

MINUTES

North Dakota State Water Commission
Devils Lake, North Dakota

July 12 and 13, 1983

The North Dakota State Water Commission held a meeting at the Artclare Motel in Devils Lake, North Dakota, on July 12 and 13, 1983. Governor-Chairman, Allen I. Olson, called the meeting to order at 9:30 a.m. on July 12, 1983, and requested Secretary, Vernon Fahy, to present the agenda.

MEMBERS PRESENT:

Allen I. Olson, Governor-Chairman
Florenz Bjornson, Member from West Fargo
Garvin Jacobson, Member from Alexander
Ray Hutton, Member from Oslo, Minnesota
Alvin Kramer, Member from Minot
Guy Larson, Member from Bismarck
Bernard Vculek, Member from Crete
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBERS ABSENT:

Kent Jones, Commissioner, Department of Agriculture, Bismarck
Henry Schank, Member from Dickinson

OTHERS PRESENT:

State Water Commission Staff
Approximately 25 persons interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official minutes).

The proceedings of the meeting were recorded to assist in compilation of the minutes.

CONSIDERATION OF MINUTES
OF MAY 19, 1983 MEETING -
APPROVED

The minutes of the May 19, 1983 meeting were not reviewed. The minutes were approved by the following motion:

It was moved by Commissioner Jacobson, seconded by Commissioner Hutton, and unanimously carried, that the minutes of May 19, 1983 be approved as presented.

REPORT ON PROGRESS OF
SOUTHWEST PIPELINE PROJECT
(SWC Project No. 1736)

Robert Dorothy, Project Manager, stated that the State Water Commission directed staff to negotiate with representatives of

Bartlett-West/Boyle firm to develop an Agreement for Engineering Services for the final design phase of the Southwest Pipeline Project. Mr. Dorothy explained that because several key design parameters have not been determined as yet (intake location, re-routing due to coal leases, etc.) a basic agreement which generally describes the terms of the agreement but does not define all the specific tasks has been developed. The basic agreement will be supplemented by a number of Specific Authorizations which will define the scope of services, times for performance, and amount and method of compensation for each authorization. Mr. Dorothy then proceeded to explain each basic provision that has been developed in the draft agreement.

In discussion of the basic provisions, Governor Olson expressed concern regarding the provision relating to compensation for engineering services. The agreement provides for the following three alternative methods of compensation: 1) LUMP SUM - based on an agreed lump sum for all services to be provided under the Specific Authorization; 2) SALARY COSTS TIMES MULTIPLIER - based on the salary costs of personnel times a multiplier. Salary costs of personnel equals the wage cost plus 38% for payroll overhead; and 3) COST PLUS A FIXED FEE - based on direct salaries and wages of employees assigned to the project, plus direct payroll overhead, plus general overhead, plus reimbursable expenses, plus the costs of special consultants, plus a negotiated fixed fee. The Governor stated that he felt probably only one method should be used rather than three alternatives, and suggested the method of a cost plus. He said he is concerned about lump sum payments because the State Water Commission is responsible for the public dollars that have been appropriated for this project and the public will want to know what was paid and why. Therefore, he is concerned that we have an alternative where this can be determined.

Secretary Fahy explained that there are certain components of the project that lend themselves specifically to a lump sum payment approach where all the parameters and quantities are known and everything is easily identifiable. In making up the lump sum figure, the component parts are worked with. Therefore, it would be advantageous to the State to have the lump sum approach. In other areas of the project, it would be most advantageous to use the methods explained in Nos. 2 and 3.

Secretary Fahy also stated that the legal staff of the Commission is making arrangements to have the draft agreement reviewed by a specialist to be certain all phases are covered in terms of national acceptance of contracts and that the State is well protected.

Robert Dorothy reported on a meeting held on June 3, 1983 between the State Water Commission and the Three Affiliated Tribes to discuss a possible agreement for an intake structure on Fort Berthold Reservation north of the community of Twin Buttes. At this meeting, the legal consultant for the State Water

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Commission, Michael Dwyer, distributed a paper titled "Response to the Concept Paper Presented by the Three Affiliated Tribes to the North Dakota State Water Commission for the Location of the Intake Structure for the Southwest Pipeline Project on the Fort Berthold Indian Reservation". Following a short discussion of the paper, and a caucus by the Indian representatives, the following courses of action were proposed by the Indian representatives: 1) the Chairman and other representatives agreed to meet with the solicitors office in Washington the week of June 6 to secure opinions on certain topics and then meet with the Water Commission; 2) the Chairman suggested the following modifications to the response to the Concept Paper: a) a top limit on water diversions through the pipeline; b) a long-term lease in lieu of fee purchase for permanent facility sites; c) more flexibility in the proposed time schedules; and d) the Tribe secure the necessary right-of-way easements in their name and then assign them to the State Water Commission.

Mr. Dorothy then discussed the following key dates that have been established, and indicated that these dates must be met to allow the final design to move forward:

- July 15, 1983 - Tribes to provide land ownership map
- August 1, 1983 - Receive solicitor's opinion on technical points of right-of-way acquisition
- August 1, 1983 - Receive solicitor's opinion on eminent domain issue
- September 15, 1983 - Tribes to provide Environmental Assessment on portion of pipeline route through the reservation
- September 15, 1983 - Agreement for pipeline on reservation lands executed by both parties
- February 15, 1984 - Tribe conveys right-of-way interest to State Water Commission

Mr. Dorothy indicated that the Tribal representatives have been notified of these key dates.

Governor Olson stressed the importance of firmly establishing the key dates as set forth, and the importance of meeting those deadlines in order that the final design of the Southwest Pipeline Project can proceed.

Mr. Dorothy discussed routing problems that have been occurring in the coal lease areas. He said that early in the study, meetings were held with the coal companies, the public, and a route was approved. Due to a recent change in management in the coal companies since the route had been approved, certain segments of the route are now being questioned.

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Governor Olson responded to this matter that the coal companies have given their approval to the route and due to deadline commitments, if problems should continue to occur they should be addressed to the Governor's office.

Mr. Dorothy indicated that Tenneco Company, The Nokota Company and the South Dakota Conservancy District have expressed an interest to be a part of the Southwest Pipeline Project, therefore, letters have been forwarded to these companies informing them that the final design of the project is about to begin and if they are still interested in going into an alternate study for the final design, they should indicate their interest prior to August 15, 1983. If a company should desire to do this, they would enter into an agreement with Bartlett-West/Boyle, with the State Water Commission being a party to the contract. This contract would be finalized by September 15, 1983.

Acquisition of right-of-way was briefly discussed. Secretary Fahy suggested, and it was concurred to by the State Water Commission, that this matter be deferred until the engineering is further along in the final design of the project.

It was moved by Commissioner Jacobson, seconded by Commissioner Larson and Commissioner Bjornson, and unanimously carried, that the schedule that has been proposed by the consultants and State Water Commission staff for the final design of the Southwest Pipeline Project be ratified.

Secretary Fahy indicated that substantial legal assistance will be required for the final design phase of the project. He said that much of this work can be completed in-house, however, because of the magnitude of the tasks involved and the time constraints that exist with the daily agency legal work, it is necessary to contract some of the legal tasks to private law firms. He said there are four areas where it is thought some outside legal assistance is needed: 1) location of the intake structure on the Fort Berthold Indian Reservation and/or at the ANG-Basin Electric intake structure; 2) negotiating with coal companies regarding the routing of the pipeline through their coal leases; 3) legislative liaison; and 4) conducting pipeline route hearings.

Michael Dwyer of the firm Dwyer and Klemm of Bismarck has been involved in the initial phase of the Southwest Pipeline Project, and Secretary Fahy suggested that because of his initial involvement he would be the most qualified to continue legal services in the areas stated.

It was moved by Commissioner Vculek and seconded by Commissioner Hutton that the State Water Commission authorize negotiations and the entering into a contract for legal services for the Southwest Pipeline Project with Dwyer and Klemm firm of Bismarck.

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In discussion of the motion, Secretary Fahy indicated that the four areas listed are the areas at this time requiring outside legal assistance; however, as the final design of the project progresses and the workload increases, it may be necessary to expand these areas. If this is necessary, it would be brought before the Commission.

At the call of the question on the motion, all members voted aye; the motion carried.

Joe Cichy discussed bonding for the project and indicated this has been turned over to the North Dakota Industrial Commission and they have selected the firm of Ohnstad, Twichell and Breitling as their bonding consultant.

Relative to the draft agreement that has been developed for engineering services for the final design phase of the Southwest Pipeline Project --

It was moved by Commissioner Larson, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission ratify the proposed draft agreement for engineering services for the Southwest Pipeline Project and submit such draft agreement to the Attorney General.

REPORT ON FLOODPLAIN
MANAGEMENT PROGRAM AND
ITS STATUS STATEWIDE
(SWC Project No. 1721)

which gave the State Engineer the authority to guide development in the floodplains of the State in an attempt to reduce floodplain damages through sound floodplain management stressing non-structural measures. He noted that the Floodplain Management section has, over the past two years, concentrated in three main areas: 1) coordination of the National Flood Insurance Program; 2) provision of technical assistance to communities in their floodplain management efforts; and 3) development of floodplain management studies.

Dave Sprynczynatyk updated the Commission members on activities that have occurred since the 1981 Legislature approved the North Dakota Floodplain Management Act

Mr. Sprynczynatyk stated that a large portion of the North Dakota floodplain management program is made possible through participation in the FEMA - funded State Assistance Program. The program is in its fourth year and receive grant funds on a 75 percent federal/25 percent state cost share. He noted that FEMA has recognized the State Water Commission for the excellent job it has done in floodplain management. He also noted that the State Water Commission is presently working with 10 communities in developing floodplain studies.

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STATUS OF PILOT IRRIGATION
PROJECT STUDY IN GOLDEN
VALLEY COUNTY
(SWC Project No. 1279)

Golden Valley County. He recalled that the Commission members had approved funds at their May 19, 1983 meeting to conduct an irrigation project study in this county.

Secretary Fahy stated that a meeting was held on June 21, 1983 to discuss what can be done to implement the proposed study for the feasibility of irrigation in the Commission members had approved

At the June 21 meeting, it was noted that there has been interest on the part of some landowners to study additional areas beyond what was first presented to the State Water Commission at its May 19 meeting. Secretary Fahy said that interest had been shown in developing a water supply on Bullion Creek and on Garner Creek and that neither of these areas had been included in the State Water Plan. Secretary Fahy indicated his concern as to how these areas would fit in with the State Water Plan and that the people in the area may be overlooking the effort that was put forth by the Citizens Advisory Board from the area. He felt that before any money be expended on a detailed feasibility study of a project, that a reconnaissance level study should be made of the two new areas to determine whether or not a water supply exists.

Secretary Fahy stated that the State Water Commission agreed to do a water supply analysis of both the Bullion and Garner Creek areas to determine what is available. The study would only consider data that is available and may not be more than an assessment of the drainage area and potential yield from the areas. At the same time, potential sites would be considered based on quad maps from the area. The Commission's report would not develop any cost estimates for these sites, but would only indicate that a site may exist. An overlay indicating the irrigable soils for the county would likewise be developed, which would be based on the information that was prepared for the State Water Plan. This could then be used in conjunction with the water supply analysis to determine whether or not there may be any need to consider further study of Bullion or Garner Creeks. It is intended to complete this work by September 1, 1983 and at that time it would be sent to the parties that were involved in the June 21 meeting. Another meeting would be scheduled after September 15, 1983. He noted that when this phase of the irrigation study is complete, all projects will have to be added to the State Water Plan.

ORGANIZATION OF LEGISLATIVE
COUNCIL INTERIM STUDIES ON
WATER RESOURCES DEVELOPMENT
AND FINANCING

Michael Dwyer, Executive Director of the North Dakota Water Users Association, discussed three study resolutions approved by the Legislature that related to water project financing: 1) a study of water marketing fees and where that might fit into a source of funds for water project financing; 2) a general study resolution sponsored by the North Dakota Water Users Association for a study of water project financing; and 3) a study that was prepared by the

Michael Dwyer, Executive Director of the North Dakota Water Users Association, discussed three study resolutions approved by the Legislature that related to water

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State Water Commission to study the Resources Trust Fund and how that fits into the water development financing needs. He noted that these studies are very important in determining the long-term future of water development in North Dakota.

Mr. Dwyer noted that one of the study resolutions provides for and encourages the Legislative Council to utilize the services of a citizens advisory committee to provide input to the Interim Study Committee that is conducting the three studies relating to water project financing. The citizens advisory committee has been formed including representatives from groups that are involved in some way or another in water development.

Secretary Fahy indicated that in the past the Natural Resources Interim Committee has handled all natural resources matters. He said it is significant to note that the Legislative Council has created a special Water Resources Interim Committee to conduct these interim studies.

CONSIDERATION OF REQUEST
FROM NORTH CASS WATER
RESOURCE DISTRICT FOR
FINANCIAL PARTICIPATION OF
BELL TOWNSHIP CRITICAL
AREA TREATMENT
(SWC Project No. 1008)

Secretary Fahy presented a request for the Commission's consideration received from the North Cass Water Resource District for financial participation for five RC&D projects in Bell Township, Cass County, North Dakota. He stated that all five projects include

critical roadside erosion sites which are located adjacent to township roads. The eroded sites have developed over a period of time from natural situations, however, the rapid runoff during the spring of 1979 aggravated the problem. These areas produce sediment into the Elm River causing damage to agricultural land and creating a safety hazard. Gullies which have formed continue to develop and enlarge. The RC&D Council will provide funding for 75 percent of the construction costs. The remaining 25 percent would be the responsibility of the water resource district. The total cost of the project would be \$20,900.

It was recommended by the State Engineer that the Commission consider approving 40 percent funding of the local share of the total cost, not to exceed \$2,090.

Representatives from the North Cass County Water Resource District were introduced. Morris Melander, Chairman, indicated the Board is trying to stop some of the erosion problems in this area and urged the Commission's favorable consideration of their request.

It was moved by Commissioner Bjornson, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission approve cost participation in 40 percent of the local share of the

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total cost, not to exceed \$2,090, in the Bell Township Critical Area Treatment RC&D projects in Cass County. This motion is contingent upon the availability of funds.

CONSIDERATION OF REQUEST
FROM TRAILL COUNTY WATER
RESOURCE DISTRICT FOR
FINANCIAL PARTICIPATION
IN TRAILL COUNTY DRAIN NO. 27
(SWC Project No. 1244)

Secretary Fahy presented a request for the Commission's consideration received from the Traill County Water Resource District for financial consideration in the reconstruction of Traill County Drain No. 27. Recently the drain near

its outlet has experienced severe erosion because of the steep drop into the Red River. The proposed project would include the reconstruction of approximately 1500 feet of channel and installation of four rock drop structures. The drop structures will help to slow the flow and to curtail any further erosion. The erosion that has resulted has endangered a county highway. The estimated cost of the project is \$155,446.

Mr. Dave Holter representing the Traill County Water Resource Board indicated that the erosion that has resulted has endangered a county highway crossing the river into Minnesota. This is a secondary road that is federally funded, and the safety factor is their prime concern at this time. It is anticipated that bids will be let for the project on July 27, 1983. He urged favorable consideration of their request.

It was recommended by the State Engineer that the Commission consider approving financial participation in the reconstruction of Traill County Drain No. 27 in 40 percent of the actual construction costs, not to exceed \$62,200.

It was moved by Commissioner Larson, seconded by Commissioner Bjornson, and unanimously carried, that the Commission approve cost participation for the reconstruction of Traill County Drain No. 27 in 40 percent of the actual construction costs, not to exceed \$62,200. This motion is contingent upon the availability of funds.

CONSIDERATION OF REQUEST
FROM SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR COST
PARTICIPATION IN
RECONSTRUCTION OF CASS COUNTY
DRAIN NO. 10
(SWC Project No. 1067)

Secretary Fahy presented a request for the Commission's consideration from the Southeast Cass Water Resource Board for cost participation in the reconstruction of a portion of Cass County Drain No. 10. The primary reason for the proposed reconstruction is to

curtail erosion that is occurring at the outlet which would involve constructing a drop structure and outfall and to realign a portion of the

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channel to the Red River. This request is for the first phase of this project and since the primary purpose is for erosion control which also helps downstream landowners, Secretary Fahy indicated he felt this phase of the project is eligible for cost sharing. Since the project also serves to benefit an urban area, Phase II may not be completely eligible for cost sharing, only those portions with agricultural benefits would be. He indicated that this will have to be considered if a request for Phase II is received. The estimated cost for this phase of the project is \$64,522.

Mr. Duane Breitling, representing the Southeast Cass Water Resource District, stated that part of the erosion directly impacts one farmstead to the point where without this erosion control structure and drop structure there is a real threat to not only the farmstead itself but to the farmhouse. He urged favorable consideration by the Commission of the request.

It was the recommendation of the State Engineer that the Commission consider approving cost sharing in 40 percent of the actual construction costs, in an amount not to exceed \$26,000, which would be subject to the availability of funds.

It was moved by Commissioner Hutton, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission approve cost participation for Phase I in the reconstruction of a portion of Cass County Drain No. 10 in 40 percent of the actual construction costs, not to exceed \$26,000. This motion shall be subject to the availability of funds.

CONSIDERATION OF REQUEST
FROM MAPLE RIVER WATER
RESOURCE DISTRICT FOR COST
PARTICIPATION IN CONSTRUCTION
OF A FLOODWATER RETENTION
STRUCTURE ON A TRIBUTARY TO
THE MAPLE RIVER IN CASS COUNTY
(SWC Project No. 841)

Secretary Fahy presented a request from the Maple River Water Resource Board requesting the Commission to consider cost participation in the construction of a floodwater retention structure on a tributary to the Maple River in Cass County. The general purpose of the project would be to provide flood control

on a portion of the Maple River and possibly to reduce flows on the Red River.

Secretary Fahy stated that the request was accompanied by a very preliminary engineering report describing the project and said that one of his concerns is that the construction costs could be reduced considerably as the design proceeds. If the State Water Commission were to approve funds at this point, there may be more funds obligated towards the project than necessary which would result in other projects in the State not being able to be cost shared in by the State.

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Therefore, it was recommended by the State Engineer that the State Water Commission defer action on this request at this time, but that the project does appear to be eligible for cost sharing and suggested that the Commission consider this project as a high priority for future funding.

It was moved by Commissioner Vculek, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission defer action at this time on the request for financial participation in the construction of a floodwater retention structure on a tributary to the Maple River in Cass County.

APPEARANCE BY RED RIVER
JOINT BOARD ON STATE WATER
COMMISSION COST SHARING
ON LAND PURCHASES
(SWC Project No. 1753)

Mr. Robert Thompson, Chairman of the Red River Joint Water Resource Board, stated that the Board at its June 6, 1983 meeting unanimously adopted the following motion:

That the Red River Joint Water Resource Board requests the State Water Commission to fund water retention projects in the Red River Watershed at 50 percent of the entire cost of the project.

Mr. Thompson indicated that the Board has been using a ratio of funding water retention projects as follows: 50 percent State Water Commission, 25 percent Red River Joint Water Resource Board, and 25 percent local Water Resource Board. He said that the problem presents itself when the State Water Commission does not pay 50 percent of the entire cost of the project and stated that the State Water Commission has not been participating in the land costs and engineering costs. He said that the state could use the Federal Government approach and pay a higher percentage when all costs aren't included - the Federal Government pays 75 - 80 percent of most project costs. He indicated that instead of trying to differentiate between what should be state funded and not state funded, it would be advantageous to simply fund 50 percent of the entire cost of the project simplifying the paperwork between the various entities involved in funding the water retention projects. He said the local water resource district's tax base eliminates the possibility of greater local funding and the voluntary membership in a joint board restricts their funding capability. The water retention projects are quite expensive and consequently 50 percent state funding of the entire project is a necessity.

Mr. Breitling indicated that the Red River Joint Board and the local water resource boards are well aware of the problems that are faced by the State Water Commission staff and the State Water Commission concerning projects throughout the State of North

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Dakota, the competition for the dollars, priorities that have to be established, etc. He noted that the Board appreciates the effort and the work the State Water Commission has put forth in those areas, but the Board is hopeful that the State Water Commission will be able to develop some approaches to different types of projects.

Mr. Breitling indicated that the particular request of the Red River Joint Resource Board addresses the question of funding water retention projects. He said the Board has focused its attention totally on and will not consider projects other than retention facilities. As far as the local board is concerned there is a dramatic difference in total dollar costs between retention structures as opposed to drainage facilities or erosion control structures. He stressed that there has to be a system developed that can allow for the funding of these projects if they are going to be built.

Secretary Fahy stated that presently cost sharing policies provide for cost sharing on the construction costs only, and neither land nor engineering costs are eligible for funding. If the State continues to provide the money based on construction costs only, a greater area of the State will benefit which will allow cost sharing in more projects. He noted that if the State Water Commission should change its policy so that land acquisition qualifies for funding, the State Water Commission will probably only be able to cost share in one or two large projects. He stated that there is also a definite disproportion in land values from the eastern part of the state to the western part of the state. By sharing in construction costs only, the money is more equally distributed amongst projects.

Secretary Fahy stated that land acquisition can often delay projects for years, and if Contract Funds were obligated towards a project, and a land acquisition delay resulted, the money would be committed and after a period of time would be lost if it had not been spent. Also, by obligating large amounts of money from the Contract Fund, the Water Commission would not be able to meet the needs of other local governments. The possible involvement of the State Water Commission in condemnation actions and other legal procedures related to land purchases would restrict or constrain our time as well as money to one area, thus preventing the State Water Commission from undertaking work elsewhere. Land acquisition usually involves numerous legal procedures, and a great deal of time, and thus, our limited legal staff cannot take on the additional work.

The Commission recessed their meeting at 12:00 noon; reconvened at 1:30 p.m.

APPEARANCE BY LYNN ROSE,
DIRECTOR OF WEATHER
MODIFICATION BOARD, TO
REPORT ON STATUS OF
STATE PROGRAM
(SWC Project No. 1727)

The Commission members received a report from Lynn Rose, Director of the Weather Modification Board, which board was initiated in 1975. Mr. Rose updated the Commission members on current projects, and briefed them on the structure and duties of the board.

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Mr. Rose indicated that the following were adopted by the State through the public meetings for the State Water Plan: 1) to develop methods to utilize the State's atmospheric water resources in drought situations; 2) to continue the North Dakota Cloud Modification project and the Atmospheric Water Resource Management project which guards the public health and environmental welfare; 3) to continue the State research effort and to provide funds to participate in cooperative research programs; and 4) to promote the public awareness of atmospheric water resource management technologies. He stated all but four of the water districts supported the research effort and all but seven of the water districts chose all four to support.

CONTINUED DISCUSSION ON
REQUEST BY RED RIVER JOINT
BOARD ON STATE WATER COMMISSION
COST SHARING ON LAND PURCHASES
(SWC Project No. 1753)

Discussion continued on the matter of the recommended cost sharing changes relating to land acquisition and if the State Water Commission wants to change its policy and become involved in general dam

design by consultants or whether the State Water Commission wants to continue its policy of having dams constructed by governmental units such as the State Water Commission, the Soil Conservation Service, Corps of Engineers and Bureau of Reclamation. Retention structures have been designed by governmental units in the past mainly because of multi-use considerations for projects and also the need for centralizing the responsibility after the project is built. Secretary Fahy indicated that the Water Commission has always maintained an interest in projects which it has designed and built in the past which includes making annual inspections in order to ensure the structural integrity of the project. He said it is very beneficial to have been involved in the actual design and construction prior to when these inspections are made. It permits you to know exactly how the dam was built. Local units of government do not have this capability or staff so engineering services may be required not only during construction but following construction as well.

Secretary Fahy indicated that cost sharing by the State was never intended to do more than supplement the local effort and it was never intended to be the major funding source for project development. He also said that the 40-50 percent cost sharing never was intended to represent the State Water Commission's share in the total project. Over the years the State Water Commission has put in 20 to 40 percent of the total project costs.

Secretary Fahy made reference to the resolution adopted by the Red River Joint Resource Board which specifies that the 50 percent cost sharing for the entire project would only apply for flood water retention projects in the Red River Watershed, which if this were to be the case, would not be fair to the other two-thirds of the State. He said a decision must be made by the Water Commission concerning the future role of the State Water Commission - to become a regulatory and inspection agency only, or to retain engineering and construction capabilities as was the original purpose of the State Water Commission.

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CONSIDERATION OF AGENCY
FINANCIAL STATEMENT

Secretary Fahy distributed and briefly discussed the agency's financial statement.

The Commission recessed their meeting at 2:30 p.m., and participated in a tour of Devils Lake for an inspection of problem areas.

Governor Olson called the meeting back into session at 8:30 a.m. on July 13, 1983.

PRESENTATION OF DEVILS
LAKE SITUATION
(SWC Project No. 1712)

Colonel Edward Raap, St. Paul District Corps of Engineers, presented updated information through a series of slides relative to the Devils Lake flood problems. The Colonel indicated that the 205 project for Creel Bay Dike has been approved, funded and ready for construction. The project will be advertised and put out for bids and construction should begin before October, 1983 on the first stage of the project which is the cofferdam, provided that local assurances are met.

Colonel Raap indicated that the 205 project that has been approved will provide protection at elevation 1440. The project will not allow any new construction or major additions to construction inside the boundary area of elevation 1440 until such time when a plan has been established to determine the 100-year protection. At that time, the zoning could then be changed within the protected area.

In discussion of the ongoing basin study, the Colonel stated that meetings have been held with federal and state agencies and a public meeting has been held in Devils Lake to gather data on the magnitude of the problems as perceived by those agencies for the purposes of determining: 1) if there is justification for further study and further alternatives; 2) if there is support for additional work; 3) the spectrum of alternatives; and 4) who is the most likely non-federal sponsor.

The reconnaissance study should be completed in approximately 18 months and it will then be necessary to identify a local sponsor. The sponsor will then be contacted to see if they are still interested in pursuing the study. The second phase of the recon study would be that the sponsor would assist the Federal Government in conducting a feasibility study lasting for about 24 months which would be 50-50 cost shared.

The Colonel indicated that the responsibilities of a non-federal sponsor would be: 1) a letter of support for the two-stage basin study including a willingness to cost share in the feasibility phase if there were feasible solutions determined as a result of the first federally funded recon phase; and 2) a sponsor would have to be identified and be willing to furnish letters of intent to provide local cooperation.

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Colonel Dean Hildebrand, representing the National Guard, reported on damages that have occurred to Camp Grafton and work that the National Guard has been involved in.

Murray Sagsveen, Attorney representing the Garrison Diversion Conservancy District, presented a detailed report on the history of the ownership of the lake bed of Devils Lake.

Mr. Sagsveen made reference to law suits in West Bay and Creel Bay concerning the ownership of the lake bed of Devils Lake and indicated that a complaint had recently been served by the State and the Garrison Diversion Conservancy District as owner-manager against Burlington Northern Railroad. Attempts have been made to negotiate a settlement because they have abandoned the railway between Devils Lake and Warwick. When Burlington Northern abandoned the railroad, the issue came up of who owns the abandoned right-of-way particularly across Camp Grafton and the bed of the lake?

Mr. Sagsveen said that relative to the law suits, the court will have to rule on one extremely important issue, that being, "what is the nature of the State's responsibility to own and manage the bed of Devils Lake?" He indicated that an argument has been made that these lands, the bed of Devils Lake, are lands that were given to the State in trust to be managed in trust, but may have been lost due to the inactivity of State officials several years ago. Mr. Sagsveen opines that the present public officials have a continuing trust responsibility to manage these lands.

Mr. Sagsveen addressed the relationship of the Garrison Diversion Conservancy District to the Devils Lake situation indicating that the State is the owner of the bed of Devils Lake and became the owner in 1889 when it became a State, but the State has to operate through an agency. In 1967, the State law indicated that the manager of the lands of the bed of Devils Lake shall be the Garrison Diversion Conservancy District because it has jurisdiction of all navigable waters in the 25-county district. The Conservancy District has the authority to manage and control the bed and, if appropriate, to convey the bed to the United States as a non-federal payment for the Garrison Diversion Unit. In 1971, the Garrison Diversion Unit began to transfer portions of the bed of Devils Lake to the United States as a non-federal payment. Everything in Creel Bay below pool elevation 1423 has been conveyed to the United States and everything above 1423 and below the meander line is claimed by the State of North Dakota.

Gordon Berg noted some of the problems they are experiencing concerning floodplain zoning in making recommendations to the Devils Lake City Commission, and suggested that the elevation be lowered to elevation 1435. Colonel Raap then reiterated the condition in the approved Section 205 project that no new construction or major additions to construction shall occur inside the boundary area of elevation 1440.

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Dennis Riggins, Mayor of Devils Lake, welcomed the State Water Commission to Devils Lake, and briefly discussed work that the Mayor's Committee has been involved in regarding the lake's problems. He said that he felt everyone is going to have to work very diligently on an outlet and try to figure out an elevation for the lake. He expressed concern relative to the elevation 1440 stipulated in the Section 205 project.

Secretary Fahy provided an update on the flooding problems around Devils Lake and a status report of ongoing studies. He indicated that Devils Lake crested in late May at an elevation of 1428.1 msl, or about 1.6 feet higher than the fall, 1982 elevation. The current lake level is 1427.98 and the lake should decline this summer with average precipitation.

Governor Olson was informed by the National Weather Service on June 30, 1983 that a hydrologic model to provide additional hydrologic information for the Devils Lake Basin will be developed. Although the entire model will take four to five years to complete, the National Weather Service feels improved forecasting information will be available for the spring of 1984.

Secretary Fahy indicated that the State Water Commission opened bids for the Dump Ground Road rock riprap project on June 24, 1983. The Emergency Commission approved up to \$25,000 for this project at the last Water Commission meeting. The low bidder was Lake Ready Mix, Inc. of Devils Lake for \$11,130. The State Water Commission is in the process of finalizing a contract with Lake Ready Mix, Inc. and the project is scheduled to be completed by July 31, 1983.

The State Water Commission contracted with KBM, Inc. of Grand Forks to provide aerial photography over a large portion of the Devils Lake Basin. The project was cost shared by the Corps of Engineers.

STATUS REPORT ON
GARRISON DIVERSION
PROJECT
(SWC Project No. 237)

Commission members heard a brief status report from Mr. Homer Englehorn, Manager of the Garrison Diversion Conservancy District, regarding the Garrison Diversion Project.

STATUS REPORT ON
ENGLISH COULEE PROJECT
(SWC Project No. 1351)

Dave Sprynczynatyk reported that the State Water Commission is currently involved in the diversion phase of the English Coulee Project. The Soil Conservation Service is involved in a separate phase, known as the Flood Retention Structure. The Soil Conservation Service is presenting their report on this phase of the project to their Washington office and expect to know shortly what action will be taken. He said the Bismarck Soil Conservation Service office is very positive regarding the project and they feel construction could begin in a couple of years.

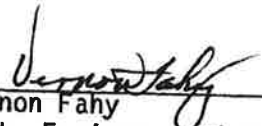
July 12 and 13, 1983

Mr. Sprynczynatyk discussed problems with the county and city involving land acquisition which has caused some delays for the contractor. The contractor began work on Phase I in mid-June. He also noted some problems that are being experienced with the township involving township roads.

There being no further business to come before the Commission at this time, the meeting adjourned at 12:00.


Allen I. Olson
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer and Secretary

July 12 and 13, 1983

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting
 DATE July 12 & 13, 1983 PLACE Devils Lake, N.Dak.
 PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
DAVID A. Spycynski	Bismarck	SWC
Ben Johnson	Lakota	Nelson Co. W.R.B.
Francis Schwindt	Bismarck	State Health
EARL DE BAOT	Devils Lake	NORTH CENTRAL PLANNING
Michael T. Sauer	Bismarck	State Health
Bill Patrie	P.O. Box 651, Devils Lake	North Central Planning Council
Werner Engelhorn	Carrington	GOCD
Walter Engelhardt	Mannevaux	GOCD
Joe Cady	Bismarck	SWC
Doug Eiben	"	ND Parks + Rec.
Bob Dorothy	"	SWC
Dale Frink	"	SWC
E. W. Hagen	Devils Lake	Tri-County Park Board
Viz. Mahoney	"	Devils Lake Park & Rec.
Russ Sushanski	"	Devils Lake Comm.

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
DEAN HILDEBRAND	Box 924	NATIONAL BOARD - N.D.
LAURIE McMERTIN	BISMARCK	ND DEPT. OF AG.
Michael Fergola	Bismarck	Governor's Office
David Regan	Devils Lake	D.L. Mayors Adv Comunity
Bob Levers	Devils Lake	D.L. Mayors advisory Comm.
Gordon Berg	Devils Lake	D.L. Mayors adv Com
Maw Leier	Devils Lake	WDAZ TV
Susan Lippig	Bismarck	N. D. State Highway Dept.
CLAY SORNESON	DEVILS LAKE	ND ST. HWY. DEPT.
DAVE HAUMERBEN	1135 US PO St Paul MN 55101	Corps of Engineers
Col ED RAPP	1135 US PO St Paul MN 55101	US ARMY CORPS OF ENGR.
Debs Lenz	Devils Lake	WDAZ-TV