

## **MINUTES**

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

**October 19, 1998**

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on October 19, 1998. Governor-Chairman, Edward T. Schafer, called the meeting to order at 1:30 PM, and requested Assistant State Engineer, Dale Frink, to call the roll. The Chairman declared a quorum was present.

State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, has accepted an assignment to lead a task force to Macedonia in 1999 for the Partnership for Peace Program of the United States Government. The first major planning conference for the task force was held in Macedonia the week of October 19, 1998. Secretary Sprynczynatyk attended the conference, and Assistant State Engineer, Dale Frink, acted in his stead at the State Water Commission meeting.

#### **MEMBERS PRESENT:**

Governor Edward T. Schafer, Chairman  
Ken Junkert, Department of Agriculture, representing Roger Johnson  
Mike Ames, Member from Williston  
Florenz Bjornson, Member from West Fargo  
Judith DeWitz, Member from Tappen  
Jack Olin, Member from Dickinson  
Harley Swenson, Member from Bismarck  
Dale Frink, Assistant State Engineer, North Dakota State Water Commission

#### **MEMBERS ABSENT:**

Elmer Hillesland, Member from Grand Forks  
Robert Thompson, Member from Page  
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **OTHERS PRESENT:**

State Water Commission Staff  
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

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

**-CONSIDERATION OF AGENDA**

the agenda approved, and requested Acting Secretary Frink to present the agenda.

There being no additional items for the agenda, the Chairman declared

**CONSIDERATION OF MINUTES  
OF AUGUST 13, 1998 STATE WATER  
COMMISSION MEETING -  
APPROVED**

The minutes of the August 13, 1998 State Water Commission meeting were approved by the following motion:

*It was moved by Commissioner Olin, seconded by Commissioner DeWitz, and unanimously carried, that the minutes of the August 13, 1998 State Water Commission meeting be approved as prepared.*

**CONSIDERATION OF MINUTES  
OF SEPTEMBER 4, 1998 STATE WATER  
COMMISSION TELEPHONE  
CONFERENCE CALL MEETING -  
APPROVED**

The minutes of the September 4, 1998 State Water Commission telephone conference call meeting were approved by the following motion:

*It was moved by Commissioner Olin, seconded by Commissioner DeWitz, and unanimously carried, that the minutes of the September 4, 1998 State Water Commission telephone conference call meeting be approved as prepared.*

**FINANCIAL STATEMENT -  
AGENCY PROGRAM BUDGET  
EXPENDITURES**

of the 1997-1999 biennium. **SEE APPENDIX "A"**

Acting Secretary Frink presented and discussed the Program Budget Expenditures for the period ending August 31, 1998, reflecting 58 percent

**FINANCIAL STATEMENT -  
RESOURCES TRUST FUND**

revenue projections for oil extraction taxes based on the July WEFA forecast. The new forecast included a drop in oil taxes by \$2,336,350, and in interest of \$2,609 from the amount approved by the legislature. Acting Secretary Frink said this drop was estimated at \$1.6 million in August, but he said low oil prices have a greater impact during the second year of the biennium. An updated WEFA forecast will be made in November for use in the executive budget.

Acting Secretary Frink reported that on August 31, 1998, the Office of Management and Budget updated its

This reduces the unobligated balance in the Contract Fund to \$1,003,264. Acting Secretary Frink said a 1999 ASAP program for Devils Lake would require approximately \$1.1 million, if approved by the State Water Commission, of which approximately \$310,000 of unobligated funds would be required. The State Water Commission typically does not obligated \$250,000 until after the spring snowmelt period for emergencies. Approximately \$440,000 would be available in the Contract Fund to allocate to priority projects over the next six to eight months. **SEE APPENDIX "B"**

**FINANCIAL STATEMENT -  
1999-2001 BUDGET**

The State Water Commission submitted its 1999-2001 budget to the Office of Management and Budget. The budget included a five percent reduction in general funds as required from all state agencies. The State Water Commission submitted optional adjustments to the budget to address items that were affected by the five percent reduction. A budget hearing was held on September 10, 1998 with the Office of Management and Budget.

Acting Secretary Frink presented and discussed the agency's optional adjustments. In discussing water resource management through the water rights system, established by the North Dakota Century Code chapter 61-04, and the collection of the hydrologic data required to make informed decisions, concern was expressed by the Commission members relative to the length of time required for processing water permit applications. The Commission members also questioned whether water quality and soils compatibility data should be included in the permitting process. Governor Schafer directed the State Engineer to develop a memorandum for generation to the Commission members addressing the water permit application process.

**APPROVAL OF REQUEST FROM  
BOMMM BOARD FOR COST SHARE  
FOR DEVELOPMENT OF MISSOURI  
RIVER COORDINATED RESOURCE  
MANAGEMENT PROGRAM  
(SWC Project No. 576)**

A request from the Burleigh, Oliver, McLean, Mercer and Morton Counties (BOMMM) Joint Board was presented for the Commission's consideration for cost share in the Missouri River Coordinated Resource Management program to address the natural, cultural, agricultural and economic resources of the Missouri River in North Dakota. The program is intended to bring together all of the interests on the Missouri River to address the significant issues affecting the river and its beneficiaries.

Andy Mork, chairman of the BOMMM Joint Board, presented the proposal and indicated there are several significant issues which will be addressed including water quality, endangered and threatened species, bank stabilization, fishing, public access and use, delta

formation, irrigation, habitat and woodlands, ownership, flooding, residential development, mainstem reservoir operation and power generation, boating and recreation, regulatory, and jurisdiction and authority. Mr. Mork said only by addressing each of these issues in a coordinated, comprehensive and cooperative manner can the citizens of North Dakota and the entire region achieve optimum benefit from the opportunities and resources associated with the river.

The program will include a Missouri assessment program, which will provide an ongoing assessment and monitoring effort to develop a more complete information base for wise decision-making. In addition, a working group will be established, consisting of the many organizations which have a stake in the Missouri River, to provide a forum for coordination, cooperation and consensus.

To secure funding for the program, Mr. Mork said the BOMMM Joint Board has increased the amount contributed by each of the five water resource districts from \$1,000 per district per year to a total contribution of \$30,000 each year. The request before the State Water Commission is to cost share in 50 percent of the eligible costs not to exceed \$30,000.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 50 percent of the eligible items, not to exceed \$30,000 from the Contract Fund, for the development of the Missouri River Coordinated Resource Management program.

***It was moved by Commissioner Ames and seconded by Commissioner DeWitz that the State Water Commission approve cost share of 50 percent of the eligible items, not to exceed \$30,000 from the Contract Fund, for the development of the Missouri River Coordinated Resource Management program. This motion is contingent upon the availability of funds.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

**GARRISON DIVERSION PROJECT -  
PROJECT UPDATE  
(SWC Project No. 237)**

On November 10, 1997, the North Dakota congressional delegation introduced legislation in the United States Senate and House of Representatives (S 1515 and HR 3012) that will re-focus and complete the Garrison Diversion Project. The bills were introduced as amendments to the Garrison

Diversion Reformulation Act of 1986, which is an amendment to the 1965 Act. The "Dakota Water Resources Act of 1997" is the final product of years of negotiations and represents broad, bipartisan consensus on the future of the project.

Field hearings on the Dakota Water Resources Act were held February 19, 1998 in Fargo, North Dakota, and on August 11, 1998 in Minot, North Dakota. The hearings were convened to receive testimony from interested parties in North Dakota and the region on the legislation to complete the Garrison Diversion Project.

The Dakota Water Resources Act was heard before the Subcommittee on Water and Power of the U.S. Senate Committee on Energy and Natural Resources on July 14, 1998 in Washington, DC. The Act was heard before the Subcommittee on Water and Power of the U.S. House of Representatives Committee on Resources on September 29, 1998. The testimony presented by Governor Schafer is attached hereto as **APPENDIX "C"**.

Jeff Reisdal, Financial Officer for the Garrison Conservancy District, summarized the House hearing on the Dakota Water Resources Act. He said it is almost assured that Congress will not act on the legislation in this session. The Conservancy staff continues to address the comments and remarks from the Administration during the hearings and prepare the necessary steps for the next Congress and early passage of the bill.

**GARRISON DIVERSION PROJECT -  
MR&I FUNDING FOR FY 1999  
(SWC Project No. 237-03)**

Jeff Reisdal made reference to the President's budget request of \$22.5 million for the Garrison Diversion Unit for Fiscal Year 1999 to continue assistance to communities still in dire need of a guaranteed supply of water.

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

Jeffrey Mattern, Coordinator for the MR&I Water Supply program, provided the following program report:

**All Seasons Rural Water:** The project will provide water to rural residents and the city of Bisbee, and will involve a reservoir/pump station, pipelines, and in-line booster stations. The estimated project cost is \$2 million. The Environmental Assessment is being reviewed.

**Burleigh Water Users, Phase 2:** The contractor, Northern Improvement Company, will complete project construction in October, 1998.

**Dickey Rural Water:** The contractor, Northern Improvement Company, completed the project construction in September, 1998.

**Grand Forks Water Treatment:** Computer programming is required on the controls, which will be completed in October, 1998.

**Missouri West Rural Water, Phase 2:** Northern Improvement Company is installing additional water distribution systems north and south of Mandan, and Maquire Iron is working on the airport water storage tank. American Engineering is working on the Flasher water storage tank. The construction contract is scheduled to be completed in 1999.

**North Valley Water Association/Walhalla-Neché Branch:** Peterson Construction completed the installation of a pipeline to Walhalla in Phase 1. Phase 2 will add rural users and the city of Neche to the North Valley water system, which is anticipated to be completed this fall.

**Ransom-Sargent Rural Water:** The engineer is working on the feasibility study, and the National Environmental Protection Act (NEPA) requirements. The 1998 project involves an expansion in the Barnes rural water area. The Environmental Assessment is being reviewed.

**NAWS Phase I (NAWS Rugby Component):** Construction is scheduled to be completed in 1999.

**NAWS Phase 2 (NAWS Minot Component):** The project is being reviewed for compliance with the National Environmental Protection Act.

On August 13, 1998, the State Water Commission approved the following revised \$13.03 million Fiscal Year 1998 MR&I Water Supply program budget:

<b>Project</b>	<b>Activity</b>	<b>MR&amp;I Grant</b>
Southwest Pipeline	D&C	\$ 3,710,000
North Valley/Neche	D&C	1,920,000
Ransom-Sargent	F,D&C	1,523,725
Missouri West	D&C	1,700,000
NAWS (Minot component)	D&C	2,805,000
NAWS (Rugby component)	D&C	195,000
All Seasons (Benson/Interior)	D&C	1,000,000
Administration	F	___ 176,275
<b>Total Available in Fiscal Year 1998</b>		<b>\$13,030,000</b>

**GARRISON DIVERSION PROJECT -  
APPROVAL OF FUNDING FROM  
MR&I INTEREST ACCOUNT FOR  
“PRELIMINARY STUDY OF EASTERN  
NORTH DAKOTA WATER SUPPLY  
SYSTEMS FOR DROUGHT  
MANAGEMENT”  
(SWC Project No. 237-03)**

A request was presented for the Commission's consideration for the expenditure of \$35,000 from the MR&I Water Supply program interest account funds for a "Preliminary Study of Eastern North Dakota Water Supply Systems for Drought Management".

Pursuant to Section 2 of the Agreement of Engineering Services, dated January 1, 1998, by and between the Garrison Diversion Conservancy District and Houston Engineering, Inc., Specific Work Order No. 4 would allow for the study. The objectives of the preliminary study are to identify issues relating to the feasibility of connecting existing water supply systems throughout eastern North Dakota for the purpose of drought management. The scope of work involves the evaluation of the opportunities and issues for interconnecting existing potable water supply systems in eastern North Dakota. The study will contain an inventory of existing water distribution systems in eastern North Dakota, a delineation of various issues relating to the possibilities of water system interconnections, and a map showing the location and extent of existing water distribution systems and identifications of opportunities per system interconnection. The study is anticipated for completion by December 31, 1998.

It was the recommendation of the State Engineer that the State Water Commission approve MR&I interest account funding, not to exceed \$35,000, for the "Preliminary Study of Eastern North Dakota Water Supply Systems for Drought Management". The interconnection study will be beneficial from the standpoint of providing drought management alternatives in eastern North Dakota with or without the Garrison Diversion Project. As is the current practice, the State Water Commission and the Garrison Conservancy District must approve expenditures from the MR&I interest account.

The Commission members expressed concurrence of the importance of the study, and requested that the study also include options on the Minnesota side of the river.

***It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve funding for the "Preliminary Study of Eastern North Dakota Water Supply Systems for Drought Management", in an amount not to exceed \$35,000 from the Garrison Diversion MR&I interest account.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

**ESTABLISHMENT OF WALSH  
RURAL WATER DISTRICT  
(SWC Project No. 237-03)**

Pembina and Walsh Counties. The Walsh Rural Water Association is the second water system to petition to organize a water district under the 1995 legislation, Chapter 61-35 of the North Dakota Century Code. The purpose to organize a water district is to provide an adequate supply of water for residents of the area. The proposed district has no power or authority to levy taxes.

On July 13, 1998, the Walsh Rural Water Association, Inc., petitioned the State Engineer to organize a water district to encompass portions of

Acting Secretary Frink explained that the Walsh Rural Water Association is trying to convert from a non-profit corporation to a water district to provide the most favorable refinancing options for an expansion project. An option the Association is considering is the ability to obtain a tax exempt bond. The interest rate on a tax exempt bond is approximately two interest points lower than on a taxable bond, which would save the Association approximately \$550,000 when refinancing a \$3 million project. The system's 1,332 water users would benefit from these savings, and the operation and maintenance would be the same under the district as under the existing corporation.

A hearing on the petition was held on August 25, 1998. If the district is found reasonably necessary for public health, convenience, and comfort of the residents, the State Engineer shall make an order establishing the district as a political subdivision, designating its boundary, and identifying by name or number. Acting Secretary Frink reported the Walsh Rural Water Association met the petition requirements, and the order establishing the Walsh Rural Water District was executed on October 1, 1998.

**SAFE DRINKING WATER ACT -  
APPROVAL OF PROJECT  
PRIORITY LIST IN FY 1999  
INTENDED USE PLAN,  
DATED SEPTEMBER 29, 1998  
(SWC File No. AS/HEA)**

The Drinking Water State Revolving Loan Fund was authorized by Congress in 1996 under the Safe Drinking Water Act with the intention of assisting public water systems in complying with the Act. Funding in North Dakota for public water systems is in the form of a loan program administered by the Environmental Protection Agency through the North Dakota Department of Health. North

Dakota Century Code chapter 61-28.1, Safe Drinking Water Act, gives the Department the powers and duties to administer and enforce the Safe Drinking Water program, and to administer the program.

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant agreement. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on September 2, 1998, with the comment period ending on September 17, 1998.

The State Water Commission's role in the program is defined in subsections 3 and 4 of section 61-28.1-12. Subsection 3 states that the Department shall administer and disburse funds with the approval of the State Water Commission. Subsection 4 states that the Department shall establish assistance priorities and expend grant funds pursuant to the priority list for the Drinking Water Treatment Revolving Loan Fund, after consulting with and obtaining the approval of the State Water Commission.

Wayne Kern, North Dakota Department of Health, presented the Fiscal Year 1999 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated September 29, 1998, for the State Water Commission's consideration. The Intended Use Plan is attached hereto as **APPENDIX "D"**. The comprehensive project priority list includes 63 projects, with a cumulative total project cost of \$191.9 million. Total Fiscal Years 1997, 1998 and 1999 program funding available for loans is \$29,859,166. The Environmental Protection Agency has approved the federal Fiscal Years 1997 and 1998 program capitalization grants. Mr. Kern said the process of prioritizing projects will be completed on an annual basis.

It was the recommendation of the State Engineer that the State Water Commission approve the project priority list for Fiscal Year 1999 as listed in the Intended Use Plan, dated September 29, 1998; and to authorize the Department to administer and disburse Fiscal Years 1997, 1998 and 1999 program funds pursuant to the Fiscal Year 1999 Intended Use Plan.

***It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve the project priority list for Fiscal Year 1999 as listed in the Intended Use Plan for the North Dakota Drinking Water State Revolving Loan Fund, dated September 29, 1998; and to authorize the***

***North Dakota Department of Health to administer and disburse Fiscal Years 1997, 1998 and 1999 Drinking Water State Revolving Loan Fund program funds pursuant to the Fiscal Year 1999 Intended Use Plan.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

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

James Lennington, Project Manager for the Southwest Pipeline Project, provided the following contract, construction and project status report:

**Contracts 2-3H and 7-5A - Transmission Pipeline to Hebron and Glen Ullin and the Rural Distribution Systems in the East Taylor Service Area:** The contractor for both contracts, Karas Construction of Larimore, North Dakota, has begun hydrotesting operations on the main transmission pipeline between Richardton and Hebron. There are several buried vaults involved with this contract. Two of the vaults containing pressure reducing valves and a vault containing Hebron's water meter must be installed and tested before service can be provided to Hebron. It is expected installation of the vaults will be completed in mid-November, 1998, and that service may be available to Hebron at that time, depending on the outcome of the hydrotesting operations. The contractor is installing the main transmission pipeline between Hebron and Glen Ullin along Interstate 94 and short segments of rural distribution lines from the main transmission pipeline. Eminent domain was exercised in one instance in this area where an easement could not be obtained by other means.

**Contract 4-4 - Jung Lake Pump Station:** The contractors have recently completed the erection of the pump station building. All piping, pumps, motors and electrical equipment are in place. Work remaining includes the interior walls, wiring, plumbing fixtures, painting of the piping and walls, installation of the standby generator and heaters, some site work, and general cleanup. The completion date on the contract was extended from September 24, 1998 to October 17, 1998 due mostly to problems associated with the building supplier. Delays were also caused by the painter of the structural steel and the electrical contractor's conduit supplier.

**Contract 5-4 - Jung Lake Reservoir:** The contractor has completed the majority of construction, with painting, paint curing, concrete placement for the pedestal interior floor, construction of the control room, and cleanup work remaining. The contract completion date for the contract was extended from September 20, 1998 to October 17, 1998 for weather-related delays caused by high winds affecting the contractor's safety program. Due to painting problems that have incurred on the Jung Lake reservoir tank, it will be necessary to extend the contract beyond October 17, 1998.

**Contract 7-4/7-3A - Bucyrus and Three Pocket Service Area Rural Distribution System:** The contractor for contract 7-4/7-3A, Northern Improvement, has completed installing pipe in the Bucyrus service area. There are approximately 17 miles of pipe left to the east and 3 miles of pipe to the west of Hettinger to successfully complete hydrotesting. The contract has 244 miles of pipeline and 242 service connections in the Bucyrus service area.

The Southwest Water Authority was recently notified of the availability of water for 24 more service connections, which increases the total number of service connections on the contract ready for water to approximately 100. The contractor has been hampered to some degree by defective pipe in the Bucyrus service area.

In the three pocket service areas, the contractor has completed the installation of all of the service connections and has begun filling the pipelines with water in preparation for hydrotesting.

The contractor completed pipeline plowing operations in the East Rainy Butte Pocket No. 2 service area on September 23, 1998. Service connections and a section of six-inch diameter pipe connecting the service area to the main transmission pipeline will most likely be completed next construction season, however, as time and weather allow, a portion of the remaining work may be completed this fall.

The completion date for contract 7-4/7-3A was extended from October 25, 1998 to November 1, 1998 due to the unavailability of water for hydrotesting caused by inspection and repainting the Bucyrus reservoir.

It is the policy of the Southwest Water Authority to begin charging rural users once water becomes available. This gives the user an incentive to have an independent contractor install service to the user's dwelling as soon as possible after water becomes available. An important exception to this policy concerns the date that water becomes available. If the user is notified of water availability between October 1 and April 15, the user has the option of waiting until May 1 to connect to service and begin paying for water. The reason for this exception is to allow the user a reasonable

amount of time during the construction season to get connected to service. On contract 7-4/7-3A, only about 75 out of 327 service connections were notified prior to October 1. It is anticipated that the majority of the service connections will be ready for connection to dwellings by the contract completion date of November 1, 1998. It is unknown at this time how many will actually connect this year.

The chloramination facility at the Dodge pump station is nearly completed, with the start-up date for the facility scheduled for October 23, 1998.

During its primary election on June 8, 1998, the city of Bowman voted on whether to receive sole source service from the Southwest Pipeline Project. The results of the election were 593 voting no and 184 voting yes. Although the question was limited only to sole source delivery, the results of the election indicate that the residents of Bowman, at this point in time, do not want to receive water from the project.

The Bowman-Scranton phase of the project is scheduled after the Mott-Elgin phase in the phased-development plan for the project. The Mott-Elgin phase is the next phase scheduled for construction beginning in 1999. It is anticipated that Mott-Elgin will require three years to construct and that construction on the Bowman-Scranton phase would begin in 2001 or 2002. The final signup campaign in the Bowman-Scranton phase will not be conducted for several years.

The Southwest Water Authority and Commission staffs are working with representatives of the city of Bowman to address concerns relative to the water needs of the rural residents if the city and the Commission are released from the Southwest Pipeline water service contract.

**SOUTHWEST PIPELINE PROJECT -  
EXECUTION OF 1998 SERIES A  
BOND DOCUMENTS  
(SWC Project No. 1736)**

**of Request for Obligation of Funds** for the 1998 Series A bond issuance of \$100,000. A change order to the existing 7-4/7-3A contract, to include the East Rainy Butte Pocket No. 2 service area, was subsequently executed.

On September 4, 1998, the State Water Commission approved the **Resolution Authorizing Execution of Letter of Intent to Meet Conditions** and the **Resolution Authorizing Execution**

James Lennington presented the following draft 1998 Series A Bond documents to the State Water Commission for consideration:

- **USDA Loan Resolution**
- **Bond Issuance Authorization Resolution**

This resolution is referred to as the wrap-around document and, if adopted, will do the following:

- 1) Authorize the 1998 Series A Bond Resolution
- 2) Authorize the Right-of-Way Certificate, Form FmHA 442-21
- 3) Approve the execution, delivery, and sale of the 1998 Series A Bonds
- 4) Accept and approve the acts of officers and proceedings with respect to the general and series resolutions
- 5) Authorize the issuance of bonds pursuant to the general and series resolutions
- 6) Describe the method of executing the bonds
- 7) Authorize investment agreements between the Commission and the Trustee

- **1998 Series A Bond Resolution**

Mr. Lennington stated that at the Commission's September 4, 1998 meeting, the USDA provided several documents which were not previously distributed to the Commission members. These documents included the **Resolution Concerning Operation and Maintenance and Reserving Funds for Replacement, Form RD 400-4 Assurance Agreement**, and **Form RD 400-1 Equal Opportunity Agreement**. Mr. Lennington explained that the **Bond Issuance Authorization Resolution** authorizes prior execution of the above-listed documents.

At its meeting on September 4, 1998, the Commission discussed the Southwest Pipeline Project General Bond Resolution relating to the annual fee for the Trustee. The Commission was informed that efforts were being made to negotiate a reduction in the annual fee, and were briefed on the options that could resolve this issue. The Commission directed the State Engineer to pursue options for reducing the fees for the Trustee's services.

Mr. Lennington explained that the project's General Bond Resolution prohibits the use of a different Trustee unless a replacement is selected and then utilized for all of the bonds issued. The Commission is prohibited by North Dakota Century Code chapter 6-09.4-03 from utilizing the North Dakota Municipal Bond Bank since the Commission does not operate the Southwest Pipeline Project. The statute specifies that state agencies are eligible to use the Municipal Bond Bank for financing if they are water system

operators. Mr. Lennington stated that because of the project's General Bond Resolution and the statutory limits on using the Bond Bank, the current Trustee will have to be used. However, after discussions with the Commission's Bond Counsel, the Trustee's fee was reduced for the 1998 Series A bonds.

It was the recommendation of the State Engineer that the State Water Commission adopt the **USDA Loan Resolution**, the **Bond Issuance Authorization Resolution**, the **Resolution Concerning Operation and Maintenance and Reserving Funds for Replacement**, the **Assurance Agreement**, and the **Equal Opportunity Agreement**.

*It was moved by Commissioner Ames and seconded by Commissioner Olin that the State Water Commission adopt the following 1998 Series A Bond documents:*

- 1) USDA Loan Resolution*
- 2) Bond Issuance Authorization Resolution*
- 3) Resolution Concerning Operation and Maintenance and Reserving Funds for Replacement*
- 4) Assurance Agreement*
- 5) Equal Opportunity Agreement*

*SEE APPENDIX "E"*

*Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF CAPITAL  
REPAYMENT RATES AND  
DEBT SERVICE CREDIT FOR 1999  
(SWC Project No. 1736)**

Under the Transfer of Operations Agreement, the Southwest Water Authority is required to submit a budget to the Secretary of the State Water Commission by December 15 of each year. The budget is deemed approved unless the Secretary of the Commission notifies the Authority of its disapproval by February 15. The Southwest Water Authority is currently preparing its budget.

At its meeting on February 13, 1998, the State Water Commission approved amendment No. 3 to the Transfer of Operations Agreement, which changed the Consumer Price Index date used for calculating the project's capital repayment rate from January 1 to September 1. This amendment was necessary to bring the Transfer of Operations Agreement into line with the water service contracts and to streamline the budget process.

The contract specifies that the water rate for capital repayment is adjusted annually based on the Consumer Price Index. The State Water Commission has the responsibility of adjusting the capital repayment rates and approving the debt service credit for each year.

The following projected capital repayment rates for 1999 were presented for the Commission's consideration:

Contract Users:	\$ 0.79	per thousand gallons
Rural Monthly:	\$ 23.96	per month

Mr. Lennington stated that in conjunction with the 1999 capital repayment rates, in 1991, the State Water Commission approved a request from the city of Dickinson for credit for qualifying debt service according to the provisions of their water service contract. The credit for Dickinson is for 75 percent of the annual debt service payment for the bascule gates at Patterson Lake. At that time, the Commission approved a schedule of declining annual rates. The State Water Commission approved a monthly debt service credit on February 13, 1998 of \$7,805 for the city of Dickinson, contingent upon the city making a debt service payment to the Bureau of Reclamation for the bascule gates at Patterson Lake dam. On August 13, 1998, the Commission was informed that the city had not made its 1997 debt service payment and did not intend to make its 1998 payment, which is due in December.

The city is seeking a reduction, or forgiveness of the bascule gates debt, which requires an act of Congress. In June, 1998, Senator Conrad submitted a bill to reduce the bascule gates debt and Senators Conrad and Dorgan were successful in attaching language to an appropriations bill to forgive the 1997 and 1998 payments. Mr. Lennington stated that while the legislative effort is underway, the Authority has been directed to deposit a portion of the city's monthly capital repayment, equal to the monthly credit, in an escrow account. The Authority is no longer granting the city the monthly credit, and has received a refund of the 1997 credit from the city. Mr. Lennington stated that pending the federal legislative action on this issue, it may be appropriate to review the contract provisions, however, it is appropriate to establish the level of credit for 1999 of \$93,654 for the city of Dickinson, to be given as a monthly credit of \$7,805. This credit will only be given if the city makes a debt service payment to the Bureau of Reclamation, otherwise the credit will be deposited by the Authority pending the outcome of federal legislation.

Greg Sund, city of Dickinson Administrator, addressed the Commission relative to the bascule gates debt service issue. Because of the uncertainty of Congressional resolution, representatives of the city and the Commission staff have discussed concerns regarding the 2001 end date of the availability of the debt service credit from the State Water Commission. Mr. Sund explained that if there is not Congressional resolution by the end of 2000, it is likely the city will be requesting the Commission's consideration to amend the debt service contract to permit the city to draw the credit to resolve the bascule gates issue.

It was the recommendation of the State Engineer that the State Water Commission approve the projected capital repayment rates for 1999 for the Southwest Pipeline Project of \$0.79 per thousand gallons for contract users; \$23.96 per month for rural users; and a monthly debt service credit of \$7,805 for the city of Dickinson, provided the city makes a debt service payment to the Bureau of Reclamation, otherwise the credit will be deposited by the Southwest Water Authority pending the outcome of the federal legislation.

***It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve the following capital repayment rates for 1999 for the Southwest Pipeline Project:***

- 1) Contract Users: \$ 0.79 per thousand gallons***
  
- 2) Rural Monthly: \$ 23.96 per month***
  
- 3) Monthly debt service credit of \$7,805 for the city of Dickinson, provided the city makes a debt service payment to the Bureau of Reclamation, otherwise the credit will be deposited in an escrow account by the Southwest Water Authority pending the outcome of the federal legislation.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF RESOLUTION  
AUTHORIZING CHIEF ENGINEER  
AND SECRETARY TO COMMISSION  
TO INSTITUTE CONDEMNATION  
PROCEEDINGS TO ACQUIRE  
PROPERTY NEEDED FOR  
CONSTRUCTION OF PROJECT  
(SWC Project No. 1736)  
(SWC Resolution No. 98-10-480)**

One of the basic requirements for the construction of the Southwest Pipeline Project is the acquisition of right-of-way. For the main transmission pipeline of the project, the landowners are compensated equally for the rights-of-way throughout the project area with the amount of compensation depending upon whether the right-of-way is located in pasture/hayland or cropland. Compensation is

currently based on \$295 per acre for cropland rights-of-way and \$150 per acre for pasture/hayland rights-of-way.

James Lennington explained that despite the efforts to fairly compensate the landowners, occasionally difficulties are encountered in obtaining rights-of-way. In these instances, every practical effort is made to negotiate with the landowner or to find an alternative route; however, on five occasions to date, in order to allow construction to proceed on the project, the exercise of eminent domain and the condemnation of rights-of-way have been initiated. In comparison to date, easements have been secured on approximately 800 parcels for the main transmission pipelines and 2,150 rural water parcels.

The State Water Commission has the authority to acquire the interests needed for construction of the Southwest Pipeline Project through the purchase or condemnation pursuant to North Dakota Century Code sections 61-02-22, 61-02-23, and 61-02-23.1, and Article 1, Section 16 of the North Dakota Constitution. Mr. Lennington explained that under "quick-take" right-of-way condemnation, the Commission may take possession of a right-of-way after making a written offer to purchase and depositing the amount of the offer with the clerk of the District Court of the county in which the right-of-way is located.

It was the recommendation of the State Engineer that the State Water Commission direct and authorize the Chief Engineer and Secretary to the Commission to negotiate with owners for the acquisition of property and interests needed for the Southwest Pipeline Project and, upon failure to agree upon a price satisfactory to the Commission as determined by the Chief Engineer, to initiate condemnation proceedings and take all other actions necessary for the purpose of acquiring the necessary interests in the property in the manner provided for by law. It was also the recommendation of the State Engineer that the Commission ratify and approve all prior acts and proceedings of the officers, agents, and employees of the Commission to obtain interests needed for the Southwest Pipeline Project.

***It was moved by Commissioner Ames and seconded by Commissioner Olin that the State Water Commission approve Resolution No. 98-10-480 to:***

***1) direct and authorize the Chief Engineer and Secretary to the State Water Commission to negotiate with owners for the acquisition of property and interests needed for the Southwest Pipeline Project and, upon failure to agree upon a price satisfactory to the State Water Commission as determined by the Chief Engineer and Secretary to the State Water Commission, to initiate condemnation proceedings and take all other actions necessary for the purpose of acquiring the necessary interests in property in the manner provided by law; and***

***2) ratify and approve all prior acts and proceedings of the officers, agents, and employees of the State Water Commission to obtain interests needed for the Southwest Pipeline Project through the exercise of North Dakota Century Code section 61-02-23.1 and Article 1, Section 16 of the North Dakota Constitution.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried. SEE APPENDIX "F"***

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

James Lennington reported that the revised *Biota Transfer Control Facilities and Criteria* report, a draft

Finding of No Significant Impact and a proposed final Environmental Assessment were distributed to the Garrison Joint Technical Committee on September 18, 1998. A meeting of the committee has been scheduled for November 20, 1998 to discuss the documents and begin to develop findings and recommendations to the Garrison United States/Canada Consultative Group. Construction may begin after the project has received clearance from the United States section of the Consultative Group assuring that the Administrator of the Environmental Protection Agency and the Secretaries of the State and Interior have determined that the project will meet the requirements of the Boundary Waters Treaty of 1909.

A meeting was held on October 9, 1998 with the city of Minot to discuss financing of the second phase of the project, the pipeline from Snake Creek to Minot. Attorneys for the Commission and the

city are reviewing the draft water service contract for the city. An agreement for financing the construction until water is delivered to the city is also being addressed.

Construction is progressing on the expansion and upgrade of the Rugby water treatment plant. The contractor, Swanberg Construction, Valley City, North Dakota, is working on the addition which includes construction of the exterior walls, pouring the second floor and basins, and preparation for installation of the roof. When the addition is completed and operational, the rehabilitation of the existing portions of the plant will commence.

**NORTHWEST AREA WATER  
SUPPLY PROJECT -  
APPLICATION FOR CONDITIONAL  
WATER PERMIT FOR PROJECT  
(SWC Project No. 237-04)**

The Bureau of Reclamation, as the lead federal agency involved with the Northwest Area Water Supply project, is responsible to see that the project complies with the National Environmental Policy Act (NEPA). One of the requirements the Bureau has for MR&I projects satisfying the NEPA process is obtaining the necessary water permits. James Lennington explained that the NEPA process is near completion for the NAWS project, and that a draft Finding of No Significant Impact has been prepared and distributed. Although a conditional water permit may not be obtained before the NEPA process is completed, Mr. Lennington said it is appropriate to apply for the permit and begin the process of securing a water right for the project.

In accordance with North Dakota Century Code 61-04-02, a conditional water permit must be obtained prior to construction of the project, which could begin next spring. Mr. Lennington explained that since the Northwest Area Water Supply project is a State Water Commission project, it is appropriate for the Chairman of the Commission to execute the water permit application.

The project will utilize water from one of two possible locations, Lake Sakakawea or Lake Audubon. The two proposed intake sites are located near the Snake Creek pumping station along US Highway 83. Water quality data, treatment costs and capital costs are being analyzed to determine the most feasible intake location. Mr. Lennington said that since the intake site has not been determined, two water permit applications will be executed and filed, one for Lake Sakakawea and one for Lake Audubon. When the intake site has been determined, the unused permit will be voided.

Applications for a conditional water permit have been prepared requesting to appropriate 12,000 acre-feet of water annually. Of this amount, 11,220 acre-feet of water are for municipal use and 780

acre-feet of water are for rural domestic use. The maximum flow rate in the application is 40 cubic feet per second, or 18,000 gallons per minute. The point of diversion for both applications is located in the NW1/4 of Section 28, Township 148 North, Range 83 West.

It was the recommendation of the State Engineer that the State Water Commission apply for a conditional water permit for the Northwest Area Water Supply project.

***It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission apply for a conditional water permit for the Northwest Area Water Supply project.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

**NORTHWEST AREA WATER  
SUPPLY PROJECT -  
APPROVAL OF INCLUSION  
OF CITY OF KENMARE  
(SWC Project No. 237-04)**

A request from the city of Kenmare was presented for the State Water Commission's consideration for inclusion to the Northwest Area Water Supply project. The NAWS advisory committee approved the request on Sep-

tember 10, 1998. An analysis of the impacts of adding Kenmare showed that if bonding was used to finance the local share of the construction costs, there would be no increased cost to the users. The addition of Kenmare would require the installation of approximately seven miles of 8-inch diameter pipe and a storage reservoir. The cost of the addition is offset by the water purchased by Kenmare.

James Lennington explained that the NAWS water service contracts that were signed in 1994 each contained a map of the project, and expansion of the project beyond that shown on the map requires the concurrence of all of the water users that have signed contracts. The original contracts specified a 75 percent federal cost share and includes some outdated language concerning the Minot Air Force Base. It is intended to redraft the contracts and offer them to the cities which signed the original agreement for their approval. The redrafted contract will first be offered to the city of Minot, since they would be the first served. In the recently drafted contract currently being discussed with Minot, only those communities which had signed contracts in 1994 were included. This limits the scope of the project and protects the cities from increased costs due to an expanded scope without their concurrence. If the Commission concurs with the inclusion of Kenmare, Mr. Lennington said the map included with the new contracts will be adjusted.

It was the recommendation of the State Engineer that the State Water Commission approve the inclusion of the city of Kenmare to the Northwest Area Water Supply project.

***It was moved by Commissioner Swenson and seconded by Commissioner Bjornson that the State Water Commission approve the inclusion of the city of Kenmare to the Northwest Area Water Supply project.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

**DEVILS LAKE  
HYDROLOGIC UPDATE  
(SWC Project No. 416-02)**

high of 1444.7 feet. Evaporation, caused by recent dry weather, has reduced the size of the lake as well as many sloughs in the basin. Depending on fall rains, the storage available in the upper basin could reduce the runoff to the lake next spring.

Acting Secretary Frink reported the current level of Devils Lake is 1443.86. The lake has receded approximately 11 inches since its all time recorded daily

The Commission members were provided the brochure entitled "A Guide to Devils Lake Water Management, Needs and Available Programs". The brochure provides an illustration of the impact of the wet cycle that has existed since 1993.

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

posed emergency outlet for Devils Lake. The proposed outlet will follow the Peterson Coulee corridor and will consist of a pump station located on the shore of the west bay south of Minnewaukan, approximately 13 miles of pipeline, and an energy dissipation structure located adjacent to the Sheyenne River. The pipeline will have a maximum pumping capacity of 300 cubic feet per second, but the flow will be controlled to maintain the 450 mg/l sulfate standard and 600 cubic feet per second channel capacity in the Sheyenne River.

Acting Secretary Frink reported the Corps of Engineers and their consultant, Barr Engineering, are continuing the engineering work on the

The State Water Commission staff continues to meet with the Corps and Barr Engineering to discuss the state's interests in the design of the outlet. Detailed design discussions have included the

south pipeline (the gravity flow section), the north pipeline (the pressure flow section), the pump station, the pump station's functionality, the inlet channel, and the fish screen. The principal design parameters are essentially complete, while the intake channel at the pump station is being refined for constructionability purposes, and the fish screen design is in the process of identifying potential approaches.

The Corps continues to prepare an Environmental Impact Statement (EIS) for the emergency outlet. As part of this process, the Corps held scoping meetings to receive public comments to help define issues to be included in the EIS. These issues were rated and placed in a draft scoping document. Future milestones in the EIS process for the emergency outlet are currently set as:

November, 1998	Final Scoping Document distributed
September, 1999	Draft EIS out for public review
October, 1999	Public review meetings
February, 2000	Final EIS distributed
May, 2000	Record of Decision

**DEVILS LAKE TO STUMP LAKE EMERGENCY OUTLET (SWC Project No. 416-01)**

If Devils Lake reaches an elevation of 1446.6 feet msl, it will begin to spill into Stump Lake. In an effort to reduce or delay flood damages around

Devils Lake and to provide time for the Peterson Coulee outlet to be constructed, the State Water Commission staff has been investigating the possibility of an emergency plan to move up to four feet of floodwater from Devils Lake to Stump Lake. The intention is to raise Stump Lake to an elevation between 1441 and 1448 feet msl, depending on the inflow to Devils Lake over the next several years. Any increase in Stump Lake above approximately 1448 feet msl will occur whether or not the proposed project is constructed.

The project consists of excavating the channel between east Devils Lake and Stump Lake. The exact size of the channel has not yet been determined, but it is expected that the channel bottom will be at 1439 feet msl and approximately 50 feet wide. The channel will be capable of passing in excess of 1,000 cubic feet per second depending on the elevation of Devils Lake. It is assumed that the project will raise Stump Lake from its current elevation of 1406.6 feet msl to approximately 1445 feet msl.

The project will impact the Stump Lake National Wildlife Refuge, the Black Swan Game Management area, Old Settlers Park, and several wetland easement areas. Because of these impacts, the Corps of Engineers's 404 permit requirements, the Bureau of Reclamation's special use permit, and the National Environmental Policy Act (NEPA) will require an environmental assessment, which will perhaps lead to an environmental impact statement and the development of a mitigation plan.

The project will require compensating landowners around Stump Lake whose land will be inundated by the project. To establish the cost of the land, appraisals were conducted, and a contract with Reilly Appraisals Consultants, Inc., was executed by the State Engineer on August 31, 1998. The contract called for appraisals of three tracts of land for the Devils Lake to Stump Lake emergency outlet including: 1) a tract along the channel; 2) a large tract on West Stump Lake consisting of a farmstead cropland and hayland; and 3) a wooded tract on East Stump Lake. The contract was completed October 12, 1998 and the reports are being reviewed by the Commission staff. Acting Secretary Frink said that while it is unknown at this time if the project will be acceptable to the environmental interests and the local landowners, the additional information generated by the appraisals and the environmental assessment are required to determine if the project can move forward.

A preliminary cost estimate of \$8 million has been developed for the project, which is based upon a preliminary project design, an estimate of project mitigation requirements, a county-wide average of land values, and \$2 million to raise State Highway 1 east of Stump Lake.

**DEVILS LAKE CAMPAIGN  
FOR UPPER BASIN STORAGE  
(SWC Project No. 416-01)**

LeRoy Klapprodt, Director of the State Water Commission's Planning and Education Division, provided a briefing on a campaign to promote up-

per basin water storage, which is critical to the three-part solution to the Devils Lake flooding problems. The campaign was organized by representatives of the Governor's office and the Congressional Delegation, the State Engineer, and Devils Lake basin local officials. This effort was deemed necessary to convince additional landowners and farm operators to store runoff water that would otherwise compound flooding at Devils Lake. A promotional brochure and poster have been developed for distribution in the basin.

**DEVILS LAKE AVAILABLE  
STORAGE ACREAGE PROGRAM  
(SWC Project No. 1882-01)**

The Devils Lake Available Storage Acreage Program (ASAP) contracts for 1998 have been completed.

Approximately \$1 million will be spent for the 21,000 acre-feet of water stored. The average cost per acre-foot was about \$49 in 1998. Costs for water storage include lease payments, structure costs, and two claims of crop damage from adjacent landowners. Unspent allocations from previous years and money not yet spent from this year's \$1.15 million allocation total approximately \$200,000. A portion of this balance will be held as a reserve fund to cover any contingencies that may arise. The State Water Commission staff is reviewing the current ASAP sites for their water storage potential in 1999.

Participants are required to leave their site intact through December. It is anticipated to extend the program into 1999 at approximately the same level as in 1997 and 1998. The first agreements will be offered to previous participants and thereafter to the most cost effective of the new applications. Approximately 30 sites from the 1998 program have been identified as potentially ineffective for 1999 storage, of which two of these sites have been surveyed to determine their elevations and provide the information about their effectiveness for future participation in the program. The ineffective sites will not be renewed.

**CITY OF DEVILS  
LAKE LEVEE RAISE  
(SWC Project No. 416-01)**

The levee raise at the city of Devils Lake is being conducted in several increments. The first increment raised the original levee by five feet and extended the line of protection at the 1445 feet msl protection level to areas not previously protected. The level of protection was increased from a lake elevation of 1440 to 1445 (top of levee raised from elevation 1445 to 1450). This increment is essentially complete except for two of the pumping stations. The second increment involves raising the entire levee alignment to a level of protection of elevation 1447 (top of levee at elevation 1452 feet msl). Construction on this increment began on July 6, 1998. Construction began on the third increment to raise the entire levee to a level of protection of elevation 1450 (top of levee at elevation 1457).

There are five pumping stations required for the project, three of which have been completed. Contracts for the construction of the two remaining pump stations (East Ditch pumping station and Eagle Bend pumping station) have been awarded to Park Construction.

**DEVILS LAKE LAKEBED LAWSUIT -  
APPROVAL OF ALLOCATION OF  
UP TO \$47,000 FROM CONTRACT  
FUND TOWARD EXPENSE OF  
HISTORIAN  
(SWC Project No. 416)**

Charles Carvell, Assistant Attorney General, addressed the background and potential litigation expenses for the Spirit Lake Nation Devils Lake lakebed lawsuit. Mr. Carvell stated that the lawsuit has been underway for nearly 12 years, and the lawsuit is of great significance to the State of North Dakota. The following Devils Lake litigation background are excerpts, in part, from an October 7, 1998 memorandum prepared by Mr. Carvell:

The suit was filed in 1986. The tribe alleges that it holds title to Devils Lake because the 1867 treaty creating the reservation includes the lake. The treaty describes the reservation's northern boundary as "[b]eginning at the most easterly point of Devils Lake; thence along the waters of said lake to the most westerly point of the same." The tribe believes that "along the waters" means the north shore, which puts the lake within the treaty's definition of the reservation.

The tribe named as defendants the state, the Garrison Diversion Conservancy District, the United States, and some riparian landowners. The tribe asserts that it owns the lakebed up to elevation 1439 feet, the lake's elevation in 1867 when the treaty was signed.

The state was sued because it asserts the lake was navigable at statehood and under federal law it acquired title to the bed in 1889. Private landowners were sued because for years they had been farming the dry lakebed.

The 1965, reauthorization of Garrison Diversion required non-federal interests to pay 50 percent of the capital costs allocated to recreation and wildlife enhancement. The Conservancy District and the Bureau of Reclamation agreed that the lakebed could be conveyed to the United States as part of the non-federal share of these costs.

State law was amended in 1967 to authorize the Conservancy District to convey the lakebed, which it did in 1971. At the time, the Conservancy District thought the lakebed included 83,046 acres. The 1971 deed conveyed 62,370 acres, for which the Bureau authorized a \$3,637,750 credit. A later deed was to convey the rest of the lakebed to increase the credit to \$5.45 million.

Until the early 1990s, the Conservancy District took the lead in defending the suit on behalf of itself and the state. Since then, the Attorney General's office has been representing the state defendants. The United States is represented by the Department of Justice and the private landowners by a Fargo attorney.

After the suit was filed, the United States asked that it be dismissed on two grounds. One, that the suit had not been brought back within 12 years from the time the tribe learned of adverse claims to the lakebed, as is required by the federal quiet title act. The United States argued that the tribe knew for decades about the state's assertion of title to the lakebed.

Two, the United States asserted that the lakebed was included in the tribe's 1977 land claim settlement. In 1951, the tribe brought an action against the United States before the Indian Claims Commission, in which it asked for compensation for aboriginal land the tribe had ceded to the United States, which approximated 9.2 million acres southeast of Devils Lake. In 1977, the claim was settled for \$13.9 million. The United States argued that the settlement included Devils Lake and, therefore, the tribe cannot sue for it again.

In 1989, the federal district court did not rule on the United States' quiet title act motion, but did grant its motion to dismiss on the 1977 land claims settlement. In 1990, the court of appeals reversed and sent the case back to the district court.

Mr. Carvell stated that after the State and Spirit Lake Nation failed to settle by negotiation the tribe's claim to the bed of Devils Lake, the federal court reactivated the litigation. The historical work on Devils Lake's navigability was completed in the early 1990s, but a historian is needed to assist with the state's response to the action. The primary responses include: 1) the treaty creating the reservation should be interpreted to exclude the lake from the reservation; 2) the reservation was disestablished in 1904 when Congress opened it to non-Indian homesteaders; and 3) the tribe's 1977 settlement of its land claim before the Indian Claims Commission included its claim to the lakebed and, therefore, the tribe cannot sue for it again. There are also other issues in the case that require a historian's assistance. The cost estimate for the historian is \$140,000.

Mr. Carvell indicated that the Attorney General office's appropriation for the biennium for litigation expenses is \$139,000, of which approximately \$120,000 remains. Because of other litigation the office is handling that will make demands on the appropriation, a request was presented for the State Water Commission's consideration to cost share in the retention of a historian to develop the state's response.

It was the recommendation of the State Engineer that because of the significance of the lawsuit to North Dakota and the state's responsibility for the management of sovereign lands, that the State Water Commission approve a three-way cost share with the Attorney General's office and the Garrison Conservancy District. The request before the State Water Commission is to cost share in the amount of \$47,000. The Garrison Diversion Conservancy District Executive Board approved \$47,000 for the retention of a historian for the Devils Lake lakebed lawsuit.

Commissioner Swenson expressed concern that a specific amount be identified from the Attorney General office's appropriation for this lawsuit before the State Water Commission considers a cost share. He suggested the cost share request be deferred until such time additional information relative to the actual expenses of retaining a historian are known.

***It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve the allocation of \$47,000 from the Contract Fund toward the expense of a historian to develop the state's response for the Devils Lake lakebed***

***lawsuit. Funds would also come from the Office of the Attorney General and the Garrison Conservancy District. This motion is contingent upon the availability of funds.***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, and Chairman Schafer voted aye. Commissioner Swenson voted nay. The Chairman declared the motion carried.***

Governor Schafer requested the Commission members be provided with periodic information relative to the historian research and expenses. Upon completion of the historian research project, if the Attorney General's office requires assistance for payment of the historian expenses, a specific cost share request should be presented to the Commission.

**APPROVAL OF RELEASE  
OF EASEMENT FOR KITZMAN  
DAM IN MCHENRY COUNTY  
(SWC Project No. 729)**

A request from Marlow Kitzman, Willow City, North Dakota, was presented for the State Water Commission's consideration to release the easement and dedication concerning

Kitzman Dam located in the NE1/4NW1/4 of Section 23, Township 159 North, Range 76 West, in McHenry County. The Civilian Conservation Corps constructed the dam in 1938. Mr. Kitzman stated in his request that the dam washed out and no longer is of public use. North Dakota Century Code section 61-02-141 states:

Release of Easements-Procedure. The commission may, when it deems action to be in the best interest of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years for the granting of the easement or if such dams are no longer in use and will not be reconstructed. Any release executed under the authority of this section shall be in the name of the state of North Dakota by the governor and attested by the secretary of state.

Comments were solicited from the North Dakota State Historical Society, Department of Health, Game and Fish Department, Parks and Recreation, Land Department, McHenry County Commission and Willow Creek Water Resource District. Based upon a review of the comments and an internal independent evaluation, it does not appear that the dam has or will provide public benefits.

It was the recommendation of the State Engineer that the State Water Commission approve the release of easement and dedication for the Kitzman Dam in McHenry County.

***It was moved by Commissioner Swenson and seconded by Commissioner DeWitz that the State Water Commission approve the release of easement and dedication for the Kitzman Dam in McHenry County. SEE APPENDIX "G"***

***Commissioners Ames, Bjornson, DeWitz, Ken Junkert representing Roger Johnson, Olin, Swenson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.***

**1999 STATE WATER PLAN  
(SWC Project No. 322)**

The Planning and Education Division of the State Water Commission is developing the 1999 State Water Management Plan. Work was initiated during the last part of 1997 and is scheduled to be completed by the end of 1998 and available for the 1999 legislative session.

The previous update to the plan in 1992 focused on water projects. The 1999 State Water Plan will focus on water management for the 21st century. It will outline current management policies, problems with those policies, and will help serve as a guide for decision-makers. It is intended to be a realistic vision of water management with emphasis on regional and local projects that are appropriate to the plan's goals and objectives.

The 1999 State Water Management Plan has three main goals: 1) to comprehensively illustrate how North Dakota water resources are currently managed and the responsibilities associated with that management; 2) to provide a vision or direction for how water could be managed into the 21st century; and 3) to reinforce the framework for implementation of the current water management plan and water development program, per the Fifty-fifth North Dakota Legislative Assembly Session laws, Chapter 15, Section 9, which reads as follows:

*The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program. The state water commission shall develop and implement a comprehensive statewide water development program. The commission shall design the program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to its proper share of Missouri River water.*

LeRoy Klapprodt provided a status report on the development of the 1999 State Water Management Plan, which is attached to these minutes as **APPENDIX "H"**.

The water development project list has been assembled and continues to evolve as additional information about water projects and water development needs are identified. To date, 500 projects have been identified with a need sometime in the future, with a total cost of approximately \$1.9 billion, which includes MR&I projects. The water development need for the next biennium, excluding MR&I projects, includes 115 projects and has a total cost of \$353 million, of which the state's share is expected to be \$67.6 million. The flood control, greenbelt and water treatment plant for Grand Forks comprise \$28.8 million of the \$67.6 million needed for the next biennium. The Grand Forks projects are not expected to be funded from the Resources Trust Fund.

The Commission staff continues to coordinate with the North Dakota Water Coalition to discuss the State Water Management Plan. Mr. Klapprodt reiterated that it is important to have the Coalition's support for the plan before it is presented to the legislature. He reported that the Coalition met on October 19, 1998 and approved an estimated need of \$46.2 million for the 1999-2001 biennium.

The Commission members were presented the draft outlines of the executive summary, goals, objectives, and vision and mission statements for the 1999 State Water Management Plan, which are currently under internal staff review.

The planning process remains on schedule, with the first draft scheduled to be completed by November 5, 1998. An executive summary will be prepared by January 1, 1999 for the legislative session. Final publication is scheduled for release during February, 1999.

## **1999 LEGISLATION**

Julie Krenz, Assistant Attorney General, provided the following summary of proposed legislation being discussed at the staff level for introduction during the 1999 legislative session:

### **Northwest Area Water Supply (NAWS) Project:**

- Amend the statute that gives the State Water Commission the authority to exercise "quick take" eminent domain authority for the Southwest Pipeline Project to include "quick take" authority for the NAWS project.
- Amend the NAWS authorizing legislation to clarify that it includes the city of Rugby and Pierce County.

- Create legislation establishing accounts for the deposit of funds received for construction, operation and maintenance, and replacement of NAWS.

**Water appropriations - permit proceedings:**

- Authorize the individual assigned to investigate a water permit application to determine whether it meets the statutory criteria for issuance to also make the recommendation on whether the permit should be granted.

**Dike Appeals:**

- Create a procedure that would allow anyone aggrieved by a decision of a water resource board with regard to a complaint of an unauthorized dike, dam, or other water control device to appeal to the State Engineer. Under the existing law, the remedy for a landowner aggrieved by the decision of a water resource board is to appeal to district court. The procedure to allow an appeal to the State Engineer for complaints of an unauthorized dike, dam, and other water control devices would be similar to what exists for complaints regarding unauthorized drains.

**Indian water rights negotiations:**

- Create a resolution that expresses the state's position that it prefers to negotiate, rather than litigate, Indian claims to reserved water rights.

Acting Secretary Frink stated that in the wake of the 1997 floods, Governor Schafer identified the need to refine the state's floodplain management policies and consider possible statutory changes for the 1999 legislative session. The State Water Commission, as part of the 1999 State Water Management Plan, held eight public input meetings and discussions with various local, state, and federal officials to determine potential changes.

Draft legislation was provided to the Commission members to initiate discussions on final legislation. The draft included the following points:

- a. Requiring the State Engineer to review the determination of impacts of proposed development activities within the mapped, regulatory floodway.

- b. Increasing by one foot, unless the State Engineer determines it is not necessary or practicable or that another elevation is acceptable, the elevation at which structures must be built in the floodfringe. Currently, structures, including basements, must be constructed to base flood levels.
- c. Requiring plats for development of subdivisions in counties to show any portions of land located within the 100-year floodplain. This requirement already exists for plats for subdivisions of towns.
- d. Requiring realtors to disclose to potential purchasers whether the property being sold is in the floodplain.
- e. Specifying that the comprehensive plan adopted by zoning authorities may be designed to provide for "emergency management". The plan would provide for the development and maintenance of an effective capability to mitigate, prepare for, respond to and recover from, known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or the environment.
- f. Requiring all communities to be enrolled in the National Flood Insurance Program. Failure to do so would make them ineligible to receive state disaster funds.
- g. Allowing the State Engineer to establish a base flood elevation for lakes.
- h. The State Engineer may provide training to floodplain managers under existing statutory authority to provide assistance to communities. Any requirement that floodplain managers receive training would require legislative changes.

**GRAND FORKS FLOOD  
CONTROL PROJECT  
(SWC Project No. 830)**

Acting Secretary Frink provided a status report on the permanent flood protection project for the cities of Grand Forks and East Grand Forks.

The federal Water Resource Development Act of 1998 was discussed, as well as flood protection project costs, and the relocation of major components of the water treatment plant. The estimated project cost is \$342 million, with a non-federal share of \$116 million. He said passage of the federal appropriation appears favorable prior to the congressional recess.

**RED RIVER BASIN BOARD  
(SWC File AOC/RBB)**

The Red River Basin Board was organized to develop and cause to be implemented, a comprehensive water management plan for the Red River basin addressing the needs on a watershed basis and to facilitate and pursue the resolution of inter-jurisdictional issues. The board of directors is comprised of five members each from Minnesota and North Dakota; seven members from Manitoba; two members from South Dakota; and two members from the tribal/aboriginal reservations in Minnesota, North Dakota, and Manitoba. All members have been identified, with the exception of the Province of Manitoba.

The board contracted with Eugene Krenz, former State Water Commission employee, to develop the Red River Basin Water Management Plan and coordinate the efforts for implementation of the plan. An inventory task force, with several subcommittees, are working on the initial phases on the new plan.

The Red River Basin Board has established special task forces to address watershed issues involving Devils Lake, Pembina River, and Lake Traverse.

The board held a retreat on September 30 and October 1, 1998 in Grand Forks. LeRoy Klapprodt reported the board agreed to continue its relationship with The International Coalition and hire an executive director to oversee the tasks of the board. Public workshops are scheduled for October 27-29, 1998 to discuss the guiding principles that were established by the board and to inform the public on the board's direction.

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

In 1994, the U.S. Army Corps of Engineers circulated a draft Environmental Impact Statement (EIS), which identified a preferred alternative for the future operation of the Missouri River main stem reservoir system. As required by the National Environmental Policy Act, the draft EIS was subject to full public review. In response to the public comments, the Corps agreed to conduct additional technical studies, re-initiate the alternative analysis, and prepare a revised draft EIS. The Corps agreed that the revised draft EIS would present a preferred alternative for public review and comment.

Current efforts of the Missouri River Basin Association and other interest groups have shown considerable progress in regard for the potential for consensus building in the basin. To maximize the potential for consensus building regarding the operation of the reservoir system, the Corps of Engineers elected to prepare and circulate a preliminary revised draft EIS, which does not present a preferred alternative, but presents data on

eight alternatives that represent the range of interests in the basin. At its August 13, 1998 meeting, the Commission members were provided the "Summary of the Preliminary Revised Draft Environmental Impact Statement Master Water Control Manual Missouri River", dated August, 1998.

A six-month public coordination period follows the release of the preliminary revised draft EIS, with a series of public workshops held throughout the Missouri River basin.

Todd Sando, Director of the State Water Commission's Water Development Division, reported on the public workshops held in North Dakota in September, 1998. The workshop sites included New Town, Williston, Garrison and Bismarck. Informational material, prepared by the Commission staff relative to North Dakota's perspective, was made available at the workshops. Mr. Sando explained the preliminary revised draft EIS is part of the Corps' effort to build consensus to facilitate the identification of a preferred alternative. State agencies will develop the official state's position to ensure that North Dakota's interests are considered in the new Master Manual. When a preferred alternative has been identified and the revised draft EIS completed, the Corps of Engineers will hold public hearings, currently scheduled for October, 1999 through March, 2000.

There being no further information to come before the State Water Commission, Governor Schafer adjourned the meeting at 4:15 PM.

/S/ Edward T. Schafer \_\_\_\_\_  
Edward T. Schafer  
Governor-Chairman

SEAL

/S/ David A. Sprynczynatyk  
David A. Sprynczynatyk  
State Engineer, and  
Chief Engineer-Secretary