

## **MINUTES**

### **North Dakota State Water Commission Grand Forks, North Dakota**

**August 6, 2003**

The North Dakota State Water Commission held a meeting at the Alerus Center, Grand Forks, North Dakota, on August 6, 2003. Governor-Chairman, John Hoeven, called the meeting to order at 1:00 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

Michael Brown, Mayor, welcomed the State Water Commission to Grand Forks. Prior to this meeting, the Commission members and others toured the Grand Forks/East Grand Forks Permanent Flood Protection project.

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

Governor John Hoeven, Chairman  
Roger Johnson, Commissioner, Department of Agriculture, Bismarck  
Charles Halcrow, Member from Drayton  
Larry Hanson, Member from Williston  
Elmer Hillesland, Member from Grand Forks  
Curtis Hofstad, Member from Starkweather  
Jack Olin, Member from Dickinson  
Harley Swenson, Member from Bismarck  
Robert Thompson, Member from Page  
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **OTHERS PRESENT:**

State Water Commission Staff  
Approximately 40 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, Governor Hoeven announced the agenda approved as presented.

**CONSIDERATION OF FINAL DRAFT  
MINUTES OF JUNE 12, 2003 STATE  
WATER COMMISSION MEETING -  
APPROVED**

The final draft minutes of the June 12, 2003 State Water Commission meeting were approved by the following motion:

*It was moved by Commissioner Olin, seconded by Commissioner Hofstad, and unanimously carried, that the final draft minutes of the June 12, 2003 State Water Commission meeting be approved as prepared.*

**FINANCIAL STATEMENT -  
AGENCY PROGRAM BUDGET  
EXPENDITURES**

Secretary Frink presented and discussed the Program Budget Expenditures for the period ending June 30, 2003, reflecting 100 percent of the 2001-2003 biennium. **SEE APPENDIX "A"**

**FINANCIAL STATEMENT -  
RESOURCES TRUST FUND,  
2001-2003 BIENNIUM**

Secretary Frink presented the following Resources Trust Fund recap for the 2001-2003 biennium:

Beginning balance - July 1, 2001	\$ 14,727,288
Total revenue received during 2001-2003 biennium	10,665,623
Expenditures	(5,463,000)
<b>Balance in Resources Trust Fund - June 30, 2003</b>	<b>\$19,929,911</b>

The Projects/Grants/Contract Fund spreadsheet, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds.

**FINANCIAL STATEMENT -  
RESOURCES TRUST FUND,  
2003-2005 BIENNIUM**

Secretary Frink presented the following summarization of projected revenues for the Resources Trust Fund for the 2003-2005 biennium:

Beginning balance - July 1, 2003	\$ 19,929,911
Oil extraction tax estimate	9,517,528
MR&I loan revenue	995,704
Southwest Pipeline Project revenue	805,000
Interest revenue	952,138
<b>Current Total Revenue Estimate</b>	<b>\$ 32,200,281</b>
<b>Resources Trust Fund Authority in Budget</b>	<b>\$ 13,650,000</b>

Secretary Frink explained that the estimated revenue exceeds the agency's spending authority by \$18,550,361. When preparing the executive budget, the Office of Management and Budget (OMB) did not use the expenditure projections contained in the agency's budget proposal. OMB's budget assumed that the agency would spend all of the Resources Trust Fund money first and then spend the Water Development Trust Fund money. The agency actually spent money from both of the funds, with the majority of the money coming from the Water Development Trust Fund. Therefore, the agency is short appropriation authority in the Resources Trust Fund and will have excess appropriation authority in the Water Development Trust Fund.

Section 10 of the State Water Commission's appropriation bill provides that any monies available in the Resources Trust Fund in excess of \$13,650,000 are appropriated to the Commission subject to Emergency Commission approval. Therefore, the State Water Commission will be required to seek Emergency Commission approval to increase its spending authority to fully utilize the cash in the Resources Trust Fund.

**FINANCIAL STATEMENT -  
WATER DEVELOPMENT TRUST  
FUND, 2001-2003 BIENNIUM**

Secretary Frink presented the following Water Development Trust Fund recap for the 2001-2003 biennium:

Beginning balance - July 1, 2001	\$ 23,805,353
Total revenue received during 2001-2003 biennium	24,136,363
Expenditures	( 38,532,205)
<b>Balance in Water Development Trust Fund - June 30, 2003</b>	<b>\$ 9,409,511</b>

**FINANCIAL STATEMENT -  
WATER DEVELOPMENT TRUST  
FUND, 2003-2005 BIENNIUM**

Secretary Frink presented the following summarization of projected revenues for the Water Development Trust Fund for the 2003-2005 biennium:

Beginning balance - July 1, 2003	\$ 9,409,511
Estimated biennium revenue	20,674,860
Less: General Fund transfer	( 10,070,373)
Disaster recovery transfer	( 2,031,361)
<b>Total Revenue Estimate</b>	<b>\$ 17,982,637</b>
<b>Water Development Trust Fund Authority in Agency Budget</b>	<b>\$ 32,946,225</b>

Secretary Frink explained that the estimated revenue is short of the agency's spending authority by \$14,963,588, which was explained in the Resources Trust Fund, 2003-2005 biennium section of these minutes. He said although the Commission has a large amount of spending authority in this fund, it may not obligate more money than the fund can actually support.

**GRAND FORKS/EAST GRAND FORKS PERMANENT FLOOD PROTECTION PROJECT - APPROVAL OF ADDITIONAL \$15.6 MILLION UNDER THE AUTHORITY OF 1999 SENATE BILL 2188 (SWC Project Nos. 830 and 1907-02)**

Senate Bill 2188, approved by the 1999 Legislature, provided up to \$52 million of state funds for the Grand Forks/East Grand Forks Permanent Flood Protection Project. The State Water Commission has approved \$36,392,814.35 previously for the project. The city of Grand Forks has indicated \$15,607,185.65 will be re-

quired during the 2003-2005 biennium.

Secretary Frink explained that \$15.6 million was included in the agency's budget for the 2003-2005 biennium. Therefore, it was the recommendation of the State Engineer that the State Water Commission approve a 45 percent cost share for an additional \$15,607,185.65 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Grand Forks/East Grand Forks Permanent Flood Protection project. Approval by the State Water Commission would increase the total authorization for the project to \$52.0 million.

Allen Grasser, Grand Forks city engineer, provided a status report regarding project construction and funding. He said the project could be completed in 2006, contingent upon the availability of federal funding.

***It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission approve a 45 percent cost share for an additional \$15,607,185.65 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, under the authority of 1999 Senate Bill 2188, for the Grand Forks/East Grand Forks Permanent Flood Protection project. This motion is contingent upon the availability of funds.***

***This action increases the total authorized state funds to \$52.0 million, under the authority of 1999 Senate Bill 2188, for the Grand Forks/East Grand Forks Permanent Flood Protection project.***

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

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

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

**Contract 7-7B/7-3C - Phase 2, Twin Buttes Service Area and West Rainy Butte Booster Area:** Contract 7-7B/7-3C is for about 277 miles of rural distribution pipelines ranging in size from 1 1/2 inches to 8 inches in diameter, and serving about 180 rural water connections. All users have now been turned over to the Southwest Water Authority for service. The contractor has completed the contract.

Contract 7-7B/7-3C includes a change order to construct about 4,400 feet of pipe and a special meter vault to serve the Perkins County Rural Water System (PCRWS) in South Dakota. These items will be entirely reimbursed by the PCRWS once installed and tested. The cost of this change order is approximately \$93,000. This section of pipe and the vault have been flushed, hydro-tested, and are ready for operation. Reimbursement from PCRWS will be requested in September, 2003.

**Contract 4-1B - Final Phase of Construction at Intake, Dodge, Richardton, and Jung Lake Pumping Facilities:** Contract 4-1B was awarded to PKG Contracting, Inc., Fargo, ND, on January 9, 2003. The contract will add pumps at the intake, Dodge and Richardton pump stations. At the intake, one 200 Hp pump will be added in the Basin Electric intake facility and a 600 Hp pump will be added to the intake booster pump station. At Dodge, one 700 Hp pump will be added and at Richardton one 900 Hp pump will be added. Pumping capacities will be increased from 7,850 gallons per minute (gpm) to 10,500 gpm at the intake and from 6,150 gpm to 8,950 gpm at Dodge and Richardton. The contract includes an additional 350 Hp pump for the Jung Lake pump station, bringing that facility from 1,900 gpm to 2,350 gpm. The completion date for contract 4-1B is November 1, 2003.

All equipment submittals have been received. The CO<sub>2</sub> tank has been installed, and the contractor is awaiting shipment of the valves, piping, pumps, motors, and electrical switchgear for this contract.

**Contract 2-5B - Medora-Beach Main Transmission Pipeline:** Contract 2-5B was awarded to Northern Improvement Company, Bismarck, ND, on June 12, 2003. The contract consists of about 46.4 miles of 12-inch to 6-inch pipe and appurtenances, including two underground variable frequency drive

booster pump stations, meter vaults for Beach, Medora, and Sentinel Butte, and three tank control vaults. This contract will include service to the cities of Beach, Medora, and Sentinel Butte and will also provide capacity for future rural water distribution systems in the area. The contractor will commence with construction on August 18, 2003 on contract 2-5B.

Under the Southwest Pipeline Project phased development plan, the next area scheduled for construction is the Medora-Beach regional service area. Included in this service area are the cities of Medora, Beach, Sentinel Butte, and Golva, along with an estimated 260 rural water users. The estimated cost for this service area is approximately \$22.5 million, depending on the scope and extent of the rural water portions, and would be constructed in two bienniums.

The financing package assembled for the 2003-2005 biennium construction on the Medora-Beach phase consists of \$5 million in state funding, \$1.54 million in a USDA, Rural Development loan, and \$1.26 million in a USDA, Rural Development grant. The USDA funding was approved on June 27, 2003 upon receipt of an executed copy of the Request for Obligation of Funds.

James Lennington explained that this funding will allow construction of the main transmission pipeline facilities from Belfield to Beach, service to Medora, Sentinel Butte, and Beach, as well as a small rural water contract serving most of those users in the area whose service lines require crossing of the Little Missouri National Grasslands administered by the U.S. Forest Service (Service). The main transmission pipeline will also cross the Service's property and, under the terms of the permit from the Service, it would be best to have only one year of impact to those properties. The main transmission facilities also includes three potable water reservoirs at Belfield, Fryburg, and Beach.

The following table shows the facilities and status for development of the Medora-Beach phase of the Southwest Pipeline Project for the 2003-2005 biennium:

<b>Contract</b>	<b>Status</b>	<b>Facility</b>	<b>Description</b>	<b>Estimated Cost</b>
2-5B	Awarded	Medora-Beach Main Transmission Pipeline	46.4 miles 12"-6"	\$4,976,000
5-9	Bid Opening 8-13-03	Belfield Reservoir	750,000 gallons	691,000
5-10	Bid Opening in 10-03	Fryburg Standpipe	480,000 gallons	522,000
5-11	Future	Beach Standpipe	420,000 gallons	500,000
7-8A	Future	Fryburg SA	27 miles, 21 users	780,000
6	Future	Telemetry		176,000
<b>Total</b>				<b>\$7,645,000</b>

The scheduled completion date for contract 2-5B is September 4, 2004. It is anticipated to have water available in Medora, Beach, and Sentinel Butte in the fall of 2004 and, to meet that schedule, the Belfield and Fryburg reservoirs are necessary. The Belfield reservoir has been advertised for bid opening on August 13, 2003, and the Fryburg reservoir will be advertised for bid in September, 2003. The Beach reservoir will be bid with contract 7-8A in the spring of 2004.

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF CITY OF GOLVA  
WATER SERVICE CONTRACT  
(SWC Project No. 1736)**

The city of Golva has requested a sole source, demand service, water service contract from the State Water Commission and the Southwest Water Authority. The city of Golva is

located 14 miles south of Beach and would be served by construction of the Medora-Beach phase of the project. The development plan for Medora-Beach includes the construction of a secondary main transmission pipeline to Golva as part of the rural water distribution system in Golden Valley county. Funding for this portion of the Medora-Beach phase has not yet been secured.

Under a sole source contract, the user agrees to use no other source of supply for its potable water distribution system. Under demand service, the project is obligated to meet the peak demand flow rate needed by the user. The capital repayment rate to the state is doubled for demand service. The cities of Manning and New Hradec, Sacred Heart Monastery, Richardton Abbey, and the Dickinson Research Center are other contract users with demand service.

The contract specifies a maximum flowrate of 60 gallons per minute. Golva has a population of approximately 106, and the historical water use records indicate that 60 gallons per minute should be adequate to provide the demand service. Capacity for Golva is incorporated in the design of contract 2-5B, Medora-Beach main transmission pipeline.

It was the recommendation of the State Engineer that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-31 with the city of Golva.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve Southwest Pipeline Project Water Service Contract 1736-31 with the city of Golva. SEE APPENDIX "C"***

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

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL TO PREAUTHORIZE  
STATE ENGINEER TO AWARD  
CONTRACT 5-9, BELFIELD RESERVOIR  
(SWC Project No. 1736)**

On June 12, 2003, the State Water Commission authorized the award of contract 2-5B, Medora-Beach Main Transmission Pipeline. Contract 2-5B was the first contract of the Medora-Beach phase of the project. The second

contract of this phase is contract 5-9, Belfield Reservoir. This potable water reservoir, along with reservoirs at Fryburg and Beach, is necessary for the development of the Medora-Beach phase. The Belfield reservoir was originally scheduled for construction in 1994 in conjunction with contract 2-5A, the main transmission pipeline from Dickinson to Belfield. In a cost savings measure, this tank was delayed until such time as the pipeline was constructed beyond Belfield. Rural users between Dickinson and Belfield, as well as the city of Belfield, have been served out of the New England reservoir through bypass piping in the Dickinson high service pump station.

The scheduled completion for contract 2-5B is September 4, 2004. It is anticipated to have water available in Medora, Beach, and Sentinel Butte in the fall of 2004 and, to meet that schedule, the Belfield reservoir is necessary. Two options are being bid for this reservoir, welded and painted steel, and glass fused bolted steel. In order to assure that the tank is completed in time for painting before cold weather in the fall of 2004, it would be most advantageous to have the tank foundation constructed in the fall of 2003.

The tank will be 48 feet tall, 52 feet in diameter, and hold 746,700 gallons at its overflow elevation. The tank will be located on land previously purchased by the State Water Commission. Bids were solicited in July with a bid opening date of August 13, 2003. The estimated construction cost of the Belfield reservoir is \$575,000. Funding for this contract will come primarily from the \$2.8 million USDA, Rural Development grant and loan, which was approved on June 27, 2003.

It was the recommendation of the State Engineer that because of the timing associated with contract 5-9, the State Water Commission preauthorize the award of this contract to avoid delays in the commencing of construction. If the award is preauthorized, a memorandum would be provided to the State Water Commission following the bid opening on August 13, 2003 summarizing the bids and requesting input from the Commission.

***It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission preauthorize the State Engineer to award Southwest Pipeline Project Contract 5-9, Belfield Reservoir.***

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

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

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

**Contract 2-1A - First Main Transmission Line:** The contractor, S. J. Louis Construction, Waite Park, Minnesota, has completed pipelaying operations on contract 2-1A. The remaining work includes reclamation, painting, and installation of cathodic testing facilities. The pressure test of the final two miles was completed on July 16, 2003. Three cast-in-place combination air vacuum/air release valves have been deleted from the contract and included in the 2-1B contract because of price.

The completion date for contract 2-1A was originally November 1, 2002. When two more miles of pipeline were added to the contract through a change order, the contractor was given additional time to complete the contract. The new completion date was July 15, 2003. The contractor has now exceeded that date. Costs are being incurred as this contract is extended beyond the completion date. The contract specifies that liquidated damages in the amount of \$1,000 per day can be assessed. The costs being incurred relate to inspection and contract administration. The contractor has been informed of these extra costs and reminded of the liquidated damages provision in the contract documents.

A meeting was held with the three remaining landowners, who appealed condemnation, and their attorney and a verbal settlement was reached with the landowners. The sewer study, undertaken to determine the impact of the NAWS pipeline on future sewer development in southwest Minot, was key in reaching the settlement. The landowners have asked for written assurance that when they develop their property, if additional sewer costs are incurred because of the presence of the NAWS pipeline on their land, they will be compensated by the State Water Commission. Under this concept, the plans would be subject to the state's engineering review. If agreement cannot be reached on the costs, the state could agree to mediation.

**Contract 2-1B - Pretreated Water Pipeline:** On April 22, 2003, the State Water Commission authorized the award of contract 2-1B to Coughlin Construction, Minot, ND. The contract was executed by the Commission's Chief Engineer and Secretary on May 22, 2003. The contract is for approximately 9.5 miles of 30-inch and 36-inch ductile iron pipe, extending

from the end of contract 2-1A to a point across N.D. Highway 23. The contract includes an above ground pressure reducing valve vault, which will be located adjacent to U.S. Highway 83 just south of the bored and cased highway crossing.

The contractor is currently working on the U.S. Highway 83 right-of-way south of Minot. They are laying pipe at the rate of 200-400 feet per day. The contract completion date is October 31, 2003.

**NORTHWEST AREA WATER  
SUPPLY (NAWS) PROJECT -  
APPROVAL OF INTERIM  
FINANCING FOR CITY OF  
RUGBY, PHASE II, WATER  
SYSTEM EXPANSION AND  
UPGRADE  
(SWC Project No. 237-04)**

The first phase of the city of Rugby's water system expansion and upgrade consisted of upgrading and expanding the city's water treatment plant to 1,200 gallons per minute. Construction was completed in the fall of 1999. A revenue bond, in the amount of \$1,120,000, was issued on May 20, 1998 for the local share of the construction costs.

The total cost of Phase I was approximately \$2.6 million, of which about \$910,000 came from the revenue bond. The city began making payments on the bonds in July, 1999, and the capitalized interest on the bonds totalled approximately \$79,000, or almost 6.5 percent of the par amount of the bonds.

The second phase of construction will consist of a new well and a larger pipeline connecting the water treatment plant to the city supply. The estimated cost of Phase II is approximately \$2.8 million, and could be ready for bidding in the spring of 2004. Some of the costs for design are currently being incurred and the city has requested reimbursement of about \$164,000. The city of Rugby and the All Seasons Water Users have completed a water purchase agreement under which both the city and the rural users pay an equal rate for repayment of the bonds.

A revenue bond is planned to provide the local share of the costs on Phase II of the project. The city would make its payments on the bond to the State Water Commission. Rather than capitalizing the interest, the bond issue could be delayed by utilizing available funds in the Resources Trust Fund to pay for the local share of the costs. After the project has been completed and all costs are known, a bond can be issued to reimburse the Resources Trust Fund. Interest on the bond should be between 4.5 percent and 5 percent, while interest earned on the Resources Trust Fund is in the 0.5 percent range.

James Lennington explained that providing interim financing in this manner would reduce the par amount of the bonds by \$65,000 to \$100,000 and would save the city of Rugby and the rural water customers \$0.03 to \$0.05 per thousand gallons on their water rate for the life of the bond.

It was the recommendation of the State Engineer that the State Water Commission approve interim financing for the local share of Northwest Area Water Supply Project - City of Rugby, Phase II, through the Resources Trust Fund.

***It was moved by Commissioner Hanson and seconded by Commissioner Halcrow that the State Water Commission approve interim financing for the local share of Northwest Area Water Supply Project - City of Rugby, Phase II, through the Resources Trust Fund.***

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

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

Devils Lake is currently at elevation 1447.30 feet msl. At this elevation, the lake has a surface area of 126,200 acres and storage of 2.47 million acre-feet of water.

In the month of June, 2003, the Devils Lake basin received above-normal precipitation with some locations receiving 6-8 inches for the month. Much of the basin remains wet, but the available storage in the upper basin has increased slightly over the past month. This increased storage will help dampen the runoff to Devils Lake during normal rainfall events.

The elevation of Stump Lake is 1415.1 feet msl. Stump Lake has risen a foot since June 12, 2003 and nearly two feet since last winter, inundating over 200 acres around the lake. Approximately half of the increase is from its own drainage and half is from the water coming from Devils Lake through Jerusalem channel. The flows have been averaging 25-30 cubic feet per second. At its current elevation, Stump Lake covers 8,150 acres and is storing 150,000 acre-feet of water.

**DEVILS LAKE OUTLET PROJECTS  
(SWC Project No. 416-01)**

**CORPS OF ENGINEERS DEVILS LAKE OUTLET PROJECT:**

On February 26, 2003, the Corps of Engineers announced that a 300 cfs outlet from Pelican Lake to the Sheyenne River had been identified as the preferred alternative to alleviate flood damages at Devils Lake if the lake continues to rise. The Corps released the final Environmental Impact Statement (EIS) for public review in April, 2003; comments were accepted until June 19, 2003. Following the review of the EIS, the Corps will prepare a Record of Decision (ROD) that will describe the Corps's final recommendation on a Devils Lake outlet. It is anticipated that the ROD will be released in the fall of 2003.

In order to utilize as much fresh water as possible and maximize outlet operation, the Corps has included as part of their initial project design a diversion from Dry Lake to Pelican Lake. Bringing fresher water to Pelican Lake, especially during years of normal and below normal runoff, will allow the outlet to function at greater flow rates and, therefore, be more effective at reducing Devils Lake water levels. Because of federal issues, which need to be resolved, the Corps has indicated additional studies and data collection are necessary before a final decision can be made.

The total estimated cost for the Pelican Lake outlet project, indexed for inflation, is \$208.2 million. A Project Cooperative Agreement (PCA) must be executed by the local sponsor and the Corps in order for the Corps to proceed with construction of the outlet project. Federal law requires the local sponsor to agree to cost share on the project at 35 percent, or \$73 million, and to indemnify the Corps. The cost estimate includes features that have been added since the draft EIS was released on February 26, 2002 that are intended to alleviate environmental concerns.

The State Water Commission has applied for the water quality certification from the North Dakota Department of Health for both the federal and state outlets. Issuance of the necessary permits generally require between three to six months. An amendment to Senate Bill 2022, the State Water Commission's appropriation bill, was passed and signed into law that would enable the State Water Commission to appropriate the funds for the non-federal cost share and to accept the liability of indemnifying the Corps. Construction could begin in 2004-2005, contingent upon the execution of the PCA and negotiations with the International Joint Commission.

## **NORTH DAKOTA DEVILS LAKE OUTLET PROJECT:**

The State of North Dakota is pursuing a temporary emergency phased outlet project from West Bay to the Sheyenne River. The project is based on a two-year construction timeline, with construction commencing in the spring of 2003 and operational by the spring of 2005:

### **Phase 1(a) - 300 cfs Open Channel Construction**

The first phase includes the construction of approximately 4.2 miles of a 300 cubic feet per second (cfs) open channel from the termination point of the pipeline from the Round Lake pump station to the Josephine pump station, and from the termination of the second pipeline to near the transition point with the 500 cfs channel.

The total cost for the 300 cfs open channel construction of Phase 1(a) is approximately \$5 million.

### **Phase 1(b) - Power Supply**

Phase 1(b) includes contracting with the local Rural Electric Cooperative (REC) for the electrical power supply to the two pump stations that would consist of 115 kV lines and a substation. Completion of the surveying, mapping, and design work of the power facilities would allow for construction to begin in the summer of 2003 and completion by the summer of 2004. The total cost for the power supply portion of Phase 1(b) is approximately \$2.5 million.

On March 5, 2003, the State Water Commission approved the continued construction of North Dakota's Devils Lake outlet project, and allocated the expenditure of \$7.5 million from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Phase 1(a) (300 cfs open channel construction - \$5.0 million) and Phase 1(b) (power supply - \$2.5 million).

The Commission staff continues to work on acquiring the necessary permits for the project. The State Engineer's Drain Permit has been received and the Sovereign Lands Permit is being processed. It is anticipated that the North Dakota Department of Health will make its final decision on the NDPDES 402 Discharge Permit in August, 2003. The contractor will be required to obtain a Stormwater Discharge Permit from the Health Department before they can begin construction.

In March, 2003, a letter was sent to the Corps of Engineers Regulatory office in Bismarck that administers 404 permits for North Dakota. The letter stated that it was the opinion of the State Water Commission that a 404 permit was not required for the state's project. On

July 2, 2003, a letter was received from the Corps of Engineers office stating that it had been determined that the state's project, as presently designed, would be accomplished without discharging into the jurisdictional area and, therefore, a 404 permit would not be required for the construction of the project.

The Commission staff continues to work on acquiring easements for the land along the project route. To date, landowners of 54 percent of the land have either signed an option for an easement or an actual easement. After numerous attempts, negotiations failed with a landowner who owns a majority of the land that is included in Contract 2. In order to begin construction on this contract this summer or fall, the quick-take condemnation authority that was granted to the State Water Commission will be initiated.

On July 17, 2003, bids were opened for the Devils Lake Emergency Outlet, Initial Canal Segments, Contract 2. This contract is for 3.2 miles of 300 cubic feet per second open channel construction. Ten bids were received for the project and no bids were rejected for non-compliance with the bidding documents. The apparent low bidder was Park Construction, Inc., Minneapolis, Minnesota, with a bid of \$766,614, which is 33 percent below the engineer's estimate of \$1.15 million. Park Construction has worked in North Dakota for a number of years completing projects for the Corps of Engineers, the North Dakota Department of Transportation, and other agencies. Park has demonstrated significant experience with this type of work. The project engineer reviewed the bids received and recommended the award of Contract 2 to Park Construction, Inc., Minneapolis, Minnesota, provided all permits and easement are in place for the project, and a legal review.

It was the recommendation of the State Engineer that the State Water Commission award Devils Lake Emergency Outlet, Initial Canal Segments, Contract 2, to Park Construction, Inc., Minneapolis, Minnesota, in the amount of \$766,614 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, contingent upon receipt of the North Dakota Department of Health NDPDES 402 Discharge Permit, and a legal review.

***It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve the award of the Devils Lake Emergency Outlet, Initial Canal Segments, Contract 2, to Park Construction, Inc., Minneapolis, Minnesota, in the amount of \$766,614 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon receipt of the North Dakota Department of Health NDPDES 402 Discharge Permit, and a legal review.***

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

**APPROVAL OF REQUEST FROM  
DEVILS LAKE BASIN JOINT WATER  
RESOURCE DISTRICT FOR STATE  
COST PARTICIPATION IN DEVILS  
LAKE UPPER BASIN WATER  
UTILIZATION TEST PROJECT  
(SWC Project No. 1882-02)**

A request from the Devils Lake Basin Joint Water Resource District was presented for the Commission's consideration for state cost participation in the Devils Lake Upper Basin Water Utilization Test Project. The test project's primary objective is to further investigate issues that have evolved re-

garding the effectiveness of the overall concept of a water utilization project in the Devils Lake basin.

The test project will involve the identification of eight land sites within the basin, with such sites being selected to allow comparisons between four different surface sources of water. The sources of water include Hurricane Lane, West Chain Lake area, East Chain Lake area, and the emergency outlet area. Near each selected water source two different soil types, sandy and loam, will be identified. A willing landowner in each area will be accepted for participation in the test project and will be provided with the infrastructure to achieve utilization of excess surface water. A technical review and monitoring board will be formed to determine test parameters and coordinate monitoring activities. It is expected that the test project can be put in place by the fall of 2003 and can be operated and monitored for at least a two-year period.

Each test site will be equipped with center pivot water application devices, 10-inch PVC supply pipes, centrifugal pumps powered by diesel engines, and three-phase generators to power the pivots. The cooperating producers will be required to grow a combination of crops including alfalfa, potatoes, corn, and soybeans.

The total estimated cost of the project is \$1,204,000, of which \$604,000 is considered eligible for a 50 percent state cost share participation as a study in the amount of \$302,000. Federal funding in the amount of \$600,000 has been committed through the Natural Resources Conservation Service to be administered by the North Central Regional Planning Council office for the benefit and use of this project. Twenty-five (25) local entities have committed a total of \$88,400.

On July 22, 2003, a letter was received from the Devils Lake Basin Joint Water Resource District requesting a 50 percent state cost share participation of the total test project cost in the amount of \$516,000. Secretary Frink explained that it has been the long-standing policy of the State

Water Commission to only cost share on the non-federal portion of projects. Because federal funding in the amount of \$600,000 has been committed to the project, \$604,000 is considered eligible for a 50 percent state cost share participation (\$302,000).

Michael Connor, Devils Lake Basin Joint Board manager; Senator Jack Traynor, Devils Lake, representing District 15; Representative Eugene Nicholas, Cando, representing District 15, and others were in attendance to provide technical information in support of the project. Senator Traynor provided historical information relative to precipitation in the Devils Lake basin, and expressed appreciation to Governor Hoeven and the State Water Commission for their past support. The project proponents explained that during previous discussions with the Commission staff, it was their understanding that the total project cost would be considered eligible for a 50 percent state cost share participation. Because federal funding is not considered eligible under the Commission's cost share criteria, concern was expressed by the project proponents as to whether the additional non-federal portion could be locally secured to proceed with the project.

It was the recommendation of the State Engineer that the State Water Commission approve a 50 percent state cost share participation, in the amount of \$302,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Devils Lake Upper Basin Water Utilization Test Project.

***It was moved by Commissioner Thompson and seconded by Commissioner Johnson that the State Water Commission approve a 50 percent state cost share participation, in the amount of \$302,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Devils Lake Upper Basin Water Utilization Test Project. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. Commissioners Halcrow, Hillesland, and Swenson voted nay. Recorded vote was 6 ayes; 3 nays. Governor Hoeven announced the motion carried.***

**STATE WATER COMMISSION  
GENERAL COST SHARE POLICY  
(SWC Project No. 1753)**

The State Water Commission's cost share policy requirements were discussed. The Commission staff met on June 17, 2003 to clarify certain require-

ments concerning the policy, and the following recommendations were presented for the Commission's consideration:

- The State Water Commission will not provide cost share funding for the development of final plans and specifications or actual construction unless an application/request is first approved by the State Water Commission or the State Engineer.
- Projects that are completed prior to the State Water Commission's cost share approval date are not eligible for cost share funding.
- Preliminary engineering costs incurred up to a maximum of two years preceding the State Water Commission's approval date will be eligible for cost share funding if the project is ultimately approved and constructed.
- For studies, only those costs incurred as of the State Water Commission's cost share approval date will be eligible for cost share funding.
- Any exceptions to the above cost share policy requirements must be approved by the State Water Commission or the State Engineer.

***It was moved by Commissioner Halcrow, seconded by Commissioner Swenson, and unanimously carried, that the State Water Commission approve the cost share policy requirements as presented.***

**STATE WATER COMMISSION  
CULVERT COST SHARE POLICY  
(SWC Project No. 1753)**

At its June 12, 2003 meeting, the State Water Commission directed the State Engineer and staff to revisit the drainage cost share policy as it relates

to the replacement of culverts. The direction came as a result of discussion relative to a cost share request from the Richland County Water Resource District for improvements to the upper watershed contributing to the Richland County Drain No. 39. That project included the restoration of several meanders in a natural stream, the installation of drop structures and filter strips, a culvert sizing study, and culvert replacements. The recommendation presented to the State Water Commission was to cost share in the project except for the culvert sizing study and the culvert replacements. This recommendation generated discussion among the Commission members as to why the culvert sizing and replacement should be considered ineligible. Some of the members felt this facet of the project should be cost shared because it was likely that many of the crossings would be reduced in capacity, thus providing some level of flood control protection.

The State Water Commission's current policy is to provide cost share for those culverts installed as part of a rural flood control project. Prior to 1998, the section line crossings required for a drain

were considered ineligible, but the policy was changed at that time to include those crossings as eligible items, and the cost share percentage for rural flood control projects was correspondingly reduced from 40 percent to 35 percent.

Todd Sando explained the options that could be available to the drainage cost share policy as it relates to the replacement of culverts. The options include the continuation of the current policy of not providing any cost share for culverts except those that are part of a drain project; provide some limited cost share in certain instances; or provide cost share for all culvert sizing and replacement work.

Mr. Sando said it is likely that providing cost share for all culverts would result in a significant level of requested funding and the recently adopted stream crossing standards would increase that likelihood. Some type of limited program could be designed, but any attempt to do so would require a lot of subjective evaluation of eligibility as road authorities attempted to adopt their processes to be eligible for cost share funding. Mr. Sando stated that continuation of the current policy would allow funding intended for water resource projects to be spent accordingly, while the cost of installing and replacing culverts would remain with the appropriate road authority. Given the potential scale of funding that might be requested if culverts were eligible for cost share funding and the potential difficulty associated with defining any sort of limited program, Mr. Sando said a continuation of the State Water Commission's current policy of providing cost share for those culverts installed as part of a drain project appears to be the most prudent at this time.

It was the recommendation of the State Engineer that the State Water Commission continue the current policy of providing cost share for those culverts installed as part of a drain project.

The State Water Commission members discussed cost share funding in the re-sizing of culverts as they relate to water management and downstream impacts. The Commission members concurred with the State Engineer's recommendation to continue the current policy of providing cost share for those culverts installed as part of a drainage project.

**APPROVAL OF REQUEST FROM  
SOUTHEAST CASS WATER  
RESOURCE DISTRICT FOR COST  
SHARE FOR DIGITAL AERIAL SURVEY,  
PHASE IV, MAPLE RIVER FLOOD  
INSURANCE STUDY DIGITAL  
IMAGERY, HYDRAULIC ANALYSIS  
AND TOPOGRAPHIC MAPPING  
(SWC Project No. 1751-06)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for additional cost share associated with obtaining digital aerial survey data for floodplain mapping 91 square miles of the Maple River near the confluence with the Sheyenne River and areas west of the previous study limits. The data will be

used in the study to update floodplain elevations and flood insurance rate maps in order to accurately delineate floodplain areas.

The State Water Commission's previous cost share approvals includes Phase I, \$45,150 on June 9, 1999; Phase II, \$49,350 on April 10, 2000; and Phase III, \$35,646 on August 15, 2002.

Todd Sando presented the request and indicated that the current proposed project, Phase IV, encompasses aerial photography, LIDAR acquisition, ground control, aerotriangulation, LIDAR processing, planimetric map compilation, and orthophotography for the described 91 square miles.

The project cost estimate for Phase IV is \$177,397, of which \$81,343 is considered eligible for state cost share participation. The recommended cost share percentage for this project is 35 percent, which is consistent with the previous phases. The Federal Emergency Management Agency is providing \$96,055 to complete the project, and the Joint Cass Water Resource District will contribute to the non-federal share of the costs. The request before the State Water Commission is to provide a 35 percent cost share of the eligible costs in the amount of \$28,470.

It was the recommendation of the State Engineer that the State Water Commission approve a 35 percent cost share of the eligible costs not to exceed \$28,470 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for costs associated with the digital aerial survey, Maple River Flood Insurance Study Digital Imagery, Hydraulic Analysis and Topographic Mapping Project, Phase IV. Affirmative action by the State Water Commission will increase the total state cost share contribution to \$158,616.

*It was moved by Commissioner Hofstad and seconded by Commissioner Johnson that the State Water Commission approve a 35 percent cost share of the eligible costs not to exceed \$28,470 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for costs associated with the digital aerial survey, Maple River Flood Insurance Study Digital Imagery, Hydraulic Analysis and Topographic Mapping Project, Phase IV. This motion is contingent upon the availability of funds.*

*This action increases the State Water Commission's cost share contribution to \$158,616.*

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

**APPROVAL OF REQUEST FROM  
GRAND FORKS COUNTY WATER  
RESOURCE DISTRICT FOR STATE  
COST PARTICIPATION IN GRAND  
FORKS COUNTY DRAIN NO. 27  
IMPROVEMENT RECONSTRUCTION  
(SWC Project No. 1117)**

A request from the Grand Forks County Water Resource District was presented for the Commission's consideration for state cost participation in the Grand Forks County Drain No. 27 improvement project. The drain will be reconstructed in Sections 4, 9, 16, 21, and 28, Tier 149 North, Range

50 West (Americus Township, Grand Forks County). The District has suffered severe erosion due to storms associated with disaster declarations. The District has been granted permission from the Federal Emergency Management Agency (FEMA) to utilize the disaster funds toward an improved project that would eliminate future flooding and damage to Grand Forks County Drain No. 27.

Approximately 3.5 miles of Drain No. 27, outletting into Cole Creek, will be reconstructed, which is necessary because flow has repeatedly broken out of the channel creating a secondary channel and washouts in the fields adjacent to the drain. The proposed project will modify the existing drain by widening the channel bottom from the original 6-foot bottom to a 20-foot bottom. The side slopes will be flattened from 3:1 to 4:1. The width is required so there will be enough spoil to construct a high enough levee on the field side of the channel to confine the runoff flow to the ditch. All adjacent landowners have voluntarily donated the necessary right-of-way to construct the project.

A drain permit application for the proposed work is required and has been filed, which was forwarded to the Red River Joint Water Resource District for their review and comments regarding the determination of statewide significance. A sediment analysis has been provided indicating 218 cubic yards of sediment present in the drain.

The total estimated cost of the project is \$170,328, of which \$141,533 is considered eligible for state cost participation. Under the current State Water Commission's rural flood control cost share guidelines, \$141,533 is considered eligible for a 35 percent cost share (\$49,537). The request before the State Water Commission is for a 35 percent state cost share participation in the amount of \$49,537.

It was the recommendation of the State Engineer that the State Water Commission approve a conditional state cost share participation of 35 percent of the eligible costs, not to exceed \$49,537 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Grand Forks County Drain No. 27 improvement reconstruction project.

***It was moved by Commissioner Hillesland and seconded by Commissioner Hanson that the State Water Commission approve a conditional state cost share participation of 35 percent of the eligible costs, not to exceed \$49,537 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Grand Forks County Drain No. 27 improvement reconstruction project. This motion is contingent upon the availability of funds, and the issuance of the drain permit.***

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

**APPROVAL OF REQUEST FROM  
GRAND FORKS COUNTY WATER  
RESOURCE DISTRICT FOR  
ADDITIONAL COST SHARE IN  
GRAND FORKS DRAIN NO. 27A  
(SWC Project No. 1117)**

A request from the Grand Forks County Water Resource District was presented for the Commission's consideration for an additional cost share in the construction of Grand Forks County Drain No. 27A.

Todd Sando presented the request, which originated in Section 21, Township 149 North, Range 49 West (Americus Township) as a diversion from Grand Forks County Drain No. 27 of 140 cubic feet per second to the east. At its juncture with Americus Township Drain No. 1, the

drain would pick up an additional 50 cubic feet per second, and accumulate 60 cubic feet per second more of local runoff along the remainder of the alignment before outletting into the Red River at a point near the quarterline of Section 16 in Bentru Township, a total distance of approximately 5 1/4 miles.

The purpose of the project is to reduce flood damage to agriculture properties along the path of the proposed drain and also to relieve the excess water burden placed on Cole Creek to the north by both Grand Forks County Drain No. 27 and Americus Township Drain No. 1.

The engineer's cost estimate for the construction of the Grand Forks County Drain No. 27A project was \$819,000, of which \$736,500 was considered eligible for a 35 percent cost share (\$257,775). On August 16, 2001, the State Water Commission passed a motion approving a 35 percent cost share of the eligible items, not to exceed \$200,000; and on August 15, 2002, the State Water Commission approved an additional \$50,000 for the project. The unfunded eligible balance of \$7,775 is eligible for cost share consideration from the 2003-2005 biennium. The request before the State Water Commission is to cost share in an additional \$7,775 in the 2003-2005 biennium.

It was the recommendation of the State Engineer that the State Water Commission approve a 35 percent cost share for the Grand Forks County Drain No. 27A project, not to exceed an additional \$7,775 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$257,775.

***It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve a 35 percent cost share of the eligible costs, not to exceed an additional \$7,775 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Grand Forks County Drain No. 27A project. This motion is contingent upon the availability of funds.***

***This action increases the total State Water Commission cost share contribution to \$257,775.***

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

**APPROVAL OF REQUEST FROM  
NORTH DAKOTA NATURAL  
RESOURCES TRUST FOR STATE  
COST PARTICIPATION FOR  
RESEARCH STUDY FOR POTENTIAL  
MARKET OF SEQUESTERED CARBON  
(SWC Project No. 1826)**

A request from the North Dakota Natural Resources Trust, on behalf of the U.S. Geological Survey, Northern Prairie Wildlife Research Center, was presented for the Commission's consideration for state cost share participation to develop a comprehensive research study in the Devils Lake basin

that will verify carbon sequestration and gas emissions from restored wetlands as a commodity with a definable market value.

Commissioner Olin disclosed that he currently serves on the North Dakota Natural Resources Trust board of directors, and questioned if a conflict of interest exists relative to this project. Governor Hoeven stated this disclosure would not be considered a conflict of interest.

Keith Trego, North Dakota Natural Resources Trust executive director, appeared before the State Water Commission to present the proposal. Mr. Trego explained that the project will raise the stature of prairie pothole wetlands to an income-generating "invisible crop" rather than a perceived problem for producers. In previous research, the Prairie Wildlife Research Center has determined that a restored wetland will generate 2.5 tons/acre of sequestered carbon per year. In the emergency carbon trading market, this could generate as much as \$45.00 per acre per year. He said this raises the possibility of wetland conservation being market driven, while society benefits from the concurrent benefits associated with wetland restorations. The overarching goal of the research is to reduce risks to producers interested in marketing sequestered carbon, reduce risks to investors in the emerging carbon market, and to better link industry to conservation activities in the prairie pothole region.

Mr. Trego described how the wetlands are critical components of the freshwater resources in North Dakota. Wetlands improve water quality, recharge ground water, attenuate floodwater, provide fish and wildlife habitat, and have recreational values. Wetlands improve the overall watershed quality and surface and ground water contributions to lakes, streams, and rivers. He said "all of these concurrent benefits associated with restored wetlands are commensurate with the State Water Commission's water management objectives and policies directed toward optimum management and use of the state's water resource." The potential for landowners to generate income from wetland restorations to store carbon will effectively promote conservation of wetlands and improve water resources on private lands at a scale that could not otherwise be accomplished by other incentive programs.

The total estimated cost of the research study is \$2,600,000, of which \$600,000 is considered the local cost to the U.S. Geological Survey. The U.S. Department of Agriculture is currently considering a \$2,000,000 grant to the Survey for the project, which is expected in August, 2003. Approximately 23.1 percent of the total estimated project cost (\$600,000) is the required local match consisting of \$300,000 in cash and \$300,000 of in-kind contributions. The Survey, through the assistance of the North Dakota Natural Resources Trust, requested a cost share participation from the State Water Commission of approximately 16.6 percent of the total local match, equivalent to 8.3 percent of the cash required, in the amount of \$50,000. Potential project contributions toward the local cost of the project were identified, but Mr. Trego explained that most of the entities identified have not committed the funds to date.

In discussion of the request, the State Water Commission members complimented the North Dakota Natural Resources Trust for its efforts in pursuing this project. Although there was support for the study, the members questioned if the State Water Commission is an appropriate agency to provide funds for the local match. Secretary Frink explained that even though the North Dakota Natural Resources Trust has acknowledged the benefits to freshwater resources, the research study is not an eligible project per the State Water Commission's cost share policy, nor is the project identified in the State Water Management Plan.

***It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve the allocation of \$50,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to the U.S. Geological Survey for the research study for the potential market of sequestered carbon. This motion is contingent upon the availability of funds, and that \$250,000 (in cash) of the local match be committed from other sources.***

***Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, and Governor Hoeven voted aye. Commissioners Halcrow and Thompson voted nay. Recorded vote was 7 ayes; 2 nays. Governor Hoeven announced the motion carried.***

**APPROVAL OF REQUEST FROM TRAILL COUNTY WATER RESOURCE DISTRICT FOR ADDITIONAL STATE COST PARTICIPATION IN TRAILL COUNTY DRAIN NO. 13 IMPROVEMENT RECONSTRUCTION AND EXTENSION PROJECT (SWC Project No. 1232)**

A request from the Traill County Water Resource District was presented for the Commission's consideration for additional state cost participation in the Traill County Drain No. 13 improvement reconstruction and extension project. The purpose of the project is to reduce flood damages to agricultural properties.

The existing drain to be reconstructed is locally known as the Mickelson Drain and was originally constructed in the early 1900s. The outlet for this 2.5 mile drain is an unnamed tributary to the Red River. The drain will be reconstructed to flatten the channel side slopes, which vary from 1:1 to 4:1 to a continuous 4:1 slope, and widen the V-shaped channel bottom to 10 feet.

Mickelson Drain will also be extended westward along the north side of the east/west township road by 6 miles and east to the Red River approximately 0.5 mile, creating a drain with a total length of approximately 9.3 miles. The portion of the drain to be constructed will have 4:1 side slopes and a 10-foot bottom width. The project will require the installation of intercept culverts, roadway crossings through the township roads and County Highways No. 2 and 4, and an outfall structure to the Red River.

The District indicated a new assessment district has been created and a positive local vote for the project has been recorded. A drain permit is required for this project, and upon receipt of the drain permit application, the Red River Basin Joint Water Resource Board will be solicited to provide a project review.

The project engineer's cost estimate is \$1,150,000, of which \$968,777 is considered eligible for state cost participation as a rural flood control project at a 35 percent cost share, not to exceed \$339,072. The State Water Commission approved \$250,000 on March 5, 2003. The unfunded eligible balance of \$89,072 is eligible for cost share consideration from the 2003-2005 biennium. The request before the State Water Commission is to cost share in the unfunded eligible balance of \$89,072 in the 2003-2005 biennium.

It was the recommendation of the State Engineer that the State Water Commission approve a conditional state cost participation of 35 percent of the eligible costs, not to exceed an additional \$89,072 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Traill County Drain No. 13 improvement reconstruction and extension project. Affirmative action by the State Water Commission will increase the total state contribution to \$339,072.

***It was moved by Commissioner Hillesland and seconded by Commissioner Halcrow that the State Water Commission approve a conditional state cost participation of 35 percent of the eligible costs, not to exceed an additional \$89,072 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Traill County Drain No. 13 improvement reconstruction and extension project. This motion is contingent upon the availability of funds, approval of the project's final design, and issuance of the required drain permit.***

***This action increases the State Water Commission's total cost share contribution to \$339,072 for the Traill County Drain No. 13 improvement reconstruction and extension project.***

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

**REQUEST FROM TRAILL COUNTY  
WATER RESOURCE DISTRICT FOR  
STATE COST PARTICIPATION IN  
TRAILL COUNTY DRAIN NO. 38  
(NORWAY) IMPROVEMENT  
RECONSTRUCTION PROJECT  
(SWC Project No. 1334)**

A request was received on July 14, 2003 from the Traill County Water Resource District for state cost participation in the Traill County Drain No. 38 (Norway) improvement reconstruction project, which involves an assessment project located in Norway and Wold townships. It is the

intention of the District to hold the assessment vote on this project in September, 2003. The purpose of the project is to reduce flood damages to agricultural properties. The project is contingent on securing a positive local assessment vote.

Todd Sando explained that adequate information and plans were not received from the Traill County Water Resource District, therefore, the request for the Commission's consideration for state cost participation was withdrawn.

**APPROVAL OF REQUEST FROM  
PEMBINA COUNTY WATER  
RESOURCE DISTRICT FOR  
STATE COST PARTICIPATION  
IN TONGUE RIVER SNAGGING  
AND CLEARING PROJECT  
(SWC Project No. 1694)**

A request from the Pembina County Water Resource District was presented for the Commission's consideration for cost share participation in their snagging and clearing project on the Tongue River. All identified sites along the Tongue River in Sections 8, 9, 10, and 17 of Tier 162

North, Range 52 West, are expected to be cleared of the trees and snags by late fall, 2003. The purpose of the project is to remove and dispose of debris blockages.

The total project cost is estimated at \$75,000, all of which is considered to be eligible for state cost share participation as a snagging and clearing project. Under the State Water Commission's policy and guidelines for snagging and clearing projects, the project is eligible for a 25 percent state cost share participation in the amount of \$18,750. The request before the State Water Commission is for a 25 percent state cost share participation in the amount of \$18,750.

It was the recommendation of the State Engineer that the State Water Commission approve a 25 percent state cost share participation, not to exceed \$18,750 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Tongue River snagging and clearing project.

***It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve a 25 percent state cost participation of the eligible costs, in an amount not to exceed \$18,750 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Tongue River snagging and clearing project. This motion is contingent upon the availability of funds.***

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

**REQUEST FROM NORTH DAKOTA  
WATER EDUCATION FOUNDATION  
FOR STATE COST PARTICIPATION  
IN "NORTH DAKOTA WATER: A  
CENTURY OF CHALLENGE"  
PUBLICATION  
(SWC Project No. 322)**

A request from the North Dakota Water Education Foundation was presented for the Commission's consideration for state cost participation to write and publish a comprehensive history of Garrison Diversion and water development in the 20th Century. The assistance of state and re-

gional water organizations are vital to provide the details, chronologies and factual information needed to tell this story. North Dakota has a rich water history dealing with the variable nature of the state's water resources and the political challenges the state has encountered. It is proposed that the final product would be published in a 160-page hard cover book, with a 32-page student guide distributed to the schools.

The cost of this project is \$245,511. The North Dakota Water Education has requested \$97,425 from the Bureau of Reclamation, and \$48,712.50 each from the State Water Commission and the Garrison Diversion Conservancy District. The Foundation will contribute \$50,661 in in-kind services to publish the water history book. It is anticipated that the project would be completed within 24 months following execution of an agreement. The request before the State Water Commission is to cost share in the amount of \$48,800.

Because of previous commitments, the executive director of the North Dakota Water Education Foundation was not able to attend this State Water Commission meeting to present the request. Therefore, it was the consensus of the State Water Commission members that consideration of the cost share request be tabled until a future Commission meeting.

**APPROVAL OF REQUEST  
FROM NORTH DAKOTA WATER  
EDUCATION FOUNDATION FOR  
ALLOCATION OF \$36,000 FOR  
PARTICIPATION IN *NORTH  
DAKOTA WATER* MAGAZINE  
FROM JULY 1, 2003 TO JUNE 30, 2005  
(SWC File No. AOC/WEF)**

A request from the North Dakota Water Education Foundation was presented for the Commission's consideration to continue its participation in the *North Dakota Water* magazine from July 1, 2003 to June 30, 2005.

The State Water Commission has contributed to this effort since 1994 to support the magazine and its own pages, the monthly "Oxbow" section and the "Water Primer" section, and to assist in the mailing distribution of the magazine. Secretary Frink said that with the Commission's support, the *North Dakota Water* magazine provides continued communication among people interested in North Dakota's water resources.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$36,000 from the funds appropriated to the State Water Commission for the 2003-2005 biennium, to the North Dakota Water Education Foundation to assist in the publication of the *North Dakota Water* magazine for the period July 1, 2003 to June 30, 2005.

***It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve the allocation of \$36,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to the North Dakota Water Education Foundation to assist in the publication of the North Dakota Water magazine for the period July 1, 2003 to June 30, 2005. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. Commissioner Halcrow voted nay. The recorded vote was 8 ayes; 1 nay. Governor Hoeven announced the motion carried.***

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

A request from the North Dakota Nonpoint Source Pollution Task Force was presented for the Commission's consideration for cost share assistance in the amount of \$200,000 for the 2003-2005 biennium for

projects authorized under Section 319 of the federal Water Pollution Act.

On June 12, 2003, the State Water Commission, on a 4-4 vote, denied a \$200,000 funding request for the Section 319 program. The Commission members generally felt that more information was needed on the program. Since the denial, the Commission members have received requests for reconsideration of the denial, and additional program information has since been provided.

Dennis Fewless, Nonpoint Pollution Source task force co-chair, appeared before the State Water Commission to explain the program criteria, and to request the Commission's favorable consideration to provide \$200,000 for the 2003-2005 biennium to support the local sponsorships increase their availability of time and affordable engineering assistance, and to achieve their water quality goals.

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

The most critical need at the present time is for engineering assistance. The demand for design assistance is too high to be met by currently available programs funded by Section 319 and other sources. Assistance is particularly needed with medium and small size CAFOs, which are often insufficiently capitalized to afford the full cost of design and construction.

During the 2001-2003 biennium, \$200,000 of funding was specifically appropriated to the State Water Commission for distribution to the North Dakota Nonpoint Source Pollution task force for a Section 319 match. Secretary Frink explained that no funding was specifically appropriated for this purpose for the 2003-2005 biennium, but the same level of funding has been requested as a general cost share for augmentation of current engineering assistance programs. Since funding was not specifically appropriated for the 2003-2005 biennium, the task force will identify project-specific allocations once funding has been committed.

It was the recommendation of the State Engineer that the State Water Commission provide \$200,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to the North Dakota Nonpoint Source Pollution Management Program of the North Dakota Department of Health for a state match in the Section 319 program. Secretary Frink stated that funds allocated for this use will provide a maximum benefit for the improvement of water quality, and also for ensuring the economic viability of many North Dakota animal feeding operations, while complying with new federal regulations.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission provide \$200,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to the North Dakota Nonpoint Source Pollution Management program of the North Dakota Department of Health for a state match in the Section 319 program. This motion is contingent upon the availability of funds.***

***Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, and Governor Hoeven voted aye. Commissioners Halcrow, Swenson, and Thompson voted nay. Recorded voted was 6 ayes; 3 nays. Governor Hoeven announced the motion carried.***

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

The Dakota Water Resources Act of 2000 authorized the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in

North Dakota and possible options for meeting those needs. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation will be the sole preparer of the Needs and Options report, while the State of North Dakota (Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor) and the Bureau will jointly prepare the EIS.

The Red River Valley Water Supply Study will result in the completion of the Needs and Options Report and a draft EIS. These reports will consider and study needs assessment, hydrology, engineering, environmental, financial analysis, and biota transfer issues. The preparation of these reports essentially began in January, 2003, and scheduled for completion by December, 2005.

Dave Koland, manager, Garrison Diversion Conservancy District, provided a status report on the efforts of the Red River Valley Water Supply Study, which is attached hereto as ***APPENDIX "D"***.

**APPROVAL OF RESOLUTION OF  
CONDOLENCE TO FAMILY OF  
WARREN L. JAMISON, FORMER  
MANAGER OF GARRISON  
CONSERVANCY DISTRICT  
(SWC Project No. 237)  
(SWC Resolution No. 2203-08-506)**

A resolution of condolence to the family of Warren L. Jamison was considered by the Commission. Mr. Jamison served the people of North Dakota as manager of the Garrison Diversion Conservancy District upon his retirement from federal service in 1993 until he retired from the District

on December 31, 2002. On August 5, 2003, Mr. Jamison lost his battle with cancer.

***It was moved by Commissioner Swenson, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission approve Resolution No. 2003-08-506, Resolution of Condolence to the Family of Warren L. Jamison. SEE APPENDIX "E"***

**MISSOURI RIVER UPDATE  
(SWC Project No. 1392)  
(SWC Resolution No. 2003-08-507)**

Todd Sando reported that the drought conditions continue to persist in the Missouri River basin. As of July 24, 2003, system storage in the six

mainstem reservoirs was 44.7 million acre-feet (MAF), 16.5 MAF below the average system storage for the end of July and 3.8 MAF less than last year. Lake Sakakawea was at an elevation of 1826.6 feet msl, 4.7 feet lower than a year ago and 15.9 feet below its average end of July elevation.

-On July 1, 2003, the Corps of Engineers predicted runoff above Sioux City for 2003 to be 20.0 MAF, 79 percent of normal. The Corps is estimating that Lake Sakakawea will fall to an elevation of 1817.8 feet msl by the end of February, 2004. The lowest end of month elevation since the dam was constructed was 1815.6 at the end of April, 1991.

The elevation of Lake Oahe was 1586.6 feet msl on July 24, 2003, 4.8 feet lower than last year and 20.7 feet lower than its average end of July elevation. Under the most likely runoff simulation, the Corps is estimating that Lake Oahe will fall to 1587.1 feet msl by the end of February, 2004.

Mr. Sando reported on the ongoing lawsuits regarding the operation of the Missouri River. The Eighth Circuit Court of Appeals reversed the judgement of the District Courts in North Dakota and South Dakota and affirmed the judgement of the Nebraska District Court. The Nebraska District Court had issued a preliminary injunction ordering the Corps of Engineers to operate the river according to the Master Manual and the 2002 Annual Operating Plan.

On July 12, 2003, a District Judge in Washington, DC issued a preliminary injunction enjoining the Corps of Engineers from taking any action that "would be inconsistent with the provision relating to summer water flow contained in the 2000 biological opinion". The Corps was ordered to reduce releases from Gavins Point Dam to 21,000 cubic feet per second (cfs) on July 15, 2003. The Corps argued that this order was in conflict with the order of the Nebraska District Court and did not reduce the releases from Gavins Point. The Corps also unsuccessfully requested a stay of the order. On July 22, 2003, the Washington, DC District Court found the Corps and the Secretary of the Army to be in contempt of the July 12 order. The Court ordered the Corps to lower the discharges from Gavins Point Dam to 21,000 cfs until August 15 and no more than 25,000 cfs from August 15 to September 1, and that the reductions begin on July 25, 2003. If the Corps does not comply with this order, a fine of \$500,000 per day of noncompliance could be imposed.

On July 14, 2003, the North Dakota District Court denied North Dakota's motion for a preliminary injunction that would have required the Corps of Engineers to maintain a minimum cold water fish habitat of 200,000 acre-feet in Lake Sakakawea. The injunction was denied based on the likelihood that the Corps will be able to successfully argue that it is immune from suit under Section 511 of the Clean Water Act.

A federal judicial panel on multidistrict litigation consolidated the cases on July 24, 2003 and moved them to a Minnesota District Court. That court stayed the contempt order for two weeks, leaving the Corps free to follow the 2003 Annual Operating Plan. The Corps has indicated that they will increase releases from Gavins Point Dam as early as the second week of August, 2003 to meet navigation flow targets. Mr. Sando explained that a further two-week delay results in no conservation until almost the middle of August, 2003, leaving almost no time for low summer flows to conserve water.

***It was moved by Commissioner Swenson, seconded by Commissioner Halcrow, and unanimously carried, that the State Water Commission approve Resolution No. 2003-08-507, Relating to the New Missouri River Master Water Control Manual (Master Manual). SEE APPENDIX "F"***

**COMMENTS FROM SENATOR  
TOM FISCHER, FARGO, ND,  
REPRESENTING DISTRICT 46**

Senator Tom Fischer, Fargo, ND, representing District 46, provided a status report on the Maple River Dam project. He commented on the State

Water Commission's rural flood control and culvert cost share criteria and requested that the cost share policies be provided to all water resource districts and county engineers within North Dakota. Arrangements are also being finalized for a workshop on drainage to be held this fall.

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

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John Hoeven, Governor  
Chairman, State Water Commission

SEAL

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