

## **MINUTES**

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

**June 22, 2005**

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on June 22, 2005. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 1:30 PM, and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

#### **STATE WATER COMMISSION MEMBERS PRESENT:**

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman  
Jeff Olson, representing Roger Johnson, Commissioner,  
North Dakota Department of Agriculture, Bismarck  
Larry Hanson, Member from Williston  
Elmer Hillesland, Member from Grand Forks  
Curtis Hofstad, Member from Devils Lake  
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

#### **STATE WATER COMMISSION MEMBER ABSENT:**

Charles Halcrow, Member from Drayton

#### **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.

**CONSIDERATION OF DRAFT MINUTES  
OF MAY 11, 2005 STATE WATER  
COMMISSION AUDIO CONFERENCE  
CALL MEETING - APPROVED**

The draft minutes of the May 11, 2005 State Water Commission audio conference call meeting were approved by the following motion:

***It was moved by Commissioner Hofstad, seconded by Commissioner Hanson, and unanimously carried, that the draft minutes of the May 11, 2005 State Water Commission audio conference call meeting be approved as prepared.***

**REAPPOINTMENT OF STATE  
WATER COMMISSION MEMBERS -  
CHARLES HALCROW, DRAYTON,  
ND; LARRY HANSON, WILLISTON,  
ND; AND CURTIS HOFSTAD,  
DEVILS LAKE, ND**

Charles Halcrow, Drayton, ND; Larry Hanson, Williston, ND; and Curtis Hofstad, Devils Lake, ND, were reappointed by Governor Hoeven to serve six-year terms as members of the State Water Commission. Their terms are effective on July 1, 2005 and will expire on June 30, 2011.

**STATE WATER COMMISSION  
ALLOCATED PROGRAM  
BUDGET 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 April 30, 2005, reflecting 92 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 \$95,000,309, leaving a balance of \$4,183,048 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 \$11,227,873 and are currently \$2,829,654, or 33.7 percent, ahead of the budgeted revenues. The increased oil extraction

collections are offset by reduced interest earnings that are currently \$790,102 below the budgeted amount.

Deposits into the Water Development Trust Fund total \$20,839,504, and are currently \$164,644 ahead of budgeted revenues.

On June 7, 2005, a bond issue was completed that provided \$60 million for projects, \$58.9 million was used to reimburse the trust funds and to pay off the line of credit. The remaining \$1.1 million is anticipated to be used in the 2003-2005 biennium on additional project payments.

**ISSUANCE OF 2005 SERIES  
B BOND RESOLUTION**

Senate Bill 2022, the State Water Commission's 2003-2005 biennium appropriation bill, authorizes the State Water

Commission to issue up to \$60 million of bonds to be used for water projects identified in the statewide water development plan. The current appropriation bill allows bonding under section 61-02, which would secure the bonds with only the Water Development Trust Fund (tobacco settlement funds), and section 61-02.1, which includes additional securitization.

When the State Water Commission began the process to issue the bonds, it became apparent there were technical issues with the authorizing legislation and, therefore, House Bill 1153 was drafted to clarify and optimize the agency's bonding authority. The Fifty-ninth Legislative Assembly passed House Bill 1153 with an emergency clause, which was executed by Governor Hoeven.

On May 11, 2005, the State Water Commission adopted the 2005 Series B Bond Resolution for the issuance of North Dakota State Water Commission, Water Development Trust Fund, Water Development and Management Program Bonds, 2005 Series B. The bonds were priced on May 24, 2005, and on June 7, 2005, the 2005 Series B bonds in the amount of \$62,205,000 were issued at a net interest cost of approximately 4.33 percent. The bonds were used to reimburse the Resources Trust Fund and the Water Development Trust Fund and to pay off the line of credit with the Bank of North Dakota (\$58.9 million). The remaining \$1.1 million will be used in the 2003-2005 biennium on project payments.

Schedules detailing the payments and projected revenues (includes only the outstanding debt that is to be paid from the Water Development Trust Fund), and the sources and uses of funds for the 2005 Series B issue are included herewith as **APPENDIX "C"**.

House Bill 1021, the State Water Commission's 2005-2007 biennium appropriation bill, authorizes an additional \$7 million of bonds.

**APPROVAL OF RESOLUTION  
TO DECLARE OFFICIAL INTENT  
TO REIMBURSE PROJECT EXPEND-  
ITURES WITH PROCEEDS OF BONDS  
(SWC File PER/BON)  
(Resolution No. 2005-06-513)**

House Bill 1021, the State Water Commission's 2005-2007 biennium appropriation bill, authorizes the State Water Commission to issue an additional \$7 million of water development project bonds in addition to the \$60 million issued on June 7, 2005. The

Commission proposes to issue tax-exempt bonds for the purpose of paying all or part of water-related projects or works in the state, including those identified in the statewide water development plan, which are authorized and declared to be in the public interest, plus the costs of issuance, capitalized interest, and required reserves.

David Laschkewitsch explained that it is anticipated the Commission will advance all, or a portion of the costs of the water-related projects prior to the issuance of the bonds, and may elect to be repaid from the proceeds of the bonds upon issuance. Federal tax law specifies the regulations under which a reimbursement allocation may be treated as an expenditure of bond proceeds, which includes a provision whereby the bond issuer must declare its intent with specific action.

A draft resolution was presented for the State Water Commission's consideration which would allow the Commission to utilize available funds to pay for water projects and then reimburse the funds with bond proceeds after the bonds have been issued. Mr. Laschkewitsch explained that although the Commission may not seek reimbursement of these expenses from the bond proceeds, affirmative action of the resolution would provide for that option.

It was the recommendation of the State Engineer that the State Water Commission approve Resolution No. 2005-06-513 as its declaration of intent to reimburse project expenditures with the proceeds of bonds.

***It was moved by Commissioner Olin and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission approve Resolution No. 2005-06-513, which shall serve as the Commission's declaration of intent to reimburse project expenditures with the proceeds of bonds. SEE APPENDIX "D"***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**APPROVAL OF 2003-2005 BIENNIUM  
PROJECT OBLIGATIONS CARRIED  
FORWARD TO THE 2005-2007 BIENNIUM  
(SWC Project No. 1753)**

Secretary Frink stated that commonly water projects require several years to implement due to regulatory issues, funding needs, and contracting, bidding and construction delays. Project con-

tracts that were previously obligated for cost share from the contract fund, but were not completed in the 2003-2005 biennium, were presented for the State Water Commission's consideration for continuation in the 2005-2007 biennium, with the exception of the following projects which are no longer being actively pursued or a portion of the obligated funds are no longer needed. In discussion with project sponsors, Secretary Frink also recommended that \$46,874 be carried forward to the 2005-2007 biennium for the Maple River Water Resource District's farmstead ring dike program; and \$76,084 be carried forward to the 2005-2007 biennium for the Southeast Cass Water Resource District's farmstead ring dike program (\$158,700 to be returned to the contract fund):

<u>Project</u>	<u>2003-2005 Obligated Amount</u>	<u>2003-2005 Obligated Amount To Be Returned</u>	<u>2005-2007 Obligated Amount Carried Forward</u>
12th Avenue North Dam, City of Fargo	\$ 13,862	\$ 13,862	\$ 0
Belfield Watershed Project	35,547	35,547	0
Grafton Flood Control Project	4,643,500	4,124,500	519,000
Homme Dam	14,500	14,500	0
Maple River Farmstead Ring Dikes	46,874	0	46,874
Rush River Farmstead Ring Dikes	46,750	21,750	25,000
Section 404 Contract-Cary Backstrand	10,000	8,900	0
Southeast Cass Farmstead Ring Dikes	259,784	158,700	76,084
Tri-County Flood Control Study	24,640	24,640	0
Walsh County Ring Dike Project	152,832	127,832	0

The incomplete projects were discussed and concerns were expressed by the State Water Commission members relating to those projects approved for state cost participation prior to 2001. It was suggested that if a project has not made significant progress within approximately four years, the project sponsors should consider revisiting the proposed project scope and cost estimates based on changes that may have occurred relating to the project needs and cost escalation. Therefore, the State Engineer and the Commission staff were directed to further scrutinize the incomplete projects, specifically addressing the Maple River and Southeast Cass farmstead ring dikes programs, and that a report be provided at a future Commission meeting.

It was the recommendation of the State Engineer that the State Water Commission continue its cost share obligation from the contract fund for the incomplete projects through June 30, 2007, with the exceptions to those projects as identified in the above table.

*It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that all 2003-2005 unexpended project obligation amounts (which includes all previous bienniums carry over) be carried forward through June 30, 2007, with the exceptions to those projects as identified in the table on page 5. This motion is contingent upon the availability of funds.*

*Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.*

**PROPOSED PROJECT  
ALLOCATIONS FOR  
2005-2007 BIENNIUM**

Secretary Frink presented and discussed the proposed project allocations for the 2005-2007 biennium, which is attached hereto as **APPENDIX "E"**.

Discussion included the Maple River Dam and the engineer's revised cost estimate. The total cost of the dam is \$28,000,000, with proposed state cost participation of \$13,925,000.

**APPROVAL OF RURAL FLOOD  
CONTROL PROJECTS COST SHARE  
LIMITATION OF \$230,000 FOR  
2005-2007 BIENNIUM  
(SWC Project No. 1753)**

On August 13, 1998, the State Water Commission approved several cost share policy changes including a limitation on the amount of money that can be provided in a single biennium for a rural flood control project to no more than 5

percent of new funding available for general projects. This limitation has been in effect for rural flood control projects since that time, although the dollar amount of the limitation has varied each biennium.

Secretary Frink explained that the budgeting process has changed since that policy was adopted. The State Water Commission's budget for the 2005-2007 biennium includes \$4,600,000 for general water projects. The funding limitation for the 2005-2007 biennium was set at 5 percent of \$4,600,000 (\$230,000) for rural flood control projects. He said that although the amount available per project would be limited to \$230,000 from the 2005-2007 appropriated funds, the total amount approved per project consists of all biennium cost share approvals.

It was the recommendation of the State Engineer that the State Water Commission approve the policy of limiting funding for rural flood control projects to \$230,000 per project for the 2005-2007 biennium.

***It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve the policy of funding limitation for individual rural flood control projects to \$230,000 per project for the 2005-2007 biennium. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**CASSELTON TOWNSHIP  
IMPROVEMENT DISTRICT  
NO. 64 PROJECT -  
APPROVAL OF STATE COST  
PARTICIPATION (\$117,250)  
(SWC Project No. 847)**

A request from the Maple River Water Resource District was presented for the State Water Commission's consideration for construction of the Casselton Township Improvement District No. 64 project. The project consists of the construction of an assessment drain along

the centerline of an existing tributary to lower Swan Creek, which will restore the tributary's hydraulic capacity.

The proposed work, located in Sections 35 and 36, Township 140 North, Range 52 West, Casselton Township, Cass County, will consist of 5,300 feet of new legal drain construction through the last mile of the existing tributary to lower Swan Creek. Construction will result in a channel with 4:1 side slopes over the entire length. North of the Burlington Northern-Santa Fe railroad (BNSF), the channel profile will have a slope of 0.2 percent and a bottom width of 10 feet, while south of the railroad the slope will be 0.15 percent with a bottom width of 12 feet. All existing culverts at the railroad crossing will be abandoned and 240 linear feet of smooth wall steel pipe will be bored under the crossing along with the installation of 120 linear feet of 66-inch diameter concrete pipe and end sections. Utility relocations will also be necessary.

According to the District, the formal procedure to create a new assessment district by a vote of the watershed will follow the State Water Commission's consideration of the request. Conditional approval of rural flood control projects is allowed, subject to a six-month time limit for receiving a positive local assessment vote. A sediment analysis is not required as this is considered the construction of a new assessment drain. A drain permit is currently being processed.

The project engineer's cost estimate is \$600,000, of which \$335,000 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$117,250). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$117,250.

Commissioner Swenson reiterated the concerns he had expressed at previous Commission meetings relating to the downstream impact analysis requirements and the possible liabilities which could be incurred as a result of negative downstream impacts.

Secretary Frink explained that the District submitted four projects in the previous three years requesting state cost participation for either channel construction or reconstructions that drain into Swan Creek located around the city of Casselton. The Commission considered funding one of the projects on August 15, 2002, but upheld its action until the Swan Creek Watershed Floodwater Retention Site Study had been completed to determine if negative downstream impacts could occur as a result of the project. Notice has not been received to date that the upstream study has been completed. Since the August 15, 2002 meeting of the Commission, the rural flood control committee concluded that it would be more appropriate to analyze any potential downstream impacts during the regulatory process rather than during the cost share process. Funding for a rural flood control project may be conditionally approved prior to the vote of the assessment district and issuance of the required permits. Secretary Frink stated that copies of all recorded drain permits will be made available to the Commission members.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed \$117,250 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Casselton Township Improvement District No. 64 project.

***It was moved by Commissioner Hanson and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$117,250 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Casselton Township Improvement District No. 64 project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, issuance of the required drain permit, and approval of the project's final design.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, and Jeff Olson representing Commissioner Johnson voted aye. Lt. Governor Dalrymple representing Governor Hoeven abstained from voting. There were no nay votes. Recorded votes were 7 ayes; 0 nays; 1 abstention. Lt. Governor Dalrymple announced the motion carried.***

***FARGO RIDGEWOOD FLOOD  
CONTROL PROJECT - APPROVAL  
OF STATE COST PARTICIPATION  
(\$2,084,750)  
(SWC Project No. 1927)***

A request from the city of Fargo was presented for the State Water Commission's consideration for state cost participation for the Fargo Ridgewood Flood Control project. As a result of the 1997 flood, the city expressed interest in

the Corps of Engineers investigating the feasibility of constructing a small flood damage reduction project for the Ridgewood Addition and adjoining neighborhoods under Section 205 of the 1948 Flood Control Act, as amended. The feasibility study, documenting the identification of flooding problems, the formulation and selection of alternatives, the copulation of benefits and costs, and the selection of a recommended plan was completed in June, 2004. The report concludes the construction of a levee/floodwall and appurtenant interior drainage is feasible.

The project consists of the 2006-2007 construction of a combination of levees and floodwalls with interior drainage facilities, with the barrier height ranging from 5 to 17 feet for local flood damage reduction measures for the Ridgewood Addition and the Veterans Administration (VA) hospital in Fargo, ND. The project is located along the east bank of the Red River of the North from 15th Avenue North to the northern edge of the VA hospital at approximately 21st Avenue North, located in Sections 29 and 32, Township 140 North, Range 48 West, Cass county. The levee/floodwall combination would begin at 15th Avenue North adjacent to the El Zagel golf course and continue north along Elm Street, east along Woodland Drive and along the river toward the VA hospital and tie into high ground near the back of the VA hospital. This alignment would resolve the unstable conditions at the existing VA hospital floodwall, provide protection for the hospital, and result in fewer structural removals. Interior flood control would be provided by a 20,000 gallons per minute (gpm) pumping station. The permanent levee/floodwall system will be constructed to either the new 100-year flood plus three feet elevation or the new 60-year flood plus three feet elevation.

The preliminary engineering has been completed and all applicable permit applications are currently being processed which includes a Section 404 permit. Final approval will be granted upon issuance of the construction permit and approval of the project's final design.

The project engineer's estimate is \$11,693,000, of which \$4,169,500 is considered eligible for conditional state cost participation as a flood control project at 50 percent of the eligible costs (\$2,084,750). The city of Fargo's share of the costs (\$4,169,500) will be predominately related to easements and right-of-way for the project, which will include legal expenses. The city of Fargo requested the State Water Commission to consider land rights and legal fees eligible for state cost participation. Other funding sources include the Corps of Engineers (\$3,742,500) and the Veterans Administration hospital (\$3,781,000).

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 participation. Specific action would be required by the Commission to make these expenses eligible for state cost participation.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation in the Fargo Ridgewood Flood Control project at 50 percent of the eligible costs, not to exceed an allocation of \$2,084,750 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. Land rights and legal fees should be considered eligible for state cost participation. Administrative expenses would remain ineligible for state cost participation.

***It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation in the Fargo Ridgewood Flood Control project at 50 percent of the eligible costs, not to exceed an allocation of \$2,084,750 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. Land rights and legal fees shall be considered eligible for state cost participation. Administrative expenses shall be considered ineligible costs. This motion is contingent upon the availability of funds, issuance of the construction permit, and receipt/approval of the final design.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**STEELE-TRAILL DRAIN NO. 17 -  
APPROVAL OF STATE COST  
PARTICIPATION (\$101,294)  
(SWC Project No. 1919)**

A request from the Traill County Water Resource District was presented for the State Water Commission's consideration for state cost participation in the construction of the Steele-Traill Drain No.

17 project. The purpose of this project is to reduce flood damage to agricultural properties.

The Steele County Water Resource District requested state cost participation on two occasions (each a different plan). The State Water Commission approved conditional cost share funding for the drain, although in the meantime the design of the drain was substantially revised. The project has now been turned over to the Traill County Water Resource District. All of the previously approved funds have been returned to the appropriate account.

The project consists of approximately 4.5 miles of channel construction. According to the drain permit application, the excavated channel will have side slopes of 4:1 to 6:1, a bottom width of 8 feet, and a maximum cut of 7 feet. The drainage area consists of 2,880 acres. The project will also include the installation of five drop structures, CMP inlets, 36-inch and 30-inch diameter CMP installation at two crossings, riprap, removal of existing 18-inch and 24-inch culverts, and seeding. A drain permit application has been received and is being processed. Conditional approval of rural flood control projects is allowed, subject to a six-month time limit for issuance of the drain permit. A positive assessment vote on the current project has been recorded. A sediment analysis is not required for this project as this is the construction of a new assessment drain.

The project engineer's cost estimate is \$343,660, of which \$289,410 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$101,294). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$101,294.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$101,294 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the construction of the Steele-Traill Drain No. 17 project.

***It was moved by Commissioner Hofstad and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$101,294 from the funds appropriated to the State Water Commission in the***

**2003-2005 biennium, for the construction of the Steele-Trail Drain No. 17 project. This motion is contingent upon the availability of funds, issuance of the required drain permit, and receipt/approval of the project's final design.**

**Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.**

**WALSH COUNTY ASSESSMENT  
DRAIN 4B - APPROVAL OF STATE  
COST PARTICIPATION (\$97,713)  
(SWC Project No. 1931)**

A request from the Walsh County Water Resource District was presented for the State Water Commission's consideration for state cost participation for the construction of Walsh County Assessment

Drain 4B. The project consists of constructing a drain to address sheetwater runoff from cropland and to reduce flood damage to agricultural properties. The project will efficiently remove runoff from agricultural lands.

The project will be constructed in Township 158 North, Range 51 West, St. Andrew's Township, Walsh County, along the northern side of Sections 8, 9, 10 and 11 (south side of Walsh County Highway 7), crossing the section line road and continuing easterly along the south side of Sections 1 and 2 (north side of Walsh County Highway 7) to the outlet. The constructed drain will be 4.7 miles in length and will outlet to the Red River of the North in the SE1/4 of Section 1. In August, 2004, the landowners voted in favor of establishing the drain with 2,532.3 acres assessed to the drain.

According to the Application to Drain No. 3027, approved by the District on August 24, 2004, the drain will be constructed with a maximum cut of 6 feet, 3:1 side slopes, and a 6-foot bottom width. The project work consists of 52,368 cubic yards of excavation, the installation of culverts at 17 locations, the construction of 8 erosion control structures, seeding, tree removal, utility relocations, land acquisition, and engineering and administrative services. A downstream impact analysis is not included in the project's cost. It is anticipated that construction will be completed by the fall of 2005 or the spring of 2006.

The project engineer's cost estimate is \$286,179, of which \$279,179 is considered eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$97,713). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$97,713.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation in the Walsh County Assessment Drain 4B construction project at 35 percent of the eligible costs, not to exceed an allocation of \$97,713 from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

***It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation in the Walsh County Assessment Drain 4B construction project at 35 percent of the eligible costs, not to exceed an allocation of \$97,713 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**ATMOSPHERIC RESOURCE BOARD  
COOPERATIVE RESEARCH PROGRAM -  
APPROVAL OF \$10,609  
(SWC File AS/SWC/ARB)**

The North Dakota Atmospheric Resource Board is charged by law to conduct a research and development program in the area of weather modification. House Bill 1021, the State Water

Commission's appropriation bill for the 2005-2007 biennium, identifies \$39,391 for cooperative research. A request was presented for the State Water Commission's consideration for an allocation of \$10,609, which would increase the funding available for cooperative research to \$50,000 for the 2005-2007 biennium.

Darin Langerud, Atmospheric Resource Board division director, stated that the University of North Dakota (UND) Department of Atmospheric Science has completed a major upgrade to its C-Band Doppler radar, which now allows the radar to differentiate between liquid-phase and ice-phase hydrometeors in the precipitation echoes it observes. He commented that this affords a tremendous opportunity for research into precipitation development and hydrometeor phase change in North Dakota clouds. UND and the Atmospheric Resource Board (ARB) recently agreed on a small research initiative which will utilize UND's radar to observe developing convective precipitation this summer. Mr. Langerud explained that the goal of the program is to better define the location of super cooled water in convective clouds which will improve targeting during aircraft seeding operations. Radars with this capability are relatively few at this time, therefore, ARB's ability to partner with UND affords opportunities that other state weather modification programs don't currently have. The National Weather Service network of Doppler radars is slated

to begin upgrades to polarimetric capability starting in 2007. Once the upgrades have been completed, information received from the UND/ARB research program may be applied directly to operations through the use of the National Weather Service radar data in real time.

The University of North Dakota has offered to fly up to two flights with its Citation II research jet at no cost. The flights will be conducted when suitable clouds are present for observation by the radar and will be coordinated through the radar facility. In-cloud data from the Citation will provide direct measurements of cloud microphysics and help verify observations made with the radar.

An enhancement to the program would be the procurement of a seeding aircraft, provided by Weather Modification, Inc., Fargo, ND, to be deployed to seed individual clouds while being observed by the UND radar. Ice Crystal Engineering (ICE) in Davenport, ND, has offered to supply some hygroscopic (salt) flares for seeding case studies. ICE is the world's largest producer of cloud seeding flares and has recently focused its attention on development of a fast-acting, hygroscopic flare formulation. Mr. Langerud explained this research could be incorporated with the cloud condensation nucleus data collection and analysis and numerical cloud modeling currently under the umbrella of ARB's Bureau of Reclamation agreements.

The cooperative effort includes both the public and private sector, with state government, a university, and two North Dakota companies participating. Mr. Langerud stated that capitalizing on opportunities such as these would not only help improve the cloud seeding operations in North Dakota but would also improve the acquisition to acquire federal funds for additional research in the future.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$10,609 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the Atmospheric Resource Board cooperative research program. Affirmative action by the State Water Commission would increase the funding available for cooperative research to \$50,000 for the 2005-2007 biennium.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve an allocation of \$10,609 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the Atmospheric Resource Board cooperative research program. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

***APPROVAL OF ALLOCATION  
OF \$50,000 TO RED RIVER BASIN  
COMMISSION FROM JULY 1, 2005  
THROUGH DECEMBER 30, 2005  
(SWC File AOC/RBB)***

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

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

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

On December 10, 2004, the State Water Commission considered a request from the Red River Basin Commission to provide an allocation of \$100,000 from January 1, 2005 through December 31, 2005 (\$50,000 in the 2003-2005 biennium, and \$50,000 in the 2005-2007 biennium) to support the Red River Basin Commission's Natural Resource Framework Plan activities. Because of budget constraints, the Commission approved the allocation of \$50,000 from January 1, 2005 through June 30, 2005, and to revisit the request for additional funding prior to December 31, 2005.

Lance Yohe, executive director of the Red River Basin Commission, presented a request for the State Water Commission's consideration to provide an allocation of \$50,000 from July 1, 2005 through December 30, 2005 to support the Red River Basin Commission's Natural Resource Framework Plan (NRFP) efforts.

The NRFP efforts will consist of three components: 1) continue the review process and evaluation that is underway; 2) conduct face-to-face meetings to inform, gather input, and make connections; and 3) finalize the NRFP for presentation at the January, 2006 conference. Mr. Yohe stated

this effort will include meetings with local levels of government (counties, cities, and water resource districts as the primary focus) for their review, comments and support. He said this would also include review and response by the state and appropriate agencies, with the end goal being support and endorsement by each of the jurisdictions.

Mr. Yohe explained the effort to connect the Basin NRFP with the State Water Commission's biennial plan and the joint water resource districts planning efforts. This effort will include face-to-face meetings with the water resource districts to link the NRFP to each district in the basin in order to include their activities in the NRFP to identify areas where cooperation on common goals can be achieved, and to identify that the Basin NRFP can be used to support district activities.

It was the recommendation of the State Engineer that the State Water Commission approve an allocation of \$50,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to support the Red River Basin Commission's Natural Resource Framework Plan efforts from July 1, 2005 through December 31, 2005. The Commission's approval of this allocation will be contingent upon the availability of funds.

***It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve an allocation of \$50,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to support the Red River Basin Commission's Natural Resource Framework Plan efforts from July 1, 2005 through December 31, 2005. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**APPROVAL OF REQUEST FROM GARRISON CONSERVANCY DISTRICT FOR CONTINUATION OF CONTRACT WITH WILL AND CARLSON; AND COST SHARE OF \$70,000 FROM JULY 1, 2005 THROUGH JUNE 30, 2007 (SWC Project No. 237)**

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

The State Water Commission initially entered into a cost share agreement for the services of Peter Carlson in 1991. Since

that time, Mr. Carlson has provided services for the State of North Dakota in Washington, DC for Garrison, Devils Lake, the Northwest Area Water Supply (NAWS) Project, and the Dakota Water Resources Act. Considerable efforts are still needed to obtain funding through the Dakota Water Resources Act.

It was the recommendation of the State Engineer that the State Water Commission approve an allocation not to exceed \$70,000 (\$35,000 for each year of the 2005-2007 biennium) from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to continue the Will and Carlson consulting contract from July 1, 2005 through June 30, 2007. These funds will be cost shared 50 percent with the Garrison Diversion Conservancy District.

***It was moved by Commissioner Hillesland and seconded by Commissioner Olin that the State Water Commission approve an allocation not to exceed \$70,000 (\$35,000 for each year of the 2005-2007 biennium) from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to continue the Will and Carlson consulting contract from July 1, 2005 through June 30, 2007. These funds will be cost shared 50 percent with the Garrison Diversion Conservancy District. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**WATER-RELATED DAMAGE  
TO INFRASTRUCTURE IN  
NELSON COUNTY  
(SWC Project No. 1294)**

House Bill 1021, the State Water Commission's 2005-2007 biennium appropriation bill, authorizes the State Water Commission to provide up to \$500,000 for water-related damage to infrastructure in Nelson county.

Secretary Frink explained that the legislative intent does not specify what types of projects are eligible, but he said there are several long-term problems in the county including McHugh Slough and Lake Loretta. The cities of Michigan and Lakota also have water supply problems that need to be addressed. The legislative language does not address cost share, but he said it was the verbal opinion of members of the Senate Appropriations committee that a higher than normal cost share should be considered.

A letter was sent to the chairman of the Nelson County Water Resource District on May 11, 2005 requesting that the District provide the State Water Commission a prioritized list of flood-related water projects. A meeting has been scheduled with the District, legislators, Nelson County Commission, and others for June 24, 2005 to further address the issue.

***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, Phase 1, Construction Status** - All three reservoirs in the Medora-Beach regional service area, Phase 1, Belfield, Fryburg, and Beach, were painted and put into service in the fall of 2004. One-year inspections of the tanks are scheduled in June, 2005.

Recent rains in the project area have resulted in some trench settlement, which will be repaired under a three-year trench settlement warranty included in contract 7-8A, Fryburg Service Area, Phase 1, and contract 2-5B, the main transmission pipeline from Belfield to Beach. The project pipeline contracts include a two-year warranty on trench settlement. The first year runs concurrently with the one-year guarantee provided by the performance bond and the second year is bonded at 10 percent of the contract amount. After settlement is repaired, the trenches will have to be re-seeded in grassland areas at the contractor's cost.

**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.

Meetings have begun with Red Trail Energy to discuss provisions of their water service contract, contract administration, and the acquisition of easements. Approximately 2.5 miles of pipeline will be needed to connect to the existing raw water transmission pipeline near Richardton. The Southwest Pipeline Project engineer has estimated the cost of a 12-inch diameter pipeline capable of delivering 600 gallons per minute of water to be about \$350,000.

**Contract 7-6A Leak** - In May, 2005, a leak was discovered in the area of the Cannonball River crossing west of the city of New Leipzig. The pipeline crossing is 6 inches in diameter constructed by Northern Improvement in 2001 under

contract 7-6A, which conveys water to the south from the main transmission line conveying water from the main transmission pipeline to New Leipzig. Approximately 90 users in the Coffin Buttes VFD Booster Pocket Area are located downstream of this leak.

The contract had a one-year guarantee that is bonded and a three-year unbonded maintenance warranty which begins after the guarantee warranty expires. The maintenance warranty covers leaks and workmanship.

The river crossing was constructed by directional drilling in 2001. The contractor had encountered ledge rock and had difficulty pulling the pipe back through the tunnel created by the machine. When the leak was discovered, the contractor determined the leak was beneath the river and replaced the entire river crossing at considerable expense. Two additional leaks were also located to the south on this contract, which were promptly repaired by the contractor. The contractor was very responsive and is to be commended for the manner in which the warranty repairs were satisfied.

**Surveying Costs on State Land** - The design of the rural water distribution system for the Bowman-Scranton Regional Service Area routed some pipelines across state "school" lands. During the process of obtaining easements to cross these lands, the State Land Department required a legal survey of the property by a registered land surveyor, which includes verifying the section corners for the affected property. In some instances, the section corner monuments have been moved or destroyed and need to be re-established.

Water pipeline easements in North Dakota are typically "gratis", or free, to keep construction costs down. The presence of the water pipeline is also considered an improvement to the property. Main and secondary transmission pipeline easements are paid for on the Southwest Pipeline Project.

The State Land Department requirement of a legal survey has increased the cost of construction of some distribution pipelines on the project. The time required to complete the survey and get permission from the State Land Department can result in delays. Delays can occur when a user is added during construction or a pipeline is moved from its planned location due to an obstruction or presence of cultural resources.

North Dakota Century Code section 61-24.3-03, **Authorization of Southwest Pipeline Project**, states, in part: "The right-of-way is hereby given, dedicated, and set apart, to locate, construct, and maintain such works over and through any of the lands which are or may be the property of the state." Despite what the North Dakota Century Code may imply, the requirement of a legal survey has

resulted in avoidance of state lands when possible. This has caused consternation with the landowners and the Southwest Water Authority - a state project avoiding state property and locating by preference on adjacent private property.

There have been 8 instances, to date, where state lands could not be avoided and legal surveys were required. The total cost of the legal surveys has been \$19,034, for an average of \$2,379. This compares with the maximum cost criteria of \$31,810 for contract 7-7B/7-3C in Bowman-Scranton, and \$32,770 for contract 7-8A in Medora-Beach, Phase 1. For the upcoming Medora-Beach, Phase II, construction, there are several locations involving the crossing or are adjacent to state lands.

In response to the surveying costs involving state land, Lt. Governor Dalrymple indicated that the Office of the Governor will convey this issue to the attention of the State Land Department.

***SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF \$5.3 MILLION FOR  
MEDORA-BEACH, PHASE II  
(SWC Project No. 1736)***

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 table shows the facilities constructed under Medora-Beach, Phase I:

**Medora-Beach, Phase I  
Completed Facilities**

<u>Contract</u>	<u>Facility</u>	<u>Description</u>	<u>Estimated Cost</u>
2-5B	Main Transmission Pipeline *	46.4 miles 12"-6"	\$ 4,921,213
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, Phase I **	21 miles, 33 users	1,491,617
6	Telemetry, Phase I		<u>112,114</u>
<b>Total</b>			<b>\$ 8,211,000</b>

\* Includes service to Home on the Range, paid by the Southwest Water Authority - \$99,398

\*\* Increased to 44 miles and 71 users

Mr. Lennington explained that the budget submitted by the State Water Commission for the 2005-2007 biennium contained an allocation of \$2.6 million for the Southwest Pipeline Project. The Southwest Pipeline Project's administrative costs are approximately \$600,000 to \$700,000 per biennium, therefore, approximately \$2 million would be available for construction for the 2005-2007 biennium at that funding level.

Representatives of the North Dakota Water Coalition providing testimony on House Bill 1021, the State Water Commission 2005-2007 biennium appropriation bill, requested an additional \$5 million in state funding for the Southwest Pipeline Project along with more funding for other projects. State funding for the Southwest Pipeline Project at that level, along with USDA Rural Development funding, would provide service to a majority of the remaining Medora-Beach users. In February, 2005, an application for USDA Rural Development was submitted conservatively based on this funding level. The following table shows the remaining facilities for Medora-Beach:

<b>Medora-Beach Phase</b>			
<b><u>Remaining Facilities to be Constructed</u></b>			
<b><u>Contract</u></b>	<b><u>Facility</u></b>	<b><u>Description</u></b>	<b><u>Estimated Cost</u></b>
NA	Fryburg Service Area, Remainder	108 miles, 77 users	\$ 2,523,000
NA	Fryburg Service Area, Fairfield Pocket	63 miles, 33 users	1,388,000
7-8B	Beach Service Area *	117 miles, 88 users	2,585,000
NA	Beach Service Area, Trotters Pocket	48 miles, 33 users	1,077,000
7-8B or 7-8D	Golva Service Area, City of Golva	105 miles, 78 users	2,449,000
7-8C	Junction Inn Service Area, Morton County	128 miles, 92 users	2,841,000
7-8C	Crown Butte Pocket	17 miles, 15 users	407,000
5-13A	Second Davis Buttes Reservoir	1,000,000 gallons	759,000
5-12	Golva Tank	150,000 gallons	439,000
6	Telemetry, Phase II		<u>98,000</u>
<b>Total (rounded)</b>			<b>\$14,600,000</b>
<b>Total Medora-Beach Phase (rounded)</b>			<b>\$22,800,000</b>

\* Includes repayment of \$99,398 to Southwest Water Authority for Home on the Range

The 2005 legislature approved increasing the State Water Commission's budget for the 2005-2007 biennium by a total of \$7.0 million. An increase for the Southwest Pipeline Project of \$2.7 million, for a total of \$5.3 million, should allow for construction of the Beach, Golva, and Morton county

areas and increase the bonding capacity to \$2.0 million due to added customers. The funding application to USDA Rural Development was modified in April, 2005 to reflect this state funding level, with administrative costs subtracted, which is shown in the following table:

**Proposed Medora-Beach Funding  
USDA Rural Development Application**

<b><u>Total Funding</u></b>	<b><u>State Grant</u></b>	<b><u>USDA Loan</u></b>	<b><u>USDA Grant</u></b>
\$8,440,000	\$4,800,000	\$2,002,000	\$1,638,000

Mr. Lennington explained the construction for Medora-Beach, Phase II, proposed with this funding scenario, which is shown in the following table:

**Medora-Beach, Phase II, Facilities**

<b><u>Contract</u></b>	<b><u>Facility</u></b>	<b><u>Description</u></b>	<b><u>Estimated Cost</u></b>
7-8B	Beach Service Area *	115 miles, 82 users	\$ 2,585,000
7-8B	Golva Service Area, City of Golva	105 miles, 78 users	2,449,000
7-8C	Junction Inn Service Area, Morton County	128 miles, 92 users	2,841,000
7-8C	Crown Butte Pocket	17 miles, 15 users	407,000
6	Telemetry, Phase II		<u>58,000</u>
<b>Total (rounded)</b>			<b>\$ 8,370,000</b>
<b>Total Medora-Beach, Phases I and II (rounded)</b>			<b>\$16,600,000</b>

\* Includes repayment of \$99,398 to Southwest Water Authority for Home on the Range

Mr. Lennington stated that the list of facilities proposed for Medora-Beach, Phase II, does not include the remaining Fryburg service area, which is the area generally north and south of Belfield. To the north, the signup percentage is slightly below the 50 percent required in the feasibility criteria jointly developed by the State Water Commission and the Southwest Water Authority. To the south of Belfield, the cost per user exceeds the current feasibility criteria cost limit of \$34,430 based on the April, 2005 Consumer Price Index. More users have been signing up for water in both of these areas and it could meet the feasibility criteria in the future. The current bidding climate is such that there is a possibility that favorable bids would allow construction of more facilities than are shown in the table. Deleting some of the high cost lines which don't meet cost limit criteria could also reduce costs in some areas. Construction of the Golva service area is included, and can be served on a temporary basis without the tank, which is deferred at this time. This area will not meet the criteria for service until the tank is built. The Trotters and Fairfield pockets and the second Davis Butte tank are also deferred until later.

On May 27, 2005, USDA Rural Development completed processing the revised application and submitted the proposed funding to their national office for Medora-Beach, Phase II. USDA Rural Development recently changed their loan underwriting methods. The Southwest Pipeline Project, with ownership and construction by the state and operation by the Southwest Water Authority, is not a "typical" water system applying for Rural Development funding. Most other rural water systems funded by Rural Development have their signup fees available for construction. Rural Development multiplied the \$430 signup fee on the Southwest Pipeline Project by the 270 users in the Phase II proposal for a total of \$117,000. In their proposal to the national office, this was included as a cash contribution from the Authority. Mr. Lennington explained that since the Commission constructs and owns the project, this cost is probably the Commission's even though the Authority collects the signup fees. Mr. Lennington indicated that notification was received that the funding package was approved, but it is not definite until the Request for Obligation of Funds is executed, which is anticipated by the end of June, 2005. The following table shows how the funding proposal was submitted by the Bismarck office of USDA Rural Development:

**Medora-Beach Funding  
USDA Rural Development Submission**

<u>Total Funding</u>	<u>State Grant</u>	<u>SWA Cash</u>	<u>USDA Loan</u>	<u>USDA Grant</u>
\$8,440,000	\$4,800,000	\$117,000	\$1,999,000	\$1,524,000

Mr. Lennington explained that the \$5,300,000 authorized in the State Water Commission's budget for the 2005-2007 biennium is not adequate to fulfill the commitment to USDA Rural Development for \$4,800,000, pay the \$117,000 Rural Development expects from the Authority, and pay project administrative costs at current spending levels. The commitment of \$4,917,000 is required to be paid before any of the USDA Rural Development money is received. Some cost savings will have to be realized in administrative costs and the Authority may have to pay the \$117,000. If funding is approved by the State Water Commission and USDA Rural Development, Mr. Lennington said the advertising for bids should occur in July, 2005 on the Beach, Golva, and parts of the Fryburg service area. The Morton county areas will be bid at a later date as extension cultural resource work is anticipated.

The bid package for the Beach service area includes capacity for the Trotters pocket service area. This pocket currently does not meet feasibility criteria for maximum cost per user. This maximum cost is \$34,430 as of May, 2005, while the Trotters pocket estimate is about \$41,000 per user. The Trotters pocket does have a signup percentage of 88 percent, which is the highest signup for the Southwest Pipeline Project. The bid package also includes the Fairfield

pocket area, north of Belfield, which receives water through the Fryburg service area pipelines. This area has high costs at about \$39,000 per user. The increased cost to upsize pipelines to include capacity for the Trotters and Fairfield pockets is estimated at \$159,000 and \$96,000, respectively, but won't be known until the bids are received and the unit prices are compared. At its meeting on April 4, 2005, the Southwest Water Authority voted to recommend that the Commission include capacity for the Trotters and Fairfield pockets so that they could be developed in the next phase of Medora-Beach. The State Water Commission will need to consider including this capacity at the time it considers awarding a contract for the Beach service area.

It was the recommendation of the State Engineer that the State Water Commission approve the funding package for Medora-Beach, Phase II, which includes a total state funding allocation of up to \$5,300,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium. The funding package includes USDA Rural Development funding of \$3,523,000.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the funding package for Medora-Beach, Phase II, which includes a total state funding allocation of up to \$5,300,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and USDA Rural Development funding of \$3,523,000. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF SERVICE TO  
COUNTRY CLUB ESTATES; AND  
APPROVAL OF CITY OF BEULAH  
INTERIM SERVICE PROJECT  
(SWC Project No. 1736)**

The city of Zap originally contacted the State Water Commission and the Southwest Water Authority about the possibility of service from the Southwest Pipeline Project in 2000. The city's "green sand" filter water treatment facility is aging and requires consider-

able maintenance. Several alternatives for supplying the city of Zap with Southwest Pipeline water early were considered but all of the alternatives had drawbacks and it was decided to wait for development of the Oliver-Mercer-North Dunn regional service area. The city held an election in November, 2001 to consider joining the project and that measure was approved by a vote of 72 for and 35 against. A contract was approved by the State Water Commission at its August 15, 2002 meeting. The debt

service credit provision, common to other Southwest Pipeline Project water service contracts, was removed from the city of Zap's contract because at that time they did not have any debt and it would remove any question about debt incurred on the water treatment plant after the contract was executed.

In 2003, the Southwest Water Authority was contacted by the city of Beulah officials about the possibility of providing Southwest Pipeline water to the Country Club Estates, a small city subdivision located across the Knife River south of the rest of the city of Beulah. There was also interest in potable water for domestic needs expressed by the Coyote power station plant, which also supplies the nearby Dakota Westmoreland mine. There are also six users located just to the east of Beulah that have been signed up for Southwest Pipeline water for a number of years.

James Lennington explained possible alternatives for supplying water from the city of Beulah to all of these entities, including the city of Zap, on an interim basis with the understanding that ultimately the Southwest Pipeline Project would supply them with water from the project. He said that any project using water from Beulah on an interim, or other basis will require an agreement with the city of Beulah. The city has agreed to provide water for \$1.50 per thousand gallons. Cost estimates for this interim solution were developed by the Southwest Pipeline Project engineer, and three options were evaluated. The following table illustrates the estimated costs of these options and the respective share of the costs for each group of users:

**Option #1 - Country Club Estates (CCE) Only**

Total Estimated Project Cost	\$ 270,000
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**Option #2 - CCE, Coyote, Airport**

Total Estimated Project Cost	\$ 435,000
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Country Club Estates share	\$ 235,000
Coyote/Dakota Westmoreland share	\$ 145,000
Beulah Airport share	\$ 55,000

**Option #3 - CCE, Coyote, Airport, Zap**

Total Estimated Project Cost	\$ 1,120,000
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Country Club Estates	\$ 220,000
Coyote/Dakota Westmoreland share	\$ 114,000
Beulah Airport share	\$ 55,000
City of Zap share	\$ 600,000
East Beulah users	\$ 131,000

The Country Club Estates subdivision is within the city limits of Beulah. The subdivision was annexed into the city as soon as it was platted in 1979, and the residents of the subdivision have been seeking improved water supplies for some time. Estimates provided by the city for connection to the city system have been fairly high, at about \$568,000 or \$11,150 per lot in 2003, which included capacity for fire flows. This compares to a cost of \$269,000, or \$5,250 per lot in the Option #1 estimate which does not include fire flows. Subdivision residents have been opposed to getting water from the city primarily because of this cost. If the city system were built without fire flow capacity, the costs would be substantially less. Costs of the city water distribution would be paid for through assessments on each lot. About 20 of the lots in the subdivision do not have houses on them and these would also be assessed. In some cases, an owner has multiple adjacent lots. The subdivision residents would rather get water through the Southwest Pipeline Project than through the city even though they recognize that paying capital repayment to the state for an unspecified amount of time will cost more than special assessments from the city. Some of the residents also maintain that the city has been uncooperative on this issue.

Mr. Lennington explained it is possible that serving the Country Club Estates would establish a precedent for the Southwest Pipeline Project. This subdivision would be the first one within city limits served by the project, although several individual homes have been served as subsequent users. Several subdivisions around the city of Dickinson are served by the project but none are actually within the city limits. Some of those subdivisions could likely have been served by Dickinson and assessed at reasonable rates.

The Southwest Water Authority board of directors has voted to give their full support to the interim project including service to the Country Club Estates. The Authority feels strong that denying service to the Country Club Estates users, some of which have been signed up for Southwest Pipeline water for many years, will reflect poorly on the project.

It was the recommendation of the State Engineer that the State Water Commission approve serving the Country Club Estates through the Beulah interim service project.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve serving the Country Club Estates through the Beulah interim service project.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

Mr. Lennington explained that in order to minimize the need for state funding and avoid impacting the Medora-Beach schedule, an application was submitted through the USDA Rural Development grant and loan program without any proposed state share. Grant funding through this program would not be available for industrial users. When Dakota Westmoreland and the Coyote station power plant were notified that they would have to pay higher water rates, they decided to wait until the Oliver-Mercer-North Dunn regional service area was developed. An application for funding from Rural Development was developed in 2004 for Option #3 with Dakota Westmoreland and the Coyote station power plant deleted. The following table shows the costs of this option and the respective share of costs for each group of users:

**Option #3 - CCE, Coyote, Airport, Zap**

Total Estimated Project Cost	\$1,034,000
Country Club Estates	\$ 248,000
Beulah Airport share	\$ 55,000
City of Zap share	\$ 600,000
East Beulah users	\$ 131,000

The amount of capital repayment generated by each of these groups has been estimated, along with how much loan that capital repayment would support, and is shown in the following table:

**Capital Repayment Estimate**

<u>User Group</u>	<u>No. of Users</u>	<u>Annual Capital Repayment</u>	<u>Loan Supported (4.75%, 38 yrs)</u>
Country Club Estates	31	\$10,340	\$180,360
Beulah Airport	3	\$ 1,000	\$ 17,440
Zap and 10 users:			
Zap	231	\$ 7,670	\$133,790
10 users	10	\$ 3,330	\$ 58,090
Subtotal		\$11,000	\$191,880
East Beulah users	6	<u>\$ 2,000</u>	<u>\$ 34,890</u>
Total		\$24,340	\$424,570

Mr. Lennington explained that the capability of the Beulah interim service project to fund itself is highly dependent on the outcome of the USDA Rural Development funding application, especially with regard to grant eligibility. Each loan under the Southwest Pipeline Project revenue bonding program is subject to an annual account maintenance fee, currently \$2,200, with the project trustee, Wells Fargo Bank in Minneapolis. The USDA debt service reserve requirements for the first ten years of payments are the equivalent of 10 percent of the

annual bond payment. Capital repayment generated by the full Beulah interim water supply project should total about \$24,340 at the 2005 rate, increasing at the rate of inflation each year. It is anticipated there could be several more lots in the Country Club Estates subdivision that will be developed in the future and there is the potential for additional users along the pipeline to Zap. Relative to the other users in the interim project, the Country Club Estates is lower cost and generates more capital repayment. The following table shows the expected loan payments and capital repayment with and without a Rural Development grant, and with and without the Country Club Estates. Estimated loan payments are based on 38-year loans at 4.75 percent:

	<b><u>Analysis of Funding</u></b>				
	<b><u>Total Cost</u></b>	<b><u>Loan Amount</u></b>	<b><u>Annual Debt Service</u></b> *	<b><u>Capital Repayment</u></b>	<b><u>Debt Service Coverage</u></b>
With CCE and USDA grant	\$1,034,000	\$ 569,000	\$38,100	\$24,340	64%
With CCE and no grant	\$1,034,000	\$1,034,000	\$67,400	\$24,340	36%
Without CCE ** and USDA grant	\$ 655,000	\$ 360,000	\$24,900	\$12,000	48%
Without CCE ** and no grant	\$ 655,000	\$ 655,000	\$43,500	\$12,000	28%

\* Including \$2,200 annual Trustee fee and DSR (first 10 years only)

\*\* Service to 6 users east of Beulah also deleted

With a USDA Rural Development grant, Mr. Lennington said the difference between the projected capital repayments and the annual debt service is \$13,000 - \$14,000 annually dropping to about \$10,500 after ten years. Without a grant, he said the annual difference between capital repayment and debt service is \$31,500 to \$43,000 annually. These figures compare to total Southwest Pipeline Project 2004 annual capital repayments of \$1,621,000 and debt service costs of \$1,070,000 on the entire project. Total debt service will rise to \$1,170,000 in 2006 and then begin to drop. Agency administrative costs for the Southwest Pipeline Project, amounting to \$300,000 to \$350,000 annually, are also paid from capital repayments. Because of the larger disparity between projected capital repayments and annual debt service, Mr. Lennington stated construction of the Beulah interim service project could not be recommended without the USDA Rural Development grant.

The Southwest Water Authority's operating and maintenance costs for the Beulah interim service project are different from the rest of the Southwest Pipeline Project as water will be purchased from the city of Beulah, and because of the distance from the rest of the project. Water rates for operating costs are still being developed and discussed by the Authority for these users.

It was the recommendation of the State Engineer that the State Water Commission approve the development of the Beulah interim service project conditioned on receiving a 45 percent grant from USDA Rural Development.

***It was moved by Jeff Olson representing Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve the development of the Beulah interim service project conditioned on receiving a 45 percent grant from USDA Rural Development.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

***SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF CAPITAL REPAYMENT  
RATE FOR JUNCTION INN SERVICE  
AREA AND NORTH CROWN BUTTE  
POCKET IN MORTON COUNTY  
(SWC Project No. 1736)***

James Lennington briefed the State Water Commission members on meetings held with the Missouri West Water System (MWWS) officials to discuss service options to the Junction Inn service area and the North Crown Butte pocket area in Morton county. The

conclusion of these discussions was that the best option was for the Southwest Water Authority to buy water from MWWS as a bulk customer at a capacity charge of \$19.20 per gallon per minute per month and a charge for water of \$2.28 per thousand gallons. This is the same rate paid by other bulk water customers on the MWWS such as the city of New Salem. There may also be a charge of \$60,000 to \$70,000 for capacity at the Mandan water treatment plant, which has not been included in the cost estimate for these areas. The payment for capacity will ensure that the Southwest Pipeline customers added on to the MWWS are brought in on the same basis as the other users with respect to the treatment plant capacity. The capacity charge of \$19.20 includes a portion for debt service retirement on the MWWS, which functions as the transmission facilities for these two new areas.

Mr. Lennington explained that if users in the Junction Inn service area and the North Crown Butte pocket area are charged the same capital repayment rate as other Southwest Pipeline Project users, then they are essentially paying twice for transmission facilities and they are paying for transmission facilities on the project that they are not using. In order to build these portions of the project for part of Medora-Beach, Phase II, the state is taking out a loan and providing a state grant of at least \$4.8 million. Mr. Lennington said that a reduction in capital repayment appears justifiable in these two areas.

Mr. Lennington explained the following methodology used in coming up with a proposed capital repayment rate for the Junction Inn service area and the North Crown Butte pocket area. The capital repayment to the

state was reduced to match the current minimum payment of \$38.25 paid by users on the Southwest Pipeline Project. The \$19.20 capacity charge comes to about \$10.77 per month per user (60 gpm and 107 equivalent service units (ESU)). The 60 gpm includes capacity for potential future users. By the time that construction is completed, there could be more than 107 ESUs in the two areas, but Mr. Lennington said it appears that the calculation is reasonable at this time. The \$38.25 also includes payment of \$5.46 to the Southwest Water Authority for the first 2,000 gallons used.

Using the \$38.25 current Southwest Pipeline Project monthly minimum as the basis for determining capital repayment is similar to the methodology used in coming up with the capital repayment for rural users in 1993. Mr. Lennington explained that at that time, the capital repayment was set at \$25.00 (\$20.00 plus a \$5.00 meter fee) by reviewing prevailing monthly minimums for other rural water systems in North Dakota. He said the current rural water rates on the Southwest Pipeline Project are in the "middle of the pack" in comparison to other systems in North Dakota, even with capital repayment adjustments every year. A comparison of the minimums is shown in the following table:

<u>Current 2005 SWPP Minimum</u>	<u>Proposed 2005 SWPP Morton County Minimum</u>
\$ 5.46 First 2,000 gallons	\$ 5.48 First 2,000 gallons
\$27.79 Capital Repayment	\$22.00 Capital Repayment
<u>\$ 5.00</u> Meter Fee	<u>\$10.77</u> MWWS Capacity Fee
\$38.25 Total	\$38.25 Total

Mr. Lennington explained that the state is receiving \$5.79 less in capital repayment and the Southwest Water Authority is receiving \$5.00 less in operating revenue (meter fee) from each user. The state also foregoes receiving the meter fee for the first two years. Based on the number of users, the impact to the state is \$7,434 using the 2005 rates.

The minimum rate shown in the table will be applied as it is on the rest of the Southwest Pipeline Project. Pasture taps will count as one-half per equivalent service unit (ESU) and pay one-half of the minimum rate. High consumption users will have their capital repayments increased the same as other project high consumption users. The capital repayment rate will be adjusted annually according to the annual increase in the September Consumer Price Index.

It was the recommendation of the State Engineer that the State Water Commission approve the capital repayment rate for the Junction Inn service area and the North Crown Butte pocket area at \$22.00 per month per equivalent service unit, and that the capital repayment rate be adjusted annually in accordance with rate adjustments on the Southwest Pipeline Project.

***It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve the capital repayment rate for the Junction Inn service area and the North Crown Butte pocket area at \$22.00 per month per equivalent service unit, and that the capital repayment rate be adjusted annually in accordance with rate adjustments on the Southwest Pipeline Project.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

***SOUTHWEST PIPELINE PROJECT -  
WATER PERMIT APPLICATION  
FOR INDUSTRIAL USERS  
(SWC Project No. 1736)  
(Water Permit Application No. 5754)***

James Lennington informed the State Water Commission members that the activity concerning the Red Trail Energy ethanol plant at Richardton, including the passage of House Bill 1274 during the 2005 legislative session, has

resulted in the realization that the existing water permit for the Southwest Pipeline Project does not include industrial use.

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

House Bill 1274 changed the North Dakota Century Code section 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. House Bill 1274 was passed by the 2005 legislature and signed into law by Governor Hoeven on April 5, 2005. This bill allows Red Trail Energy, and other industrial users, to pay for water as they use it.

The current water permit for the Southwest Water Project was approved on December 5, 1984. Conditional Water Use Permit No. 3688 provides for the use of 17,100 acre-feet of water at a maximum withdrawal rate of 10,590 gallons per minute. Permit No. 3688 states that of the 17,100

acre-feet of water, 13,047 acre-feet is for municipal use and 4,053 acre-feet is for rural domestic use. None is reported as for industrial use. Over the years, a number of industrial users have signed water service contracts for Southwest Pipeline water including Steffes Manufacturing and Baker Boy Industries in Dickinson, Taylor Nursery, and a number of dairies in rural areas. In 2004, these users combined to use approximately 7,422,900 gallons, or 22.8 acre-feet of water. Section 61-04-06.1 of the North Dakota Century Code lists the use of water in order of priority from highest to lowest as follows: 1) domestic use; 2) municipal use; 3) livestock use; 4) irrigation use; 5) industrial use; and 6) fish, wildlife, and other outdoor recreational uses.

Section 89-03-02-01 of the North Dakota Administrative Code states that change of use on existing water permits can only be from a lower priority use to a higher priority use. Mr. Lennington explained that for this reason, the industrial use of Southwest Pipeline Project water requires a new permit application. A conditional water use application has been prepared for the Southwest Pipeline Project in the amount of 1,130 acre-feet of water per year for industrial use. This would be the amount used by Red Trail Energy at its lower development level of 726 acre-feet plus an additional 404 acre-feet for other users. Mr. Lennington said this amount should be adequate for Red Trail Energy and the other industrial users with some allowance for future development. The applicant is the North Dakota State Water Commission, just as on Conditional Water Use Permit No. 3688.

It was the recommendation of the State Engineer that the State Water Commission apply for a conditional water use permit for the Southwest Pipeline Project in the amount of 1,130 acre-feet of water annually for industrial use.

***It was moved by Commissioner Thompson and seconded by Commissioner Hofstad that the State Water Commission submit an application to the North Dakota Office of the State Engineer for a conditional water use permit for the Southwest Pipeline Project in the amount of 1,130 acre-feet of water annually for industrial use.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

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

James Lennington, project manager for the Northwest Area Water Supply (NAWS) project, provided the following project 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 at Ward County Road 16.

The contractor completed pipe laying on June 26, 2004, and completed testing of the facilities on November 22, 2004, which signifies substantial completion of the project. The original completion date for contract 2-1B was October 31, 2004. There were some time delays due to weather and some changed conditions during execution of the contract, as well as added facilities. The primary reason for the contract being over one year beyond the completion date was low production in pipeline by the contractor.

The pre-final inspection of this contract was held on December 6 and 7, 2004. The contractor was given a "punch list" of items to address before final contract closeout, which is nearly completed. It is anticipated that the final contract closeout and a final inspection of contract 2-1B will occur in June, 2005.

Disturbed areas of the contract, which originally were grass, were re-seeded into grass last fall. Recent heavy rains in Ward county have caused extensive damage to these areas which require repair. The estimates for repairing the damaged areas range from \$30,000 to \$50,000.

**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 has completed all but about 1,200 feet of pipe laying on this contract. The contract includes three cast-in-place concrete valve vaults in areas where there were high water tables and one

additional cast-in-place vault was added through a change order. The Canadian Pacific railroad bore at Max was extended and lowered after the contract was bid because of the presence of an equalization culvert. The additional cost requested by the boring subcontractor for this bore was rejected, and alternate locations for the bore to avoid the culvert were considered. This has delayed the completion of pipe laying on the contract. The contractor has agreed to deleting the railroad crossing and the remaining pipe from contract 2-1C and adding it to contract 2-1D. The contractor is finishing up with the cast-in-place vaults and some of the pre-cast vaults and wrapping things up on the contract. The contractor did discover three rolled gaskets in the pipe, even before doing any pressure testing. This does not bode well for the pressure test on this contract. The completion date for contract 2-1C in the documents was December 3, 2004, but that date was adjusted because of the railroad bore issue.

**Contract 2-1D - Pretreated Water Main Transmission Pipeline from City of Max Pump Station to Lake Sakakawea Intake:** Contract 2-1D consists of approximately 14.9 miles of 36-inch pipe extending from just north of N.D. Highway 53 at Max, ND, to a point just south of the Totten Trail Restaurant at the Snake Creek embankment. At its March 10, 2005 meeting, the State Water Commission authorized the State Engineer discretionary approval to award contract 2-1D, which was awarded to Molstad Excavating, Inc., Grand Forks, ND, on April 18, 2005.

The contractor is currently putting together a pipe laying schedule and materials submittals and has indicated that construction should commence the week of June 27, 2005.

**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 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.

On April 15, 2005, Judge Collyer found that an injunction stopping all construction activity on the project was not appropriate and, therefore, she allowed construction to proceed on existing contracts and on contract 2-1D. Judge Collyer also stated that construction could proceed on other features if the government could demonstrate why the proposed additional construction would not influence the ability to choose water treatment options in the ongoing NEPA review. On June 13, 2005, the Department of the Interior and the State of North Dakota filed an appeal to Judge Collyer's February, 2004, ruling on the adequacy of the NEPA review as well as the issue of Manitoba and Canada having standing to file suit under NEPA, although they have not done so to date. It is also possible that the Canadians or Manitobans will file an appeal of Judge Collyer's ruling on an injunction.

**Arsenic Communities:** The new drinking water arsenic regulations were published in the federal register in January, 2001. These regulations reduced the maximum containment level of arsenic from 50 micrograms per liter (parts per billion or ppb) to 10 ppb. Communities have to be in compliance by January 23, 2006. Communities not in compliance have to receive an exemption by that date. Exemptions may be granted to communities who have developed a plan to reduce arsenic within a limited time frame. Extensions to the exemption may also be granted to communities based on their progress toward meeting the regulations and their individual situation.

Several communities in the NAWS project area exceed the 10 ppb level for arsenic including the communities of Anamoose, Columbus, Crosby, Fortuna, Granville, Karlsruhe, Kenmare, Plaza, Ryder, Upham, Westhope and Wildrose. All of these communities were included in the NAWS prefinal design but most of them have declined to sign water service contracts. The city of Kenmare declined a water service contract but later decided to join NAWS. The NAWS advisory committee reviewed their request and determined that adding Kenmare would not increase the cost of the reconfigured project. None of the communities has a contract which has been executed by the State Water Commission. This may be required as part of their plan to address arsenic, but at this point in time, it does not.

State Water Commission and Houston Engineering staffs attended city council meetings in Westhope, Columbus and Kenmare to discuss how those cities were addressing their arsenic situations.

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

Devils Lake is currently at an elevation of 1448.55 feet msl, which is the lake's highest elevation for this year. At its current elevation, the lake has a surface area of 135,200 acres and storage of 2.63 million acre-feet of water. The lake reached a historic level of 1449.1 feet msl on June 17, 2004. Due to the higher level of Stump Lake, the combined current storage in Devils Lake exceeds the peak storage in 2004.

The current elevation of Stump Lake is 1429.32 feet msl. At this elevation, Stump Lake has a surface area of 10,100 acres and is storing 278,800 acre-feet of water. The gage on the Jerusalem channel is registering flows of 270 cubic feet per second. Staffs of the State Water Commission, Division of Emergency Management, and FEMA have been working to allow damages on Stump Lake to be covered by the disaster declaration made in 2004 since much of the water that came into Devils Lake in 2004 will eventually end up in Stump Lake. The volume of discharge through the USGS gage on the Jerusalem outlet and the volumetric increase of Stump Lake in 2004 are virtually identical indicating that flooding on Stump Lake is a direct result of the flooding on Devils Lake covered by the disaster declaration. A final elevation of Stump Lake up to which damages can be covered by the disaster declaration has not been determined.

**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.

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 electrical 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 been on-site since April, 2005 working on the last 3.5 miles of canal, of which the majority of the canal has been shaped. The completed 6.5 miles have been seeded and the installation of fencing remains. Industrial Builders, Inc. has completed work on the concrete structures and some seeding remains on the contract. They have also been retained by S.J. Louis to make the collars to connect the pipelines to the transition structures. Excel Corporation continues work on the pump station. The inlet structure is being constructed at the Josephine pump station, the interior of the Josephine standpipe has been painted and the exterior is being painted. The paint work has begun on the Round Lake standpipe. The power lines have been strung to the pump stations with connections in the near future. The transformers are on-site and being installed.

Because of delays caused by weather affecting both the canal work and painting of the standpipes, Mr. Sando said the project will not be operational by July 1, 2005, although every attempt is being made to begin the operation as soon as possible.

On March 10, 2005, the State Water Commission preauthorized the State Engineer to award the Devils Lake Emergency Outlet Contract 6, Radio Telemetry SCADA System, to the lowest responsible bidder. Contract 6 was awarded to U.S. Filter on June 3, 2005. The outlet will be able to operate prior the completion of Contract 6.

House Bill 1021, the State Water Commission's appropriations bill for the 2005-2007 biennium, provides a legislative appropriation for two full-time positions for the operation of the Devils Lake outlet. The State Water Commission recently advertised for the two positions.

***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 irrigation pipelines have been installed and flushed at 10 sites. The pivot units have been erected, the wire strung and buried, and all of the sites have been wired and connected. North Dakota State University is sampling the sites to establish baselines to monitor any effects irrigation will have on the soil chemistry. K&T Irrigation has demonstrated how to run each particular system with each operator and will return to assist in applying water to the fields upon NDSU's approval. On June 1, 2005, a celebratory "kickoff" event was held at the Anderson farm near Site 7.

***MR&I WATER SUPPLY PROGRAM -  
MR&I COMMITTEE REPORT;  
PROJECT STATUS REPORT; AND  
APPROVAL OF PROPOSED  
FISCAL YEAR 2006 MR&I  
FEDERAL BUDGET  
(SWC Project No. 237-03)***

The State Water Commission and the Garrison Diversion Conservancy District Municipal, Rural and Industrial (MR&I) committee met on April 28, 2005 to discuss the project status and the funding of MR&I projects. The issues were discussed at length, and the committee recommended funding for the

Northwest Area Water Supply (NAWS) project, Stutsman County Rural Water, and the city of Underwood (The State Water Commission considered the Stutsman County

Rural Water and the city of Underwood water supply project under separate actions on June 22, 2005). Projects recommended for funding approval, and the approved projects status are summarized in a Commission staff memorandum, dated June 13, 2005, and attached hereto as **APPENDIX "F"**.

Secretary Frink presented and recommended the proposed MR&I Water Supply program budget allocation for Fiscal Year 2006 of \$4,083,500 for the State Water Commission's consideration. 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 2006 would be committed:

**Northwest Area Water Supply Project (Minot Component):** Contract 2-1D consists of approximately 14.9 miles of 36-inch main transmission pipeline extending from just north of North Dakota Highway 53 at Max, ND to a point just south of the Totten Trail Restaurant at the Snake Creek embankment. The project engineer's estimate for construction is \$9,368,612, and the project cost is approximately \$10,280,000. On February 28, 2005, bids were opened for contract 2-1D. The contract was awarded to Molstad Excavating, Inc., Grand Forks, ND, on April 18, 2005.

Funding would come from several sources: \$1,550,000 - 65 percent MR&I federal balance; \$1,780,000 - 65 percent state federal advance; \$3,350,000 - 65 percent city of Minot federal advance; and \$3,600,000 - 35 percent city of Minot cost share.

The proposed Fiscal Year 2006 funding, which includes an estimated \$3,600,000 for MR&I, is pending final congressional approval. This amount will be needed to complete the current federal NAWS commitments. The city of Minot indicated its intent to advance the shortfall in the federal MR&I 65 percent funding. If the Fiscal Year 2006 funding is approved in time, the city of Minot would not be required to make an advance to meet the current commitments. Any 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 in Fiscal Year 2006.

*The State Engineer's recommendation provides for an additional federal Fiscal Year 2006 MR&I grant of up to \$3,600,000 (see table on page 41), 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 \$22,077,464 for the Northwest Area Water Supply Project, Minot component:

**Fiscal Year 2006  
MR&I Water Supply Program**

<u>Project</u>	<u>Activity</u>	<u>FY 2006 Approved</u>	<u>FY 2006 Proposed</u>	<u>FY 2006 Total</u>
NAWS (Minot)	D&C	\$ 0	\$3,600,000	\$3,600,000
Stutsman Rural Water *	D&C	83,500	83,500	83,500
City of Underwood **	D&C	0	400,000	400,000
Administration		<u>0</u>	<u>0</u>	<u>0</u>
<b>Totals</b>		<b>\$ 83,500</b>	<b>\$4,083,500</b>	<b>\$4,083,500</b>

\* Grant percentage changes from 5 percent to 10 percent, but the grant amount (\$83,500) remains. State Water Commission action covered under separate item.

\*\* Grant would be reimbursed from future federal MR&I funding. State Water Commission action covered under separate item.

***It was moved by Commissioner Thompson and seconded by Commissioner Swenson that the State Water Commission approve the MR&I Water Supply program proposed allocation of \$4,083,500 for Fiscal Year 2006 as recommended by the State Engineer. This motion is contingent upon the availability of federal funds, and is subject to future revisions.***

***This action increases the total federal MR&I grant to \$22,077,464 for the Northwest Area Water Supply Project, Minot component.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

***APPROVAL OF GRANT PERCENTAGE CHANGE FOR FUNDING FROM WATER DEVELOPMENT AND RESEARCH FUND FOR STUTSMAN COUNTY RURAL WATER (SWC Project No. 237-03)***

On March 10, 2005, the State Water Commission approved 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.

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 1,100 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 \$1,455,000 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. The District has applied to USDA, Rural Development for funding.

A request from the Stutsman County Rural Water District was presented for the State Water Commission's consideration that the grant be increased from 5 percent to 10 percent of the eligible costs, not to exceed \$83,500 from the Water Development and Research Fund (approved March 10, 2005).

It was the recommendation of the State Engineer that the State Water Commission approve a 10 percent grant for the Stutsman County Rural Water infrastructure project, not to exceed \$83,500 from the Water Development and Research Fund (approved March 10, 2005). The MR&I program is based on reimbursement and does not pay without matching funds. 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.

***It was moved by Commissioner Hofstad and seconded by Commissioner Olin that the State Water Commission approve a 10 percent grant, not to exceed \$83,500 from the Water Development and Research Fund (approved March 10, 2005), for the Stutsman County Rural Water infrastructure improvements project. This motion is contingent upon the availability of funds, and is subject to future revisions.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**CITY OF UNDERWOOD WATER  
SUPPLY PROJECT - APPROVAL  
OF STATE FUNDING FOR MR&I  
PROJECTS (\$400,000)  
(SWC Project No. 237-03)**

\$400,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, not to exceed 17 percent of the eligible costs, for the city of Underwood's water supply project.

House Bill 1021, the State Water Commission's appropriation bill for the 2005-2007 biennium, includes \$2,500,000 for funding MR&I projects. A request was presented for the State Water Commission's consideration for an allocation of

The city of Underwood will lose its existing water supply through mining activities in 2006. Falkirk Mine Company and the city have agreed to a \$1,150,000 buyout, and a new water source by 2006. The city intends to obtain its future water supply from the city of Riverdale. The overall project includes an expansion of Riverdale's water treatment plant, a pipeline to Underwood, and 60 gallons per minute to the McLean-Sheridan Rural Water System for rural users on the south shore of Lake Sakakawea. The agreement with McLean-Sheridan will allow for additional water for expansion as long as it does not affect the city of Underwood's 250 gallons per minute.

The project engineer's estimated cost is \$2,414,000. Proposed funding sources include Falkirk Mine Company (\$1,150,000); McLean-Sheridan Rural Water (\$100,000); city of Underwood loan from USDA-Rural Development (\$764,000); and the State Water Commission (\$400,000).

It was the recommendation of the State Engineer that the State Water Commission approve funding of 17 percent of the eligible costs, not to exceed an allocation of \$400,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the city of Underwood's water supply project. It is intended that the State of North Dakota would be reimbursed \$400,000 using future federal MR&I grant funding authorized under the Dakota Water Resources Act of 2000. The projects are required to satisfy federal criteria during the entire process.

***It was moved by Commissioner Olin and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission approve funding of 17 percent of the eligible costs, not to exceed an allocation of \$400,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the city of Underwood's water supply project. This motion is contingent upon the availability of funds, and that the State of North Dakota be reimbursed \$400,000 using future federal MR&I grant funding authorized under the Dakota Water Resources Act of 2000.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**APPROVAL FOR CITY OF STANLEY  
TO EXPEND \$35,000 FROM CAPITAL  
REPLACEMENT RESERVE FUND  
(SWC Project No. 237-STA)**

A request from the city of Stanley was presented for the State Water Commission's consideration to expend \$35,000 from the city's capital replacement re-

serve fund for the relocation of 7,300 feet of the water line due to the construction of U.S. Highway 2. The city of Stanley executed a loan and grant agreement in 1993 for a water supply project, which has a term of 25 years. The agreement requires approval of the State Water Commission to expend funds from the capital replacement reserve fund.

It was the recommendation of the State Engineer that the State Water Commission grant approval to the city of Stanley to expend \$35,000 from the capital replacement reserve fund for the relocation of a portion of the water supply pipeline, and that the time requirement for the accumulation of reserve funds be extended to 2011.

***It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission grant approval to the city of Stanley to expend \$35,000 from the capital replacement reserve fund for the relocation of a portion of the water supply pipeline, and that the time requirement for the accumulation of reserve funds shall hereby be extended to 2011.***

***Commissioners Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.***

**APPROVAL OF ALLOCATION OF \$175,000 FROM STATE FUNDS; AND ALLOCATION OF \$125,000 FROM WATER DEVELOPMENT AND RESEARCH FUND FOR RAMSEY COUNTY RURAL UTILITIES WATER SERVICE TO GRAHAMS ISLAND STATE PARK (SWC Project No. 237-RAM)**

A request was presented for the State Water Commission's consideration for an allocation of \$175,000 from state funds, and authorization for the expenditure of \$125,000 (35 percent grant) from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the Ramsey County Rural Utilities to provide water service to Grahams Island state park.

The Ramsey County Rural Utilities currently provides water to the Grahams Island state park with an existing six-inch water main located along the east right-of-way of the old road alignment. The North Dakota Department of Transportation is raising and relocating the road that serves Grahams Island due to the rising water of Devils Lake. The water main is not only under the lake, but has two gate valves installed on the line. When originally installed, the gate valves on the system were not provided with stainless steel bolts, therefore, numerous failures on the gate valves have been experienced. It is apparent that it is only a matter of time when these valves will also fail and water service will no longer be available to the area.

The project engineer's cost estimate to relocate the waterline is \$350,000. Secretary Frink stated that during the 2005 legislative session, several meetings were held whereby the State Water Commission was encouraged to fund a portion of the waterline costs. The North Dakota Game and Fish Department and the North Dakota State Parks were encouraged to fund part of the non-federal costs of the road. Ramsey County Rural Utilities intends to do the project in the fall of 2005 in conjunction with the road raise. The funding proposal includes \$50,000 - Ramsey County Rural Utilities; \$175,000 from the State Water Commission; and \$125,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District).

The State Water Commission members emphasized the importance of maintaining the state park for the people of North Dakota, but there were concerns relating to the percentage and the funding level requested of the Commission.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation of 50 percent of the eligible items, not to exceed an allocation of \$175,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and a 35 percent grant, not to exceed an expenditure of \$125,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District), for Ramsey County Rural Utilities to relocate the waterline that serves the Grahams Island state park. 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.

***It was moved by Commissioner Hillesland and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission approve state cost participation of 50 percent of the eligible items, not to exceed an allocation of \$175,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium; and a 35 percent grant, not to exceed an expenditure of \$125,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District), for Ramsey County Rural Utilities to relocate the waterline that serves Grahams Island state park. This motion is contingent upon the availability of funds, and is subject to future revisions.***

***Commissioners Hanson, Hillesland, Olin, Swenson, Thompson, Jeff Olson representing Commissioner Johnson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. Commissioner Hofstad abstained from voting. There were no nay votes. Recorded votes were 7 ayes, 0 nays, and 1 abstention. Lt. Governor Dalrymple announced the motion 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 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 "G"**.

The Bureau of Reclamation distributed the draft report on the Red River Valley Water Needs & Options on May 27, 2005. Public comments on the draft report are due by October 3, 2005. The draft report details the projected water supply needs in the Red River valley through 2050, and contains engineering and cost estimates on the action alternatives. Mr. Koland summarized the action alternatives and said the costs range from \$500 million to \$2.5 billion. The total annualized costs, including operation and maintenance, range from \$32.7 million to \$173.3 million per year. To date, the most cost effective alternative appears to be the GDU Import to the Sheyenne River alternative, with an estimated cost of \$504 million for Scenario 1 and \$660 million for Scenario 2 water demands. The total annualized cost for this alternative ranges from \$32.7 million to \$42.6 million. These costs do not include any environmental commitments other than the operation of the biota water treatment plant.

Mr. Koland reviewed the Red River Valley Water Supply Project timeline which includes September, 2005 - state alternative selected; November, 2005 - Final Needs & Options Report issued; December, 2005 - draft Environmental Impact Statement distributed; and December, 2006 - final Environmental Impact Statement due.

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

Todd Sando reported that the recent beneficial rainfall coupled with a favorable precipitation outlook has been welcome, but runoff projections for the Missouri River basin are still well below average. The National Weather Service Climate Prediction Center's Seasonal Drought Outlook shows drought improvements with impacts easing in western North Dakota and Montana through August, 2005.

The Missouri River runoff above Sioux City for May, 2005, was 3.2 million acre-feet (MAF), 96 percent of normal, which is a considerable boost from 45 percent of normal in March, 2005, and 46 percent of normal in April, 2005. The Corps' June 1, 2005 forecast is predicting runoff above Sioux City for 2005 to be 16.6 MAF, 66 percent of normal.

On June 9, 2005, system storage in the six mainstem reservoirs was 36.7 MAF, an increase of 1.7 MAF from early May, 2005, but 22.0 MAF below the average system storage for the end of May, 2005, and 1.8 MAF less than a year ago. System storage reached a record low of 34.8 MAF in January, 2005.

On June 9, 2005, Lake Sakakawea was at an elevation of 1810.4 feet msl. This elevation is 3.6 feet above the record low of 1805.8 feet msl set on May 12 and 16, 2005, but 4.8 feet lower than a year ago, and 27.9 feet below the average June elevation. Under the basic simulation released June 1, 2005, the Corps is estimating that Lake Sakakawea will fall to an elevation of 1804.9 feet msl by the end of August, 2005, and to an elevation of 1804.7 feet msl by the end of February, 2006. The lower basic simulation shows Lake Sakakawea falling to an elevation of 1803.3 feet msl by the end of August, 2005, and 1799.2 feet msl by February, 2006.

The elevation of Lake Oahe was 1576.7 feet msl on June 9, 2005, 0.8 feet lower than last year, and 29.9 feet lower than its average June elevation. This elevation is 3.2 feet msl above the record low elevation for Lake Oahe of 1573.5 reached on April 9, 2005. Under the basic simulation released June 1, 2005, the Corps is estimating that Lake Oahe will fall to an elevation of 1569.4 feet msl by August 31, 2005, and then begin to rise.

Fort Peck Lake was at an elevation of 2200.6 feet msl on June 9, 2005, 2.8 feet lower than a year ago, and 33.9 feet below its average June elevation. Under the basic simulation released June 1, 2005, the Corps is estimating that Fort Peck Lake will fall to an elevation of 2194.3 feet msl by the end of February, 2006.

The Corps of Engineers, in conjunction with numerous federal and state agencies, have reviewed several alternatives in an effort to preserve water quality in Lake Sakakawea that will sustain cold water habitat for the fishery. The alternative selected consists of a barrier installation on the trash racks for two of the five intakes, integrated with variable daily flow release from the power plant. This alternative minimizes impacts and is technically feasible. These modifications are expected to take place in mid-July, 2005 and will be removed in the fall following lake turnover. The initial cost estimate for the trash rack modification is \$146,070, which is based on material costs and assumed project duration. Considering that the trash racks have not been removed since the dam was constructed, actual installation time could vary significantly. Modification of the flow release has no construction costs. The Corps of Engineers has agreed to fund the project.

The Commission staff has attended meetings with the other Missouri River basin states and stakeholders in an effort to develop a plan for a spring rise from Gavins Point Dam in 2006. The new Missouri River Master Water Control Manual and the biological opinion set a default spring rise in 2006 unless an alternative plan is developed and agreed to by the Corps of Engineers and the U.S. Fish and Wildlife Service. A spring rise from Gavins Point Dam during a drought will further reduce system storage and lake levels. The Commission staff is making an effort to develop a plan that will limit the impacts.

**CONSIDERATION OF REQUEST  
FROM NORTH DAKOTA NONPOINT  
SOURCE POLLUTION TASK FORCE  
FOR SECTION 319 FUNDING  
(SWC Project No. 1859)**

A request from the North Dakota Non-point Source Pollution Task Force was presented for the State Water Commission's consideration for state cost participation in the amount of \$200,000 for the 2005-2007 biennium for projects

authorized under Section 319 of the federal Water Pollution Act.

One of the greatest challenges for current water quality management in North Dakota is meeting the new Environmental Protection Agency's (EPA) regulations limiting runoff from concentrated animal feeding operations (CAFO). Failure to meet these regulations not only affects water quality, but also incurs the risk of large fines and even the possible loss of economic viability for some livestock operations. A large portion of the state-apportioned EPA Section 319 funding has, in recent years, been allocated for engineering assistance and cost share to help livestock producers comply with federal regulations. The updating of the state's CAFO animal waste facilities is a major undertaking which will be ongoing for several years.

The most critical need at the present time is for engineering assistance. The demand for design assistance is too high to be met by currently available programs funded by Section 319 and other sources.

Assistance is particularly needed with medium and small-sized CFAOs, which are often insufficiently capitalized to afford the full cost of design and construction.

Dennis Fewless, director, North Dakota State Health Department Division of Water Quality, appeared before the State Water Commission to explain the program criteria, and to request the Commission's favorable consideration to provide \$200,000 for the 2005-2007 biennium to support the local sponsorships increasing their availability of time and affordable engineering assistance, and to achieve their water quality goals.

Secretary Frink explained that during the 2001-2003 biennium, funding of \$200,000 was specifically appropriated to the State Water Commission for distribution to the North Dakota Nonpoint Source Pollution task force for a Section 319 match. In the 2003-2005 biennium, no funding was specifically appropriated for this purpose, but the same level of funding was requested as a general cost share for augmentation of the current engineering assistance program. On August 3, 2003, the State Water Commission approved an allocation of \$200,000 to the North Dakota Nonpoint Source Pollution Management Program of the North Dakota Department of Health for a state match in the Section 319 program to provide a maximum benefit for the improvement of water quality, and also for ensuring the economic viability of many North Dakota animal feeding operations while complying with new federal regulations.

In discussion of the request, the State Water Commission members expressed their support for the program. Although the State Health Department received legislative authority for the 2005-2007 biennium, the authority did not include an appropriation. The State Water Commission members questioned whether this is the appropriate agency to provide funds for a state match in the Section 319 program. Secretary Frink explained that the State Water Commission does have the legal authority to fund the program under North Dakota Century Code section 61-02-14, powers and duties of the Commission. He also explained the correlation between the Commission and the Department in developing the water quality standards as they relate to minimum flows in the rivers and streams in the state, as well as cooperation of the two agencies in other projects. The State Water Commission members generally felt that more information was needed on the program and, therefore, the request was tabled at this meeting.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the meeting at 5:55 PM.

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Lt. Governor Jack Dalrymple  
Representing Governor John Hoeven  
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