

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 7, 2007

The North Dakota State Water Commission held a meeting at the Best Western Ramkota Hotel, Bismarck, North Dakota, on December 7, 2007. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 9:00 AM, and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman
Roger Johnson, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page

STATE WATER COMMISSION MEMBER ABSENT:

Elmer Hillesland, Member from Grand Forks

OTHERS PRESENT:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 75 people interested in agenda items

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Lt. Governor Dalrymple announced the agenda approved as presented.

**CONSIDERATION OF DRAFT MINUTES
OF OCTOBER 24, 2007 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the October 24, 2007 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Foley, and unanimously carried, that the draft minutes of the October 24, 2007 State Water Commission meeting be approved as prepared.

**STATE WATER COMMISSION
BUDGET EXPENDITURES,
2007-2009 BIENNIUM**

In the 2007-2009 biennium, the State Water Commission has two special line items - administrative and support services, and water and atmospheric resources expenditures. The allocated program expenditures for the period ending October 31, 2007, reflecting 17 percent of the 2007-2009 biennium, were presented and discussed by David Laschkewitsch, State Water Commission accounting manager. The expenditures, in total, are within the authorized budget. **SEE APPENDIX "A"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$52,887,964, leaving a balance of \$45,135,166 available to commit to projects.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2007-2009 BIENNIUM**

The oil extraction tax deposits into the Resources Trust Fund total \$8,914,117 and are currently \$2,294,745, or 34.7 percent ahead of the budgeted revenues.

No deposits have been received in the 2007-2009 biennium for the Water Development Trust Fund. The first planned deposit is for \$15,800,000 in April, 2008.

**ELM RIVER SNAGGING
AND CLEARING PROJECT -
APPROVAL OF STATE COST
PARTICIPATION (\$24,500)
(SWC Project No. 1934)**

A request from the Traill County Water Resource District was presented for the State Water Commission's consideration for state cost participation in a snagging and clearing project on the Elm River.

The project will consist of snagging and clearing approximately 40 statute miles of the south branch of the river from the outlet in Section 8 of Elm River township upstream. Intermittent snags along the north branch of the river will also be addressed.

The snagging and clearing work includes tree removal and disposal, the removal of beaver dams and channel bottom sedimentation, cattail control, and other miscellaneous items for channel maintenance.

The project engineer's cost estimate is \$100,000, of which \$98,000 is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$24,500). The request before the State Water Commission is for a 25 percent state cost participation in the amount of \$24,500.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation in the Elm River snagging and clearing project at 25 percent of the eligible costs, not to exceed an allocation of \$24,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020).

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission approve state cost participation in the Elm River snagging and clearing project at 25 percent of the eligible costs, not to exceed an allocation of \$24,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020). This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***NORTH DAKOTA WATER RESOURCES
RESEARCH INSTITUTE 2008-2009
FELLOWSHIP PROGRAM THROUGH
NDSU - APPROVAL OF STATE COST
PARTICIPATION (\$13,850)
(SWC Project No. 1403)***

A request from the North Dakota Water Resources Research Institute (WRRI) was presented for the State Water Commission's consideration for state cost participation of their 2008-2009 academic year fellowship program administered through the North Dakota

State University (NDSU). The WRRI program requires a match of \$2.00 non-federal for each \$1.00 federal. NDSU's match is monetary and in-kind services.

The WRRI is a program funded annually by a United States Geological Survey (USGS) 104B grant. Annual grants have varied from \$20,000 to \$200,000 with 2008-2009 federal funding at \$92,335. The total program costs for the 2008-2009 academic year are estimated at \$160,000. The \$92,335 federal grant is apportioned for administrative/personnel costs and for individual fellowships.

The fellowships support graduate students working on water resource related topics and are granted on the basis of the relevance of programs to the management of North Dakota water resources and the overall quality of the projects. Research topics have varied broadly including methods for improving municipal water treatment, methods for measuring organic contaminants in water in the field, research on climate change in North Dakota, effects of algae on lake oxygen levels in winter, and many other topics. Two priorities of the WRRRI are providing information useful for solving state regulatory and policy problems, and state support and participation.

Anticipating the receipt of a USGS 104B grant in the amount of approximately \$92,335 for the 2008-2009 academic year, the WRRRI requested a 15 percent state cost participation of the annual federal allocation (\$13,850). The intent of this request is to replace a portion of NDSU's in-kind services with the proposed cost share amount in order to provide more cash for fellowships.

Although the eligible state cost participation amount is less than \$20,000, Secretary Frink explained that because of the uncertainty of future federal allocations for the program, it is anticipated this will be an annual request for state cost participation. Therefore, the WRRRI will be required to submit an annual cost participation request for the State Water Commission's future consideration of support for the program.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation, not to exceed an allocation of \$13,850 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the North Dakota Water Resources Research Institute for their 2008-2009 academic year fellowship program administered through the North Dakota State University.

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission approve state cost participation, not to exceed an allocation of \$13,850 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the North Dakota Water Resources Research Institute for their 2008-2009 academic year fellowship program administered through the North Dakota State University. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SAFE DRINKING WATER ACT -
APPROVAL OF PROJECT
PRIORITY LIST IN FY 2008
INTENDED USE PLAN,
DATED NOVEMBER 26, 2007
(SWC File AS/HEA)**

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

administered by the Environmental Protection Agency through the North Dakota Department of Health. North Dakota Century Code ch. 61-28.1, Safe Drinking Water Act, gives the Department the powers and duties to administer and enforce the Safe Drinking Water program and to administer the program.

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant application process. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on November 26, 2007; no comments were received.

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

David Bruschwein, North Dakota Department of Health, presented the Fiscal Year 2008 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated November 26, 2007, for the State Water Commission's consideration. The 2008 Intended Use Plan is attached hereto as **APPENDIX "C"**. The comprehensive project priority list includes 91 projects, with a cumulative total project cost of \$326,700,000 for Fiscal Years 1997 through 2008. The fundable list for Fiscal Year 2008 includes 18 projects at a cost of \$36,000,000.

It was the recommendation of Secretary Frink that the State Water Commission approve the project priority list for Fiscal Year 2008 as listed in the Intended Use Plan, dated November 26, 2007, and authorize the North Dakota Department of Health to administer and disburse Fiscal Years 1997 through 2008 program funds pursuant to the Fiscal Year 2008 Intended Use Plan.

It was moved by Commissioner Johnson and seconded by Commissioner Thompson that the State Water Commission approve the project priority list for Fiscal Year 2008 as listed in the Intended Use Plan, dated November 26, 2007, and authorize the North Dakota Department of Health to administer and disburse Fiscal Years 1997 through 2008 program funds pursuant to the Fiscal Year 2008 Intended Use Plan.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

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

Tim Freije, project manager for the Southwest Pipeline Project, provided the following project status report:

Medora-Beach Regional Service Area, Phase III:

Contract 7-8D - South Fryburg Pocket. Bids were opened for contract 7-8D on April 12, 2007. USDA Rural Development funding was approved for the contract. On May 9, 2007, the State Water Commission authorized the award of contract 7-8D to Abbot, Arne, Schwindt, Inc., Moorhead, MN, in the amount of \$1,535,515.90. The contract consists of approximately 97 miles of pipeline, 81 users, and one booster pump station.

All pipelines were installed by mid-September, 2007. Start-up for the variable frequency drive booster pump station was held on November 13, 2007. The pipelines served by the booster pump station were disinfected and the bacTs testing was performed the last week in November, 2007. Twenty-one (21) users have been turned over to the Southwest Water Authority as ready for service. The completion date for contract 7-8D is December 15, 2007.

Contract 7-8E - Fairfield Service Area; and Contract 7-8F, Grassy Butte Service Area and Trotters Pocket. The bid opening for contract 7-8E, originally scheduled for June 27, 2007, was postponed to allow time to incorporate the Grassy Butte pocket area in McKenzie county into contract 7-8E.

Contract 7-8E plans and specifications were received October 8, 2007. The bid date has not been scheduled as an application is on file with USDA Rural Development for \$5,500,000 million in funding assistance on contract 7-8E.

The Grassy Butte service area is in McKenzie county north of the Fairfield service area and is outside of the Southwest Pipeline Project area. A draft agreement between the State Water Commission, the Southwest Water Authority, and McKenzie county to allow the Grassy Butte service area to be incorporated into the Southwest Pipeline Project is being reviewed by the legal counsel.

Richardton and Dodge Pump Stations Standby Engine Generators:

On April 12, 2007, the State Water Commission authorized the award of contract 4-2A/4-1C to Cummins N Power, LLC, Fargo, ND, in the amount of \$919,800. The contract includes one 1000kw standby generator for the Dodge pump station and one 1500kw standby generator for the Richardton pump station. The generators will start and run one large pump at each pump station to provide a flow of 6150 gpm, or 68.7 percent, of the design flow rate.

The Richardton genset was delivered and placed on the concrete pad on November 13, 2007. The Dodge concrete pad was poured on November 19, 2007, and the genset was delivered and set in place the last week in November, 2007. A representative from Cummins N Power was on site to install miscellaneous loose items and prepare the gensets for their two-hour tests. The subsequent wiring will be completed prior to the completion date of December 30, 2007.

System Capacity/Subsequent Users:

Project officers have been approached by various entities interested in obtaining significant amounts of water from the Southwest Pipeline Project, primarily industrial users. Three hundred (300) gallons per minute remains unallocated which could be used to serve one of these industrial users.

The Southwest Water Authority board of directors approved allocating 300 gallons per minute to an ethanol plant planned in Gascoyne after the city of Bowman confirmed its lack of interest in receiving Southwest Pipeline Project water. The allocation of water would be contingent upon the State Water Commission's approval.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF CAPITAL REPAYMENT
RATES, AND REPLACEMENT AND
EXTRAORDINARY MAINTENANCE
RATE FOR 2008
(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 to the State Water Commission by December 15 of each year. The budget is deemed approved unless the Secretary to the Commission notifies the Authority of his disapproval by February 15. The Southwest Water Authority submitted its proposed budget in November, 2007.

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 into line with the water service contracts and to streamline the budget process.

The agreement 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.

At the June 22, 2005 meeting, the State Water Commission approved the 2005 capital repayment rate for rural users in Morton county receiving water through the Missouri West water system transmission pipelines at \$22.00 per month. Applying the Consumer Price Index adjustment to this figure results in a 2008 rate for these users of \$24.14 per month.

The following projected capital repayment rates, and the replacement and extraordinary maintenance rate for 2008 for the Southwest Pipeline Project were presented for the State Water Commission's consideration:

Contract users	\$ 1.00 per thousand gallons
Rural users	\$30.49 per month
Morton county users receiving water through Missouri West water system	\$24.14 per month
Replacement and extraordinary maintenance	\$ 0.35 per thousand gallons

It was the recommendation of Secretary Frink that the State Water Commission approve the projected capital repayment rates for 2008 for the Southwest Pipeline Project of \$1.00 per thousand gallons for contract users; \$30.49 per month for rural users; \$24.14 per month for Morton County users receiving water through the Missouri West water system; and a rate for replacement and extraordinary maintenance of \$0.35 per thousand gallons.

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It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve the following capital repayment rates, and the replacement and extraordinary maintenance rate for 2008 for the Southwest Pipeline Project:

- 1) Contract users \$ 1.00 per thousand gallons***
- 2) Rural users \$30.49 per month***
- 3) Morton county users \$24.14 per month
receiving water through
Missouri West water system***
- 4) Replacement and \$ 0.35 per thousand gallons
extraordinary maintenance***

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

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

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

Environmental Impact Statement: The Bureau of Reclamation published a notice of intent in the Federal Register on March 6, 2006 to initiate scoping for an environmental impact statement (EIS) on the NAWS project to address the treatment options relating to biota concerns. The initial public scoping was completed in May, 2006. The Bureau completed a review of the draft EIS with the cooperating agencies on July 25, 2006. The Commission staff provided technical information for the EIS as requested by the Bureau.

The Bureau of Reclamation expects to release the draft EIS to the public on December 21, 2007, with public hearings scheduled in February, 2008.

Manitoba Lawsuit: At the request of Judge Rosemary Collyer, a joint federal and state project status report was presented in June, 2007. The next expected court activity would be the state's request to modify the injunction to allow for additional projects after the draft EIS is released.

Design Work Update: The State Water Commission intends to bid NAWS contract 4-2A in January, 2008. This contract includes the Minot high service pump station and a 2 million gallon reservoir. Estimates of cost for the facility are \$13,000,000.

Construction Contracts Update:

Contract 2-1D: This contract covers 15 miles of 36-inch pipe between the city of Max and Lake Sakakawea. Concerns with the high failure rate on the welded tangentials on the pipe in the vaults are being addressed with the contractor. Development of a maintenance bond has been proposed to provide a one-year warranty on the tangentials, which would start once water can be delivered to the city of Minot. The contract cost is \$9,661,735.95, with remaining payments totalling \$533,275.60.

Contract 2-2A: The State Water Commission authorized the award of Contract 2-2A to ERS Constructors, Centennial, CO, on April 19, 2007. Contract 2-2A covers 10 bores, approximately 4 miles of 36" - 24" pipe, and associated facilities within the city of Minot, which includes pipeline from the high service pump station west to the U.S. Highway 83 bypass, south to U.S. Highway 52, and to North Hill. Construction activities commenced the week of June 4, 2007.

Contract 2-2A costs are \$6,445,384, with the remaining payments totaling \$2,597,332. Eight (8) of the 10 bores including 1 river bore have been completed. The remaining bores include 1 river bore at 5th Avenue in Minot and the Max railroad bore. The remaining pipe laying work is from the U.S. Highway 83 bypass near the gravel pit heading to North Hill.

Contract 2-2B: This contract includes approximately 20 miles of 16" - 10" pipe and 3 booster pump stations between Minot at U.S. Highway 52 and the city of Berthold. The State Water Commission authorized the award of contract 2-2B on May 9, 2007 to Northern Improvement Co., Fargo, ND. Construction activities commenced the week of June 25, 2007. The contract cost is \$3,222,995.46, with the remaining payments totaling \$1,087,233.73.

The line between Des Lacs and Burlington was pressure tested and passed the bacTs. The portion of the line near Burlington and Minot is being pigged and disinfected. Delivery of the booster pump station has been delayed until mid-December, 2007.

Contract 5-2B: The State Water Commission authorized the award of contract 5-2B on July 17, 2007, in the amount of \$1,135,000. The contract was awarded to Engineering America on September 12, 2007. Acquisition issues relating to

the reservoir site property were resolved, and the Notice to Proceed was issued October 31, 2007. Contract 5-2B covers a 750,000 gallon reservoir and a 500,000 gallon storage reservoir along the contract 2-2B pipeline between Minot and Berthold.

The ring wall for the second tank site near Speedway Hill was poured on November 15, 2007. The ring wall for the second tank was delayed until the spring of 2008.

**MR&I WATER SUPPLY PROGRAM -
FEDERAL MR&I REIMBURSEMENT
(SWC Project No. 237-03)**

The State Water Commission and the Garrison Diversion Conservancy District approved the concept of using funds appropriated to the State Water Commission for developing the Municipal, Rural and Industrial (MR&I) Water Supply program, with the intent that the State Water Commission would be reimbursed funds from future federal MR&I funds. Approximately \$25,000,000 from the funds appropriated to the State Water Commission have been approved since 2001 for the program and, to date, there have been no reimbursements of federal MR&I funds.

Secretary Frink provided background information relative to the MR&I Water Supply program, and emphasized the importance to continue addressing the program's future needs and concerns. Secretary Frink explained that although the previous approvals were based on the expectation that funds would be reimbursed to the State Water Commission from future federal MR&I funds, legislative and legal requirements are not in place to satisfy those reimbursements.

It was the recommendation of Secretary Frink that the State Water Commission not pursue the issue to ensure reimbursement of previous payments from future federal MR&I funds. Secretary Frink also recommended that the Commission continue to consider future allocations from the funds appropriated to the State Water Commission to address the needs and concerns associated with the MR&I Water Supply program.

It was moved by Commissioner Olin and seconded by Commissioner Berg that the State Water Commission not pursue the issue to ensure reimbursement of previous payments from future federal MR&I funds; and, that the State Water Commission continue to consider future allocations from the funds appropriated to the State Water Commission to address the needs and concerns associated with the MR&I Water Supply program.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**MR&I WATER SUPPLY PROGRAM -
MR&I COMMITTEE REPORT; AND
PROJECT STATUS REPORT
(SWC Project No. 237-03)**

The State Water Commission and the Garrison Diversion Conservancy District Municipal, Rural and Industrial (MR&I) Water Supply program committee met on November 20, 2007 to discuss the

status and funding of MR&I projects. The committee recommended funding for the Garrison water system, Northwest Area Water Supply Project, North Central Rural Water Consortium, and the city of Williston water system improvements, all of which were considered by the State Water Commission under separate actions on December 7, 2007. Projects recommended for funding, and the projects status report are detailed in a Commission staff memorandum, dated December 6, 2007, and attached hereto as **APPENDIX "D"**.

**MR&I WATER SUPPLY PROGRAM -
CITY OF GARRISON WATER SYSTEM -
APPROVAL OF FUNDS (\$35,750)
FROM WATER DEVELOPMENT
RESEARCH FUND
(SWC Project No. 237-03)**

The city of Garrison has experienced water quality issues due to the fluctuating water levels of Lake Sakakawea. To address the issues, the city is proposing to change from a conventional treatment system to a membrane treatment system, control improvements,

conversion from an acid system to a CO₂ system for pH adjustment, and a water storage capacity increase to 250,000 gallons. The estimated project cost is \$4,100,000, of which a 70 percent grant would amount to \$2,870,000. The feasibility study for the proposed project is estimated at \$55,000, of which a 65 percent grant would amount to \$35,750.

It was the recommendation of Secretary Frink that the State Water Commission approve a 65 percent grant, not to exceed an allocation of \$35,750 from the Garrison Diversion Conservancy District water development research fund, for the water system feasibility study for the city of Garrison.

It was moved by Commissioner Johnson and seconded by Commissioner Berg that the State Water Commission approve a 65 percent grant, not to exceed an allocation of \$35,750 from the Garrison Diversion Conservancy District water development research fund, for the water system feasibility study for the city of Garrison. This motion is contingent upon the availability of funds, and subject to future revisions.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF PROPOSED
FISCAL YEAR 2008 MR&I
FEDERAL BUDGET (FUNDING
FOR NAWS PROJECT-\$3,400,000)
(SWC Project No. 237-04)**

Secretary Frink presented and recommended the proposed MR&I Water Supply program budget allocation for fiscal year 2008 of \$3,595,000 for the State Water Commission's consideration:

**Fiscal Year 2008
MR&I Water Supply Program**

<u>Project</u>	<u>Activity</u>	<u>FY 2008 Approved</u>	<u>FY 2008 Proposed</u>	<u>FY 2008 Total</u>
NAWS (Minot) Administration	D&C	\$ 0 \$ 195,000	\$3,400,000 * \$ 0	\$3,400,000 \$ 195,000
Totals		\$ 195,000	\$3,400,000 *	\$3,595,000

* Fiscal Year 2007 Year-End Funds - \$400,000; Fiscal Year 2008 - \$3,000,000

On March 24, 2006, Judge Rosemary Collyer approved the state and federal request to proceed with design and construction activities for three NAWS projects that would not affect the treatment decision: Minot high service pump station, Berthold pipeline, and the pipeline which would provide service north of the Minot water treatment plant. The estimated cost of the projects is \$25,480,000.

Contract 4-2A covers the Minot high service pump station, at an estimated cost of \$13,000,000. The contract bid is anticipated in January, 2008. Contract 4-2A will use 2008 MR&I federal funding. The city of Minot has indicated its intent to advance funds towards the 65 percent MR&I funds, and provide a 35 percent cost share.

It was the recommendation of Secretary Frink that the State Water Commission approve the MR&I Water Supply program proposed allocation of \$3,595,000 for Fiscal Year 2008, which provides for a Fiscal Year 2008 MR&I federal grant allocation up to \$3,400,000 (Fiscal Year 2007 year-end funds - \$400,000; Fiscal Year 2008 - \$3,000,000) for the Northwest Area Water Supply Project, and \$195,000 for Fiscal Year 2008 administrative costs. The State Water Commission and the Garrison Diversion Conservancy District MR&I committee approved the proposed allocation for MR&I federal Fiscal Year 2008 on November 20, 2007.

It was moved by Commissioner Hanson and seconded by Commissioner Foley that the State Water Commission approve the MR&I Water Supply program proposed federal allocation of \$3,595,000 for Fiscal Year 2008. This funding provides for a Fiscal Year 2008 MR&I federal grant allocation up to \$3,400,000 (Fiscal Year 2007 year-end funds - \$400,000; Fiscal Year 2008 - \$3,000,000) for the Northwest Area Water Supply Project, and \$195,000 for Fiscal Year 2008 administrative costs. This action is contingent upon the availability of federal funds, and is subject to future revisions.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***MR&I WATER SUPPLY PROGRAM -
NORTH CENTRAL RURAL WATER
CONSORTIUM - APPROVAL OF
STATE FUNDS (\$1,900,000)
(SWC Project No. 237-03)***

The North Central Rural Water Consortium was formed with the Central Plains Water District, which includes the south Benson county area, North Prairie Rural Water District, and McLean-Sheridan Water District to provide a funding

mechanism and cooperative body to more efficiently serve the most users possible while allowing each system to remain independent. The approach is to utilize existing infrastructure while strengthening and supplementing to serve new users in existing and new areas. The total estimated project cost is \$7,985,000. The south Benson Rural Water area is scheduled to begin construction in the spring of 2008, at an estimated project cost is \$2,925,000, of which a 65 percent grant would amount to \$1,900,000.

It was the recommendation of Secretary Frink that the State Water Commission approve a 65 percent grant, not to exceed an allocation of \$1,900,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the North Central Rural Water Consortium for construction of the south Benson Rural Water area.

It was moved by Commissioner Berg and seconded by Commissioner Olin that the State Water Commission approve a 65 percent grant, not to exceed an allocation of \$1,900,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium, to the North Central Rural Water Consortium for construction of the south Benson Rural Water area. This motion is contingent upon the availability of funds, satisfaction of the federal MR&I Water Supply program requirements, and subject to future revisions.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***MR&I WATER SUPPLY PROGRAM -
CITY OF WILLISTON WATER
SYSTEM IMPROVEMENTS -
APPROVAL OF FINAL ADVANCE
OF STATE FUNDS (\$2,000,000)
(SWC Project No. 237-04)***

The city of Williston has completed construction of major improvements to its water treatment plant and transmission line, Phases I and II. The improvements cover regulatory, optimization, and expansion of the water system. Phase I improvements in 2002 were for filter upgrades using Drinking Water State Revolving loan funds of approximately \$4,000,000. A new 36-inch transmission main line was completed in 2004 at a cost of \$4,000,000. The \$21,500,000, Phase II, optimization/expansion project was completed in September, 2006. Design and construction of Phase III, scheduled for 2011-2015, is contingent upon the future regulatory requirements and expansion growth demands. The estimated cost of Phase III is \$10,800,000.

The city of Williston has completed construction of major improvements to its water treatment plant and transmission line, Phases I and II. The improvements cover regulatory, optimization, and expansion of the water system. Phase I improvements in 2002 were for filter

At its meeting on August 15, 2002, the State Water Commission approved eligibility of the city of Williston for future reimbursement of a federal MR&I grant of up to \$5,000,000 of the eligible project costs. The approval was subject to the future availability of federal funds, the city of Williston satisfying all MR&I program requirements, and the intention that the State of North Dakota be reimbursed \$5,000,000 using future federal MR&I funding authorized under the Dakota Water Resources Act of 2000.

The State Water Commission's previous approvals of partial advances of the \$5,000,000 grant included December 9, 2005, an allocation of \$1,000,000 for reimbursement from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021); and May 9, 2007, an allocation of \$2,000,000 as a grant from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was the recommendation of Secretary Frink that the State Water Commission approve an additional partial advance (final advance) of the \$5,000,000 grant, not to exceed an allocation of \$2,000,000 as a grant from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the city of Williston for its water system improvements project.

It was moved by Commissioner Hanson and seconded by Commissioner Olin that the State Water Commission approve an additional partial advance (final advance) of the \$5,000,000 grant (approved by the State Water Commission on August 15, 2002), not to exceed an allocation of \$2,000,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), for the city of Wiliston water system improvements project. This motion is contingent upon the availability of funds, satisfaction of the federal MR&I Water Supply program requirements, and subject to future revisions.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

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

As of October 15, 2007, Devils Lake was at an elevation of 1447.01 feet msl. Stump Lake was at elevation 1446.82 feet msl. The two lakes have equalized

at this time although U.S. Geological Survey readings continue to record a slight difference in stage, which is dependent on wind conditions.

The combined volume of Devils Lake and Stump Lake is 2.896 million acre-feet with 137,575 surface acres. This is a reduction for the two lakes from October 15, 2007 when the volume was 2.926 million acre-feet with 139,071 surface acres. On November 18, 2006, Devils Lake was at 1446.95 feet msl and Stump Lake was at an elevation of 1444.28 feet msl. This is an increase in volume from November 18, 2006 of 17,209 acre-feet and a decrease of 152 acres in surface area for the two lakes.

Since equalization has occurred, the U.S. Geological Survey has discontinued the flow gage between the two lakes. Flow may be in either direction depending upon the levels of both lakes, the wind direction and velocity.

Because of the low moisture conditions in late summer and early autumn, 2007, the wetlands in the basin have lowered producing available storage for snow melt in the spring. This will be beneficial for reducing the amount of runoff reaching Devils Lake, however, substantial late autumn precipitation could change the conditions.

The predicted peaks at differing exceedance levels from the National Weather Service forecast for mid-December, 2007 are shown below for Devils Lake and Stump Lake:

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake	1446.56	1446.65	1446.74
Stump Lake	1446.56	1446.65	1446.74

***NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT REPORT
(SWC Project No. 416-07)***

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. Construction commenced in the fall of 2002, and operation of the outlet began on August 15, 2005 within the guidelines of the North Dakota Pollutant Discharge Elimination System (NDPDES) water quality discharge permit issued by the North Dakota Department of Health.

The North Dakota Department of Health authorized modifications to the NDPDES water quality discharge permit that would allow a more effective operation of the outlet. The modifications would: 1) allow pumping beyond the original May 1 to November 1 constraint as long as ice-free conditions exist on the Sheyenne River; 2) remove the total suspended solids limit; and 3) adjust the current 300 mg/L instream sulfate level that would allow the outlet to be operated if the instream sulfate level is greater than 260 mg/L as long as the sulfate levels in the Sheyenne River were not increased more than 15 percent up to a maximum level of 450 mg/L. The NDPDES water quality discharge permit has an expiration date of June 30, 2008. The State Water Commission anticipates filing an application with the North Dakota Department of Health for a five-year water quality discharge permit for the North Dakota Devils Lake outlet project.

On September 14, 2006, the People to Save the Sheyenne River, Inc., the Peterson Coulee Outlet Association, the Government of the Province of Manitoba, and the National Wildlife Federation filed an appeal to challenge the North Dakota Department of Health's modifications to the NDPDES water quality discharge permit. The Appellants arguments included: 1) that the North Dakota Department of Health failed to demonstrate adequate causes for the permit modifications, or there was new information available now that was not available at the time the permit was issued on August 22, 2003; and 2) that the North Dakota Department of Health failed to conduct an anti-degradation review. The judge dismissed the appeal by the Province of Manitoba and other groups. The modified water quality permit was appealed to the North Dakota Supreme Court. Oral arguments were heard on October 10, 2007.

Adequate flows in the Sheyenne River with lower sulfate levels occurred during June through August, 2007 and allowed a total release of 299 acre-feet of water from the outlet. Since August 18, 2007, Devils Lake water was not released as flows in the Sheyenne River were negligible and the sulfate concentrations were above 450 mg/L.

State Water Commission staff activities included the removal of the intake at Round Lake and winterization of the outlet in November, 2007. Water sampling was suspended until the spring of 2008.

Joe Belford, Devils Lake Downstream Acceptance program manager, provided an update on the efforts of the Devils Lake interagency task force.

**AASMUNDSTAD, ET AL. V.
STATE, ET AL. LAWSUIT
(SWC Project No. 416-08)**

In May, 1999, approximately 100 individuals who own land around Devils Lake sued the State of North Dakota, the North Dakota State Water Commission, the North Dakota State Engineer, and nine water resources districts (collectively referred to as 'defendants'). They alleged that water projects in the upper Devils Lake basin - designed, constructed, funded, and/or maintained by the defendants - caused Devils Lake to flood their property. The landowners sought monetary damages in excess of \$10 million, an injunction, and an order directing the defendants to initiate condemnation proceedings.

In May, 1999, approximately 100 individuals who own land around Devils Lake sued the State of North Dakota, the North Dakota State Water Commission,

On October 25, 2007, after 8 years of litigation and 17 days of trial, the court ultimately issued its decision in favor of the defendants concluding the plaintiffs failed to establish that any of the alleged projects were the cause of harm and damages to their properties. The court ordered that the claims be dismissed with prejudice, meaning that the plaintiffs cannot sue on the same grounds in the future. The court entered judgment on November 15, 2007, and notice of entry of judgment was served on the plaintiffs on November 19, 2007.

**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 completed the *Report on Red River Valley Water Needs and Options*. The State of North Dakota and the Bureau are jointly preparing the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The 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

The draft EIS was released in December, 2005, public hearings were held in February and March, 2006, and all studies have been completed. The final EIS is scheduled to be issued before January 1, 2008.

A supplemental draft EIS was completed with the comment period ending on April 25, 2007. Additional study efforts included biota plant failure analysis by the United States Geological Survey (USGS), water quality monitoring by the USGS, impact analysis of Missouri River depletions under drought conditions by the Corps of Engineers, and a cumulative impact analysis of ground-water depletions in Minnesota by the USGS.

The status reports provided by the Garrison Diversion Conservancy District relating to the specific efforts of the Red River Valley Water Supply project are attached hereto as **APPENDIX "E"**.

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

On November 20, 2007, the system storage in the six mainstem reservoirs was 37.3 million acre-feet (MAF), 16.3 MAF below the average system storage for the end of November and 2.6 MAF more than in 2006. The record minimum system storage for the end of November was 34.6 MAF in 2006. The Corps of Engineers predicted runoff above Sioux City for 2007 to be 21.2 MAF, 84 percent of normal. This resulted in a forecast that the system will have 37.0 MAF at the end of 2007, the previous minimum end of year system storage was 34.4 MAF in 2006.

Lake Sakakawea was at an elevation of 1813.2 feet msl on November 20, 2007, 4.0 feet higher than in 2006 and 22.2 feet msl below its average end of November elevation. Lake Sakakawea is at or near its peak for the year. The record minimum end of November elevation was 1808.9 feet msl in 2006. Lake Sakakawea is forecasted to fall to 1811.1 feet msl at the end of 2007, and to 1809.1 feet msl by the end of February, 2008.

The elevation of Lake Oahe was 1582.1 feet msl on November 20, 2007, which is 9.0 feet higher than a year ago and 16.6 feet lower than its average end of November elevation. The Corps of Engineers is estimating that Lake Oahe will fall to 1581.9 feet msl by the end of 2007.

Fort Peck Lake was at an elevation of 2200.2 feet msl on November 20, 2007, which is 1.6 feet lower than a year ago and 30.6 feet below its average end of November elevation. The forecast calls for Fort Peck Lake to fall to 2199.4 feet msl by the end of 2007.

The Master Manual revision and the Biological Opinion of that revision calls for the establishment of a Missouri River Recovery Implementation Committee (MRRIC). The committee will provide recommendations and guidance to the Secretary of the Army, governmental entities, and the tribes regarding mitigation, recovery, restoration of threatened and endangered species, and the prevention of further declines of native species. A committee consisting of stakeholders from throughout the Missouri River basin has developed a proposed charter with public workshops and comments accepted until November 21, 2007.

**MISSOURI RIVER JOINT BOARD
(SWC Project No. 1392)**

address issues be deferred until the next meeting of the State Water Commission.

The Missouri River Joint board requested that its presentation of the 2007 annual report and plan of action to

address issues be deferred until the next meeting of the State Water Commission.

**REAFFIRMATION OF STATE
ENGINEER'S ADMINISTRATIVE
AUTHORITY**

Chapter 61-02 of the North Dakota Century Code provides for the powers and duties of the State Water Commission. The policy and guidelines established by the State Water Commission are under the supervision and direction of the Commission. The State Engineer (who also serves as the secretary and chief engineer to the State Water Commission) has impliedly been delegated the administrative authority on behalf of the State Water Commission (Attorney General's opinion, dated August 8, 1991).

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The 1981 State Legislature placed the Weather Modification Board under the umbrella of the State Water Commission. The North Dakota Atmospheric Resource Board was created, which is currently a division of the State Water Commission. North Dakota Century Code section 61-04.1-06 provides "that the powers, functions, and duties of the Board shall be administered under the direction and supervision of the State Water Commission. The board shall retain the quasi-judicial, quasi-legislative, advisory, budgetary, rulemaking, and other functions vested in it, which are to be exercised in accordance with the policy and guidelines for weather modification activities as established by the State Water Commission."

Henry Bodmer, chairman of the Atmospheric Resource Board, appeared before the State Water Commission to discuss issues relating to the administrative authority over the Atmospheric Resource Board division staff.

Secretary Frink responded to the issues raised by Mr. Bodmer, and explained the authority of the State Engineer to determine administrative decisions. The 1991 Attorney General's opinion indicated that the Commission has this authority, but the Commission impliedly has delegated this authority to the State Engineer on its behalf. Secretary Frink noted that the Commission has operated in this manner for approximately 30 years.

It was the recommendation of Secretary Frink that the State Water Commission reaffirm that the State Engineer has the authority to determine administrative decisions regarding all State Water Commission staff, including the Atmospheric Resource Board division staff, with the acknowledgement that the Atmospheric Resource Board has the authority to appoint an executive director and approve the hiring of staff.

It was moved by Commissioner Olin and seconded by Commissioner Berg that the State Water Commission reaffirm that the State Engineer has the authority to determine administrative decisions regarding all State Water Commission staff, including the Atmospheric Resource Board division staff, with the acknowledgement that the Atmospheric Resource Board has the authority to appoint an executive director and approve the hiring of staff.

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

Lt. Governor Dalrymple directed that the State Engineer and the Atmospheric Resource Board chairman work with the Office of the Governor for resolution of the administrative authority issues raised by Henry Bodmer.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the meeting at 11:05 AM.



Jack Dalrymple, Lt. Governor
Representing John Hoeven, Governor
Chairman, State Water Commission

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

