

## **MINUTES**

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

**December 6, 2002**

The North Dakota State Water Commission held a meeting at the Best Western Ramkota Inn, Bismarck, North Dakota, on December 6, 2002. Governor-Chairman, John Hoeven, called the meeting to order at 9:00 AM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

#### **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**

announced the agenda approved as presented.

There being no additional items for the agenda, Governor Hoeven an-

**CONSIDERATION OF FINAL DRAFT  
MINUTES OF OCTOBER 10, 2002 STATE  
WATER COMMISSION MEETING -  
APPROVED**

The final draft minutes of the October 10, 2002 State Water Commission meeting were approved by the following motion:

*It was moved by Commissioner Swenson, seconded by Commissioner Hofstad, and unanimously carried, that the final draft minutes of the October 10, 2002 State Water Commission meeting be approved as prepared.*

**CONSIDERATION OF FINAL DRAFT  
MINUTES OF NOVEMBER 14, 2002  
STATE WATER COMMISSION  
TELEPHONE CONFERENCE CALL  
MEETING - APPROVED**

The final draft minutes of the November 14, 2002 State Water Commission telephone conference call meeting were approved by the following motion:

*It was moved by Commissioner Swenson, seconded by Commissioner Hofstad, and unanimously carried, that the final draft minutes of the November 14, 2002 State Water Commission telephone conference call 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 October 31, 2002, reflecting 67 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. The total approved for projects is \$61,206,140, leaving a balance of \$28,310,548 available to commit to projects.

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

David Laschkewitsch stated the oil extraction tax deposits into the Resources Trust Fund are currently \$1,138,980, or 18.95 percent behind the

budgeted revenues. The November oil extraction revenue exceeded the budgeted revenue by \$2,910. The 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 \$678,151 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 \$3.7 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 included a five percent reduction in general funds as required from all state agencies. The budget request included optional adjustments to address items that were affected by the five percent reduction with the most significant cuts in salaries, travel and equipment.

A meeting was held on September 20, 2002 with representatives of the Office of Management and Budget and the Legislative Council concerning the agency budget and the optional adjustment package.

On December 4, 2002, Governor Hoeven released the executive budget recommendations for the 2003-2005 biennium. Secretary Frink stated that because of the revenue situation in the general fund, the executive budget recommends the agency operations be funded from federal and special funds and, therefore, no general fund revenues were included in the agency budget for the 2003-2005 biennium. The executive budget also recommends only two line items - administrative and support services, and water and atmospheric resources. Federal Emergency Management Agency (FEMA) disaster deficiency payments incurred by the State of North Dakota totalling \$11 million are also included in the executive budget recommendation.

Secretary Frink presented the proposed 2003-2005 budget for water projects, which is attached hereto as **APPENDIX "C"**.

**APPROVAL OF DRAFT 2003-2005  
WATER DEVELOPMENT REPORT  
(SWC Project No. 322)**

In order to maintain the 1999 State Water Management Plan and to meet the requirements of 1999 Senate Bill 2188, the draft 2003-2005 Water Development Report was presented for the Commission's consideration at its October 10, 2002 meeting. Section 10, Statewide Water Development Program-Legislative Intent, of ch. 535 of the 1999 Legislative Session Laws (Senate Bill 2188) states:

“The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this act are completed.”

Section 57-51.1-07.1(2) of the North Dakota Century Code (N.D.C.C.) requires that “every legislative bill appropriating moneys from the Resources Trust Fund, pursuant to subsection one, must be accompanied by a State Water Commission report.” Secretary Frink explained that although the format has changed from previous reports, the 2003-2005 Water Development Report will satisfy the requirements for funding from the Resources Trust Fund for the 2003-2005 biennium, and 1999 Senate Bill 2188 and 1999 House Bill 1475, codified in N.D.C.C. §§ 61-02-26 and 61-02-14.

It was the recommendation of the State Engineer that the State Water Commission approve the draft 2003-2005 Water Development Report as the official update to the 1999 State Water Management Plan; the formal request for funding from the Resources Trust Fund; and the record of water development needs and funding abilities to meet those needs in the 2003-2005 biennium. The final version of the 2003-2005 Water Development Report reflects the changes, which were approved by the State Engineer, since the October 10, 2002 Commission meeting.

It was the general consensus of the Commission members that the 2003-2005 Water Development Report include reference to the FEMA flood emergency deficiency payments of \$11 million as recommended in the executive budget.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the 2003-2005 Water Development Report (attached hereto as APPENDIX “D”):***

***1) to serve as the State Water Commission’s supplement to the 1999 State Water Management Plan;***

**2) to serve as the State Water Commission's formal request for funding from the Resources Trust Fund;**

**3) to serve as the State Water Commission's record of water development needs and funding abilities to meet those needs for the 2003-2005 biennium; and**

**4) the 2003-2005 Water Development Report shall include reference to the FEMA flood emergency deficiency payments of \$11 million recommended in the 2003-2005 executive budget.**

**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 COST SHARE  
POLICY REVISIONS FOR RURAL  
FLOOD CONTROL POLICY  
(SWC Project No. 1753)**

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 down-

*stream 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 the Commission members relative to the downstream impact analysis requirements and possible liabilities which could be incurred as a result of negative downstream impacts, Governor Hoeven directed the Commission's rural flood control committee and others to revisit the issue. Pursuant to this directive, the committee met with representatives of the North Dakota Water Resource Districts Association, the Commission staff, and others on November 14, 2002.

Because funding for a rural flood control project may be granted prior to the issuance of an associated drain permit, the committee determined that it would be more appropriate to analyze any potential downstream impacts during the regulatory process, rather than during the cost share process. The committee additionally concluded that for projects located in the Red River valley, input from the Red River Basin Joint Water Resource Board should be solicited in order to bring a more regional perspective to the local water resource district's review of the drain permit application.

The committee assigned the Commission staff to work with a Red River Joint Water Resource board representative for the purpose of developing a policy statement. The following committee cost share policy statement for rural flood control projects was presented for the Commission's consideration:

*It is the policy of the State Water Commission to provide financial support, contingent upon the availability of funds, for rural flood control projects. In order to provide a basinwide perspective to the regulatory review of proposed drainage projects, the State Engineer shall solicit, at his discretion, comments from the applicable joint powers board. It is anticipated that this additional basinwide perspective, in concert with the State Engineer's judgement, will help ensure that the issue of potential downstream impacts is properly addressed.*

It was the recommendation of the State Engineer that the State Water Commission approve the proposed rural flood control cost share policy statement relating to downstream impact analysis requirements as presented.

***It was moved by Commissioner Thompson and seconded by Commissioner Hofstad that the State Water Commission approve the following rural flood control cost share policy statement relating to downstream impact analysis requirements:***

***It is the policy of the State Water Commission to provide financial support, contingent upon the availability of funds, for rural flood control projects. In order to provide a basinwide perspective to the regulatory review of proposed drainage projects, the State Engineer shall solicit, at his discretion, comments from the applicable joint powers board. It is anticipated that this additional basinwide perspective, in concert with the State Engineer's judgement, will help ensure that the issue of potential downstream impacts is properly addressed.***

***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 POLICY FOR  
STATE COST ASSISTANCE IN  
DEVELOPMENT OF IRRIGATION  
PROJECTS  
(SWC Project No. 1400)**

Hanson, Hillesland, Hofstad, and Thompson. The Commission staff and representatives of the North Dakota Irrigation Caucus, the Dickey-Sargent Irrigation District, and the Garrison Diversion Conservancy District also participated in the review.

At the May 1, 2002 meeting of the State Water Commission, Governor Hoeven appointed a committee to review the Commission's cost share policy for irrigation projects. The

committee consisted of Commissioners

The committee deliberated at length at its first meeting on the purpose of directing state funds towards the development of irrigation. Based on the discussion, it was concluded that utilizing state funds for expanding irrigation creates new economic opportunities by further developing North Dakota's soil and water resources resulting in an improved quality of life for its citizens.

After evaluating the history of the Commission's cost share policy for irrigation development, the committee presented the following cost share policy recommendations, which are intended to foster the development of irrigation projects in a fair and equitable manner throughout North Dakota:

- 1) *Cost share must be limited to supporting the irrigation development efforts of political subdivisions. The primary political subdivision is the irrigation district, but could include water resource districts and a county board of flood irrigation;*
- 2) *The items eligible for cost share are those associated with the central supply works. The central supply works could include water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, electrical transmission and control facilities, and engineering. Eligibility of certain items for cost share may be addressed on an individual basis and presented to the State Water Commission for consideration after the review of project plans by the Commission staff;*
- 3) *Components of the central supply works that require significant reconstruction or replacement should be considered for cost share. Maintenance is not eligible for cost share. In extraordinary cases where the difference between maintenance and reconstruction is not readily identified, the Commission may have to make the determination after review by the Commission staff;*

- 4) *Economic feasibility of a new irrigation project is to be based on the study conducted for the creation of the irrigation district or an update thereof that would be provided with the request for cost share. Economic feasibility will be determined by the total projected revenues from the products produced and the overall operating costs; and*
- 5) *The construction of new central supply works and the reconstruction or replacement of components of a central supply works should be funded at 40 percent of the eligible items.*

It was the recommendation of the State Engineer that the State Water Commission adopt the proposed policy on cost share for irrigation projects as presented.

In discussion of the proposed policy, it was the consensus of the Commission members that condition No. 2 be rewritten as follows: *"The items eligible for cost share are those associated with the new central supply works. ...."*

***It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission adopt the policy on cost share for irrigation projects as presented.***

The proposed policy was discussed and although the Commission members voiced concurrence that state funds should be directed towards the development of new irrigation, there was considerable discussion if the components of a central supply works that require significant reconstruction or replacement should be considered eligible cost share items (relating specifically to proposed policy Nos. 3 and 5). Based on the discussion, it was concluded that significant reconstruction and/or replacement of the components of central supply works should not be considered eligible items for state cost share assistance.

***Commissioner Hanson voted aye. Commissioners Halcrow, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted nay. Recorded vote was 1 aye; 8 nays. Governor Hoeven announced the motion failed.***

***It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission adopt the following policy on state cost share assistance for irrigation projects:***

***1) Cost share must be limited to supporting the irrigation development efforts of political subdivisions. The primary political subdivision is the irrigation district, but could include water resource districts and a county board of flood irrigation;***

***2) The items eligible for cost share are those associated with new central supply works. The central supply works could include water storage facilities, intake structures, wells, pumps, power units, primary water conveyance facilities, electrical transmission and control facilities, and engineering. Eligibility of certain items for cost share may be addressed on an individual basis and presented to the State Water Commission for consideration after the review of project plans by the Commission staff;***

***3) Maintenance is not eligible for cost share;***

***4) Economic feasibility of a new irrigation project is to be based on the study conducted for the creation of the irrigation district or an update thereof that would be provided with the request for cost share. Economic feasibility will be determined by the total projected revenues from the products produced and the overall operating costs; and***

***5) The construction of new central supply works should be funded at 40 percent of the eligible items.***

***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 SUPPORT FOR  
FEDERAL HYDROPOWER FOR  
IRRIGATION IN NORTH DAKOTA  
(SWC Project Nos. 237 & 1392)**

Under the Pick-Sloan Missouri Basin Program, irrigation development was intended to provide benefits to upstream areas for the loss of land permanently flooded by the mainstem

reservoirs, and federal hydropower was allocated to the pumping of water to irrigation districts from the Missouri River at the project pumping rate.

Previous efforts to secure hydropower for irrigation development and rural water systems in North Dakota were discussed, which included meetings with the North Dakota Association of Rural Electric Cooperatives. On June 15, 2000, the North Dakota Irrigation Caucus adopted the following position concerning the allocation of federal hydropower for irrigation and rural water systems:

The North Dakota Irrigation Caucus believes that federal hydropower allocated for irrigation development as part of the Pick-Sloan Missouri Basin Program should still be allocated and utilized for irrigation, and should also be made available for rural water systems.

The North Dakota Irrigation Caucus recognizes that under the Pick-Sloan Missouri Basin Program, federal hydropower was allocated to the pumping of water to irrigation districts from the Missouri River at the project pumping rate. Thus, the North Dakota Irrigation Caucus will work with the North Dakota Rural Electric Cooperatives to secure federal hydropower for irrigation districts, at the project pumping rate, for projects involving the pumping of water to the point of distribution to individual irrigators by the irrigation district.

The North Dakota Irrigation Caucus also supports Congressional authorization of the allocation of federal hydropower for statewide irrigation districts for energy and power requirements of irrigators, who are included in such irrigation districts, at the firm or preference power rate utilized for other preference customers.

Finally, since irrigation development under the Pick-Sloan Missouri Basin Program was intended to provide benefits to upstream areas for the loss of land permanently flooded by the mainstem reservoirs, the North Dakota Irrigation Caucus supports the allocation of federal hydropower at the firm power rates for rural water systems.

Similar positions were adopted by the Garrison Diversion Conservancy District on July 6, 2000, and the State Water Commission on July 14, 2000. The thrust of the actions is to restore benefits to the upper basin states to offset the loss of permanently flooded land.

Commissioner Thompson explained that federal preference, or firm power, would enhance the development of irrigation in North Dakota. He said it is important that the State Water Commission, along with other entities, continue the efforts to actively pursue congressional authorization for such power to serve irrigation districts statewide and the Devils Lake outlet project to enhance the development of irrigation in North Dakota.

***It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission, along with other entities, continue the efforts to actively pursue congressional authorization for the allocation of federal hydropower for statewide irrigation districts and the Devils Lake outlet project at the federal preference, or firm power rate utilized for other preference customers, for the purpose of enhancing the development of irrigation in North Dakota.***

***Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Swenson, Thompson, and Governor Hoeven voted aye. Commissioner Olin voted nay. Recorded vote was 8 ayes; 1 nay. Governor Hoeven announced the motion carried.***

**APPROVAL OF REQUEST FROM  
CITY OF DEVILS LAKE FOR STATE  
COST PARTICIPATION IN THE  
EXTENSION AND RAISE OF THE  
DEVILS LAKE LEVEE SYSTEM,  
STAGES I - III  
(SWC Project No. 416)**

The 2001 Legislative Session approved House Bill 1015 authorizing the State Water Commission to use up to \$5,000,000 to provide cost share for constructing and improving levees at Devils Lake.

The city of Devils Lake's original dike was constructed in 1984 offering a protection level of 1440 feet msl and a top elevation of 1445 feet msl. As a result of the rising lake level, modifications of the original dike and added protection were necessitated in 1996. The city of Devils Lake executed an agreement with the Corps of Engineers on August 12, 1996 to raise the dike to protect the city to a top elevation of 1450 feet msl. The State Water Commission issued construction permit No. 1155, although it did not provide funds for the original construction.

An amendment to the agreement between the city and the Corps was executed in June, 1998 authorizing an extension and raise of the system to a top elevation of 1454 feet msl, which was later modified to a top elevation of 1457 feet msl. In January, 2003, the city will execute an amended agreement with the Corps to raise the entire levee system

three feet to a protection level of 1454 feet msl and a top elevation of 1460 feet msl. The Office of the State Engineer is currently processing an application to permit this raise.

As the Corps of Engineers continues to amend the agreement for the extension and raise of the Devils Lake levee system, certain costs are known (Stages I and II) and some costs are estimated (Stage III). It is anticipated that the agreement will conclude after this three-foot raise allowing for an audit of the project as described. The total known and estimated cost of the project is \$59,987,729 (Stage I - \$43,050,000, Stage II - \$2,700,000, and Stage III is estimated to cost \$8,750,000, of which \$6,750,000 is for the construction and \$2,000,000 for the acquisition of the ponding land).

The city of Devils Lake is responsible for 25 percent of the total cost of the project (\$14,996,932). Cash contributions in the amount of \$10,922,730 have been provided from the State Water Commission (\$750,000), a Community Development Building Grant (\$1,400,000), Housing and Urban Development (\$7,000,000), and the city of Devils Lake (\$1,772,730). Since the city of Devils Lake has limited funding, state assistance was requested for the required balance of \$4,074,202. No costs are considered ineligible in this project.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve the request from the city of Devils Lake for state cost share participation in the Extension and Raise of the Devils Lake Levee System, Stages I - III, in the amount of \$4,074,202 (which is equivalent to 25 percent of the non-federal share less all cash contributions) from the funds appropriated to the State Water Commission in the 2001-2003 biennium. Affirmative approval by the Commission is contingent upon the availability of funds and issuance of the required construction permit.

***It was moved by Commissioner Olin and seconded by Commissioner Halcrow that the State Water Commission approve the request from the city of Devils Lake for state cost share participation in the Extension and Raise of the Devils Lake Levee System, Stages I - III, in the amount of \$4,074,202 (which is equivalent to 25 percent of the non-federal share less all cash contributions) from the funds appropriated to the State Water Commission in the 2001-2003 biennium. This motion is contingent upon the availability of funds and issuance of the required construction permit.***

***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  
GRIGGS COUNTY WATER  
RESOURCE DISTRICT FOR  
COST SHARE ASSOCIATED  
WITH GRIGGS COUNTY DRAIN  
NO. 1 (KARNAK DRAIN)  
(SWC Project No. 1486)**

A cost share participation request from the Griggs County Water Resource District for costs associated with the construction of the Griggs County Drain No. 1 (also known as Karnak Drain) was presented for the Commission's consideration.

The project was completed in 1995 and 1996 and consisted of constructing approximately eight miles of main drain and an additional four and one-half miles of lateral drain. The lateral is in Greenfield Township and the main drain is in Sverdrup and Broadview Townships. The discharge is into a tributary creek of Lake Ashtabula in Section 14, Township 144 North, Range 58 West, Broadview Township. The drainage area is approximately 14 square miles. The channel has a 10-foot bottom width with 4 to 1 side slopes and a grade of 0.025 percent in a majority of the channel. After the drain was constructed, a vote was taken and passed to form an assessment district for the drain.

The total project cost is \$173,194, of which \$135,243 is considered eligible for a 35 percent cost share (\$47,335). The project was completed, and the cost share was requested prior to the Commission's policy of requiring a statement of downstream impacts or a sediment analysis. The project was permitted on November 21, 1995. The request before the State Water Commission is for a 35 percent cost share in the amount of \$47,335.

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 \$47,335 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Griggs County Drain No. 1 (Karnak Drain).

***It was moved by Commissioner Halcrow and seconded by Commissioner Johnson that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed \$47,335 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Griggs County Drain No. 1 (Karnak Drain). 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.***

**GARRISON DIVERSION PROJECT -  
APPROVAL OF NORTH DAKOTA  
NATURAL RESOURCES TRUST  
ALLOCATION FOR FY 2002  
(SWC Project No. 1826)**

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

features are widespread programs benefitting much of the state. The Dakota Water Resources Act of 2000 changed the name to the North Dakota Natural Resources Trust.

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

In 1993, the Garrison Diversion Conservancy District, the State Water Commission, and the North Dakota Game and Fish Department entered into a memorandum of agreement in which the three entities agreed to share equally the state's commitment, in accordance with terms set out in a February 14, 1991 agreement between the State of North Dakota, the Bureau of Reclamation, and the North Dakota Wetlands Trust. That agreement provides that the state's share shall be based on 0.15 percent of the federal Garrison Diversion Unit (GDU) appropriation. The Fiscal Year 2002 state's commitment is \$46,540; the State Water Commission's share is \$15,513.34.

Commissioner Olin stated he is currently serving on the North Dakota Natural Resources Trust board of directors and, to avoid a conflict of interest, requested to be excused from discussion of the request and that an abstention vote be recorded for him.

It was the recommendation of the State Engineer that the State Water Commission approve the obligation of \$15,513.34 for one-third of the state's Fiscal Year 2002 Natural Resources Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

***It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission approve the obligation of \$15,513.34 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for one-third of the state's Fiscal Year 2002 North Dakota Natural Resources Trust (formerly known as the North Dakota Wetlands Trust)***

***contribution. This motion is contingent upon the availability of funds, and an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.***

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

**APPROVAL OF REQUEST FROM  
SIOUX IRRIGATION DISTRICT  
FOR COST SHARE OF EXPANDED  
AND RENOVATED PUMPING  
CAPABILITIES  
(SWC File PS/IRR/SIO)**

A request from the Sioux Irrigation District was presented for the Commission's consideration for cost share participation for the acquisition of an additional pump, floating intake and pipeline for the District's irrigation system. Changes in the

Yellowstone River channel, due to low water periods and sedimentation, have necessitated changing the District's current pumping procedures and equipment.

The Sioux Irrigation District was originally formed in 1939. The District flood irrigates 760 acres of land owned by seven landowners in Sections 1, 2, 11, 13 and 14, Tier 151 North, Range 104 West, in McKenzie county. The District holds water permit No. 213B, which is being amended to include an additional point of diversion in the E 1/2 of Section 14. The quantity of water permitted will remain the same at 1,520 acre-feet and the authorized pumping rate of 11,000 gallons per minute will not be exceeded. Water is presently pumped from the Yellowstone River to an irrigation ditch by means of three centrifugal pumps, one diesel-powered pump with an intake structure and two floating electric pumps. Each pump is rated at a maximum of 4,000 gallons per minute. The District irrigates small grains, dry beans, hay, corn and sugar beets that are contracted to American Crystal Sugar Company in Sidney, Montana.

To alleviate the problems caused by the changes in the Yellowstone River channel, the District has proposed the purchase of a second diesel-powered pump, floating intake, and 900 feet of pipeline to facilitate obtaining water from the diversion locations where electricity is not available.

The project engineer's estimated total cost is \$52,650. The proposal consists of expanding and renovating the pumping capabilities necessitated by the changing river conditions and, therefore, under

the State Water Commission's policy and guidelines for cost share participation in irrigation development, \$52,650 is eligible for a 40 percent cost share (\$21,060). The request before the State Water Commission is for a 40 percent cost share in the amount of \$21,060.

Commissioner Halcrow stated that because of his interest in American Crystal Sugar Company, and to avoid a conflict of interest, requested to be excused from discussion of the request and that an abstention vote be recorded for him.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 40 percent of the eligible items, not to exceed \$21,060 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for expanding and renovating the pumping capabilities of the Sioux Irrigation District.

***It was moved by Commissioner Hanson and seconded by Commissioner Johnson that the State Water Commission approve a cost share of 40 percent of the eligible items, not to exceed \$21,060 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to the Sioux Irrigation District for expanding and renovating the pumping capabilities. This motion is contingent upon the availability of funds.***

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

**APPROVAL OF REQUEST FROM STEELE COUNTY WATER RESOURCE DISTRICT FOR STATE COST PARTICIPATION IN CONSTRUCTION OF STEELE-TRAILL COUNTY DRAIN NO. 17 PROJECT (SWC Project No. 1919)**

A request from the Steele County Water Resource District was presented for the Commission's consideration for state cost participation in the construction of Steele-Trail County Drain No. 17. The purpose of the project is to reduce flood damage to agricultural properties.

The assessment drain will be located in Sections 23 and 24 of Township 147 North, Range 54 West (Enger Township), Steele County, and in Section 19 of Township 147 North, Range 53 West (Viking Township), Traill County. The drain will outlet to Grass Coulee, a tributary to the Goose River, in Section 19, and will be approximately 1.8 miles long. The excavated channel will have side slopes of 4:1 or greater and a bottom width

varying between 10 and 12 feet. The project will include the installation of three associated culverts and two drop structures. The drain has been designed to convey runoff generated from a 10-year flood and should have little impact on downstream interests.

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 project engineer's cost estimate is \$155,231, of which \$128,936 is considered eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$45,127). The request before the State Water Commission is for a 35 percent cost share in the amount of \$45,127.

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 \$45,127 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for state cost participation in the construction of the Steele-Traill County Drain No. 17 project.

***It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation in the Steele-Traill County Drain No. 17 construction project at 35 percent of the eligible costs, not to exceed \$45,127 from the funds appropriated to the State Water Commission in the 2001-2003 biennium. This motion is contingent upon the availability of funds, attainment of a positive local 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 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 approximately one and one-half miles of a tribu-

tary to Swan Creek by means of constructing a short diversion channel.

The request was presented and discussed at the State Water Commission meeting on August 15, 2002. Funding was not approved at that time, as the Commission members expressed the importance of completing the approved Swan Creek Watershed Floodwater Retention Site Study prior to considering this request. The Commission members also expressed hope that the upstream study results would determine if negative downstream impacts could occur as a result of this project. Since the August 15, 2002 Commission meeting, the rural flood control committee recommended, and was approved by the State Water Commission (approved December 6, 2002), that it would be more appropriate to analyze any potential downstream impacts during the regulatory process rather than in the cost share process. Funding for a rural flood control project may be approved prior to the formation of the assessment district and issuance of the required permits.

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 project engineer's cost estimate is \$240,000, of which \$167,722 is considered eligible for conditional state cost share participation as a rural flood control project at a 35 percent cost share, for an amount not to exceed \$58,703 in state funds. The request before the State Water Commission is for a 35 percent cost share in the amount of \$58,703.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve the request by the Maple River Water Resource District for a 35 percent state cost share participation in the Swan Creek Tributary Channel Improvements Project, not to exceed \$58,703 from the funds appropriated to the State Water Commission in the 2001-2003 biennium.

***It was moved by Commissioner Halcrow and seconded by Commissioner Thompson that the State Water Commission conditionally approve a state cost participation of 35 percent of the eligible items, not to exceed \$58,703 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.***

***Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Thompson, and Governor Hoeven voted aye. Commissioners Olin and Swenson voted nay. Recorded vote was 7 ayes; 2 nays. Governor Hoeven announced the motion carried.***

**APPROVAL OF REQUEST FROM TRAILL COUNTY WATER RESOURCE DISTRICT FOR STATE COST PARTICIPATION IN RECONSTRUCTION AND EXTENSION OF TRAILL COUNTY DRAIN NO. 6 PROJECT (SWC Project No. 1228)**

A request from the Traill County Water Resource District was presented for the Commission's consideration for state cost participation in the reconstruction and extension of Traill County Drain No. 6. The project is an assessment drain to be located in Sections 14, 15, 16, 19 and 20 of Town-

ship 147 North, Range 49 West (Bingham Township) of Traill County. The purpose of the project is to reduce flood damage to agricultural properties.

Traill County Drain No. 6, also referred to as Munter Drain, was originally constructed in 1904 and is located along the north side of the east/west township road on the south side of Section

14, 15 and 16, and outlets to an unnamed coulee that discharges to the Red River in the SE1/4 of Section 14. The existing drain will be reconstructed to flatten the channel side slopes from 1:1 and 1.5:1 to 4:1, and to widen the channel bottom which varies between 8 and 10 feet to 12 feet in Sections 15 and 16.

Drain No. 6 will be extended westward by two miles creating a drain with a total length of 4.5 miles. The new portion of the drain will be constructed along the south side of the east/west township road on the north side of Sections 19 and 20, and will have an 8-foot bottom width and 4:1 side slopes. The project will require the replacement of four bridges with corrugated metal pipes, and the installation of associated culverts and a field inlet.

The existing channel was designed to meet the Soil Conservation Service's "S" curve standard, which is based on runoff volumes generated from between a 2- to 5-year event. The current project has been designed to convey runoff from a 5-year event.

An application to permit this project has been received from the District and is currently being processed. Information provided regarding the volume of sediment to be removed during reconstruction indicates the project should not have an adverse effect on the Red River as the drain is designed to handle a 5-year event and a reduction in the size of a downstream culvert will actually serve to decrease peak outflows.

The project engineer's cost estimate is \$202,163, of which \$176,405 is considered eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed \$61,742 in state funds.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 35 percent of the eligible items, not to exceed \$61,742 from the funds appropriated to the State Water Commission in the 2001-2003 biennium.

***It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed \$61,742 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the reconstruction and extension of Traill County Drain No. 6. This motion is contingent upon the availability of funds, and the issuance of the required permit.***

***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 STATE COST PARTICIPATION IN WALSH COUNTY DRAIN NO. 30 RECONSTRUCTION PROJECT (SWC Project No. 1520)**

A request from the Walsh County Water Resource District was presented for the Commission's consideration for state cost participation in the reconstruction of Walsh County Drain No. 30, which is an assessment drain in Tier 157 North, Range 52 West (Oakwood Township). The pro-

posed reconstruction and improvements will enhance the conveyance that has been reduced by the channel sloughing down and silting in.

Walsh County Drain No. 30 is located five miles east of the city of Grafton (near the village of Oakwood) along the west side of the north/south township road on the east side of Sections 14, 23, 26 and 35. This legal drain, which was permitted on April 9, 2002, outlets directly into the Park River in the NE1/4 of Section 14, and serves approximately 7,500 acres of farmland in eastern Walsh county. The channel is 3.9 miles long with a design slope of 2.1 feet/mile. The project includes widening the ditch bottom to 16 feet, re-sloping the sides to 3:1, and the installation of properly-sized culverts. Riprap placement and seeding will stabilize the channel and help prevent premature silt buildup in the drain.

Because the project crosses North Dakota State Highway 17, the drain is designed to accommodate a 25-year event as required by the North Dakota Department of Transportation. Larger magnitude events, such as a 100-year event, will break out of the channel and generally will be unchanged from the current conditions. No significant impacts on any downstream interests are probable. A sediment analysis was not provided.

The project engineer's cost estimate is \$451,811, of which \$341,546 is considered eligible for state cost participation as a rural flood project at 30 percent of the eligible costs, not to exceed \$102,464 in state funds. The request before the State Water Commission is for a 30 percent cost share in the amount of \$102,464.

Larry Tanke, Walsh County Water Resource District, provided information relative to the reconstruction project, and requested the Commission's favorable consideration of the cost share request.

It was the recommendation of the State Engineer that the State Water Commission approve a state cost share participation of 30 percent of the eligible costs, not to exceed \$102,464 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Walsh County Drain No. 30 reconstruction project.

***It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland that the State Water Commission approve a 30 percent state cost share participation of the eligible costs, not to exceed \$102,464 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Walsh County Drain No. 30 reconstruction project. 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 STATE COST  
PARTICIPATION IN CONSTRUCTION  
OF FARMSTEAD RING DIKES  
(SWC Project No. 1271)**

A request from the Maple River Water Resource District was presented for the Commission's consideration for state cost participation in the District's farmstead ring dike program.

The program consists of constructing two ring dikes around farmsteads. The Weber ring dike will be constructed in the NE1/4 of Section 26, Gill Township; and the Saewert ring dike will be located in the SE1/4 of Section 25, Maple River Township. The proposed ring dike work will provide flooding from the Maple River.

Moore Engineering of West Fargo is designing and contracting the construction of the dikes. The design plans for the ring dike program and the required permits will be provided following the State Water Commission's consideration of the request.

The project engineer's total cost estimate of the program is \$115,000. Under the State Water Commission's policy and guidelines for rural farmstead ring dike projects, funding is limited to 50 percent of the eligible costs, not to exceed \$25,000 in state cost participation per individual ring dike. The request before the State Water Commission is to cost share in 50 percent of the eligible costs in the amount of \$46,874.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 50 percent of the eligible costs, not to exceed \$46,874 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Maple River Water Resource District farmstead ring dike program.

***It was moved by Commissioner Hofstad and seconded by Commissioner Johnson that the State Water Commission conditionally approve a 50 percent state cost participation of the eligible costs, not to exceed \$46,874 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Maple River Water Resource District farmstead ring dike program. This motion is contingent upon the availability of funds, issuance of the required permits, approval of the program's final designs, and compliance with the ring dike criteria.***

***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  
RUSH RIVER WATER RESOURCE  
DISTRICT FOR STATE COST  
PARTICIPATION IN CONSTRUCTION  
OF FARMSTEAD RING DIKES  
(SWC Project No. 1271)**

A request from the Rush River Water Resource District was presented for the Commission's consideration for state cost participation in the District's farmstead ring dike program.

The program consists of constructing three ring dikes around farmsteads. The Otterson's ring dike will be constructed in the SW1/4 of Section 33; the Freedland's ring dike, located in the NW1/4 of Section 33, will be raised and realigned; and the Richard's ring dike will be sited in the SW1/4 of Section 4. The proposed ring dike work will provide flooding from the Rush, Maple, Sheyenne and Red Rivers.

Moore Engineering of West Fargo is designing and contracting the construction of the dikes. The design plans for the ring dike program and the required permits will be provided following the State Water Commission's consideration of the request.

The project engineer's total cost estimate of the program is \$94,999, of which \$93,499 is considered eligible for conditional state cost share participation as a rural flood control ring dike at 50

percent, for an amount not to exceed \$46,750 in state funds. The maximum cost share per ring dike is limited to \$25,000. The request before the State Water Commission is for a 50 percent cost share participation in the amount of \$46,750.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 50 percent of the eligible costs, not to exceed \$46,750 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Rush River Water Resource District farmstead ring dike program.

***It was moved by Commissioner Hofstad and seconded by Commissioner Johnson that the State Water Commission conditionally approve a 50 percent state cost participation of the eligible costs, not to exceed \$46,750 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Rush River Water Resource District farmstead ring dike program. This motion is contingent upon the availability of funds, issuance of the required permits, approval of the program's final designs, and compliance with the ring dike criteria.***

***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  
SOUTHEAST CASS WATER RESOURCE  
DISTRICT FOR STATE COST PARTICI-  
PATION IN CONSTRUCTION OF  
FARMSTEAD RING DIKES  
(SWC Project No. 1271)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for state cost participation in the District's farmstead ring dike program.

The program consists of constructing ring dikes around twelve farmsteads/rural homes and one around a church. The ring dikes are located in Stanley, Pleasant, Mapleton, Reed and Normanna Townships (Cass County), and will provide flooding protection from the Red, Sheyenne and Wild Rice Rivers.

Moore Engineering of West Fargo is designing and contracting the construction of the dikes. The design plans for the ring dike program and the required permits will be provided following the State Water Commission's consideration of the request.

The project engineer's total cost estimate of the program is \$659,998. Considering each ring dike is eligible for 50 percent of eligible costs, up to a maximum of \$25,000, the program can be considered for state cost participation in the amount of \$259,784. Administration and legal expenses (\$6,500) are ineligible for cost share assistance. The request before the State Water Commission is for a 50 percent cost share participation in the amount of \$259,784.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 50 percent of the eligible costs, not to exceed \$259,784 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Southeast Cass Water Resource District farmstead ring dike program.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission conditionally approve a 50 percent state cost participation of the eligible costs, not to exceed \$259,784 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Southeast Cass Water Resource District farmstead ring dike program. This motion is contingent upon the availability of funds, issuance of the required permits, approval of the program's final designs, and compliance with the ring dike criteria.***

***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  
RED RIVER JOINT WATER RESOURCE  
DISTRICT FOR STATE COST SHARE  
ASSISTANCE FOR PUBLIC  
RELATIONS COORDINATOR  
(SWC Project No. 1705)**

Red River Joint Water Resource District and the expenses would be shared by the District, the State Water Commission, and the Garrison Diversion Conservancy District. The position is proposed to be initiated on January 1, 2003.

A request from the Red River Joint Water Resource District was presented for the Commission's consideration for state cost share assistance for a public relations coordinator. The position would be filled through the hiring of a private contractor by the

The Red River basin is subject to severe and repeated flooding, which has a dramatic impact on the lives, health, property, and well being of its citizens. Success in developing and implementing a comprehensive and workable plan to reduce these impacts will require that the

various political subdivisions in the Red River basin and other interested groups understand the various options and its impacts, and are able to work together on common strategies to reduce flooding. The public relations coordinator will implement an information program associated with these efforts.

The proposed cost of the public relations coordinator would include \$50,000 annually in salary plus expenses of up to \$10,000. The Red River Joint Water Resource District has requested the State Water Commission and the Garrison Diversion Conservancy District to each provide 30 percent of the cost, or up to \$15,000 of salary and \$3,000 of expenses annually.

Secretary Frink explained that the State Water Commission cannot execute an agreement beyond the end of the current biennium, therefore, he proposed the Commission consider an initial commitment of funding through the end of the current biennium with the request being considered again in the 2003-2005 biennium. The cost share requested of the State Water Commission for the period of January 1, 2003 through June 30, 2003, would be \$7,500 of salary and \$1,500 of expenses.

It was the recommendation of the State Engineer that the State Water Commission approve cost share assistance for the period of January 1, 2003 through June 30, 2003 of up to \$7,500 of salary and \$1,500 of expenses from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Red River Joint Water Resource District Public Relations Coordinator.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve state cost share assistance for the period of January 1, 2003 through June 30, 2003 of up to \$7,500 of salary and \$1,500 of expenses from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Red River Joint Water Resource District Public Relations Coordinator. 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.***

**GARRISON DIVERSION PROJECT -  
APPROVAL OF CONTINUATION  
OF CONTRACT WITH WILL &  
CARLSON; AND COST SHARE  
UP TO \$35,000 FOR PERIOD JULY  
1, 2002 THROUGH JUNE 30, 2003  
(SWC Project No. 237-03)**

Secretary Frink presented a request from the Garrison Diversion Conservancy District to continue participation in support of the Will & Carlson contract in the amount of \$35,000 for services relating to the appropriations under the Garrison Diversion Unit.

The State Water Commission first entered into a cost share agreement for the services of Peter Carlson in 1991. Since that time, Mr. Carlson has provided services for the state in Washington, DC for Garrison, Devils Lake, and the Dakota Water Resources Act. Considerable efforts are still needed to obtain funding through the Dakota Water Resources Act.

It was the recommendation of the State Engineer that the State Water Commission approve an expenditure of \$35,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to continue the Will & Carlson contract for the period July 1, 2002 through June 30, 2003. These funds will be cost shared 50 percent with the Garrison Diversion Conservancy District.

***It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve an expenditure of \$35,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to continue the Will & Carlson contract for the period July 1, 2002 through June 30, 2003. These funds will be cost shared 50 percent with the Garrison Diversion Conservancy District. 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.***

**STATE ENGINEER AUTHORIZATION TO LIFT MORATORIUM ON WATER PERMIT APPLICATIONS FOR THE APPROPRIATION OF WATER FROM CEDAR, CANNONBALL, GRAND AND GREEN RIVERS, AND APPLE CREEK (SWC Project No. 1400)**

At its meeting on August 4, 1960, the State Water Commission placed a moratorium on the issuance of permits for the appropriation of water from the Cedar, Cannonball, Grand, and Green Rivers, and Apple Creek until water conditions on these streams improved through storage or

importation of water from other sources. Since that time, water permit applications have not been accepted by the Office of the State Engineer for the appropriation of water from these rivers. Because the moratorium applied only to the mainstems of these rivers, permits have been issued for the appropriation of water from their tributaries. Those appropriations are primarily for small dams that store water for livestock and fish, wildlife, and recreation purposes.

Secretary Frink stated there is little information in the Commission minutes as to the reasons the moratorium was established. Most of the documented information is related to Apple Creek indicating that there was very low flow to no flow that was occurring in the creek due to drought conditions and the landowners were concerned about water for livestock.

Even though the watersheds for the Cedar, Cannonball, Grand, and Green Rivers, and Apple Creek are currently in a drought condition, Secretary Frink stated consideration should be given to lifting the moratorium established by the Commission 42 years ago because much has changed during the ensuing years, many of the water permits that existed at that time have been abandoned and subsequently canceled, and additional streamflow data have been collected that provides a much better basis for the allocation and management of the resource. Technology has also increased the efficiency of the consumptive use of water, and the legal system is better utilized for not only the informed appropriation of the water but also to protect against over appropriation. Secretary Frink explained that lifting the moratorium would provide for the uniform management of water appropriations for all of the state's rivers.

Secretary Frink stated an appropriate procedure will need to be established for lifting the moratorium. He proposed that a notice be published in the official newspaper for each county through which the respective river passes that would include a summary of the moratorium and specify a given date for lifting the moratorium. The water resource district in each county would also be provided a letter explaining the lifting of the moratorium.

It was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer to take the steps necessary to lift the moratorium on water permit applications for the appropriation of water from the Cedar, Cannonball, Grand, and Green Rivers, and Apple Creek.

***It was moved by Commissioner Swenson and seconded by Commissioner Hanson that the State Water Commission authorize the State Engineer to take the steps necessary to lift the moratorium on water permit applications for the appropriation of water from the Cedar, Cannonball, Grand, and Green Rivers, and Apple Creek.***

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

Deviils Lake is currently at elevation 1446.8 feet msl. At this elevation, the lake has a surface area of 123,000 acres and storage of 2.40 million acre-feet of water. The Devils Lake basin has received below normal precipitation and temperatures since October, 2002, and has resulted in the 0.20 of a foot drop in elevation. The lake has leveled off and is freezing in, so little change in elevation is expected through the winter.

Deviils Lake is at the same elevation as April, 2001. Evaporation and flows to Stump Lake have offset the spring and summer, 2001 runoff and the heavy rains from this past summer. Although this does not eliminate the flood danger, it means that periods of drier weather have offset the wet periods, temporarily stabilizing the lake elevation.

Deviils Lake continues to flow east through the Jerusalem channel into Stump Lake, however, due to ice formation in the channel, the USGS has suspended gaged flow measurements. The current elevation of Stump Lake is 1413.2 feet msl. At this elevation, Stump Lake covers 7,950 acres and is storing 135,000 acre-feet of water.

**APPROVAL OF EXTENSION OF  
DEVILS LAKE OUTLET AWARENESS  
PROJECT MANAGER'S CONTRACT  
FOR PERIOD OF JANUARY 1, 2003  
TO DECEMBER 31, 2003  
(SWC Project No. 416-05)**

In 1998, the State Water Commission, the Garrison Diversion Conservancy District, the Devils Lake Basin Joint Water Resource Board, and the Forward Devils Lake Corporation began cost sharing in a contract securing the services of the Devils Lake

Outlet Awareness Project Manager, which is occupied by Joe Belford. As the efforts continue toward pursuing the implementation of a state-sponsored Devils Lake emergency outlet and the Corps of Engineers permanent emergency outlet, Secretary Frink expressed the importance to continue to provide factual information to all downstream interests in North Dakota, Minnesota and Manitoba. The downstream education efforts provide a critical mechanism to dispense information and for people to communicate their concerns.

A request was presented from the Devils Lake Joint Water Resource Board for the Commission's consideration to continue funding for the Devils Lake Outlet Awareness project manager's position through December 31, 2003, with a 33 percent cost share, not to exceed \$15,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium. All other parties of the previous agreement have indicated their intentions to continue this effort through 2003.

The terms of the proposed contribution agreement are as follows:

|   |          |   |
|---|----------|---|
| State Water Commission                  | \$15,000 | (33 percent)  |
| Garrison Diversion Conservancy District | \$15,000 | (33 percent)  |
| Devils Lake Joint Board                 | \$10,000 | (22 percent,<br>plus up to \$5,000 in-kind service) |
| Forward Devils Lake Corporation         | \$ 5,000 | (12 percent)  |

It was the recommendation of the State Engineer that the State Water Commission approve extending the contract for the Devils Lake Outlet Awareness project manager's position for the period January 1, 2003 to December 31, 2003, with a 33 percent cost share, not to exceed \$15,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, in accordance with the terms as outlined, and contingent upon the availability of funds.

*It was moved by Commissioner Hillesland and seconded by Commissioner Hofstad that the State Water Commission approve extending the contract for the Devils Lake Outlet Awareness project manager's position, with a 33 percent cost share, not to exceed \$15,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the period January 1, 2003 to December 31, 2003, in accordance with the terms as outlined. 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 EXTENSION OF  
DEVILS LAKE BASIN MANAGER  
CONTRACT FOR PERIOD OF  
JANUARY 1, 2003 THROUGH  
DECEMBER 31, 2003  
(SWC Project No. 416-01)**

Since 1998, the State Water Commission has participated with the Devils Lake Basin Joint Water Resource Board in cost sharing for a full-time Devils Lake basin manager and an office for the board. Michael J.

Connor occupies that position and an office has been maintained in the Ramsey county courthouse. The Joint Board formally requested continued financial participation from January 1, 2003 through December 31, 2003.

Due to increased administrative costs, the Board requested an increase of \$3,000. The cost share arrangement would remain at 40 percent provided by the State Water Commission for one year, not to exceed \$26,000. The Commission would pay the Joint Board for the actual expenses based on quarterly expense reports approved by the Commission. The remaining funds would be provided by the Devils Lake Basin Joint Board.

It was the recommendation of the State Engineer that the State Water Commission approve 40 percent funding, not to exceed \$26,000 from the funds appropriated to the State Water Commission for the 2001-2003 biennium, for the Devils Lake basin manager from January 1, 2003 through December 31, 2003.

*It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission approve extending the contract for the Devils Lake basin manager from January 1, 2003 to December 31, 2003, with a 40 percent cost share, not to*

***exceed \$26,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, in accordance with the terms as outlined. 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 STATE COST  
SHARE IN DEVILS LAKE  
FEASIBILITY STUDY OF 1993  
(SWC Project No. 416-01)**

In October, 1993, an agreement was executed between the United States of America through the Corps of Engineers and the State Water Commission to conduct the Devils Lake

Feasibility Study at an estimated cost of \$102,000. The State Water Commission approved the expenditure of \$69,484 at its meeting on July 2, 1992 for Phase I of the feasibility study, which included a review of the hydrologic data and a determination of the frequency analysis for Devils Lake.

Secretary Frink reported that the Devils Lake Feasibility Study was completed, and the Corps of Engineers has submitted a request for payment of the remaining portion of the state's cost share which is \$32,516.

It was the recommendation of the State Engineer that the State Water Commission approve the request from the Corps of Engineers for the expenditure of an additional \$32,516 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the state's cost participation in the Devils Lake Feasibility Study of 1993.

***It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve the request from the Corps of Engineers for the state cost participation in the Devils Lake Feasibility Study of 1993 for the expenditure of an additional \$32,516 from the funds appropriated to the State Water Commission in the 2001-2003 biennium. 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.***

**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 permanent Devils Lake emergency 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 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. If the Corps recommends that the outlet proceed, the project would then 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 these delays, the spring of 2004 would be the earliest construction could begin on the federal outlet project.

The Corps of Engineers is continuing to work on the final design for the project. The State Water Commission, as the local sponsor, has applied for a water quality discharge permit for the project.

The Corps of Engineers is also nearing completion of a Devils Lake Infrastructure Protection study which will identify the costs and benefits of flood protection for roads, railroads, state facilities, communities, and rural areas in and around Devils Lake. The study will be used to develop an implementation plan, which will give the responsible parties a means of anticipating the costs and developing a schedule for the planning and implementation of the flood protection measures.

The State Water Commission and the Office of Attorney General have been negotiating the Project Cooperative Agreement (PCA) with the Corps of Engineers. Federal law requires that the local sponsor agree to cost share on the project at 35 percent of the total project costs and to indemnify the Corps of Engineers. Secretary Frink explained that the State Water Commission does not have the authority to obligate funds that have not been appropriated by the State Legislature, pursuant to the North Dakota Century Code (NDCC) which provides that all public money may be paid out only pursuant to a legislative appropriation. NDCC section 54-44.1-10 provides that no obligation may be incurred against any appropriation unless the obligation has been authorized as provided by law. Secretary Frink also explained that the State Water Commission does not have the authority to accept the liability associated with indemnifying the Corps of Engineers. Therefore, he said legislation will be required to be introduced by a state legislator to appropriate the funds necessary to

cost share with the Corps of Engineers on the project and to accept the liability of indemnifying the Corps. Without legislation, the State Water Commission cannot approve the PCA and/or authorize execution of the PCA by its secretary.

Governor Hoeven requested the State Engineer and the Commission staff reiterate to the Corps of Engineers the importance of meshing the state outlet project with the federal outlet project plans wherever possible.

**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 engi-

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

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 and the construction of an access road, which is 3 miles south of Minnewaukan.

On September 19, 2002, bids were opened for the Round Lake pump station site grading project. The contract was awarded to Wanzek Construction, Inc., Fargo, ND, who submitted the low bid of \$79,500. Construction commenced on October 15, 2002. The earthwork is essentially complete, but due to inclement weather conditions in late October, completion of grading and graveling the access road was delayed until the spring of 2003.

The State Water Commission staff met with Bartlett & West Engineers, Central Power Electric Cooperative, and the Northern Plains Rural Electric Cooperative to discuss power supply for the project. The issues discussed included costs, location, construction time-line, and delivery options.

The State Water Commission has applied for a water quality discharge permit from the North Dakota Health Department. Commission staff members are developing a water quality report, which will provide information to the State Health Department in its analysis and application process, and in determining the potential downstream impacts and concerns.

The State Water Commission discussed the construction schedule for the state's temporary outlet project. Governor Hoeven emphasized the importance of developing the best management plan to aggressively move the state's project forward in a realistic, sensible, and expeditious manner.

**DEVILS LAKE UPPER BASIN  
WATER UTILIZATION AND  
ENHANCEMENT PROJECT  
(SWC Project No. 1882-02)**

On February 20, 2002, the State Water Commission passed a motion to approve up to \$25,000 with the Devils Lake Basin Joint Water Resource Board to conduct a recon-

naissance study to determine the potential of using irrigation as a means of water utilization and management in the Devils Lake basin.

The proposal for the study and the objectives of the reconnaissance study have been completed by Bartlett & West Engineers. Their report depicts that water utilization in the Devils Lake basin, through irrigation, may be feasible and recommends moving forward with a small test project in order to monitor and study the crop water use characteristics of irrigated crops versus dryland crops. The test project would consist of eight sites, with two sites in each of the four potential project areas. Each site would consist of one center pivot system irrigating approximately 130 acres. Alternative crops would be used to determine which crops utilize the most water. The estimated cost of the test project would be approximately \$150,000 per site for a total of \$1.2 million.

Resolutions of support for the project have been received from the city of Devils Lake, North Central Planning, county commissions, and numerous county and local level economic development groups. The Devils Lake Joint Board is currently attempting to secure funding for the test project.

Michael Connor, manager, Devils Lake Basin Joint Water Resource Board, detailed the concepts, objectives, costs, and future phases associated with the Upper Devils Lake Water Utilization test project, which are attached hereto as **APPENDIX "E"**.

**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 7-7A - Twin Buttes Service Area, Rural Water Distribution System:** Contract 7-7A consists of approximately 124 miles of rural water distribution pipelines ranging in size from 1 1/2 inches to 8 inches in diameter. The contract serves about 116 rural water connections. All pipe installation has been completed and the prefinal inspection was held on November 26-27, 2002. This contract is considered complete with the exception of some administrative items.

**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 rural distribution pipelines ranging in size from 1 1/2 inches to 8 inches in diameter. When completed, the contract will serve about 163 rural water connections. The contract was awarded to Abbot, Arne, & Schwindt on May 31, 2002. The contract has intermediate completion dates of September 1, 2002 for 40 connections, August 1, 2003 for the remaining connections, and a substantial completion date of September 15, 2003 for the entire contract. About 190 miles of pipeline have been installed, and 150 miles have been pressure tested. There have been 81 rural water connections installed and 50 have been turned over the Southwest Water Authority for service. Pending results of the bacteria water test, an additional 43 rural users could be turned over to the Southwest Water Authority in early December, 2002. The contractor has shutdown operations for the winter season.

This contract has been challenging from the standpoint of keeping easement acquisition ahead of the contractor, which has resulted from a combination of factors. These factors include that the contractor has been very aggressive in completing construction; about 25 users have been added during construction possibly due, in part, to drought conditions; and the contract area encompasses extensive areas of National Grasslands administered by the U.S. Forest Service which requires permits and botanical surveys for any pipeline easements across Forest Service lands. Any pipeline easements on state lands require a legal survey. These items have all resulted in increased project costs and some delays.

**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 Southwest Pipeline water service contract in 1983 for 13 million gallons of water per year at a rate not to exceed 40.3 gallons per minute. After the June vote, the city requested an Attorney General's opinion on whether the ordinance was created properly. On October 14, 2002, the Office of Attorney General issued an opinion that

the city cannot legally adopt an ordinance which impairs the obligations of a contract. The city has decided it will not challenge the Attorney General's opinion and that the 1983 contract will be honored.

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF SOLE SOURCE  
AMENDMENT TO CITY OF SOUTH  
HEART WATER SERVICE CONTRACT  
(SWC Project No. 1736)**

James Lennington presented a request for the Commission's consideration from the city of South Heart to amend its water service contract with the Southwest Pipeline Project for sole source service. Capacity

for South Heart was included in the design of contract 2-5A. South Heart began service from the Southwest Pipeline in December, 1995, and has been blending water with its own ground water source. South Heart's contract was for a minimum use of 5 million gallons per year; the city used approximately 6 million gallons in 2001. The 2000 census listed South Heart's population at 307, thus, the annual water usage should be about 11 million gallons.

Under sole source service, a user agrees to use pipeline water for all of its needs. In exchange, the provisions in the water service contract requiring purchase of a minimum amount are waived and the user is billed for the actual amount of water used.

It was the recommendation of the State Engineer that the State Water Commission approve a sole source amendment to the city of South Heart's Southwest Pipeline Project water service contract. The sole source amendment was approved by the Southwest Water Authority at its meeting on December 2, 2002.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve a sole source amendment to the city of South Heart's Southwest Pipeline Project water service contract. SEE APPENDIX "F"***

***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 -  
AWARD OF CONTRACT 4-1B, FINAL  
PHASE OF CONSTRUCTION AT  
INTAKE, DODGE, RICHARDTON,  
AND JUNG LAKE PUMPING  
FACILITIES TO PKG CONTRACTING,  
INC., FARGO, ND  
(SWC Project No. 1736)**

On November 21, 2002, bids were opened for Southwest Pipeline Project contract 4-1B, Final Phase of Construction at Intake, Dodge, Richardton, and Jung Lake Pumping Facilities. This is the final construction contract for the Bowman-Scranton regional service area. Contract 4-1B will complete the ultimate design capac-

ity of the project pumping facilities, and will add the foundation and piping for a carbon dioxide tank at the Dickinson pump station.

The contract will add pumps at the intake, Dodge and Richardton pump stations. At the intake, one 200 Hp pump will be added in the Basin Electric intake facility and a 600 Hp pump will be added at the intake booster pump station. At Dodge, one 700 Hp will be added and at Richardton, one 900 Hp pump will be added. Pumping capacities will be increased from 7,850 gallons per minute (gpm) to 10,500 gpm at the intake, and from 6,150 gpm to 8,950 gpm at Dodge and Richardton.

The contract includes a 26-ton carbon dioxide tank to be added in the next year at the Dickinson water treatment plant for additional capacity. The plant currently has a 13-ton tank. Carbon dioxide is used to lower the pH and stabilize the water after lime softening. Contract 4-1B will include the foundation and piping work for this tank. The tank itself will be purchased by the Southwest Water Authority and reimbursed by the Commission. The estimated cost of the tank is \$65,000.

As an alternate bid schedule, the contract includes an additional 350 Hp pump for the Jung Lake pump station, bringing that facility from 1,900 gpm to 2,350 gpm. This pump will complete the ultimate design capacity of that facility and will be necessary when both the Perkins County Rural Water System usage (400 gpm) has developed and either the city of Bowman connects or there is significant energy development in the area.

The bidding documents were prepared with schedules to afford the Commission the most flexibility in awarding the contract without exceeding budgetary limitations. Upgrading the capacity for the Jung Lake pump station (Bid Schedule 2) would be deferred if funding was not adequate to include that work. Bid Schedule 2 also allowed the Commission to delete the Variable Frequency Drive (VFD) equipment.

There were five bids received from the following for contract 4-1B: Waylor Enterprises, Inc. of Oacoma, SD; ICS, Inc. of Grand Forks, ND; PKG Contracting of Fargo, ND; Wanzek Construction, Inc. of Fargo, ND; and Magney Construction of Chanhassen, MN. James Lennington explained that the bid from Waylor Enterprises did not contain a copy of a North

Dakota contractor's license in the class required for the contract dated at least 10 days prior to the bid opening (NDCC § 43.07.12). On advice of the Commission's legal counsel, the bid was not opened. The apparent low bid received was \$1,149,353 from PKG Contracting of Fargo, ND.

Mr. Lennington explained the contract documents allow the Commission to select the most advantageous bid. The project engineer reviewed the bids and recommended the award of contract 4-1B, based on the combination of Bid Schedules 1 and 2, to PKG Contracting of Fargo, ND. The contract will require approval by USDA, Rural Development. The award of the contract and notice to proceed is dependant on the completion of the contract documents and a legal review. The contract documents specify that the State Water Commission has 60 days to award the contract after the bid opening, which falls on January 20, 2003.

Commissioner Thompson stated that because of a family member's employment with PKG Contracting, and to avoid a conflict of interest, requested to be excused from discussion of the request and that an abstention vote be recorded for him.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 4-1B, Final Design of Construction at Intake, Dodge, Richardton, and Jung Lake Pumping Facilities, based on Bid Schedules 1 and 2 in the amount of \$1,149,353, to PKG Contracting of Fargo, ND.

***It was moved by Commissioner Swenson and seconded by Commissioner Johnson that the State Water Commission approve the award of Southwest Pipeline Project contract 4-1B, Final Phase of Construction at Intake, Dodge, Richardton, and Jung Lake Pumping Facilities, based on Bid Schedules 1 and 2 in the amount of \$1,149,353, to PKG Contracting of Fargo, ND.***

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

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF REIMBURSEMENT  
FROM RESERVE FUND FOR REPLACEMENT AND EXTRAORDINARY  
MAINTENANCE FOR REPLACEMENT  
OF BLOWOFF VALVES  
(SWC Project No. 1736)**

The Southwest Water Authority collects and maintains a reserve fund for replacement and extraordinary maintenance. This fund exists because over the life of the project there will occur replacement and maintenance items that will exceed annually budgeted amounts. These items need

to be prefunded. Expenditures from this fund are required to be authorized by the State Water Commission.

It is known that there will be maintenance costs each year, and an amount sufficient to cover the expected maintenance with some allowance for the unexpected is included in each year's operating budget. If an extremely unlikely event occurs, but its cost is low, it should be considered as ordinary maintenance since a certain number of unlikely events are bound to happen each year. The reserve fund is intended for use on extremely costly events which are too costly to be included in any year's operating budget.

In considering authorization to use the fund for the replacement of air vacuum/air release valves at its June 19, 1996 meeting, the State Water Commission adopted a criterion based on the cost of the event. The Southwest Water Authority calculates the maintenance, or replacement cost of an event and, based upon the State Engineer's review, if the eligible items exceed \$10,000, the Commission will authorize the maintenance or replacement. Lost water and vehicle replacement are not considered eligible for reimbursement.

At its August 13, 1998 meeting, the State Water Commission approved reimbursing the Southwest Water Authority, out of the reserve fund for replacement and extraordinary maintenance, for repairing several blowoff valves. The valves being repaired are of a style that has proven to be troublesome. The valves are prone to leaking and some cannot be closed. Each blowoff includes two buried valves and repairing them involves excavations as deep as 18 - 20 feet. The repairs include modifying the blowoffs so that one valve is in a manhole so that it can be repaired in the future without excavation. A total of nine valves have been repaired since 1998 for a total cost of \$40,715.33. The budget submitted by the Authority for each of the past three years has included the repair of some valves.

James Lennington presented a request from the Southwest Water Authority for the Commission's consideration for reimbursement of \$41,783.65 from the reserve fund for replacement and extraordinary maintenance for the costs of replacing three valves in 2001 and six valves in 2002.

It was the recommendation of the State Engineer that the State Water Commission approve the reimbursement of \$41,783.65 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the blowoff valves.

***It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve the reimbursement of \$41,783.65 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the blowoff valves.***

***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, distributed the 2002 project brochure, and 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 pipe laying on the original 7.5 miles in contract 2-1A. The completion date for that contract was November 15, 2002. Pressure testing of the pipeline was completed on November 14, 2002, with no leaks detected. The contractor is completing some of the minor work items such as cleanup and installing marker posts, thus, construction on this contract is nearly complete for the 2002 season.

The contract amount for contract 2-1A was originally \$4,741,410.35. Change Orders 1 and 2, which primarily adjusted quantities, increased that amount to \$4,817,078.18. The prices received on this contract were very favorable and the contractor's work has been satisfactory. The contract documents allow for change orders increasing the contract amount by up to 25 percent. On October 15, 2002, Change Order No. 3 was executed, which added 10,000 feet of pipe to contract 2-1A, increasing the total cost of contract 2-1A to \$5,782,688.15. The completion date for this change order is July 15,

2003. The added pipe will extend the contract to the east side of US Highway 83 and then south 2 miles. The contractor is completing the highway crossing and the pipe for this change order has been manufactured and will be stored over the winter.

**Project Design:** Preliminary plans and specifications for contract 2-1B are currently being reviewed and it is anticipated these plans will be submitted to the Bureau of Reclamation in mid-December, 2002. The contract extends approximately nine miles from the end of contract 2-1A to the junction of US Highway 83 and State Highway 23. Most of the pipe alignment for this contract will be in the highway right-of-way, which should help to avoid the necessity of acquiring easements from landowners by condemnation.

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

The Dakota Water Resources Act of 2000 directed the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in

North Dakota. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation will be the sole preparer of the Needs and Options report, while the State of North Dakota and the Bureau will jointly prepare the EIS.

During the week of October 7, 2002, the State Water Commission and the Bureau of Reclamation held water user meetings to discuss the Red River Valley Water Supply Project. The purpose of the meetings was to inform interested Red River valley water users about the Red River Project studies and how water users can participate in the study process.

The Bureau of Reclamation and the Garrison Diversion Conservancy District held public meetings during October 28-30 and November 6-8, 2002 to inform the public of the National Environmental Policy Act (NEPA) and water supply processes, and other significant issues which may be addressed in the Red River Valley Water Supply project EIS. Dave Koland, District deputy manager, stressed that public input is essential for identifying issues and alternatives to meet the water quality and quantity needs of the Red River valley for the future.

On August 20, 2002, the Bureau of Reclamation hosted a workshop relative to the Memorandum of Understanding (MOU) between the State of North Dakota and the Bureau of Reclamation specific to the requirements in the Dakota Water Resources Act of 2000 to begin the process on the Red River Valley Water Supply study. The MOU was executed on November 6, 2002.

Mr. Koland reported that Warren Jamison will retire as the District's manager, effective December 31, 2002. Mr. Jamison has served the State of North Dakota in that capacity since 1993. Secretary Frink informed the Commission members that Dave Koland has been hired to fill the position vacated by Mr. Jamison, effective January 1, 2003.

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

Todd Sando reported that the drought conditions persist in the Missouri

River basin. As of November 20, 2002, system storage in the six mainstem reservoirs was 43.3 million acre-feet (MAF), 12.8 MAF below the average system storage for the end of November and 6.2 MAF less than last year. Lake Sakakawea was at an elevation of 1825.6 feet msl, 5.2 feet lower than a year ago and 13.4 feet below its average November elevation. The elevation of Lake Oahe was 1584.1 feet msl on November 20, 2002, 15.9 feet lower than last year and 18 feet lower than its average November elevation. Fort Peck Lake was at an elevation of 2217.1 feet msl on November 20, 13.1 feet lower than a year ago and 17.7 feet below its average November elevation.

The Corps of Engineers released the draft 2002-2003 Annual Operating Plan (AOP) for the Missouri River in October, 2002. Mr. Sando stated the draft AOP continues to define operations based on the outdated Master Manual with no meaningful conservation measures. The only significant deviation for the Master Manual is a "steady release", which calls for additional water to be released from mid-May through August to allow the Corps to meet navigation targets in August without inundating low-lying nests of threatened and endangered bird species. This "steady release" would use 200,000 to 800,000 acre-feet of water compared to the operation called for in the Master Manual. The Corps of Engineers held public meetings in Bismarck, North Dakota (October 15, 2002), Omaha, Nebraska, and Jefferson City, Missouri, to review the draft AOP. Governor Hoeven provided testimony on behalf of the State of North Dakota at the Bismarck hearing (testimony is attached to these minutes as **APPENDIX "G"**).

The Missouri River Basin Association (MRBA) executed a letter to the U.S. Fish and Wildlife Service, dated October 31, 2002, and attached hereto as **APPENDIX "H"**, requesting the Service to provide assurances that moving the nests and chicks of threatened and endangered bird species will be allowed in the summer of 2003, which would allow the Corps to operate the river to meet the navigation targets without releasing extra water. While these assurances have not been provided, the Service has indicated to the Corps that the low summer flows called for in the biological opinion should be implemented in 2003.

**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.

The elements which are required for a complete submission for assumption of the 404 program 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 applicable statutes and regulations.

Todd Sando reported that the Commission staff review of the updated draft administrative rules was completed. The draft administrative rules were made available to state and federal agencies and associations, requesting their comments by November 1, 2002. The comment period was extended because several federal and state agencies were unable to meet the November 1 deadline and the Commission staff considered it essential to receive all comments prior to initiating the formal rule adoption process. Once the comments have been reviewed and any resulting changes have been made to the draft rules, the formal rule adoption process will be initiated.

**DROUGHT DISASTER LIVESTOCK  
WATER ASSISTANCE PROGRAM  
STATUS REPORT  
(SWC Project No. 1851)**

On August 15, 2002, the State Water Commission approved 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 (North Dakota Drought Emergency Proclamation, Executive Order No. 2002-04, dated July 1, 2002). The Commission also approved, on an emergency basis, proposed amendments to the North Dakota Administrative Code chapter 89-11-01 for the program.

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 chapter 89-11 was adopted by the Commission on June 24, 1991 for management of this program.

Todd Sando reported the program has generated many inquiries since the Commission approved funding on August 15, 2002. As of November 30, 2002, approximately 90 requests for information and applications were handled by the Commission staff. Approximately 50 applications have been received and pre-approval letters authorizing a contractor to complete the water supply project have been returned to the producers. The program allows for state cost assistance of 50 percent of the eligible costs up to a reimbursement maximum of \$3,500 per producer. Thirteen (13) requests for reimbursement, totalling \$20,528, are being processed for the purpose of drilling new water wells, establishing flow from springs, or renewing flow into spring-fed, or water table dugouts. The inquiries have decreased because many producers are having difficulty finding well drillers and dragline operators to clean out the springs. Several producers have indicated their intent to tap into existing rural water supply lines to ensure quality supplies for livestock.

**RESOLUTION OF APPRECIATION TO  
WARREN L. JAMISON, MANAGER,  
GARRISON CONSERVANCY DISTRICT  
(SWC Resolution No. 2002-12-501)**

A resolution of appreciation to Warren L. Jamison was presented for the Commission's consideration.

Mr. Jamison admirably served the State of North Dakota since 1993 as manager of the Garrison Diversion Conservancy District. He was a key architect in the passage of the Dakota Water Resources Act of 1997, a congressional promise to help North Dakota meet critical, contemporary and future water needs across the state. His optimism and vision for North Dakota's natural resource management will be a long-lasting influence on future water development. Mr. Jamison retired from his position as manager of the District on December 31, 2002.

***It was moved by Commissioner Olin, seconded by Commissioner Hillesland, and unanimously carried, that the State Water Commission approve Resolution No. 2002-12-501, In Appreciation to Warren L. Jamison, Manager, Garrison Diversion Conservancy District. SEE APPENDIX "I"***

Secretary Frink informed the Commission that Dave Koland, Garrison Diversion Conservancy District deputy manager, has been hired for the position vacated by Mr. Jamison. Mr. Koland will assume this position on January 1, 2003.

**AUTHORIZATION FOR STATE ENGINEER TO DETERMINE SITE FOR SWC MAINTENANCE PROPERTY; AND INITIATE SALE OF EXISTING MAINTENANCE PROPERTY (SWC File SHOP)**

In accordance with the State Water Commission's budget for the current biennium, H.B. 1023 authorizes the Commission to sell its property at the corner of 26th Street and Broadway Avenue and to use the proceeds to construct a new maintenance building.

The Commission staff conducted a study to locate a suitable location in the Bismarck area for construction of the new maintenance building, which is documented in the report "*Objectives, Site Suitability, and Cost Analysis for Construction of a New North Dakota State Water Commission Shop, as Authorized Under House Bill 1023 (2201)*".

Secretary Frink explained the objectives that were used to identify a suitable location, and he said it has been determined that the cost of land in the Bismarck area combined with the estimated costs of the new maintenance building exceed the authorized appropriation of \$977,100. Options for selling the existing maintenance property and new construction were discussed which included entering into a long-term lease for property in Burleigh county. Secretary Frink stated he intends to file an amendment to the agency's 2003-2005 biennium budget requesting legislative authority to utilize one of the options.

***It was moved by Commissioner Halcrow and seconded by Commissioner Swenson that the State Water Commission authorize the State Engineer to determine the appropriate economic option for the State Water Commission maintenance building; and, if determined appropriate, proceed with the sale of the existing State Water Commission property located at the corner of 26th Street and Broadway Avenue.***

***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.***

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 12:00 noon.

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John Hoeven, Governor  
Chairman, State Water Commission

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

SEAL