

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 5, 2003

The North Dakota State Water Commission held a meeting at the Best Western Ramkota Hotel, Bismarck, North Dakota, on December 5, 2003. 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

roadway dike was included on the agenda.

A request for state cost share participation for the international boundary

**CONSIDERATION OF FINAL DRAFT
MINUTES OF NOVEMBER 3, 2003
STATE WATER COMMISSION MEETING -
APPROVED**

The final draft minutes of the November 3, 2003 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Hofstad, and unanimously carried, that the final draft minutes of the November 3, 2003 State Water Commission meeting be approved as prepared.

**2003-2005 BIENNIUM
AGENCY PROGRAM
BUDGET EXPENDITURES**

In the 2003-2005 biennium, the State Water Commission has two special line items - administrative and support services, and water and atmospheric resources. David Laschkewitsch, accounting manager, presented and discussed the allocated program expenditures for the period ending October 31, 2003, reflecting 17 percent of the 2003-2005 biennium. All expenditures are within the authorized budget.
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 \$63,798,892, leaving a balance of \$32,384,465 available to commit to projects.

**2003-2005 BIENNIUM
RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES**

The Office of Management and Budget (OMB) developed the state's budget assuming the State Water Commission would spend the Resources Trust Fund money first and then spend the Water Development Trust Fund money. The agency actually spent money from both funds in the 2001-2003 biennium, with the majority of the money coming from the Water Development Trust Fund. Therefore, the State Water Commission will seek Emergency Commission approval on January 6, 2004 to increase its spending authority to fully utilize the cash in the Resources Trust Fund, and decrease its spending authority in the Water Development Trust Fund.

The oil extraction tax deposits into the Resources Trust Fund total \$1,637,638, and are \$57,559 or 3.4 percent behind the budgeted revenues. Deposits into the Water Development Trust Fund total \$103,934, which was not anticipated. The first scheduled payment is in April, 2004, and is projected to be \$10.3 million.

**APPROVAL OF REQUEST FROM
RUSH WATER RESOURCE DISTRICT
FOR STATE COST PARTICIPATION
FOR RECONSTRUCTION OF CASS
COUNTY DRAIN NO. 30
(SWC Project No. 1082)**

A request from the Rush River Water Resource District was presented for the State Water Commission's consideration for state cost participation for the reconstruction of Cass County Drain No. 30. Erosion has led to bank instability and threatens a bridge in the center of the project area.

The proposed project will include the installation of a concrete drop structure within the channel, which will subsequently reduce channel erosion, bank instability, and sediment loading in the Sheyenne River. The channel will be reconstructed with an improved grade line and flatter side slopes. Upstream of the drop structure, 750 feet of the channel will be reconstructed to a depth of 12 feet with an 8-foot bottom width and 5:1 side slopes. Downstream of the drop structure, 790 feet of the channel will be reconstructed to a depth of 15-18 feet with a 14-foot bottom width and 3:1 side slopes. A sediment analysis has been provided indicating no sediment removal will occur at the site during the reconstruction.

The project engineer's cost estimate is \$195,000, of which \$191,000 is considered eligible for conditional state cost share participation as a rural flood control project at 35 percent of the eligible costs (\$66,850). The request before the State Water Commission is for a 35 percent cost share in the amount of \$66,850.

The Rush River Water Resource District will utilize existing Cass County Drain No. 30 maintenance funds for the local share of the project. The preliminary engineering plans have been submitted for review and all applicable state permits will be applied for during the final design. Under the State Water Commission's policy, conditional approval of rural flood control drainage projects will be allowed, subject to the contingencies. Final approval will be granted upon issuance of the required state permit(s) and approval of the project's final design. Construction is anticipated for the summer of 2004.

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 \$66,850 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the reconstruction of Cass County Drain No. 30.

It was moved by Commissioner Johnson and seconded by Commissioner Halcrow that the State Water Commission conditionally approve state cost share participation in the Cass County Drain No. 30 project at 35 percent of the eligible items, not to exceed \$66,850 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds, satisfaction of all permit requirements, and 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
RICHLAND COUNTY WATER
RESOURCE DISTRICT FOR STATE
COST SHARE PARTICIPATION
FOR RECONSTRUCTION AND
IMPROVEMENT OF RICHLAND
COUNTY DRAIN NO. 2
(COLFAX WATERSHED)
(SWC Project No. 1176)**

A request from the Richland County Water Resource District was presented for the State Water Commission's consideration for state cost share participation to reconstruct and improve a portion of Richland County Drain No. 2 (Colfax Watershed) and extend the drain by constructing two laterals. The purpose of the reconstruction is to satisfy current standards and improve the stability of

the channel. The existing channel was constructed with 2:1 or steeper side slopes that have experienced failures and slides over the last several years. Since the channel is adjacent to a township gravel road for most of its length, the bottom of the channel will be moved away from the road.

The District has indicated that the local assessment vote results are anticipated by the end of February, 2004. The preliminary engineering plans have been submitted for review and all applicable state permits will be applied for during the final design. Under the State Water Commission's policy, conditional approval of rural flood control drainage projects will be allowed, subject to a six-month time limit for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive local assessment vote, issuance of the required state permits, and approval of the project's final design.

The design of the proposed project is a cooperative effort between the Natural Resources Conservation Service (NRCS), the Richland County Highway Department and Interstate Engineering, Inc. The channel portion of the project was designed as two phases by the NRCS, although both phases will be completed concurrently. The first phase consists of constructing a new channel

to extend the drain approximately two miles to the south. The purpose of the lateral is to improve agricultural drainage and provide flood protection for the city of Colfax. The second phase of the project consists of reconstructing approximately three miles of the drain and creating a one-half mile new lateral to the channel on the north side for flood protection north and east of the drain. The lateral will capture floodwaters across the land bringing this water to the drain. Construction is anticipated to be completed in 2004.

The NRCS has determined the proposed project will impact four wetlands. The District will use an existing wetland bank and create a small additional acreage to mitigate for the loss of the wetlands as required by NRCS. It was also determined that a sediment analysis was not required for the reconstruction of the main drain since the drain is being moved further from the road burying any accumulated sediment.

The project engineer's estimate is \$865,148, of which \$701,099 is considered eligible for conditional state cost share participation as a rural flood control project at 35 percent of the eligible costs (\$245,385). The request before the State Water Commission is for a 35 percent cost share in the amount of \$245,385.

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 \$245,385 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Richland County Drain No. 2 (Colfax Watershed) project.

It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission conditionally approve state cost share participation in the Richland County Drain No. 2 (Colfax Watershed) reconstruction and extension project at 35 percent of the eligible items, not to exceed \$245,385 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds, attainment of a positive local vote within six months of the State Water Commission's funding approval, satisfaction of all permit requirements, and 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 NORTH DAKOTA
NATURAL RESOURCES TRUST
ALLOCATION FOR FY 2003
(SWC Project No. 1826)**

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

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

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 the 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 2003 state's commitment is \$48,867; the State Water Commission's share is \$16,289.

Commissioner Olin disclosed that he currently serves on the North Dakota Natural Resources Trust board of directors, and questioned if a conflict of interest exists relative to this project. Governor Hoeven stated this disclosure would not be considered a conflict of interest.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$16,289 for one-third of the state's Fiscal Year 2003 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 Johnson and seconded by Commissioner Swenson that the State Water Commission approve the allocation of \$16,289 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for one-third of the state's Fiscal Year 2003 contribution to the North Dakota Natural Resources Trust. 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, 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
BOARD FOR STATE COST SHARE
PARTICIPATION FOR RED RIVER
JOINT WATER RESOURCE DISTRICT
COORDINATOR FROM JANUARY 1,
2004 THROUGH DECEMBER 31, 2004
(SWC Project No. 1705)***

A request from the Red River Joint Water Resource Board was presented for the State Water Commission's consideration for state cost share participation for the Red River Joint Water Resource District coordinator. The position was filled through the hiring of a private contractor by the Red River Joint Water Resource Board and the

expenses are being shared by the Board, the State Water Commission, and the Garrison Diversion Conservancy District. The position was initiated on January 1, 2003.

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 work plan to reduce these impacts requires 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 coordinator will implement an information program associated with these efforts.

As in 2003, the annual salary of the Red River Joint Water Resource District coordinator is \$50,000 plus expenses of up to \$10,000. The Red River Joint Water Resource board has requested the State Water Commission and the Garrison Diversion Conservancy District to each provide 30 percent of the cost of up to \$18,000 (\$15,000 of salary and \$3,000 of expenses) annually. On December 6, 2002, the State Water Commission approved state cost share participation from January 1, 2003 through June 30, 2003 of up to \$9,000 (\$7,500 of salary and \$1,500 of expenses); and on June 12, 2003, the Commission approved an

additional state cost participation from July 1, 2003 through December 31, 2003 of up to \$9,000 (\$7,500 of salary and \$1,500 of expenses) for the Red River Joint Water Resource District coordinator.

It was the recommendation of the State Engineer that the State Water Commission approve cost share participation from January 1, 2004 through December 31, 2004 of up to \$18,000 (\$15,000 of salary and \$3,000 of expenses) from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Red River Joint Water Resource District coordinator. A summary of the activities of the coordinator, the 2004 work plan, and projects under development are attached hereto as **APPENDIX "C"**.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve state cost share participation for the period of January 1, 2004 through December 31, 2004 of up to \$18,000 (\$15,000 of salary and \$3,000 of expenses) from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Red River Joint Water Resource District 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.

**APPROVAL OF REQUEST FROM
GARRISON CONSERVANCY DISTRICT
FOR CONTINUATION OF CONTRACT
WITH WILL AND CARLSON; AND
COST SHARE OF \$70,000 FROM JULY
1, 2003 THROUGH JUNE 30, 2005
(SWC Project No. 237)**

Secretary Frink presented a request from the Garrison Diversion Conservancy District to continue participation in support of the Will and Carlson consulting contract in the amount of \$70,000 for services relating to the appropriation under the Garrison Diversion Unit.

The State Water Commission initially 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 up to \$70,000 (\$35,000 for each year of the 2003-2005 biennium) from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to continue the Will and Carlson consulting contract from July 1, 2003 through June 30, 2005. These funds will be cost shared 50 percent with the Garrison Diversion Conservancy District.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission approve an expenditure of up to \$70,000 (\$35,000 for each year of the 2003-2005 biennium) from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to continue the Will and Carlson consulting contract from July 1, 2003 through June 30, 2005. 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.

**CONSIDERATION OF REQUEST
FROM NORTH DAKOTA WATER
EDUCATION FOUNDATION FOR
STATE COST PARTICIPATION
IN "NORTH DAKOTA WATER:
A CENTURY OF CHALLENGE"
PUBLICATION
(SWC Project No. 322)**

A request from the North Dakota Water Education Foundation was presented for the State Water Commission's consideration for state cost participation to write and publish a comprehensive history of Garrison Diversion and water development in the 20th Century. The assistance of state and regional water organizations is vital to provide the

details, chronologies and factual information needed to tell this story.

Michael Dwyer, North Dakota Water Education Foundation executive director, presented the proposal and stated "North Dakota has a rich water history dealing with the variable nature of the state's water resources and the political challenges the state has encountered." Mr. Dwyer explained that much of the document will be based on interviews with a range of technical and political leaders who have worked on North Dakota water issues. The personal recollections of persons involved in meeting the state's water needs as well as the research of papers and records of those persons now deceased will be key to this effort. Interviews will be taped and compiled to provide an oral history, and factual information gained from various agencies and organizations will be used in providing details.

Mr. Dwyer said the final product would be published in a hard cover book along with a student guide that would be distributed to schools. Each fourth and eighth grade teacher who teaches North Dakota social studies would receive a copy of the student guide.

The cost of the proposal is \$245,511. The North Dakota Water Education Foundation has requested \$97,425 from the Bureau of Reclamation, and \$48,712 each from the State Water Commission and the Garrison Diversion Conservancy District. The Foundation will contribute \$50,661 in in-kind services to publish the water history book. It is anticipated that the project would be completed within 24 months following execution of an agreement. The request before the State Water Commission is to cost share in the amount of \$48,712.

Secretary Frink said the proposed historical publication would be appropriate at this time because the 20th Century was just completed and some of the major North Dakota projects including Garrison, Grand Forks, Devils Lake, and the Souris River flood control are at a critical point. Additionally, the Office of the State Engineer was created by the Legislature in 1905, thus, that office will have been in existence for 100 years in 2005. Secretary Frink explained that the publication could also be beneficial for the Water Education for Teachers (WET) program. Therefore, it was the recommendation of the State Engineer that the State Water Commission approve an expenditure not to exceed \$48,712 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to the North Dakota Water Education for assistance in the publication of "North Dakota Water: A Century of Challenge". The funding would be cost shared by the Bureau of Reclamation, the Garrison Diversion Conservancy District, and the North Dakota Water Education Foundation.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve an expenditure not to exceed \$48,712 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to the North Dakota Water Education for assistance in the publication of "North Dakota Water: A Century of Challenge". This motion is contingent upon the availability of funds, and funding would be cost shared by the Bureau of Reclamation, the Garrison Diversion Conservancy District, and the North Dakota Water Education Foundation.

In discussion of the motion, the State Water Commission members deliberated on the proposal to direct state funds toward a historical publication. The Commission members discussed the state's priority water development efforts and needs and the available funding for the 2003-2005 biennium. The Commission members stressed the importance of recognizing the statewide critical water needs, and the need to support and fund projects that develop and manage the state's water resources in the best interests of the people of North Dakota.

Commissioners Hanson, Johnson, Olin, and Governor Hoeven voted aye. Commissioners Halcrow, Hillesland, Hofstad, Swenson, and Thompson voted nay. Recorded vote was 4 ayes; 5 nays. Governor Hoeven announced the motion failed.

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

Devils Lake froze at its current elevation of 1446.3 feet msl. At this elevation, the lake has a surface area of 119,600 acres and storage of 2.34 million acre-feet of water. The current elevation of Devils Lake is 1.7 feet lower compared to the elevation it was in August, 2001; one-half of a foot lower than it was a year ago at this time going into winter freeze-up; and, the lake is down over a foot from its 2003 peak of 1447.4 feet msl.

In comparing the overall system storage for Devils Lake and Stump Lake, the total storage peaked in August, 2001 at 2.68 million acre-feet. The lakes are currently at 2.49 million acre-feet. That is an overall reduction of 190,000 acre-feet, or a 7 percent decrease in two years.

The timing and the amount of moisture that the basin has received over the last two years has been conducive to Devils Lake lowering in elevation. If the weather returns to conditions similar to 1993-2001, the lake could once again rise dramatically. Even though the basin has been given a recent reprieve from excessive moisture, it is still relatively wet when compared to the period of record.

Stump Lake froze at its current elevation of 1414.4 feet msl. The flows in the Jerusalem channel have dropped to less than 2 cubic feet per second (cfs) and will likely cease once the channel is frozen. At its current elevation, Stump Lake covers 8,075 acres and is storing 144,700 acre-feet of water.

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

On February 26, 2003, the Corps of Engineers announced that a 300 cubic feet per second (cfs) outlet from Pelican Lake to the Sheyenne River had been identified as the preferred alternative to alleviate flood damages at Devils Lake if the lake continues to rise. The Corps released the final Environmental Impact Statement (EIS) for public review in April, 2003, and comments were accepted until June 19, 2003.

On October 14, 2003, the Corps of Engineers signed a Record of Decision (ROD) recommending that an outlet be constructed from Devils Lake to reduce flood damages and to reduce the risk of a natural overflow from Devils Lake.

The Corps is continuing to address the conditions that were outlined in the ROD. Included is a determination by the U.S. State Department on whether or not the outlet project would violate the Boundary Waters Treaty Act of 1909. As part of the determination, the State Department has contacted federal agencies for input, which will be reviewed during the next several weeks.

***NORTH DAKOTA DEVILS
LAKE OUTLET PROJECT-
APPROVAL OF ADDITIONAL
\$19 MILLION TO BID AND
CONSTRUCTION FINAL
PHASES OF STATE PROJECT
(SWC Project No. 416-01)***

The State of North Dakota is pursuing a temporary emergency phased outlet project from West Bay to the Sheyenne River. The project is based on a two-year construction timeline, with construction commencing in the fall of 2003 and operational in 2005:

Phase 1(a) - 300 cfs Open Channel Construction

The first phase includes the construction of approximately 4.2 miles of a 300 cubic feet per second (cfs) open channel from the termination point of the pipeline from the Round Lake pump station to the Josephine pump station, and from the termination point of the second pipeline to near the transition point with the 500 cfs channel.

The total cost for the 300 cfs open channel construction of Phase 1(a) is approximately \$5 million.

Phase 1(b) - Power Supply

Phase 1(b) includes contracting with the local Rural Electric Cooperative (REC) for the electrical power supply to the two pump stations that would consist of 115 kV lines and a substation. Completion of the surveying, mapping, and design work of the power facilities would allow for construction to be completed in 2004. The total cost for the power supply portion of Phase 1(b) is approximately \$2.5 million.

On March 5, 2003, the State Water Commission approved the continued construction of the North Dakota Devils Lake outlet project, and allocated the expenditure of \$7.5 million from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Phases 1(a) and 1(b).

On August 6, 2003, the State Water Commission approved the award of the Devils Lake Emergency Outlet, Initial Canal Segments, Contract 2, to Park Construction, Inc., Minneapolis, Minnesota, in the amount of \$766,614. The contract is for 3.2 miles of 300 cfs open channel. Park Construction commenced construction on October 21, 2003, and construction was shutdown on November 4, 2003 due to frost. The contractor anticipates a 16-week construction period for this contract, and will complete the remaining portions of the contract in the spring of 2004.

A hearing was held on September 22, 2003 to provide several groups including People to Save the Sheyenne, the Peterson Coulee Outlet Association, and the Benson County Commission who are opposed to the state's outlet project, an opportunity to present testimony on the State Engineer's Drain Permit, which was approved on July 2, 2003. On October 2, 2003, the State Engineer upheld his earlier decision of granting the permit to the state for the construction of the outlet project. On October 31, 2003, the People to Save the Sheyenne appealed the State Engineer's decision to District Court. The North Dakota Office of Attorney General has asked for dismissal of the case because the plaintiffs filed the appeal in the Barnes County District Court rather than in the Burleigh County District Court where it should have been filed.

Secretary Frink provided a description and the estimated construction costs for the remaining portions of the state's Devils Lake outlet project. He said if the project is to be operational in 2005, it will be necessary to move forward with construction and bid the remaining portions of the project this winter. The total cost of the project is approximately \$28.075 million. The State Water Commission previously approved funding in the amount of \$9.075 million; therefore, an additional \$19 million would be required to complete the remaining portions of the project. The State Water Commission has all of the required permits to construct and operate the state's outlet. Secretary Frink said the permits decisions were based on sound information and although some of the decisions have been appealed, it is anticipated those issues will be resolved within the next several months.

It was the recommendation of the State Engineer that the State Water Commission approve the funding necessary to bid and construct the final phases of the North Dakota Devils Lake Outlet project in the amount of an additional \$19 million from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve the funding necessary to bid and construct the final phases of the North Dakota Devils Lake Outlet project in the amount of an additional \$19 million from the funds appropriated to the State Water Commission in the 2003-2005 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.

The State Water Commission members requested that the State Engineer and the Assistant Attorney General provide a litigation briefing relating to the Devils Lake and Northwest Area Water Supply Project issues. Secretary Frink explained that an executive session, under the provisions of North Dakota Century Code § 44-04-19.1 for the purposes of attorney consultation, would be required.

It was moved by Commissioner Johnson, seconded by Commissioner Hofstad, and unanimously carried, that the State Water Commission direct that the State Engineer and the Assistant Attorney General schedule an executive session, under the provisions of North Dakota Century Code § 44-04-19.1 for the purposes of attorney consultation, on the Devils Lake and Northwest Area Water Supply Project litigation issues as soon as practical.

***APPROVAL OF EXTENSION OF
DEVILS LAKE OUTLET AWARENESS
PROJECT MANAGER'S CONTRACT
FROM JANUARY 1, 2004 THROUGH
DECEMBER 31, 2004
(SWC Project No. 416-01)***

Awareness project manager, which is occupied by Joe Belford. As the efforts continue toward 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.

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 initiated cost sharing in a contract securing the services of the Devils Lake Outlet

A request was presented from the Devils Lake Joint Water Resource Board for the State Water Commission's consideration to continue funding for the Devils Lake Outlet Awareness project manager's position from January 1, 2004 through December 31, 2004, with a 33 percent cost share. All other parties to the previous agreement have indicated their intentions to continue this effort through 2004.

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 from January 1, 2004 through December 31, 2004, with a 33 percent cost share, not to exceed \$15,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. Secretary Frink indicated this represents a salary increment from \$2,950 to \$3,000 per month.

It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland 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 2003-2005 biennium, from January 1, 2004 through December 31, 2004. 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 FROM JANUARY 1, 2004
THROUGH DECEMBER 31, 2004
(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, 2004 through December 31, 2004.

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 in the 2003-2005 biennium, for the Devils Lake basin manager from January 1, 2004 through December 31, 2004.

It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve a contract extension for the Devils Lake basin manager from January 1, 2004 through December 31, 2004, with a 40 percent cost share, not to exceed \$26,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, in accordance with the terms outlined in the contract. 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.

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

James Lennington, project manager for the Southwest Pipeline Project, provided the following project status report:

Contract 4-1B - Final Phase of Construction at Intake, Dodge, Richardton, and Jung Lake Pumping Facilities: Contract 4-1B was awarded to PKG Contracting, Inc., Fargo, ND, on January 9, 2003. The contract added pumps at the intake, Dodge and Richardton pump stations. At the intake, one 200 Hp pump was added in the Basin Electric intake facility and a 600 Hp pump was added to the intake booster pump station. At Dodge, one 700 Hp pump was added, and at Richardton one 900 Hp pump was added. Pumping capacities were 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 included an additional 350 Hp pump at the Jung Lake pump station, increasing the capacity of that facility from 1,900 gpm to 2,350 gpm. The contract also included the addition of a 26-ton carbon dioxide tank at the Dickinson water treatment plant. The completion date for contract 4-1B was November 1, 2003.

During field assembly, a "split ring" in the shaft coupling between the motor and the pump at Richardton was inadvertently left out. This caused two shafts to decouple during the startup and the pump impeller to drop into the bowls. The pump was removed and sent to the manufacturer to determine if there was damage. The problem was duplicated at all of the pumps on the contract, but the pumps were not started. Startup of all of the pumps is tentatively scheduled for the week December 14, 2003.

Contract 2-5B - Medora-Beach Main Transmission Pipeline: Contract 2-5B was awarded to Northern Improvement Company, Bismarck, ND, on June 12, 2003. The contract consists of about 46.4 miles of 12-inch through 6-inch diameter PVC pipe. The contract includes two booster pump stations and several pressure reducing valve vaults. The time for completion of contract 2-5B is 430 days after award, but no later than September 4, 2004. The contract also includes an intermediate completion date of December 31, 2003 for those portions of the pipeline and related appurtenances located in the Little Missouri National Grasslands area. The completed pipeline would then be in one contiguous segment including the service line to the city of Medora which involves 22.1 miles of pipeline. The reason for the intermediate completion date is the anticipated complications in complying with the terms of the U.S. Forest Service permit received for construction on the grasslands. No construction activity is allowed in some areas during specific periods of time because of sensitive animal species such as eagles, falcons, and other raptors, bighorn sheep, and prairie dogs.

As of November 24, 2003, the contractor had installed about 21.5 miles of pipe and had only a few thousand feet remaining on the Little Missouri National Grasslands. Construction operations shutdown for the winter on November 26, 2003. The contractor was unable to meet the intermediate completion date, but there was some delay while waiting for the State Water Commission to acquire railroad crossing permits.

During construction on contract 2-5B, a battery disposal site near railroad mile post 153 and approximately two miles west of Medora was discovered. It appeared that the batteries that were uncovered during the installation of the water pipeline had been disposed of by Burlington Northern Santa Fe (BNSF) at this site many years ago. The North Dakota Department of Health and the North Dakota Division of Emergency Management removed approximately 110 batteries from the site, and remedial activities are currently being conducted.

Contract 5-9 - Belfield Reservoir: Contract 5-9 was awarded to Advance Tank & Construction, Wellington, Colorado. The contract is for a welded and painted steel potable water reservoir 52 feet in diameter by 48 feet high with a capacity of approximately 750,000 gallons. The reservoir is located east of Belfield. The contract has an intermediate completion date of November 22, 2003 for the foundation, including the inlet and outlet piping, and the drain and underdrain system within the foundation and all backfill. The completion date for the contract is August 1, 2004.

The contractor began work the second week of October, 2003, and has completed the inlet and outlet piping, the drain and underdrain system, and poured the concrete ringwalls. Some of the backfill was placed but the inclement winter weather caused the contractor to cease this activity and the site has been sealed for the winter.

Contract 5-10 - Fryburg Tank - The award of contract 5-10 was authorized by the State Water Commission on November 6, 2003. The contract documents have not been completed, but the documents specify that the tank must be completed no later than August 15, 2004. Contract 5-9 is for a welded and painted steel potable water storage reservoir 37 feet in diameter by 64 feet high, with a capacity of approximately 507,000 gallons. The reservoir is located approximately one mile south and one mile west of Fryburg.

Medora-Beach Contract Status - The following tables show the funding plan developed for constructing the first phase of the Medora-Beach regional service area in the 2003-2005 biennium, and the facilities and contract status for development:

Medora-Beach Phase 2003-2005 Funding

<u>State Grant</u>	<u>USDA Grant</u>	<u>USDA Loan</u>	<u>Total</u>
\$ 5,000,000	\$ 1,260,000	\$ 1,540,000	\$ 7,800,000

**Contract Status and Estimated Costs
2003-2005 Biennium Construction**

<u>Contract</u>	<u>Status</u>	<u>Facility</u>	<u>Description</u>	<u>Estimated Cost</u>
2-5B	Awarded	Medora-Beach Main Transmission Pipeline	46.4 miles 12"-6"	\$ 4,976,000
5-9	Awarded	Belfield Reservoir	750,000 gallons	656,000
5-10	Awarded	Fryburg Standpipe	480,000 gallons	452,000
5-11	Bid Jan/Feb '04	Beach Standpipe	420,000 gallons	520,000
7-8A	Bid Jan/Feb '04	1st Phase Fryburg Rural Distr. SA	21 miles, 33 users	1,025,000
6	Future	Telemetry, Phase 1		<u>176,000</u>
Total				\$ 7,805,000

***SOUTHWEST PIPELINE PROJECT -
ADOPT/APPROVAL OF GENERAL
AUTHORIZATION RESOLUTION
FOR 2003 SERIES A BOND
(SWC Project No. 1736)***

At its December 8, 2000 meeting, the State Water Commission authorized the project officers identified in the Southwest Pipeline Project Water Development Revenue Bond documents to execute all USDA, Rural Development

documents in the loan and grant assistance application process up to, but not including, the sale of the bonds. The obligation of the State Water Commission does not occur until the bonds are approved for sale and have been closed. James Lenington explained this action has streamlined the application process for the 2003 Series A

bond, which is to be used to fund construction of the Medora-Beach regional service area. The next contract for the Medora-Beach phase is the Beach tank. Obligating funds for this contract will exceed the amount of state funding approved for project construction in the 2003-2005 biennium, therefore, USDA Rural Development grant and loan funding will be required.

In order to meet the obligations of the USDA, Rural Development funding for the Medora-Beach regional service area, Phase I, the remaining documents to authorize the sale of the 2003 Series A bond requires State Water Commission action. The 2003 Series A Bond Resolution was presented for the Commission's consideration which, if approved, will authorize the sale of \$1,540,000 in bonds with an interest rate not to exceed 4.50 percent for the Southwest Pipeline Project.

The 2003 Series A bond documents have not yet received approval from USDA, Rural Development. Mr. Lennington said no significant revisions are anticipated. Closing on the 2003 Series A bond has not been scheduled but could occur in late December, 2003.

It was the recommendation of the State Engineer that in order to satisfy the requirements of USDA, Rural Development funding, the State Water Commission adopt and approve the execution of the 2003 Series A Bond Resolution as presented, which has been satisfactorily reviewed by the State Water Commission's bond counsel and the assistant attorney general.

It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission adopt and approve the execution of the 2003 Series A Bond Resolution for the North Dakota State Water Commission Water Development Revenue Bonds, Southwest Pipeline Project, Medora-Beach Regional Service Area, Phase I. SEE APPENDIX "D"

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 (NAWS) PROJECT
STATUS REPORT
(SWC Project No. 237-04)**

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

Contract 2-1B - Pretreated Water Pipeline: On April 22, 2003, the State Water Commission authorized the award of contract 2-1B to Coughlin Construction, Minot, ND. The contract was executed by the Commission's Chief Engineer and Secretary on May 22, 2003. The contract is for approximately 9.5 miles of 30-inch and 36-inch ductile iron pipe, extending from the end of contract 2-1A to a point across N.D. Highway 23. The contract includes an above ground pressure reducing valve vault located adjacent to U.S. Highway 83 just south of the bored and cased highway crossing. The contract completion date was October 31, 2003, but an extension was granted until November 14, 2003 because of delays in awarding the contract.

The contractor completed pipe laying operations for the year on November 1, 2003, which consisted of the installation of 32,740 feet of pipe out of a total of 50,000 feet on the contract, approximately 65.5 percent. The contract has several pre-cast and cast-in-place vaults and less than half of those vaults have been constructed. Structural work on the pressure reducing valve vault has not commenced. The subcontractor hired to construct the bored and cased crossing of N.D. Highway 23 completed that work during the week of November 10, 2003.

Coughlin Construction did not complete the contract by the contract completion date specified in the contract documents. The contract specifies that liquidated damages in the amount of \$1,500 per day can be assessed to the contractor for each day beyond the contract completion date. Coughlin Construction has submitted a new construction schedule, indicating a completion target date of June 23, 2004, which is currently being reviewed.

Contract 2-1C - Pretreated Water Pipeline Station 1600+00 to Max Pumping Station: Contract 2-1C consists of approximately 61,006 feet (about 11.6 miles) of 36-inch steel or ductile iron pipe extending from N.D. Highway 23 to the south side of the city of Max. The plans and specifications for contract 2-1C were received on November 21, 2003 and have been submitted to the Bureau of Reclamation and the North Dakota Department of Health for review. Contingent upon review of the plans and specifications, it is anticipated that bids will be opened on contract 2-1C in January, 2004. The project engineer's estimate for construction of this contract is \$6.45 million, and the project cost is approximately \$7.8 million. The funding that is currently in place is not sufficient to award contract 2-1C, therefore, the contract award is contingent upon the availability of Fiscal Year 2004 federal funding.

Manitoba Lawsuit: On November 14, 2003, the United States District Court for the District of Columbia, Judge Rosemary Collyer, denied motions made by the U.S. Department of the Interior and the State of North Dakota to dismiss the action that had been brought by the Province of Manitoba against the Department of the Interior. The motions to dismiss the case were based on jurisdictional and procedural issues.

The Manitoba suit, filed in October, 2002, against the Secretary of the Interior, Commissioner of Reclamation, Reclamation's Great Plains Regional Director, and Reclamation's Dakotas Area Manager, challenges the adequacy of the NAWS environmental assessment and the Finding of No Significant Impact (FONSI). Manitoba is seeking a declaratory judgment and an injunction requiring the defendants to conduct an environmental impact statement (EIS) and enjoining the defendants from expending federal funds until they have fully complied with such requirements. North Dakota petitioned the court to intervene as a defendant and was unopposed.

The Bureau of Reclamation is preparing the administrative record for the case. When the administrative record has been completed, the parties will then file motions for summary judgment. A hearing will be held before Judge Collyer at which time she will decide whether the Bureau's environmental assessment was sufficient or whether the more comprehensive EIS should have been prepared.

The North Dakota Office of the Attorney General is exploring the possibility of hiring outside legal assistance to complement their staff.

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

The Dakota Water Resources Act of 2000 authorized 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 and possible options for meeting those needs. 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. Governor Hoeen designed the Garrison Diversion Conservancy District to represent the state in this endeavor.

The Red River Valley Water Supply Study will result in the completion of the Needs and Options report and a draft EIS. These reports will consider the study needs assessment, hydrology, engineering, environmental, financial analysis, and biota transfer issues. The preparation of these reports essentially began in January, 2003, and the reports are scheduled for completion in December, 2005.

Dave Koland, manager, Garrison Diversion Conservancy District, provided a status report on the following Red River Valley Water Supply Study efforts:

Needs Assessment

North Dakota State University and Advanced Engineering and Environmental Services, Inc. have been retained to determine the industrial needs in the study area to 2050. These studies will be completed by March 1, 2004.

Hydrology

Most of the hydrology work has consisted of obtaining and compiling basic streamflow criteria for the model selection. The water quantity model selected was the StateMod(Colorado). The Bureau of Reclamation and Garrison Diversion Conservancy District personnel have received training on the model's capability and operation, and the model is being calibrated for study use. The assumptions data is presently being fed into the model, and it is anticipated that a public workshop will be scheduled for consultants and entities interested in model training.

Engineering

Collecting and compiling actual water use data for the existing rural water systems and cities have been completed. Assessment of the rural water systems is also essentially complete. Task orders were prepared to have Garrison Diversion (Houston Engineering, Inc.) identify the alignment of the buried pipelines and to develop design criteria for the evaluation of the selected alternatives and features. Design criteria workshops were conducted by Houston Engineering, Inc. for Reclamation and Garrison Diversion personnel involved in this work. Houston Engineering, Inc. is currently working on the probable cost estimates of the pipeline alignments in the alternatives.

Environmental

The screening criteria and general alternatives have been approved. Seven specific alternatives have been selected for further study. These alternatives include: 1) No action; 2) North Dakota In-Basin; 3) Red River Basin; 4) Missouri River to Red River Valley Import; 5) GDU Import to Sheyenne River; 6) GDU Import (buried) pipeline; and 7) GDU Water Supply Replacement (buried) pipeline. All of these alternatives, except No. 7, will consider providing a supplemental water supply to meet projected shortages through 2050. The replacement alternative will consider a total replacement supply.

The Bureau of Reclamation and Garrison Diversion hosted a series of meetings in June, 2003 to give the public an opportunity to provide feedback on the alternatives and other aspects of the study. Comments received at these meetings have been summarized and are available on the RRWSP web site.

Biota Transfer

A preferred study approach to the biota transfer issue was developed for the study by Houston/Montgomery-Watson-Harza and was transmitted to the Bureau of Reclamation on July 15, 2003. The study approach is to evaluate the significance of a biota transfer risk of any organism considering the various control treatment options, levels of treatment, and redundancy as risk variables.

A discussion paper was prepared by the study engineer in July, 2003, which discussed the key elements of the biota transfer issue. The Bureau of Reclamation has essentially agreed with the technical issues as outlined in the discussion paper.

A biota workshop was held in Fargo, ND on October 28, 2003 during which personnel from the U.S. Geological Survey and the U.S. Forest Service discussed biota concerns, risk analysis, control systems, risk reduction, economics, and other biota transfer aspects. The draft report on biota transfer is anticipated for completion by July, 2004.

***APPROVAL OF REQUEST FROM
RED RIVER BASIN COMMISSION
FOR EXPENDITURE OF \$100,000
FROM JANUARY 1, 2004 THROUGH
DECEMBER 31, 2004
(SWC File AOC/RBB)***

The Red River Basin Commission (RRBC) was formed in 2001 to serve as a grassroots effort to address land and water issues in a basinwide context. The RRBC was originally known as the Red River Basin Board, and is a result of the amalgamation of the Board, The Inter-

national Coalition, and the Red River Water Resources Council. The organization is comprised of a 41-member board of directors representing a broad cross-section of local and state/provincial governments and other interests. The State Engineer is a member of the board appointed by Governor Hoeven.

The states of North Dakota and Minnesota, the Province of Manitoba, and the local governments in the three major jurisdictions have participated in funding the activities of the Red River Basin Board for several years. Contributions of \$100,000 per year are requested of each of the six primary sponsors to fund the Red River Basin Commission's operating costs for projects.

A request was presented for the State Water Commission's consideration to provide an expenditure of \$100,000 to the Red River Basin Commission from January 1, 2004 through December 31, 2004 to support the Red River Basin Commission's Natural Resource Framework planning activities.

Lance Yohe, executive director of the Red River Basin Commission, expressed appreciation to the State Water Commission for its past support. The goals and actions for the Natural Resource Framework planning activities were explained, which are attached hereto as **APPENDIX "E"**. Mr. Yohe said that work on the plan is anticipated to have a significant positive effect in overcoming historic impediments to water management across the Red River basin.

The 21st annual Red River Basin Land and Water International Summit conference, "Watershed Issues: Bridging the Past, Present and the Future", is scheduled for January 14-16, 2004 at the Moorhead, Minnesota Area Conference Center. The conference is sponsored by the Red River Basin Commission.

It was the recommendation of the State Engineer that the State Water Commission approve the expenditure of \$100,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to support the Red River Basin Commission's Natural Resource Framework planning activities from January 1, 2004 through December 31, 2004. The Commission's approval of this expenditure will be contingent upon the availability of funds. It is expected that the primary sponsors will match any funds the State Water Commission contributes to the RRBC.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve the expenditure of \$100,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to support the Red River Basin Commission's Natural Resource Framework planning activities from January 1, 2004 through December 31, 2004. 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.

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

Todd Sando reported that the drought conditions continue to persist in the Missouri River basin. As of November 20, 2003, system storage in the six mainstem reservoirs was 39.1 million acre-feet (MAF), which is the lowest system storage since the reservoirs initially filled. This storage volume is 16.5 MAF below the average system storage for the end of November, and 4.26 MAF less than last year. Lake Sakakawea was at an elevation of 1819.5 feet msl, 6.0 feet lower than a year ago and 18.3 feet below its average end of November elevation.

On November 1, 2003, the Corps of Engineers predicted runoff above Sioux City for 2003 to be 17.5 MAF, 69 percent of normal. The Corps is estimating that Lake Sakakawea will fall to an elevation of 1813.8 feet msl by the end of February, 2004, the lowest elevation since Lake Sakakawea initially filled.

The elevation of Lake Oahe was 1577.4 feet msl on November 20, 2003, 6.8 feet lower than last year and 23.9 feet lower than its average end of November elevation. The Corps has begun to reduce the releases being made from Gavins Point and Lake Oahe to support navigation, so Lake Oahe is near its low for the year. Under the most likely runoff simulation, the Corps is forecasting that Lake Oahe will rebound to 1582.9 feet msl by the end of February, 2004.

The elevation of Fort Peck was 2209.1 feet msl on November 20, 2003, 8.1 feet lower than last year and 25.2 feet lower than its average end of November elevation. The Corps is estimating that Fort Peck reservoir will fall to 2205.2 feet msl by the end of February, 2004, which would be another record low lake level.

On November 17, 2004, the Corps released the final biological assessment on the operations of the Missouri River mainstem reservoir system. The majority of the biological assessment addresses measures to aid in the recovery of the endangered species. The primary focus of the biological assessment is "adaptive management" which calls for modifying actions in response to new information. Because of this adaptive management approach, the operation of the Missouri River reservoir system will be more uncertain under the proposal in the biological assessment than it is under the current Master Manual. The biological assessment states the spring rise and summer low flows recommended in the 2000 biological opinion do not provide the intended biological effect. Instead of the flow changes, the biological assessment proposes building habitat, expanding and accelerating propagation efforts, and a research monitoring and evaluation program that examines the multiple factors that may be limiting pallid sturgeon spawning and recruitment.

Mr. Sando explained the conservation measures which are proposed in the biological assessment. Although the proposed conservation measures are a step in the right direction, Mr. Sando said they do not conserve as much water as the conservation measures agreed to by seven of the eight Missouri River Basin Association (MRBA) states.

The current timetable for the Master Manual revision calls for a new biological opinion to be completed by mid-December, 2003. Assuming that a favorable biological opinion is received from the U.S. Fish and Wildlife Service, the Corps anticipates completion of a final Environmental Impact Statement and Record of Decision in January, 2004. This would allow the revised Master Manual to be implemented in March, 2004.

The Missouri River Basin Association is sponsoring a Stakeholders Forum on December 11-12, 2003 in Kansas City, Missouri to discuss monitoring of the Missouri River basin. There are currently two bills in Congress regarding monitoring of the Missouri River that will be discussed at the forum. Given the biological assessment's focus on adaptive management, research, and monitoring to restore endangered species, this forum is very timely.

***BOMMM JOINT BOARD REPORT
RELATING TO MISSOURI RIVER
ACTIVITIES ON THE GARRISON
TO OAHE REACH
(SWC Project No. 1392)***

Andy Mork, BOMMM Joint Board chair, and Ronald Sando, Water Resources Consultant, appeared before the State Water Commission to provide the following update on Missouri River activities on the Garrison to Oahe reach:

Missouri River Protection and Improvement Act of 2000

In 2000, Congress passed legislation to help address the impacts of sedimentation on the river corridor in North Dakota. A part of that legislation called for the establishment of the Missouri River Trust. Nearing the end of 2003, the Trust is not functioning. The BOMMM board is concerned the window of opportunity to access up to \$5 million per year to address corridor issues will be lost because of inaction. The BOMMM board requested the State Water Commission to work with the Governor's staff to move this issue forward.

Missouri River Corridor Concept Plan and Comprehensive Plan

The BOMMM board completed the preparation of the Missouri River Corridor Concept Plan in September, 2003. This document was an inventory document prepared for the five BOMMM county commissions to assist in deciding whether to complete a full comprehensive plan for the corridor. Because of the sovereign land issues and the related corridor issues, the State Water Commission funded a portion of this inventory effort. This document and the website identified in the document are the results of that funding.

The counties are reluctant to move forward in spite of the need identified in the document. The city of Bismarck recently expanded its territorial limits in order to get better control of growth management due to the county's reluctance to take action.

The BOMMM board is encouraging the counties to complete a comprehensive plan jointly and implement the necessary ordinances to achieve the plan. The Board requested the State Water Commission's continued support in this effort.

Prison Farm Bank Stabilization and Aquatic Restoration Demo Study Project

The BOMMM board has been working with the State Water Commission, the Prison Farm, North Dakota Game and Fish Department, Corps of Engineers, and others to develop a Bank Stabilization and Aquatic Restoration Project on Prison Farm land in Burleigh county. The project area includes approximately 9,000 lineal feet of eroding banks.

The Corps of Engineers agreed to work on the project through its Section 1135 Program "Environmental Improvements Relating to Existing Corps Projects". The federal cost share will be 75 percent with a 25 percent local match. The project will impact both sovereign and state lands in a positive manner. It is the intent of the BOMMM board to request state cost share participation for the local share.

Corps Implementation Plan (IP) for the Non-Flow Creation and Maintenance of the Emergency Sandbar Habitat Portion of the 2000 Biological Opinion

The Corps of Engineers and the U.S. Fish and Wildlife Service are proposing to increase the islands and sandbars in the Missouri River in North Dakota. Presently, an average of 12.5 surface acres per mile exists. The plans are to increase that average number to 50 acres per mile by the year 2015. This will occur primarily in the lower reaches of the river in North Dakota, with the bed and banks of the river being the source of sediment that will create the islands and sandbars. The permanent loss of high bottomland, loss of recreational boating, and the impacts on the sports fisheries, floodplain and power production will be affected if this plan is implemented. If this issue is not addressed by the state and the counties, significant economic losses will occur by the year 2015.

**INTERNATIONAL BOUNDARY
ROADWAY DIKE
(SWC Project No. 1401)**

Secretary Frink explained the historical background relating to flood damages caused from the blockage of the natural flows in Canada by a "so-called road

on the Manitoba side with few culverts." The roadway dike was constructed in 1944, and extends from the Red River all across Pembina county and about one-half of Cavalier county. The roadway dike impedes the natural flow of water across the international border and has caused millions of dollars of damage in crop loss, erosion, damage to cities, infrastructure, farmsteads and personal property. Discussions and negotiations have continued for many years with federal, state and local officials for resolution of the issues.

In 2000, a proposal was formulated to equip border crossings Nos. 2 and 3 with adequately-sized culverts, which was to be done in conjunction with improvements to Walhalla Drain Nos. 2 and 3. The new crossings were to be accompanied by channel improvements in Manitoba. A Memorandum of Understanding was approved and executed, and the amount to be paid to Manitoba for enlarging the two crossings was \$357,000. The new culverts in Crossing No. 3 have been installed, and work on Crossing No. 2 is scheduled for 2004.

Secretary Frink stated that although there has been progress, the majority of the frustration remains among the residents of Pembina county. As a result, the county is considering bringing a lawsuit in Canada to remove the roadway dike. A meeting was held with a Manitoba law firm in Cavalier, ND, on November 17, 2003 to discuss the matter. The estimated cost of the action is \$400,000. A request was received in the Office of the State Engineer on November 28, 2003 from the Pembina County Water Resource District for a 50 percent state cost share participation in the amount of \$200,000.

In an expeditious effort to review and respond to the Board's cost share request, Governor Hoeven directed the State Engineer and the Assistant Attorney General to continue to work with the Pembina County Water Resource Board to develop a recommendation for the State Water Commission's consideration at a future meeting.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 12:10 PM.

John Hoeven, Governor
Chairman, State Water Commission

SEAL

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

