

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

November 3, 2003

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on November 3, 2003. Lt. Governor-Chairman, Jack Dalrymple, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, 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
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

STATE WATER COMMISSION MEMBER ABSENT:

Robert Thompson, Member from Page

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

A request for a status report on the State Water Commission's maintenance building was included on the agenda.

**CONSIDERATION OF FINAL DRAFT
MINUTES OF AUGUST 6, 2003 STATE
WATER COMMISSION MEETING -
APPROVED**

The final draft minutes of the August 6, 2003 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Hanson, seconded by Commissioner Halcrow, and unanimously carried, that the final draft minutes of the August 6, 2003 State Water Commission meeting be approved as prepared.

**FINANCIAL STATEMENT -
AGENCY PROGRAM
BUDGET EXPENDITURES**

In the 2003-2005 biennium, the State Water Commission has two special line items - administrative and support services, and water and atmospheric resources. The expenditures through September 30, 2003 for the administrative and support services total \$253,779 of an appropriated \$2,076,235. The expenditures for water and atmospheric resources total \$7,123,852 of an appropriated \$157,782,619.

The Contract Fund spreadsheet, attached hereto as **APPENDIX "A"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$55,243,699, leaving a balance of \$40,939,658 available to commit to projects.

**FINANCIAL STATEMENT -
2003-2005 RESOURCES TRUST
FUND AND WATER DEVELOP-
MENT TRUST FUND REVENUES**

The Office of Management and Budget (OMB) developed the state's budget assuming the State Water Commission would spend 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 in the 2001-2003 biennium, with the majority of the money coming from the Water Development Trust Fund. 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, and to decrease the spending authority in the Water Development Trust Fund.

The oil extraction tax deposits into the Resources Trust Fund total \$1,258,688, or 2.2 percent behind the budgeted revenues. Deposits into the Water Development Trust Fund total \$103,934, which was not anticipated. The first scheduled payment is in April, 2004 and is projected to be \$10.3 million.

The Commission requested that the State Engineer and staff continue to provide a breakdown of the agency's program budget expenditures by divisions/projects similar to the information provided in the 2001-2003 biennium.

**APPROVAL OF FUNDING
FOR NORTH DAKOTA CLOUD
MODIFICATION PROGRAM
(SWC Files ACT/RES & AS/SWC/ARB)**

The North Dakota Cloud Modification Project (NDCMP) is an operational summertime cloud seeding program designed to decrease hail damage

and increase growing season rainfall. The counties presently participating in the program include Bowman, McKenzie, Mountrail, Ward, Williams, and part of Slope. Many of these counties have participated in the program for more than 40 years.

Local funds for the program are generated through county tax levies, which are currently capped at seven mills. Counties are expected to commit more than \$850,000 to the program in the 2003-2005 biennium. The biennial costs are expected to total approximately \$1.3 million, or about 9.5 cents per acre per year.

In considering the funding needs for North Dakota water projects, the 2003 Legislature identified \$224,358 in the 2003-2005 biennium to meet the state's cost share of the NDCMP. The state has provided cost share to participating program counties since 1976.

In addition to seeding operations, NDCMP funding has enabled the acquisition of \$292,000 in federal funds for cloud seeding research over the last two years. The Weather Damage Modification Program, administered by the Bureau of Reclamation, requires concurrent work in cloud seeding operations and a 50 percent in-kind match to receive federal funds.

Independent evaluations of the cloud seeding program indicate a 10 percent increase in rainfall, increases in wheat yields of 6 percent, and reductions in crop-hail damage of 45 percent. Studies conducted by the North Dakota State University in 1998 estimated the total economic benefit-to-cost ratio of the program at greater than 45.1.

It was the recommendation of the State Engineer that the State Water Commission approve funding, not to exceed \$225,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the North Dakota Cloud Modification Program, contingent upon the availability of funds.

It was moved by Commissioner Hanson and seconded by Commissioner Johnson that the State Water Commission approve funding, not to exceed \$225,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the North Dakota Cloud Modification Program. This motion is contingent upon the availability of funds.

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

**DROUGHT DISASTER LIVESTOCK
WATER ASSISTANCE PROGRAM -
APPROVAL OF ADDITIONAL
EXPENDITURE OF \$150,000
FOR PROGRAM
(SWC Project No. 1851)**

The Drought Disaster Livestock Water Assistance program, established by statute in 1991, is a state cost share assistance program administered by the State Water Commission that provides financial assistance to existing livestock producers with water

supply problems caused by drought. North Dakota Administrative Code Article 89-11 was adopted by the Commission on June 24, 1991 for management of this program.

Only water supply projects located in counties included in a drought disaster declaration and counties adjacent to those counties included in a drought disaster declaration are considered eligible for state cost participation. Types of projects that may be funded by the program include the construction of new wells, dugouts and stock dams that are spring-fed or have a high water table, pipeline installations, rural water system connections, and spring development. North Dakota Century Code chapter 61-34 limits assistance to individual producers of 50 percent of project costs, not to exceed \$3,500, and requires the State Engineer to provide the funds for the program.

The program was reactivated on July 1, 2002, following Governor Hoeven's issuance of North Dakota Drought Emergency Proclamation, Executive Order No. 2002-04, indicating that a drought emergency existed within 20 counties within the State of North Dakota. On August 15, 2002, the State Water Commission approved the allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the program for those counties included in the Governor's Proclamation and adjacent counties.

During the past 14 months, 95 producers have been reimbursed \$162,322. Approximately 50 percent of the projects receiving assistance have been for newly drilled wells, about 30 percent have been for spring developments, water table or spring fed dugouts, and the remaining projects have been extensions from existing rural water connections or existing wells.

Secretary Frink stated the program has been widely accepted by the state's livestock producers and there continues to be a need for livestock water supply assistance. The North Dakota Agricultural Statistics Services reported on October 20, 2003 that statewide the topsoil moisture supplies were rated 70 percent short to very short, and livestock water supplies were rated 55 percent short to very short. Applications are currently being processed which, if approved for cost share funding, would obligate the \$200,000 previously allocated by the Commission for the program.

It was the recommendation of the State Engineer that the State Water Commission approve an additional allocation of \$150,000 for the Drought Disaster Livestock Water Assistance program for those counties included in the Governor's Proclamation and adjacent counties for those producers who were not able to secure cost share funding from other sources.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve an additional allocation of \$150,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the Drought Disaster Livestock Water Assistance program for those counties included in the Governor's Proclamation and adjacent counties for producers who were not able to secure cost share funding from other sources. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
CITY OF FARGO FOR STATE COST
PARTICIPATION IN 32ND AVENUE
SOUTH DAM MODIFICATIONS
(SWC Project No. 644)**

A request from the city of Fargo was presented for the Commission's consideration for state cost participation for modifications to the 32nd Avenue South Dam. The city owns the dam and is partnering with the Corps of Engi-

neers to modify the dam to provide improved dam safety and fish migration characteristics. The Corps will administer the project under the Section 206 Authority (Aquatic Ecosystem Restoration). The proposed improvements are similar to those previously completed at the Midtown Dam and 12th Avenue North Dam in Fargo.

The 32nd Avenue South Dam was constructed in 1933 for water supply purposes. It is a sheet-pile structure with a spillway length of 104 feet and a height of about 10 feet. The proposed modifications to the dam involve construction of a rock slope fishway downstream of the dam that would have the appearance and function of natural rock rapids. Besides allowing fish to migrate to important upstream spawning habitat, the rock rapids will create habitat for fish and aquatic organisms. Other benefits would include improved public safety, aesthetics and recreational fishing opportunities. A sovereign lands permit (No. S-1343) has been issued authorizing the project. A construction permit and water use permit are currently being processed for the dam because these permits were not obtained when the dam was originally constructed. Construction is anticipated for the winter of 2004.

The total estimated cost of the project is \$1,035,000, of which \$362,250 (35 percent) is the local cost eligible for state cost share participation. The State of Minnesota will contribute \$175,329 (48.40 percent) and the State of North Dakota will contribute a total of \$186,921 (51.60 percent) of the local need. The Corps of Engineers will contribute 65 percent (\$672,750) towards the total estimated cost of the project. The request before the State Water Commission is for a 21.10 percent cost share participation in the amount of \$76,435.

It was the recommendation of the State Engineer that the State Water Commission approve a conditional state cost share participation of 21.10 percent of the eligible costs, not to exceed \$76,435 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for the dam safety and recreation modifications to the 32nd Avenue Fargo South Dam.

It was moved by Commissioner Hillesland and seconded by Commissioner Halcrow that the State Water Commission approve a conditional state cost share participation of 21.10 percent of the eligible costs, not to exceed \$76,435 from the funds appropriated to the State

Water Commission in the 2003-2005 biennium, for the dam safety and recreation modifications to the 32nd Avenue Fargo South Dam. This motion is contingent upon the availability of funds, and issuance of the required permits.

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

**APPROVAL OF REQUEST FROM
STEELE COUNTY WATER RESOURCE
DISTRICT FOR STATE COST PARTICI-
PATION IN STEELE-TRAILL
DRAIN NO. 17
(SWC Project No. 1919)**

A request from the Steele County Water Resource District was presented for the State Water Commission's consideration for state cost participation to construct Steele-Trail Drain No. 17. The purpose of the project is to reduce flood damage to agricultural properties.

On December 6, 2002, the State Water Commission conditionally approved a 35 percent state cost share participation, not to exceed \$45,127 for the Steele-Trail Drain No. 17 project. The design of the drain was revised and, therefore, the funds approved for the project were returned to the appropriate account at the end of the 2001-2003 biennium.

The assessment drain will be located in Sections 23, 24, 25 and 26 of Tier 147 North, Range 54 West (Enger Township - Steele County), and in Sections 19, 20, 21, 29 and 30 of Tier 147 North, Range 53 West (Viking Township - Traill County). The design will outlet into the grass coulee going to the Goose River in Section 21 of Viking Township and will consist of approximately 7 miles of channel. The excavated channel will have side slopes of 6:1 and a bottom width of 12 feet. The project will include the installation of five associated culverts and five drop structures. A drain permit application has not yet been received for this project, nor has the assessment vote been scheduled.

The project engineer's cost estimate is \$292,217, of which \$263,809 is considered eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$92,333). The request before the State Water Commission is for a 35 percent cost share in the amount of \$92,333.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a cost share of 35 percent of the eligible items, not to exceed \$92,333 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, for state cost participation in the Steele-Trail Drain No. 17 project.

It was moved by Commissioner Halcrow and seconded by Commissioner Hillesland that the State Water Commission conditionally approve state cost share participation in the Steele-Traill Drain No. 17 construction project at 35 percent of the eligible items, not to exceed \$92,333 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds, attainment of a positive local vote within six months of the State Water Commission's funding approval, satisfaction of all permit requirements, and approval of the project's final plans and specifications.

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

**APPROVAL OF REQUEST FROM
DEVILS LAKE JOINT WATER
RESOURCE BOARD FOR STATE
COST PARTICIPATION IN
2004-2009 SWEETWATER-
MORRISON LAKE STORAGE
CONTRACTS
(SWC Project No. 1746)**

The Sweetwater-Morrison Lake outlet structure was redesigned in 1998 to accommodate an additional 0.50-foot rise above the natural outlet elevation of 1459.0 feet msl. This rise to 1459.5 feet msl added 3,500 acre-feet of storage and required storage easements on the property adjacent to

the two lakes. The easements were for the land between the elevations inundated with the rise. The landowners agreed to a five-year easement at a cost of \$100 per acre, equivalent to \$20/acre/year. The total cost of the easements was approximately \$27,750 and was paid from the State Water Commission's water storage funds.

Many of the easements were signed in the fall of 1998 near the completion date of the outlet structure construction. Because those easements terminated in October, 2003, and in early 2004, the Devils Lake Joint Water Resource Board researched the possibility of renewing the contracts. All of the landowners favored a five-year easement.

Secretary Frink explained that upper basin storage is part of the three-pronged approach to water management in the Devils Lake basin and, therefore, funding \$100 per acre for five years of storage, not to exceed \$27,750, is appropriate. If the landowners and the Board negotiate a higher payment, the unfunded balance will be the responsibility of the Joint Board.

It was the recommendation of the State Engineer that the State Water Commission approve the request by the Devils Lake Joint Water Resource Board for state cost participation in the 2004-2009 Sweetwater-Morrison lake storage contracts at \$100 per acre, not to exceed \$27,750 from the funds appropriated to the State Water Commission in the 2003-2005 biennium.

It was moved by Commissioner Hofstad and seconded by Commissioner Olin that the State Water Commission approve the request by the Devils Lake Joint Water Resource Board for state cost participation in the 2004-2009 Sweetwater-Morrison lake storage contracts at \$100 per acre, not to exceed \$27,750 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
WALSH COUNTY WATER RESOURCE
DISTRICT FOR STATE COST SHARE
PARTICIPATION IN THE IMPROVE-
MENT RECONSTRUCTION OF WALSH
COUNTY DRAIN NO. 27
(SWC Project No. 1258)**

A request from the Walsh County Water Resource District was presented for the State Water Commission's consideration for state cost participation in the improvement reconstruction of Walsh County Drain No. 27. A positive assessment vote has been recorded for this project. The purpose of

the project is to reduce flood damage to agricultural properties, and the approved Permit to Drain (No. 2987) is on file.

Walsh County Drain No. 27 was originally constructed in 1961 in Sections 7, 8, 9, 10, 11 and 14 of Tier 156 North, Range 51 West (Pulaski Township - Walsh County). The drain is approximately 4.5 miles long and outlets into the Forest River through a concrete chute. Severe erosion of the channel has occurred over the years and landowners have attempted to improve the channel resulting in undercutting a portion of the drain channel. The improvement project consists of reconstructing the eroded channel to a six-foot bottom width and flattening the side slopes to 3:1. A sediment analysis was provided indicating that no sediment would be removed as a result of the design of the drain. A new 48-inch corrugated metal pipe will be installed in the northwest quarter of Section 17 and the existing pipes along the entire length of the drain will be salvaged and reused. Other construction items consist of removing the sod on the inslope, excavation, seeding, engineering, surveying and quality control.

The total estimated cost of the project is \$100,896, of which \$99,531 is considered eligible for state cost participation. Under the current State Water Commission's rural flood control cost share criteria, \$99,531 is considered eligible for a 35 percent cost share (\$34,836). The request before the State Water Commission is for a 35 percent state cost share participation in the amount of \$34,836.

It was the recommendation of the State Engineer that the State Water Commission approve the request by the Walsh County Water Resource District for state cost participation in the Walsh County Drain No. 27 improvement reconstruction project at 35 percent of the eligible costs, not to exceed \$34,836 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, contingent upon the availability of funds.

It was moved by Commissioner Halcrow and seconded by Commissioner Olin that the State Water Commission approve the request by the Walsh County Water Resource District for state cost participation in the Walsh County Drain No. 27 improvement reconstruction project at 35 percent of the eligible costs, not to exceed \$34,836 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
NORTH DAKOTA IRRIGATION
CAUCUS FOR ALLOCATION OF
\$100,000 FOR STRATEGIC PLAN
(SWC File AOC/IRR)**

A request from the North Dakota Irrigation Caucus was presented for the State Water Commission's consideration of state cost participation in the amount of \$50,000 for each of the years 2004 and 2005 (total of \$100,000) to provide a foundation for undertaking the initiatives outlined in its Strategic Plan for Irrigation Development in North Dakota. The draft Strategic Plan is attached hereto as **APPENDIX "B"**.

The Strategic Plan consists of important components necessary for the development of irrigation and diversification of the state's economic base. These components consist of communications and coordination, irrigation development, marketing, funding and financing, research related to irrigation, and the pursuit of federal hydropower and affordable energy. These elements provide the basis for substantially increasing the irrigated acreage and economic output in North Dakota.

It was the recommendation of the State Engineer that the State Water Commission support the efforts of the North Dakota Irrigation Caucus with an allocation of \$50,000 for each of the years 2004 and 2005, not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to continue to carryout the activities outlined in the Strategic Plan for Irrigation Development in North Dakota.

It was moved by Commissioner Hanson and seconded by Commissioner Hillesland that the State Water Commission allocate \$50,000 for each of the years 2004 and 2005, not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to continue to carryout the activities outlined in the Strategic Plan for Irrigation Development in North Dakota. This motion is contingent upon the availability of funds.

Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, and Lt. Governor Dalrymple voted aye. Commissioner Halcrow voted nay. Recorded vote was 7 ayes; 1 nay. Lt. Governor Dalrymple announced the motion carried.

**APPROVAL OF REQUEST FROM
NORTH DAKOTA IRRIGATION
CAUCUS FOR STATE COST
PARTICIPATION IN NORTH
DAKOTA HIGH VALUE AND
VALUE ADDED OPPORTUNITIES
(SWC File AOC/IRR)**

A request from the North Dakota Irrigation Caucus was presented for the State Water Commission's consideration for state cost participation of \$590,600 to enhance irrigation development opportunities by coordinating marketing efforts and developing an infrastructure. The proposed plan is attached hereto as **APPENDIX "C"**.

Under the proposal, certain marketing and irrigation activities of the Departments of Commerce and Agriculture, State Water Commission, North Dakota Irrigation Caucus, North Dakota State University's High Value Crop Offices, and Experiment and Research Stations would be coordinated by the Governor's office. The coordinated efforts would be directed at such items as malting barley, corn (ethanol) and vegetables. The total estimated cost is \$5,906,000. A coalition of private and public entities would contribute funding as outlined in the proposal. The request before the State Water Commission is for a 10 percent state cost participation in the amount of \$590,600.

Herb Grenz, North Dakota Irrigation Caucus, Steve Knorr and Rod Holth, Commercial Vegetable Growers, offered comments in support of the proposal. Mr. Grenz said "Irrigation has an exciting

future in North Dakota and, if successful in increasing irrigation from 250,000 to 500,000 acres, an increase in gross production revenues of nearly \$100 million can be expected. There are many people who have a passion for North Dakota and for helping strengthen the economy and improve the quality of life. Irrigation is an important aspect of that overall effort.”

It was the recommendation of the State Engineer that the State Water Commission approve a state cost participation of 10 percent of the eligible costs, not to exceed \$590,600 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to enhance irrigation development opportunities by coordinating marketing efforts and developing a critical infrastructure for malting barley, corn, and vegetables.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve a state cost participation of 10 percent of the eligible costs, not to exceed \$590,600 from the funds appropriated to the State Water Commission in the 2003-2005 biennium, to enhance irrigation development opportunities by coordinating marketing efforts and developing a critical infrastructure for malting barley, corn, and vegetables. This motion is contingent upon the availability of funds.

In discussion of the motion, the State Water Commission members deliberated at length on the proposal and directing state funds towards the marketing of high value crops and value added opportunities. Based on the discussion, it was concluded that utilizing state funds for expanding irrigation creates new economic opportunities by further developing North Dakota's soil and water resources resulting in an improved quality of life for its citizens. Although there was support for the proposal, the Commission members questioned whether the State Water Commission is the appropriate agency to provide state funds.

Commissioners Hanson, Hillesland, Hofstad, Johnson, Olin, and Lt. Governor Dalrymple voted aye. Commissioners Halcrow and Swenson voted nay. Recorded vote was 6 ayes; 2 nays. Lt. Governor Dalrymple announced the motion passed.

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

Devils Lake is currently at elevation 1446.30 feet msl. At this elevation, the lake has a surface area of 119,600 acres and storage of 2.34 million acre-feet of water.

In the months of August through October, 2003, the Devils Lake basin received near or below normal precipitation with some locations receiving only two inches of rain over the three months.

Due to the lack of precipitation and above normal temperatures, the basin has continued to dry resulting in the recent decline in the lake's elevation. Some of the basin remains wet, but the storage available in the upper basin has increased over the last several months, which will reduce the runoff to Devils Lake during normal rainfall events and from the snowmelt runoff next spring.

The current elevation of Stump Lake is 1414.5 feet msl. The flows in the Jerusalem channel have dropped off significantly from 20-25 cubic feet per second (cfs) in August to less than 5 cfs in mid-October, 2003. Elevation data of the overflow area in the Jerusalem channel was gathered by the State Water Commission survey crew. A more defined channel has developed and the elevation of the divide has lowered to 1446.3 feet msl. At its current elevation, Stump Lake covers 8,090 acres and is storing 145,500 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 Corp of Engineers announced that a 300 cubic feet per second (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, and comments were accepted until June 19, 2003.

On October 14, 2003, the Corps of Engineers signed a Record of Decision (ROD) recommending that an outlet be constructed from Devils Lake to reduce flood damages and to reduce the risk of a natural overflow from Devils Lake.

The recommendation includes construction of a 300 cfs outlet to pump water from Pelican Lake, which is part of Devils Lake, and then to the Sheyenne River. The plan consists of installing pumping facilities, a regulation reservoir to manage flows to the Sheyenne River, an open channel and a buried pipeline, as well as mitigation features to avoid or minimize effects on the environment.

The Corps of Engineers claims that environmental mitigation features are integral to the project including the acquisition of management of 6,000 acres of riparian habitat, protecting the Sheyenne River from erosion, maintaining high-flow bypass channels to provide for critical aquatic habitat, establishing water quality and quantity constraints where the water enters the Sheyenne River, and building a sand filter to minimize the risk of biota transfer from the lake into the Sheyenne River.

The Corps contends that the plan complies with environmental regulations provided that the State of North Dakota issues a Clean Water Act Section 401 water quality certification and a Section 402 permit. Any future construction and operation is also dependent upon receipt of assurances from the U.S. Secretary of State that the project will not violate the Boundary Waters Treaty Act of 1909.

In order to proceed with construction of the federal outlet, the Corps of Engineers would require assurance of the cost share provisions from the local sponsor, which is the State of North Dakota. It does not appear that the state currently has or will have the funds necessary for the 35 percent cost share, which would be approximately \$65 million. Steps may be taken in the near future to see if the local percentage could be lowered.

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 the North Dakota 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).

On August 6, 2003, the State Water Commission approved the award of the Devils Lake Emergency Outlet, Initial Canal Segments, Contract 2, to Park Construction, Inc., Minneapolis, Minnesota, in the amount of \$766,614. The contract is for 3.2 miles of 300 cfs open channel. Park Construction commenced construction on October 21, 2003, and anticipates a 16-week construction period.

All of the required permits have been received for the outlet project including the State Engineer's Drain Permit, Sovereign Lands Permit, and the 402 Discharge Permit from the North Dakota Department of Health. The contractor acquired a Stormwater Discharge Permit from the North Dakota Department of Health before construction began.

A hearing was held on September 22, 2003 to provide several groups, including People to Save the Sheyenne, the Peterson Coulee Outlet Association, and the Benson County Commission who are opposed to the state's outlet project, an opportunity to present testimony on the State Engineer's Drain Permit which was approved on July 2, 2003. On October 2, 2003, the State Engineer upheld his earlier decision of granting the permit to the state for the construction of the outlet project. On October 31, 2003, the State Engineer's decision was appealed to District Court.

The state received the 402 Water Quality Discharge Permit from the North Dakota Department of Health on August 22, 2003. The Department received several requests to reconsider the permit, therefore, the comment period for the permit was extended until October 20, 2003.

The Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency have requested the Environmental Protection Agency (EPA) to intervene in the 402 Water Quality Discharge Permit process.

The Commission staff acquired the easements for the parcels of land along the project route. After numerous attempts, negotiations failed with one landowner who owns a majority of the land that is included in Contract 2. In order to begin construction on this contract this

fall, the quick take condemnation authority that was granted to the State Water Commission was initiated. The landowner has filed an appeal to contest the value of the land condemned.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM;
MR&I COMMITTEE REPORT; AND
APPROVAL OF FISCAL YEAR
2003 MR&I BUDGET
(SWC Project No. 237-03)**

The State Water Commission and the Garrison Diversion Conservancy District Municipal, Rural and Industrial Water Supply program (MR&I) committee met on September 30, 2003 to discuss the project status and the funding of MR&I projects. The issues

were discussed at length, and the committee recommended funding from the MR&I Water Supply program and the Water Development and Research Fund for the projects which are outlined in the Commission staff memorandum dated October 27, 2003, and attached hereto as **APPENDIX "D"**:

Northwest Area Water Supply (NAWS) Project - Minot Component: Construction has been completed on the first contract for 9.5 miles of 36-inch and 30-inch pipeline from the Minot water treatment plant south to a point 5 miles south of the North Dakota Agricultural Experiment Station. Construction is 35 percent complete on the second contract for 9.5 miles of 36-inch and 30-inch pipeline from the experiment station south to Highway 23. An additional \$1,219,000 would provide for continued construction and design, with the next construction bids to be let this winter. Discussions are being held with the Bureau of Reclamation on using the Snake Creek pump station as a potential intake for the project by removing one of the three pumps and installing the NAWS pump.

The MR&I committee recommended a federal grant of up to \$1,219,000, not to exceed 65 percent of the eligible project costs.

Williams Rural Water Expansion: This existing rural water system is planning an expansion in Williams County. The city of Williston provides bulk water to the rural water system and will provide for the expansion. The project would add 105 rural users, a school, and four industrial users with an estimated cost of \$3.027 million. The project has east, central, west, and north units. The system could be constructed in two phases. One phase could have the west, central, and north units at a cost of \$1.51 million, and the other phase could have the east unit at a cost of \$1.51 million. A 70 percent grant on design and construction would be \$1,060,000. The feasibility study cost was \$71,000 and was approved for a MR&I grant of \$40,000.

The MR&I committee recommended a federal grant of up to \$1,060,000, not to exceed 70 percent of the eligible project costs.

Secretary Frink presented and recommended the proposed allocation of \$2,557,785 Fiscal Year 2003 MR&I Water Supply program budget for the State Water Commission's consideration, contingent upon the availability of federal funds and subject to future revisions. On October 3, 2003, the Garrison Diversion Conservancy District board of directors approved the proposed budget for Fiscal Year 2003:

<u>Project</u>	<u>Activity</u>	<u>FY 2003 Proposed</u>
NAWS (Minot)	D&C	\$ 1,219,000
Williams Rural Water Administration	D&C	\$ 1,060,000
		\$ 278,785
Total		\$ 2,557,785

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve the proposed allocation of \$2,557,785 Fiscal Year 2003 MR&I Water Supply program budget as recommended by the State Engineer. This motion is contingent upon the availability of federal funds and is subject to future revisions.

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

In discussion of the MR&I Water Supply program, the Commission members stressed the importance that the state's critical water needs must be considered in the most cost effective way. Commissioner Swenson requested that the MR&I committee become more involved in the program criteria/allocation process, and that State Engineer and the Manager of the Garrison Diversion Conservancy District re-visit the MR&I program funding criteria and the previous project priority ranking system.

GARRISON DIVERSION PROJECT - APPROVAL OF FUNDING FROM THE WATER DEVELOPMENT AND RESEARCH FUND FOR MCKENZIE COUNTY RURAL WATER, PHASE 2 (SWC Project No. 237-03)

A request was presented for the State Water Commission's consideration for the expenditure of \$360,000 from the Water Development and Research Fund for Eastern McKenzie County Rural Water System, Phase 2.

The McKenzie County Water Resource District requested grant funding for obtaining the Phase 2 water supply from the northwest segment of the Three Affiliated Tribes Fort Berthold Rural Water. A Phase 2 feasibility study was completed and the preferred alternative is

to obtain bulk water supply from the Fort Berthold Rural Water. Serving eastern McKenzie County (Phase 2) would require upsizing Fort Berthold's pipeline capacity. Fort Berthold opened bids on their project, and the increased capacity features for McKenzie was bid as an alternate. The cost for these features is \$515,000 and a 70 percent grant requires \$360,000.

It was the recommendation of the State Engineer that the State Water Commission approve a 70 percent grant, not to exceed \$360,000 from the Water Development and Research Fund, for the Eastern McKenzie County Rural Water System, Phase 2. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's board of directors approved the request at its October 3, 2003 meeting.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve a 70 percent grant, not to exceed \$360,000 from the Water Development and Research Fund, for the Eastern McKenzie County Rural Water System, Phase 2. This motion is contingent upon the availability of funds, McKenzie County Rural Water System entering into a water service agreement, and is subject to future revisions.

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

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

A request was presented for the State Water Commission's consideration for a 65 percent grant of \$37,700 from the Water Development and Research Fund for the Mountrail County Rural Water feasibility study.

Mountrail County Rural Water has requested grant funding for a feasibility study for a new rural water project serving over 250 potential rural water users. The Northwestern Dairy, two campgrounds along Lake Sakakawea, Brendel's resort area, the cities of Plaza and Ryder, and the U.S. Air Force sites would be served. Some of the users are included in the proposed northeast segment of the proposed Fort Berthold Rural Water Supply System. Mountrail is working with the Three Affiliated Tribes to ensure that water system planning incorporates the needs for the entire area and the possibility of using the Tribe's system for a bulk water supply. The feasibility study has an estimated cost of \$85,000. Garrison Rural Water has agreed to provide \$27,000 towards the study.

It was the recommendation of the State Engineer that the State Water Commission approve a 65 percent grant, not to exceed \$37,700 from the Water Development and Research Fund, for the Mountrail County Rural Water System feasibility study. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's board of directors approved the request at its October 3, 2003 meeting.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve a 65 percent grant, not to exceed \$37,700 from the Water Development and Research Fund, for the Mountrail County Rural Water System feasibility study. This motion is contingent upon the availability of funds, coordination with North Central Rural Water Consortium studies, and is subject to future revisions.

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

**GARRISON DIVERSION PROJECT -
APPROVAL OF FUNDING FROM
THE WATER DEVELOPMENT AND
RESEARCH FUND FOR PARK RIVER
WATER SYSTEM IMPROVEMENTS
(SWC Project No. 237-03)**

A request was presented for the State Water Commission's consideration for a 15 percent grant of \$550,000 from the Water Development and Research Fund for the Park River Water System improvements project.

The city of Park River has requested a non-federal grant to develop a project using the Fordville aquifer as a new primary source of water. The city's current water supply is from the Homme reservoir, which has quality and potential quantity problems. The project will acquire the surplus wells, reservoir/booster station, and transmission lines from the military sites no longer needed near Cavalier and Nekoma. A transmission line will connect these facilities to the city where renovations and control system improvements will be made to the existing water treatment plant. The city is planning to complete an engineering study and report on the project. The project allows the city to obtain a high quality ground water source with an estimated cost of \$3,666,800. The city obtained a 55 percent EPA grant and the non-federal grant will maintain an affordable monthly water rate.

It was the recommendation of the State Engineer that the State Water Commission approve a 15 percent grant, not to exceed \$550,000 from the Water Development and Research Fund, for the City of

Park River water system improvements. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's board of directors approved the request at its October 3, 2003 meeting.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve a 15 percent grant, not to exceed \$550,000 from the Water Development and Research Fund, for the City of Park River Water System improvements. This motion is contingent upon the availability of funds and is subject to future revisions.

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

**GARRISON DIVERSION PROJECT -
APPROVAL OF FUNDING FROM
WATER DEVELOPMENT AND
RESEARCH FUND FOR TRAILL
COUNTY RURAL WATER
(SWC Project No. 237-03)**

A request was presented for the State Water Commission's consideration **THE** for a 65 percent grant of \$42,250 from the Water Development and Research Fund for the Traill County Rural Water feasibility study.

Preliminary studies have been completed to address the water needs of the Traill county rural users, and the cities of Hillsboro and Mayville. The estimated cost of the feasibility study is \$158,000, which will address the evaluation for a regional system to meet water needs of the area, future Environmental Protection Agency (EPA) water quality regulations, and evaluate a potential water source in the Galesburg aquifer. The Red River Valley Water Supply study has included the needs of this area in its preliminary work.

It was the recommendation of the State Engineer that the State Water Commission approve a 65 percent grant, not to exceed \$42,250 from the Water Development and Research Fund, for the Traill County Rural Water feasibility study. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund. The District's board of directors approved the request at its October 3, 2003 meeting.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve a 65 percent grant, not to exceed \$42,250 from the Water Development and Research Fund, for the Traill County Rural Water feasibility study. This motion is contingent upon the availability of funds and is subject to future revisions.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously 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 the reports are 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 "E"**.

**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 been turned over to the Southwest Water Authority for service. The contract is essentially complete with only cleanup, reclamation, and administrative items remaining.

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 was November 1, 2003.

All pumps and valves under this contract have been installed. Remaining work consists of electrical work at Jung Lake and startup tests of the new pumps. The contractor expects to be finished by the second week in November, 2003.

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 through 6-inch diameter PVC pipe. The contract includes two booster pump stations and several pressure reducing valve vaults. The time for completion of contract 2-5B is 430 days after award, but no later than September 4, 2004. The contract also include an intermediate completion date of December 31, 2003 for those portions of the pipeline and related appurtenances located on the Little Missouri National Grasslands and the portions of pipeline located on private land within the Little Missouri National Grasslands area. The completed pipeline would then be in one contiguous segment including the service line to the city of Medora which involves about 22.1 miles of pipeline. The reason for the intermediate completion date is the anticipated complications in complying with the terms of the U.S. Forest Service permit received for construction on the grasslands. No construction activity is allowed in some grasslands during specified periods of time because of sensitive animal species such as eagles, falcons, and other raptors, bighorn sheep, and prairie dogs.

As of October 24, 2003, the contractor had installed about 15.8 miles of pipe and was well into the Little Missouri National Grasslands. The bore across the Little Missouri River south of Medora has been completed. Crews have also finished with construction in the bighorn sheep lambing area west of the Little Missouri River.

Contract 5-9 - Belfield Reservoir: Contract 5-9 was awarded to Advance Tank & Construction, Wellington, Colorado. The contract is for a welded and painted steel potable water reservoir 52 feet in diameter by 48 feet high with a capacity of approximately 750,000 gallons. The reservoir is located east of Belfield. The contract has an intermediate completion date of November 22, 2003 for the foundation, including the inlet and outlet piping, and the drain and underdrain system within the foundation and all backfill. The completion date for the contract is August 1, 2004.

The contractor began work the second week of October, 2003, and has completed the inlet and outlet piping and drain and underdrain system within the foundation and has started preparations for pouring the foundation ringwall. It is anticipated that the intermediate completion date will be met.

Second New England Tank: On September 23, 2003, the 11-month inspection of the second New England tank was conducted. The inspection found that the floor area along the southwestern wall to the north and continuing to the southeast had deflected downward 3 1/2 to 5 inches at a distance of 2 to 4 feet from the tank wall. Apparently, there has been some settlement of the foundation material or the sand cushion beneath the tank was insufficient. The foundation for this tank has been subcontracted out to Northern Improvement Co. The floor plates were removed to permit inspection of the foundation on October 29, 2003. The tank is currently empty and will remain out-of-service until the contractor advises in writing whether or not the tank can be put back into service. It is anticipated that the contractor will schedule repair work early in the spring of 2004.

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

<u>Contract</u>	<u>Status</u>	<u>Facility</u>	<u>Description</u>	<u>Estimated Cost</u>
2-5B	Awarded	Medora-Beach Main Transmission Pipeline	46.4 miles 12"-6"	\$4,976,000
5-9	Awarded	Belfield Reservoir	750,000 gallons	656,000
5-10	Award Pending	Fryburg Standpipe	480,000 gallons	452,000
5-11	Future	Beach Standpipe	420,000 gallons	500,000
7-8A	Future	Fryburg SA	27 miles, 21 users	780,000
6	Future	Telemetry		<u>176,000</u>
Total				\$7,540,000

Mr. Lennington explained that the table shows that estimated costs are about \$125,000 less than had been projected originally. He said this is because the bids on contracts 2-5B and 5-9 were somewhat lower than expected. A number of users have been added to contract 7-8A and the cost of that contract may well be somewhat higher than shown in the table.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF POINT OF DELIVERY
AMENDMENT TO CITY OF MEDORA
WATER SERVICE CONTRACT
(SWC Project No. 1736)**

Southwest Pipeline Water Service Contract SWC-1736-18 between the State Water Commission and the city of Medora states in section VI.C that the point of delivery of water is “at

station 2165 Dickinson to Beach segment at a point 550 feet west of six inch city line in south Medora.” This contract was executed by the State Water Commission on December 6, 1982. James Lennington explained that for many reasons, the points of delivery in the contracts are commonly amended once final design of the pipeline connection to a city is completed.

The point of delivery described in the city of Medora’s original contract is about 320 feet south and about 475 feet west of the location chosen for the Medora master meter vault on land owned by the Theodore Roosevelt Medora Foundation. The change was made because of the proximity to the city’s distribution system and its water treatment plant. The change in location was approved by the Medora City Council and by the Southwest Water Authority on September 8, 2003.

Once the facilities have been constructed and put into service, the agreement transferring ownership and responsibility for operation and maintenance of the facilities beyond the point of delivery to the city will be presented to the State Water Commission for consideration. The city of Medora has agreed to this arrangement.

It was the recommendation of the State Engineer that the State Water Commission approve the point of delivery amendment to the city of Medora’s Southwest Pipeline Project Water Service Contract 1736-18.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the point of delivery amendment to the city of Medora’s Southwest Pipeline Project Water Service Contract 1736-18. SEE APPENDIX “F”

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF CAPITAL REPAYMENT
RATES, AND REPLACEMENT AND
EXTRAORDINARY MAINTENANCE
RATE FOR 2004
(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 its 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. The State Water Commission has the responsibility of adjusting the capital repayment rates annually.

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, and the replacement and extraordinary maintenance rate for 2004 were presented for the Commission's consideration:

Contract Users:	\$ 0.89	per thousand gallons
Rural Users:	\$ 27.07	per month
Replacement and Extraordinary Maintenance:	\$ 0.35	per thousand gallons

It was the recommendation of the State Engineer that the State Water Commission approve the projected capital repayment rates for 2004 for the Southwest Pipeline Project of \$0.89 per thousand gallons for contract users; \$27.07 per month for rural users; and a rate for replacement and extraordinary maintenance of \$0.35 per thousand gallons.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve the following capital repayment rates, and the replacement and extraordinary maintenance rate for 2004 for the Southwest Pipeline Project:

- 1) Contract Users: \$ 0.89 per thousand gallons*
- 2) Rural Users: \$ 27.07 per month*
- 3) Replacement and Extraordinary Maintenance Rate:
\$ 0.35 per thousand gallons*

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

**SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 5-10,
FRYBURG TANK, TO ADVANCED
TANK & CONSTRUCTION,
WELLINGTON, COLORADO
(SWC Project No. 1736)**

On October 28, 2003, bids were opened for Southwest Pipeline Project contract 5-10, Fryburg Tank. This contract is for a potable water storage reservoir 37 feet in diameter by 64 feet high, with a capacity of

approximately 507,000 gallons. The reservoir is located approximately one mile south and one mile west of Fryburg. The bid documents allowed for either a welded and painted steel or a glass-coated bolted steel water storage reservoir.

There were three bids received from the following for contract 5-10: Advance Tank & Construction, Wellington, CO; Maquire Iron, Inc., Sioux Falls, SD; and Engineering America, Inc., Oakdale, MN. The apparent low bid received was \$355,275 from Advance Tank & Construction, Wellington, CO, which was \$44,625 under the engineer's estimate.

James Lennington explained the contract documents allow the Commission to select the most advantageous bid. The project engineer reviewed the bids received and recommended the award of

contract 5-10 to Advance Tank & Construction, Wellington, CO. The award of the contract and notice to proceed is dependent on the completion of the contract documents, approval by USDA, Rural Development, and a legal review. The contract documents specify that the tank must be completed no later than August 15, 2004.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 5-10, Fryburg Tank, in the amount of \$355,275, to Advance Tank & Construction, Wellington, CO.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the award of Southwest Pipeline Project contract 5-10, Fryburg Tank, in the amount of \$355,275, to Advance Tank & Construction, Wellington, CO.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Johnson, Olin, Swenson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple 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 Pipeline: The contractor, S. J. Louis, Waite Park, Minnesota, has completed work on contract 2-1A, with the final inspection held on September 24, 2003. The completion date for this contract was originally November 1, 2002. When two additional miles of pipeline were added to the contract through a change order, the contractor was given until July 15, 2003 to complete the contract. The contractor exceeded that date due to extenuating circumstances. The contract specifies that liquidated damages in the amount of \$1,500 per day can be assessed for each day beyond the contract completion date. Extra costs incurred relate to inspection and contract administration. A letter will be sent to the contractor considering the circumstances with a final determination of the costs.

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 located adjacent to U.S. Highway 83 just south of the bored and cased highway crossing. The contract completion date is October 31, 2003, but an extension until November 14, 2003 has been granted to the contractor because of delays in awarding the contract.

The contractor has completed approximately 64 percent of the pipe laying on this contract and has used about 88 percent of the available time. It appears unlikely that they will complete the contract within the time specified even with the time extension. The contract specifies that liquidated damages in the amount of \$1,500 per day can be assessed to the contractor for each day beyond the contract completion date. If the contractor does not meet the completion date a decision will have to be made on imposing liquidated damages.

The workmanship of the contractor in laying pipe has been satisfactory, but production has been lacking. Other concerns which have developed include coordination with vendors to get shop drawings completed in a timely fashion, coordination of deliveries, right-of-way reclamation, and compliance with the North Dakota Department of Transportation permit.

Contract 2-1C - Pretreated Water Pipeline Station 1600+00 to Max Pumping Station: Contract 2-1C consists of approximately 11.4 miles of 36-inch steel or ductile iron pipe extending from N.D. Highway 23 to the city of Max. Plans are currently being completed for this contract which will be submitted to the Bureau of Reclamation and the North Dakota Department of Health for their review. It is anticipated that bids will be opened on contract 2-1C in January, 2004.

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

The State Water Commission exercised its authority under N.D.C.C. § 61-02-23.1 to condemn certain properties of three landowners for the Northwest Area Water Supply (NAWS) project.

The landowners had appealed condemnation of pipeline easements across their property and have agreed to a settlement with the State Water Commission concerning compensation for increased costs to install sewer service on their property.

James Lennington explained the following terms of the landowners settlement agreement. He said this had been the major issue with the landowners in the original negotiations on compensation for the easements. The Commission believes that the NAWS project will not create any future costs for the landowners, or subsequent landowners, if the property is connected to the city of Minot's sewer system:

- 1) The landowner agrees to connect to the city of Minot's sanitary sewer in the most economically feasible manner and to consult with the State Water Commission in choosing the option.
- 2) If, and when, the landowner connects to the city of Minot's system and there are extra costs due to the presence of the NAWS pipeline, the State Water Commission will pay them. These costs are limited for each landowner, with a total of \$148,915. The limits are adjusted for inflation according to the Consumer Price Index for a period of 10 years.
- 3) If there is a disagreement, the State Water Commission and the landowner agree to submit the issue to arbitration.
- 4) Once the agreement is executed, the landowners agree to drop their claims in court and the State Water Commission agrees to release any remaining funds due to the landowners.
- 5) The agreement will run with the property for a period of 20 years, terminating on October 1, 2023.

It was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer to execute the landowner settlement agreements with Cloyd Kittilson, Laverne Mikkelson, and the Dakota Acres Partnership.

It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission authorize the State Engineer to execute the following settlement agreements (SEE APPENDIX "G"):

- 1) *Settlement Agreement by and among the State of North Dakota and Cloyd Kittilson*
- 2) *Settlement Agreement by and among the State of North Dakota and Laverne Mikkelson*
- 3) *Settlement Agreement by and among the State of North Dakota and the Dakota Acres Partnership*

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

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

Todd Sando reported that the drought conditions continue to persist in the Missouri River basin. As of October 24,

2003, system storage in the six mainstem reservoirs was 40.4 million acre-feet (MAF), which is the lowest system storage since the reservoirs initially filled. This storage volume is 16.4 MAF below the average system storage for the end of October and 3.97 MAF less than last year. Lake Sakakawea was at an elevation of 1820.8 feet msl, 6.1 feet lower than a year ago and 18.2 feet below its average end of October elevation.

On October 1, 2003, the Corps of Engineers predicted runoff above Sioux City for 2003 to be 17.7 MAF, 70 percent of normal. The Corps is estimating that Lake Sakakawea will fall to an elevation of 1814.3 feet msl by the end of February, 2004, which would be the lowest elevation since Lake Sakakawea initially filled.

The elevation of Lake Oahe was 1579.3 feet msl on October 24, 2003, 6.8 feet lower than last year and 23.4 feet lower than its average end of October elevation. Under the most likely runoff simulation, the Corps is estimating that Lake Oahe will fall to 1579.0 feet msl by the end of October, 2003, and then rebound to 1583.4 feet ml by the end of February, 2004.

The elevation of Fort Peck Lake was 2209.3 feet msl on October 24, 2003, 8.1 feet lower than last year and 25.2 feet lower than its average end of October elevation. The Corps is estimating that Fort Peck reservoir will fall to 2205.8 feet msl by the end of February, 2004, which would be another record low lake level.

The Corps of Engineers has released its 2003-2004 draft Annual Operating Plan for the Missouri River Mainstem System (AOP). The draft AOP states, in part, "It is anticipated that ... the publication of an updated Master Manual will be completed before March 1, 2004." Mr. Sando explained that if the Corps of Engineers actually does meet their deadline and complete the Master Manual, it is likely the water control plan described in the draft AOP will change. Public meetings have been scheduled in Pierre, SD, Omaha, NE, and Columbia, MO to discuss the draft AOP. Commission staff will attend the public meeting in Pierre, SD to present North Dakota's comments on the draft AOP, which are attached hereto as **APPENDIX "H"**.

**MISSOURI RIVER -
RESOLUTION NO. 2003-08-507
RELATING TO NEW MISSOURI
RIVER MASTER WATER CONTROL
MANUAL (MASTER MANUAL)
(SWC Project No. 1392)**

On August 6, 2003, the State Water Commission approved Resolution No. 2003-08-507 requesting the North Dakota congressional delegation to make every effort to withhold all hiring, appointments, promotions, and salary increments within the Corps

of Engineers until the Corps releases a new Missouri River Master Water Control Manual (Master Manual).

Secretary Frink reiterated that the Corps of Engineers has announced its intentions to have a new Master Manual for the Missouri River in place for the 2004 operating season and to release their recommended plan by late December, 2003 or early January, 2004. He said he is optimistic that the Corps's recommended plan, if released, will be beneficial to the upper basin states, although the final decision will be made at levels above the Corps of Engineers.

Secretary Frink presented draft Resolution No. 2003-08-507 for the Commission's final consideration. Based on the most recent information from the Corps of Engineers relating to the Master Manual, it was the recommendation of the State Engineer that Resolution No. 2003-08-507 relating to the new Missouri River Master Water Control Manual not be distributed at this time.

It was moved by Commissioner Halcrow and seconded by Commissioner Swenson that the State Water Commission reaffirm its action of August 6, 2003 relating to Resolution No. 2003-08-507, New Missouri River Master Water Control Manual (Master Manual), and that said resolution be executed and distributed to the North Dakota congressional delegation.

Commissioners Halcrow, Hofstad, Swenson, and Lt. Governor Dalrymple voted aye. Commissioners Hanson, Hill- esland, Johnson and Olin voted nay. Recorded vote was 4 ayes; 4 nays. Lt. Governor Dalrymple announced the motion failed due to a tie vote.

Lt. Governor Dalrymple clarified that the Commission's action of August 6, 2003 will prevail and directed that Resolution No. 2003-08-507 be executed and distributed appropriately.
SEE APPENDIX "I"

**STATE WATER COMMISSION
MAINTENANCE PROPERTY
(SWC File SHOP)**

In accordance with the State Water Commission's budget for the 2001-2003 biennium, H.B. 1023 authorized the Commission to sell its property at

the corner of 26th Street and Broadway Avenue and to use the proceeds to construct a new maintenance building. The Commission staff conducted a study to locate a suitable location in the Bismarck area for construction of the new maintenance building, which is documented in the report "*Objectives, Site Suitability, and Cost Analysis for Construction of a New North Dakota State Water Commission Shop, as Authorized Under House Bill 1023 (2001)*".

On December 6, 2002, the State Water Commission authorized the State Engineer to determine the appropriate economic option for the State Water Commission maintenance building; and, if determined appropriate, proceed with the sale of the existing State Water Commission property located at the corner of 26th Street and Broadway Avenue in Bismarck.

Todd Sando briefed the Commission members on the current efforts and proposals relative to the State Water Commission's maintenance building. Negotiations are currently ongoing with the North Dakota Department of Corrections and the North Dakota Department of Health involving the lease of a parcel of state property. The State Water Commission has advertised for architect engineering services until November 24, 2003. A selection committee consisting of Commission staff members and others will review the proposals and conduct the interview/selection process. Mr. Sando stated it is anticipated the new maintenance building would be designed this winter with construction initiated in the spring of 2004. Negotiations will be pursued relative to the sale of the Commission's existing property.

**APPRECIATION TO -
ROBERT W. HARMS**

The State Water Commission expressed its appreciation to Robert W.

Harms, who admirably served the State of North Dakota as an employee of the Governor's office during the Schafer Administration and the Hoeven Administration. Mr. Harms accepted the Commission's recognition for his "outstanding leadership in addressing North Dakota's critical water issues and in promoting water resource management that will continue to enhance the lives of all North Dakota citizens for many generations".

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The 40th annual joint North Dakota Water Convention and Irrigation Expo is scheduled for December 3-5, 2003 at the Best Western Ramkota Hotel, Bismarck, ND.

**NORTH DAKOTA WATER
CONVENTION AND
IRRIGATION EXPO**

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for December 5, 2003 at the Best Western Ramkota Hotel, Bismarck, ND, convening at 9:00 AM.

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

SEAL

John Hoeven, Governor
Chairman, State Water Commission

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