



North Dakota State Water Commission

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**Meeting To Be Held At
State Office Building
Lower Level Conference Room
Bismarck, North Dakota**

**November 12, 2009
1:30 P.M., CST**

AGENDA

- A. Roll Call
- B. Consideration of Agenda *(Information pertaining to the agenda items is available on the State Water Commission's website at <http://www.swc.nd.gov>)*
- C. Consideration of Draft Minutes of Following SWC Meetings:
 - 1) **August 18, 2009 State Water Commission Meeting** **
 - 2) **September 1, 2009 SWC Conference Call Meeting** **
- D. State Water Commission Financial Updates:
 - 1) 2009-2011 Biennium Resources Trust Fund and Water Development Trust Fund Revenues
- E. Consideration of Following Requests for State Cost Participation:
 - 1) **SWC/USGS Cooperative Hydrologic Monitoring Program** **
 - 2) **Non-NRCS Rural/Farmstead Ring Dike Program** **
 - 3) **Missouri River Emergency Bank Stabilization - Morton County** **
 - 4) **Hydraulic Effects of Rock Wedges at Low-Head Dams Study** **
 - 5) **Red River Section 22 Project-Unsteady Flow Hydraulic Model** **
 - 6) **North Dakota Silver Jackets Team Charter and Action Plan** **
- F. Devils Lake:
 - 1) Hydrologic Report
 - 2) **North Dakota Devils Lake Outlet** **
- G. Northwest Area Water Supply (NAWS) Project:
 - 1) **Contract 2-2E, Burlington/West River Connection** **
 - 2) Executive Session:
 - a) Manitoba-Missouri v. Interior Lawsuit Update
 - b) **Contract 4-2A, Minot High Service Pump Station** **
- H. Other Business:
 - 1) Next State Water Commission Meeting - December 11, 2009
- I. Adjournment

** **BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION**

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

November 12, 2009

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on November 12, 2009. Governor John Hoeven, Chairman, called the meeting to order at 1:30 P.M., and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
Maurice Foley, Member from Minot
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Douglas Vosper, Member from Neche

STATE WATER COMMISSION MEMBERS ABSENT:

Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson

OTHERS PRESENT:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

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

CONSIDERATION OF AGENDA

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

**CONSIDERATION OF DRAFT MINUTES
OF AUGUST 18, 2009 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the August 18, 2009 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Foley, seconded by Commissioner Thompson, and unanimously carried, that the draft minutes of the August 18, 2009 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF DRAFT MINUTES
OF SEPTEMBER 1, 2009 STATE WATER
COMMISSION AUDIO CONFERENCE
CALL MEETING - APPROVED**

The draft minutes of the September 1, 2009 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Foley, seconded by Commissioner Thompson, and unanimously carried, that the draft minutes of the September 1, 2009 State Water Commission audio conference call meeting be approved as prepared.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2009-2011 BIENNIUM**

October, 2009 revenues into the Resources Trust Fund totaled \$4,266,87 and \$11,600,000 from July through October, 2009. The Commission's budget is based on the November, 2008 oil

extraction revenue forecast. Although the February, 2009 projection was lower, the actual revenues are tracking close to the November, 2008 forecast.

There have been no deposits into the Water Development Trust Fund in the 2009-2011 biennium. The first planned deposit is for \$9,900,000 in April, 2011.

**SWC/USGS COOPERATIVE
STATEWIDE HYDROLOGIC
MONITORING PROGRAM -
APPROVAL OF STATE COST
PARTICIPATION (\$381,980)
(SWC Project No. 1395)**

A request from the U.S. Geological Survey was presented for the State Water Commission's consideration for state cost participation in the cooperative statewide hydrologic monitoring program which consists of three components: stream gaging to measure

flow rate and volume, stream water quality monitoring, and aquifer water level and water quality monitoring.

The stream gaging network provides stream flow statistics that are needed for a wide variety of applications including the design of flood control structures, bridges, culverts, general water resource planning, floodplain mapping, water management and permitting. Many of the gaging sites provided real-time stream stage data which was crucial in responding to the flood events that occurred in 2009.

Water samples are collected for chemical analysis at specific stream sites during high and low-flow periods and at selected lakes. This data is used to determine the suitability of the chemical quality for beneficial use, interpret area hydrology, and to assess changes in the quality resulting from the stresses of both man-induced activities and natural processes caused by climatic variations. The water quality data also provides planners with a basis to assess if waste water resulting from beneficial use can be discharged into surface water bodies. Recent examples include the siting of ethanol plants and the operation of the Devils Lake outlet.

Monitoring ground-water levels and quality in wells completed in selected aquifers throughout the state provides essential information used to allocate and manage the state's ground-water resources.

The State Water Commission has participated in the cooperative statewide hydrologic monitoring program since the 1950s and has provided a 50 percent state cost participation with the U.S. Geological Survey providing the remaining 50 percent. The State Water Commission's obligation for Fiscal Year 2010 (October 1, 2009 through September 30, 2010) is \$381,980.

It was the recommendation of Secretary Frink that the State Water Commission approve a 50 percent state cost participation, not to exceed an allocation of \$381,980 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the U.S. Geological Survey for the cooperative statewide hydrologic monitoring program.

It was moved by Commissioner Berg and seconded by Commissioner Vosper that the State Water Commission approve a 50 percent state cost participation, not to exceed an allocation of \$381,980 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the U.S. Geological Survey for the cooperative statewide hydrologic monitoring program. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**RED RIVER BASIN NON-NATURAL
RESOURCES CONSERVATION
SERVICE RURAL/FARMSTEAD
RING DIKE PROGRAM -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$400,000)
(SWC Project No. 1638)**

On June 23, 2009, the State Water Commission approved an allocation not to exceed \$400,000 for the construction of individual ring dikes around rural residences/farmsteads in the Red River basin for those ring dikes not being constructed under the Natural Resources Conservation Service's ring dike pro-

gram. Floods have caused extensive damage and property owners have recognized the need and desire to have their home and outbuildings protected from future floods.

Under the State Water Commission's program (non-NRCS funded), rural/farmstead ring dikes will be constructed to criteria developed by the Commission. A dike permit will be required if the imprint of the dike consists of a volume of 50 acre-feet or more of water. The proposed ring dikes do not require engineering services, although a survey may be necessary to set elevations. Reimbursement is limited to 60 percent of the actual eligible costs, limited to a maximum of \$40,000 per ring dike. Administration and legal expenses are ineligible for cost share assistance. To date, the entire \$400,000 approved on June 23, 2009 has been obligated for the construction of 21 ring dikes.

It was the recommendation of Secretary Frink that the State Water Commission approve an additional allocation not to exceed \$400,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the water resource districts within the Red River basin to support the non-Natural Resources Conservation Service rural/farmstead ring dike program.

It was moved by Commissioner Berg and seconded by Commissioner Thompson that the State Water Commission approve an additional allocation not to exceed \$400,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the water resource districts within the Red River basin to support the non-Natural Resources Conservation Service rural/farmstead ring dike program. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**MISSOURI RIVER 2009 EMERGENCY
BANK STABILIZATION PROJECT
(MORTON COUNTY) - CONSIDERATION
OF REQUEST FOR STATE COST
PARTICIPATION DEFERRED
(SWC Project No. 576)**

A request from the city of Mandan was presented for the State Water Commission's consideration for state cost participation for their emergency bank stabilization project on a section of the Missouri River on the north side of Borden Harbor to protect the city's

waste water plant discharge pipe from high water conditions. The U.S. Army Corps of Engineers approved the project and the work was completed on August 2, 2009.

The total project cost was \$48,663, all of which was determined as eligible for state cost participation as a bank stabilization project at 50 percent of the eligible costs (\$24,332). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$24,332.

Secretary Frink explained that additional information is required on this request for state cost participation and recommended that the State Water Commission defer action at this meeting. The State Water Commission members concurred with the recommendation.

**UNIVERSITY OF NORTH DAKOTA
STUDY OF HYDRAULIC EFFECTS
OF ROCK WEDGES AT LOW-HEAD
DAMS - APPROVAL OF STATE
COST PARTICIPATION (\$50,000)
(SWC Project No. 1964)**

There are many low-head dams in North Dakota, which are structures consisting of a weir across a watercourse which impounds a small pool in the river channel. Some of the low-head dams built for a city's water supply, recreation, locomotive water, and other purposes are

very old, but many of the dams still serve a purpose. Although the low-head dams are a simple, low maintenance, and a relatively inexpensive structure, they can present a turbulence hazard downstream under moderate or high flow conditions. Some structures have been modified with rock wedge-shaped fill extending from the top of the dam to the channel bottom for some distance downstream. These structures have other advantages including the prevention of erosion at the toe of the dam, reinforcing the dam itself, and ease the passage of fish over the dam. While the structures can be beneficial, there are concerns when installed in a area with floodplain management ordinances.

A proposal from the University of North Dakota for a physical model study was presented for the State Water Commission's consideration. The study would focus on the geometric properties of the structures and ranges of flow in order to develop methods to use to determine if conveyance is lost. This information would be beneficial in providing guidance in reviewing and permitting structures. The cost estimate of this effort is \$49,888.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$50,000 to the University of North Dakota to fund a study to determine the hydraulic effects of rock wedges at low-head dams.

It was moved by Commissioner Swenson and seconded by Commissioner Berg that the State Water Commission approve an allocation not to exceed \$50,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the University of North Dakota to fund a study to determine the hydraulic effects of rock wedges at low-head dams. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***UNSTEADY FLOW HYDRAULIC
MODEL OF THE RED RIVER -
APPROVAL OF IN-KIND SERVICES
NOT TO EXCEED VALUE OF \$75,000
(SWC Project No. 1701)***

The U.S. Army Corps of Engineers is developing an unsteady flow hydraulic model of the Red River and its major tributaries. To date, the work has been done under the Section 22 Planning Assistance to States program, which

required a 50 percent non-federal cost share. The State Water Commission staff is providing assistance to the Corps of Engineers in the development of the model. The cost share requirement has been modified to allow the entire non-federal share to be in-kind services, which allows the Commission staff to use in-house expertise, develop experience, and maintain hands-on-involvement in the project without a direct monetary obligation.

Because of the large scope of this effort, it is proposed that the Corps of Engineers and the State Water Commission enter into an agreement to cover the entire project and phasing the work over several years. This approach is advantageous as it allows step-wise progress, developing a useful product at each step, and allows the Corps of Engineers to seek funding for each subsequent step. The in-kind cost share for this multi-year approach is \$25,000 per year for three years, for a total of \$75,000 of in-kind services.

It was the recommendation of Secretary Frink that the State Water Commission approve participation in the Red River Section 22 project by providing in-kind services valued not to exceed \$75,000; and that the secretary to the State Water Commission be authorized to execute an agreement with the U.S. Army Corps of Engineers for a study of the unsteady flow hydraulic model of the Red River, contingent upon a legal review of the contract documents by the state.

It was moved by Commissioner Foley and seconded by Commissioner Thompson that the State Water Commission approve participation in the Red River Section 22 project by providing in-kind services at a value not to exceed \$75,000; and that the secretary to the State Water Commission be authorized to execute an agreement with the U.S. Army Corps of Engineers for a study of the unsteady flow hydraulic model of the Red River. This action is contingent upon a legal review of the contract documents by the state.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***NORTH DAKOTA SILVER JACKETS
TEAM CHARTER AND ACTION PLAN -
APPROVAL OF STATE COST
PARTICIPATION (\$75,000)
(SWC Project No. 1965)***

The National Response Plan, issued in December, 2004, by the United States Department of Homeland Security, provides the framework for collaboration between federal, state, local, and tribal agencies to prepare for, respond to, and

recover from major disasters. The planning and implementation of preventative solutions to these disasters have typically been achieved through individual agency processes and procedures.

Col. Robert J. Ruch, U.S. Army Corps of Engineers, Omaha District Commander, was introduced. The Corps of Engineers has been directed by Congress to conduct a review of the original purposes established by the 1944 Flood Control Act. The goal of the multi-year study is to determine if changes in the original project purposes are warranted. The eight purposes are flood control, hydropower, water supply, irrigation, navigation, recreation, water quality, and fish and wildlife. Infrastructure operated by both the Corps of Engineers and the Bureau of Reclamation are included in the study. A series of focus group and tribal meetings to identify initial priorities and a communications strategy will be held in 2009-2010; a meeting is scheduled for December 8, 2009 in Bismarck, N.D.

Col. Ruch reported on the efforts of the Omaha District during the Dakotas 2009 flood fight, making specific reference to fighting flood waters on the James River that flow through the city of Jamestown. Col. Ruch stated that "five months, \$10 million dollars, the construction of 5.5 miles of temporary levees, and 177 District employees contributed to preventing \$70 million in damages from record amounts of snow melt that swelled the James River to historic levels. We had an extraordinary team effort during our Dakotas flood fight with one goal - to protect the lives and property for the states of North and South Dakota. We will continue to help make the decisions in the determinations for future flood control measures."

In discussion of the overall flooding issues of 2009 and the efforts to evaluate the possible alternative solutions for future flood control measures, Secretary Frink responded that there is a need for improved flood forecasting in the rural areas. Stream gages are operated by the U.S. Geological Survey and the State Water Commission will work with the U.S. Geological Survey and the National Weather Service to evaluate the need for more gages to improve flood forecasting. The Corps of Engineers is initiating watershed studies and the State Water Commission will be actively involved throughout the process. Any alternative that moves forward would require non-federal dollars and the State Water Commission can work with the local sponsor on alternatives that do not meet the federal requirements. Governor Hoeven directed Secretary Frink to provide a detailed report at a future State Water Commission meeting relating to the future efforts for flood control measures.

Because flooding is the nation's leading natural disaster, an interagency pilot program was implemented with focus on flood mitigation. The pilot program, referred to as the Silver Jackets, involves the U. S. Army Corps of Engineers, the Federal Emergency Management Agency (FEMA), and state officials serving as the lead facilitators in establishing an interagency team at the state level. This concept provides a more formal and consistent strategy for implementing an interagency approach to planning and implementing measures to reduce the risks associated with natural hazards. The Silver Jackets program serves as a mechanism for developing and maintaining interagency partnerships and collectively moving towards solutions to high priority issues. The program also provides an opportunity to identify barriers to collaboration between agencies and elevating recommendations to the next level.

The North Dakota Silver Jackets team charter has been drafted involving the State Water Commission, North Dakota Department of Emergency Services, Federal Emergency Management Agency Region VIII, and the St. Paul District and the Omaha District of the Corps of Engineers. The draft charter is attached hereto as **APPENDIX "A"**, which establishes and formalizes the expectations for implementation of the Silver Jackets Flood Risk Management Team for the State of North Dakota. The mission statement is "to enhance intergovernmental partnerships which will result in comprehensive and sustainable solutions to North Dakota state flood risk hazards."

The team supports the creation of a new position in the state that would serve as the state team coordinator, with the primary responsibility to work with the team agencies and others towards implementing the charter goals. The State Water Commission will chair the team, and it is proposed that a temporary full-time employee be hired beginning December 1, 2009 through June 30, 2011. The proposed total budget (\$200,000) for salary, travel and associated expenses includes State Water Commission (\$75,000); North Dakota National Guard (\$75,000); and federal (\$50,000).

It was the recommendation of Secretary Frink that the State Water Commission approve the creation of a temporary full-time position to be the North Dakota Silver Jackets state coordinator and authorize contracting for related technical services as required for the remainder of the 2009-2011 biennium. It was also the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$75,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020) to support the proposed budget for salary, travel and associated expenses of the state coordinator.

It was moved by Commissioner Swenson and seconded by Commissioner Goehring that the State Water Commission:

1) approve the creation of a temporary full-time position as the North Dakota Silver Jackets state coordinator;

2) authorize contracting for related technical services as required for the remainder of the 2009-2011 biennium; and

2) approve an allocation not to exceed \$75,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020) to support the proposed budget for salary, travel, and associated expenses of the state coordinator. This action is contingent upon the availability of funds.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

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

of Devils Lake and Stump Lake for November 12, 2009 is 3.37 million acre-feet of water with a total surface area of 162,000 acres.

As of November 12, 2009, the current water surface elevations for Devils Lake is 1449.95 feet msl and Stump Lake is 1450.07 feet msl. The combined storage

Weather data from the North Dakota Agricultural Weather Network for the past 60 days indicates varied precipitation in the basin. The precipitation values are above normal this year, and lower than last year. It can be expected that soils may go into the winter quite wet which will increase the runoff next spring.

**NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT REPORT; AND
AUTHORIZATION FOR SECRETARY
TO SWC TO EXECUTE CONTRACTS
FOR DEVILS LAKE OUTLET EXPANSION
(SWC Project No. 416-10)**

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 and the authorized modifications issued by the North Dakota Department of Health. The NDPDES water quality discharge permit had an expiration date of June 30, 2008, which was extended through June 30, 2013.

The outlet pumps were started on May 21, 2009, with releases into the Sheyenne River beginning on May 22, 2009. Unlike in 2008 when the operations began on April 21, flood conditions on the Sheyenne River prevented any releases until the river flows were lower. Between May 29 and June 5, 2009, the flow and water quality conditions allowed the outlet to operate at a maximum capacity of 100 cubic feet per second. The discharge from the outlet was then decreased because of the higher sulfate on the Sheyenne River.

On June 24, 2009, the North Dakota Department of Health rescinded the water quality discharge permit and changed the water quality constraint to 450 mg/L at Bremen instead of 15 percent above the baseline. This allowed for 100 cubic feet per second of discharge until July 6, 2009 and then the discharge varied from 35 to 50 cubic feet per second. On July 15, 2009, the Department implemented an emergency rule for a segment of the Sheyenne River changing the sulfate standard from 450 mg/L to 750 mg/L. The outlet discharge was increased to 100 cubic feet per second since that time with some minor interruptions for maintenance. Operation of the outlet ended on October 31, 2009 to allow the intake to be removed and to begin the expansion project. It is estimated that approximately 27,700 acre-feet of water was released from Devils Lake.

On August 18, 2009, the State Water Commission approved an allocation not to exceed \$16,500,000 for the expansion of the Devils Lake outlet to 250 cubic feet per second using the Round Lake alternative; and authorized the secretary to the State Water Commission to acquire the necessary pumps for the Round Lake alternative based on the lowest responsive and responsible bid contingent upon review of the bids and a legal review of the contract documents.

The estimated cost of the Devils Lake outlet expansion has decreased since August 18, 2009 to approximately \$15,300,000 and consists of the following contracts:

	<u>Contract</u>	<u>Cost</u>	<u>Status</u>
1)	Power supply	\$ 3,220,000	Underway
2)	Contract 7 pump procurement	\$ 1,455,000	Bid awarded
3)	Contract 8 shop	\$ 119,000	Bids opened 10/22/2009
4)	Contract 9 pump station expansion	\$ 6,120,000	Bid opening 11/24/2009
5)	Contract 10 rock filter/terminal structure	\$ 1,500,000	Under design
6)	Telemetry	<u>\$ 250,000</u>	Under design
	Subtotal	\$12,664,000	
	Contingencies of 20 percent	\$ 2,636,000	
	Total	\$15,300,000	

It was the recommendation of Secretary Frink that due to the aggressive schedule for the Devils Lake outlet expansion project, that the State Water Commission authorize the secretary to the State Water Commission to execute the Devils Lake outlet expansion contracts as listed, plus bid contingencies of 20 percent, and contingent upon a legal review of the contract documents.

It was moved by Commissioner Berg and seconded by Commissioner Vosper that the State Water Commission authorize the secretary to the State Water Commission to execute the Devils Lake outlet expansion contracts as listed, plus bid contingencies of 20 percent, and contingent upon a legal review of the contract documents.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

Mary Lee Nielson, Mayor, City of Valley City, stated that if Devils Lake continues to rise, a control structure on the east end of Devils Lake to control the natural discharge needs to be considered.

**NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
AUTHORIZE AWARD OF CONTRACT
2-2E, BURLINGTON-WEST RIVER
CONNECTION
(SWC Project No. 237-04)**

Bids were opened for Northwest Area Water Supply (NAWS) project contract 2-2E, Burlington-West River Connection, on September 15, 2009. This contract involves the connection of the community of Burlington and the West River water and sewer district to the Berthold line.

There were three bids received for NAWS contract 2-2E: Kemper Construction Co., Minot, N.D.; Steen Construction & Associates, Inc., Stanley, N.D.; and Robert Gibb & Sons, Fargo, N.D. The bid was received from Robert Gibb & Sons, Fargo, N.D. did not have the appropriate bid bond and, therefore, was not opened. The apparent lowest responsible bid received was \$471,782 from Steen Construction & Associates, Inc. The project engineer's estimate was \$492,300. The contract documents specify that the State Water Commission has 90 days to award the contract after the bid opening.

The contract document allows the State Water Commission to select the most advantageous bid. The project engineer reviewed the bids and recommended the award of NAWS contract 2-2E to Steen Construction & Associates, Inc., Stanley, N.D. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are dependent on the satisfactory completion of the contract documents by Steen Construction & Associates, Inc. and the State Water Commission's legal counsel review.

It was the recommendation of Secretary Frink that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 2-2E, Burlington-West River Connection, in the amount of \$471,782, to Steen Construction & Associates, Inc., Stanley, N.D., contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

It was moved by Commissioner Swenson and seconded by Commissioner Foley that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 2-2E, Burlington-West River Connection, in the amount of \$471,782, to Steen Construction & Associates, Inc., Stanley, N.D. This action is contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

***NORTHWEST AREA WATER
SUPPLY (NAWS) PROJECT -
MANITOBA-MISSOURI V.
INTERIOR LAWSUIT UPDATE; AND
NAWS CONTRACT 4-2A, MINOT
HIGH SERVICE PUMP STATION
(SWC Project No. 237-04)***

The administrative record showing the information that the Bureau of Reclamation used to develop their Record of Decision for the environmental impact statement (EIS) was filed with the federal court on May 26, 2009. This information provides the factual basis upon which the case will be decided.

The U.S. Department of Justice, on behalf of the Bureau of Reclamation and the U.S. Army Corps of Engineers, and the State of North Dakota filed separate answers to Manitoba's supplemental complaint and to Missouri's complaint. Although North Dakota was named as a defendant in Missouri's suit, North Dakota intervened as a defendant to protect its interests.

The Department of Justice and the State of North Dakota filed separate summary judgment motions on August 13, 2009 asking that the complaint be dismissed and that the court lift its injunction. The grounds for the motions were that the Bureau of Reclamation had fully complied with its obligations under NEPA. On September 28, 2009, Missouri and Manitoba filed their motions for summary judgment and requested that the injunction remain in place. A group of environmental organizations, as well as the Government of Canada, filed amicus briefs in support of Manitoba and Missouri. Reply briefs from the Department of Justice and the State of North Dakota are due on November 13, 2009.

Northwest Area Water Supply (NAWS) project contract 4-2A involves the construction of a new 2 million gallon reservoir and an 18 million gallon high service pump station adjacent to the Minot water treatment plant, as well as the demolition of the existing high service pumps and backwash pumps, and the installation of new backwash pumps and controls. The project will pump water into the 36-inch pipeline installed under the NAWS 2-2A contract and the existing Minot water distribution system.

On April 23, 2008, the State Water Commission authorized the award of contract 4-2A, in the amount of \$12,435,793.58 to John T. Jones Construction, Fargo, N.D., and the notice to proceed was executed on May 20, 2008. The contract completion date is January 8, 2010.

The contractor submitted a \$500,000 claim, which was denied by Houston Engineering. A mediation session was held on May 4, 2009 which resulted in a timeframe for requesting and answering additional questions. A second mediation session was held on August 24, 2009, and no agreement was reached although the parties have continued discussion and a draft settlement agreement is being negotiated.

It was the recommendation of Secretary Frink that the discussion relating to the Manitoba-Missouri v. Interior lawsuit and NAWS contract 4-2A issues be held in executive session, under the provisions of North Dakota Century Code § 44-04-19.1, for the purpose of attorney consultation. The State Water Commission invited the following to participate in the executive session: John Hoeven, Governor-Chairman, State Water Commission; Arne Berg, Maurice Foley, Doug Goehring, Harley Swenson, Robert Thompson, and Douglas Vosper, State Water Commission members; Dale Frink, State Engineer and Chief Engineer-Secretary to the State Water Commission; Charles Carvell and Todd Sattler, North Dakota Office of Attorney General; Todd Sando, Michelle Klose, David Laschkewitsch, and Sharon Locken, State Water Commission staff.

It was moved by Commissioner Vosper and seconded by Commissioner Thompson that under the provisions of North Dakota Century Code § 44-04-19.1, the State Water Commission proceed into executive session on November 12, 2009 at 3:15 P.M., for the purpose of attorney consultation regarding the Manitoba-Missouri v. Interior lawsuit, and the Northwest Area Water Supply (NAWS) project contract 4-2A.

Commissioners Berg, Foley, Goehring, Swenson, Thompson, Vosper, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

Following attorney consultation regarding the Manitoba-Missouri v. Interior lawsuit, and the Northwest Area Water Supply (NAWS) project contract 4-2A, Governor Hoeven adjourned the executive session and reconvened the open session of the State Water Commission meeting on November 12, 2009 at 4:00 P.M.

***NEXT STATE WATER
COMMISSION MEETING***

The next meeting of the State Water Commission is scheduled for December 11, 2009 at the Best Western Ramkota Hotel, Bismarck, N.D.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 4:10 P.M.



John Hoeven, Governor
Chairman, State Water Commission

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