

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 8, 2000

The North Dakota State Water Commission held a meeting at the Radisson Inn, Bismarck, North Dakota, on December 8, 2000. Governor-Chairman, Edward T. Schafer, called the meeting to order at 9:00 AM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
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

There being no additional items for the agenda, the Chairman declared the agenda approved, and requested Secretary Sprynczynatyk to present the agenda.

**CONSIDERATION OF MINUTES
OF SEPTEMBER 11, 2000 STATE
WATER COMMISSION MEETING -
APPROVED**

The minutes of the September 11, 2000 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner DeWitz, seconded by Commissioner Olin, and unanimously carried, that the minutes of the September 11, 2000 State Water Commission meeting be approved, as prepared.

**FINANCIAL STATEMENT -
AGENCY PROGRAM BUDGET
EXPENDITURES**

Dale Frink, Assistant State Engineer, presented and discussed the Program Budget Expenditures for the period ending October 31, 2000, reflecting 67 percent of the 1999-2001 biennium. **SEE APPENDIX "A"**

**FINANCIAL STATEMENT -
RESOURCES TRUST FUND**

shown on **APPENDIX "B"**. If this trend continues, the Resources Trust Fund could receive approximately \$3.45 million in excess of the agency's current spending authority for the 1999-2001 biennium.

Dale Frink reported that oil extraction revenues continue to exceed the agency's budget estimate, which is

The Projects-Contract Fund spreadsheet, attached hereto as **APPENDIX "C"**, is based on the agency's current authorized funding appropriation from the Resources Trust Fund. The unobligated funds available for project allocation in the 1999-2001 biennium is \$392,620.

**NORTH DAKOTA WATER
DEVELOPMENT TRUST
FUND BOND PROGRAM
(SWC Project No. 1907-02)**

On March 23, 2000, the bond sale relating to the North Dakota Water Development Trust Fund Program was completed in regard to Senate Bill 2188. The bond sale, which totalled

\$32.1 million, will provide \$23 million for the Grand Forks Flood Control project and \$4.5 million for the Southwest Pipeline Project during the 1999-2001 biennium.

Dale Frink reported \$4.5 million has been spent on the Mott-Elgin phase of the Southwest Pipeline Project. To date, \$9,653,563 has been provided to Grand Forks, using \$8 million for land acquisitions and \$1.3 million for relocations. Construction began on modifications to the Grand Forks Riverside Park Dam and the removal of an old railroad bridge. Grand Forks levee construction and modifications to the English Coulee diversion will begin in 2001.

**RESOURCES TRUST FUND/
NORTH DAKOTA WATER
DEVELOPMENT TRUST FUND
REQUESTS
(SWC PROJECT NO. 322)**

In order to maintain the 1999 State Water Management Plan and to meet the requirements of 1999 Senate Bill 2188, the Water Development 2001 Biennial Report was completed.

Section 10, Statewide Water Development Program-Legislative Intent, of Chapter 535 of the 1999 Legislative Session Laws (Senate Bill 2188) states:

“The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this act are completed.”

On September 11, 2000, the State Water Commission passed a motion approving the following recommendations relating to the State Water Commission's general concepts for funding, a statewide water development program with project priorities, and priority funding for the 2001-2003 biennial budget as contained in the Water Development 2001 Biennial Report:

- 1) the State Water Commission begin cost sharing up to 65 percent of the cost for domestic water supply projects and seek reimbursement of their cost share should federal MR&I dollars be made available. To be eligible for the state cost share, these projects must be built according to federal MR&I guidelines;
- 2) the State Water Commission adopt the prioritization process described in the 2001 Water Development Biennial Report to be managed within the framework of the State Water Management Plan. Full development of the prioritization process and project information gathered will occur simultaneously throughout the next biennium to allow full implementation of the prioritization process before the 2003-2005 biennial budgeting process begins; and
- 3) the State Water Commission approve the \$72.34 million of prioritized funding needs as described in table 9 of the report, which includes \$31.5 million for Senate Bill 2188 projects, \$15 million for MR&I projects, and \$25.84 million for other typically-funded water management projects.

Secretary Sprynczynatyk reported the Water Development 2001 Biennial Report satisfies the requirements of 1999 Senate Bill 2188 and 1999 House Bill 1475, which are codified in North Dakota Century Code 61-02-26 and 61-02-14.

Secretary Sprynczynatyk stated Section 57-51.1-07.1(2) of the North Dakota Century Code requires that "every legislative bill appropriating moneys from the Resources Trust Fund, pursuant to subsection one, must be accompanied by a State Water Commission report." Secretary Sprynczynatyk reported that although the format has changed from previous reports, the Water Development 2001 Biennial Report satisfies the requirements for funding from the Resources Trust Fund for the 2001-2003 biennium.

**FINANCIAL STATEMENT -
2001-2003 BIENNIUM BUDGET**

The State Water Commission's 2001-2003 biennium base budget is based on 100 percent of the current general

fund appropriation as required from all state agencies. The State Water Commission submitted optional adjustment requests addressing specific aspects of the budget relating to the Resources Trust Fund, the Water Development Trust Fund, and the agency's maintenance shop replacement. An agency budget meeting was held on October 2, 2000 with the Office of Management and Budget.

On December 7, 2000, Governor Schafer released his executive budget recommendations during the 2001-2003 biennium. Secretary Sprynczynatyk said the executive budget is very favorable to the State Water Commission in addressing the water development needs and, if approved by the Legislature, it will allow enhancement of the agency's operations in some areas.

Secretary Sprynczynatyk stated that because of the revenue situation in the general fund, the executive budget recommends shifting \$9.3 million of funding for the current agency's operations from the state's general fund to the Water Development Trust Fund. Secretary Sprynczynatyk said there is a question of whether or not special funds should be used for agency operations. He expressed concerns relative to the impact on the agency's operations if the special funds are not available in the future.

2001 LEGISLATION

Secretary Sprynczynatyk presented the following bill drafts for consideration to the 2001 Legislature, which are under the authority of the State Water Commission:

Under the Authority of the State Water Commission:

- **Southwest Pipeline Project:**

A bill increasing the amount of bonds that can be issued for the Southwest Pipeline Project. Currently, the Commission is limited to issuing \$15 million in bonds. Upon completion of the Mott-Elgin phase, bonds issued for the project will be approximately \$13.73 million. The bill proposes to raise the amount that could be bonded to \$25 million, if the revenues from the system can support that amount.

- **Delivery of Water to Eastern North Dakota:**

A bill authorizing the development of a plan and estimate of costs for the delivery of water to eastern North Dakota. The bill would appropriate \$150,000 for the plan, which has been recommended by the North Dakota Water Coalition.

The money has been included in the State Engineer's recommendation for the 2001-2003 Water Development Program. The study would be similar to what was done prior to the authorization of the Southwest Pipeline Project and the Northwest Area Water Supply Project.

- **Conflicts of Interest of State Water Commission Members:**

A bill addressing the conflicts of interest of State Water Commission members. Under the bill, a Commission member would not be prohibited from having an interest in contracts funded by the Commission provided the member discloses the interest and does not participate in the matter to be voted upon.

- **Interest on the Water Development Trust Fund and the Devils Lake Outlet:**

In the November 20, 2000 memorandum to the State Water Commission regarding legislation, Secretary Sprynczynatyk indicated he was proposing language to be contained in the Governor's biennial executive budget bill dealing with amendments to the 1999 Senate Bill 2188. The Office of

Management and Budget felt it would be more appropriate if the Commission introduced the following proposed changes that were “substantive” in nature:

- The bill removes requirements for federal participation in the Devils Lake outlet so that bonds can be issued for a state constructed outlet.
- The bill will give the State Water Commission quick take authority to acquire the interests needed to construct a Devils Lake outlet.
- The bill authorizes the State Water Commission to construct the outlet through a design/build procedure rather than going through a competitive bidding process.
- The bill ensures that any interest earned on the Water Development Trust Fund will remain in that fund rather than being transferred to the general fund.

It was the recommendation of the State Engineer that the State Water Commission approve the bill drafts as presented for submittal to the 2001 Legislature:

It was moved by Commissioner Thompson and seconded by Commissioner Hanson that the State Water Commission approve the following bill drafts for submittal to the 2001 Legislature:

- ***A bill increasing the amount of bonds that can be issued for the Southwest Pipeline Project to \$25 million***
- ***A bill authorizing the development of a plan and estimate of costs for the delivery of water to eastern North Dakota***
- ***A bill addressing conflicts of interest of State Water Commission members***
- ***A bill relating to interest on the Water Development Trust Fund and the Devils Lake outlet***

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried. SEE APPENDIX "D"

**APPROVAL OF REQUEST FROM
RENVILLE COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARE IN MOUSE RIVER PARK
SLOPE STABILIZATION PROJECT
(SWC Project No. 1300)**

(McKinney Township) of Renville County, which is approximately 13 miles northwest of Mohall, ND.

A request from the Renville County Water Resource District was presented for the Commission's consideration for cost share in the Mouse River Park slope stabilization project. The project is located in Section 2, of Township 161 North, Range 86 West,

Todd Sando, Director of the State Water Commission's Water Development Division, presented the request. The purpose of the project is to stabilize a 1,000-foot section of the right bank (east side) of the Mouse River on the west arm of the meander through the Mouse River Park immediately north of the existing stoplog control structure. According to the District, this stretch is experiencing excessive bank erosion and is threatening several area cabins.

The Corps of Engineers inspected the area in 1999 and recommended the installation of a vegetative geogrid system, along with riprap, as a means of reducing further bank erosion. These recommendations were incorporated into the final project design. It is anticipated that construction will be completed in 2001.

The engineer's cost estimate for this project is \$148,075, of which \$78,075 is considered eligible for a 50 percent cost share. The request before the State Water Commission is to cost share in the amount of \$39,038. Of the total project cost, \$60,000 will be provided through the EPA 319 program.

James Burbidge, chairman of the Renville County Water Resource District, provided additional information relative to the project, and requested the Commission's favorable consideration of the cost share request.

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 \$39,038 from the Contract Fund in the 1999-2001 biennium, for the Mouse River Park slope stabilization project in Renville County, contingent upon the availability of funds.

It was moved by Commissioner Thompson and seconded by Commissioner Olin that the State Water Commission approve cost share of 50 percent of the eligible items, not to exceed \$39,038 from the Contract Fund in the 1999-2001 biennium, for the Mouse River Park slope stabilization project in Renville County. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
CASS COUNTY JOINT WATER
RESOURCE BOARD FOR
ALLOCATION OF ADDITIONAL
\$500,000 TO MAPLE RIVER DAM
(COMPONENT OF SHEYENNE
RIVER FLOOD CONTROL PROJECT)
(SWC Project No. 1344)**

In 1992, the State Water Commission approved \$500,000 for the Maple River Dam, a component of the Sheyenne River Flood Control project, for the preliminary engineering and design, geotechnical analysis, cultural resource studies, and associated contingency costs.

Dale Frink stated that to date, \$429,269 has been spent on the project, and the current request for payment from the Cass County Joint Water Resource Board will exceed the \$70,731 balance. Another \$3,500,000 has been earmarked for the dam in the 1999-2001 biennium. The request before the State Water Commission is the allocation of an additional \$500,000 from the \$3.5 million earmarked for the project.

The project's engineer has estimated the total project cost to be \$16.4 million. This includes the moneys already spent on the project.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of an additional \$500,000 to the Maple River Dam, based on a 50 percent cost share of the eligible items with the Cass County Joint Water Resource Board, to include preliminary engineering and design, geotechnical analysis, environmental studies, road and utility relocation and modifications, and associated contingency costs. The recommendation is contingent upon the availability of funds.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve the allocation of an additional \$500,000 to the Maple River Dam, based on a 50 percent cost share of the eligible items with the Cass County Joint Water Resource District, to include preliminary engineering and design, geotechnical analysis, environmental studies, road and utility relocation and modifications, and associated contingency costs. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR COST
SHARE IN CASS COUNTY DRAIN
NO. 35 BACKFLOW PREVENTION
STRUCTURE INSTALLATION
(SWC Project No. 1086)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for cost share in the Cass County Drain No. 35 backflow prevention structure installation project. The purpose of the project, which was completed earlier this year, is to prevent

backflow water from the Sheyenne River through the drain into the Maple River watershed during periods of high flow.

Todd Sando presented the request. The project is located in the north/south township road between Sections 9 and 10, Township 137 North, Range 50 West, (Normanna Township) of Cass County, and consists of two 66-inch diameter CMP culverts with flap gates and a concrete headwall. As part of this project, an existing wooden bridge just north of the project was removed, and an adjoining 400-foot section of the drain was realigned.

The engineer's cost estimate is \$95,000, of which \$94,500 is considered eligible for a 35 percent cost share. Under the State Water Commission's policy and guidelines for rural flood control/drainage projects, 35 percent of the eligible costs qualify for cost share. The request before the State Water Commission is to cost share in the amount of \$33,075.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 35 percent of the eligible items, not to exceed \$33,075 from the Contract Fund in the 1999-2001 biennium, for the Cass County Drain No. 35 backflow prevention structure installation project, contingent upon the availability of funds.

It was moved by Commissioner Hillesland and seconded by Commissioner Bjornson that the State Water Commission approve cost share of 35 percent of the eligible items, not to exceed \$33,075 from the Contract Fund in the 1999-2001 biennium, for the Cass County Drain No. 35 backflow prevention structure installation project. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**CONSIDERATION OF REQUEST
FROM NORTH DAKOTA IRRIGATION
CAUCUS FOR FUNDING TO SUPPORT
HIRING OF MARKETING CONSUL-
TANT BY COMMERCIAL VEGETABLE
GROWERS OF NORTH DAKOTA, INC.
(SWC File PS/IRR/GEN)**

A request from the North Dakota Irrigation Caucus, on behalf of the Commercial Vegetable Growers of North Dakota, Inc., was presented for the Commission's consideration for cost share to assist in supporting a consultant to explore and develop opportunities and markets for the com-

mercial production of selected vegetables under irrigation. This effort is being planned for a period of three years, but will be evaluated at the end of the first year.

The budget for the first year is \$155,000. The request before the State Water Commission is to cost share in the amount of \$50,000. Funding has been secured for the first year from the following entities:

Agricultural Products Utilization Commission (APUC)	\$35,000
High Value Irrigated Crops Task Force	15,000
City of Jamestown/Stutsman County	40,000
City of Grand Forks	5,000
Promersberger & Co.	2,000

Secretary Sprynczynatyk explained that the State Water Commission has the authority to finance irrigation projects developed by individuals, groups of individuals, or irrigation districts, North Dakota Century Code chapter 61-37 and sections 61-02-14 and 61-02-18. The North Dakota Century Code also allows the Commission to conduct all investigations it determines necessary to determine the feasibility of such projects.

In addition to the State Water Commission's authority to finance individual irrigation development projects, the 1999 Legislative Assembly created the North Dakota Irrigation District Finance Program (Program) and designated the Commission to operate, manage, and control it, North Dakota Century Code chapter 61-37. The Program created a legislative framework to encourage irrigation development and to provide financing for irrigation districts. The financing mechanism is through the issuance of bonds, with the proceeds loaned to irrigation districts, or by guaranteeing or purchasing bonds issued by irrigation districts.

The State Water Commission has granted funds to proposed irrigation projects for studies to evaluate the technical and economic feasibility for the projects. In the last two years, funds have been granted to two irrigation districts for the partial support of the construction of primary infrastructure. In addition, the Commission has granted funds to support studies to determine the feasibility of developing irrigation projects in three other areas. All of the projects would use water from the Missouri River including the reservoirs.

The State Water Commission has approved grant funds for the Nesson Valley and Elk/Charbon Irrigation Districts in the amounts of \$1.5 million and \$1.0 million dollars, respectively. The construction costs for the two irrigation districts range from approximately \$1,200 per acre to \$1,400 per acre. With the grant funds from the State Water Commission, the construction costs are reduced. Additional high value irrigated crops are needed to enhance the economic feasibility of the projects in order to continue economic growth through irrigation and value added processing as well as further secure the investment of state funds. The development of opportunities and markets for vegetable crops is an essential step to enhance this economic feasibility.

The North Dakota Irrigation Caucus has requested the State Water Commission to consider issuing revenue bonds for irrigation projects and establishing a loan program for individual irrigation development. If additional markets are developed for irrigated high value crops grown in North Dakota, the economic feasibility of irrigation districts and individual irrigation projects will be enhanced. Increasing the economic feasibility will protect the state's investment in projects the Commission has already committed funds towards. It should also protect the state's investment in future projects because increasing economic feasibility will further ensure that funds guaranteed or loans made by the Commission will be repaid.

The Agricultural Products Utilization Commission (APUC) has the authority to provide funds for the development of markets. Secretary Sprynczynatyk said this is the first time the State Water Commission has received a request to provide funds to support market development. However, in this case, the State Water Commission has an

interest in supporting the development of additional opportunities that will enhance the economic viability of irrigation. Although the request is for \$50,000, Secretary Sprynczynatyk said the Commission should not contribute more funds to the project than APUC, since this is a primary role for APUC. Also, for the past several years, the Commission has contributed funds to the High Value Irrigated Crops task force, another contributor to the project. Therefore, he said \$25,000 would be an appropriate amount for the State Water Commission to consider for this project.

It was the recommendation of the State Engineer that the State Water Commission approve \$25,000 for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc., contingent upon the availability of funds.

Michael Dwyer, Executive Director, North Dakota Irrigation Caucus, reported on the activities of the Irrigation Caucus which has identified five areas of work for strengthening and expanding irrigation in North Dakota:

- 1) coordination and communication
- 2) economic development/irrigation opportunities
 - a. irrigation districts/projects
 - b. high value crops/markets
 - c. economic development partnerships
- 3) irrigation research
- 4) funding and financing
- 5) affordable energy

Mr. Dwyer said developing markets for high value crops is one of the tasks that needs to be accomplished for irrigation growth in North Dakota. In this case, he said markets for vegetables under irrigation in North Dakota would be one additional opportunity that would strengthen and expand irrigation in North Dakota.

Maynard Helgaas, Jamestown, ND, representing the Commercial Vegetable Growers of North Dakota, provided additional information relative to the project and the request for funding before the State Water Commission. He said there have been a number of meetings in the past three months amongst state agencies, economic development entities, and grower groups to formally initiate an effort to provide development of additional irrigated crops in North Dakota. There is a critical need to provide additional vegetable crops to supplement the potato rotation. The vegetable crops most frequently mentioned are onions, carrots and sweet corn.

Mr. Helgaas explained the funding support for the first year of the program, with an estimated cost of \$155,000. An application was submitted to the Agricultural Products Utilization Commission (APUC) for a cost share in the amount of \$50,000. On October 26, 2000, APUC approved a \$35,000 grant for the project. The job description for the Executive Marketer position was reviewed, and Mr. Helgaas said the vegetable consultant will work closely with the High Value Irrigated Crops task force as the activities in the state are coordinated.

Mr. Helgaas expressed appreciation to the State Water Commission for its support of irrigation development in North Dakota, and urged favorable consideration of the request for funding in the amount of \$50,000.

Governor Schafer expressed strong support for irrigation in North Dakota, but he questioned whether the request being considered for an expenditure of funds for a vegetable marketing consulting is appropriate for the State Water Commission. Upon a statutory review of the authority of APUC, he said it is clear that APUC has the authority to fund and develop markets for expanded agricultural products.

It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve up to \$50,000, but not to exceed the amount approved by APUC, for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc. This motion is contingent upon the availability of funds.

An amendment to the original motion was offered by Commissioner DeWitz and seconded by Commissioner Hanson that the State Water Commission approve \$35,000 for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc. This amendment is contingent upon the availability of funds.

Chairman Schafer called the question on the amendment to the original motion, and asked for a roll call vote:

Commissioners Bjornson, DeWitz, Hanson and Hillesland voted aye. Commissioners Johnson, Olin Swenson, and Chairman Schafer voted nay. Commissioner Thompson abstained from voting. The recorded vote was 4 ayes; 4 nays; 1 abstention. The Chairman announced the amendment to the original motion failed.

Chairman Schafer called the question on the original motion, and asked for a roll call vote:

Commissioners Bjornson, DeWitz, Hanson, Hillesland and Thompson voted aye. Commissioners Johnson, Olin, Swenson, and Chairman Schafer voted nay. The recorded vote was 5 ayes; 4 nays. The Chairman announced the original motion carried.

Chairman Schafer recognized Commissioner Bjornson who requested a reconsideration of the motion that was passed by the State Water Commission approving up to \$50,000, but not to exceed the amount approved by APUC, for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc.

It was moved by Commissioner Bjornson and seconded by Commissioner DeWitz that the State Water Commission reconsider the vote on the motion to approve up to \$50,000, but not to exceed the amount approved by APUC, for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc. This motion is contingent upon the availability of funds.

Chairman Schafer called the question on the reconsideration of the vote on the motion, and asked for a roll call vote:

Commissioners Bjornson, DeWitz, Hillesland, Johnson, Olin, Swenson, and Chairman Schafer voted aye. Commissioners Hanson and Thompson voted nay. The recorded vote was 7 ayes; 2 nays. The Chairman announced the adoption of the reconsideration of the vote on the motion.

It was moved by Commissioner Bjornson and seconded by Commissioner DeWitz that the State Water Commission approve \$25,000 for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc. This motion is contingent upon the availability of funds.

In discussion of the motion, Governor Chairman reiterated his previous comments that although he strongly supports irrigation in North Dakota and will continue to support the development of products across the state, the Agricultural Products Utilization Commission has the statutory authority to fund and develop markets for the expanded agricultural products, and is the appropriate agency, in his opinion, for funding this project.

A substitute motion was offered by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission:

- 1) not approve an expenditure of funds for the North Dakota Irrigation Caucus to support hiring a marketing consultant by the Commercial Vegetable Growers of North Dakota, Inc.; and***
- 2) recommend to the Agricultural Products Utilization Commission that it reconsider the application submitted by the North Dakota Irrigation Caucus and the Commercial Vegetable Growers of North Dakota, Inc. for full funding for the alternative irrigated crops marketing effort.***

Chairman Schafer called the question on the substitute motion, and asked for a roll call vote:

Commissioners Johnson, Hanson, Hillesland, Olin, Swenson, and Chairman Schafer voted aye. Commissioners Bjornson, DeWitz, and Thompson voted nay. The recorded vote was 6 ayes; 3 nays. The Chairman announced the substitute motion carried.

**APPROVAL OF NON-FEDERAL
FUNDS FOR CITY OF WAHPETON
FLOOD CONTROL PROJECT
UNDER AUTHORITY OF
1999 SENATE BILL 2188
(SWC Project No. 1913)**

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

of the North and the Otter Tail River. The most recent significant damage occurred in April, 1997 when the temporary levee systems at Breckenridge failed and caused catastrophic flood damages. The damages resulting from the 1997 flood adversely affected Wahpeton dramatically. After the 1997 flood, city officials requested the Corps of Engineers to conduct flood control studies, with the hope that such studies would lead to a federal flood protection project. In response to the request, the Corps completed a federal interest study in 1998, which led to a more detailed feasibility study, documented in a report by the Corps, dated September, 2000.

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

The feasibility study will be used to determine whether a federal project is justified. If the project is justified, authorized by Congress, and funds are appropriated for the project, the project would be constructed with the non-federal share of costs to be not less than 35 percent and not more than 50 percent.

Mr. Frink said that in order for the Wahpeton project to receive funding from the State Water Commission under the authority in 1999 Senate Bill 2188, the project has to be authorized and funded, in part, by the federal government and designed to provide permanent flood control or reduction to Wahpeton. In addition for Wahpeton to receive funds, it must have received significant federal funding through federal grants and funds from the Corps of Engineers and the Federal Emergency Management Agency (FEMA). According to the Division of Emergency Management, the city of Wahpeton received \$691,328 in 1997, \$124,590 in 1998, \$2,181 in 1999, and \$257,648 to date in the year 2000 from FEMA. In addition, the Wahpeton Park Board received \$159,936 in 1997, \$193,405 in 1998, \$0 in 1999, and \$43,041 to date in the year 2000.

On December 8, 2000, a request was received from the city of Wahpeton requesting 50 percent of the non-federal funds, under the authority of 1999 Senate Bill 2188, for the city's acquisition and demolition costs. The city's total expenditures are \$1,203,881. The request before the State Water Commission is to consider 50 percent of the non-federal funds in the amount of \$601,940.50, under the authority of 1999 Senate Bill 2188.

It was the recommendation of the State Engineer that the State Water Commission approve 50 percent of the non-federal funds, in the amount of \$601,940.50, for the Wahpeton flood control project, under the authority of 1999 Senate Bill 2188, contingent upon the determination of the State Engineer that the project has satisfied all of the legislative requirements of 1999 Senate Bill 2188.

It was moved by Commissioner Johnson and seconded by Commissioner DeWitz that the State Water Commission approve 50 percent of the non-federal funds, in the amount of \$601,940.50, under the authority of 1999 Senate Bill 2188, for the Wahpeton flood control project. This motion is contingent upon the city of Wahpeton satisfying all of the legislative requirements of 1999 Senate Bill 2188.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

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

The Dakota Water Resources Act of 1999 (S. 623) was heard before the Subcommittee on Water and Power of the U.S. Senate Committee on Energy

and Natural Resources on May 27, 1999 in Washington, DC. The companion bill (H.R. 2918) was heard before the U.S. House of Representatives Committee on Resources, Subcommittee on Water and Power, on September 30, 1999.

The efforts that were pursued to resolve the differences expressed by the environmental groups, the Canadian government, and the states of Minnesota and Missouri relating to the Dakota Water Resources Act included a workshop held on May 15, 2000 in Washington, DC with the appropriate parties from the State of Missouri. Although no final decisions were reached at that time, the group agreed to a concept, subject to the development of acceptable language and all parties being able to get concurrence from constituencies in their respective state.

On September 11, 2000, Secretary Sprynczynatyk had reported to the Commission that discussions at the staff level indicated the State of Missouri was ready to proceed with the amendment to the Dakota Water Resources Act that would, hopefully, clear the way for its passage on the Senate side. He also reported that negotiations were continuing with the House Resources Subcommittee staff and, hopefully, those efforts would be successful for full committee mark-up on September 27, 2000.

Note: Subsequent to the December 8, 2000 State Water Commission meeting, Congress voted to authorize the Dakota Water Resources Act (DWRA) on December 15, 2000. The DWRA provides an additional authorization of \$631.5 million for the state: \$200 million for tribal MR&I projects; \$200 million for state MR&I projects; \$200 million for the water supply needs of the Red River valley; and \$31.5 million for natural resources and recreation projects. The DWRA legislation provides the funding authority for the development of a study that will determine the best way to meet the needs of the Red River valley through a comprehensive study.

This study is a joint process between the Bureau of Reclamation, the State Water Commission, and the Garrison Diversion Conservancy District. The DWRA legislation includes a provision for the full analysis of the best ways to meet the needs of the valley. The engineering, environmental and financial analysis is estimated to take three or more years, and includes a full environmental analysis with participation by downstream interests and Canada.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM
UPDATE; AND APPROVAL OF
REVISED MR&I FISCAL YEARS
2000 AND 2001 BUDGETS
(SWC Project No. 237-03)**

Secretary Sprynczynatyk provided the following MR&I Water Supply program status report:

All Seasons Rural Water System 5 (Pierce County): The new rural water system would serve 373 rural users and Willow City. The estimated project cost is \$8.65 million. The rural monthly minimum would be approximately \$49.00 per thousand gallons. The Bureau of Reclamation is working on the environmental assessment. The city of Rugby plans to supply System 5 with a bulk water supply based on receiving an additional water appropriation from the Pleasant Lake aquifer. System 5 is approved for Fiscal Year 2001 MR&I funding of \$3.5 million.

Glenfield Water Supply/Storage: The city of Glenfield has installed a new 8-inch well in the New Rockford aquifer using a FEMA grant of \$16,750. The city's water system uses eight pressure tanks with bladders that do not

last long due to the poor water quality. Therefore, the city relies on the well pump to cycle on and off to supply pressure for the distribution system. This cycling reduces the pump's overall life. The city has installed an 8,000 gallon reservoir and a high service pump to correct the pressure problem. The original cost estimate for the city to install a new reservoir storage system and a high service pump to fix the pressure system was \$46,500.

On September 11, 2000, the State Water Commission approved the proposed \$6.5 million Fiscal Year 2001 MR&I Water Supply program budget, which included a 65 percent MR&I grant in the amount of \$30,225 for the city of Glenfield.

Based on the November 7, 2000 bid, the engineer provided an updated estimate for the water storage project. The current cost estimate is \$85,000. A 65 percent MR&I grant would be \$55,250, or an additional \$25,025.

McLean-Sheridan Rural Water: The existing rural water system is planning a Phase IV expansion to serve additional rural water users and providing bulk water service to the communities of Underwood and Wilton. The preliminary project cost is \$4.9 to \$8.6 million, with service from 20 to 147 rural users. The feasibility study is estimated to cost \$57,000, with a 65 percent MR&I grant of \$37,050.

McKenzie Rural Water: The proposed service area is around the city of Watford City and covers seven miles south, two miles north, two miles east, and fifteen miles west to the city of Alexander. The project would serve 215 rural users, with a cost of \$1.7 million, with an additional \$600,000 to serve the city of Alexander. Watford City has the water treatment plant capacity to serve the proposed rural system and is willing to sell water at \$1.00 per thousand gallons and will do the rural water billing. The project received approval for a 65 percent grant of \$32,500 in Fiscal Year 2001 for completing the feasibility study.

Northwest Area Water Supply, Phase I (Rugby Component): The upgrade of the Rugby water treatment plant has been completed. The next component for the Rugby water project is the installation of a new water transmission pipeline, which matches the 1,200 gallons per minute capacity of the water treatment plant. The request for an additional water allocation from the Pleasant Lake aquifer may come from a different location than the current well field. A new location would require an additional pipeline. The pipeline design will be finalized and the proposed MR&I grant of \$805,000 will be reviewed after the water permit process is finalized.

Ramsey County Rural Water: The proposed expansion covers portions of Eddy, Foster and Ramsey counties. An engineering review was made of the service area involving the Stutsman Rural Water District in Foster

county and the potential for Carrington to provide bulk water service to the rural users surrounding Carrington. The review showed 12 users could be served from the existing Stutsman system, and 101 users could be served from Carrington. The remaining 247 users in Eddy and Foster counties would be served by Ramsey's existing water treatment plant. Service includes Glenfield, Grace City, and McHenry. Sheyenne has the potential to be served from New Rockford. There are 40 rural users located in the existing rural system in Ramsey county. The estimated cost is \$9.9 million.

Ransom-Sargent Rural Water: The total estimated project cost is \$20 million and would serve 800 rural users and the communities of Cogswell, Elliott, Fingal, and Marion. The 2000 project phase includes adding rural users in the core service area around Lisbon, with an estimated cost of \$10 million. The final phase involves a water treatment plant expansion in Lisbon, a new well field, and a raw water transmission pipeline with an estimated cost of \$7 million. The total proposed MR&I funding allocation is \$14.3 million. The allocation included, if needed, a \$1.3 million adjustment to the MR&I funding to help keep the monthly minimum cost to \$45.00. The project received an additional allocation of \$7,832,250 in Fiscal Year 2000, increasing the total MR&I funding to \$13,985,975 for the project.

Secretary Sprynczynatyk presented the following breakdown for the revised proposed funding budgets for Fiscal Years 2000 and 2001 MR&I Water Supply program for the Commission's consideration:

Project	Activity	FY 2000	FY 2001	
		Approved	Approved	Proposed
All Seasons System IV	D&C	\$ 2,600,000	\$ 0	\$ 0
All Seasons System V (Pierce)	D&C	22,750	3,500,000	3,500,000
NAWS - Rugby	D&C	0	805,000	805,000
Ransom-Sargent Rural Water	D&C	7,832,250	0	0
Glenfield Water Supply/Storage	D&C	0	30,225	55,250
Stutsman Water District (Ramsey)	F	50,000	0	0
McKenzie Rural Water	F	0	32,500	32,500
McLean-Sheridan Rural Water	F	0	0	37,050
Other Projects		0	1,832,275	1,770,200
Administration		94,153	300,000	300,000
Total		\$10,599,153	\$6,500,000	\$6,500,000

F Feasibility Study
D Design
C Construction

It was the recommendation of the State Engineer that the State Water Commission approve the revised proposed Fiscal Years 2000 and 2001 MR&I Water Supply program budgets as presented, contingent upon the availability of federal funds and subject to future revisions. The recommended proposed Fiscal Year 2001 budget reduces the 'Other Projects' funding by \$62,075 for funding for the Glenfield Water Supply/Storage and McLean-Sheridan Rural Water projects. On December 11, 2000, the Garrison Conservancy District executive board of directors approved the revised proposed budgets for Fiscal Years 2000 and 2001.

It was moved by Commissioner Hanson and seconded by Commissioner Johnson that the State Water Commission approve the recommendation of the State Engineer of the revised \$10.599 million Fiscal Year 2000 allocation, and the revised allocation of \$6.5 million for Fiscal Year 2001 for the MR&I Water Supply program budgets as presented. This motion is contingent upon the availability of federal funds and is subject to future revisions.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced 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:

Contract 2-6B - Burt Service Area, Main Transmission Pipeline: This contract has been completed with the exception of some administrative items. The contract had the following intermediate completion dates: service to New Leipzig by September 15, 2000; service to Elgin by October 15, 2000; and service to Carson by November 30, 2000.

Water service to Elgin began on September 28, 2000; service to Carson began on October 24, 2000; and service to New Leipzig began on November 1, 2000. Service to New Leipzig was available earlier, but the city chose to wait until November.

The prefinal inspection of this contract has been conducted and a "punch list" of items requiring attention has been provided to the contractor. The final completion date for the contract is January 14, 2001.

Contract 7-3B /7-5B - Rural Water Distribution System, Southeast Jung Lake and South Hebron Pocket Areas: This contract totals about 112 miles of pipeline serving 64 rural service connections in two pockets of users. This contract has been completed with the exception of some administrative items. Final completion was required by October 16, 2000.

This contract had an intermediate completion date of August 1, 2000 for the 24 connections in the South Hebron pocket, and a substantial completion date of September 1, 2000 for the 40 hookups in the Southeast Jung Lake pocket. Service to the South Hebron pocket was not available until September 29 when the underground booster station serving the area was installed. Service to the Southeast Jung Lake pocket was complete by September 12.

Contract 7-6A - Rural Distribution System, Burt Service Area: This contract includes approximately 231 miles of pipe serving about 163 service connections. The contract had an intermediate completion date of August 20, 2000 for 40 users in the vicinity of Elgin, and has a substantial completion date of July 1, 2001 for the remaining users. The interim completion date passed without service to any users, but 56 users were turned over to the Southwest Water Authority for service at the time water became available to New Leipzig and Elgin at the end of September, 2000. At this time, a total of 81 users have been turned over for service.

The contractor has completed pipe laying operations on this contract with the exception of a short stretch south of New Leipzig, which is pending on the plans for the Coffin Buttes pocket. The contractor is currently lowering shallow pipe and installing service connections to the east of Carson. Due to weather conditions, the contractor ceased operations for the 2000 construction season at the end of November.

Contract 7-6B - Coffin Buttes Service Area, Rural Distribution System: Contract 7-6B was originally named the Plum Butte service area. The name was changed to the Coffin Buttes service area because of the location of the tank on the Coffin Buttes, although a tank is no longer needed because of the reduced numbers of users.

This contract is scheduled for construction in 2001 as the third and final portion constructed under the Mott-Elgin phase of the Southwest Pipeline Project. The proposed funding for this contract totals \$3 million and consists of \$500,000 from the previously approved \$1.5 million loan through the State Revolving Loan Program, a \$500,000 loan from USDA, Rural Development, and a \$2 million grant from USDA, Rural Development.

At this point in the final design process, service is being planned to a total of 83 users in a “core” area of 54 users, and three pockets containing 29 users. One of these pockets, serving 6 users to the south of the Prairie Learning Center, is actually within the Burt service area.

The contract was advertised for construction bids on November 13, 2000, with a bid opening scheduled for December 13, 2000. The availability of funding for this contract from USDA, Rural Development is pending for Fiscal Year 2001.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REVISED RURAL
WATER DESIGN CRITERIA FOR
BOWMAN-SCRANTON PHASE
(SWC Project No. 1736)**

The next area scheduled for construction in the phased development of the Southwest Pipeline Project is the Bowman-Scranton regional service area, which consists of three service areas of two pockets each. This

phase includes capacity upgrades to existing facilities as the project is expanded. These facilities include a second New England reservoir, a second Davis Buttes reservoir, and additional raw water pumps at the intake, Dodge and Richardton pump stations.

The proposed funding for the Bowman-Scranton phase is shown in the following table:

**Bowman-Scranton Phase Funding
(in million dollars)**

Year	State Grant	USDA Grant	USDA Loan	Yearly Total
2001	\$3.60	\$0.60	\$0.80	\$ 5.00
2002	\$3.70	\$1.10	\$1.20	\$ 6.00
Totals	\$7.30	\$1.70	\$2.00	\$11.00

James Lennington explained that the Scranton service area and the Bowman-Haley pocket are served out of the Scranton Standpipe. The Bowman service area and the Rhame pocket are served out of the Bowman Standpipe. The Amidon and West Rainy Butte pockets will be served from the existing Jung Lake elevated tank. Mr. Lennington discussed the projected construction schedule and preliminary cost estimates for the Bowman-Scranton phase using the current rural water design criteria, which is shown in the staff memorandum, dated November 17, 2000, and attached to these minutes as **APPENDIX “E”**.

The cities of Marmarth and Rhame have both decided they are not interested in buying water from the Southwest Pipeline Project. Both of the cities are within the area planned for service in the Bowman-Scranton phase. The city of Amidon has a small municipal water system serving the courthouse, school, a church and two residences. Amidon could be served within the Amidon pocket should they choose to sign a contract.

At its March 24, 1999 meeting, the State Water Commission approved the adoption of revised design criteria for peak instantaneous flow and potential service units for the Mott-Elgin phase of the Southwest Pipeline Project to lower the costs of construction.

The current criteria, adopted by the Commission at its July 2, 1993 meeting, provides for a peak instantaneous flow as follows:

Where: Q_p = Peak Instantaneous Flow in gallons per minute (gpm)
 N^s = Number of Service Units
 C = Constant flow for contract users (gpm)

The revised criteria approved by the Commission for the Mott-Elgin phase are as follows:

$$\begin{aligned} Q_p &= 9 \sqrt{N} + C && \text{For } N \leq 25 \\ Q_p &= 0.9 \sqrt{N} + 22.5 + C && \text{For } N > 25 \\ Q_p &= 7 \sqrt{N} + C && \text{For } N \leq 25 \\ Q_p &= 0.7 \sqrt{N} + 13.6 + C && \text{For } N > 25 \end{aligned}$$

Potential service units are rural residences in the project area which have either not signed up or have not notified the Southwest Water Authority either way. In the current design criteria, additional capacity is included for one-half of the potential service units which may elect to sign-up in the future. The revised criteria approved by the State Water Commission for the Mott-Elgin phase included capacity for one-third of the potential service units.

Mr. Lennington said the areas proposed for service in the Bowman-Scranton phase are similar to those in the Mott-Elgin phase. The sign-up percentage is in the neighborhood of 50 percent and the farms and ranches are fairly far apart especially in the western part of

the area. He said it is proposed to use the same design criteria for Bowman-Scranton as was used for Mott-Elgin to help as many users as possible to meet the State Water Commission's feasibility criteria. The table in **APPENDIX "E"** shows the projected construction schedule and preliminary cost estimates for Bowman-Scranton if the Mott-Elgin rural design criteria were used.

The final design of the Bowman-Scranton phase of the Southwest Pipeline Project is now underway. Mr. Lennington stated that applying the revised design criteria for the Mott-Elgin phase to the Bowman-Scranton phase would provide a savings in construction costs of approximately \$335,000 and would help more areas and users meet the State Water Commission's feasibility criteria. The revised criteria compares favorably with other rural water systems in the state and should provide adequate service to users in the Bowman-Scranton phase.

It was the recommendation of the State Engineer that the State Water Commission approve the adoption of the Mott-Elgin rural water design criteria for the peak instantaneous flow and the potential service for the Bowman-Scranton phase of the Southwest Pipeline Project.

It was moved by Commissioner Johnson and seconded by Commissioner Bjornson that the State Water Commission approve the adoption of the following rural water design criteria for the Bowman-Scranton phase of the Southwest Pipeline Project:

Peak Instantaneous Flow:

$$Q_p = 7 \sqrt{N} + C \quad \text{For } N \# 25$$

$$Q_p = 0.7 \sqrt{N} + 13.6 + C \quad \text{For } N > 25$$

Where: Q_p = Peak Instantaneous Flow in gallons per minute (gpm)

N = Number of Service Units

C = Constant flow for contract users (gpm)

Potential Service Units:

The rural water design criteria shall count each potential service unit as one-third.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
AUTHORIZATION FOR COMMISSION
SECRETARY AND AUTHORIZED
PROJECT OFFICERS TO EXECUTE
USDA, RURAL DEVELOPMENT
DOCUMENTS IN LOAN/GRANT
ASSISTANCE APPLICATION
(SWC Project No. 1736)**

At its September 11, 2000 meeting, the State Water Commission members were informed that Southwest Pipeline Project contract 7-6B, Coffin Buttes service area, rural distribution system, was scheduled for construction in 2001 as the third and final phase constructed in the Mott-Elgin regional service area. James Lennington

stated an application was submitted to USDA, Rural Development in July, 2000. The documents requiring the State Water Commission's completion were received in September, 2000. Similar documents have been approved by the Commission for past USDA, Rural Development applications on the project.

Mr. Lennington explained the process of obtaining funding through the USDA, Rural Development which includes submission of the application form, a balance sheet, an operating budget, and several certifications; approval of the conditions for funding and a request for USDA, Rural Development to obligate the funding; and approval of the bond documents and the sale of the bonds. He said the actual commitment of the Commission to repay any bonds does not occur until the bonds are approved for sale. Approval of these documents can require three separate Commission meetings and extend the length of time required to secure funding.

Mr. Lennington stated that USDA, Rural Development has agreed to allow the State Water Commission's Secretary and the authorized project officers to execute all of the required documents, if so authorized by the Commission. He said this could speed up the loan and grant assistance process by avoiding the necessity of a Commission meeting. Consideration of the sale of bonds, as the final step in the process and the point at which the Commission commits to repaying the bonds, would require the Commission's consideration.

It was the recommendation of the State Engineer that the State Water Commission authorize its Secretary and the authorized project officers to execute all USDA, Rural Development documents in the loan and/or grant assistance application process for the Southwest Pipeline Project up to, but not including, the sale of the bonds. Consideration of the sale of bonds will be presented to the Commission for each bond issuance.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission authorize its Secretary and the authorized project officers to execute all USDA, Rural Development documents in the loan and/or grant assistance application process for the Southwest Pipeline Project up to, but not including, the sale of the bonds. Consideration of the sale of bonds shall be presented to the State Water Commission for each bond issuance.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF POINT OF DELIVERY
AND PRESSURE RANGE AMEND-
MENT TO CITY OF ELGIN'S WATER
SERVICE CONTRACT
(SWC Project No. 1736)**

In June, 1999, the city of Elgin was contacted about the point of delivery for water from the Southwest Pipeline Project. In July, 1999, the city commission voted to move the point of delivery to a location different from that specified in the contract approved

in 1982, and to have the pressure range increased to fill the city's elevated tank. The Southwest Water Authority will consider this amendment at a future meeting.

It was the recommendation of the State Engineer that the State Water Commission approve the point of delivery and the pressure range amendment to the city of Elgin's water service contract.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve the point of delivery and the pressure range amendment to the city of Elgin's water service contract. SEE APPENDIX "F"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF MASTER METER
VAULT EMERGENCY BYPASS
ADDENDUM TO CITY OF ELGIN'S
WATER SERVICE CONTRACT
(SWC Project No. 1736)**

James Lennington reported that in October, 2000 an inquiry was received from the city of Elgin concerning fire flows available from the Southwest Pipeline on a temporary emergency basis. The project engineer concluded the pipeline could deliver up to 600 gal-

lons per minute with a bypass installed around the city's master meter vault. The master meter vault restricts flows to 133 gallons per minute. Mr. Lennington said that if Elgin was to require water at the higher rate in a fire emergency, downstream users including the city of Carson would be impacted, thus requiring notification to the Southwest Water Authority. The cost of the bypass is estimated at \$4,000-\$5,000, not including engineering. The city will pay all of these costs.

The addendum was approved by the Elgin City Commission and the Southwest Water Authority at their meetings held on November 2 and 6, 2000, respectively. The bypass was approved on condition that Elgin agrees to an addendum to its water service contract specifying that the bypass would only be operated on a temporary basis, that the Southwest Water Authority would be notified of its use, and that the city pays for water conveyed through the bypass. Mr. Lennington indicated that a similar addendum was approved by the State Water Commission for the city of Richardton in 1999. The city of Elgin was allowed to proceed with constructing the bypass because of the late season and the Commission's past approval of a similar addendum for Richardton. The bypass was scheduled for installation the week of November 20-24, 2000.

Secretary Sprynczynatyk responded to liability concerns that were expressed by the Commission members that could result by allowing the city to obtain water through the master meter vault emergency bypass line. The city of Elgin would be responsible for any liability issues that may or in any manner arise out of or result from the addendum, except claims resulting from or arising out of the state's or the Southwest Water Authority's own acts. He said the addendum to the water service contract will be amended to include a provision addressing the indemnification issue.

It was the recommendation of the State Engineer that the State Water Commission approve the master meter emergency bypass addendum to the city of Elgin's water service contract.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the master meter vault emergency bypass addendum to the city of Elgin's water service contract. SEE APPENDIX "G"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR REPLACEMENT
AND EXTRAORDINARY
MAINTENANCE FOR REPLACEMENT
OF MANHOLE COVERS
(SWC Project No. 1736)**

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

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

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

In considering authorization to use the fund for the replacement of air vacuum/air release valves at its June 19, 1996 meeting, the State Water Commission adopted a criterion based on the cost of the event. The Southwest Water Authority calculates the maintenance, or replacement cost of an event and, based upon the State Engineer's review, if the eligible items exceed \$10,000, the Commission will authorize the maintenance or replacement. Lost water and vehicle replacement are not considered eligible for reimbursement, nor is staff time considered eligible, although an exception was made in 1998 for overtime.

As part of the normal operations, each blowoff valve, mainline valve, or air release valve is exercised at least once annually by the Southwest Water Authority. Some of the manhole covers on the raw water line can weigh up to 486 pounds. The covers specified on the latest contracts weigh about 170 pounds. The Authority is very concerned about the potential for injury in removing and replacing these manhole covers.

James Lennington presented a request from the Southwest Water Authority for the Commission's consideration of reimbursement from the reserve fund for replacement and extraordinary maintenance for the costs of replacing the extremely heavy manhole covers with

light weight covers. The replacement covers are manufactured locally and weigh about 87 pounds. Mr. Lennington said there were initial concerns about unauthorized access, but the Authority has stated no one has entered and damaged equipment in a manhole. The replacement manhole covers are steel and can have a paddlelock hasp welded on if the need arises. He indicated that Risk Management has been contacted and has approved replacing the covers.

There are about 150 manhole covers which the Authority wants to replace over a three-year period. The total material costs to change the covers would be approximately \$14,250, or \$95 each based upon a 2000 quote. The Authority would change the covers when exercising the valves as part of the normal operations to save staff time.

It was the recommendation of the State Engineer that the State Water Commission approve the reimbursement of \$14,250 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the manhole covers.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the reimbursement of \$14,250 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for the replacement of manhole covers.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF CAPITAL REPAYMENT
RATES AND DEBT SERVICE CREDIT
FOR 2001
(SWC Project No. 1736)**

Under the Agreement for the Transfer of Management, Operations, and Maintenance Responsibilities for the Southwest Pipeline Project, 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 his disapproval by February 15. The Southwest Water Authority is currently preparing its budget.

On October 19, 1998, the State Water Commission approved an amendment to the Transfer of Operations Agreement, which changed the Consumer Price Index date used for calculating the project's capital repayment rates 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 rates for capital repayment be adjusted annually based on the Consumer Price Index. Secretary Sprynczynatyk explained that the State Water Commission has the responsibility of adjusting the capital repayment rates and approving the debt service credit for each year.

The rate for replacement and extraordinary maintenance was approved by the State Water Commission at its February 9, 1999 meeting at \$0.35 per thousand gallons. The original rate of \$0.30 per thousand gallons was approved in 1991. The rate of \$0.35 per thousand gallons is satisfactory and, therefore, no change was recommended at this time.

The following projected capital repayment rates for 2001 were presented for the Commission's consideration:

Contract Users:	\$ 0.83	per thousand gallons
Rural Monthly:	\$ 25.34	per month

Secretary Sprynczynatyk stated that in conjunction with settling the 2001 capital repayment rates, the State Water Commission needs to approve the annual debt service credit for the city of Dickinson 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. The city of Dickinson is the only contract user with qualifying water supply facility debt service cost. Debt service credit to Dickinson began in November, 1991 and was approved for a period of 10 years. The debt service credit expires after October, 2001.

The city is seeking a reduction, or forgiveness of the bascule gates debt, which requires an act of Congress. Secretary Sprynczynatyk 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 and not to grant the city the monthly credit. The last payment the city made was for 1998.

Pending the federal legislative action on this issue, Secretary Sprynczynatyk said it may be appropriate to review the contract provisions, however, it is appropriate to establish the level of credit for 2001 of \$78,050 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 the federal legislation.

It was the recommendation of the State Engineer that the State Water Commission approve the projected capital repayment rates for 2001 for the Southwest Pipeline Project of \$0.83 per thousand gallons for contract users; \$25.34 per month for rural users; a rate for replacement and extraordinary maintenance of \$0.35 per thousand gallons; 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 Johnson and seconded by Commissioner Olin that the State Water Commission approve the following capital repayment rates, replacement and extraordinary maintenance rate, and debt service credit for the city of Dickinson for 2001 for the Southwest Pipeline Project:

- 1) Contract Users: \$ 0.83 per thousand gallons***
- 2) Rural Monthly: \$ 25.34 per month***
- 3) Replacement and Extraordinary Maintenance Rate:
\$0.35 per thousand gallons***
- 4) 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 Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**NORTH DAKOTA RURAL WATER
FINANCE CORPORATION
(SWC File No. AOC/RUR)
(SWC Project No. 1736)**

The North Dakota Rural Water Finance Corporation (NDRWFC) was created in December, 1998 by the North Dakota Rural Water Systems Association. The purpose of the Corpo-

ration is to assist communities in obtaining competitive interim financing for construction projects.

At the September 11, 2000 meeting, Dave Koland, Executive Program Director for the North Dakota Rural Water Systems Association, appeared before the State Water Commission to explain the program. In an effort to assist borrowers across the state with the overwhelming burden of financing capital construction projects, the Corporation, in conjunction with Kirkpatrick Pettis, created an interim construction loan program to provide funding for communities which have received a permanent loan commitment from the USDA, Rural Development. The estimated rate of borrowing after investment earnings credit and a final rebate is from one to three percent.

Secretary Sprynczynatyk reported that the Commission's Assistant Attorney General has pursued a review of the program to determine the Commission's legal authority, and to determine whether there could be a potential opportunity for the Commission to utilize this program and save money on the Southwest Pipeline Project where USDA, Rural Development funds are being used. He said the Commission does have the legal authority to utilize the program and meetings have been held with bond counsel, Rural Development, and Mr. Koland. Information on costs that could be saved by utilizing the program have also been received from Kirkpatrick Pettis. Any costs saved must be compared with the costs of the Commission to utilize the program in order to determine whether its use would be cost effective.

In order to borrow from the Corporation, the Commission would have to meet the requirements of the Corporation and also the requirements of the Commission. Secretary Sprynczynatyk said the only way the Commission can borrow money on an interim basis under its existing authority is through the issuance of a bond anticipation note or interim financing note. These are all considered to be issuing a bond, and according to the Commission's bond counsel, the same amount of work may be required to issue interim financing notes or bond anticipation notes as is required to issue a permanent bond, resulting in costs of issuance fees that may exceed any potential savings.

Secretary Sprynczynatyk said efforts are continuing to explore what would need to be done by the Commission's bond counsel to utilize the funding available through the Corporation. When an accurate estimate of costs of issuance fees has been determined, a comparison of the interest costs saved versus the costs to issue the interim notes will then determine whether it is cost effective to utilize the program.

**NORTH DAKOTA SWC WATER
DEVELOPMENT REVENUE BOND
PROGRAM - APPROVAL OF
CONTRACT EXTENSION AND
AGREEMENTS FOR BOND
COUNSEL AND UNDERWRITING
SERVICES
(SWC Project No. 1907-02)**

In 1996 and 1997, the State Water Commission selected a financial advisor, bond counsel, underwriter, and an arbitrage rebate services consultant for the North Dakota State Water Commission's Water Development Revenue Bond program. The agreements with these firms have the following expiration dates:

Beauclair & Cook - Bond Counsel
Dain Rauscher - Underwriter
Evensen Dodge - Financial Advisor
Berens-Tate - Arbitrage Consultant

Contract Expires
December 4, 2000
February 16, 2001
October 2, 2001
May 22, 2002

Secretary Sprynczynatyk indicated the bond counsel and underwriter contracts both expire in the 1999-2001 biennium. He reported the performance of the bond counsel and the underwriter has been excellent, and both have satisfied the state's needs very well. Earlier this year, upon the death of Leo Beauclair, the firm of Beauclair & Cook was dissolved and the firm the Cook Wegner & Wike was formed. He said virtually all of the bond counsel work in the past has been with Maurice Cook and Scott Wegner.

It was the recommendation of the State Engineer that the State Water Commission approve contract extension and agreements to Cook Wegner & Wike, PLLP, for performing bond counsel legal services, and to Dain Rauscher, Inc., for underwriting services for the North Dakota State Water Commission's Water Development Revenue Bond program. Both contracts would expire June 30, 2004.

Commissioner Johnson suggested the contracts for performing the bond counsel legal services and the underwriter services be extended to the end of the 1999-2001 biennium, which is June 30, 2001. This would allow the State Water Commission members, appointed in the Hoeven Administration, the opportunity to seek Requests For Proposals in its decision-making for these services.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve contract extension and agreements to Cook Wegner & Wike, PLLP, for performing bond counsel legal services, and to Dain Rauscher, Inc., for underwriting services. Both contracts would expire on June 30, 2001. The State Water Commission may seek Requests For Proposals for these services beyond June 30, 2001. SEE APPENDIX "H"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

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

Secretary Sprynczynatyk reported that above normal precipitation for the month of November has kept Devils Lake at or around the 1446 feet msl elevation. The current elevation of Devils Lake is 1446.1 feet msl. At this elevation, the lake covers 118,000 acres, and is storing 2.32 million acre-feet of water. Devils Lake will likely freeze near this elevation and remain at this elevation for the winter months.

There are approximately 48,000 acre-feet of storage available in Devils Lake below the 1446.5 feet msl elevation, which is the current divide elevation between Devils Lake and Stump Lake. The average volume increase for Devils Lake for the months of December through July over the past eight years has been 227,000 acre-feet. If the Devils Lake basin receives comparable precipitation, the resulting inflows could cause Devils Lake to peak next year at 1448 feet msl. If Devils Lake remains at 1448 feet msl throughout next summer, approximately 36,000 acre-feet of water would move to Stump Lake, raising Stump Lake to 4.5 feet. Stump Lake is currently at an elevation of 1409.8 feet msl.

**APPROVAL OF EXTENSION OF
DEVILS LAKE ENGINEERING
SERVICES CONTRACT TO
DECEMBER 31, 2001
(SWC Project No. 416-01)**

State Water Commission engineering assistance has been provided to the Devils Lake region for several years through cost share arrangements with the Devils Lake Basin Joint Water Resource District. The Devils

Lake Joint Board formally requested that this arrangement be continued for a 12-month period, effective January 1, 2001.

Secretary Sprynczynatyk explained the terms of the proposed agreement: the Devils Lake Basin Joint Water Resource Board will pay the State Water Commission \$9,000 to maintain a staff engineer committed full-time to Devils Lake water projects. The State Water Commission will pay the balance of the position costs. James Landenberger of the Water Development Division currently provides this assistance.

It was the recommendation of the State Engineer that the State Water Commission approve the extension of the Devils Lake engineering services contract from January 1, 2001 to December 31, 2001, in accordance with the terms as outlined, and contingent upon the availability of funds.

It was moved by Commissioner Johnson and seconded by Commissioner Bjornson that the State Water Commission approve the extension of the Devils Lake engineering services contract from January 1, 2001 to December 31, 2001, in accordance with the terms as outlined. This motion is contingent upon the availability of funds. SEE APPENDIX "I"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF EXTENSION OF
DEVILS LAKE OUTLET AWARENESS
PROJECT MANAGER'S CONTRACT
TO DECEMBER 31, 2001
(SWC Project No. 416-01)**

Success in implementing a Devils Lake emergency outlet requires that potentially-affected parties completely understand the project and its potential impacts. In 1998, the Garrison Diversion Conservancy District, the

Devils Lake Basin Joint Water Resource Board, and the Forward Devils Lake Corporation cost shared with the State Water Commission to fund a full-time position for the purpose of dispersing information about the proposed emergency outlet. Joe Belford was hired into this position and has met with many interest groups such as civic, wildlife, and agricultural organizations in North Dakota, Minnesota, and Manitoba.

A request was presented by the Devils Lake Joint Water Resource Board for the Commission's consideration to continue funding for the Devils Lake Outlet Awareness Project Manager's position through December 31, 2001, with a 33 percent cost share, not to exceed \$15,000 from the Contract Fund. All other parties of the previous agreement have indicated their intentions to continue this effort through 2001.

The terms of the proposed contribution agreement are as follows:

The State Water Commission	\$15,000	(33 percent)
Garrison Diversion Conservancy District	\$15,000	(33 percent)
Devils Lake Joint Board	\$10,000	(22 percent,
	plus up to \$5,000 in-kind service)	
Forward Devils Lake Corporation	\$ 5,000	(12 percent)

It was the recommendation of the State Engineer that the State Water Commission approve extending the contract for the Devils Lake Outlet Awareness Project Manager's position from January 1,

2001 to December 31, 2001, with a 33 percent cost share, not to exceed \$15,000 from the Contract Fund, in accordance with the terms as outlined, and contingent upon the availability of funds.

It was moved by Commissioner Hillesland and seconded by Commissioner Olin that the State Water Commission approve extending the contract for the Devils Lake Outlet Awareness Project

Manager's position, with a 33 percent cost share, not to exceed \$15,000 from the Contract Fund, from January 1, 2001 to December 31, 2001, in accordance with the terms as outlined. This motion is contingent upon the availability of funds. SEE APPENDIX "J"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF EXTENSION OF
DEVILS LAKE BASIN MANAGER
CONTRACT TO DECEMBER 31, 2001
(SWC Project No. 416-01)**

For the past three years, the State Water Commission has participated with the Devils Lake Basin Joint Water Resource Board in cost sharing for a full-time Devils Lake

Basin Manager and office for the board. Wayne Simon was hired into the position in 1998, and an office has been maintained in the Ramsey County Courthouse. On December 31, 2000, Mr. Simon will resign as the Devils Lake Basin Manager. Michael J. Connor will assume the manager duties on January 1, 2001. The Joint Board formally requested continued financial participation for a 12-month period, effective January 1, 2001.

The cost share arrangement requested is 40 percent provided by the State Water Commission for one year, not to exceed \$23,000. The Commission would pay the Joint Board for the actual expenses based on quarterly expense reports approved by the Commission. The remaining funds would be provided by the Devils Lake Basin Joint Board.

It was the recommendation of the State Engineer that the State Water Commission approve 40 percent funding, not to exceed \$23,000 from the Contract Fund, for the Devils Lake Basin Manager.

It was moved by Commissioner Swenson and seconded by Commissioner Bjornson that the State Water Commission approve extending the contract for the Devils Lake Basin Manager from January 1, 2001 to December 31, 2001, with a 40 percent cost share, not to

exceed \$23,000 from the Contract Fund, in accordance with the terms as outlined. This motion is contingent upon the availability of funds. SEE APPENDIX "K"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**DEVILS LAKE EMERGENCY
OUTLET STATUS REPORT;
AND APPROVAL TO SEEK
EMERGENCY COMMISSION
ACTION FOR \$500,000 FROM
RESOURCES TRUST FUND
FOR TWIN LAKES OUTLET
ENVIRONMENTAL REVIEW
(SWC Project No. 416-01)**

Secretary Sprynczynatyk reported on the following federal, state and local efforts being pursued to develop an emergency outlet from Devils Lake to the Sheyenne River:

Corps of Engineers Permanent Emergency Outlet:

The Corps of Engineers is proceeding with their permanent outlet project for Devils Lake, completing the environmental impact statement (EIS), and continuing with preconstruction engineering and design. Several contracts have been awarded for data collection and evaluation of the EIS including riparian inventory mapping along the Sheyenne River, an evaluation of upper basin storage, ground-water well monitoring, lake modeling, and a cultural reconnaissance survey on the Sheyenne River. The Corps, the U.S. Geological Survey, and the staffs of the State Water Commission and the State Health Department met on November 14, 2000 to discuss the modeling of Devils Lake and downstream water quality issues. It is the intent of the Corps to have the modeling completed in March, 2001. Some of the information gathered for the Corps' EIS may be useful in completing the state's environmental review process for the state's temporary project.

Stump Lake Channel:

On September 26, 2000, the Corps of Engineers furnished the state with the *Final Department of the Army Decision Document, State of North Dakota's 1999 Devils Lake/West Stump Lake Emergency Outlet Component*. This document proposes an operating plan that would allow only water that would move to Stump Lake in a given year to be moved in that year with the project. A permit limited by such an operating plan does not meet the intended purpose of the project, which is flood control.

Early in the permitting process, the state and the Corps of Engineers worked together to develop the initial compromise alternative. This was not the original alternative proposed by the state. The state's original proposal would have drawn Devils Lake down approximately three feet, providing

immediate flood relief around Devils Lake. However, the state was willing to compromise to reduce impacts to the national wildlife refuge in order to move forward with the project and provide limited flood relief around Devils Lake. Unfortunately, as the permitting process proceeded, the Corps became much less willing to discuss potential operating plans with the state and developed the operating plan that is proposed to be permitted without consulting the state to determine if it would provide the intended benefits of flood control. The details of this operating plan were not disclosed to the state until the Final Decision Document was recently provided. As a result, the Corps developed a Decision Document that identified a "least damaging practicable alternative" that was not practicable. Governor Schafer sent a letter to the Corps rejecting the offered permit, as it does not provide flood control relief, and requested that the Decision Document be elevated to the Division level for reconsideration.

Twin Lakes Temporary Emergency Outlet:

The State Water Commission staff is continuing work on the state's proposed Twin Lakes temporary emergency outlet project, with the main focus on the environmental review process. An operating plan for the project was assembled and distributed to interested parties and various agencies. The wetland delineation report from consultants has been completed and distributed, which will benefit the state's environmental review. The design process is continuing, but currently awaiting information from the Bureau of Indian Affairs and the U.S. Fish and Wildlife Service on their concerns with the current route. An application has been submitted to the North Dakota Department of Health for a Section 402 water permit.

Secretary Sprynczynatyk commented that all of the Devils Lake outlet projects considered by North Dakota thus far have raised significant concern from both Minnesota and Manitoba over potential environmental impacts. These concerns have been expressed in several forums including the Red River Basin Board (RRBB). In September, 2000, the RRBB adopted a resolution requesting that Minnesota and Manitoba become full partners in the federal environmental impact statement process and that the process address impacts in the Red River up to and including Lake Winnipeg. Secretary Sprynczynatyk said he suggested that North Dakota endorse this idea in order to short-circuit future criticism that Minnesota and Manitoba concerns were not adequately considered.

Manitoba, Minnesota and the Spirit Lake Nation have raised the same concerns over North Dakota's proposed temporary outlet project at Twin Lakes as they have for the federal project. This was also discussed at length during the RRBB's September, October and

November, 2000 meetings. The current design of the Twin Lakes outlet avoids situations that would involve a federal decision that would trigger a federal environmental impact statement. Thus far, only two state administered permits are required - a meandered lake permit from the North Dakota State Engineer, and a Section 402 water discharge permit from the North Dakota Department of Health. Neither permit requires a broad environmental review. Secretary Sprynczynatyk said because of the expressed concerns by Minnesota and Manitoba, he proposed that North Dakota conduct an extensive state-led environmental review process. While the proposal does not constitute the equivalent of a federal environmental impact statement, it will strive to adequately address the identified concerns.

A steering committee is being assembled consisting of various governmental leaders. Governor Schafer has sent letters of invitation to join the steering committee to Manitoba, Minnesota, the Red River Basin Board, and the Spirit Lake Nation. Thus far, Manitoba has declined to participate citing their belief is the state's process will not be sufficiently thorough.

Secretary Sprynczynatyk said conducting the proposed environmental review will require expertise beyond the staff capabilities. Beginning construction on the Twin Lakes emergency outlet in 2001 makes it imperative that work on the environmental review begin as soon as possible and be completed within the next six to eight months. In order to do so, it will be necessary to contract with qualified consultants. The cost is estimated between \$300,000 and \$500,000, dependent on the amount of work required. He said it would be appropriate to contact firms to solicit proposals that would be reviewed for the capability to perform fully-credible work in the allotted time. Direct involvement from the downstream interests in the review process will be accomplished through an environmental review steering committee.

Information generated through the state's environmental review process will be made available for use by the Corps of Engineers in their studies of permanent outlet options. Study efforts will be coordinated with the Corps to ensure that research is not duplicated and that the results of the state process will enhance the information used in future federal decisions.

Secretary Sprynczynatyk explained that the oil extraction tax deposits into the Resources Trust Fund continue to be above the amounts included in the State Water Commission's current appropriation. This makes it possible to seek additional funding authority to accomplish the environmental review process and meet other financial needs such as specialized engineering assistance for certain aspects of the project.

It was the recommendation of the State Engineer that the State Water Commission seek Emergency Commission approval authorizing the use of up to \$500,000 of additional funds from the Resources Trust Fund to be dedicated to the environmental review, land rights acquisition, engineering consultation, and other tasks associated with the Devils Lake temporary emergency outlet project. It was also the recommendation of the State Engineer that proposals be immediately solicited from qualified firms to undertake the Devils Lake temporary emergency outlet environmental review.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission:

- 1) seek Emergency Commission approval authorizing the use of up to \$500,000 of additional funds from the Resources Trust Fund to be dedicated to the Devils Lake temporary emergency outlet environmental review, land rights acquisition, engineering consultation, and other tasks associated with the Devils Lake temporary emergency outlet project; and***
- 2) solicit proposals immediately from qualified firms to undertake the Devils Lake temporary emergency outlet environmental review.***

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

Note: Subsequent to the December 8, 2000 State Water Commission meeting, the Office of Management and Budget recommended that the funds for the Devils Lake temporary emergency outlet environmental review be taken from the existing Resources Trust Fund authority. Although most of the existing authority in the Resources Trust Fund has been allocated to specific projects, the funds actually spent is well below the existing authority. Therefore, the Office of Management and Budget does not see a problem with over-allocation, as long as the actual funds expended do not exceed the existing authority.

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

Secretary Sprynczynatyk reported all of the contracts for the Devils Lake Extended Storage Acreage Program (ESAP) have been executed. A total of \$120,550 has been forwarded to the

Devils Lake Joint Water Resource Board and the first installment in the amount of \$12,055 has been paid to the participants. The remaining funds of \$108,495 have been placed in a six-month CD, and additional payments will be paid to the participants in April or May for the next nine years. Each year, the remaining funds will be placed in a CD for one year until the next payment is due.

Under the ESAP program, the State Water Commission and the Devils Lake Basin Joint Water Resource Board entered into agreements with the landowners for 10-year water storage contracts. The Joint Board will continue to annually inspect the sites and make the yearly payments to the landowners. Approximately 800 acre-feet of annual storage, costing just over \$12,000 per year, will be provided by the program.

The Environmental Protection Agency, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, and the Corps of Engineers have signed the wetland statement, which completes the requirements of the contract. The wetland statement was included in the contract and it clarifies current federal law governing the created temporary water storage sites.

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

The United States Section of the Garrison Consultative Group met in Denver, Colorado on August 11, 1999.

Representatives of the Department of the Interior, the Environmental Protection Agency, and the Department of State agreed to conduct a biota transfer risk analysis for the Northwest Area Water Supply Project (NAWS). The Bureau of Reclamation agreed to provide funding for the analysis.

James Lennington reported the Comparative Risk Analysis report for NAWS was received in July, 2000. This report provides supporting documentation to the Department of the Interior, the Environmental Protection Agency, and the Department of State in their determination of whether the project will meet the requirements of the Boundary Waters Treaty of 1909. The report confirms the state's position that the risk of biota transfer due to the NAWS project is minimal when compared to the "background" risk. This determination is required by the 1986 Garrison Diversion Reformulation Act and is the final step, along with the concurrent signing of the Finding of No Significant Impact (FONSI) by the Department of the Interior in the NEPA process for NAWS.

The Department of the Interior held several meetings in Washington, DC to discuss the project and the approval process. The Department is currently developing a concurrence document to be signed by the Department, the Environmental Protection Agency and the Department of State for the project. If the NEPA process is successfully completed, the project can formally be submitted to the Government of Canada through a diplomatic note. If this process is successful, advertisement for the construction bids on the first phase of the pipeline to Minot could begin in late 2001.

Note: On January 19, 2001, the Secretary of the Interior, in consultation with the Administrator of the Environmental Protection Agency, determined that the project provides adequate treatment to meet the Boundary Waters Treaty of 1909. This determination was required by the 1986 Garrison Diversion Reformulation Act. There still needs to be an exchange of diplomatic notes by the two countries. This was a major step for the project and, if environmental compliance is obtained as expected, construction on the main transmission line will begin in 2001.

GRAND FORKS/EAST GRAND FORKS FLOOD PROTECTION PROJECT (SWC Project No. 830)

Allen Grasser, Acting Grand Forks City Engineer, provided a status report on the permanent flood protection project for the cities of Grand Forks and East Grand Forks. The sta-

tus report provided by Mr. Grasser is attached hereto as **APPENDIX "L"**.

Ken Vein, former Grand Forks City Engineer and Director of Public Works, presented an appreciation plaque to Secretary Sprynczynatyk and the Commission staff for the continued support, both personal and professional, to the city of Grand Forks during the 1997 flood event and the subsequent recovery efforts.

MISSOURI RIVER UPDATE (SWC Project No. 1392)

Secretary Sprynczynatyk reported that as of November 1, 2000, the Corps of Engineers forecasted the total runoff

for 2000 to be 16.7 million acre-feet, which is approximately 66 percent of normal. Up to November 1, runoff had been approximately 64 percent of normal for the year. The recent precipitation has alleviated the drought conditions across the basin but, he said, it is still much too soon to determine if the drought has ended.

A United States District Judge in South Dakota ordered the Corps of Engineers to maintain the level of Lake Oahe at 1597.7 feet above mean sea level, plus or minus six inches, to prevent further disturbance of cultural and historical sites important to the Standing Rock Sioux

Tribe. Secretary Sprynczynatyk explained that this action effectively removes the storage from Lake Oahe from the system storage available to support navigation releases. The Corps supported navigation through November, 2000 with releases from Lake Sakakawea and Fort Peck. Releases from the Garrison Dam were increased from 13,000 cubic feet per second to over 26,000 cubic feet per second, increasing the river stage at Bismarck by approximately four feet. Lake Sakakawea fell about 1.3 feet during November, however, the total system storage will not be impacted by this ruling and it is expected that the winter operations will offset these releases from Lake Sakakawea resulting in little impact to the level of the lake next spring.

The Corps of Engineers released its draft 2000-2001 Missouri River Annual Operating Plan (AOP) in October, 2000. The AOP does not provide for any conservation measures beyond those delineated in the current Master Manual should the drought continue. Even with the inadequate conservation measures in the current Master Manual, the AOP states that releases for navigation will need to be reduced with median inflow or less. Governor Schafer presented comments on the AOP to the Corps of Engineers at its October 17, 2000 public meeting in Bismarck, which are attached hereto as **APPENDIX "M"**. Based, in part, on these comments, the Corps has agreed to reduce winter discharges from 14,500 to 15,500 cubic feet per second levels called for in the AOP to 12,000 cubic feet per second.

Secretary Sprynczynatyk stated the Missouri River Basin Association also provided comments on the Corps' Annual Operating Plan. All of the member states, except the state of Missouri, agreed to the comments. These comments include a request that the Corps use its discretion to implement the following conservation measures:

- Provide minimum navigation service levels in 2001 if the March 15, 2001 runoff forecast indicates inflows are below the upper quartile and the system storage is less than 54.5 million acre-feet.
- Shorten the navigation season to 7.1 months. The Corps should meet with navigators by March 15, 2001 to determine when to make the cuts in the season's length.
- Re-evaluate flow support on May 1, 2001, which is just before the nesting season begins, to see if releases can be increased.
- Re-evaluate flow support on July 1, 2001 to see if flows can be increased to intermediate service after August 20, 2001.

**RED RIVER BASIN BOARD;
INTERNATIONAL FLOOD
MITIGATION INITIATIVE;
AND INTERNATIONAL
JOINT COMMISSION
(SWC Project Nos. AOC/RBB & 1431-08)**

Secretary Sprynczynatyk reported on the current efforts of the Red River Basin Board including its support for the state's Devils Lake temporary emergency outlet environmental review process.

The International Flood Mitigation Initiative group held its concluding meeting on November 14-15, 2000 in Fargo, ND. The Governors of the states of North Dakota, South Dakota, Minnesota, and the Premier of the Province of Manitoba executed a "Memorandum of Understanding for Flood Mitigation on the Red River". They agreed to meet at least annually to confer and to encourage and enhance cooperation and coordination of flood mitigation activities at the local, state, provincial, and federal levels in the Red River basin in the United States and Canada in order to minimize the adverse consequences of flooding in the Red River and its tributaries. Each party of the Memorandum of Understanding agreed to appoint a key official within their administration to take the steps necessary to implement the terms of the agreement. The Memorandum of Understanding is attached hereto as **APPENDIX "N"**.

On December 6, 2000, the International Joint Commission held public briefings in Fargo, Grand Forks, and Winnipeg to discuss its final report '*Living With the Red: A Report to the Governments of Canada and the United States on Reducing the Flood Impacts in the Red River Basin*', and its recommendations on preventing harm from future flooding in the Red River basin.

**APPROVAL OF RESOLUTION
OF APPRECIATION TO
BRUCE A. BOE, DIRECTOR,
ATMOSPHERIC RESOURCE
BOARD
(SWC Resolution No. 2000-12-489)**

A resolution of appreciation to Bruce A. Boe, State Water Commission employee, was presented for the Commission's consideration. Bruce Boe resigned on November 30, 2000 from the position of Executive Director of the North Dakota Atmospheric Resource Board, a division of the State Water Commission, having served the State of North Dakota since April, 1988.

spheric Resource Board, a division of the State Water Commission, having served the State of North Dakota since April, 1988.

It was moved by Commissioner Johnson, seconded by Commissioner Olin, and unanimously carried, that the State Water Commission approve Resolution No. 2000-12-489, In Appreciation to Bruce A. Boe, State Water Commission employee. SEE APPENDIX "O"

**COST SHARE ASSISTANCE IN
RURAL RING DIKE PROJECTS
(SWC Project Nos. 1271, 1280, 1312, 1705)**

The State Water Commission has granted funding at 25 percent of the eligible costs, not to exceed a total of \$400,000 from the Contract Fund, for

cost share participation in rural ring dike projects in Walsh, Cass, and Grand Forks counties. To date, payments totalling \$25,532 have been made by the Commission toward the construction of two farmstead ring dikes.

Because of concerns expressed on behalf of the landowners that the level of funding approved would not be adequate for the landowners to pursue the program, the Commission directed the State Engineer to pursue options for a partnership of funding for the program that could involve the Red River Joint Water Resource Board, the local water resource district, the landowner, and the state.

At its meeting on April 10, 2000, it was the consensus of the Commission members that the State Engineer continue discussions with the Red River Joint Water Resource Board and the local water resource boards in an effort to increase the cost share percentage for rural farmstead ring dikes. The State Engineer was also directed to provide for the Commission's consideration an economic analysis of the funding capability of the Joint Board and the local water resource boards, and to re-visit the farmstead ring dike design criteria required for state cost share assistance.

On July 14, 2000, the Commission staff provided specific information relative to the Commission's April 10, 2000 directive. Secretary Sprynczynatyk said it would be appropriate for the State Water Commission to consider an increased state cost share provided there is a cost share match by a local entity. The State Water Commission members were in concurrence that the level of funding currently provided by the state is not adequate for the landowners to pursue the program. The options that could be made available for an increased state cost share were discussed, but the Commission members also expressed the importance of involving a local entity cost share as well. A motion was passed by the State Water Commission to continue to provide a 25 percent state cost share grant for the rural ring dike projects (previously approved by the State Water Commission); to approve up to an additional 15 percent state cost share grant, contingent upon an equal cost share match by a local entity; and to request the Red River Joint Water Resource Board seek an attorney general's opinion confirming the Board's spending authority to participate in the cost share of rural ring dike projects.

It was moved by Commissioner Hillesland and seconded by Commissioner Swenson that the State Water Commission direct the State Engineer and Commission staff to re-visit the rural farmstead ring dikes issue, researching the options for increasing the state cost share assistance to 50 percent, with a cap for each water district, for the Commission's consideration.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, Swenson, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF RESOLUTION
OF APPRECIATION TO
EDWARD T. SCHAFFER,
GOVERNOR OF NORTH DAKOTA
(SWC Resolution No. 2000-12-490)**

A resolution of appreciation to Edward T. Schafer, Governor of North Dakota, was presented for the Commission's consideration.

It was moved by Commissioner Swenson, seconded by Commissioner Hillesland, and unanimously carried, that the State Water Commission approve Resolution No. 2000-12-490, In Appreciation to Edward T. Schafer, Governor of North Dakota. SEE APPENDIX "P"

**RESIGNATION OF -
DAVID A. SPRYNCZYNATYK,
NORTH DAKOTA STATE ENGINEER,
AND CHIEF ENGINEER-SECRETARY
TO THE STATE WATER COMMISSION,
EFFECTIVE DECEMBER 31, 2000**

*Note: Subsequent to the December 8, 2000 State Water Commission meeting, David A. Sprynczynatyk resigned as the North Dakota State Engineer; and Chief Engineer-Secretary to the State Water Commission, effective December 31, 2000. He was appointed to serve this position by the State Water Commission on July 7, 1989. Mr. Sprynczynatyk was employed with the North Dakota State Water Commission since 1972. Letter of resignation is attached hereto as **APPENDIX "Q"**.*

At the request of Governor John Hoeven, Mr. Sprynczynatyk assumed the duties as the Director of the North Dakota Department of Transportation on January 2, 2001.

There being no further business to come before the State Water Commission, Governor Schafer adjourned the meeting at 12:20 PM.

Edward T. Schafer
Governor-Chairman

SEAL

David A. Sprynczynatyk
North Dakota State Engineer, and
Chief Engineer-Secretary for the
State Water Commission