commission members and others toured the Devils Lake flooded areas.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Charles Halcrow, Member from Drayton
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Curtis Hofstad, Member from Starkweather
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff
Approximately 75 people interested in agenda items

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA There being no additional items for the agenda, Governor Hoeven announced the agenda approved as presented.

**CONSIDERATION OF FINAL DRAFT
MINUTES OF MAY 1, 2002 STATE
WATER COMMISSION MEETING -
APPROVED**

The final draft minutes of the May 1, 2002 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Hanson, and unanimously carried, that the final draft minutes of the May 1, 2002 State Water Commission meeting be approved as prepared.

**FINANCIAL STATEMENT -
AGENCY PROGRAM
BUDGET EXPENDITURES**

David Laschkewitsch, accounting manager, State Water Commission's Administrative Services Division, presented and discussed the Program

Budget Expenditures for the period ending June 10, 2002, reflecting 50 percent of the 2001-2003 biennium. All expenditures are within the authorized budget amounts. *SEE APPENDIX "A"*

The Contract Fund spreadsheet, attached hereto as *APPENDIX "B"*, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds.

**FINANCIAL STATEMENT -
2001-2003 RESOURCES TRUST
FUND REVENUES**

David Laschkewitsch stated the oil extraction tax deposits into the Resources Trust Fund are currently \$1,078,240, or 23.84 percent behind the

budgeted revenues. Revised projections prepared by Economy.com show the oil extraction deposits increasing above budgeted figures beginning in November, 2002 and remaining above budget through the end of the biennium. These revised projections could allow the recovery of some of the current shortfall, and completing the biennium \$605,211 below the budgeted oil extraction tax figures. Even with this expected shortfall, the total revenues into the Resources Trust Fund are projected to exceed the agency's spending authority by approximately \$3.8 million. This is primarily due to a larger biennium beginning balance than was anticipated.

**FINANCIAL STATEMENT -
2001-2003 WATER DEVELOPMENT
TRUST FUND REVENUES**

David Laschkewitsch reported that deposits into the Water Development Trust Fund total \$12,051,320, which is an increase of more than \$109,920 of the

budgeted revenues for the first year of the biennium. The next scheduled payment is anticipated in January, 2003 and is projected to be \$3.5 million. The 1999 Legislature placed a restriction on the funds the State Water Commission may obligate from the Water Development Trust Fund. That restriction allows the commitment of 75 percent of the appropriated amount. The remaining 25 percent may be obligated to the extent the uncommitted funds are available in the Water Development Trust Fund.

**FINANCIAL STATEMENT -
2003-2005 BUDGET**

The State Water Commission submitted its 2003-2005 budget to the Office of Management and Budget on August 15, 2002.

The budget includes a five percent reduction in general funds as required from all state agencies. Secretary Frink provided a summary of the Agency Overview listing the future critical issues defined for the agency, and the Requested Summary listing the major programs, line items and funding sources.

Secretary Frink indicated that the budget request included a list of optional adjustments to address items that were affected by the five percent reduction. He said the most significant cut is in salaries where three positions were not included in the base budget. In addition to salaries, significant cuts were also made in travel and equipment.

The proposed budget for projects is based on available revenue from the Resources Trust Fund, the Water Development Trust Fund, and bonding. Secretary Frink stated approximately \$55.6 million could be available for new projects next biennium. The requests for project funds, as identified in the State Water Management Plan update, greatly exceed this amount. Because the agency's budget submittal does not assign allocations to specific projects, Secretary Frink stated that a preliminary allocation of project monies is being developed with the assistance of the North Dakota Water Coalition and the project sponsors.

**NORTH DAKOTA
WATER COALITION
(SWC File AOC/WAT)**

The North Dakota Water Coalition was established in July, 1994 as an initiative of the Flagship Initiative #6 of the North Dakota Vision 2000 Report, which

stated, in part: "The North Dakota 2000 Committee recommends that North Dakota establish a "Coalition for Infrastructure Projects" to further develop three key elements of our state's infrastructure: water resources, telecommunications, and advanced air transportation." The Coalition is made up of 36 statewide organizations, regional entities, municipalities, and other groups from across North Dakota.

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

The North Dakota Water Coalition goals are:

1) to provide an adequate water supply across North Dakota for manufacturing, industrial, energy bi-product utilization, agriculture, agricultural processing, recreation, wildlife, municipalities, and rural water systems which have an inadequate supply or quality of water:

- complete a workable and achievable Garrison Diversion Project through the passage of the Dakota Water Resources Act to provide an affordable multiple-use water supply to central and eastern North Dakota, including the James, Sheyenne, and Red Rivers
- complete the Southwest Pipeline and Northwest Area Water Supply Projects
- stabilize Devils Lake
- secure adequate funding for the MR&I program
- develop multi-use statewide water impoundments for recreation, wildlife, and fishing
- secure funding for irrigation development

2) to complete projects to control and alleviate floodwaters and damages, including Grand Forks and Devils Lake flood control, bank protection, and increasing the flood control capacities of the Baldhill Dam and Reservoir, the Maple River Dam, and others; and

3) support the Missouri River Master Manual revisions to provide maximum benefits to North Dakota.

The State Water Commission staff and the North Dakota Water Coalition have identified funding needs for several projects during the 2003-2005 biennium. Michael Dwyer, representing the North Dakota Water Coalition, distributed "Meeting The Challenge, III" brochure. The 2003-2005 biennium proposed revenues, and the North Dakota Water Coalition and State Engineer's proposed allocations are attached to these minutes as **APPENDIX "C"**.

Mr. Dwyer stated that "since the 1990s and beyond, North Dakota has battled forces with many natural disasters and, in the wake of their path, the resources and funding needs are multiplying at a fast rate, leaving little revenue available for completing water projects that

have long-awaited funding.” Mr. Dwyer highlighted the four major water projects that have been identified with the largest funding needs: Fargo, Devils Lake, Grand Forks, and the Southwest Pipeline Project. He said “it is clear that in order to meet the challenge of North Dakota’s water priorities, additional resources must be employed to address the critical water needs of today. Funding and completing these large disaster-based projects as soon as possible will save millions in local, state and federal dollars, as well as help ensure the security and safety of many North Dakotans.”

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

Todd Sando, Assistant State Engineer, reported that Devils Lake is currently at elevation 1447.2 feet msl.

At this elevation, the lake has a surface area of 125,000 acres and storage of 2.45 million acre-feet of water. The Devils Lake basin has received above normal precipitation since May, 2002. During the middle of June, portions of the basin received nearly 9 inches of precipitation, which is half of the average annual precipitation for the area. In addition to the raise in the lake level, most of the available storage in the upper basin was filled. Due to these heavy rains, Devils Lake peaked at an elevation of 1447.5 feet msl. The basin has received periods of drier, warmer weather recently along with heavy localized rain events.

The National Weather Service released their long-range probabilistic forecast for Devils Lake on July 24, 2002. The current 50 percent exceedance elevation is 1447.4 feet msl, and the 10 percent exceedance elevation is 1447.6 feet msl. Next year’s spring runoff will depend on the amount of precipitation the basin receives this fall and winter.

Devils Lake continues to flow east through the Jerusalem channel into Stump Lake. Approximately 20 cubic feet per second is being measured by the U.S. Geological Survey’s gauge. If the elevation of Devils Lake continues to drop, the flows should decrease. Stump Lake has risen 1.5 feet since May 1, 2002, with the current elevation at 1413.5 feet msl. At this elevation, Stump Lake covers 8,000 acres and storage of 138,000 acre-feet of water.

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

On February 26, 2002, the Corps of Engineers released the draft *Integrated Planning Report and Environmental Impact Statement* (EIS) for the

Devils Lake permanent outlet. This document estimates the cost and benefits of a permanent 300 cubic feet per second outlet from Pelican Lake to the Sheyenne River and describes the potential environmental impacts. A series of public meetings were held in April, 2002 to present the results of the draft EIS and to

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provide an opportunity for public comments. The Corps was scheduled to release a final EIS in August, 2002, and have a Record of Decision (ROD) completed by September, 2002.

On August 12, 2002, Governor Hoeven was notified that the Corps of Engineers had delayed their recommendations regarding the permanent outlet to January, 2003. After that, the recommendations regarding the permanent outlet would be referred to the International Joint Commission for review, which will require approximately 6 to 12 months. Secretary Frink explained that as a result of the Corps's delay, the spring of 2004 would be the earliest construction could begin on the federal outlet project.

**DEVILS LAKE STATE TEMPORARY
EMERGENCY OUTLET PROJECT
(SWC Project No. 416-01)**

On August 16, 2001, the State Water Commission approved the selection of Bartlett & West Engineers, Inc./Boyle Engineering Corporation as the engineer for the state's Devils Lake temporary emergency outlet project.

neer for the state's Devils Lake temporary emergency outlet project.

Todd Sando stated that work continues on the final design of the state's temporary emergency phased outlet project out of West Bay to the Sheyenne River. The first phase of construction on a 100 cubic feet per second temporary emergency outlet involves a grading project at the Round Lake pump station, which is 3 miles south of Minnewaukan. The acquisition of options for the land rights has been initiated with 20 individual landowners along the outlet alignment.

Secretary Frink stated that it is important to continue discussions with the Corps of Engineers regarding the federal outlet project and that, hopefully, the project can move forward despite the recent disappointing indications to the contrary. As a result, it was the recommendations of the State Engineer that the State Water Commission conditionally approve the following toward the implementation of the state's temporary outlet for Devils Lake:

- 1) approve up to \$150,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the bidding and construction of Phase I of the project, which includes the grading of the Round Lake pumping plant site. Approval of this expenditure is contingent upon the availability of funds;
- 2) approve an additional \$470,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to complete the final design of the project, contingent upon a thorough evaluation of the specific authorization by the State Engineer, and the availability of funds;

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- 3) approve Resolution No. 2002-8-500, Devils Lake Outlet Project Condemnation Authority (attached hereto as **APPENDIX "D"**), which authorizes the Chief Engineer and Secretary to the State Water Commission to initiate condemnation proceedings to acquire interests in property needed for the construction of the Devils Lake outlet upon failure to acquire those interests by negotiation; and
- 4) that the Chief Engineer and Secretary to the State Water Commission continue to consult with the U.S. Army Corps of Engineers in regard to the Devils Lake federal permanent outlet project.

On August 15, 2002, the Lake Emergency Management committee adopted a resolution in support of the state's temporary outlet for Devils Lake, which is attached hereto as **APPENDIX "E"**.

It was moved by Commissioner Hofstad and seconded by Commissioner Halcrow that the State Water Commission approve the State Engineer's recommendations (1-4) as presented toward the implementation of the state's Devils Lake temporary outlet.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**DEVILS LAKE BASIN WATER
MANAGEMENT PLAN
(SWC Project No. 416-01)**

Management Plan (Plan). The 1991 plan evolved into a more comprehensive plan that was published in 1995. At the request of the Devils Lake Basin Joint Board (Board), the Commission staff is now involved in the updating of that plan.

As part of meeting the need to stabilize Devils Lake, in 1991, the State Water Commission produced the Devils Lake Basin Conceptual Water

Michael Connor, Devils Lake Basin Joint Board manager, said that there is no single approach to solving the current flooding problems of Devils Lake. Those involved with combating the flooding situation have concluded that a three-pronged approach including upper basin water management, infrastructure protection, and an outlet to the Sheyenne River will be required. This planning effort will help address the upper basin management portion of the solution.

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The current update of the plan began in early 2002, with the Board requesting the Commission staff to take the lead in coordinating the efforts. The Board requested technical assistance from representatives of various federal, state, and private agencies who have a management interest in the basin. The nine basin counties and the Spirit Lake Nation were asked to appoint a representative to each of the four task forces: agriculture, economic development, tourism, and wildlife/fisheries.

The final 2002 Plan, which is anticipated to be completed in late 2002, will include funding needs and priorities for implementation.

**DROUGHT DISASTER LIVESTOCK
WATER ASSISTANCE PROGRAM -
APPROVAL OF EXPENDITURE OF
\$200,000 FOR PROGRAM
(SWC Project No. 1851)**

The Drought Disaster Livestock Water Assistance program, established by statute in 1991, is a state cost share assistance program administered by the State Water Commission that provides financial assistance to

existing livestock producers with water supply problems caused by drought. North Dakota Administrative Code Article 89-11 was adopted by the Commission on June 24, 1991 for management of this program.

Only water supply projects located in counties included in a drought disaster declaration and counties adjacent to those counties included in a drought disaster declaration are considered eligible for state cost participation. Types of projects that may be funded by the program include the construction of new wells, dugouts and stock dams that are spring-fed or have a high water table, pipeline installations, rural water system connections, and spring development. North Dakota Century Code chapter 61-34 limits assistance to individual producers of 50 percent of project costs, not to exceed \$3,500, and requires the State Engineer to provide the funds for the program.

The State Water Commission approved \$250,000 for the program on June 24, 1991, and an additional \$50,000 was approved by the Commission on July 1, 1992, for a total state contribution of \$300,000. Between the program's active dates of July 1, 1991 and June 30, 1993, 215 applications for cost share were received by the State Engineer, with 179 applications approved and 165 projects completed. Total project costs for this activity period were \$744,657, and payments totalling \$260,918 were made to the producers. The remaining undispersed funds were returned to the Resources Trust Fund in 1993.

On July 1, 2002, Governor Hoeven issued North Dakota Drought Emergency Proclamation, Executive Order No. 2002-04, indicating that a drought emergency exists within 20 counties within the State of North Dakota. The Proclamation and Executive Order are attached hereto as **APPENDIX "F"**.

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It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$200,000 for the Drought Disaster Livestock Water Assistance program for those counties included in the Governor's Proclamation and adjacent counties. The U.S. Fish and Wildlife Service has indicated it may also have funds available for the program.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Drought Disaster Livestock Water Assistance program for those counties included in the Governor's Proclamation and adjacent counties. This motion is contingent upon the availability of funds.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**DROUGHT DISASTER LIVESTOCK
WATER ASSISTANCE PROGRAM -
APPROVAL OF PROPOSED
AMENDMENTS TO N.D.A.C.
CHAPTER 89-11-01
(SWC Project No. 1851)**

As required by North Dakota Century Code chapter 61-34, in 1991, the State Water Commission appointed an advisory committee to develop rules for the management of the Drought Disaster Livestock Water Assistance program. Rules developed by the advisory committee that define the eligibility criteria, application procedures, and cost share limits were approved by the State Water Commission at its June 24, 1991 meeting, and adopted as Administrative Code Article 89-11. Amendments to chapter 89-11-01 that reduced the maximum state share from \$3,500 to \$2,000 and the addition of an eligibility condition requiring the State Engineer's approval prior to construction were recommended by the advisory committee and, subsequently, approved by the Commission on September 15, 1992.

The advisory committee convened by conference call on August 13, 2002 to discuss proposed amendments to chapter 89-11-01. The following proposed amendments were presented for the Commission's consideration:

The advisory committee convened by conference call on August 13, 2002 to discuss proposed amendments to chapter 89-11-01. The following proposed amendments were presented for the Commission's consideration:

Update references to the Agricultural Stabilization Conservation Service to reflect the agency's current name of Farm Service Agency.

Subsection 2 of Section 89-11-01-03 is amended as follows:

2. The applicant must first apply for water cost share assistance from the ~~agricultural stabilization conservation service farm service agency~~ and must have been denied ~~agricultural stabilization conservation service farm service agency~~ cost share assistance.

Subsection 1 of Section 89-11-01-06 is amended as follows:

1. Requests for assistance must be on a form provided by the state water commission and must include:
 - a. Written proof the applicant applied for ~~agricultural stabilization conservation service farm service agency~~ cost share assistance and was denied such assistance including the reason for the denial.

Remove the \$2,000 limitation and allow the \$3,500 maximum given in statute to govern.

Subsection 4 of Section 89-11-01-04 is amended as follows:

4. The applicant may receive up to fifty percent of the eligible costs of the project. ~~but no more than two thousand dollars.~~

Remove outdated project start and completion date that restrict eligibility and renumber remaining subsections.

Subsections 4, 5, 6, 7, and 8 are amended as follows:

4. ~~A water supply project started or completed prior to July 1, 1991.~~
5. Water supply project started ~~after December 31, 1992,~~ without prior approval of the state engineer.
- 6 5. The construction of stock dams or dugouts dependent upon runoff.

7 6. Projects that require repair as a result of failure to provide maintenance to an existing water source.

8 7. Readily removable project features of water supply projects including electric pumps, stock watering tanks, or electrical hookups, or easements.

Update the State Water Commission's telephone number:

Subsection 3 of Section 89-11-01-06 is amended as follows:

3. Application forms may be obtained by contacting:

North Dakota State Water Commission
900 East Boulevard
Bismarck, ND 58505
(701)-224-2750 328-2750

It was the recommendation of the State Engineer that the State Water Commission approve, on an emergency basis, the amendments as proposed to North Dakota Administrative Code chapter 89-11-01 for the Drought Disaster Livestock Water Assistance program.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve, on an emergency basis, the proposed amendments to the North Dakota Administrative Code chapter 89-11-01 for the Drought Disaster Livestock Water Assistance program as recommended by the State Engineer.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
NORTH CASS WATER RESOURCE
DISTRICT FOR COST SHARE IN
CASS COUNTY DRAIN NO. 24
IMPROVEMENT RECONSTRUCTION
PROJECT
(SWC Project No. 1077)**

A request from the North Cass Water Resource District was presented for the Commission's consideration for cost share participation in the Cass County Drain No. 24 improvement project. The project is to reconstruct a portion of the drain to improve the hydraulic capacity.

Todd Sando presented the project, which involves the reconstruction of approximately 4 miles of Cass County Drain No. 24 in Sections 15, 16, 17 and 18, Township 142 North, Range 49 West (Wiser Township). Drain No. 24 is a tributary to Cass County Drain No. 13, of which portions were also reconstructed, and a tributary to the Red River of the North. The improvement project consists of the reconstruction of a new channel bottom and side slopes with containment berms, installation of intercept drainage culverts, replacement of road crossings, and other miscellaneous items. The existing channel has a variable grade line, an 8-foot bottom width, and 3:1 side slopes. The channel will be cut to a 0.05 percent grade with a 10-foot bottom width and 4:1 side slopes. The new channel provides the benefits of increased hydraulic capacity, more uniform channel velocities, and added stable side slopes.

The District indicated the formal procedure to create a new assessment district by a vote of the watershed will follow the State Water Commission's consideration of the request. The preliminary engineering has been completed, and the applicable permits will be applied for during the final design.

The design engineer provided a statement of the downstream impacts, which conclude that the hydraulic capacity of the drain is based on a 10-year event and, therefore, does not generate negative downstream impacts. On events of a large magnitude, the channel is designed to break out and the improvement reconstruction will generally have no impact on those events. A sediment analysis was provided.

The project engineer's cost estimate is \$365,000, of which \$333,184 is considered eligible for a 35 percent cost share (\$116,614). The request before the State Water Commission is for a 35 percent cost share in the amount of \$116,614.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$116,614 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 24 improvement reconstruction project.

At its May 1, 2002 meeting, the State Water Commission approved cost share policy revisions for rural flood control. The criteria included the *requirement for a discussion of downstream impacts at the project outlet, with the need for further analysis considered on a case-by-case basis as determined by the State Engineer; the analysis shall also include a determination as to whether or not costs will be incurred downstream as a result of the project.* Because of concerns expressed by Commissioner Swenson relative to the downstream impact analysis requirements and the possible liabilities which could be incurred as a result of negative downstream impacts, Governor Hoeven recommended the Commission's rural flood control committee and others revisit the issue.

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It was moved by Commissioner Johnson and seconded by Commissioner Thompson that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$116,614 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 24 improvement reconstruction project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months, satisfying all permit requirements, and receipt/approval of the project's final design.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
NORTH CASS WATER RESOURCE
DISTRICT FOR COST SHARE IN
CASS COUNTY DRAIN NO. 25A
IMPROVEMENT RECONSTRUCTION
AND EXTENSION PROJECT
(SWC Project No. 1078)**

A request from the North Cass Water Resource District was presented for the Commission's consideration for cost share participation in the Cass County Drain No. 25A improvement reconstruction and extension project. The project is to reconstruct the drain to improve the hydraulic capacity and extend the drain.

Todd Sando presented the project, which involves the reconstruction of approximately 4 miles of Cass County Drain No. 25A with the addition of a one-half mile extension located in Sections 19, 20, 21, and 22, Township 142 North, Range 49 West (Wiser Township), and Section 24, Township 142 North, Range 50 West (Gardner Township). Drain No. 25A is a tributary to Cass County Drain No. 13, of which portions were also reconstructed, and a tributary to the Red River of the North. The improvement project consists of the preliminary analysis, design, construction of a new channel bottom and side slopes, and the installation of intercept drainage culverts. Roadway crossing improvements will be made to township roads, County Highway 81, Interstate Highway 29, and the Burlington Northern and Santa Fe railroads. The existing channel has a variable grade line, an 8-foot bottom width, and 3:1 side slopes. The channel will be cut to a 0.05 percent grade with a 10-foot bottom width, and 4:1 side slopes. The reconstructed channel will provide the benefits of increased hydraulic capacity, more uniform channel velocities and added stable side slopes, and extend the drain west of Interstate 29.

The District indicated the formal procedure to create a new assessment district by a vote of the watershed will follow the State Water Commission's consideration of the request. The preliminary engineering has been completed, and the applicable permits will be applied for during the final design.

The design engineer provided a statement of the downstream impacts, which conclude that the hydraulic capacity of the drain is based on a 10-year event and, therefore, does not generate negative downstream impacts. On events of a larger magnitude, the channel is designed to break out and the improvement reconstruction will generally have no impact on those events. A sediment analysis was provided.

The project engineer's cost estimate is \$635,000, of which \$486,435 is considered eligible for a 35 percent cost share (\$170,252). The request before the State Water Commission is for a 35 percent cost share in the amount of \$170,252.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$170,252 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 25A improvement reconstruction and extension project.

It was moved by Commissioner Halcrow and seconded by Commissioner Hanson that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$170,252 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 25A improvement reconstruction and extension project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months, satisfying all permit requirements, and receipt/approval of the project's final design.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

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**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR COST
SHARE IN NORMANNA TOWNSHIP
IMPROVEMENT DISTRICT NO. 60
(CASS COUNTY DRAIN NO. 60)
(SWC Project No. 1918)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for cost share participation in the Normanna Township Improvement District No. 60 project. The project is also referred to as Cass County Drain No. 60 and is to construct a drainage channel to improve adequate drainage.

Todd Sando presented the project, which involves the construction of a drainage channel approximately 3 1/2 miles long in Normanna Township in Sections 26, 27, 28 and 29, Township 137 North, Range 50 West, Cass county. The channel runs east from Highway 15 to the Sheyenne River. The project will extend the ditch to the west to capture runoff from the city of Kindred and the Kindred airport and outlet into the Sheyenne River in Section 26. A drainage control structure will be constructed near the airport. The area to the west of Section 27 does not have adequate drainage especially in the spring of the year. Re-routing drainage from west of Section 27 into an existing Sheyenne River inlet culvert in Section 26 will improve this situation. The modified drainage will be controlled with a sluice gate so as to not increase drainage during flooding situations. The project includes the preliminary analysis, design, and construction of a new 10-foot channel bottom and 4:1 side slopes with containment berms, installation of intercept drainage culverts, replacement culverts, replacement of road crossings, construction of an outfall structure into the Sheyenne River, and other miscellaneous items.

The District indicated the formal procedure to create a new assessment district by a vote of the watershed will follow the State Water Commission's consideration of the request. The preliminary engineering has been completed, and the applicable permits will be applied for during the final design.

The design engineer provided a statement of the downstream impacts, indicating that the hydraulic design of the channel is similar to that used throughout Cass county which is designed primarily for the 10-year event. On events of a larger magnitude such as a 100-year event, the channel is designed to break out and generally will be unchanged from the current conditions.

The project engineer's cost estimate is \$215,000, of which \$185,000 is considered eligible for a 35 percent cost share (\$64,750). The request before the State Water Commission is for a 35 percent cost share in the amount of \$64,750.

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It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$64,750 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for participation in the Normanna Township Improvement District No. 60 project.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$64,750 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Normanna Township Improvement District No. 60 project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months, satisfying all permit requirements, and receipt/approval of the project's final design.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
MAPLE RIVER-RUSH RIVER
JOINT WATER RESOURCE
DISTRICT FOR COST SHARE IN
SWAN CREEK WATERSHED
FLOODWATER RETENTION
SITE STUDY
(SWC Project No. 847)**

A request from the Maple River-Rush River Joint Water Resource District was presented for the Commission's consideration for cost share participation in a preliminary engineering study for a floodwater retention site in the Swan Creek watershed in Cass county.

Todd Sando presented the request and stated the study is needed to identify a retention site to reduce the flood damages along Swan Creek especially upstream of the city of Casselton and along the lower Maple River near the city of Mapleton. The work includes site topographic surveying and mapping, hydrologic and hydraulic computer modeling, preliminary site design, a soils investigation, and assisting the district with public input meetings. The preliminary engineering study is anticipated to be completed in the 2001-2003 biennium, with possible project design and implementation during the 2003-2005 biennium.

The estimated total cost of the study is \$50,000, of which all is admissible for state cost share assistance as an engineering feasibility study project at 50 percent (\$25,000). The request before the State Water Commission is for a 50 percent cost share in the amount of \$25,000.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 50 percent of the eligible items, not to exceed \$25,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Swan Creek watershed floodwater retention site study in Cass county.

It was moved by Commissioner Hanson and seconded by Commissioner Thompson that the State Water Commission approve a cost share of 50 percent of the eligible items, not to exceed \$25,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Swan Creek watershed floodwater retention site study in Cass county. This motion is contingent upon the availability of funds.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**CONSIDERATION OF REQUEST
FROM MAPLE RIVER WATER
RESOURCE DISTRICT FOR
COST SHARE IN SWAN CREEK
TRIBUTARY CHANNEL
IMPROVEMENTS PROJECT
(SWC Project No. 847)**

A request from the Maple River Water Resource District was presented for the Commission's consideration for cost share participation in the Swan Creek tributary channel improvements project. The project will reroute and eliminate approxi-

mately one and one-half miles of a tributary to Swan Creek by means of constructing a short diversion channel.

Todd Sando presented the request stating the tributary reach to Swan Creek drains property from west of the city of Casselton, NDSU farm property, and adjacent to the Casselton industrial park. The capacity of this tributary is inadequate in high runoff events and causes overland flooding in the industrial park area south of Casselton. The proposed project will eliminate the overland flooding problem. A mile long diversion channel, running from east to west, will be constructed along the township road/south line of Section 34, Township 140 North, Range 52 West (Casselton Township), preventing runoff from entering the tributary reach and redirecting the runoff to the diversion around Casselton that is a part of Swan Creek. Two bridges allowing runoff to flow into the tributary reach will be removed. The channel will be cut to a 0.080 percent slope with a 10-foot bottom width and 4:1 sides slopes on the berm and the road.

The District indicated the formal procedure to create a new assessment district by a vote of the watershed will follow the State Water Commission's consideration of the request. The preliminary engineering has been completed, and the applicable permits will be applied for during the final design.

The design engineer provided a statement of the downstream impacts, indicating that the hydraulic design of the channel is based on a 10-year event and, therefore, does not generate negative downstream impacts. No new water is being introduced into Swan Creek, however, the timing on smaller magnitude events may be changed slightly. On events of a large magnitude, such as a 100-year event, the channel is designed to break out and the improvement reconstruction will generally have no impact on those events.

The project engineer's cost estimate is \$235,000, of which \$162,722 is considered eligible for a 35 percent cost share (\$56,953). The request before the State Water Commission is for a 35 percent cost share in the amount of \$56,953.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$56,953 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for cost share participation in the Swan Creek tributary channel improvements project in Cass county.

The request was discussed at length and although there was support for the proposed project, the Commission members expressed the importance of completing the Swan Creek watershed floodwater retention site study, which was previously approved by the Commission at this meeting, prior to considering the cost share request for the Swan Creek tributary channel improvements project. The upstream study results would determine if negative downstream impacts could occur as a result of the proposed project.

It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed \$56,953 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Swan Creek tributary channel improvements project in Cass county. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months, satisfying all permit requirements, and receipt/approval of the project's final design.

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Commissioners Hillesland and Thompson, and Governor Hoeven voted aye. Commissioners Halcrow, Hanson, Hofstad, Johnson, Olin, and Swenson voted nay. The recorded vote was 3 aye; 6 nays. Governor Hoeven announced the motion failed.

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR COST
SHARE FOR RED RIVER FLOOD
INSURANCE MAPPING AND
HYDRAULIC ANALYSIS PROJECT,
PHASE III
(SWC Project No. 1751)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for additional cost share associated with obtaining digital aerial survey data for floodplain mapping for the Red River area north of Fargo. The project will address the need for detailed elevation mapping and a hy-

draulic analysis for the Red River Flood Insurance Study through Fargo. The data will be used in the study to update floodplain elevations and flood insurance rate maps in order to accurately delineate floodplain areas.

On June 9, 1999, the State Water Commission passed a motion approving a 35 percent cost share of the eligible costs, not to exceed \$45,150 from the Contract Fund, for Phase I for costs associated with obtaining digital aerial survey data for floodplain mapping the Red River area south of Fargo. Phase I involved the collection of LIDAR data for a 138-square mile area and final processing of that data for a 42-square mile area.

On April 10, 2000, the State Water Commission passed a motion approving a 35 percent cost share of the eligible costs, not to exceed \$49,350 from the Contract Fund in the 1999-2001 biennium, for costs associated with obtaining digital aerial survey data for floodplain mapping the Red River area south of Fargo, Phase II.

Todd Sando presented the request and indicated that the current proposed project, Phase III, will also acquire data to be used in the mapping and modeling of the area north of Phases I and II.

Houston Engineering will contract with Merrick and Company to LIDAR map approximately 164.5 square miles, of which approximately 107.5 square miles of the mapping coverage is located in North Dakota and approximately 57 square miles of the mapping coverage is located in Minnesota. The existing Corps of Engineers hydraulic model (HEC-RAS) for the approximate 17.5 river mile long reach of the Red River will be updated, and the 100-year and 500-year floodplain for the Red River of the North through Fargo will be mapped.

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The project cost estimate for Phase III is \$518,780, of which the State of Minnesota has agreed to provide a cost share of \$157,488. The Federal Emergency Management Agency is providing \$290,000 in federal funds to complete the project. The request before the State Water Commission is to provide a 35 percent cost share of the eligible costs in the amount of \$35,646.

It was the recommendation of the State Engineer that the State Water Commission approve a 50 percent cost share of the eligible costs, not to exceed \$35,646 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for costs associated with the city of Fargo's Red River flood insurance mapping and hydraulic analysis project, Phase III. Affirmative action by the State Water Commission will increase the total state cost share contribution to \$130,146.

It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve a 50 percent cost share of the eligible costs, not to exceed \$35,646 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the city of Fargo's Red River flood insurance mapping and hydraulic analysis project, Phase III. This motion is contingent upon the availability of funds.

This action increases the State Water Commission's cost share contribution to \$130,146.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
RICHLAND COUNTY WATER
RESOURCE DISTRICT AND
RICHLAND COUNTY COMMISSION
FOR COST SHARE ON FARGO-
MOORHEAD AND UPSTREAM
FEASIBILITY STUDY PROJECT,
PHASE I
(SWC Project No. 305)**

A request from the Richland County Water Resource District and the Richland County Commission was presented for the Commission's consideration for cost share participation for the Corps of Engineers Fargo-Moorhead and upstream feasibility study project.

The study, encompassing the area of Fargo-Moorhead and upstream to the South Dakota border, provides a comprehensive watershed approach to analyze potential flood damage reduction/environmental enhancement projects. The study will be approached in two

phases. The first phase includes developing the tools to analyze potential projects for flood damage reduction. The specific tools to be created in Phase I will be compatible with the Red River Geographical Information System (GIS). Approximately 40 square miles of LIDAR mapping for site-specific detailed design of project features will be prepared. Effects on stages from measures that affect tributary inflows and mainstem flows will be assessed with a HEC-RAS hydraulic unsteady flow mainstem model from Wahpeton-Breckenridge to Fargo-Moorhead linked to existing unsteady flow models for the Bois de Sioux, Ottetail, and Wild Rice Rivers. Input for ecosystem restoration features will be provided through a water quality model upstream of Fargo-Moorhead. An economic damage model for the Bois de Sioux, Ottetail and Wild Rice Rivers and mainstem Red River between Wahpeton-Breckenridge and Fargo-Moorhead will be produced. In Phase II, these tools and results of other field investigations will be used to conduct a preliminary analysis of up to 15 potential features, preparation of detailed designs for the 5 most promising features, and integrate the local watershed management planning for the study area.

The estimated total cost of the Fargo-Moorhead and upstream feasibility study is \$3,511,649, of which \$1,092,422 are Phase I costs and \$2,419,227 are Phase II costs. Of the Phase I costs, the State of Minnesota has agreed to fund \$557,563, and the remaining balance of \$534,859 is North Dakota's share. The Corps of Engineers will fund 50 percent (\$267,429) of the North Dakota cost, leaving a balance of \$267,430 to be paid by North Dakota. The request before the State Water Commission is for a 50 percent cost share in the amount of \$267,430. The locals have requested the State Water Commission act as the sponsoring entity for this study and contract with the Corps of Engineers.

It was the recommendation of the State Engineer that the State Water Commission sponsor the Fargo-Moorhead and upstream feasibility study and approve a cost share of 50 percent of the non-federal costs in the amount of \$267,430 from the funds appropriated to the State Water Commission in the 2001-2003 biennium.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission sponsor the Fargo-Moorhead and upstream feasibility study and approve a cost share of 50 percent of the non-federal eligible costs, in the amount of \$267,430 from the funds appropriated to the State Water Commission in the 2001-2003 biennium. This motion is contingent upon the availability of funds, and securing 50 percent (\$133,715) from local North Dakota supporters of the project.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
WALSH COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARE IN REQUEST FOR ALTERNATE
LEVEE SYSTEM STUDY FOR RED
RIVER BETWEEN GRAND FORKS
AND DRAYTON
(SWC Project No. 1638)**

A request from the Walsh County Water Resource District was presented for the Commission's consideration for cost share participation in an alternate levee system study for the Red River between Grand Forks and Drayton.

Secretary Frink presented the request, and stated the area on the Red River between Grand Forks and Drayton has suffered repeatedly from flooding in the recent past, even in years when flood damages in other parts of the state have been moderate or absent. This is the area in which the level of the dikes is regulated by the Corrective Plan for Agricultural Levees. In this area, the levees in Minnesota are set at the level of a 43,000 cubic feet per second profile and levees in North Dakota are set one foot lower. Building levees in the area has been a controversial subject for many years, even before the Corrective Plan, which resulted in the current situation.

There has been a long-standing effort among some interests in the area to review the levee standards, which has resulted in a proposal for a study which would address overbank storage and other unsteady flow conditions in an effort to determine whether a flood control project would be feasible. The proposed study would use the unsteady flow routing techniques of the UNET computer model. This program was developed under contract with the Corps of Engineers Hydrologic Engineering Center for inclusion into their hydraulics programs and has developed as a stand-alone program as well. Unsteady flow hydraulics include the effect of flow leaving and entering the system, off-channel storage, and other influences not addressed by standard backwater step modeling. Earlier attempts at this project were made by the Corps of Engineers, however, the 1997 flood and other events interrupted the study and it has not been completed.

Secretary Frink said the value of such a study is in providing a better assessment of the hydraulic impact of levees in this complex river system to determine whether further modifications of the levee system are worth pursuing, or whether other means of addressing the flooding problem should be sought.

The total estimated cost of the study is \$140,000, which would be shared equally between North Dakota and Minnesota. The request before the State Water Commission is to consider cost share with the Walsh County Water Resource District at 50 percent of the North Dakota share, not to exceed \$35,000.

It was the recommendation of the State Engineer that the State Water Commission approve cost share with the Walsh County Water Resource District at 50 percent of the North Dakota share, not to exceed \$35,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, contingent upon the availability of funds.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission approve cost share with the Walsh County Water Resource District at 50 percent of the North Dakota share, not to exceed \$35,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the study of an alternate levee system for the Red River between Grand Forks and Drayton. This motion is contingent upon the availability of funds.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
MAPLE RIVER WATER RESOURCE
DISTRICT FOR ADDITIONAL COST
SHARE IN CASS COUNTY DRAIN NO.
14 RECONSTRUCTION PROJECT
(SWC Project No. 1070)**

A request from the Maple River Water Resource District was presented for the Commission's consideration for an additional cost share on the reconstruction of Cass County Drain No. 14.

Todd Sando presented the project, which involves the reconstruction of 4.5 miles of Cass County Drain No. 14 in Cass County. The portion of the drain to be enhanced is located in Sections 20, 29 and 32, Township 139 North, Range 50 West, and in Sections 5, 7 and 18, Township 138 North, Range 50 West.

The engineer's original cost estimate for this portion of the drain reconstruction was \$800,000, of which \$720,000 was considered eligible for a 35 percent cost share. On April 10, 2001, the State Water Commission passed a motion approving a 35 percent cost share of the eligible items, not to exceed \$136,000, and deferred the remaining balance for consideration in the 2001-2003 biennium.

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The Maple River Water Resource District attempted to establish an assessment drain to reconstruct the entire drain at one time, however, the vote did not receive support because of the landowners' financial capability. The District decided to proceed with a portion of the project using available drain funds and future maintenance funds, with the intent of completing the project as funds become available.

The project engineer submitted a revised cost estimate for this portion of the drain reconstruction of \$1,069,101, of which \$1,004,255 was considered eligible for a 35 percent cost share (\$351,489). On August 16, 2001, the State Water Commission passed a motion approving a 35 percent cost share of the eligible items, not to exceed an additional \$200,000.

On May 1, 2002, the State Water Commission passed a motion increasing the funding limitation for individual rural flood control projects to \$250,000 per project for the 2001-2003 biennium, to include projects previously approved during this biennium. An unfunded eligible balance of \$15,489 exists for additional cost share consideration in the 2001-2003 biennium for the Cass County Drain No. 14 reconstruction project. The request before the State Water Commission is to cost share in the remaining balance of \$15,489.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed an additional \$15,489 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 14 reconstruction project. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$351,489.

It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed an additional \$15,489 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 14 reconstruction project. This motion is contingent upon the availability of funds.

This action increases the total State Water Commission cost share contribution to \$351,489.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

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**APPROVAL OF REQUEST FROM
NORTH CASS AND RUSH RIVER
JOINT WATER RESOURCE DISTRICT
FOR ADDITIONAL COST SHARE ON
CONSTRUCTION OF CASS COUNTY
DRAIN NO. 29A
(SWC Project No. 1081)**

A request from the North Cass and Rush River Joint Water Resource District was presented for the Commission's consideration for an additional cost share of the construction of Cass County Drain No. 29A.

Todd Sando presented the project, which is an assessment drain established along the east-west boundary line of Arthur, Amenia, Gunkel, Gardner, Rush River, and Berlin Townships. The drain is located immediately west of Argusville, ND. The main channel begins on the north side of the corporate limits of Argusville at Interstate Highway 29 and extends west to ND State Highway 18. This is on the borderline between Townships 141 and 142 North, Ranges 50, 51 and 52 West. The project consists of enhancing 13.5 miles of existing section line road ditches, which includes the installation of section line road culverts.

The original engineer's cost estimate for the construction of Cass County Drain No. 29A was \$1,220,000, of which \$713,555 was considered eligible for a 35 percent cost share. On July 14, 2000, the State Water Commission approved a 35 percent cost share expenditure of the eligible items not to exceed \$136,000. The remainder of the cost share request was deferred for consideration during the 2001-2003 biennium.

The revised project engineer's cost estimate was \$1,205,000, of which \$975,000 was considered eligible for a 35 percent cost share (\$341,250). On August 16, 2001, the State Water Commission passed a motion approving a 35 percent cost share of the eligible items, not to exceed an additional \$200,000.

On May 1, 2002, the State Water Commission passed a motion increasing the funding limitation for individual rural flood control projects to \$250,000 per project for the 2001-2003 biennium, to include projects previously approved during this biennium. An unfunded eligible balance of \$5,250 exists for additional cost share consideration in the 2001-2003 biennium for the Cass County Drain No. 29A project. The request before the State Water Commission is to cost share in the remaining balance of \$5,250.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed an additional \$5,250 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the construction of Cass County Drain No. 29A. Affirmative action by the State Water Commission will increase the total state cost share contribution to \$341,250.

It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed an additional \$5,250 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the construction of Cass County Drain No. 29A. This motion is contingent upon the availability of funds.

This action increases the State Water Commission's cost share contribution to \$341,250.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

APPROVAL OF REQUEST FROM GRAND FORKS COUNTY WATER RESOURCE DISTRICT FOR ADDITIONAL COST SHARE IN GRAND FORKS DRAIN NO. 27A (SWC Project No. 1117)

A request from the Grand Forks County Water Resource District was presented for the Commission's consideration for an additional cost share in the construction of Grand Forks County Drain No. 27A.

Todd Sando presented the request, which originated in Section 21, Township 149 North, Range 49 West (Americus Township) as a diversion from Grand Forks County Drain No. 27 of 140 cubic feet per second to the east. At its juncture with Americus Township Drain No. 1, the drain would pick up an additional 50 cubic feet per second, and accumulate 60 cubic feet per second more of local runoff along the remainder of the alignment before outletting into the Red River at a point near the quarterline of Section 16 in Bentru Township, a total distance of approximately 5 1/4 miles.

The purpose of the project is to reduce flood damage to agriculture properties along the path of the proposed drain and also to relieve the excess water burden placed on Cole Creek to the north by both Grand Forks County Drain No. 27 and Americus Township Drain No. 1.

The engineer's cost estimate for the construction of the Grand Forks County Drain No. 27A project was \$819,000, of which \$736,500 was considered eligible for a 35 percent cost share (\$257,775). On August 16, 2001, the State Water Commission passed a motion approving a 35 percent cost share of the eligible items, not to exceed \$200,000.

On May 1, 2002, the State Water Commission passed a motion increasing the funding limitation for individual rural flood control projects to \$250,000 per project for the 2001-2003 biennium, to include projects previously approved during this biennium. The total unfunded eligible balance is \$57,775, of which \$50,000 can be considered for additional cost share consideration in the 2001-2003 biennium for the Grand Forks County Drain No. 27A project. The request before the State Water Commission is to cost share in an additional \$50,000 in the 2001-2003 biennium.

It was the recommendation of the State Engineer that the State Water Commission approve a 35 percent cost share for the Grand Forks County Drain No. 27A project, not to exceed an additional \$50,000 from the funds provided to the State Water Commission in the 2001-2003 biennium. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$250,000.

It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland that the State Water Commission approve a 35 percent cost share of the eligible items, not to exceed an additional \$50,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Grand Forks County Drain No. 27A project. This motion is contingent upon the availability of funds.

This action increases the total State Water Commission cost share contribution to \$250,000.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
RICHLAND COUNTY WATER
RESOURCE DISTRICT FOR
ADDITIONAL COST SHARE IN
RICHLAND COUNTY DRAIN NO. 95
(SWC Project No. 1900)**

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

Todd Sando presented the completed project. The project consists of three laterals coming into the main ditch which are improvements to section line road ditches and the fourth lateral is an improvement to the natural watercourse, which is a tributary to Antelope Creek. The original engineer's cost estimate for the project was \$1,220,110, of which \$925,435 was considered eligible for a 40 percent cost share in the amount of \$370,200.

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The project has been completed and is operational. The final revised project cost was \$1,763,714, of which \$1,287,755 was considered eligible for a 40 percent cost share (\$515,102).

Previously approved cost share actions by the State Water Commission include: July 22, 1997, a 40 percent cost share in the amount of \$100,000 from the Contract Fund (deferral on remainder of request); December 21, 1998, an additional \$50,000 for the project (deferral on remainder of request); December 10, 1999, a 40 percent cost share of the eligible items in the amount of \$136,000 (deferral on remainder of request for consideration in 2001-2003 biennium); and August 16, 2001, a 40 percent cost share of the eligible items in the amount of \$200,000. The total state cost share contribution is \$486,000.

On May 1, 2002, the State Water Commission passed a motion increasing the funding limitation for individual rural flood control projects to \$250,000 per project for the 2001-2003 biennium, to include projects previously approved during this biennium. An unfunded eligible balance of \$29,102 exists for additional cost share consideration in the 2001-2003 biennium for Richland County Drain No. 95. The request before the State Water Commission is to cost share in an additional \$29,102 in the 2001-2003 biennium.

It was the recommendation of the State Engineer that the State Water Commission approve a 40 percent cost share of the eligible items, not to exceed an additional \$29,102 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Richland County Drain No. 95. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$515,102.

It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland that the State Water Commission approve a cost share of 40 percent of the eligible items, not to exceed an additional \$29,102 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Richland County Drain No. 95. This motion is contingent upon the availability of funds.

This action increases the State Water Commission's cost share contribution to \$515,102.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

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**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:

Contract 2-4C - Twin Buttes Service Area, Main Transmission Pipeline:

Contract 2-4C is for approximately 32.5 miles of mostly 10-inch and 8-inch pipe and includes service to the city of Scranton. The contractor, Nygard Construction, has completed this contract with the exception of cleanup work and administrative items. Water service began in Scranton on July 29, 2002.

Contract 5-3A - Second New England Reservoir: Contract 5-3A is for a 1,240,000 gallon potable water reservoir 67 feet in diameter and 48 feet high, located about 4 miles north of New England. This contract has been completed and the tank has been placed in service. This tank provides additional water storage for the south zone of the project.

Contract 5-8 - Twin Buttes Reservoir: Contract 5-8 is for a 249,000 gallon potable water reservoir 42 feet in diameter and 25 feet high, located about 1.5 miles north of Bowman. The tank has been completed and put into service. This tank provides water storage for the Twin Buttes service area rural users and the city of Scranton.

Contract 7-6B - Coffin Buttes Service Area, Rural Distribution System:

Contract 7-6B is for approximately 137 miles of pipeline serving about 85 rural water connections. This contract was essentially finished last fall with all connections completed. The prefinal inspection of this contract was held June 19, 2002 and the contract is considered complete.

Contract 7-7A - Twin Buttes Service Area, Rural Water Distribution System:

Contract 7-7A is for approximately 124 miles of primarily 6-inch through 1 1/2-inch rural water distribution pipelines serving about 108 rural water connections. The contractor began work the first week in October, 2001 and completed about 35 miles of pipeline prior to winter shutdown. The contract has an intermediate completion date of July 15, 2002 for 40 rural water users, and a substantial completion date of September 1, 2002. Water was not available from contract 2-4C until about July 8, 2002, and an extension in time of 32 days for the intermediate completion date was issued. The new intermediate completion date for 40 users is August 16, 2002. The contractor Abbot, Arne & Schwindt, has been making good progress with about 122 miles of pipeline installed. A request for an extension in time for the substantial completion date is being considered.

Contract 7-7B/7-3C - Twin Buttes Service Area and West Rainy Butte Booster Area, Phase II: Contract 7-7B/7-3C is for about 267 miles of 8-inch through 1 1/2-inch rural distribution pipelines serving about 160 rural water connections. The contract was awarded to Abbot, Arne & Schwindt on May 31, 2002. The contract has an intermediate completion date of September 1, 2002 for 40 users, August 1, 2003 for 139 users, and a substantial completion date of September 15, 2003 for the entire contract. A preconstruction conference for this contract was held in Scranton on July 25, 2002. The contractor began construction work on July 26, 2002.

City of Medora: In June, 2002, voters in the city of Medora narrowly passed an ordinance prohibiting the city from accepting water from the Southwest Pipeline Project. Medora entered into a water service contract in 1983 for 13 million gallons of water per year at a rate not to exceed 40.3 gallons per minute. The city has requested an Attorney General's opinion on whether the ordinance was created properly. At its January, 2002 meeting, the city council voted to go with a sole source amendment to the existing contract and there is a question of whether a referendum requiring a two-thirds majority was needed to overturn the council's action. If the ordinance stands, the State Water Commission will likely have to address the issue of the existing water service contract.

The city of Medora has no water meters installed other than those with its wells, therefore, it is difficult to estimate the peak water usage. The many visitors to the city during the summer season has a large influence on the water usage. The latest records of water use from the city wells show that the city uses about 25-30 million gallons of water per year. The Southwest Water Authority has installed several meters in Medora to gather information for design, and some of the city meters are being read daily to obtain accurate information.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT WITH CITY OF ZAP
(SWC Project No. 1736)**

In 2001, the city of Zap expressed an interest in entering into a Southwest Pipeline Project water service contract. A draft contract was developed by the Southwest Water Authority,

which was subsequently approved by the city of Zap in April, 2002, and the Authority in May, 2002. The contract is for sole source water service, in which the city agrees not to use water from any other source other than the Southwest Pipeline for the term of the contract. In exchange, the provisions in the older water service contracts requiring purchase of a minimum amount each month are waived. The user is billed for the actual amount of water used each month. The contract also has the provision for debt service credit removed. This provision was incorporated in the original water service contracts as an enticement for signing the contract. Under this provision, the city could get credit against

the capital repayment portion of their bill for existing debt on water supply infrastructure which was abandoned once the city connected to the pipeline. The credit was limited to 75 percent of the city's annual debt service payments and was limited to the first 10 years after the connection to the pipeline. The provision was removed from Zap's contract because the city doesn't have any current debt and it removes any question of whether it could be applied to debt added after the contract is signed and before the city is connected to the pipeline.

The contract specifies a maximum flow rate of 48 gallons per minute based on the city of Zap's present population and a design capacity of 250 gallons per day per person. Capacity for Zap's supply will be incorporated in the design of the Oliver-Mercer-North Dunn phase of the project.

It was the recommendation of the State Engineer that the State Water Commission approve Southwest Water Pipeline water service contract 1736-30 with the city of Zap.

It was moved by Commissioner Johnson and seconded by Commissioner Thompson that the State Water Commission approve Southwest Pipeline water service contract 1736-30 with the city of Zap. SEE APPENDIX "G"

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF DEBT SERVICE
CREDIT FOR CITY OF MOTT
(SWC Project No. 1736)**

The city of Mott completed a construction project in 1989 and 1990 to replace a portion of its water mains. During this project, the city put in a dedicated water line for the Southwest Pipeline

Project. This pipeline extended from the outskirts of the city to a point in 4th Street close to the city's ground storage tank. The final segment of pipe, through an alley, connecting the city's ground storage tank to the new water line was not constructed during this street project. This pipeline was put in by the State Water Commission as part of Southwest Pipeline contract 2-6A in 1994. At its December 7, 2001 meeting, the Commission approved a request from the city of Mott to transfer ownership and maintenance responsibility for the water distribution line running from 4th Street to the city's ground storage water reservoir.

James Lennington explained that the files concerning Mott contain a letter received from the city in 1992 requesting a credit for the city's costs in constructing the pipeline from the outskirts of the city

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to 4th Street. Discussions with the Commission staff and city personnel showed that the Commission did not respond to this letter in 1992 probably because construction of the pipeline project in the area had not yet taken place.

When the final engineering report for the Southwest Pipeline Project was published in 1982, all of the cities in the project were to be responsible to pay the costs of connecting the pipeline to their facilities. Mott, Golden Valley and Dodge all paid for these facilities a few years before the project reached them, perhaps because of available funding or other planned construction. After about 1992, it appears as though the project paid the costs of all subsequent city connections.

Discussions with the city of Mott prompted them to write a letter renewing their request, which was received in March, 2002. The city used a Community Development block grant to pay 70 percent of the costs of its project back in 1989 and 1990. An apportionment of the costs paid by the city determined the debt service credit in the amount of \$8,525.73, which was accepted by the city. Mr. Lennington explained that although debt service credit provisions in the water service contracts were intended for facilities abandoned when cities connect to the project, it provides a method for reimbursing cities for their costs which would have appropriately been project costs. The city of Mott paid approximately \$19,800 in capital repayment in 2001. The debt service credit offered would be about 5 1/2 months worth of payments.

It was the recommendation of the State Engineer that the State Water Commission approve a debt service credit for the city of Mott of \$8,525.73 for costs of connecting the city to the Southwest Pipeline Project.

It was moved by Commissioner Hanson and seconded by Commissioner Olin that the State Water Commission approve a debt service credit for the city of Mott of \$8,525.73 for costs of connecting the city to the Southwest Pipeline Project.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

August 15, 2002

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AMENDMENT I TO
WATER SERVICE CONTRACT 1736-SD
WITH PERKINS COUNTY, SD
(SWC Project No. 1736)**

In February, 2002, a letter was received from the Perkins County Rural Water System (PCRWS) proposing repayment of the \$4.5 million specified in the Southwest Pipeline Project water service contract over a five-year

period beginning in 2002. The contract specifies that the \$4.5 million is to be repaid before any water is received from the project. The PCRWS has a federal authorization for \$20,630,000, but it is uncertain what amount will be appropriated in any given year. The submitted budget estimates appropriations of \$3.4 million to \$4.3 million each year. If the contract provision was enforced, PCRWS would miss out on an entire construction season.

At the March 21, 2002 PCRWS meeting, it was proposed that they repay North Dakota by allocating 22 percent of their federal allocation received each year until the \$4.5 million is repaid. PCRWS accepted the proposal and a amendment to their water service contract was drafted with the following language included, and presented to the State Water Commission at its May 1, 2002 meeting. At the meeting, the Commission directed the State Engineer and the Commission staff to develop an alternative that addressed repayment of interest and guaranteeing repayment of the total amount.

The User will pay the Capital cost for Dedication of Existing Capacity by allocating 22 percent of the federal appropriation received in each year until such time as a total of \$4,500,000 has been paid to the Commission. Water service, as provided in Section V of this contract, shall be delivered to the User without reduction based on the amount of the Capital Cost for Dedication of Existing Capacity paid by the User.

James Lennington explained that the Southwest Pipeline's authorizing legislation allowed the State Water Commission to include capacity for South Dakota users. The legislation required that first there had to be a commitment by the South Dakota users which required them to pay the costs of any additional capacity to provide them service. During the early years of construction, there was no identifiable South Dakota entity in the region to be served and construction proceeded without including any explicit capacity for South Dakota. In 1992, the PCRWS was formed and in 1996 the State Water Commission recognized that the Southwest Pipeline Project did have unallocated capacity adequate to provide service. A contract was negotiated which provided for a dedicated flow rate of 400 gallons per minute and required payment of capital costs "up front" rather than as water was consumed as in the other project contracts.

The contract with PCRWS recognized two types of capital costs: those for incremental capacity in portions of the project which had not yet been constructed, and those for dedication of existing capacity. Construction contracts subsequently let for portions of the project, which would be

used to supply water to South Dakota, were bid with an alternative including the additional capacity. PCRWS then paid the difference between the base bid and the alternate with added capacity for contracts 2-4A, 2-4B and 7-4, with the incremental costs totalling \$865,058.41. The costs for the dedication of existing capacity was determined to be \$4.5 million based upon a pro rata share of costs using the 400 gallons per minute capacity for PCRWS.

Following the May 1, 2002 Commission meeting, an alternative for repayment based upon projected flow rates provided by PCRWS was developed. This alternative restricts PCRWS to only that amount of capacity which has been paid for. The following tables show the payments under the two proposals. The appropriations in the first table were derived from the budget included with the letter from PCRWS in February, 2002.

**Perkins County Rural Water System, Inc.
Proposed Capital Repayments to North Dakota**

22 Percent of Federal Appropriations

Year	Appropriation	Cumulative Appropriation	Capital Repayment	Cumulative Capital Repayment
2002	\$3,400,000	\$ 3,400,000	\$748,000	\$ 748,000
2003	\$4,300,000	\$ 7,700,000	\$946,000	\$ 1,694,000
2004	\$4,310,000	\$ 12,010,000	\$948,200	\$ 2,642,200
2005	\$4,310,000	\$ 16,320,000	\$948,200	\$ 3,590,400
2006	\$4,310,000	\$ 20,630,000	\$909,600	\$ 4,500,000

**Proposed Flows, from PCRWS Manager
June 3, 2002**

Year	Flowrate	% Of Total	Pro-Rata Payment	Cumulative Capital Repayment
2002	30	7.5 %	\$ 337,500	\$ 337,500
2003	90	22.5 %	\$ 675,000	\$1,012,500
2004	240	60.0 %	\$ 1,687,500	\$2,700,000
2005	300	75.0 %	\$ 675,000	\$3,375,000
2006	350	87.5 %	\$ 562,500	\$3,937,500
2007	400	100.0 %	\$ 562,500	\$4,500,000

Mr. Lennington stated that it appears the best alternative is the original 22 percent proposal with an additional stipulation that the State Water Commission and PCRWS periodically review the quantity and the rate of water delivered in comparison to the amount paid commencing three years after water is first delivered.

The User and Commission will periodically review the quantity and rate at which water is delivered in comparison to the payments of Capital Cost of Dedication of Existing Capacity beginning three years after water deliveries commence.

It was the recommendation of the State Engineer that the State Water Commission approve Amendment I to the Southwest Pipeline Water Service Contract 1736-SD that includes the stipulations (underlined) as presented.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve Amendment I to Southwest Pipeline Project Water Service Contract 1736-SD, Perkins County Rural Water System, Inc., with the stipulations (underlined) as recommended by the State Engineer. SEE APPENDIX "H"

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

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

James Lennington, project manager for the Northwest Area Water Supply (NAWS) project, provided the following status report:

Contract 2-1A- First Main Transmission Line: The award of contract 2-1A was authorized by the State Water Commission on February 20, 2002 to S. J. Louis Construction, St. Cloud, Minnesota, contingent upon the written concurrence by the Bureau of Reclamation (received on March 28, 2002) and upon completion of the contract documents.

The contractor has completed construction of about 3 miles of the 7.5 miles of pipeline in contract 2-1A. Construction has reached the outskirts of the city of Minot and the pace of construction should increase as the number of underground utilities diminishes and the contractor no longer has to deal with working in paved areas.

Contract 2-1A has a contract amount of approximately \$4.8 million and has a completion date of November 1, 2002. According to the schedule provided by the contractor, construction is several weeks behind schedule. Discussions are pursuing with the contractor about the possibility of adding on a mile or so of pipeline to the contract.

Project Intake: On July 8, 2002, a letter was received from the Bureau of Reclamation indicating that a proposed location for the NAWS pumping and facilities location on the north side of the Snake Creek pumping plant appears acceptable, and would impact a very small portion of the Corps's managed public lands. The intake at this site would consist of a 30-foot diameter concrete caisson 90 feet deep with a 42-inch diameter horizontal shaft bored out to an intake screen in the lake. A channel with a bottom elevation of approximately 1,775 feet above mean sea level would be dredged to provide deep water in the intake screen vicinity. This channel would tie into the existing dredged channel providing water to the Snake Creek facility. This is one of several intake options being investigated, and it appears to be the most promising option.

If this option is selected, a special use permit from the Bureau of Reclamation would be required stating the responsibilities for joint maintenance of shared facilities such as the access road and the existing dredged channel. A draft special use permit has been received from the Bureau and discussions are ongoing to satisfy concerns relative to the permit provisions. Meetings have also been held relative to using the Garrison diversion facilities for the NAWS intake; however, any use of Garrison facilities will require either a water purchase contract or repayment contract with the Bureau of Reclamation.

Project Design: The construction schedule for 2003 includes a 3 million gallon pretreated water reservoir just north of the Continental Divide and approximately 8.5 miles of main transmission pipeline from the end of contract 2-1A to the reservoir. The proposed location for the reservoir is about 1 mile north of the former radar installation along Highway 83 and 13 miles south of Minot. The proposed site is near the two wind generators currently being constructed by Basin Electric. Draft plans for the main transmission pipeline segment, contract 2-1B, and the reservoir, contract 5-1A, are anticipated for completion by the end of September, 2002. Estimated project costs for these facilities are about \$9.5 million.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF \$130,000 FOR
PURCHASE OF EASEMENTS
(SWC Project No. 237-04)**

On October 23, 2001, the State Water Commission approved the expenditure of \$104,000 for the purchase of easements for the first Northwest Area Water Supply (NAWS) project construction contract. MR&I funds are

being used for 65 percent of the costs of NAWS, but pipeline easement costs are not eligible (chapter 89-12-01-02). Under the Interim Financing Agreement with the city of Minot, the city has agreed to pay 35 percent of the project costs including those for pipeline easements. Other costs ineligible have been incurred including a portion of the groundbreaking ceremony and for public information.

James Lennington stated that through May, 2002, ineligible costs for NAWS have totalled \$165,746.78. The state share of these costs is \$107,735.41, which exceeds the approved expenditure. Mr. Lennington said that the acquisition of pipeline easements has turned out to be more difficult and costly than originally projected. Pipeline easements across four properties have been condemned to date and it appears that three more condemnations may be necessary. The four condemnations, which have been recorded, have been appealed and a jury trial will determine whether the compensation was adequate. Offers on these properties exceeded the projection of \$160,000, and legal costs as well as any additional compensation awarded at trial, will increase the costs.

Construction currently underway entails about 7.5 miles of 36-inch and 30-inch transmission pipeline stretching from the Minot water treatment plant south and east to the intersection of U.S. Highway 83 and Ward County Road 16. The pipeline easement parcels consist of a permanent easement 60 feet wide and a temporary construction easement 40 feet wide. Consistent with the Southwest Pipeline Project, Mr. Lennington explained that most landowners have been compensated for permanent easements at 80 percent of the appraised value of their land. Offers were reduced where easements have been located within road right-of-way and property setbacks. Appraised property values have ranged from \$1,000 per acre for agricultural land to \$0.40 per square foot (\$17,424 per acre) for land with development possibilities.

The city of Minot has approved a request for an additional \$70,000 in easement and ineligible costs and some of these funds have been expended since May, 2002. The increased cost of easements on the first contract and the need to begin easement acquisition at this time for the next contract, require additional funding. Mr. Lennington said although the legal and awarded costs are difficult to project, it is anticipated that \$200,000 should satisfy those costs and those needed for easements in the next contract. The state share of this amount is \$130,000.

It was the recommendation of the State Engineer that the State Water Commission approve up to \$130,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the purchase of easements for the NAWS project.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve up to \$130,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the purchase of easements for the Northwest Area Water Supply project. This motion is contingent upon the availability of funds.

August 15, 2002

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF ADDITIONAL
FUNDING FOR MCKENZIE
COUNTY RURAL WATER SYSTEM
FEASIBILITY STUDY
(SWC Project No. 237-03)**

On May 1, 2002, the State Water Commission passed a motion approving a federal grant to the McKenzie County Rural Water System for up to \$1.47 million, not to exceed 70 percent of the eligible costs. The proposed system will provide service to 90 rural

water users in the vicinity of Watford City. The city would provide water from their water treatment plant including the operation and maintenance. The estimated project cost is \$2.1 million.

The McKenzie County Rural Water System has requested a MR&I grant on additional feasibility costs to address the need of the east system which has identified 71 users and service for Amerada Hess for industrial use. The initial feasibility study looked at regional water service in McKenzie county, but it did not address service to the east because of the distance from Watford City. Since the initial study, the Fort Berthold Rural Water System has been contacted and has indicated that McKenzie could buy water as a bulk user at the reservation boundary with McKenzie being responsible for developing and maintaining the distribution system outside the reservation. The additional study has an estimated cost of \$35,000, with a 65 percent grant of \$22,750. The initial feasibility study cost of \$50,000 was approved for a MR&I grant of \$32,500.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$22,750 for a feasibility study of eastern McKenzie county, not to exceed a 65 percent grant of the eligible feasibility study costs. Affirmative action by the State Water Commission would increase the total federal MR&I grant to \$55,250 for the feasibility study.

It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission approve an additional \$22,750 for a feasibility study of eastern McKenzie county, and shall not exceed a 65 percent federal grant of the eligible feasibility study costs. This motion is contingent upon the availability of federal funds and subject to future revisions.

This action increases the total federal MR&I grant to \$55,250 for the McKenzie County Rural Water System feasibility study.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF ADDITIONAL
\$15,000 FOR MCLEAN-SHERIDAN
RURAL WATER FEASIBILITY STUDY
(SWC Project No. 237-03)**

The McLean-Sheridan Rural Water System is conducting a feasibility study for a system expansion to serve an additional 200 rural water users and providing bulk water service to the communities of Anamoose, Benedict,

Underwood, and Wilton. The preliminary project cost is \$12 million. The feasibility study had an estimated cost of \$57,000 with an approved 65 percent MR&I grant of \$37,050. The study is being expanded to cover the area between the surrounding water systems to provide an understanding how to best serve the users while looking at the other systems. The estimated additional study cost is \$23,000 with a 65 percent federal MR&I grant of \$15,000.

Also being considered is a North Central Rural Water Consortium with the Central Plains Water District and North Prairie Rural Water. This proposed project would address the needs of the other systems. Discussions have started to include the All Seasons Water Users. A preliminary engineering report is being proposed with a cost estimate of \$65,000.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$15,000 to the McLean-Sheridan Rural Water System for a rural water feasibility study, not to exceed a 65 percent federal MR&I grant of the eligible feasibility study costs. Affirmative action by the State Water Commission would increase the total federal MR&I grant to \$52,050.

It was moved by Commissioner Johnson and seconded by Commissioner Halcrow that the State Water Commission approve an additional \$15,000 to the McLean-Sheridan Rural Water System for a rural water feasibility study, not to exceed a 65 percent federal MR&I grant of the eligible feasibility study costs. This motion is contingent upon the availability of federal funds and is subject to future revisions.

This action increases the total federal MR&I grant to \$52,050 for the McLean-Sheridan Rural Water System feasibility study.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF ELIGIBILITY FOR
FUTURE REIMBURSEMENT OF A
FEDERAL MR&I GRANT OF UP
TO \$5 MILLION FOR CITY OF
WILLISTON WATER SYSTEM
IMPROVEMENTS
(SWC Project No. 237-03)**

The city of Williston has completed a master study for the water treatment plant and transmission line. The total cost of the improvements is \$34 million which include regulatory, optimization, and expansion of the water system. Phase I improvements are being implemented with the Drinking Water State Revolving loan

funds for approximately \$4 million. The design of the transmission line improvements are to begin in July, 2002, with construction in July, 2003. Design for the \$15.3 million Phase II optimization/expansion project will begin in June, 2003, with construction in January, 2004. Work on the \$10.8 million Phase III will be in 2011-2015 and includes backwash reclaim, solids contact, basin expansion, filter expansion, and the transfer of pumps depending on future regulatory requirements and expansion growth demand. The city has requested a 22 percent federal MR&I grant, in the amount of \$5 million, in funding assistance toward the \$23.3 million which covers Phases I and II and the transmission line improvements.

Secretary Frink explained that although MR&I funds are not available at this time, the project needs approval to begin the process of meeting the MR&I program requirements to ensure the project costs are eligible for future reimbursement with MR&I funding. The Garrison Diversion Conservancy District approved the city of Williston's request for future reimbursement.

It was the recommendation of the State Engineer that the State Water Commission approve the eligibility of the city of Williston for future reimbursement of a federal MR&I grant of up to \$5 million of the eligible project costs, subject to the future availability of federal funds, and that the city of Williston satisfies all MR&I program requirements.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve the eligibility of the city of Williston for future reimbursement of a federal MR&I grant of up to \$5 million of the eligible project costs. This motion is contingent upon the future availability of federal funds, and that the city of Williston satisfies all MR&I program requirements.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

The following MR&I program status report was provided:

All Seasons Rural Water System 4 Expansion: The expansion project is being constructed in two phases. The first phase is constructed and serves 22 rural water users and the city of Bisbee, at a cost of \$2 million. The second phase expands the system into western Towner county with the addition of 82 rural water users and the capacity to serve the city of Rock Lake. The estimated Phase II project cost is \$3.3 million, with the major construction to be completed in 2002. Phase II includes 82.5 miles of pipeline, expanding the well field, increasing the water treatment plant capacity, increased reservoir storage, and a new booster station. System 4 is approved for a federal MR&I grant of up to \$3,950,000, not to exceed 70 percent of the eligible project costs, and includes \$240,000 for adding capacity for the city of Rock Lake.

All Seasons Rural Water System 5 (Pierce County): The new rural water system proposes to serve 373 rural users and the city of Willow City. The city of Rugby intends to supply System 5 with a bulk water supply based on receiving an additional water appropriation from the Pleasant Lake aquifer. The city of Rugby and All Seasons need an agreement for the cost of bulk water service. Bids for construction will be taken in the fall of 2002. USDA, Rural Development would provide a loan for the non-federal share of the costs. The estimated project cost of System 5 is \$8,651,000. A federal MR&I grant of \$6,055,700, not to exceed 70 percent of the eligible project costs, has been approved.

Langdon Rural Water - Munich Expansion: The estimated project cost for the Langdon Rural Water - Munich expansion is \$10.0 million, with service to 220 rural users and to the cities of Calvin, Clyde, Egeland, Munich, and

Wales. The proposed project includes reservoir/pumping facilities, pipelines, and improvements to the city of Langdon's water treatment plant. A federal MR&I grant of up to \$7.0 million, not to exceed 70 percent of the project costs, has been approved for the Langdon Rural Water - Munich Expansion project.

Mountrail County Rural Water New System: This proposed project is considering water service for 90 rural users with the potential for 250 users. The NorthWestern Dairy, two campgrounds along Lake Sakakawea, Brendel resort area, Plaza, Ryder and the United States Air Force sites would also be served. Sixty (60) of the rural water users are included in the proposed Fort Berthold Rural Water Supply System. Representatives of the proposed project are working with the Three Affiliated Tribes to ensure that water system planning incorporates the needs for the entire area.

Northwest Area Water Supply (NAWS) Project (Minot Component): The first phase of construction began with 7.5 miles of 36-inch and 30-inch pipeline from the Minot water treatment plant south to the intersection of Ward County Road 16 and U.S. Highway 83. The design of Phase II is underway with construction bids to be let in the fall of 2002, pending future funding. The estimated project costs of Phase II is \$2.66 million. A federal MR&I grant has been approved for Phase II of the NAWS project in the amount of \$2.66 million, not to exceed 65 percent of the eligible project costs. The total federal MR&I grant for NAWS, Phases I and II, is \$8,356,498.

Northwest Area Water Supply (NAWS) Project (Rugby Component): The water treatment plant was the first component completed at a cost of \$2.59 million. The next component for the Rugby water project is the installation of a new water transmission pipeline to match the capacity of the expanded water treatment plant. The project involves pipeline, two wells, and dredging of the existing sludge pond. The estimated cost of these features is \$2.87 million. The total project costs for NAWS, Rugby components, Phases I and II, are \$5.46 million. A 65 percent federal MR&I grant is \$3.55 million, and \$2.6 million has been approved. Therefore, an additional \$950,000 will be required when all permits have been obtained.

Ramsey Rural Utilities Rural Water Expansion: The proposed expansion project covers portions of Eddy, Foster, and Ramsey counties and would serve 465 users. Service includes the cities of Glenfield, Grace City, and McHenry. The city of Carrington will provide bulk water service to 102 rural users surrounding Carrington. The remaining 363 users will be served by Ramsey's existing water treatment plant near Tolna. Construction is over a two-year period.

Ramsey conducted studies for the proposed expansion at a cost of \$115,000, with an approved 70 percent MR&I grant of \$80,500. The studies covered mapping, system hydraulic review, preliminary design/reports, and negotiations with the city of Carrington regarding potential water service.

The current construction cost estimate is \$12,677,000. The project has been approved for a federal MR&I grant of \$9,127,000, not to exceed 72 percent of the eligible project costs.

Ransom-Sargent Rural Water: The project will serve 830 rural users and the communities of Cogswell, Elliott, Fingal, and Marion. The final phase involves a water treatment plant expansion in Lisbon, a new well field, and a raw water transmission pipeline. The project is scheduled to be completed in the summer of 2002. The project received approval for a federal MR&I grant of \$15.1 million, not to exceed 72 percent of the eligible project costs.

South Central Regional Rural Water System: A regional water system would provide service to rural users and municipalities in the counties of Burleigh, Emmons, Kidder, Logan, and McIntosh. Burleigh Rural Water is developing the project with several other sponsors from various counties. A conceptual and preliminary engineering report was completed in June, 2002. The water supply option being studied is using bulk water from the city of Bismarck in combination with a new water treatment plant using the Spring Creek aquifer in McIntosh county. The current signup is 1,429 new users and 9 municipalities including Wilton, Braddock, Hague, Hazelton, Linton, Strasburg, Ashley, Venturia, and Napoleon. Service would continue to the existing 2,620 Burleigh Rural Water users. The estimated project cost is \$65-\$70 million.

Southeast Area Regional Expansion Study: The proposed and future regulations under the Safe Drinking Water Act affect many water systems in southeastern North Dakota. Regional water service may be the long-term alternative to meet those regulations. Some of the water systems in southeast North Dakota are served by the Southeast Water Users District, Ransom-Sargent Water Users District, and Dickey Rural Water Association.

A study was conducted by the three existing regional water systems in order to obtain an assessment, concept development, and options of probable costs for various phases of a Southeast Area Regional Expansion project. The main tasks of the study included examining existing system challenges, examine the potential system expansions, and geographical information system development and the integration needs assessment. The estimated study cost was \$93,000, with an approved 65 percent water development and research fund grant of \$60,450 from the Garrison Diversion Conservancy District.

The study results indicated that the Southeast Water Users District could provide bulk service to the communities of Hankinson, Lidgerwood, and Wyndmere at a cost of \$472,000, \$613,000, and \$427,000, respectively. The study also indicated that the Dickey Rural Water Association could provide bulk service to the communities of Oakes and LaMoure for Option A (iron and manganese treatment) for \$3,890,707 and \$1,586,794, respectively; and for Option B (iron and manganese with reserve osmosis treatment) for \$6,742,642 and \$2,419,758, respectively. All of these costs are based on a total project with shared improvements.

Southwest Pipeline Project (SWPP): Construction continues on the Bowman-Scranton service area. The project cost of \$10 million is being funded with a \$6.64 million state grant and funding of \$3.36 million from USDA, Rural Development. The next service area of Medora-Beach has an estimated cost of \$17.4 million to serve the rural water users and communities, with a Phase I estimated cost of \$11.9 million.

Tri-County Rural Water Expansion: The existing rural water system is planning an expansion to its system to serve 142 rural users, including 22 rural users in the McVille area and Stump Lake Park. The project will add new users, correct water pressure problems, and add a water tower to eliminate nine booster stations in the existing water system. The tower design will save costs for operation and maintenance. The project cost estimate is \$4,555,000. A federal MR&I grant of \$3,380,000, not to exceed 72 percent of the eligible project costs, has been approved for the project, including \$100,000 for adding capacity for the city of Michigan. Also approved for the Tri-County Rural Water Expansion project's feasibility study is a federal MR&I grant of up to \$35,750, not to exceed 65 percent of the eligible feasibility study costs. The total cost of the feasibility study is \$55,000.

Williams Rural Water Expansion: The existing rural water system is planning an expansion in Williams county that would add 140 rural water users, with an estimated cost of \$2.3 million. The estimated cost of the feasibility study is \$71,000, of which a federal MR&I grant of \$40,000 has been approved.

**MR&I WATER SUPPLY PROGRAM -
REVISED FISCAL YEAR 2002
MR&I FUNDING BUDGET
(SWC Project No. 237-03)**

The revised Fiscal Year 2002 MR&I Water Supply program budget, which includes funding for the McKenzie County Rural Water System, McLean-Sheridan Rural Water Expansion,

and for the city of Williston (dated August 5, 2002), is attached hereto as **APPENDIX "I"**.

August 15, 2002

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF AGREEMENT FOR
JOINT EXERCISES OF GOVERN-
MENTAL POWERS BETWEEN
SWC AND GDCD CONCERNING
MR&I PROGRAM AND RED RIVER
VALLEY WATER SUPPLY PROJECT
(SWC Project No. 237-03)**

The State Water Commission and the Garrison Diversion Conservancy District have an agreement for the Joint Exercises of Governmental Powers concerning the Municipal, Rural and Industrial Water Supply program (MR&I), authorized by the Garrison Diversion Reformulation Act of 1986 (Public Law 99-294). The

Act has since been amended by the Dakota Water Resources Act of 2000 (Public Law 106-554).

An amended agreement that corresponds to the 2000 legislation was presented for the State Water Commission's consideration. The amendments being proposed include reference to the Dakota Water Resource Act of 2000 and to the Red River Valley Water Supply project that allows the District to work with the Bureau of Reclamation on the project. The amended agreement has been reviewed by the State Water Commission's assistant attorney general.

It was the recommendation of the State Engineer that the State Water Commission approve the amendments to the agreement as presented.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the Agreement for the Joint Exercises of Governmental Powers between the North Dakota State Water Commission and the Garrison Diversion Conservancy District concerning the Municipal, Rural and Industrial Water Supply Program and the Red River Valley Water Supply Project, Authorized by Public Law 106-554, as amended. SEE APPENDIX "J"

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

August 15, 2002

**GARRISON DIVERSION
CONSERVANCY DISTRICT
REPORT
(SWC Project No. 237)**

Dave Koland, Garrison Diversion Conservancy District deputy manager, provided an update on the current efforts relating to the continued appropriations under the

Garrison Diversion Unit including appropriations for ongoing maintenance of the existing facilities, and for the state MR&I program, the Indian MR&I program, and the management arrangement for the Red River Valley Water Supply study and environmental analysis required by the passage of the Dakota Water Resources Act of 2000. The Bureau of Reclamation is hosting a workshop on August 20, 2002, relative to the Memorandum of Understanding between the State of North Dakota and the Bureau of Reclamation to begin the process on the Red River Valley Water Supply study. The Fiscal Years 2002 and 2003 federal budgets for the Garrison Diversion Unit were also discussed.

**APPROVAL OF RELEASE OF
EASEMENTS AND DEDICATION
FOR THE HILDENBRAND DAM
IN LOGAN COUNTY
(SWC Project No. 1286)**

The Works Progress Administration built the Hildenbrand Dam (also referred to as Hildebrandt Dam) in Logan County in the 1930s. Ownership of the dam was then transferred to the State of North Dakota. The dam

was breached in 1989, and a temporary repair consisting of three 48-inch corrugated metal pipe culverts were placed in the washed-out spillway, which failed in 1991. A cost estimate was prepared in 1989 by the Commission staff that indicated approximately \$90,000 would be required for the repair of the dam. The dam has remained in this failed state since that time.

Two easements were obtained from different landowners for this project. The dam site easement is for land in the NW1/4SE1/4 of Section 21, Tier 133 North, Range 71 West, Johannesdale Township. According to the Commission's records, John Hildenbrand granted the dam easement on July 7, 1938. Delmer and Deloris Deigel now own the dam site property. The impoundment easement is for the area inundated by the dam in the NE1/4SW1/4 of Section 21, Tier 133 North, Range 71 West, Johannesdale Township. Albert Lang granted the impoundment easement on July 6, 1938. Albert Lang is deceased, and the land belongs to Mathilda Lang (Mrs. Albert Lang) et al.

A letter was received on May 8, 2002 from Richard Lang, Wishek, ND, indicating his intentions to sell the property and requested the State of North Dakota release the easements for the dam. A letter was sent to the following agencies and entities soliciting comments: North Dakota Land Department, North Dakota Department of Health, North Dakota Parks and Recreation, North Dakota Historical Society, Logan County Water Resource District, and the Logan County Commission. The deadline for comments was June 7, 2002.

Because the Hildenbrand Dam is no longer useful and will not be reconstructed, it was the recommendation of the State Engineer that the State Water Commission approve the Release of Easements and Dedication for the two easements as described for the dam.

It was moved by Commissioner Swenson and seconded by Commissioner Johnson that the State Water Commission approve the Release of Easements and Dedication for the two easements as described for Hildenbrand Dam in Logan County.

Commissioners Halcrow, Hanson, Hillesland, Hofstad Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

MISSOURI RIVER UPDATE (SWC Project No. 1392)

The Corps of Engineers held a series of public workshops and hearings to receive testimony on the draft Environ-

mental Impact Statement (EIS) for the Missouri River Master Water Control Manual. The meetings in North Dakota were held on October 23, 2001 in Bismarck and on October 24, 2001 in New Town. Governor Hoeven provided testimony on behalf of the state at the Bismarck hearing, and the Commission staff provided testimony at the meetings in New Town, Kansas City, and St. Louis. The Corps accepted comments on the draft EIS until February 28, 2002. More than 55,000 comments were received, of which slightly more than 50,000 of the comments came from various environmental organizations in the forms of letters, postcards, and e-mails. Other comments came from a variety of federal, state, and local governmental agencies, Native American Tribal groups, private citizens, and local interest groups.

The Corps was scheduled to release the final EIS on the Master Manual review in May, 2002. The Corps did not meet that schedule; instead they, once again, began consulting with the U.S. Fish and Wildlife Service regarding the impacts of the proposed revision on threatened and endangered species resulting in an indefinite delay of the Master Manual revision. Unless this consultation is concluded soon, the Annual Operating Plan (AOP) for 2003 will be set and the Missouri River system will be operated for another year based on the 40-year old Master Manual. which has proven inadequate for the current needs of the Missouri River basin. Staffs of the Governor's office and the State Water Commission have been working to convince the Corps to finalize the Master Manual revisions and to begin operating the river in a responsible manner.

In April, 2002, South Dakota filed a lawsuit against the Corps of Engineers preventing the Corps from lowering Lake Oahe to protect the spring hatch of the rainbow smelt, which is a tiny fish that is a

food source for walleye and other game fish. South Dakota officials also asked in their lawsuit to prevent the Corps from lowering the water levels on any of the Missouri River reservoirs in South Dakota, North Dakota, and Montana. That would prevent the Corps from drastically dropping the level of other lakes to support the level in Lake Oahe. The federal district court granted South Dakota's request and enjoined the Corps from lowering the water level of Lake Oahe. To make up for the water it could not release from Lake Oahe, the Corps began to take water from Lake Sakakawea and Fort Peck.

North Dakota filed a suit to prevent loss of the smelt spawn in Lake Sakakawea and Montana then followed suit to protect Fort Peck Lake. The Nebraska district court issued an injunction requiring the Corp to operate the system in accordance with the current Master Manual and the operation plan and to maintain navigation on the lower river. Although the spawn is over and the restraining orders regarding Lake Sakakawea and Lake Oahe have expired, the lawsuits continue. The Corps has appealed the district courts' judgements maintaining that the Corps's decision concerning the water levels in the reservoirs and the river are not reviewable by a court. North Dakota has amended its complaint in the original lawsuit asking the court to order the Corps to complete the Master Manual revision and treat all uses equally instead of providing preferential treatment to navigation.

Todd Sando reported the Missouri River basin is facing its third consecutive year of drought. As of July 31, 2002, system storage in the six mainstem reservoirs was 48.3 million acre-feet (MAF), 13.5 MAF below the average system storage for that day and 6.4 MAF less than in 2001. Lake Sakakawea was at an elevation of 1831.4 feet msl, 3.0 feet lower than a year ago and 11.7 feet below its average end of July elevation. The elevation of Lake Oahe was 1590.8 feet msl on July 31, 2002, 17.9 feet lower than last year and 17 feet lower than its average end of July elevation. Fort Peck Lake was at an elevation of 2219.0 feet msl on July 31, 2002, 3.5 feet lower than a year ago and 18.8 feet below its average end of July elevation.

The Corps is attempting to meet the minimum service navigation targets on the lower river, however, the Fish and Wildlife Service has prevented the Corps from moving the piping plover and least tern nests. Therefore, the Corps has not been able to increase discharges from Gavins Point Dam as tributary inflow on the lower river has decreased. As a result, the flows have been below the minimum service navigation levels at some locations.

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**SECTION 404 ASSUMPTION
(SWC Project No. 1855)**

During the 2001 North Dakota legislative session, legislation was passed that provided funding and authorized

the hiring of full-time employees to administer the Section 404 permitting program. The funding and hiring authority would be provided once the State Engineer certifies to the Governor that a program has been designed to effectively assume the responsibility for the Section 404 program. Commissioner Thompson requested that staff provide an update on the assumption process at each Commission meeting.

Todd Sando explained the elements which are required for a complete submission for assumption of the 404 program. The elements include a letter from the Governor requesting program assumption; a complete program description; an Attorney General's statement; Memorandum of Agreements with the Environmental Protection Agency and the Corps of Engineers; and copies of applicable statutes and regulations.

A meeting with staff members of the Environmental Protection Agency was held on May 15, 2002 in Denver, CO. The history of North Dakota's efforts to assume the program were summarized and discussed, along with the limitations on the waters for which authority can be assumed, the status of other states' efforts toward assumption, the merits of operating a state program as an interim step toward assumption, and the assumption process in general.

One of the primary points of discussion was the option of running a state regulatory program as an interim step toward assumption. It was noted that the only two states to have successfully assumed the program, Michigan and New Jersey, both had state programs in place prior to submitting a completed application for assumption of the federal program. The State of Oregon is currently working toward assumption, and they have also implemented a state program. Mr. Sando explained that while running a concurrent state program as an interim step toward assumption is not a specific requirement with the federal regulations, EPA representatives did indicate that it would facilitate approval of the state's assumption request by providing an opportunity for development of a track record and an opportunity for the state to better define the resources required to successfully operate such a program.

The Office of the Attorney General responded to an inquiry by the State Engineer as to whether or not the existing legislation authorized funding and full-time employees for implementing a state run program as an interim step toward assumption. The conclusion of the assistant attorney general was that:

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... once the water commission promulgates the rules, the state engineer should be able to certify to the governor that a program has been designed to effectively assume the 404 program and the state is ready to assume the program. The governor shall notify the secretary of state and the legislative council of the effective date of the Act. Once the Act is effective, the five FTE's should be available to work on the assumption process - which may or may not include running a state run general permitting program prior to assumption - and on the administration of the 404 program prior to assumption - and on the administration of the 404 program once it is assumed by the state.

The draft administrative rules have been updated and are currently undergoing staff review. Once the internal staff review has been completed, the draft rules will be circulated and comments will be solicited from other state and federal agencies including EPA. It is then intended to proceed with the rule adoption process. Once the rules have been adopted, work would continue toward the initial program design and implementation. Also, once the rules have been adopted and the Governor notifies the Secretary of State and the Legislative Council of the effective date of the Act, full-time employees may be hired to continue the efforts toward assumption.

NORTH DAKOTA STATE WATER COMMISSION AND OFFICE OF THE STATE ENGINEER BIENNIAL REPORT FOR THE PERIOD JULY 1, 1999 TO JUNE 30, 2001

plained that the State Water Commission and the Office of the State Engineer are not required by law to provide a biennial report.

The State Water Commission members were provided with the North Dakota State Water Commission and Office of the State Engineer biennial report for the period July 1, 1999 to June 30, 2001. Secretary Frink ex-

COMMENTS BY SENATOR KEN SOLBERG, RUGBY, ND, DISTRICT 7, RELATIVE TO DEVILS LAKE BIOTA TRANSFER (SWC Project No. 416)

Lake subbasin to the Hudson Bay basin is one of the major concerns that the opposition of both the federal and state emergency outlets have raised. Senator Solberg recommended that the State Water Commission conduct a thorough biotic survey of not only the Devils Lake subbasin, but the Hudson Bay basin as well.

Ken Solberg, North Dakota Senator from Rugby, ND and representing District 7, appeared before the State Water Commission to express concerns relative to the Devils Lake biota transfer. Biota transfer from the Devils

Secretary Frink responded that as a result of the concerns regarding an emergency outlet for Devils Lake, the Garrison Diversion project, and the Northwest Area Water Supply project in the

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past, there have been numerous studies conducted exploring the potential for biota transfer, which have been commissioned by both state and federal agencies. Secretary Frink stated there would be significant costs associated with a study as requested, and the scientific studies such as are currently being advocated by opponents of the Devils Lake emergency outlet projects, would not definitely rule out the possibility of biota transfer. *(Note: A meeting was held on September 24, 2002 with Senator Ken Solberg and the staffs of the Governor's office and the State Water Commission to provide a briefing on the Devils Lake biota transfer risk analysis.)*

**COMMENTS RELATIVE TO
DEVILS LAKE BY CHARLES
MERTENS, DEVILS LAKE, ND
(SWC Project No. 416)**

Charles Mertens, Devils Lake, ND, appeared before the State Water Commission to request the removal of siltation in the Devils Lake channel area that overflows into Stump Lake.

Mr. Mertens also addressed the issue of compensation to landowners for patents that were given by the federal government to settlers for land rights above the meander line of Devils Lake. He requested the Commission's assistance in an effort to obtain federal compensation for the landowners.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 4:45 PM.

John Hoeven, Governor
Chairman, State Water Commission

SEAL

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission

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