

**MINUTES**

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

**March 10, 2005**

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on March 10, 2005. Governor-Chairman, John Hoeven, called the meeting to order at 1:30 PM, 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  
Elmer Hillesland, Member from Grand Forks  
Curtis Hofstad, Member from Devils Lake  
Jack Olin, Member from Dickinson  
Robert Thompson, Member from Page  
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

**STATE WATER COMMISSION MEMBERS ABSENT:**

Charles Halcrow, Member from Drayton  
Larry Hanson, Member from Williston  
Harley Swenson, Member from 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**

the agenda approved as presented.

There being no additional items for the agenda, Governor Hoeven announced

**CONSIDERATION OF FINAL DRAFT  
MINUTES OF DECEMBER 10, 2004  
STATE WATER COMMISSION MEETING -  
APPROVED**

The final draft minutes of the December 10, 2004 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 December 10, 2004 State Water Commission meeting be approved as prepared.*

**CONSIDERATION OF FINAL DRAFT  
MINUTES OF JANUARY 28, 2005  
STATE WATER COMMISSION AUDIO  
CONFERENCE CALL MEETING -  
APPROVED**

The final draft minutes of the January 28, 2005 State Water Commission audio conference call 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 January 28, 2005 State Water Commission audio conference call meeting be approved as prepared.*

**STATE WATER COMMISSION  
ALLOCATED PROGRAM  
EXPENDITURES -  
2003-2005 BIENNIUM**

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 January 31, 2005, reflecting 79 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 \$94,167,527, leaving a balance of \$5,015,830 available to commit to projects.

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

The oil extraction tax deposits into the Resources Trust Fund total \$9,456,893, and are currently \$1,772,771, or 23.1 percent ahead of the budgeted revenues. The increased oil extraction

collections are offset by reduced interest earnings that are currently \$665,873 below the budgeted amount.

Deposits into the Water Development Trust Fund total \$10,457,382, and are currently \$119,952 ahead of budgeted revenues.

As of March 1, 2005, the State Water Commission has drawn \$12 million against the \$25 million line of credit from the Bank of North Dakota.

**STATE WATER COMMISSION  
BUDGET - 2005-2007 BIENNIUM**

The State Water Commission submitted its 2005-2007 biennium budget to the Office of Management and Budget on August 15, 2004. On December 8, 2004, Governor Hoeven released the executive budget recommendations for the 2005-2007 biennium. The executive recommendation for the State Water Commission totals \$112,787,834:

|                                     |                      |
|-------------------------------------|----------------------|
| Administrative and Support Services | \$ 2,176,060         |
| Water and Atmospheric Resources     | <u>\$110,611,774</u> |
| <b>Total</b>                        | <b>\$112,787,834</b> |
| <br>                                |                      |
| General Funds                       | \$ 2,063,357         |
| Federal Funds                       | \$ 17,680,628        |
| Other Funds                         | <u>\$ 93,043,849</u> |
| <b>Total</b>                        | <b>\$112,787,834</b> |

In the 2003-2005 biennium, \$9.4 million of the agency's operations were funded with general fund dollars, with an offsetting \$10.1 million transfer from the Water Development Trust Fund to the general fund. General funds totaling \$2,063,357 and federal funds totaling \$17,680,628 were included in the executive recommendation.

The Resources Trust Fund is projected to bring in \$15,384,487 in new revenue in the 2005-2007 biennium, which is based on projections provided by the Office of Management and Budget. The Water Development Trust Fund is projected to bring in \$20,674,860 in new revenue in the 2005-2007 biennium.

These amounts, in addition to the beginning balances in the funds and cost shares from project sponsors, will provide the agency's funding for the 2005-2007 biennium. To arrive at the estimated beginning trust fund balances, it was assumed that the \$60 million of bonding authority provided in the agency's 2003-2005 appropriation bill would be issued in the 2003-2005 biennium.

House Bill 1021 was heard before the Government Performance and Improvement Division of the House Appropriations Committee on January 24, 2005. The House approved budget for the State Water Commission totals \$112,748,356:

|                                     |                      |
|-------------------------------------|----------------------|
| Administrative and Support Services | \$ 2,170,511         |
| Water and Atmospheric Resources     | <u>\$110,577,845</u> |
| <b>Total</b>                        | <b>\$112,748,356</b> |

|               |                      |
|---------------|----------------------|
| General Funds | \$ 9,819,473         |
| Federal Funds | \$ 17,680,628        |
| Other Funds   | <u>\$ 85,248,255</u> |
| <b>Total</b>  | <b>\$112,748,356</b> |

The House approved budget includes two new full-time employees for personnel to operate the Devils Lake outlet and contains \$2.1 million for the new employees and estimated operation costs of the outlet. Funding for the outlet staff and operations will come from the Resources Trust Fund.

The Governor's budget recommendation included adequate funding to keep the major water projects moving forward and contained \$2.1 million of general fund dollars. The House approved budget reimburses the \$2.1 million from the general fund with trust fund dollars making it necessary to reduce the amount available for water projects.

Engrossed House Bill 1021 was heard before the Senate Appropriations Committee on March 8, 2005.

***ADOPTION OF 2005 SERIES  
A BOND RESOLUTION***

The North Dakota Fifty-sixth Legislative Assembly, through the passage of Senate Bill 2188, established the Water Development Trust Fund and provided authority for the State Water Commission to issue up to \$84.8 million in appropriation bonds under the provisions of Senate Bill 2188. The Legislature's intent was to partially fund flood control projects at Grand Forks, Devils Lake, Wahpeton, and Grafton, and to continue funding for the Southwest Pipeline Project. In addition, 1999 House Bill 1475 devoted 45 percent of the state's tobacco settlement to the Water Development Trust Fund.

On March 8, 2000, the State Water Commission passed a motion approving the execution of documents required to satisfy the first bond sale related to the North Dakota Water Development Trust Fund Bond Program. Bonds were issued in the amount of \$32,095,000 on March 23, 2000 to provide funds needed during the 1999-2001 biennium for statewide water projects.

In January, 2005, RBC Dain Rauscher, the State Water Commission's underwriter, recommended that the State Water Commission consider an advance refunding of a portion of the outstanding \$32,095,000 Water Development Trust Fund, Water Development and Management Program Bonds,

2000 Series A. The outstanding callable bonds total \$20,340,000, and represents bonds maturing on August 1, 2011 through 2020. Those bonds are callable on August 1, 2010 at a price of par. An independent analysis of the feasibility of a refunding of the 2000 bonds was performed by Public Financial Management, Inc. (PFM), the State Water Commission's financial manager, estimating that approximately \$780,000 could be saved over the life of the bonds. On January 28, 2005, the State Water Commission passed a motion to advance refunding of \$20,340,000 of the outstanding \$32,095,000 Water Development Trust Fund, Water Development and Management Program Bonds, 2000 Series A.

Secretary Frink explained that the 2005 Series A bonds, in the amount not exceeding \$23,000,000, will provide money to advance refunding a portion of the outstanding 2000 Series A bonds and to pay costs incurred in connection with the issuance of the 2005 Series A bonds. It was the recommendation of the State Engineer that the State Water Commission adopt the 2005 Series A Bond Resolution for the Issuance of North Dakota State Water Commission Water Development Trust Fund, Water Development and Management Program Refunding Bonds, 2005 Series A. He said if the bond sale is approved, the bonds will be issued on March 31, 2005.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission adopt the 2005 Series A Bond Resolution for the Issuance of North Dakota State Water Commission Water Development Trust Fund, Water Development and Management Program Refunding Bonds, 2005 Series A. (Executed 2005 Series A Bond Resolution is attached hereto as APPENDIX "C")***

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

**CROWN BUTTE DAM, MORTON COUNTY - APPROVAL OF STATE COST PARTICIPATION (\$41,000) FOR REPAIRS AND MODIFICATIONS (SWC Project No. 870)**

Crown Butte Dam is located approximately 10 miles west of Mandan on U.S. Interstate 94 serving as the embankment for the dam. In December, 2004, staffs of the State Water Commission and the North Dakota Department of

Transportation inspected the dam and determined several items that need to be addressed including the differential settlement of the spillway pipe causing material to seep through the joints, sinkholes on the upstream and downstream sides of the dam, a lack of a working low-level valve, and non-functioning toe drains. It was agreed that the

best method to make the repairs was to include the work into the reconstruction of U.S. Interstate 94, which is scheduled for the 2005 construction season at this location.

On February 11, 2005, bids were opened for the reconstruction of the west bound lanes of U.S. Interstate 94. The apparent low bidder was Northern Improvement Company, Bismarck, ND. The estimated cost to construct a new concrete drop inlet and replace 28 feet of spillway pipe is \$161,877.58. The contractor will install a vent pipe and a portion of a new low-level drawdown system at the dam. The Commission's construction crew will finish the installation of the low-level drawdown, grout shut the old four-inch low-level drawdown, install a sand collar near the downstream end of the spillway pipe, and improve the drainage of the toe drain at an estimated cost of \$17,000 (in-kind services). The Morton County Park Board, the owner of the dam, will supply the materials for the vent pipe, the low-level drawdown, and the downstream work at an estimated cost of \$11,000.

The estimated total cost for the repairs and modifications at Crown Butte Dam is \$190,000, of which \$68,000 will be provided by the North Dakota Department of Transportation. The non-federal share of the project (\$122,000) will be provided by the State Water Commission, the North Dakota Game and Fish Department, and the Morton County Park Board with each entity providing a one-third cost share (\$41,000). The request before the State Water Commission is for one-third of the non-federal share of the eligible items in the amount not to exceed \$41,000 (\$17,000 of in-kind services, and \$24,000 from the funds appropriated to the Commission in the 2003-2005 biennium).

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation of one-third of the non-federal eligible costs, not to exceed \$41,000 (\$17,000 of in-kind services, and \$24,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium) for the repairs and modifications to Crown Butte Dam in Morton county.

***It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve state cost participation of one-third of the non-federal eligible costs, not to exceed \$41,000, of which \$24,000 shall come from the funds appropriated to the State Water Commission in the 2003-2005 biennium, and \$17,000 shall be for in-kind services, for the repairs and modifications to Crown Butte Dam in Morton county. This motion is contingent upon the availability of funds.***

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

**STEELE-TRAILL DRAIN NO. 2  
CONSTRUCTION PROJECT -  
APPROVAL OF STATE COST  
PARTICIPATION (\$250,000)  
(SWC Project No. 1926)**

A request from the Steele County Water Resource District was presented for the State Water Commission's consideration for construction of Steele-Trail Drain No. 2. This is a rural flood control project of which the entire drain will exist within

Steele county. The drainage area and the assessment district extends into Traill county. Work has been completed in the past by local farmer groups in the unnamed natural waterway, which resulted in poor drainage and non-standard channel configurations.

The proposed work, located in Sections 24, 25, and 36, Township 146 North, Range 54 West, and in Sections 1, 12, 13, 24, 25, and 36, Township 145 North, Range 54 West, will be within and adjacent to an unnamed, natural waterway creating a drain 59,000 feet in length. Approximately 175,000 cubic yards of material will be excavated to construct the main channel and three small laterals, which will be constructed to a bottom width of 14 feet, 6:1 side slopes, and a depth of 3 feet. The project includes road crossing work, culvert installation, and a wetland mitigation plan. The proposed work located near the confluence with the south branch of the Goose River involves the installation of a low overfall grade stabilization under the roadway and create a grass waterway between the structure and the south branch of the Goose River to maintain the design gradient level.

The project engineer's cost estimate is \$1,175,000, of which \$1,005,000 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$351,750). Under the current State Water Commission guidelines, rural flood control projects are limited to a \$250,000 cost share approval per biennium. The request before the State Water Commission is for state cost participation in the amount of \$250,000. The unfunded balance of \$101,750 may be considered by the State Water Commission for state cost participation in future bienniums.

The preliminary engineering is complete and all applicable permit applications, including a 404 permit, are being processed. A positive assessment vote has been recorded. 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.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 35 percent of the eligible costs, not to exceed \$250,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Steele-Trail Drain No. 2 construction project.

***It was moved by Commissioner Hillesland and seconded by Commissioner Olin that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed \$250,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Steele-Trail Drain No. 2 construction project. This motion is contingent upon the availability of funds, satisfaction of all permit requirements, and approval of the project's final design.***

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

**SWAN CREEK TRIBUTARY  
CHANNEL IMPROVEMENTS,  
CASS COUNTY - APPROVAL  
OF ADDITIONAL STATE COST  
PARTICIPATION (\$19,600)  
(SWC Project No. 847)**

On December 6, 2002, the State Water Commission conditionally approved the Maple River Water Resource District's request for state cost participation in the Swan Creek tributary channel improvements project. The project rerouted and eliminated approximately one and one-

half miles of a tributary to Swan Creek by means of constructing a short diversion channel. The State Engineer approved Drain Permit No. 3001 on October 3, 2003, and a positive assessment district vote funded the project. The estimated total cost of the project was \$240,000, of which \$167,722 was considered eligible as a rural flood control project at a 35 percent cost share not to exceed \$58,703 in state funds.

The tributary reach to Swan Creek drains property from west of the city of Casselton, NDSU farm property, and adjacent to the Casselton industrial park. The capacity of this tributary was inadequate in high runoff events and caused overland flooding in the industrial park area south of Casselton. The project eliminated the overland flooding problem. A mile long diversion channel, running from east to west, was constructed along the township road/south line of Section 34, Township 140 North, Range 52 West, Casselton Township, preventing runoff from entering the tributary reach and redirecting the runoff to the diversion around Casselton that is a part of Swan Creek. Two bridges allowing runoff to flow into the tributary reach were removed. The channel was cut to a 0.080 percent slope with a 10-foot bottom width and 4:1 side slopes on the berm and the road. Pipe was installed along the diversion channel and at the Red River Valley and Western Railroad crossing facilitating the outlet from the diversion channel into the existing diversion around Casselton.

The project engineer's revised estimated project cost is \$296,000, of which \$223,721 is considered eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$78,303). The project is approximately 95 percent complete, and the overrun on costs resulted primarily from utility relocations. A request from the Maple River Water Resource District was presented for the State Water Commission's consideration for additional state cost participation of \$19,600 for the Swan Creek tributary channel improvements project.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 35 percent of the eligible costs, not to exceed an additional \$19,600 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Swan Creek tributary channel improvements project. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$78,303.

***It was moved by Commissioner Thompson and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation in the Swan Creek tributary channel improvements project at 35 percent of the eligible costs, not to exceed an additional \$19,600 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.***

***This action increases the total State Water Commission cost share contribution to \$78,303.***

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

**CITY OF FARGO SOUTHSIDE  
FLOOD CONTROL PROJECT  
PRELIMINARY ENGINEERING  
DEVELOPMENT - APPROVAL  
OF STATE COST PARTICIPATION  
(\$500,000)  
(SWC Project No. 1928)**

A request from the city of Fargo was presented for the State Water Commission's consideration for state cost participation for the project development and permitting activities associated with the Southside Flood Control project to protect existing homes and businesses in south Fargo from overland flooding from the Sheyenne and Wild Rice Rivers which occurred during the 1997 spring floods, and to limit the potential expansion of the 100-year floodplain across existing development and potential growth areas.

Following the 1997 flood, the city of Fargo asked the Southeast Cass Water Resource District to participate in a study to evaluate potential options to protect south Fargo from overland flooding. Concurrent with the city's request, Cass county was to study rural flooding problems on a broader scale, and retained the services of Moore Engineering to develop emergency flood protection plans for 1997 flooded areas and potential permanent flood protection improvements for these areas. Incorporated into the Cass county study was the overland flooding problem in south Fargo, which identified potential options and two proposed alternatives to accomplish this protection: 1) 70th Avenue South outlet, which would allow overland flows to be directed to the Red River via a new diversion channel at 70th Avenue south; and 2) Wild Rice River outlet, which would prevent floodwaters from breaking out of the Wild Rice River by construction of a dike along the north edge of the river east of the Drain No. 47 outlet. The study included the evaluation of two potential options for flood protection for segments of the area east of Highway 81 including a ring dike around the city of Briarwood, and a Red River dike from 76th to 88th Avenue south.

The total estimated cost for the 70th Avenue South Flood Control project was \$22 million, of which \$9.5 million was obligated from Hazard Mitigation Grant Program (HMGP) funds. The 2001 North Dakota Legislature, House Bill 1021, appropriated \$5.5 million to provide a 50 percent state cost participation in the non-federal project costs. Of this amount, the legislature designated \$500,000 for design and permitting activities, and the remaining \$5.0 million for construction after all necessary project permits are secured.

The estimated cost of the preliminary engineering development project is \$502,235, of which \$500,000 is considered eligible for state cost participation. Reimbursement to the city of Fargo would be at 50 percent of the submitted costs, not to exceed \$500,000, for costs incurred after July 1, 2001.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation in the city of Fargo's Southside Flood Control project preliminary engineering development at 50 percent of the submitted costs dated July 1, 2001, not to exceed \$500,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

***It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve state cost participation in the city of Fargo's Southside Flood Control project preliminary engineering development at 50 percent of the submitted costs dated July 1, 2001, not to exceed \$500,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.***

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

***BUFFALO CREEK CHANNEL  
ENHANCED DRAINAGE  
CAPACITY PROJECT  
(ALSO REFERRED TO AS  
WALHALLA DRAIN NOS. 2 AND 3)  
(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 road/dike on the Manitoba side of the border. 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 done in conjunction with improvements to Walhalla Drains Nos. 2 and 3. The new crossings will be accompanied by channel improvements in Manitoba. A Memorandum of Understanding was approved and executed in September/October, 2002 between North Dakota and Canada. Section 1.01(c) of the agreement states:

- (c) develop a detailed construction schedule with the intent of constructing within a three-year period, to be attached as Schedule B to the agreement. The milestones of the schedule shall be: installation of pipes by the end of the first year, completion of a drain one mile on either side of the United States-Canada border by the end of the second year, and the entire project completed by the end of the third year.

The responsibilities of Manitoba specified in the agreement consists of upgrading approximately 16 miles of channels and several crossings in Manitoba, and the installation of culverts at Crossing Nos. 2 and 3 results in the enhanced drainage capacity benefit attributable to North Dakota. In 2003, Manitoba completed the culvert installation at Walhalla Drain No. 3. Although the Canadian portion of the project was completed, the culverts through Walhalla Drain No. 2 were not installed. During the spring of 2004, substantial damages occurred in North Dakota because these culverts had not been installed. In order to avoid a similar situation in 2005, Secretary Frink forwarded a letter, dated November 19, 2004, to the Manitoba Minister of Water Stewardship, asking that the commitments in the 2002 agreement be honored by Manitoba and that the installation of culverts in Walhalla Drain No. 2 be completed in 2004. A response to this letter has not been received to date from Manitoba.

Press reports and communications from the Manitoba Water Stewardship have raised concerns that Manitoba intends to further delay installation of the culverts at Walhalla Drain No. 2 and ignore its contractual relationship with North Dakota. A representative of the Manitoba Water Stewardship recently indicated that the agreement allows Manitoba three years to install the culverts and that Manitoba intends to install the culverts no later than September 11, 2005, which is three years from the execution of the agreement on September 11, 2002.

The State Water Commission members stressed the importance of this issue for the State of North Dakota and its residents and, therefore, provided direction to the State Engineer to forward a letter to the Manitoba Minister of Water Stewardship requesting that Manitoba notify the State Water Commission in writing by April 4, 2005 as to whether it intends to install the culverts in Walhalla Drain No. 2 by September 11, 2005. The Commission directed that the letter specify that if Manitoba does not complete the work by September 11, 2005, the State Water Commission will consider all available remedies to enforce the agreement.

***It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Engineer be directed to forward a letter to the Manitoba Minister of Water Stewardship requesting that Manitoba notify the State Water Commission in writing by April 4, 2005 as to whether it intends to install the culverts in Walhalla Drain No. 2 by September 11, 2005. If Manitoba does not complete the work by September 11, 2005, the State Water Commission will consider all available remedies to enforce the agreement.***

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

(Note: On March 11, 2005, a letter from the State Engineer was forwarded to the Manitoba Minister of Water Stewardship, which is attached hereto as **APPENDIX "D"**.)

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

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

**Medora-Beach Construction Status** - The Medora-Beach regional service area is currently under construction. The first phase of construction, the installation of the main transmission pipeline and reservoirs, has been completed, as well as a portion of the Fryburg service area rural distribution system.

The following tables show the facilities constructed in the Medora-Beach regional service area in the 2003-2005 biennium, and the remaining Medora-Beach facilities to be constructed:

**Medora-Beach Phase  
2003-2005 Biennium Construction**

| <u>Contract</u> | <u>Facility</u>                     | <u>Description</u> | <u>Estimated Cost</u> |
|-----------------|-------------------------------------|--------------------|-----------------------|
| 2-5B            | Main Transmission Pipeline *        | 46.4 miles 12"-6"  | \$ 5,020,612          |
| 5-9             | Belfield Reservoir                  | 750,000 gallons    | 662,542               |
| 5-10            | Fryburg Standpipe                   | 480,000 gallons    | 456,745               |
| 5-11            | Beach Standpipe                     | 420,000 gallons    | 566,769               |
| 7-8A            | Fryburg Service Area,<br>Phase I ** | 21 miles, 33 users | 1,491,617             |
| 6               | Telemetry, Phase I                  |                    | <u>120,114</u>        |
| <b>Total</b>    |                                     |                    | <b>\$ 8,318,399</b>   |

\* Includes service to Home on the Range, paid by the Southwest Water Authority - \$99,400

\*\* Increased to 44 miles and 71 users

**Medora-Beach Phase  
Remaining Facilities to be Constructed**

| <u>Contract</u>                 | <u>Facility</u>                           | <u>Description</u>  | <u>Estimated Cost</u> |
|---------------------------------|---|---------------------|-----------------------|
| 7-8B                            | Fryburg Service Area,<br>Remainder        | 91 miles, 58 users  | \$ 2,244,000          |
| 7-8B                            | Fryburg Service Area,<br>Fairfield Pocket | 51 miles, 32 users  | 1,365,000             |
| 7-8B                            | Beach Service Area                        | 115 miles, 82 users | 2,297,000             |
| 7-8B                            | Beach Service Area,<br>Trotters Pocket    | 44 miles, 18 users  | 1,154,000             |
| 7-8B or 7-8D                    | Golva Service Area,<br>City of Golva      | 108 miles, 82 users | 2,580,000             |
| 7-8C                            | Huff Service Area                         | 128 miles, 93 users | 2,821,000             |
| 7-8C                            | Crown Butte Pocket                        | 20 miles, 15 users  | 431,000               |
| 5-13A                           | Second Davis Buttes Reservoir             | 1,000,000 gallons   | 759,000               |
| 5-12                            | Golva Standpipe                           | 150,000 gallons     | 439,000               |
| 8-2                             | Huff Tank                                 | 150,000 gallons     | 439,000               |
| 6                               | Telemetry, Phase II                       |                     | <u>98,000</u>         |
| <b>Total</b>                    |   |                     | <b>\$14,627,000</b>   |
| <b>Total Medora-Beach Phase</b> |   |                     | <b>\$22,945,399</b>   |

Mr. Lennington explained that the budget submitted by the State Water Commission for the 2005-2007 biennium contains an allocation of \$2.6 million for the Southwest Pipeline Project. Agency operations are about \$600,000 per bien-

nium, therefore, approximately \$2.0 million would be available for construction in the 2005-2007 biennium. A review of the income generated by capital repayments on the project indicates that a revenue bond of approximately \$1.5 million could be issued in the 2005-2007 biennium if the state funding remains at about the \$2.0 million level. If state funding was at a higher amount, a larger bond issue could be issued. An application for USDA, Rural Development funding has also been submitted. Mr. Lennington stated that in the past, USDA funding has consisted of a 45 percent grant and a 55 percent loan. Assuming a revenue bond of \$1.5 million, the State Water Commission could qualify for a USDA grant of about \$1.23 million. This would provide the capability of constructing several of the remaining Medora-Beach facilities.

Representatives of the North Dakota Water Coalition provided testimony on House Bill 1021, the State Water Commission appropriation, requesting a total of \$7.6 million in state funding for the Southwest Pipeline Project. Mr. Lennington said state funding at this level, along with USDA funding, would provide service to a majority of the remaining Medora-Beach users.

**Red Trail Energy** - The Red Trail Energy, LLC, is constructing an ethanol plant on the outskirts of the city of Richardton. Red Trail Energy has informed the Southwest Water Authority of their intention to purchase between 450 and 600 gallons per minute of raw water, which would be between 236 million gallons (726 acre-feet) and 315 million gallons (968 acre-feet) of water per year. This would make Red Trail Energy the second largest customer of the Authority behind the city of Dickinson, which used approximately 656 million gallons in 2003.

The 2005 legislature is considering House Bill 1274, which amends North Dakota Century Code § 61-24-3.07 to remove a requirement that industrial users have to pay at least their proportionate costs of the Southwest Pipeline Project. Large industrial users are defined in the same section as those industrial users which consume 724 acre-feet of water for industrial purposes. Testimony was provided in support of House Bill 1274.

This section of the North Dakota Century Code was introduced in Senate Bill 2251 during the 1983 legislation session. At that time, construction had not yet begun on the Southwest Pipeline Project. Energy development was very active in the state at that time and representatives of the Nokota Project and Tenneco Corporation had expressed some interest in possibly getting water from the Southwest Pipeline Project. Testimony on 1983 Senate Bill 2251 included some concern over the requirement in § 61-24.3-08 that South Dakota pay up-front the additional capital costs of including capacity for them in the project while the same was not required of industrial users. It was speculated that there was

concern that the state would incur increased costs to include additional capacity for a large industrial user which may not materialize. In that event, the state would have built additional capacity into the project with no one to pay for it. Because of these concerns, the language requiring up-front payment was added to 1983 Senate Bill 2251 by amendment.

***SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF REIMBURSEMENT  
FROM RESERVE FUND FOR  
REPLACEMENT AND EXTRA-  
ORDINARY MAINTENANCE FOR  
BLOWOFF REPAIRS  
(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 infrastructure replacement and maintenance will occur that will exceed annually budgeted amounts. These items need to be prefunded.

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

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

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

At its August 13, 1998 meeting, the State Water Commission approved reimbursing the Southwest Water Authority, out of the reserve fund for replacement and extraordinary maintenance, for repairing several blowoff valves. The valves being repaired are of a style that has proven to be troublesome. There are a total of 80 of this style blowoff on the project. The valves are prone to leaking and some cannot be closed. Each blowoff includes two buried valves and repairing them involves excavations as deep as 18-20 feet. The repairs include modifying the blowoffs so that one valve is in a manhole so that it can be repaired in the future without excavation. A total of 24 valves have been repaired since 1998 for a total cost of \$114,252.48.

James Lennington presented a request from the Southwest Water Authority for the State Water Commission's consideration for reimbursement of \$31,753.50 from the reserve fund for replacement and extraordinary maintenance for the costs of replacing six blowoff valves in 2003.

It was the recommendation of the State Engineer that the State Water Commission approve the reimbursement of \$31,753.50 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the blowoff valves.

***It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve the reimbursement of \$31,753.50 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the blowoff valves.***

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

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

million acre-feet of water. At this time last year, the lake was at an elevation of 1446.45 feet msl.

Deville Lake is currently at an elevation of 1447.92 feet msl. At its current elevation, the lake has a surface area of 130,500 acres and storage of 2.55

The current elevation of Stump Lake is 1425.11 feet msl. At this elevation, Stump Lake has a surface area of 9,400 acres and is storing 238,000 acre-feet of water. The gage on the Jerusalem channel is affected by ice giving questionable data.

The Devils Lake basin has a snow pack ranging from none in the northwest and south to two inches of water equivalent. The National Weather Service forecast from February 22, 2005 indicated a 90 percent probability of a lake level of 1449.0 feet msl, 50 percent probability of 1449.7 feet msl, and a 10 percent probability of 1450.7 feet msl.

The 50 percent probability forecast for Devils Lake would result in flows from Devils Lake to Stump Lake raising Stump Lake by approximately 105,000 acre-feet to 1435.3 feet msl, or nine feet above the current level. This does not include local runoff going directly into Stump Lake.

**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 \$7,500,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Phases I(a) and I(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.

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, which extended the comment period 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. The permit was upheld in the initial hearing held on August 23, 2004 in Valley City, ND. The first appeal was filed jointly by the People to Save the Sheyenne and the Province of Manitoba, and the second appeal was filed by the Peterson Coulee Association. Therefore, the Department's original decision to issue the permit remains intact.

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

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.

*March 10, 2005 - 17*

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 allocation 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. The basis of their charges were on-site visits, satellite imagery, and aerial photography. Based on reviews of their information, the Corps of Engineers provided the State Engineer a letter restating that the 404 provisions were not violated.

Todd Sando provided a status report noting that work continued on the project through mid-December, 2004 and resumed in early, January, 2005. Park Construction has essentially completed the first 6.3 miles of the canal, with seeding and fencing remaining. Roughly 0.8 mile of the remaining 3.5 miles has been shaped, while the rest has been stripped of topsoil. An additional crossing was added between siphons two and three due to local concerns after the Benson County Commission voted to deny a petition to close a section line. All except for three of the road crossings have been installed and ripped. Park Construction intends to resume work on April 15, 2005 and be essentially complete by June 15, 2005. Industrial Builders continues work on the concrete structures consisting of two drop structures, transition structures, terminal structure outlet, and terminal structure pipeline. Crews were on site until December 17, 2004, and returned in mid-January, 2005. Excel Corporation has the pumps, motors, manifolds, pipeline, and housing in place at both pump stations. Valves and associated operating gear and electrical work remains to be installed. Advance Tank, a subcontractor for Excel Corporation, has completed the metal work for both the Josephine and Round Lake standpipes.

It is anticipated that the canal will be completed in June, 2005, although the canal can be utilized while work continues on the area adjacent to the canal. It is expected the power supply should be available in June or July, 2005 which will determine the start of operation.

Joe Belford briefed the Commission members on the efforts 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.

**NORTH DAKOTA DEVILS LAKE  
OUTLET PROJECT - APPROVAL  
TO PREAUTHORIZE THE STATE  
ENGINEER TO AWARD CONTRACT 6,  
RADIO TELEMETRY SCADA SYSTEM  
(SWC Project No. 416-07)**

On March 18, 2005, bids will be opened for the Devils Lake Emergency Outlet Contract 6, Radio Telemetry SCADA System. Bidders have been prequalified for the contract, and the firms who responded to the prequalification request were: In-Control, Micro-Comm, System

Integrated, and U.S. Filter. Each of the four firms provided data to demonstrate their ability to meet the telemetry system requirements and timelines and will be allowed to bid.

It was the recommendation of the State Engineer that the State Water Commission preauthorize the State Engineer to award the Devils Lake Emergency Outlet Project Contract 6, Radio Telemetry SCADA System, to the lowest responsible bidder. The award of the contract and notice to proceed are dependent on the completion of the contract documents and concurrence from legal counsel. Funding for Contract 6 will be provided from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

***It was moved by Commissioner Johnson and seconded by Commissioner Thompson that the State Water Commission preauthorize the State Engineer to award the Devils Lake Emergency Outlet Contract 6, Radio Telemetry SCADA System, to the lowest responsible bidder. The award of the contract and notice to proceed are dependent on the completion of the contract documents and concurrence from legal counsel. Funding for Contract 6 will be provided from the funds appropriated to the State Water Commission in the 2003-2005 biennium.***

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

**DEVILS LAKE WATER UTILIZATION  
TEST IRRIGATION PROJECT  
STATUS REPORT  
(SWC Project No. 1882-07)**

On August 6, 2003, the State Water Commission approved a 50 percent state cost participation in the amount of \$302,000 for the Devils Lake water utilization test irrigation project. The test

project's primary objective is to further investigate a number of issues that have evolved regarding the effectiveness of the overall concept and the results of a water utilization project in the Devils Lake basin.

The estimated cost of the project is \$1,204,000, of which all non-federal costs are eligible for state cost participation. The eligible costs (center pivot, pump engine, generator, pipe, electrical connection, appurtenances, engineering, monitoring, and test costs) are determined by reducing the total estimated cost (\$1,204,000) by the federal funding contribution (NRCS) of \$600,000. Per the 2003 state cost participation agreement, the remaining costs of \$604,000 are shared equally (\$302,000) between the Devils Lake Joint Water Resource Board and the State Water Commission. This allocation is consistent with the long-standing policy that the State Water Commission only cost shares on the non-federal portion of a project.

Todd Sando reported that the final site selection is complete and construction is currently underway on the project. Pivots have been delivered to nine of the ten sites and assembled on five of the sites. Pipe has been delivered to five of the sites, but will not be installed until after the spring thaw. The pumps, motors, and wire have not been ordered as of this date. To date, \$78,889 has been expended on the project, of which \$71,913 is eligible for and state cost shared at \$35,956.

Site Nos. 2 and 9 were deleted due to water availability issues. Site No. 2, for which sufficient intake depth could not be found in Hurricane Lake, was replaced by Site No. 2a, also in Pierce county, but appropriating the water out of Grass Lake. Site No. 9 was originally intended to either run an intake pipe through a culvert under Highway 281 or tap into an existing irrigation pipe. Neither option could be negotiated. Boring under the highway would have added significant costs for the site, therefore, it was deleted. This reduces the total number of sites to ten with eight normal sites with full-sized pivots and two specialty crop sites with smaller pivots. It is anticipated to have the project operational by June, 2005.

***APPROVAL OF FUNDING FROM  
THE WATER DEVELOPMENT AND  
RESEARCH FUND FOR STUTSMAN  
RURAL WATER PROJECT  
(SWC Project No. 237-03)***

A request was presented for the State Water Commission's consideration for the expenditure of \$83,500 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the Stutsman Rural Water District infrastructure improvements.

The Stutsman Rural Water District is considering an expansion to address inadequacies in the rural system which limits their ability for the addition of rural water users. The system currently serves 1,200 rural users, the cities of Cleveland and Montpelier, and the Northern Prairie Wildlife Research Center. A full-system hydraulic model and capital improvements study were completed to confirm the need for \$9,580,000 in infrastructure improvements. The hydraulic model and feasibility study costs were \$38,000, and were approved for a 65 percent grant of \$24,700 from the Water Development and Research Fund.

*March 10, 2005 - 20*

The infrastructure improvements project is divided into three categories: 1) category 1, near-term improvement; 2) category 2, moderate-term improvement; and 3) category 3, long-term improvement. The District intends to proceed with category 1, at an estimated cost of \$1,670,000. The majority of the funding will be provided from the North Dakota Department of Health, Drinking Water State Revolving Loan Fund.

It was the recommendation of the State Engineer that the State Water Commission approve a 5 percent grant, not to exceed \$83,500 from the Water Development and Research Fund, for the Stutsman County Rural Water infrastructure improvements project. 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 approved the request at its March 7, 2005 meeting.

***It was moved by Commissioner Hofstad and seconded by Commissioner Johnson that the State Water Commission approve a 5 percent grant, not to exceed \$83,500 from the Water Development and Research Fund, for the Stutsman County Rural Water infrastructure improvements project. This motion is contingent upon the availability of funds, and subject to future revisions.***

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

**MR&I WATER SUPPLY PROGRAM -  
APPROVAL OF REVISED FISCAL  
YEAR 2005 MR&I FEDERAL BUDGET  
(SWC Project No. 237-03)**

Secretary Frink presented and recommended the proposed revised MR&I Water Supply program budget allocation of \$3,000,000 for Fiscal Year 2005 for the State Water Commission's consider-

ation. Secretary Frink explained that if the State Water Commission acts affirmatively on the recommendation (*shown in italics*) as presented, all federal dollars for Fiscal Year 2005 would be committed. On March 7, 2005, the Garrison Diversion Conservancy District executive committee approved the proposed revised budget for Fiscal Year 2005:

**Northwest Area Water Supply Project (Minot Component):** Contract 2-1D consists of approximately 14.9 miles of 36-inch main transmission pipeline extending from north of N.D. Highway 83 at Max to south of the Totten Trail Restaurant and Lounge on the east side of the Snake Creek embankment. The project engineer's estimate for construction of this contract is \$9,368,612, and the project cost is approximately \$10,280,000. On February 3, 2005, bids were opened for contract 2-1D.

Funding would come from several sources: \$2,000,000 - funds appropriated to the State Water Commission in 2003-2005 biennium; \$160,000 - federal fiscal year 2005 MR&I grant (balance); \$700,000 - federal fiscal year 2005 MR&I grant (request); \$3,600,000 - 35 percent match from the city of Minot; and \$3,820,000 - 65 percent MR&I federal funding (shortfall).

The city of Minot indicated its intent to advance the shortfall in federal funding of \$3,820,000. This advance from the city, along with the \$2,000,000 in state funding, would cover the 65 percent federal MR&I funding shortfall. The advance from the city would be used as a credit toward the local 35 percent match on future construction. Without the funding advance, the pipeline segment would have to be shortened to reflect the funds available. The project engineer is also working on the preliminary design of the Minot water treatment plant and UV system.

*The State Engineer's recommendation provides for an additional federal Fiscal Year 2005 MR&I grant of up to \$700,000 (see table), not to exceed 65 percent of the eligible project costs, contingent upon the availability of federal funds, and subject to future revisions.*

Affirmative action will increase the total federal MR&I grant to \$18,477,464 for the Northwest Area Water Supply project, Minot component.

***Fiscal Year 2005  
MR&I Water Supply Program***

| <u>Project</u>                 | <u>Activity</u> | <u>FY 2005<br/>Approved</u> | <u>FY 2005<br/>Proposed</u> | <u>FY 2005<br/>Total</u> |
|--------------------------------|-----------------|-----------------------------|-----------------------------|--------------------------|
| NAWS (Minot)<br>Administration | D&C             | \$2,300,000<br>0            | \$ 700,000<br>0             | \$3,000,000<br>0         |
| <b>Totals</b>                  |                 | <b>\$2,300,000</b>          | <b>\$ 700,000</b>           | <b>\$3,000,000</b>       |

***It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the MR&I Water Supply program revised proposed allocation of \$3,000,000 for Fiscal Year 2005 as recommended by the State Engineer. This motion is contingent upon the availability of federal funds, and subject to future revisions.***

***This action increases the total federal MR&I grant to \$18,477,464 for the Northwest Area Water Supply project, Minot component.***

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

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

address concerns relative to the Municipal, Rural and Industrial (MR&I) Water Supply program. Commissioners Swenson, Olin, Hanson, and Hillesland currently serve on the State Water Commission's MR&I committee.

On February 9, 1995, a subcommittee was appointed from the State Water Commission to work with the Garrison Diversion Conservancy District to

It was the recommendation of the State Engineer, and concurrence of the State Water Commission, that an alternate Commission member be appointed to serve on the committee. Commissioner Hofstad was appointed to serve as an alternate on the State Water Commission's MR&I committee, effective March 10, 2005.

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

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 "E"**.

**DROUGHT DISASTER LIVESTOCK  
WATER ASSISTANCE PROGRAM -  
TERMINATION OF PROGRAM  
(SWC Project No. 1851)**

financial assistance to existing livestock producers with water supply problems caused by drought. North Dakota Administrative Code Article 89-11 was adopted by the Commission on June 24, 1991 for management of this program. Water supply projects located in counties and adjacent counties included in a drought disaster declaration are considered eligible for state cost participation. Types of projects that may be funded by the program include the construction of new wells, dugouts and stock dams that are spring-fed or have a high water table, pipeline installations, rural water system connections, and spring development.

The Drought Disaster Livestock Water Assistance program, established by statute in 1991, is a state cost participation program administered by the State Water Commission, which provides

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

On July 1, 2002, Governor Hoeven issued North Dakota Drought Emergency Proclamation, Executive Order No. 2002-04, which indicated that a drought emergency existed within 20 counties within the State of North Dakota. This Proclamation has not been revised or rescinded since 2002.

The State Water Commission reactivated the Drought Disaster Livestock Water Assistance program on August 15, 2002, and approved the allocation of \$200,000 for the program, and amendments to the North Dakota Administrative Code chapter 89-11-01. On November 3, 2003, the State Water Commission allocated an additional \$150,000 for the program, for a total state cost participation of \$350,000 since reactivation. The U.S. Fish and Wildlife Service also provided a grant of \$25,000. Livestock producers must have been denied cost share assistance from the federal Farm Service Agency's Emergency Conservation Program (ECP) to be eligible for the state program of up to 50 percent of the eligible costs, not to exceed \$3,500. The ECP program was not funded in 2003 and 2004.

As of February 28, 2005, approximately 200 livestock producers have been reimbursed about \$325,000, for an average of about \$1,600 per project. Approximately \$56,000 remains to be paid to producers, 10 requests for cost share participation are in-process, and approximately 50 applications are pending approval.

Secretary Frink stated that the program has been very successful and well received by farmers and ranchers. Some areas of the state remain extremely dry, but the ground and surface water conditions have improved in much of the designated emergency area. The program has assisted most of the emergency livestock water shortages.

It was the recommendation of the State Engineer that the remaining funds allocated to the Drought Disaster Livestock Water Assistance program be expended to the livestock producers, followed by program termination.

***It was moved by Commissioner Johnson and seconded by Commissioner Thompson that the remaining funds allocated to the Drought Disaster Livestock Water Assistance program be expended to the livestock producers, followed by program termination. The State Water Commission shall reactivate the Drought Disaster Livestock Water Assistance program, if necessary, through a revised North Dakota Drought Emergency Proclamation issued by the Governor.***

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

**FIFTY-NINTH LEGISLATIVE  
ASSEMBLY - 2005 WATER  
LEGISLATION UPDATE**

Secretary Frink provided a status report relating to water legislation being considered in the 2005 legislative session. The North Dakota legislative bill tracking system report, water legislation, dated March 10, 2005, is attached hereto as **APPENDIX "F"**.

**2005 SPRING FLOOD OUTLOOK  
(SWC Project No. 1431-08)**

The National Weather Service report of February 14, 2005, indicates that snow cover is limited to a 20-40 mile band west of the Red River, with sparse to no snow west of this band. There is more snow in the Minnesota portion of the Red River basin. Another band of snow exists from Lakota to Velva between Highway 2 and the Canadian border. Both snow areas have between 1 and 4 inches of water equivalent.

Todd Sando presented the National Weather Service's hydrologic conditions for the Red, Sheyenne, Pembina, and Souris Rivers, which are summarized in a staff memorandum dated February 28, 2005, and attached hereto as **APPENDIX "G"**.

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

Todd Sando reported that the drought conditions persist in the Missouri River basin, 2005 will be the sixth consecutive

year of below normal runoff. The mountain snow pack above Fort Peck Dam was approximately 68 percent of normal on February 15, 2005. Above Lake Sakakawea, the mountain snow pack was approximately 72 percent of normal. The National Weather Service climate prediction center's seasonal drought outlook shows the drought persisting across almost all of the Missouri River basin through May, 2005, although it does show limited improvement across some of the plains in the basin. Runoff in 2004 was 16.6 million acre-feet (MAF), 66 percent of the average runoff. The Corps of Engineers is predicting runoff above Sioux City for 2005 to be 18.0 MAF, 71 percent of normal. The February, 2005 snow pack is less than the February, 2004 snow pack, but the Corps assumes some return to normal precipitation for the rest of 2005. If the current precipitation patterns persist, runoff could reach lower decile or lower runoff levels. As of February 17, 2005, system storage in the six mainstem reservoirs was 35.3 million acre-feet (MAF), 19.2 MAF below the average system storage for February, and 2.7 MAF less than last year. This is a record low system storage.

On February 17, 2005, Lake Sakakawea was at an elevation of 1808.4 feet msl, 6.8 feet lower than a year ago, and 25.1 feet below its average February elevation. Under the February 1 most likely runoff simulation, the Corps is estimating that Lake Sakakawea will fall to an elevation of 1804.4 feet msl by the end of August, 2005, and end the year at elevation 1806.2 feet msl. Under the February 1 lower decile simulation, the Corps is estimating that Lake Sakakawea will fall to an elevation of 1795.0 feet msl by the end of September, 2005, and 1793.8 feet msl by the end of 2005.

The elevation of Lake Oahe was 1575.7 feet msl on February 17, 2005, 2.7 feet lower than last year, and 26.0 feet lower than its average February elevation. Under the February 1 most likely runoff simulation, the Corps is estimating that Lake Oahe will fall to an elevation of 1573.9 feet msl by the end of 2005. Under the February 1 lower decile simulation, the Corps is estimating that Lake Oahe will fall to an elevation of 1567.7 feet msl by the end of 2005.

Fort Peck Lake was at an elevation of 2198.3 feet msl on February 17, 2005, 6.0 feet lower than a year ago, and 31.9 feet below its February elevation. Under the February 1 most likely runoff simulation, the Corps is estimating that Fort Peck Lake will fall to an elevation of 2195.8 feet msl by the end of February, 2006. Under the February 1 lower decile simulation, the Corps is estimating that Fort Peck Lake will fall to an elevation of 2186.2 feet msl by the end of February, 2006.

The low lake levels will decimate the cold water fishery in Lake Sakakawea. The Commission staff is investigating the possibility of restricting the flow from the lower portion of the lake causing the upper and warmer level of the lake to go through the dam. Plans are also being developed to address several water intakes which will be rendered inoperative by the low lake levels.

The new Missouri River Master Manual and the biological opinion set a goal of 50 acres per mile of emergent sandbar habitat for the piping plover and least tern on the Garrison reach. The 50 acres per mile is based on the amount of sandbar habitat after the flood in 1997. The Corps is preparing a programmatic environmental assessment on the construction of this habitat. The Corps is also proposing to spray the vegetation on some sandbars this summer to provide habitat. Any manipulation of the sandbars in the Missouri River in North Dakota would require a sovereign lands permit from the State Engineer.

The Master Manual and the biological opinion also prescribe a spring rise from Gavins Point Dam in 2006, if a plan is not agreed upon by the Corps of Engineers and the U.S. Fish and Wildlife Service, further depleting the reservoirs impacted by the continuing drought. The Corps plans to hire the U.S. Institute on Conflict Resolution to assist in developing a plan acceptable to all of the interests in the basin. The Corps' goal is to reach an agreement by August, 2005 to allow the plan to be included in the draft annual operating plan for 2006.

Andy Mork, chairman, Morton County Water Resource District, briefed the Commission members on the efforts for the formation of a Missouri River Joint Water Board, which would include the water resource districts of Burleigh, Dunn, Emmons, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Sioux, and Williams counties, and the Lower Heart River Water Resource District, to jointly provide a cooperative and coordinated effort in addressing the management, conservation, protection, development, and control of water resources in the Missouri River basin. The joint powers agreement has been drafted and is being reviewed by the respective parties.

***NORTHWEST AREA WATER  
SUPPLY (NAWS) PROJECT -  
MANITOBA V. BUREAU OF  
RECLAMATION LAWSUIT  
(SWC Project No. 1736)***

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. These motions to dismiss the case were based on jurisdictional and procedural issues.

*March 10, 2005 - 27*

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 NAWIS 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 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 of North Dakota were filed on April 16, 2004. Judge Collyer heard oral arguments in this lawsuit on July 29, 2004 in Washington, DC. On September 28, 2004, Judge Collyer issued an order seeking comments on two issues with respect to the consultative process with Canada which the Bureau of Reclamation and the State of North Dakota had engaged in. Briefs for this order were filed on October 19, 2004.

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.

On February 3, 2005, Judge Collyer ruled that the federal government needed to provide additional information in support of the Finding Of No Significant Impact for the project's environmental assessment. Judge Collyer deferred a ruling on the Province of Manitoba's request for an injunction prohibiting the authorization or expending federal funds on the project or taking further steps to build the project. Additional briefs on the injunction issue were filed by the Department of the Interior, the State of North Dakota, and Manitoba in March, 2005.

It was the recommendation of the State Engineer that the discussion relating to the Manitoba v. Bureau of Reclamation lawsuit on the Northwest Area Water Supply project issues be held in executive session, under the provisions of North Dakota Century Code § 44-04-19.1, for the purpose of attorney consultation. The State Water Commission invited the following to participate in the executive session: John Hoeven, Governor-Chairman, State Water Commission; Elmer Hillesland, Curtis Hofstad, Roger Johnson, Jack Olin, and Robert Thompson, State Water Commission members; Dale Frink, State Engineer and Chief Engineer-Secretary to the State Water Commission; Charles Carvell, and Matthew Sagsveen, North Dakota Office of the Attorney General; Dave Koland, Garrison Diversion Conservancy District; Robert Schempp, Curtis Zimbelman, David Waing, and Robert Frantsvog, city of Minot; Roger Hagen, Houston Engineering; Todd Sando, James Lennington, and Sharon Locken, State Water Commission staff.

***It was moved by Commissioner Johnson and seconded by Commissioner Olin that under the provisions of North Dakota Century Code § 44-04-19.1, the State Water Commission proceed into executive session on March 10, 2005 at 4:00 PM, for the purpose of attorney consultation regarding the Manitoba v. Bureau of Reclamation lawsuit relative to the Northwest Area Water Supply Project.***

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

Following attorney consultation regarding the Manitoba v. Bureau of Reclamation lawsuit relative to the Northwest Area Water Project, Governor Hoeven reconvened the open session of the State Water Commission meeting on March 10, 2005 at 4:35 PM.

***NORTHWEST AREA WATER  
SUPPLY (NAWS) PROJECT -  
DISCRETIONARY STATE  
ENGINEER APPROVAL TO  
AWARD CONTRACT 2-1D  
(SWC Project No. 237-04)***

Bids were opened for Northwest Area Water Supply Project contract 2-1D on February 3, 2005. The contract documents specify that the State Water Commission has 90 days to award the contract after the bid opening, which occurs on May 5, 2005. The contract is

for approximately 14.9 miles of 36-inch main transmission pipeline extending from north of N.D. Highway 83 at the city of Max to south of the Totten Trail Restaurant and Lounge on the east side of the Snake Creek embankment.

There were eight bids received from the following for contract 2-1D: Molstad Excavating, Inc., Grand Forks, ND; BRB Contractors, Topeka, KS; Winter Brothers Underground, Inc., Brookings, SD; S.J. Louis Construction, Inc., Waite Park, MN; S.R. Weidma, Inc., Maple Grove, MN; Western Municipal Construction, Inc., Billings, MT; and Industrial Contractors Services, Inc., Grand Forks, ND. A bid from Excel Construction, Sheridan, WY, was not opened because the required bid bond form was not used. The apparent low bid received was \$9,578,241 from Molstad Excavating, Inc., Grand Forks, ND. The project engineer's estimate is \$9,368,612. All of the bidders included ductile iron pipe in their bids although steel pipe was allowed. Ductile iron pipe has been used on the three previous project pipeline contracts. Pipe prices received on this contract from the apparent low bidder were about 20 percent higher than those on contract 2-1C.

James Lennington explained that the contract documents allow the State Water Commission to select the most advantageous bid. The contract documents required submission of experience on similar projects. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are dependent on the completion of the contract documents and a legal review. The time for completion is specified no later than October 21, 2006.

It was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer discretionary approval to award Northwest Area Water Supply Project contract 2-1D.

***It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission authorize the State Engineer discretionary approval to award Northwest Area Water Supply Project contract 2-1D.***

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

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

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John Hoeven, Governor  
Chairman, State Water Commission

SEAL

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

