

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

August 16, 2004

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on August 16, 2004. Lt. Governor-Chairman, Jack Dalrymple, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, 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 50 people interested in agenda items

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Lt. Governor Dalrymple announced the agenda approved as presented.

**NORTH DAKOTA MYTHICAL NAVY
COMMODORE AWARD PRESENTED
TO FRANCIS SCHWINDT**

Francis Schwindt was recognized as a Commodore in North Dakota's Mythical Navy "for his unwavering support of water issues and water projects." Mr.

Schwindt joined the North Dakota Department of Health in 1972, and was the section chief of the environmental health section at the time of his retirement in 2002. Under his leadership, North Dakota's Drinking Water State Revolving Loan Fund program, authorized under the Safe Drinking Water Act in 1996, has provided approximately \$300 million in loans to assist public water systems in financing the costs of infrastructure needed to achieve or maintain compliance with the Act and protect public health.

**RESOLUTION OF APPRECIATION
TO BRADLEY T. BENSON,
SWC EMPLOYEE
(SWC Resolution No. 2004-08-509)**

A resolution of appreciation to Bradley T. Benson was presented for the State Water Commission's consideration. Mr. Benson resigned on August 31, 2004, where he served the State of North

Dakota and the State Water Commission for 16 years. He served in the position as chief of the design and construction section since 1996.

It was moved by Commissioner Olin, seconded by Commissioner Johnson, and unanimously carried, that the State Water Commission approve Resolution No. 2004-08-509, Resolution of Appreciation to Bradley T. Benson. SEE APPENDIX "A"

**RESOLUTION OF APPRECIATION
TO CRAIG ODENBACH,
SWC EMPLOYEE
(SWC Resolution No. 2004-08-510)**

A resolution of appreciation to Craig Odenbach was presented for the State Water Commission's consideration. Mr. Odenbach resigned on August 13, 2004, where he served the State of North

Dakota and the State Water Commission for 19 years. He served in the position as chief of the regulatory section since 1999.

It was moved by Commissioner Olin, seconded by Commissioner Johnson, and unanimously carried, that the State Water Commission approve Resolution No. 2004-08-510, Resolution of Appreciation to Craig Odenbach. SEE APPENDIX "B"

Secretary Frink informed the State Water Commission that Jason Boyle, presently a water resource engineer with the State Water Commission's water development division, was hired for the position vacated by Mr. Benson. John Paczkowski, presently the Devils Lake project engineer, was hired for the position vacated by Mr. Odenbach.

**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, State Water Commission accounting manager, presented and discussed the allocated program expenditures for the period ending June 30, 2004, reflecting 50 percent of the 2003-2005 biennium. All expenditures are within the authorized budget. **SEE APPENDIX "C"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "D"**, 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 \$93,522,414, leaving a balance of \$5,660,943 available to commit to projects. The funds earmarked for the Fargo Flood Control project (\$10.5 million) were reduced to fund projects approved at the June 28, 2004 State Water Commission meeting.

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

The oil extraction tax deposits into the Resources Trust Fund total \$5,113,675, and are \$175,344, or 3.5 percent ahead of the budgeted revenues. Deposits into the Water Development Trust Fund total \$10,342,465, and are currently \$5,035 ahead of budgeted revenues.

**SWC BONDING AUTHORITY
AND APPROVAL TO USE
LINE OF CREDIT FROM
BANK OF NORTH DAKOTA**

Secretary Frink explained the State Water Commission's authority to issue bonds under North Dakota Century Code chapter 61-02.1, which was created by 1999 Senate Bill 2188 and 1999 House Bill 1495, for water management and development. To assist in financing the costs of the statewide water development program during the 2003-2005 biennium, Secretary Frink said it will be necessary to exercise the Commission's bonding authority.

When soliciting proposals for investment banking services for the agency's bond issue, it became apparent that it would be advantageous for the agency to identify sources of repayment in addition to the Water Development Trust Fund. Secretary Frink stated that bonds issued using only the tobacco proceeds for repayment have become increasingly difficult to sell, and command substantially higher interest rates. Replicating the following sources of repayment identified in the agency's 2000 Series Statewide Water Development bonds would make the bonds more marketable: Water Development Trust Fund, Resources

Trust Fund, other revenues appropriated to the State Water Commission, and an amount necessary to make one biennium's payments from proceeds of the Bank of North Dakota. Secretary Frink indicated these additional revenue sources will be proposed in a separate legislative bill with an emergency clause which will allow the State Water Commission to issue bonds late in the 2003-2005 biennium. Although interest rates may increase between now and May, 2005, the improved rating of the more secure bonds likely will offset any rate increase.

Secretary Frink stated that because bond proceeds will not be available until late in the 2003-2005 biennium, it will be necessary for the State Water Commission to secure interim financing. Section 7 of Senate Bill 2022 of the 2003 session laws provides for interim financing with a line of credit not to exceed \$25 million from the Bank of North Dakota. The Bank of North Dakota has offered a rate of 1.5 percent plus the current London Interbank Offered Rate (1.54 percent) for a total of 3.04 percent on the line of credit. The Office of Management and Budget has been asked to defer the transfer of \$10 million to the general fund until the bonds have been issued. He said this line of credit and the delayed transfer of funds to the general fund will provide the agency with adequate funds until the bonds are issued. The line of credit will be repaid when the bonds are issued.

It was the recommendation of the State Engineer that the State Water Commission approve the use of the \$25 million line of credit from the Bank of North Dakota for interim financing until the bonds authorized in Senate Bill 2022 of the 2003 session laws are issued.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve the use of the \$25 million line of credit from the Bank of North Dakota for interim financing until the bonds authorized in Senate Bill 2022 of the 2003 session laws are issued.

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

**APPROVAL OF UNDERWRITER FOR
INVESTMENT BANKING SERVICES
FOR NORTH DAKOTA STATE WATER
COMMISSION WATER DEVELOPMENT
REVENUE BOND PROGRAM
(SWC Project No. 1885)**

banking services. The proposals were reviewed based on the following criteria: 1) experience of the firm in serving as senior manager on revenue bond programs for

On July 8, 2004, the State Water Commission solicited proposals for investment banking services for the North Dakota State Water Commission Water Development Revenue Bond program. The Commission received six proposals from qualified investment

state-level clients with an emphasis on relevant water development project finance experience; 2) program structuring experience and suggestions; 3) expertise of personnel assigned to the program; 4) marketing/distribution, including the firm's commitment and ability to market bonds and support issuers at bond sales; and 5) fees.

It was the recommendation of the State Engineer that the firm of RBC Dain Rauscher, Minneapolis, Minnesota, be selected as the State Water Commission's underwriter for investment banking services for the North Dakota State Water Commission Water Development Revenue Bond program through June 30, 2005. The recommendation is based on favorable past experience with the firm and the firm's significant interest in serving as the underwriter for this issue. The firm was the underwriter for the agency's 2000 Series Water Development Revenue Bond program and has a strong understanding of the complexities concerning this bond issue. The proposal is financially competitive with the other proposals.

It was moved by Commissioner Swenson and seconded by Commissioner Halcrow that the State Water Commission select the firm of RBC Dain Rauscher, Minneapolis, Minnesota, as the underwriter for investment banking services for the North Dakota State Water Commission Water Development Revenue Bond program for an engagement through June 30, 2005.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple 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 2-5B - Main Transmission Pipeline, Medora-Beach Phase: Contract 2-5B is for 46.4 miles of 12-inch through 6-inch diameter PVC pipe. The contract includes two booster pump stations and several pressure reducing valves, as well as meter vaults for Medora, Sentinel Butte, and Beach. The completion date for contract 2-5B is September 4, 2004. The contractor, Northern Improvement Company, Bismarck, ND, has completed pipe laying operations and is currently filling and testing pipeline segments.

Contracts 5-9, 5-10, and 5-11 - Belfield, Fryburg, and Beach Reservoirs: The contractor for contracts 5-9, 5-10, and 5-11 is Advance Tank and Construction, Wellington, CO. All three reservoirs will be welded and painted steel. Construction of the Belfield reservoir was completed and painted the last week in July. Remaining work includes lettering on the tank, disinfection, and site work.

The contractor has completed erection of the walls of the Fryburg reservoir and the roof has been welded on. An additional crew has been mobilized to work on the Beach reservoir, and several "rings" of the steel plates, which makes up the walls, have been completed. The following table provides details on the three reservoir contracts:

<u>Reservoir</u>	<u>Volume (gallons)</u>	<u>Dimensions (diameter x height)</u>	<u>Estimated Cost</u>	<u>Completion Date</u>
5-9, Belfield	750,000	52' x 48'	\$625,000	8/01/2004
5-10, Fryburg	507,000	37' x 64'	\$457,700	8/15/2004
5-11, Beach	382,000	28' x 83'	\$574,600	10/01/2004

Contract 7-8A - Fryburg Service Area, Phase I: Contract 7-8A is for approximately 42.7 miles of PVC pipe ranging in size from 6 inches to 1 ½ inches in diameter serving 70 rural water users in the general area from Belfield to west of Medora. The completion date for contract 7-8A is September 15, 2004. The contractor, Abbot, Arne & Schwindt, Moorhead, MN, completed all pipe laying by the end of June, and is awaiting for water to become available through the contract 2-5B pipeline so flushing and hydro testing can commence, which is anticipated in mid-August, 2004.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR
REPLACEMENT AND EXTRA-
ORDINARY MAINTENANCE FOR
REPLACEMENT OF VOLTAGE
REGULATORS AT RICHARDTON
PUMP STATION ELECTRICAL
SUBSTATION
(SWC Project No. 1736)***

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

James Lennington presented a request from the Southwest Water Authority for the Commission's consideration for the expenditure of funds from the reserve fund for replacement and extraordinary maintenance for replacing the voltage regulators at the Richardton pump station electrical substation in January, 2004. Under the electric service agreement with West Plains Electric Cooperative, this substation is owned by the Cooperative, but any repairs or replacements that exceed \$1,500 are to be paid by the Commission. The regulators were replaced by the Cooperative and paid for by the Southwest Water Authority in February, 2004, at a cost of \$28,260.16.

It was the recommendation of the State Engineer that the State Water Commission concur in the determination that the replacement of the voltage regulators at the Richardton pump station electric substation are eligible for reimbursement of \$28,260.16 from the reserve fund for replacement and extraordinary maintenance.

It was moved by Commissioner Swenson and seconded by Commissioner Johnson that the State Water Commission approve the reimbursement of \$28,260.16 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the voltage regulators at the Richardton pump station electrical substation.

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AMENDMENT TO WEST
PLAINS ELECTRIC COOPERATIVE
SERVICE AGREEMENT TO PROVIDE
POWER TO FRYBURG BOOSTER
PUMP STATION
(SWC Project No. 1736)**

On July 5, 1999, the State Water Commission entered into an agreement with West Plains Electric Cooperative to wheel Western Area Power Administration (WAPA) power to the Southwest Pipeline Project's Richardton and Dodge pump stations. Federal power from WAPA is to be provided to the new

Fryburg booster pump station built as part of the main transmission facilities for the

Medora-Beach regional service area, which is served by West Plains. The rate for wheeling power to this location is 12 mills per kWh, in addition to a minimum monthly bill of \$1.00 per kVa and a \$30.00 per month service charge. With a 150 kVa transformer, the result will be a \$180 minimum charge. West Plains charges 14.5 mills per kWh for the Richardton and Dodge pump stations with monthly minimums of \$1,000 and \$169, respectively.

It was the recommendation of the State Engineer that the State Water Commission approve the amendment to the West Plains Electric Cooperative service agreement for the purpose of providing service to the Southwest Pipeline Project Fryburg booster pump station.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the amendment to the West Plains Electric Cooperative service agreement for delivery of electrical power to the Southwest Pipeline Project Fryburg booster pump station. SEE APPENDIX "E" (executed amendment)

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

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT 1736-33 WITH
LAKESHORE ESTATES
(SWC Project No. 1736)***

The Lakeshore Estates has requested a sole source, demand service, water service contract from the State Water Commission and the Southwest Water Authority for its water distribution system located north of Beulah on Lake

Sakakawea. Lakeshore Estates consists of 98 lakeside lots, of which 61 lots are occupied. The water distribution system also serves the Dakota Waters Resort and the Outpost 1806 supper club. The system currently uses well water and has a water permit. Lakeshore Estates first contacted the Southwest Water Authority in 2001 about water service. The Authority installed a water meter to determine water use on the system. The meter readings indicated that during peak periods, water usage can be up to 250,000 gallons per month, falling off to less than 80,000 gallons per month during the winter months. It is anticipated that water use would be approximately 1.2 to 1.5 million gallons per year which would put Lakeshore Estates about on par with the communities of Manning and New Hradec.

Under a sole source contract, the user agrees to use no other source of supply for its potable water distribution system. Under demand service, the project is obligated to meet the peak demand flow rate needed by the user. The capital repayment rate to the state is doubled for demand service.

The contract specifies a maximum flow rate of 35 gallons per minute. Capacity for demand service to Lakeshore Estates will be included in the Oliver-Mercer-North Dunn phase of the Southwest Pipeline Project, which is next in line for construction following the Medora-Beach phase.

It was the recommendation of the State Engineer that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-33 with Lakeshore Estates.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-33 with Lakeshore Estates. SEE APPENDIX "F" (executed contract)

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

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT 1736-32 WITH
THE THEODORE ROOSEVELT-
MEDORA FOUNDATION
(SWC Project No. 1736)***

The Theodore Roosevelt-Medora Foundation (TRMF) has requested a sole source, demand service, water service contract from the State Water Commission and the Southwest Water Authority for its campground in Medora on the west side of the Little Missouri

River. Service to this campground was constructed as part of the Southwest Pipeline Project contract 7-8A, Fryburg Service Area, Phase I. The TRMF had originally signed up as a high consumption rural user with three extra units of water, which entitles them up to 100,000 gallons per month at 14 gallons per minute. Shortly before the service was to be installed, it became apparent that this supply would not be adequate for the needs of the campground. It is estimated that the campground may use as much as 500,000 gallons of water per month during the summer. The service to this location was amended to include a 2-inch meter and vault.

Under a sole source contract, the user agrees to use no other source of supply for its potable water distribution system. Under demand service, the project is obligated to meet the peak demand flow rate needed by the user. The capital repayment rate to the state is doubled for demand service.

Water service contract 1736-32 specifies a maximum flow rate of 40 gallons per minute. Capacity for demand service to the campground is available in the system without concern.

It was the recommendation of the State Engineer that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-32 with the Theodore Roosevelt-Medora Foundation.

It was moved by Commissioner Swenson and seconded by Commissioner Johnson that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-32 with the Theodore Roosevelt-Medora Foundation. SEE APPENDIX "G" (executed contract)

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

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT 1736-34 WITH
HOME ON THE RANGE
(SWC Project No. 1736)***

Home on the Range (HOTR) has requested a sole source, demand service, water service contract from the State Water Commission and the Southwest Water Authority for its residential care facility for at-risk youth, located four miles northwest of the city of Sentinel Butte, to replace its well water for domestic use. HOTR currently has 77 residents in addition to a staff of 75 and is building a new girls dormitory. The wells are also used to water livestock, which number 50 head of cattle and 20 horses. HOTR intends to maintain the wells for livestock and as a backup supply. Water use records indicate peak monthly usage of approximately 600,000 gallons.

Home on the Range (HOTR) has requested a sole source, demand service, water service contract from the State Water Commission and the Southwest Water Authority for its residential care facility for at-risk youth, located four

Home on the Range did not sign up for water during the final signup campaign conducted by the Southwest Water Authority for the Medora-Beach regional service area. Construction of their new dormitory and the condition of their existing water system caused them to reconsider their earlier position. HOTR contacted the Authority in 2003 about the possibility of getting water from the project, and requested that consideration be given to constructing the pipeline to serve them earlier than planned. The preliminary design for the Beach Service Area includes a pipeline passing a mile to the east of the HOTR and serving 15 rural users to the north. It is estimated that it would cost approximately \$150,000 to construct the first two miles of this pipeline in order to serve the HOTR. A change order for this estimate could be added to contract 2-5B, Main Transmission Pipeline, to provide service to the HOTR. Because the present funding situation precludes this expenditure, the Southwest Water Authority has approved funding this construction out of their existing reserves with the understanding that the State Water Commission would reimburse the Authority once construction began on the Beach Service Area and contingent on the availability of funding. A similar arrangement has been used in the past for funding preliminary engineering studies of regional service areas.

It is estimated that water use at the HOTR is between 3 and 4 million gallons per year. In comparison, the Prairie Learning Center, a similar facility near Raleigh, ND, averages about 1.3 million gallons a year. Water use at the HOTR would be on par with Dunn Center, which has a population of about 120.

Under a sole source contract, the user agrees to use no other source of supply for its potable water distribution system. Under demand service, the project is obligated to meet the peak demand flow rate needed by the user. The capital repayment rate to the state is doubled for demand service.

Water service contract 1736-34 specifies a maximum flow rate of 45 gallons per minute. There is adequate capacity for demand service to Home on the Range in the Medora-Beach main transmission facilities.

It was the recommendation of the State Engineer that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-34 with Home on the Range.

It was moved by Commissioner Hanson and seconded by Commissioner Halcrow that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-34 with Home on the Range. SEE APPENDIX "H" (executed contract)

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

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

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

Contract 2-1B - Pretreated Water Pipeline: On April 23, 2003, the State Water Commission authorized the award of contract 2-1B to Coughlin Construction, Minot, ND. 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 just south of N.D. Highway 23. Approximately 65 percent of the pipe in this contract was installed in 2003. 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 contractor completed pipe laying on June 26, 2004. Work since then has focused on the pressure reducing station building, reclamation, and completion of the precast and cast-in-place valve vaults. The contractor has started filling the pipeline with water in anticipation of pressure testing. A cracked manway inside a cast-in-place valve vault was determined, which may be difficult to repair.

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 ductile iron pipe extending from N.D. Highway 23 to the south side of the city of Max. At its March 11, 2004 meeting, the State Water Commission authorized the award of contract 2-1C to Winter Brothers Underground, Sioux Falls, SD, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation. The contract was executed by the State Engineer on April 6, 2004.

The contractor began work on June 21, 2004, and three crews have approximately 9,300 feet of pipe laid to date. The completion date for this contract is December 3, 2004.

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 submitted the administrative record for the case. On March 8, 2004, the Province of Manitoba filed its motion for summary judgment and briefs supporting its position. Responding motions and briefs from the Department of the Interior and the state were filed on April 16, 2004. Judge Collyer heard oral arguments in this lawsuit on July 29, 2004 in Washington, DC.

Fred Wagner of Beveridge & Diamond, P.C., a Washington, DC attorney, has been retained to complement the staff of the North Dakota Office of the Attorney General in the lawsuit.

Miscellaneous: The city of Minot has approved funding for preliminary design work on some future elements of the project which includes a pipeline segment from Des Lacs to Berthold as well as a booster pump station in Des Lacs. This pipeline segment could be constructed before Missouri River water gets to Minot. North Prairie Rural Water currently supplies water to Des Lacs. North Prairie could supply Minot water to Berthold, on an interim basis, if the pipeline segment between Des Lacs and Berthold, proposed as part of NAWS, could be built. The pipeline segment and booster pump stations have been estimated to cost about \$1.0 million.

The city of Minot has also approved funding for preliminary design work on the pipeline system between Minot and the Minot Air Force Base. This work includes updating the city's water distribution network computer model, sizing facilities, and preliminary route work. Minot Air Force Base personnel have contacted the city and the State Water Commission about the possibility of financing this segment of the project and the preliminary design work is necessary to estimate the costs.

No federal or state money will be used for either of these preliminary design elements. Funding provided by the city for these purposes will be eligible for federal matching when construction on the pretreated water pipeline and the Minot water treatment plant upgrade and expansion are completed.

***NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
APPROVAL OF RESOLUTION
AUTHORIZING DEFEASANCE
OF WATER DEVELOPMENT
BONDS, NAWS PROJECT
(RUGBY COMPONENT)
1998 SERIES A
(SWC Project No. 237-04)***

At its meeting on April 30, 1998, the State Water Commission issued \$1,220,000 of Water Development Revenue Bonds, Northwest Area Water Supply Project (Rugby Component) 1998 Series A, under the provisions of chapter 61-24.6 of the North Dakota Century Code, to finance the cost of the Rugby component of the NAWS project. The Commission adopted the

general bond resolution and the 1998 Series A bond resolution on April 30, 1998, which provided for the payment and defeasance of the bonds prior to their maturity upon compliance with the terms of the bond resolution.

The city of Minot approved a request on July 6, 2004 from the city of Rugby authorizing up to \$2 million of the NAWS sales tax monies be made available for payment of the local share of the Rugby project based on requested reimbursements by the State Water Commission. Minot has been paying the local share of the costs of construction of the pipeline from Lake Sakakawea to Minot and has indicated its intent to pay the local share of construction for all of the project.

The 1998 Series A bonds had a par value of \$1,220,000 and have \$1,110,000 outstanding on June 30, 2004. Rugby has been paying \$0.80 per thousand gallons of water towards these bonds since July, 1999. The bonds are callable on September 1, 2008. An escrow agreement with the Commission's trustee is required to defease these bonds, which will establish an escrow account to hold the funds dedicated to payment of the principal and interest on the bonds until September 1, 2008, and to redeem the bonds after that date.

It was the recommendation of the State Engineer that the State Water Commission approve the resolution authorizing the defeasance of Water Development Revenue Bonds Northwest Area Water Supply Project (Rugby Component) 1998 Series A.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve the resolution authorizing the defeasance of Water Development Revenue Bonds Northwest Area Water Supply Project (Rugby Component) 1998 Series A. SEE APPENDIX "I" (executed resolution)

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

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

feet of water. At this time last year, the lake was at an elevation of 1447.03 feet msl.

Devils Lake is currently at an elevation of 1448.7 feet msl. At this elevation, the lake has a surface area of 136,000 acres and storage of 2.65 million acre-

The current elevation of Stump Lake is 1421.5 feet msl. At this elevation, Stump Lake has a surface area of 8,900 acres and is storing 204,800 acre-feet of water. The Jerusalem channel is flowing at 165 cubic feet per second. Based on the National Weather Service's 50 percent probability for the weekly chance of exceedance for Devils Lake, the State Water Commission has estimated that Stump Lake could rise to an elevation of 1423.3 feet msl by early September as a result of flows from Devils Lake. This calculation does not include local runoff into or evaporation from Stump Lake.

**CORPS OF ENGINEERS DEVILS
LAKE OUTLET PROJECT STATUS
(SWC Project No. 416-07)**

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 continues to address the conditions that were outlined in the ROD, which included a determination by the U.S. State Department on whether or not the outlet project would violate the Boundary Waters Treaty Act of 1909. On January 20, 2004, U.S. Secretary of State, Colin Powell, provided a letter to the Corps of Engineers which detailed his review of the project plans for the federal outlet and provided assurances that the project does not violate the Boundary Waters Treaty Act of 1909 as currently designed since the plans assume no biota of concern exists in Devils Lake that are not already present in the Red River system.

On July 30, 2004, Colonel Michael Pfenning replaced Colonel Robert Ball as the Commander and District Engineer of the St. Paul District Corps of Engineers.

**NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT STATUS
(SWC Project No. 416-07)**

The State of North Dakota is pursuing an 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.

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 \$7,500,000 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, MN, in the amount of \$766,614. The contract was for 3.2 miles of 300 cubic feet per second (cfs) open channel. Park Construction commenced construction on October 21, 2003, and completed the contract work in the spring of 2004.

The state received the 402 Water Quality Discharge Permit from the North Dakota Department of Health on August 22, 2003. The Department received several requests to reconsider the permit, therefore, the comment period was extended until October 20, 2003. In letters to those individuals questioning the issuance of the permit, the Department stated that no new information had been provided. Therefore, the Department's original decision to issue the permit remains intact. Appeals to the discharge permit have been filed in District Court by The People to Save the Sheyenne and the Province of Manitoba, and by the Peterson Coulee Association. Both complaints seek the District Court to rescind the discharge permit, but neither complaint asked for an injunction to stop project construction. The initial hearing on the appeal to the discharge permit filed jointly by The People to Save the Sheyenne and the Province of Manitoba is scheduled for August 23, 2004 in Valley City, ND.

At its meeting on December 5, 2003, the State Water Commission approved the funding necessary to bid and construct the final phases of the state's outlet project in the amount of an additional \$19,000,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

On March 11, 2004, the State Water Commission approved the awards of Devils Lake Emergency Outlet Contract 4, Final Canal Segments, in the amount of \$2,371,134, to Park Construction Company, Minneapolis, MN; and the Devils Lake Emergency Outlet Contract 5, Canal Structures, in the amount of \$5,041,000, to Industrial Builders, Inc., Fargo, ND.

At its meeting on April 16, 2004, the State Water Commission approved the awards of Devils Lake Emergency Outlet Contract 2A/2B, Round Lake and Josephine Pump stations, in the amount of \$5,879,700, to Excel Construction, Inc., Sheridan, WY; and the Devils Lake Emergency Outlet Contract 3, Round Lake and Josephine Pipelines, in the amount of \$3,682,120, to S. J. Louis Construction, Inc., Waite Park, MN.

The electric service agreement for the North Dakota Devils Lake Outlet Project was approved by the State Water Commission on June 28, 2004 with Northern Plains Electric Cooperative, Cando, ND. The agreement provides for the expenditure of \$2,400,000 for construction of the facilities necessary to provide electric power and energy to the Round Lake and Josephine pump stations.

On June 13, 2004, the State Water Commission received a notice of intent to file a legal challenge from The People to Save the Sheyenne, Peterson Coulee Outlet Association, National Wildlife Federation, Minnesota Conservation Federation, Minnesota Center for Environmental Advocacy, and the Government of the Province of Manitoba. The notice challenges that the State of North Dakota and the U.S. Army Corps of Engineers are in violation of the Clean Water Act Section 404 discharge permit for the North Dakota Devils Lake outlet project.

Todd Sando, Assistant State Engineer, provided a status report noting that four contractors are mobilized on-site and construction is continuing as the weather permits. Park Construction is nearing completion on the initial channel section near Long Lake as well as continuing to work on the lower canal portions of the project. Industrial Builders continues to make good progress on the concrete structures, the drop structures and Transition #2, and has started work on the terminal structure near the Sheyenne River. Horizontal Boring, a subcontractor for Industrial Builders, is installing the three siphons in the project. Excel Corporation, the contractor who will be installing the pumping stations, is in the process of completing the foundation work for the Round Lake standpipe.

The State Water Commission members discussed a proposal being pursued by the Nelson County Water Resource District and the Nelson County Commission for a Devils Lake east end outlet and the Tolna Coulee cleanout project.

Commissioner Swenson requested a status report on the Devils Lake Upper Basin Water Utilization Test project. The State Water Commission approved a 50 percent state cost participation in the amount of \$302,000 at its August 6, 2003 meeting. Because of the state's funding uncertainties, Commissioner Swenson expressed concerns relating to the potential for future project expenditures, and requested that project status reports be provided at future Commission meetings.

James Landenberger, Bartlett & West Engineers, explained the scenario for moving ahead with the Devils Lake Upper Basin Water Utilization Test project. He provided technical information relating to the local support for the project, North Dakota State University's involvement, landowner sign-ups, the use of existing irrigation sites, and the proposed test project schedule.

**MAPLE RIVER DAM PROJECT -
APPROVAL OF LAND RIGHTS
AND LEGAL FEES AS ELIGIBLE
ITEMS FOR STATE COST
SHARE PARTICIPATION
(SWC Project No. 1878)**

The Cass County Joint Water Resource District is constructing the Maple River Dam to reduce the flood stages and areas inundated within the Maple River, Sheyenne River, and Red River valley floodplain areas due to Maple River flows. The cost share proposal for con-

struction of the dam follows the cost share proposal that was approved in 1992 for the Maple River Dam study project for the preliminary work (including engineering, legal fees, environmental impact statement, soils investigation, mitigation plan, and archeological investigations) required to move the Maple River Dam to physical construction. On June 28, 2004, the State Water Commission approved partial funding in the amount of \$4,500,000 for the actual construction of the dam, contingent upon the availability of funds, issuance of the required construction and water use permits, and approval of the final engineering plans. An indication was also provided that the State Water Commission is obligated to consider the unfunded eligible balance from the funds appropriated to the Commission in the 2005-2007 biennium.

The proposed Maple River Dam will be located in the NE1/4 of Section 14, Tier 137 North, Range 54 West, in Cass County. The project is located in a rural area approximately 7 miles east and 4 miles south of the city of Enderlin. The watershed area for the Maple River Dam comprises 901.8 square miles, or 577,152 acres. The project consists of the construction of an earthen embankment, a principal spillway, and two emergency spillways. The embankment will be constructed to an elevation of 1063 feet msl with a 25-foot top width, 3:1 upstream side slopes protected with riprap, and 4:1 downstream side slopes.

Previously approved cost share actions by the State Water Commission for costs incurred and some of which were or will be reimbursed under the previous Maple River Dam Study project include: May 26, 1992 - \$500,000; December 8, 2000 - \$500,000; March 5, 2003 - \$500,000; and June 28, 2004 - \$4,500,000 (\$6,000,000 total approved state contribution). The total estimated cost for construction of the Maple River Dam is \$22,500,000. Of this amount, \$18,800,000 is considered to be eligible for conditional state cost participation as a rural flood control project at 50 percent of the eligible costs (\$9,400,000), less the previously approved amounts (\$6,000,000) for other costs and construction. The remaining unfunded balance of \$3,400,000 is considered eligible for state cost participation. The ineligible costs of \$3,700,000 are for the estimated administration expenses (\$750,000) and land rights (\$2,950,000).

Jeffrey Volk, Moore Engineering, West Fargo, ND, provided technical information relating to the project features and downstream benefits, projected schedule, and the proposed project funding. After many years of working with the Omaha District Corps of Engineers, the Cass County Joint

Water Resource District received a Section 404 permit for the project on May 17, 2004. The Commission staff is currently reviewing the construction and water use permits. Mr. Volk explained that the Section 404 permit has a three-year window for which construction must be completed. To meet this schedule, the Joint Board is planning to begin construction on the project in the fall of 2004, which would allow the project to be operational by the winter, 2005-2006, and construction completion anticipated in 2008.

Mr. Volk stated that although the State Water Commission previously approved legal fees for the project as eligible for state cost share assistance, concern was expressed whether administration expenses (\$750,000) and land rights (\$2,950,000) are included as eligible items in the motion passed by the State Water Commission at its June 28, 2004 meeting, which approved partial funding in the amount of \$4,500,000 for construction of the Maple River Dam. In discussion of the administrative expenses (\$750,000), Mr. Volk explained that this line item amount includes both administrative expenses (\$150,000) and legal fees (\$600,000). The Cass County Joint Water Resource Board requested the State Water Commission to consider administrative expenses (\$150,000) and land rights (\$2,950,000) as eligible items for state cost share assistance for the Maple River Dam project.

Secretary Frink explained that the State Water Commission has a long-standing policy in which legal, land, and administrative expenses are not eligible for state cost share assistance. Specific action would be required by the Commission to make these expenses eligible for state cost share. The Commission previously agreed in 1992 to make legal fees for the Maple River Dam study project eligible due to the escalated legal expense for obtaining a Section 404 permit.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission conditionally approve state cost participation of 50 percent of the total eligible Maple River Dam construction costs (\$22,500,000), of which \$22,350,000 is considered eligible in the amount of \$9,675,000 (\$11,175,000 less previously approved expenditures of \$1,500,000). Land rights and legal fees shall be considered eligible for state cost share participation. Administration expenses (\$150,000) shall be considered as ineligible costs. This motion is contingent upon the availability of funds, issuance of the required construction and water use permits, and approval of the final engineering plans.

By action of June 28, 2004, the State Water Commission conditionally approved the expenditure of \$4,500,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium for the construction of the Maple River Dam project. The

The action of August 16, 2004 amended the Commission's obligation to consider the unfunded eligible balance of \$5,175,000 (amended per action of August 16, 2004) for construction of the Maple River Dam project from the funds appropriated to the State Water Commission in the 2005-2007 biennium.

The total approved state cost share contribution for both the Maple River Dam study and the construction project is \$6,000,000.

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

Lt. Governor Dalrymple directed the Rural Flood Control Policy Committee (Commissioners Halcrow, Hillesland, Swenson, and Thompson) and others to revisit the State Water Commission's policy and guidelines as it relates to cost share arrangements for water retention structures.

CONSIDERATION OF FINAL DRAFT MINUTES OF JUNE 28, 2004 STATE WATER COMMISSION AUDIO CONFERENCE CALL MEETING - APPROVED

The final draft minutes of the June 28, 2004 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Hillesland, and unanimously carried, that the final draft minutes of the June 28, 2004 State Water Commission audio conference call meeting be approved as prepared.

APPROVAL TO TRANSFER FUNDS (\$147,801) FROM WALHALLA DRAIN NO. 2 AND LATERAL A, AND WALHALLA DRAIN NO. 3 RECONSTRUCTION PROJECTS TO BUFFALO CREEK CHANNEL ENHANCED DRAINAGE CAPACITY PROJECT; AND APPROVAL OF ADDITIONAL COST SHARE PARTICIPATION (\$30,674) (SWC Projects Nos. 1401, 1904 & 1905)

On June 9, 1999, the State Water Commission approved \$95,311 for the reconstruction of Walhalla Drain No. 2 and Lateral A, and \$52,490 for Walhalla Township Drain No. 3. The funds (\$147,801) have been reauthorized for the projects through the 2003-2005 biennium. An agreement was executed for cost share with the Pembina and Cavalier County Water Resource Districts.

The Cavalier and Pembina County Water Resource Districts have requested that \$147,801 approved for the Walhalla Drains be transferred to the Buffalo Creek Channel Enhanced Drainage Capacity, which

is a project between the Government of Manitoba and the State of North Dakota, and to dissolve the two drain projects. It is the intent of the Water Resource Districts to complete the construction of the Walhalla Drain Nos. 2 and 3 without state cost share assistance, and that other sources of funding will be utilized.

The responsibilities of Manitoba specified in the Memorandum of Agreement (MOA) consist of upgrading approximately 16 miles of channels and several crossings in Manitoba, and the installation of culverts at Crossing Nos. 2 and 3 resulting in the enhanced drainage capacity benefit attributable to North Dakota (calculated at \$357,000, or 100 percent). On March 6, 2001, the State Water Commission authorized \$178,525 (25 percent) for payment to Manitoba for the pro-rated share of the enhanced drainage capacity. The funds have been reauthorized through the 2003-2005 biennium.

The MOA includes several requirements of the State of North Dakota and divides these requirements between the State Water Commission and Cavalier and Pembina counties. North Dakota is to pay Manitoba \$357,000 in United States funds, of which currently \$178,525 is the Commission's obligation, and \$178,475 is the obligation of Cavalier and Pembina counties. The request to transfer the drain funds (\$147,801) to the counties' obligation results in a cost share request of an additional \$30,674. As a result of the transference of the drain funds to the Buffalo Creek Channel Enhanced Drainage Capacity project and additional cost share approval, the State Water Commission will ultimately pay 100 percent of the enhanced drainage capacity of the Buffalo Creek channel in Manitoba.

A request for payment was received from the Government of Manitoba on February 17, 2004 indicating that Manitoba had completed the channel work and Crossing No. 3 on the South Buffalo Creek drainage system. In accordance with the MOA, North Dakota agrees to remit a pro-rated share of the enhanced drainage capacity according to the percentage of work completed. Commission and District staff visited the project during construction noting that the crossing culverts were adequately installed. Therefore, Manitoba received a payment from the State Water Commission in the amount of \$89,250, and Cavalier and Pembina counties remitted \$89,250, totalling \$178,500.

It was the recommendation of the State Engineer that the State Water Commission approve the request from the Cavalier and Pembina County Water Resource Districts to transfer the funds in the amount of \$147,801 from the Walhalla Drain No. 2 and Lateral A, and Walhalla Drain No. 3 reconstruction projects to the Buffalo Creek Channel Enhanced Drainage Capacity project (MOA); and approve additional state cost share participation, not to exceed \$30,674 to meet North Dakota's total obligation stipulated in the MOA, from the funds

appropriated to the State Water Commission in the 2003-2005 biennium, contingent upon the availability of funds. The Walhalla Drain No. 2 and Lateral A, and the Walhalla Drain No. 3 reconstruction projects will be discontinued for State Water Commission purposes.

Upon additional cost share approval of \$30,674 and the transfer of funds from the drain projects to the Buffalo Creek channel project, \$357,000 will have been approved. Less the previous payment of \$89,250 to Manitoba, the balance of obligated funds would be \$267,750. Of the \$267,750, Cavalier and Pembina counties will be reimbursed for their previous payment to Manitoba (\$89,250), and subject to completion of Crossing No. 2 and the remaining channel work, \$178,500 will be sent directly to Manitoba. Reimbursement to the counties will be facilitated under a separate agreement between the State Water Commission and the counties.

It was moved by Commissioner Halcrow and seconded by Commissioner Thompson that the State Water Commission approve the request from the Cavalier and Pembina County Water Resource Districts to transfer the approved funds, in the amount of \$147,801, from the Walhalla Drain No. 2 and Lateral A, and Walhalla Drain No. 3 reconstruction projects to the Buffalo Creek Channel Enhanced Drainage Capacity project (MOA); and, approve additional state cost share participation, not to exceed \$30,674 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to meet North Dakota's total obligation stipulated in the MOA. This motion is contingent upon the availability of funds. The Walhalla Drain No. 2 and Lateral A, and the Walhalla Drain No. 3 reconstruction projects shall be discontinued for State Water Commission purposes.

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

**APPROVAL OF ADDITIONAL
NON-FEDERAL FUNDS IN
2003-2005 BIENIUIM FOR CITY
OF WAHPETON FLOOD CONTROL
PROJECT, UNDER AUTHORITY
OF 1999 SENATE BILL 2188
(SWC Project No. 1907-01)**

The city of Wahpeton, North Dakota, is located in Richland county on the west bank of the Red River of the North and Bois de Sioux River at the confluence of the Otter Tail River. This community has a long history of significant flooding from the Red River of the North and the Otter Tail River. The most significant damage

occurred in April, 1997 when the temporary levee systems at Breckenridge failed and caused catastrophic flood damages. The damages resulting from the 1997 flood

adversely affected Wahpeton dramatically. After the 1997 flood, city officials requested the Corps of Engineers to conduct flood control studies, with the hope that such studies would lead to a federal flood protection project. In response to the request, the Corps completed a federal interest study in 1998, which led to a more detailed feasibility study, documented in a report by the Corps, dated September, 2000.

Secretary Frink explained that as a result of the 1997 flood, the Wahpeton Flood Control project was included in Senate Bill 2188, passed in the 1999 Legislative session, which provided up to 50 percent of state funds for the non-federal share of the costs to construct a flood control or reduction project. Senate Bill 2188 provided up to \$3,500,000 of state funds for the Wahpeton flood control project. According to the Corps's feasibility study and environmental assessment, the plan identified for Wahpeton is a multi-featured project that would provide reliable permanent flood control protection for all areas of flowage easements to maintain a flood flow breakout channel between the Bois de Sioux and the Wild Rice Rivers.

Previously approved cost share actions by the State Water Commission for costs incurred and reimbursed for the Wahpeton Flood Control project include: December 8, 2000 - \$601,940.50; and October 23, 2001 - \$1,307,500.

The city of Wahpeton estimates costs of \$500,000 for the 2003-2005 biennium, of which 50 percent would be eligible for funding from the State Water Commission under the authority of 1999 Senate Bill 2188. The request before the State Water Commission is to consider 50 percent of the non-federal costs in the amount of \$250,000.

It was the recommendation of the State Engineer that the State Water Commission approve 50 percent of the non-federal costs, in the amount of \$250,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Wahpeton flood Control project, contingent upon the availability of funds. Affirmative action by the State Water Commission will increase the total state expenditure for the Wahpeton flood Control project to \$2,159,440.50.

It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission approve 50 percent of the non-federal costs, in the amount of an additional \$250,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Wahpeton Flood Control project. This motion is contingent upon the availability of funds.

This action increases the total state expenditure for the Wahpeton Flood Control project to \$2,159,440.50, under the authority of 1999 Senate Bill 2188.

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

***CONSIDERATION/DEFERRAL
OF COST SHARE REQUESTS
(SWC Project Nos. 1403, 847,
1688, and 1077)***

The following requests were presented for the State Water Commission's consideration for state cost participation. Because of budget constraints resulting from the uncertainty of cost share funding sources, it was the recommendation of the State Engineer that the following projects be deferred at this time pending resolution of the biennium funding:

The following requests were presented for the State Water Commission's consideration for state cost participation. Because of budget constraints resulting from the uncertainty of cost share

North Dakota Water Resources Research Institute

The North Dakota Water Resources Research Institute (WRRI) requested grant funds from the State Water Commission to assure the continuation of their 2004-2005 academic year program. The WRRI program requires a match of \$2.00 non-federal for each \$1.00 federal. Currently, the required non-federal match (in-kind) is provided as faculty and staff time, graduate student tuition waivers, work on other non-federal funded projects, and support of local utilities and industry. Anticipating the receipt of an U.S. Geological Survey 104B grant in the amount of approximately \$80,000 for the 2004-2005 academic year, the WRRI has requested 15 percent of the annual federal allocation with a ceiling of \$19,500. The intent of this request is to replace a portion of NDSU's in-kind services with the proposed cost share amount in order to provide more cash for fellowships. Although the eligible cost share amount is less than \$20,000, the request was presented for the Commission's consideration and concurrence with the State Engineer's recommendation to defer action. It is anticipated this will be an annual request to the State Water Commission.

Lower Swan Creek Channel Reconstruction

The Maple River Water Resource District requested cost share assistance for the reconstruction of the Lower Swan Creek channel. The project consists of reconstructing the 60-year old NRCS constructed ditch (Swan Creek) from Casselton to U.S. Interstate 94. The reconstruction will restore Swan Creek's hydraulic capacity and bank stability. The channel improvement will consist of reconstructing the channel by widening the bottom and flattening the side slopes. The project is estimated to cost \$571,000, of which \$531,000 is considered eligible for a 35 percent state cost participation in the amount of \$185,850.

Enterprise Legal Drain No. 1 Improvement Reconstruction

The Nelson County Water Resource District requested cost share assistance to redevelop and enhance the pump facility. The work includes moving and setting new pump bottoms and hoses, the installation of electrical features, enlargement of the inlet and outlet areas, and modification of riprap. The project continues to protect several township roads, farmsteads, railroad tracks, and Nelson County Road No. 1. Enterprise Legal Drain No. 1 has a watershed of approximately 12 square miles and extends south from the Walsh-Nelson county line to the southern end of Enterprise township. As a rural flood control project, with a sediment analysis, the proposal is eligible for \$8,750, which is equal to 35 percent of the preliminary estimated cost of \$25,000. Although the eligible cost share amount is less than \$20,000, the request was presented for the Commission's consideration and concurrence with the State Engineer's recommendation to defer action.

Swan Creek Tributary Channel Improvement Reconstruction

The Maple River Water Resource District has requested additional funding for the Swan Creek Tributary Channel Improvement project, which was approved by the State Water Commission in 2002. The project consists of constructing a short diversion channel to redirect the runoff around the city of Casselton. In review of the request, the Commission staff determined the request for additional funding is not applicable to the original project as the proposal is not for added costs incurred in constructing the diversion channel, but rather for work outside of the identified diversion channel area.

Therefore, the request for additional state cost share participation is considered a new project, and the submitted cost share proposal is insufficient in data and the required documentation including plans, cost estimate, sediment analysis, and permits. It is estimated the project will cost \$44,867, of which \$32,908 is considered eligible for a 30 percent state cost share participation in the amount of \$9,872. Although the eligible cost share amount is less than \$20,000, the request was presented for the Commission's consideration and concurrence with the State Engineer's recommendation to defer action.

Cass County Drain No. 24 Permanent Erosion Control

The North Cass County Water Resource District has requested cost share participation for a project to riprap specific areas in sections 15, 16, 17 and 18 in Wisner township for permanent erosion control measures. The project

is estimated to cost \$12,590, all of which is considered eligible for a 35 percent cost share in the amount of \$4,407. Although the eligible cost share amount is less than \$20,000, the request was presented for the Commission's consideration and concurrence with the State Engineer's recommendation to defer action.

The State Water Commission members discussed at length financing the costs of the statewide water development program during the 2003-2005 biennium. The Commission's authority to issue bonds under North Dakota Century Code chapter 61-02.1, which was created by 1999 Senate Bill 2188 and House Bill 1495 for water management and development, was also discussed.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission concur with the State Engineer's recommendation that the cost share requests presented at this meeting be deferred pending resolution of the current funding uncertainties.

In discussion of the motion, and the potential impacts that could result in delaying state cost share assistance, the project sponsors/representatives were recognized.

Jeffrey Volk, Moore Engineering, West Fargo, ND, provided technical information relating to the Lower Swan Creek Channel Reconstruction project. Bids were recently opened for the project and came in approximately \$100,000 below the original estimate. The project engineer's revised estimate is \$440,000, of which a 35 percent state cost share would be approximately \$154,000. Mr. Volk expressed concerns that deferring the state cost share assistance at this time, could ultimately have an impact on the contract award.

Mr. Volk provided technical information on the Swan Creek Tributary Channel Improvements project and the request for additional cost share. The State Water Commission approved cost share assistance in 2002, and the project is currently under construction.

Wei Lin, North Dakota Water Resource Research Institute (WRRI), Fargo, ND, provided technical information relative to the WRRI cost share request. Mr. Lin expressed appreciation to the State Water Commission for its past support, and stated that a deference of the request until December, 2004, would not be an issue.

A substitute amendment to the original motion was offered by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve a cost share of 35 percent of the eligible items, not to exceed an additional \$154,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Lower Swan Creek Channel Reconstruction project. This substitute amendment is contingent upon the availability of funds.

Lt. Governor Dalrymple called the question on the substitute amendment to the original motion, and asked for a roll call vote:

Commissioners Halcrow, Hillesland, Hofstad, and Thompson voted aye. Commissioners Hanson, Johnson, Olin, and Swenson voted nay. Lt. Governor Dalrymple abstained from voting due to a conflict of interest. The recorded vote was 4 ayes; 4 nays; 1 abstention. Lt. Governor Dalrymple announced the substitute amendment to the original motion failed.

Lt. Governor Dalrymple called the question on the original motion:

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

**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 is the sole preparer of the Needs and Options report, while the State of North Dakota and the Bureau are jointly preparing the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

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

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 efforts of the Red River Valley Water Supply study, which is attached hereto as **APPENDIX "J"**. Mr. Koland responded to questions relating to the Garrison Diversion Unit, and the MR&I Water Supply program. The Commission members requested they be provided with the Garrison Diversion Conservancy District's annual report.

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

Todd Sando reported that the drought conditions continue to persist in the Missouri River basin. As of August 1, 2004, system storage in the six mainstem reservoirs was 37.3 million acre-feet (MAF), and 6.7 MAF less than last year. System storage reached a record low of 38.0 MAF in mid-February, 2004. Lake Sakakawea was at an elevation of 1815.8 feet msl, 8.8 feet lower than a year ago.

The Corps of Engineers is predicting runoff above Sioux City for 2004 to be 16.2 MAF, 64 percent of normal. Under the August 1 most likely runoff simulation, the Corps is estimating that Lake Sakakawea will fall to an elevation of 1807.1 feet msl by the end of February, 2005. Under the August 1 lower decile simulation, the Corps is estimating that Lake Sakakawea will fall to an elevation of 1804.8 feet msl by the end of February, 2005.

The elevation of Lake Oahe is currently at 1573.5 feet msl, 12.0 feet lower than last year.

**MOUNT CARMEL DAM
REHABILITATION PROJECT
(CAVALIER COUNTY)
(SWC Project No. 1346)**

A contract was executed on January 9, 2004 with GEI Consultants, Inc. to investigate the causes of the March, 2003, partial failure of Mount Carmel Dam in Cavalier county, and to develop a design to repair the structure. The estimated construction and engineering inspection costs of the repair are \$3,000,000. The State Water Commission approved funding on April 22, 2003 in the amount of \$320,000 for the initial costs associated with the emergency repairs and consulting engineering services; on February 11, 2004 in the amount of \$30,000 for the final project design costs; and on March 11, 2004 in the amount of \$2,500,000 (with an additional \$400,000 of contingency funding only if no other funding is obtained) for the costs associated with the replacement of the spillway and general repairs to Mount Carmel Dam.

The plans and specifications for the project involves the demolition of the existing concrete chute spillway, construction of a new principal spillway, and the installation of a relief well system at the dam.

The project bid opening was held on May 25, 2004, with construction commencing in June, 2004. The project will be substantially complete on November 1, 2004, with final acceptance on July 1, 2005.

**STATE WATER COMMISSION
MAINTENANCE BUILDING UPDATE
(SWC File SHOP)**

In accordance with the State Water Commission budget for the 2003-2005 biennium, House Bill 1023 authorized the Commission to sell its property at the corner of 26th Street and Broadway Avenue and to use the proceeds to build a new maintenance building. The authorization directed that the cost of the land and construction of the building shall not exceed \$977,100.

The State of North Dakota has deeded approximately 4.3 acres north of the North Dakota Penitentiary and east of the North Dakota Department of Health and Consolidated Laboratories in southeast Bismarck to the State Water Commission for the purpose of constructing a new maintenance building. In March, 2004, the Commission entered into a contract with the architectural firm of AWBW, Bismarck, to develop plans and specifications for a new building.

The North Dakota Game and Fish Department is constructing a maintenance facility on land immediately to the east of the Commission's property. The state is currently constructing a new mortuary on the Health Department's property. On June 28, 2004, the State Water Commission approved an expenditure of \$100,000 to cost share in the development of the site and utilities with these agencies.

On June 6, 2004, bids were opened for developing the utilities at the new location, and on June 23, 2004, bids were opened for the construction of a new maintenance building. The project was bid using a base bid for the main building and site work. In addition to the base bid, the bidders supplied costs for additional features to be selected by the Commission.

The apparent low general, mechanical and electrical construction bids, the alternate features required for a functional maintenance building, and the State Water Commission's cost share for development of the site and utilities exceeded the funding limit of \$977,100 authorized by the Legislature under House Bill 1023. At its meeting on June 28, 2004, land sale issues involving the current property owned by the State Water Commission and options for a functional new maintenance building were discussed; and, the State Engineer and the Commission staff were directed to re-evaluate these issues prior to moving forward.

**2004-2007 NORTH DAKOTA
STATE WATER COMMISSION AND
OFFICE OF THE STATE ENGINEER
STRATEGIC PLAN
(SWC Project No. 322)**

The draft 2004-2007 North Dakota State Water Commission and Office of the State Engineer Strategic Plan was presented for the Commission's review and comments. The final version of the Strategic Plan is anticipated in November, 2004.

Secretary Frink explained that the primary purpose of the 2004-2007 plan is to clearly document agency direction and expectations that have been set through the strategic planning timeframe. As part of the planning process, the agency's goals have been re-evaluated to ensure that the standards expected by the agency's constituents are being achieved. Additionally, objectives have been laid out for many key projects and programs to effectively meet goals. Tasks and actions have been defined that the agency's divisions and management need to take to achieve desired outcomes. The Strategic Plan will better allow the agency to document the progress it is making in managing North Dakota's water resources.

It was suggested that the Red River Valley Water Supply study be included in the Strategic Plan's projects and programs, and that each project and program be identified with the number of agency full-time employees (FTEs) assigned to carry out the tasks.

**APPROVAL OF FUNDING FROM
THE WATER DEVELOPMENT AND
RESEARCH FUND FOR ALL SEASONS
WATER USERS DISTRICT SYSTEM 5
(PIERCE COUNTY) - FUTURE
CAPACITY FOR RURAL USERS
(SWC Project No. 237-03)**

A request was presented for the State Water Commission's consideration for the expenditure of \$630,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the All Seasons Water Users District System 5 (Pierce County) to include service to an additional 60 rural users.

The new rural water system proposes to serve approximately 408 rural water users, the city of Willow City, and capacity for water service to Leeds. The city of Rugby intends to supply System 5 with a bulk water supply. Construction is anticipated to be completed this summer, 2004. The estimated project cost is \$8,651,000. The project is approved for a federal MR&I grant of up to \$6,055,700, not to exceed 70 percent of the eligible project costs. The estimated cost to include the additional rural users is \$900,000. All Seasons Water Users District requested a 70 percent grant to cover the non-federal share, not to exceed \$630,000.

It was the recommendation of the State Engineer that the State Water Commission approve a 70 percent grant, not to exceed \$630,000 from the Water Development and Research Fund, for the All Seasons Water Users District System 5 (Pierce County) project to include the capacity for service to an additional 60 rural users. Affirmative action is contingent upon the availability of funds, subject to future revisions, and that the \$630,000 (70 percent) be repaid from future federal MR&I funding. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's executive committee will consider the request at its September 8, 2004 meeting.

It was moved by Commissioner Hofstad and seconded by Commissioner Hanson that the State Water Commission approve a 70 percent grant, not to exceed \$630,000 from the Water Development and Research Fund, for the All Seasons Water Users District System 5 project (Pierce County) to include capacity for service to 60 additional rural users. This motion is contingent upon the availability of funds, subject to future revisions, and that the \$630,000 (70 percent) be repaid from future federal MR&I funding.

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

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the meeting at 5:30 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

