

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

October 17, 1986

The North Dakota State Water Commission held a meeting on October 17, 1986, in the State Office Building, Bismarck, North Dakota. Acting Chairman, Kent Jones, called the meeting to order at 10:00 a.m., and requested State Engineer-Secretary, Vernon Fahy, to call the roll and present the agenda.

MEMBERS PRESENT:

Governor George A. Sinner, Chairman
Kent Jones, Commissioner, Department of Agriculture, Bismarck
Richard Backes, Member from Glenburn
Joyce Byerly, Member from Watford City
Jacob Gust, Member from West Fargo
Ray Hutton, Member from Oslo, MN
William Lardy, Member from Dickinson
Jerome Spaeth, Member from Bismarck
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBER ABSENT:

William Guy, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 25 persons interested in agenda items

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

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

CONSIDERATION OF MINUTES
OF SEPTEMBER 10, 1986 MEETING -
APPROVED, AS AMENDED

The minutes of the September 10, 1986 meeting were considered. Commissioner Lardy indicated on page 7, paragraph 2, of the discussion by Andy Mork on bank stabilization, the minutes read, "Mr. Mork commended the State Water Commission for their cooperative efforts in adopting a resolution at its June 18, 1965 meeting" Commissioner Lardy stated this should read "at its June 18, 1986 meeting"

On page 12 of the September 10, 1986 minutes, Commissioner Lardy referred to the motion, as amended, at the

bottom of the page, which reads, "It was moved by Commissioner Lardy" He said Commissioner Guy made the original motion, and according to the rules of Parliamentary Procedure, the minutes should have stated, "It was moved by Commissioner Guy"

It was moved by Commissioner Lardy, seconded by Commissioner Byerly, and unanimously carried, that the corrections as stated above be reflected in the minutes of September 10, 1986.

It was moved by Commissioner Backes, seconded by Commissioner Lardy, and unanimously carried, that the minutes of September 10, 1986, be approved, as amended.

CONSIDERATION OF REQUEST
FROM RICHLAND COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARING FOR CONSTRUCTION OF
RICHLAND COUNTY DRAIN NO. 30,
LEGAL LATERAL NO. 2
(SWC Project No. 1191)

David Sprynczynatyk, Director of Engineering for the State Water Commission, presented a request from the Richland County Water Resource Board for the Commission's consideration to cost share in the construction of Richland County Drain No. 30, Legal Lateral No. 2.

Drain No. 30 was originally known as the LeMars DeBillo Summit Drain No. 30 and was constructed in 1947 using a Soil Conservation Service design and built for a cost of \$42,800, of which the State Water Commission provided funds of \$17,120.

Mr. Sprynczynatyk indicated the project consists of channel excavation, construction of a berm on the field side of the channel, installation of several field inlets, and the installation of riprap at the outlet and the field drains. The total project cost is \$111,000. Under the present State Water Commission's cost sharing guidelines, \$83,060 are eligible for 40 percent cost sharing, which amounts to \$33,225.

Jorgen Haugen, Chairman of the Richland County Water Resource Board, commented on the project and requested the Commission to act favorably on their cost sharing request.

It was the recommendation of the State Engineer that the State Water Commission participate in the construction of Richland County Drain No. 30, Legal Lateral No. 2, for 40 percent of the eligible costs, not to exceed \$33,225, contingent upon the availability of funds.

It was moved by Commissioner Hutton and seconded by Commissioner Gust that the State Water Commission approve cost participation in the

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construction of Richland County Drain No. 30, Legal Lateral No. 2, for 40 percent of the eligible costs, not to exceed \$33,225, contingent upon the availability of funds.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Spaeth and Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM RICHLAND COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARING IN RECONSTRUCTION OF
RICHLAND COUNTY DRAIN NO. 65
(SWC Project No. 1207)

Dave Sprynczynatyk presented a request from the Richland County Water Resource Board for the Commission's consideration to cost share on the proposed cleaning and reconstruction of Richland County Drain No. 65. The drain was peti-

tioned, planned, and declared a legal drain on June 27, 1960, with the Soil Conservation Service doing the design.

Mr. Sprynczynatyk stated Drain No. 65 was designed in 1960 to intercept excess runoff and divert it into the Wild Rice River which otherwise went into Drain 30 along Highway No. 11. It has a drainage area of approximately 38 square miles. The 1960 cost estimate was \$61,426 with the State Water Commission approving funds of \$20,000 on October 24, 1960.

During construction in 1962 excessive rains prevented final completion. In 1963, the drain was completed but rains again caused erosion and an additional estimate of \$11,500 was needed to complete the repair of the project. The State Water Commission agreed to assist by funding an additional \$1,500 on July 31, 1963. The State Water Commission's total contribution to the project was \$21,290.

In March, 1981, the State Water Commission completed a study of Drain No. 65 to determine what could be done to upgrade the drain. It had proven to be inadequate numerous times which was caused, in part, by excessive erosion and channel capacity. Recommendations of the study included installation of ditch blocks, widening and deepening the channel, clearing minor snags in upper reaches, reduction of slopes in critical channel areas and improving three road crossings.

In 1984, a flood retention structure was constructed in the SE¼ of Section 27, Township 130 North, Range 49 West, on an unnamed tributary to Drain No. 65 to control runoff from approximately eight square miles and reduce discharges to the drain. The State Water Commission agreed to fund 50 percent, not to exceed \$57,920, with a payment of \$43,768 being made on June 28, 1985.

Mr. Sprynczynatyk stated Houston Engineering has recommended the drain be cleaned to gradelines, widening modifications be done on two bridges, and riprap three crossings to reduce downstream scour. Houston's design storm was less than recommended by the

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State Water Commission study, and the engineer felt that the State Water Commission's design was not the most desirable in view of project economics as well as the general trend to reduce stream peak flows wherever possible.

The project consists of excavation, field inlets, structure modification, seedings, and rock riprap with fabric. The Richland County Water Resource Board has not submitted an "Application to Drain" at this time, but is in the process of doing so. The project cost estimate is \$87,090, with eligible costs being \$69,363. Mr. Sprynczynatyk indicated the eligible costs do not include costs for cleaning, only for reconstruction. Forty percent of the eligible costs would be \$27,745.

Jorgen Haugen, Chairman of the Richland County Water Resource Board, discussed the project and indicated they would like to do the construction this fall.

It was the recommendation of the State Engineer that the State Water Commission cost participate in the reconstruction of Richland County Drain No. 65 for 40 percent of the eligible costs, not to exceed \$27,745. This is contingent upon the availability of funds and the Richland County Water Resource District receiving a drain permit.

It was moved by Commissioner Hutton and seconded by Commissioner Gust that the State Water Commission approve cost participation in the reconstruction of Richland County Drain No. 65 for 40 percent of the eligible costs, not to exceed \$27,745. This motion shall be contingent upon the availability of funds and the Richland County Water Resource District receiving a drain permit.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Spaeth and Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Governor Sinner entered the meeting.

CONSIDERATION OF REQUEST
FROM STANLEY TOWNSHIP BOARD
IN CASS COUNTY FOR COST
PARTICIPATION IN WILD RICE
FLOODPLAIN STUDY IN
RICHLAND COUNTY
(SWC Project No. 1751)

David Sprynczynatyk presented a request from the Stanley Township Board in Cass County for the Commission's consideration to cost share in the Wild Rice River Floodplain Study in Richland County. As a result of the Board's request, the Soil Conservation Service was asked to prepare a plan of study for the complete floodplain analyses. Stanley Township, as well as other communities along the Wild Rice River, are

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experiencing problems in administering floodplain development. Mr. Sprynczynatyk indicates these problems are occurring because of a lack of basic floodplain data.

Mr. Sprynczynatyk stated a meeting was held in June, 1986 to determine the interest of other communities along the Wild Rice River that needed a floodplain study. As a result of that meeting, several agencies have agreed to cost share in a floodplain study of approximately 150 miles of the Wild Rice River and adjacent floodplain, beginning near Wyndmere and ending at the confluence of the Wild Rice River and the Red River. The total cost of the study is estimated at \$210,000. The Soil Conservation Service has agreed to provide 80 percent of this amount, \$168,000. The balance is to be shared by non-federal entities: the Richland County Water Resource District will provide \$21,000, and the Southeast Cass Water Resource District will provide \$4,200 for the study. These entities have asked the Commission to contribute 40 percent of the non-federal share, amounting to \$16,800.

Jorgen Haugen, Chairman of the Richland County Water Resource Board, indicated this study is being requested by the Stanley Township Board because they need better floodplain data in order to administer the flood insurance program. He requested favorable action by the Commission for this cost sharing request.

It was the recommendation of the State Engineer that the State Water Commission contribute 40 percent of the non-federal share of this study, not to exceed \$16,800, contingent upon the availability of funds during this biennium.

It was moved by Commissioner Spaeth and seconded by Commissioner Hutton that the State Water Commission approve 40 percent cost sharing, not to exceed \$16,800, for the Wild Rice River Floodplain Study. This motion shall be contingent upon the availability of funds during the biennium.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Spaeth, Jones, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR COST
SHARING OF PHASE I AND III
FOR CASS COUNTY DRAIN NO. 40
(SWC Project No. 1090)

Dave Sprynczynatyk presented a request from the Southeast Cass Water Resource District for the Commission's consideration to cost share in Phases I and III of an improvement project for Cass County Drain No. 40. Phases I and III of the project consists of reconstruction and relocation of the existing channel. The project cost incurred by the District in Phase I was \$111,057, with the estimated cost for Phase III being \$325,000.

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Mr. Sprynczynatyk stated the drain was established in 1918 with several improvements being done prior to Phases I and III of the new improvement project. Drainage permits for Phases I and III of the project were obtained through the State Engineer prior to construction of the project. Phase I was begun in 1982 and completed in 1983, with bidding for Phase III held August 21, 1986.

The State Water Commission staff reviewed the plans and the costs incurred for Phases I and III and found them to be satisfactory. Of the total cost of \$111,057 for Phase I, \$105,657 would be eligible for cost participation under present State Water Commission guidelines. Forty percent of eligible costs for Phase I is \$42,263. Mr. Sprynczynatyk explained that a request for cost sharing for Phase I was not made by the Southeast Cass Water Resource District at the time of construction of Phase I. Of the total cost of \$325,000 for Phase III, \$207,168 is eligible for cost participation with 40 percent of eligible costs being \$82,867.

Fred Selberg, Chairman of the Southeast Cass Water Resource Board, commented on the project. He indicated the reason the Board did not request funds at the time of construction for Phase I was the Board felt that the State Water Commission did not have funds available at that time for cost sharing. He said there has been no opposition to this project and requested the Commission's favorable consideration of their cost sharing request.

It was the recommendation of the State Engineer that since the request for cost sharing was not made by the Southeast Cass Water Resource District at the time of construction of Phase I that this request for cost participation be denied. For Phase III, it was the recommendation of the State Engineer that the State Water Commission grant 40 percent of the costs for this phase, not to exceed \$82,867, contingent upon the availability of funds.

It was moved by Commissioner Jones and seconded by Commissioner Byerly that the State Water Commission deny the request for cost participation of Phase I for Cass County Drain No. 40; and, that the State Water Commission approve cost sharing in 40 percent of the eligible items for Phase III for the Cass County Drain No. 40, not to exceed \$82,867, contingent upon the availability of funds.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Spaeth, Jones, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF INELIGIBILITY
FOR COST SHARING FOR ROLETTE
COUNTY WATER RESOURCE DISTRICT
(SWC Project No. 1468)

Rosellen Sand, Assistant Attorney
General for the State Water Commi-
ssion, discussed with the Commis-
sion members a series of events

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which have taken place from June, 1985 to the present time relative to Rolette County Water Resource District's failure to properly execute the drainage law. Ms. Sand indicated because of the Board's inaction, the Legal Division of the State Water Commission is now handling the matter.

Ms. Sand informed the Commission members that on August 28, 1986 she wrote a letter to the Chairman of the Rolette County Water Resource Board requesting the Rolette County Water Resource District comply with Administrative Rule 89-02-01-23, which requires the Board to report to the State Engineer's office concerning any complaints referred to it within 30 days of the receipt of the complaint from the State Engineer's office. This letter outlined the consequences of the Board's inaction and set September 8, 1986 as the date by which the Board needed to have a report to the State Engineer's office.

On September 30, 1986, Ms. Sand wrote a memorandum to the North Dakota Attorney General requesting the Attorney General's approval to bring an action pursuant to the North Dakota Environmental Law Enforcement Act. This memorandum outlined the events which had taken place to date and indicated the State Engineer's intent to bring the matter before the State Water Commission. This memo also stated the State Engineer would recommend the State Water Commission refuse to grant any monies from the Contract Fund to that Water Resource District until the Water Resource District had resolved this complaint.

Secretary Fahy indicated he informed the Chairman of the Rolette County Water Resource Board on October 8, 1986 the State Water Commission would be addressing this matter at its October 17, 1986 meeting and that a representative of that Board should attend the meeting to present the Board's position.

Ms. Sand indicated on October 17, 1986 a letter was received from the Attorney General granting the State Engineer the permission required by the North Dakota Century Code §32-40-06 to bring an action under the Environmental Law Enforcement Act against the Rolette County Water Resource District for failure to properly execute the drainage law.

The Administrative Rules and the North Dakota Century Code governing this area were generally discussed along with possible remedies for this issue.

Commissioner Spaeth inquired as to the response that has been received by the Rolette County Water Resource Board and felt they should be contacted again emphasizing the possible action the State Water Commission is considering, and that the State Water Commission defer action until its next meeting. Ms. Sand responded no response has been received from the Board and feels the Board has had ample time to respond since the initial complaint was filed in June, 1985.

Commissioner Byerly stated she felt this inaction by the Board is a matter of flouting the law and the law is a protection for the citizens. She said if the State Water Commission does not in some way enforce the legal aspects of the matter, she feels the State Water Commission is failing in its responsibilities. Commissioner

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Byerly requested that if the State Water Commission declares this county ineligible for cost sharing from the Contract Fund until the matter has been resolved that public notice of the Commission's action be placed in the official Rolette County newspaper.

It was moved by Commissioner Jones and seconded by Commissioner Gust that the State Water Commission declare the Rolette County Water Resource District ineligible for cost participation from the Contract Fund until the District has resolved the above-stated drainage complaint; and, that public notice of the Commission's action be placed in the official Rolette County newspaper.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Jones, and Governor Sinner voted aye. Commissioner Spaeth voted nay. Recorded vote was 7 ayes and 1 nay. The Chairman declared the motion carried.

CONTINUED DISCUSSION OF REQUESTS
FOR RESOURCES TRUST FUND
APPROPRIATIONS FOR 1987-1989
BIENNIUM

Dave Sprynczynatyk reviewed the background of the Resources Trust Fund. He stated the last session of the Legislature amended the authority for the Resources Trust

Fund to include a procedure for making application for financial assistance from the Fund. The law now requires any political subdivision or rural water system seeking loans, grants or other assistance from the Legislature, through the Resources Trust Fund, to first submit their request to the State Water Commission. The State Water Commission will review the application, make a recommendation and submit to the Legislature a request for funding from the Resources Trust Fund.

The Commission members were informed at their September 10, 1986 meeting that staff was in the process of reviewing five applications for funding from the Resources Trust Fund for the 1987-1989 biennium, and recommendations relative to these projects from the Water Coalition. The members were also informed that draft reports for each project request would be available for the Commission's consideration and recommendations at its next meeting.

The following draft reports were presented for the Commission's consideration:

- 1) State Water Commission Contract Fund
- 2) Southwest Pipeline Project
- 3) Garrison MR&I Program
 - a) McLean-Sheridan Water Supply Project
 - b) Grand Forks Riverside Dam
 - c) Other
- 4) Souris River Flood Control Project
- 5) Sheyenne River Flood Control Project

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Michael Dwyer, Executive Secretary for the North Dakota Water Users Association, indicated the Water Coalition has met to discuss water-related needs, resources available to meet those needs, and have developed recommendations to assist the State Water Commission for prioritization of such needs. Mr. Dwyer indicated the water interests in North Dakota are keenly aware of the budget situation facing the State of North Dakota at the present time, and therefore, are not asking for an increase in state water funding at the expense of other programs and needs, and is not recommending funding for the 1987 Legislature which exceeds 1985 levels of expenditure. Mr. Dwyer stated, using 1985 as a base, that the Water Coalition proposes the following funding which represents no increase and at the same time allows for continued development and management of North Dakota's water resources at a slower, but still reasonable pace:

A. General Fund Appropriation to the State Water Commission Contract Fund	\$ 1.6 Million
B. Resources Trust Fund:	
1) State Water Commission Contract Fund	\$ 2.0 Million
2) Souris River Flood Control Project	\$ 1.0 Million
3) Garrison Diversion Unit MR&I Program	\$ 2.5 Million
a) McLean-Sheridan Water Supply Project	-- \$1.25 Million
b) Grand Forks Riverside Dam Project	-- \$250,000
c) Other	-- \$1.0 Million
4) Sheyenne River Flood Control Project	\$ 3.0 Million
5) Southwest Pipeline Project	\$ 1.0 Million
Total from Resources Trust Fund	<u>\$ 9.5 Million</u>

Mr. Dwyer explained that the recommendations for the Southwest Pipeline Project and the Grand Forks Riverside Dam Project are based on the contingency that Garrison Diversion Unit MR&I funding, through the Garrison Diversion Conservancy District, is provided.

Mr. Dwyer stated the Water Coalition realizes it is possible revenues to the Resources Trust Fund will not equal \$9.5 million. Therefore, the Water Coalition has recommended a provision be included in the appropriation bill to provide the State Water Commission with the authority to make adjustments and reallocations of funding levels authorized by the legislature. The provision would allow the Commission to not provide funding for a project if it is not ready for construction, or to reduce funding for any or all appropriated items. Mr. Dwyer said this kind of provision would allow flexibility within the legislative appropriation authorized by the Legislature and would be especially helpful as it related to programs such as the Garrison MR&I program.

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Secretary Fahy indicated that although OMB has not prepared an official projection at this time for anticipated revenues to the Resources Trust Fund for the 1987-1989 biennium, it is currently estimated that \$6 million could be available. Secretary Fahy stated the following State Engineer's recommendations and prioritization of the projects requesting funding assistance from the Resources Trust Fund for the 1987-1989 biennium are presented for the Commission's consideration. He indicated these recommendations are based on the deadline for submittal of requests for financial assistance from the Resources Trust Fund and on the current estimated projections by OMB relative to anticipated revenues that could be available to the Resources Trust Fund during the next biennium:

<u>Project</u>	<u>Priority</u>	<u>State Engineer's Recommendation</u>
1) State Water Commission Contract Fund	I	\$ 2.0 Million
2) Southwest Pipeline Project	II	\$ 0.5 Million
3) Garrison MR&I Program	II	\$ 2.25 Million
4) Souris River Flood Control Project	III	\$ 0.25 Million
5) Sheyenne River Flood Control Project	III	\$ 1.0 Million
		<hr/>
Total		\$ 6.0 Million

Secretary Fahy said the Commission's request to the Legislature must be realistic. OMB has currently estimated a \$6 million projection that could be available in the Resources Trust Fund for the next biennium, and in working with this projection, Secretary Fahy said legislative language will be developed which would authorize the expenditure of those funds, and such other funds, that might accrue to that particular account.

Lengthy discussion pursued relative to the Water Coalition's recommendations and the State Engineer's recommendations for funding from the Resources Trust Fund.

Additional comments in support of the Water Coalition's recommendations were offered by: Beverly Stone, representing the North Dakota Water Resource Districts Association; Daniel Twichell, Southeast Cass Water Resource District; and, Russell Nelson, Stark County Water Resource District.

C. Emerson Murry, Manager of the Garrison Diversion Conservancy District, commented on federal funding which is contemplated for the Garrison MR&I Program and stated approximately \$8 million is anticipated to be granted to the Southwest Pipeline Project in fiscal year 1987 and approximately \$12 million in fiscal year 1988. This would relieve the Resources Trust Fund of a major burden in financing the

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Southwest Pipeline Project during those two years and in turn would free up funds within the Resources Trust Fund for a number of state water projects. He requested favorable consideration for including \$2.5 million for assistance to communities in the MR&I water program.

Governor Sinner commented on the State's financial status. The Souris River Flood Control Project was discussed, and Governor Sinner stressed the importance of this project and said that "if the negotiations can be completed that will resolve this long-term monumental problem between the two countries in a satisfactory manner, we must commit the \$1 million that has been requested for the project. I don't think we can compromise on funding for this project and I feel very strongly on this. We must retain the \$1 million for this project regardless of whatever else we need to do."

Secretary Fahy responded to the Governor's comments relative to the Souris River Flood Control Project and said the State Engineer's recommendation reflected a reduction in funding for this project because he doesn't think the entire \$1 million would be required in the next biennium.

Governor Sinner, as Chairman of the State Water Commission, indicated he would "support the \$9.5 million request for funding from the Resources Trust Fund today, but at the time when the Governor's Executive budget is prepared for the next biennium he may be required to consider reductions from the Resources Trust Fund depending on the actual revenue." Governor Sinner stated if there is not sufficient revenue to support the \$9.5 million request, the total allocation from the Resources Trust Fund should be on the basis of a reallocation for each of the project requests with a proportionate amount taken from each request in order to retain the \$1 million allocation for the Souris River Flood Control Project.

It was moved by Commissioner Gust and seconded by Commissioner Byerly that the State Water Commission recommend an allocation of \$9.5 million for the following requests from the Resources Trust Fund for the 1987-1989 biennium, contingent upon the availability of funds:

- | | |
|---|----------------|
| 1) State Water Commission Contract Fund | \$ 2.0 Million |
| 2) Southwest Pipeline Project | \$ 1.0 Million |
| 3) Garrison MR&I Program | \$ 2.5 Million |
| 4) Souris River Flood Control Project | \$ 1.0 Million |
| 5) Sheyenne River Flood Control Project | \$ 3.0 Million |

Commissioners Backes, Byerly, Gust, Hutton, Spaeth and Jones voted aye. Governor Sinner and Commissioner Lardy voted nay. Recorded vote was 6 ayes and 2 nays. The Chairman declared the motion carried.

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It was moved by Commissioner Backes and seconded by Commissioner Gust that the State Water Commission recommend in its request to the Legislature for funding from the Resources Trust Fund a \$1.0 million allocation for the Souris River Flood Control Project and that this \$1.0 million allocation for this project not be reduced in the event a prorata reduction is necessary.

In discussion of the motion, Commissioner Lardy indicated in 1980 the people of North Dakota voted for a measure which created the Resources Trust Fund, and he read a portion of the session laws, "The principal and income of the Resources Trust Fund may be expended only pursuant to legislative appropriation and shall be available to the State Water Commission for planning for and construction of comprehensive water supply facilities, including rural water systems..." Commissioner Lardy said the 1985 legislature amended the Resources Trust Fund laws significantly from the original intent, "shall be available to the State Water Commission for planning for and construction of water-related projects" Commissioner Lardy voiced his concern that the Commission is now recommending funding from the Resources Trust Fund for projects for flood control which he feels is contrary to the original intent when the Resources Trust Fund was established. He also expressed his concern relative to future funding from the Resources Trust Fund for rural water systems.

Governor Sinner responded to Commissioner Lardy's concerns that "we must live and defend the current law". He said he feels the situation changed considerably between the time the people voted for Measure 6 in 1980 which created the Resources Trust Fund and the 1985 session. At the time of the 1985 session, the State of North Dakota was involved in the negotiations for the Garrison Diversion Project and there were assurances there would be a significant amount of federal money available for the original intent that was planned in Measure 6. Governor Sinner stated he does not feel there is any inconsistency in what the legislature did even to the original act because the circumstances changed.

Secretary Fahy indicated the State Water Commission has stressed to prior legislatures that the highest priority for funding from the Resources Trust Fund is the Southwest Pipeline Project. He said even though it appears there are going to be federal funds available for this project, through the Garrison Diversion Conservancy District, in the next biennium, we must emphasize our commitment to the Southwest Pipeline Project to the maximum extent possible in the coming legislative sessions. Secretary Fahy said "in the event federal funds, through the Garrison Diversion Conservancy District, do not materialize, I don't feel we can foresake our commitment to the Southwest Pipeline Project".

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Commissioners Backes, Byerly, Gust, Hutton, Spaeth, Jones, and Governor Sinner voted aye. Commissioner Lardy voted nay. Recorded vote was 7 ayes and 1 nay. The Chairman declared the motion carried.

Commissioner Lardy explained his nay vote on this motion does not in any way indicate his opposition to the Souris River Flood Control Project. He said he thinks this is a very vital project and will continue to support the project.

UPDATE ON RED
RIVER DIKING
(SWC Project No. 1638)

Dave Sprynczynatyk updated the Commission members on the progress of the North Dakota landowners to bring their illegal dikes into compliance by October 31, 1986 as set forth in an order issued by the Federal District Court.

Mr. Sprynczynatyk briefed the Commission members on conversations with representatives from Minnesota relative to what was taking place in Minnesota to bring the illegal dikes in that state into compliance by October 31, 1986. He said the State of Minnesota has contracted approximately \$925,000 to the local watershed districts to modify the Minnesota dikes. The watershed districts have been working with attorneys for the individual landowners to obtain easements to enter lands, and Mr. Sprynczynatyk said he was then informed that the attorneys for the Minnesota landowners are holding the easements and will do nothing on the Minnesota side to bring the dikes into compliance until they have been assured that the North Dakota dikes are in compliance. Mr. Sprynczynatyk also explained what was being done in North Dakota on the issue.

Mr. Sprynczynatyk indicated when the diking issue has been settled, representatives of North Dakota and Minnesota will be considering measures to help alleviate flooding problems.

Commissioner Hutton stated he had been contacted by Grant Trenbeath, Neche, ND, relative to the diking issue and Mr. Trenbeath indicated his concern that the one-foot differential in the dikes, he feels, is not in the best interest of the North Dakota farmers.

Commissioner Hutton stated he was requested by the attorney for a group of landowners living on the North Dakota side of the river to file a copy of a brief with the State Water Commission requesting that the orders issued by the State Engineer for removal of dikes be dismissed. Commissioner Hutton said these landowners were not a part of the original agreement and do not feel the Court can enforce the order until a hearing has been held. These landowners constructed their dikes prior to 1975 and at that time there were no diking laws, although the State Engineer was aware the dikes were being constructed. Commissioner Hutton said these dikes have been modified and the farmers have cooperated, and therefore, their concerns must be considered.

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It was moved by Commissioner Hutton and seconded by Commissioner Lardy that the State Water Commission allow the North Dakota dikes to remain as they are until the Minnesota dikes are in compliance.

In discussion of the motion, Commissioner Hutton commented he personally does not feel the Minnesota dikes will be in compliance by October 31, 1986.

Commissioner Lardy stated if this motion were passed essentially the State Water Commission would be going on record opposing something they had worked hard to achieve.

Governor Sinner said it would be his intentions if North Dakota complies with the order and Minnesota does not comply by the October 31 deadline that the District Court be asked to deliver a contempt ruling with whatever penalties the Court find appropriate.

Secretary Fahy reminded the Commission members that we are working within the framework of a court order to bring the dikes into compliance.

Commissioner Hutton voted aye. Commissioners Backes, Byerly, Gust, Lardy, Spaeth, Jones, and Governor Sinner voted nay. Recorded vote was 1 aye and 7 nays. The Chairman declared the motion failed.

UPDATE ON GARRISON
DIVERSION PROJECT
(SWC Project No. 237)

At the Commission's September 10, 1986 meeting, the Garrison Diversion Conservancy District and the State Water Commission staff were directed to prepare draft procedural agreements for implementing the Garrison MR&I program. A draft Memorandum of Understanding between the State Engineer and the Manager, Garrison Diversion Conservancy District, was distributed to the Commission members for their consideration, attached hereto as APPENDIX "A".

The Commission members also considered a sample draft Agreement for the Funding of Preliminary Planning for a Municipal, Rural or Industrial Water Project, attached hereto as APPENDIX "B". A number of questions were raised concerning this sample draft and after lengthy discussion Murray Sagsveen and the State Engineer were asked to prepare an "issue paper" on the subject of local entity repayment and send it out to State Water Commission members for discussion at a future meeting.

After Mr. Sagsveen's review of the draft Memorandum of Understanding, and following considerable discussion, it was the consensus of the Commission members that the title be changed to

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Memorandum of Understanding between the State Engineer/State Water Commission and the Manager, Garrison Diversion Conservancy District/Garrison Diversion Conservancy District Board of Directors.

It was moved by Commissioner Jones and seconded by Commissioner Lardy that the State Water Commission approve the Memorandum of Understanding between the State Engineer/State Water Commission and the Manager, Garrison Diversion Conservancy District/Garrison Diversion Conservancy District Board of Directors for implementation of the Garrison MR&I Program.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Spaeth, Jones, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Governor Sinner left the meeting and Commissioner Jones assumed the chair.

UPDATE ON SOUTHWEST
PIPELINE PROJECT
(SWC Project No. 1736)

Dale Frink, Manager of the Southwest Pipeline Project, updated the Commission members on the progress of the Southwest Pipeline Project.

Mr. Frink indicated 19.4 miles of pipeline are under construction, with 13.6 miles of pipeline now underground. He said there will be 3½ miles of pipeline that will have to be completed in 1987 due to wet weather conditions. Thirty-day extensions have been granted to the contractors for completion of their work in 1987.

Mr. Frink discussed the Garrison Diversion funding under the MR&I program and noted approximately \$8 million of these funds could be allocated to the Southwest Pipeline Project for 1987. He said it will be necessary to comply with federal requirements in order to receive federal money. In 1985, the Legislature passed a bill requiring all contracts for the Southwest Pipeline Project provide a five percent preference to North Dakota contractors. Mr. Frink indicated federal requirements will not allow this clause and in order to receive federal monies the legislature will be required to repeal this law.

It was moved by Commissioner Byerly and seconded by Commissioner Gust that the State Water Commission direct the Legal Division to prepare draft legislation which would repeal the requirement of a five percent preference to North Dakota contractors for the Southwest Pipeline Project.

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Commissioners Byerly, Gust, Hutton, Lardy, Spaeth and Jones voted aye. Commissioner Backes voted nay. Recorded vote was 6 ayes and 1 nay. The Chairman declared the motion carried.

Mr. Frink discussed 1987 construction for the project, noting that it is anticipated bids will be pre-advertised in October and opened in mid-January, 1987. Pre-advertising for bids in October will provide the contractors adequate time to investigate the route and do any necessary test drilling.

Mr. Frink commented on the 1987-1989 budget request of \$2.3 million of state funds for this project noting this is a major change from previous budgets as most of the dollars requested are federal funds.

Secretary Fahy briefed the Commission members relative to a request from the City of Dickinson on the possibility of using Dickinson's existing water treatment plant for the Southwest Pipeline Project rather than building a separate plant near the lake. This request is due partly because of required improvements the city must make on its existing plant. The State Health Department has given the city until April 1, 1987 to do approximately \$600,000 of maintenance on its plant. Secretary Fahy indicated this request is being reviewed and representatives from the City of Dickinson have requested an audience before the State Water Commission at its next meeting to discuss this request. Secretary Fahy noted state law requires the water treatment plant be located in a different location and suggested the Commission give consideration to drafting legislation that would give the State Water Commission the option for determining the most appropriate location for the water treatment plant.

Bruce Pier, Dickinson City Engineer, commented on the request made by the city relative to the possibility of using the city's existing water treatment plant, and said it is very important that the State Water Commission consider drafting legislation that would provide the Commission options for determining the most appropriate location for the water treatment plant.

It was moved by Commissioner Lardy and seconded by Commissioner Gust that the State Water Commission authorize the legal staff to prepare draft legislation that would give the State Water Commission the option to determine the most appropriate location for the water treatment plant for the Southwest Pipeline Project.

Commissioner Lardy stated at a meeting he attended in Dickinson, comments were made that if the Dickinson water treatment plant would become a part of the Southwest Pipeline Project the maintenance and operation costs could be increased and these costs

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would not be covered by any grant from the State or Federal Government. Commissioner Lardy said the additional costs would be the responsibility of the local entities and could increase the ultimate cost of the water to the consumer.

Commissioners Backes, Byerly, Gust, Hutton, Lardy, Spaeth and Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONTINUED DISCUSSION OF
INTER-BASIN BIOTA
TRANSFER STUDY
(SWC Project No. 237)

Secretary Fahy reviewed the activities of the biota study group that has been meeting to develop an approach to a comprehensive inter-basin biota study. Commissioner

Guy was appointed as chairman of this group.

At its December 13, 1985 meeting, the State Water Commission passed a motion that directed the State Water Commission to accept the responsibility of organizing, coordinating and directing this study. Although several meetings have been held with parties of interest in this study little progress has been made. Commissioner Guy suggested that a more direct coordinating role be assumed by the State Water Commission staff so that the Governor and State Water Commission members would be more directly involved.

In response to Commissioner Guy's request, Secretary Fahy said he has appointed Gene Krenz, Director of the Planning Division for the State Water Commission, to coordinate the study for the Commission as a part of his Division's assignment. The Conservancy District has indicated there is money in their budget to assist with the study effort and also the Bureau of Reclamation has indicated the authorization of the Garrison Diversion Unit Commission has funds available for a biota study.

Secretary Fahy noted that Mr. Krenz and the Manager of the Conservancy District have arranged a meeting with NDSU staff on October 21 to discuss a study proposal. Secretary Fahy said he would keep the Commission members advised of the progress of this study.

UPDATE ON SOURIS RIVER
FLOOD CONTROL PROJECT
(SWC Project No. 1408)

Secretary Fahy updated the Commission members on negotiations with the Canadian officials relative to the proposed Rafferty and Alameda

Dams in Saskatchewan. He said an agreement has been reached with our negotiating partners in Saskatchewan on technically what would be involved in an assumption of a certain portion of the evaporation in Canada in return for building of the reservoirs. Secretary Fahy explained at the Commission's last meeting that North Dakota's negotiating process was more cumbersome than Saskatchewan's process because North Dakota has to coordinate negotiations with the City of Minot, the U.S. Fish and Wildlife Service and the Souris River Joint Board.

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When the agreement was reached, the U.S. Fish and Wildlife Service did not agree with the proposed control elevation at Lake Darling. The U.S. Fish and Wildlife Service has recommended the control elevation be one foot higher, thus giving them more flexibility. This information was forwarded to Saskatchewan, however, Saskatchewan has responded that it feels an agreement has been reached and all that remains to be worked out are minor details.

CONSIDERATION OF AGENCY'S
FINANCIAL STATEMENT

Projects Authorized Report and the Program Budget Expenditures Report through September 30, 1986.

Matt Emerson, Director of Administration for the State Water Commission, presented and discussed the

It was moved by Commissioner Backes, seconded by Commissioner Gust, and unanimously carried, that the State Water Commission meeting adjourn at 3:30 p.m.



George A. Sinner
Governor-Chairman

ATTEST:



Vernon Fahy
State Engineer and Secretary

October 17, 1986

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission
 DATE October 17, 1986 PLACE Bismarck, ND
 PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Bill Hanson	Bis	SWC
Fletcher Poling	Bismarck	Basin Electric Power Cooperative
Russ DUSHINSKE	DEVILS LAKE	BARISON DIV CONSERVANCY DIST.
© EMERSON MURRY	BISMARCK	GDCD
Perry M. woods	Ft Yates ND	S.K.S.T
RONALD FRENCH	GRAND FORKS	KBM ENGINEERING
Bob Dorothy	Bismarck	GDCD
Russell Nelson	Dickinson	West River front W.R. Bd. Stark C.W.R.D.
Milton Lindberg	Bismarck	SWC
ROBERT MUSCHA	FARGO ND	HOUSTON ENGR Inc RICHARD W.M. DIST
STAN Zschomler	Bismarck	fish & wildlife ser
Bruce Stone	Barney, Richland Co	W.R.B.
Jacqueline Klougen	Ma Road, Richland Co	W.R.B.
Charles E. Mummie	Bismarck, N.D.	USDA - SCS
Jeffrey Valle	West Fargo	Morse Engineering, Inc

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Gregory Stein	Hankenison n. Dak	Richland Co. WRD.
Daniel A. Nichell	West Fargo, ND	Southwest Can WRD
Frank Helberg	Harwood ND	South East Cass WRD
Ellen Crawford	Bismarck, ND	United Press International
G. Krenz	"	SWC
Mike Faith	Ft Yates	Standing Rock
Bruce F. McCallum	Bismarck 14th Floor	BW/BEC Engineering OIA
Howard Sage	Capitol Building	

MEMORANDUM OF UNDERSTANDING
between the State Engineer and the Manager,
Garrison Diversion Conservancy District
October 16, 1986

1. Background Information.

The agreement between the State Water Commission and the Board of Directors, Garrison Diversion Conservancy District (dated July 18, 1986) concerning the municipal, rural, and industrial water program authorized by Public Law 99-294 states, in part, the following:

6. The Commission and the Board shall jointly cause a "needs assessment" to be prepared for the MR&I water systems in the state of North Dakota. The Commission and the Board will develop joint criteria for any consultants retained to conduct the "needs assessment" (if a consultant is retained). The Board shall request funds from the Secretary of the Interior for the "needs assessment" which will be matched by the Commission and the Board.

7. The Commission and the Board shall assist, to the extent funds are available to the Commission and the Board, the preparation of feasibility studies by entities seeking funding of MR&I systems. The State Engineer shall establish guidelines for construction standards and the preparation of feasibility studies. The Board shall request funds from the Secretary of the Interior for feasibility studies which will be matched by the Commission and the Board.

8. Proposed MR&I water projects must be consistent with statewide plans and programs of the Commission. Therefore, plans for proposed MR&I water projects must be submitted to the State Engineer for approval.

9. Entities seeking funding of MR&I water systems may apply for nonfederal matching funds from the Commission and the Board. Funding requests to the Board shall be submitted to the GDCD Manager. Funding request to the Commission shall be submitted to the Secretary of the Commission, and any requests for money from the Resources Trust Fund must comply with N.D.C.C. Section 57-51.1-07.1. for the purposes of this agreement, the term "project" in Section 57-51.7-07.1 is construed to include the MR&I program authorized in P.L. 99-294.

2. Purpose of this memorandum of understanding.

The State Engineer, as Secretary of the State Water Commission (Secretary), and the Garrison Diversion Conservancy District Manager agree that they shall combine their efforts to expeditiously implement the MR&I program and the July 16, 1986,

Commission/Board agreement. The State Water Commission has a statewide responsibility by law and the Commission/Board agreement, but the Board will have the primary responsibility for assisting MR&I efforts within the Garrison Diversion Conservancy District (GDCD).

3. Procedures for handling the feasibility report.

3.1. The State Engineer and the GDCD Manager will assist any potential applicant for the MR&I program. GDCD assistance will be limited to applicants in the District; Secretary will focus on applicants outside the District.

3.2. The first step in the application process will be preparation of a feasibility report by the applicant.

3.2.1 The applicant may request funding for the feasibility report. If the applicant's project is within the GDCD, the funding request shall be submitted to the Board. If the applicant's project is outside the GDCD, the funding request shall be submitted to the State Engineer.

3.2.2. If the request is approved by either the State Engineer or the GDCD Manager, funds may be provided from the "MR&I Planning Account" or from other funds available to the respective agencies.

3.2.3. The GDCD Manager shall use a form contract with the applicant for the funds provided from the "MR&I Planning Account". The form contract is at Appendix p. 1.

3.2.4. The feasibility report will address at least the following items (details concerning the preparation of the feasibility report are at Appendix p. 2. [To be developed.]):

- a. the quality of available water supplies;
- b. the quantity of available water supplies;
- c. preliminary plans for the proposed system;
- d. cost estimates for the proposed system; and
- e. probable sources of funding for the nonfederal construction and OM&R costs.

3.2.5. The feasibility report will be submitted to the State Engineer.

3.3. Action by the State Engineer concerning the feasibility report.

3.3.1. The State Engineer shall evaluate the feasibility reports to determine whether the proposal is feasible and consistent with the statewide plans and programs of the Commission.

3.3.2. If the State Engineer approves the feasibility report, the State Engineer shall notify the applicant and the GDCD Manager.

3.3.3. If the State Engineer disapproves the feasibility report, the State Engineer shall provide the reasons for disapproval to the applicant (a courtesy copy of the communication shall be sent to the GDCD Manager). The applicant shall have an opportunity to modify and resubmit the feasibility report.

3.4. Funding for an approved MR&I project.

3.4.1 If the State Engineer has approved a MR&I project outside the GDCD, the State Engineer and the applicant shall arrange any necessary nonfederal funding for the project. When appropriate nonfederal funding has been secured, the approved feasibility report and details concerning the funding shall be provided to the GDCD Manager who shall, in turn, submit the documents to the Secretary of the Interior for funding pursuant to Section 5 of P.L.99-294.

3.4.2. If the State Engineer has approved a MR&I project inside the GDCD, the State Engineer, the applicant, and the GDCD Manager shall arrange the necessary nonfederal funding for the project. When appropriate nonfederal funding has been secured, the GDCD Manager shall submit, after approval, the documents to the Secretary of the Interior for funding pursuant to Section 5 of P.L.99-294.

3.5 Preparation of Plans and Specifications.

3.5.1. The applicant may request funds from the "MR&I Planning Account" for preparation of the plans and specifications prior to the receipt of P.L.99-294 construction funds for the project. Applicants outside the GDCD shall submit the request to the State Engineer; applicants inside the GDCD shall submit the request to the GDCD Manager.

3.5.2. The State Engineer and the GDCD Manager shall jointly determine whether funds are available from the "MR&I Planning Account" for the preparation of plans and specifications. If they jointly determine that funds are available, the form contract at Appendix p. 3 shall be use for transferring the funds to the applicant. [To be developed.]

3.6 Modification of the Memorandum of Understanding.

3.6.1. This memorandum of understanding shall remain in effect until modified by the State Engineer and the GDCD Manager.

DATE:

Vern Fahy
State Engineer and
Secretary, North Dakota
State Water Commission

C. Emerson Murry
Manager, Garrison Diversion
Conservancy District

SAMPLE DRAFT

APPENDIX "B"

AGREEMENT

For the Funding of Preliminary Planning
for a Municipal, Rural or Industrial Water Project

1. This agreement is between _____
(hereafter "Applicant") and the Board of Directors, Garrison
Diversion Conservancy District (hereafter "Board").
2. The Applicant has requested funds to prepare a
feasibility report concerning a proposed municipal, rural or
industrial water project to be financed under Section 5, Public
Law 99-294.
3. The request has been approved by the State Engineer
(proposed projects outside the Garrison Diversion Conservancy
District) or the District (proposed projects within the
District).
4. Funds will be provided to the Applicant from the "MR&I
Planning Account" of the Garrison Diversion Conservancy District
to supplement contributions from the Applicant. The Applicant
shall pay for a least 25% of the total cost of preparing the
feasibility report. The maximum authorized for the Applicant
under this agreement is [amount].
5. If the feasibility report is approved by the State
Engineer, federal funds are authorized for the project, and the
project is constructed, the Applicant agrees to repay the funds
provided under this agreement (without interest) within ten years
after the project is operational. Repayment shall be to the
Resources Trust Fund established by Section 57-51.1-07 of the
North Dakota Century Code.
6. If the feasibility report is disapproved by the State
Engineer, the Applicant shall not be obligated to repay the funds
provided pursuant to this agreement.
7. Payment shall be made to the Applicant (or its
designees) monthly (or as may be otherwise agreed upon). The
payment shall not exceed 75% of costs incurred by the Applicant
for the preparation of the feasibility report.

Date _____

Applicant

Garrison Diversion Conservancy
District

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission
 DATE November 19, 1986 PLACE Bismarck, ND
 PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Charles Reutter	New Rockford	GDCD
David Spruence	Bismarck	SWC
Roxella Sand	Bismarck	SWC
E. EMERSON MURRY	"	GDCD
Step Valerke	Taylor	West River joint Pond
Henry Scheep	Dickinson	West River water supply Dist
Robert You	Dickinson	— — — — —
Verroa Jaky	State Engineer	Bism
Roland Dolly	special assist.	commissioner of Reclamation
Darrell Krull	USBR	Proj mgr Bismarck
Dick Anderson	P.O. Box 2041 BISMARCK, ND	ULTEIG ENGINEERS, INC.
Pat McLaughlin	Standing Rock	Fort Yates N.D.
RONALD FRENCH	GRAND FORKS	KBM, INC.
Dale Frink	Bismarck	SWC
Jeff Weispening	OMB/EO's Office	Bismarck

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Jim Marti	Baldwin ND	Pheasants Forever
Ernie Greenshields	Dodge N.D.	Dunn County W.R.D
Leonard Jacobs	Reeder ND	Southwest Water Coop
HANK TRANGSRUD	P.O. Box 5054, FARGO, N.D.	HOUSTON ENGINEERING
Bruce McCollom	Bismarck	BW/BEC Engineering
Ken DURANT	Dickinson	City Commission
BRUCE PIER	Dickinson	City ENGR.
Milton Jundoy	Bismarck	SWC
Bruce Haugen	Bismarck	Cong. Dorgan
Clay Carlson	Bismarck	Sen Mark Andrews
Chale Duwall	Wash. D.C.	Bureau of Reclamation
Billy E. Martin	Billings, Mt.	Bureau of Reclamation
Robert A. Napman	Bismarck	Sen. Quentin N. Burdick ^{U.S.S.} office of Intergovernmental Assistance
Howard Sage	Bismarck	
John M. Lamm	Bismarck	N.P. Farm Bureau