

MINUTES

**North Dakota State Water Commission
Bismarck, North Dakota**

August 26, 1993

The North Dakota State Water Commission held a meeting in the lower level conference room in the State Office Building, Bismarck, North Dakota, on August 26, 1993. Governor-Chairman, Edward T. Schafer, called the meeting to order at 1:30 PM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
Judith Dewitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
David Sprynczynatyk, State Engineer and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 20 persons in attendance interested in agenda items
(The attendance register is on file with the official minutes.)

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

**INTRODUCTION OF
FLORENZ BJORNSON,
WEST FARGO, ND, TO
STATE WATER COMMISSION**

Commission, replacing Daniel Narlock. Her term is effective July 1, 1993 and expires on July 1, 1999.

Florenz Bjornson, West Fargo, ND, was introduced. Ms. Bjornson was appointed by Governor Schafer to serve as a member of the State Water

APPROVAL OF AGENDA

There being no additional items for the agenda, the Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

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CONSIDERATION OF MINUTES
OF JULY 1, 1993 SWC AND
GDCD JOINT MEETING -
APPROVED

The minutes of the July 1, 1993
State Water Commission and
Garrison Diversion Conservancy
District joint meeting were
approved by the following
motion:

*It was moved by Commissioner Swenson,
seconded by Commissioner Olin, and
unanimously carried, that the minutes of the
July 1, 1993 State Water Commission and
Garrison Diversion Conservancy District joint
meeting be approved as circulated.*

CONSIDERATION OF MINUTES
OF JULY 2, 1993 MEETING -
APPROVED

The minutes of the July 2, 1993
State Water Commission meeting
were approved by the following
motion:

*It was moved by Commissioner Swenson,
seconded by Commissioner Olin, and
unanimously carried, that the minutes of the
July 2, 1993 State Water Commission meeting
be approved as circulated.*

AGENCY FINANCIAL STATEMENT -
AGENCY OPERATIONS

Charles Rydell, Assistant State
Engineer, presented and discus-
sed the Program Budget Expendi-
tures, dated August 3, 1993, reflecting 100 percent of the 1991-
1993 biennium. Mr. Rydell indicated the biennium ended June 30,
1993 and that \$114,520 was turned back to the General Fund. **SEE
APPENDIX "A"**.

Mr. Rydell presented and
discussed the Program Budget Expenditures, dated August 26, 1993,
reflecting 4.2 percent of the 1993-1995 biennium. **SEE APPENDIX
"B"**.

AGENCY FINANCIAL STATEMENT -
RESOURCES TRUST FUND/
CONTRACT FUND

Dale Frink, Director of the
State Water Commission Water
Development Division, reviewed
and discussed the Contract Fund
expenditures for the 1991-1993
biennium. **SEE APPENDIX "C"**.

**1993 FLOOD UPDATE
(SWC Project No. 1516)**

Dale Frink provided a status report on flooding throughout the state. He distributed a statewide precipitation map, summarized critical flooded areas and reported on damages. The State Water Commission staff has been involved in the assessment of flood damages statewide. The most critical situation is currently in the Devils Lake Basin. Concern was also expressed for the situation that could result next spring because of wet antecedent conditions prior to spring snowmelt and runoff. Although flooding has been severe in much of the state, Mr. Frink said no major damage has been reported to any of the dams the State Water Commission has designed or built.

**SOUTHWEST PIPELINE PROJECT -
PROJECT UPDATE AND
CONTRACT/CONSTRUCTION STATUS
(SWC Project No. 1736)**

Tim Fay, Manager of the Southwest Pipeline Project, provided a status report on the following construction contracts:

Contracts 2-3E and 2-3F - Transmission Lines from Dickinson to Highway 21: Piping installation on Contract 2-3E continues with less than two miles remaining. Filling of some completed portions in preparation for testing has begun.

Piping is installed on Contract 2-3F. Reclamation is essentially complete. Pressure testing has not yet been successful as a number of leaks were detected. Some minor items related to manhole fixtures have yet to be completed.

Contract 2-6A - Transmission Piping from Highway 22 to Mott: This contract has been plagued by problems with pipe material quality. The contractor has ceased work on the site pending resolution of the problems. Discussions with the contractor and the pipe supplier are continuing.

Contract 2-7B - Transmission Piping from Davis Buttes to Richardton: This contract has progressed as far as the City of Taylor. It has recently been discovered that pipe supplied for the remainder of this contract has walls thicker than the specification allows. Although from a solely structural perspective this is a benefit, the resulting passageway for the water has less area than it should, resulting in higher loss of energy at design flow rates. This pipe has been rejected and the contractor is currently inactive.

Contract 3-1B - Second Zap Reservoir: Painting of the new reservoir is complete, as is re-painting of the first reservoir. Some items still await correction, which include a leaking joint on the overflow piping and improper compaction of fill near the foundation wall. These items will be resolved in the near future.

Contract 4-3 - Dickinson Pump Station: The floor and walls of the clear well, including the foundation drain system are complete. Currently, the inlet piping is being installed into the clear well and the outlet piping is being extended. Construction of the operating floor support pillars is also progressing. Following that, work can begin on the operating floor itself. When the clear well is complete, it must be filled and tested for water tightness. Backfilling and erection of the steel building can then commence.

Contract 5-3 - New England Reservoir: Construction of the foundation ringwall and backfill are complete. Current activities are grading rock pad within the ringwall. When this is finished, the site will be ready for steel erection.

Contract 5-13 - Davis Buttes Reservoir: Foundation construction, inlet, outlet, and overflow piping are complete. The steel construction crews have installed three of the five steel rings. After steel erection is complete, remaining work includes supply piping, painting, and final site work.

Mr. Fay indicated that all contracts have experienced some delays due to the weather.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
SOLE-SOURCE AND DEMAND SERVICE
AMENDMENTS TO WATER SERVICE
CONTRACTS FOR NEW HRADEC WATER
WORKS AND CITY OF DUNN CENTER
(SWC Project No. 1736)**

Tim Fay presented requests for the Commission's consideration from the New Hradec Water Works and the City of Dunn Center for sole-source and demand service amendments to their water service contracts.

Mr. Fay indicated interest in sole-source service has been expressed by the City of Beach, but the signed amendment has not been received.

It was the recommendation of the State Engineer that the State Water Commission approve executing sole-source and demand service amendments for the New Hradec Water Works and the City of Dunn Center.

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It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve executing the water service contract with sole-source and demand service amendments for the New Hradec Water Works and the sole-source and demand service amendments to the water service contract for the City of Dunn Center.

Commissioners Ames, Bjornson, Dewitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**GARRISON DIVERSION PROJECT -
PROJECT UPDATE
(SWC Project No. 237)**

Warren Jamison, Manager of the Garrison Diversion Conservancy District, provided a status report on the Garrison Diversion

Project, and discussed the Fiscal Year 1994 budget. The administration has recommended \$30 million for the project, which has been approved by the House. The House Appropriations Committee included the following language:

"GARRISON DIVERSION UNIT OF NORTH DAKOTA - Within funds provided for the Garrison Diversion Project in North Dakota and, after substantial completion of the draft Sykeston Canal alternative study, the Bureau of Reclamation is directed to begin a programmatic Environmental Impact Study (EIS) on the Garrison Diversion Unit and to continue to cooperate with the feasibility study and EIS on Devils Lake stabilization. The Bureau of Reclamation is also directed to continue preconstruction design work on the Turtle Lake Irrigation and Wildlife area with the funds provided for in Fiscal Year 1994."

Mr. Jamison briefed the Commission members on meetings held in Washington, DC on August 6, 1993, with the Congressional Delegation and the Commissioner of the Bureau of Reclamation, Dan Beard, to discuss the future water resource needs of the State of North Dakota.

As a result of those meetings, and in follow-up conversations with the congressional staff, the House Appropriations Committee report language has been modified and refined to move into a collaborative process to determine how to move the Garrison Diversion Project forward. Mr. Jamison said it is hoped that through the collaborative process a document would result by the end of next year that would finally put us on

the road to meeting the state's water resource needs and fulfilling the long-standing commitment of the federal government to North Dakota.

The modified language, as follows, has been submitted to the Congressional Delegation for consideration:

"GARRISON DIVERSION UNIT, NORTH DAKOTA - Within funds provided for the Garrison Diversion Unit Project in North Dakota, the Secretary of the Interior, through the Bureau of Reclamation, is directed to implement a collaborative process with the State of North Dakota to include, at a minimum, the parties who have historically been involved in the project. The collaborative process will consist of a series of meetings among people committed to the development of a mutually supportable plan, schedule and, ultimately, a legislative package which protects and enhances the North Dakota ecosystem and provides for the delivery of sufficient quantities of Missouri River water to meet the projected water uses in central and eastern North Dakota. The products of the collaborative process are to be completed by September 30, 1994. The plan should define the conditions under which such water would be delivered and for what uses water would be delivered to eastern North Dakota. The Bureau shall also continue to cooperate with the US Army Corps of Engineers and the State of North Dakota on the feasibility study for the stabilization of Devils Lake. As part of this effort, the Bureau of Reclamation is also directed to continue to conduct investigations, layouts, and estimates for the Turtle Lake Irrigation and Wildlife area with the funds provided for Fiscal Year 1994."

Mr. Jamison indicated that Commissioner Beard has agreed to work on new directions for the Garrison Project and has offered to take the lead role to bring the responsible parties to the table for this effort and to front-end it with the national environmental community.

Mr. Jamison announced the next meeting of the Garrison Diversion Conservancy District is scheduled for October 7-8, 1993, in Harvey and Carrington, ND, in conjunction with the dedication of the Lonetree Wildlife Management Area.

**GARRISON DIVERSION PROJECT -
BIOTA TRANSFER STUDY
(SWC Project No. 1828)**

At the July 1, 1993 meeting, Dr. Jay Leitch made a presentation on the Biota Transfer Study, reported on activities of the Technical Advisory Team, and discussed the progress of seven ongoing or recently completed studies.

Dr. Leitch discussed the funding process for the study and related budget costs. The Bureau of Reclamation, the State Water Commission and the Garrison Diversion Conservancy District are the sponsors for the study. Dr. Leitch expressed concern relative to the future direction and funding for the study.

Chairman Schafer had directed the State Engineer and the Manager of the Garrison Diversion Conservancy District to develop a recommendation relative to the future direction and funding for the Biota Transfer Study.

Secretary Sprynczynatyk reported he and Warren Jamison met with Dr. Leitch to discuss the future direction and funding for the study. It was agreed that funds would be made available for completion of the work proposed for 1993. The direction the study will take beyond 1993 will be resolved at a later date. Secretary Sprynczynatyk indicated it is his intent to schedule a meeting of the Biota Transfer Study Oversight Committee, which was created when the study was initiated, to provide oversight on the direction and funding for the study.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM UPDATE
(SWC Project No. 237-3)**

Jeffrey Mattern, MR&I Water Supply Program Coordinator, provided the following 1993 construction status report:

Garrison Rural Water Project: The project will provide water service to 260 users and Fort Stevenson State Park. Water service will be provided by October 1, 1993, if conditions remain favorable.

Missouri West Rural Water, Phase I: Phase I of the project has 384 rural water users and will provide bulk water service to New Salem, Crown Butte Subdivision, and Riverview Heights. Construction progress has been substantially delayed due to rain, but water service should be available to some of the users by September 1, 1993.

Ramsey County Rural Water Project, Phase I:

Construction is complete on Phase I of the project. Final cleanup and seeding will be done as the area dries out. Ramsey County Rural Water, Phase I, will provide water to 730 users, Grahams Island State Park, and Shelters Grove State Park. Construction will begin in September, 1993 on the new well field and water transmission pipeline; and in October, 1993, on the water treatment plant.

Stanley Water Supply Project: The Stanley Water Supply Project has approximately eight miles of pipeline to complete. The water storage reservoir is complete, but the system controls need to be installed. Water service is anticipated to be available to the City of Stanley by October 1, 1993.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM
FISCAL YEAR 1994 FUNDING
(SWC Project No: 237-3)**

The Garrison Diversion Unit federal appropriation for Fiscal Year 1994 is estimated to be \$30 million, which includes \$14,550,000 for the MR&I

Water Supply Program. At the July 1, 1993 meeting, the State Water Commission tentatively approved the State Engineer's recommendation of the Fiscal Year 1994 Garrison MR&I Water Supply Program budget and projects that qualify for 1994 funding. The motion for tentative approval was contingent upon approval of a federal Fiscal Year 1994 appropriation for the Garrison Diversion Unit Project, and subject to future revisions.

Jeffrey Mattern indicated the following projects have a high ranking on the MR&I priority list and the project sponsors have been asked to review their projects and provide written confirmation that their project can essentially be completed in 1994: Southwest Pipeline Project, Grand Forks Water Treatment, Langdon Water Treatment, Dickey Rural Water, Lehr Water Supply, Glenfield Water Supply, Hannaford Water Supply, and Fargo Water Supply.

A recommendation for the Fiscal Year 1994 Garrison MR&I Water Supply Program final budget will be made at a future meeting of the State Water Commission.

**GARRISON DIVERSION PROJECT -
MR&I PRIORITY CRITERIA REVIEW
COMMITTEE REPORT
(SWC Project No. 237-3)**

At the July 1, 1993 meeting, concern was expressed regarding the criteria used to rank MR&I projects and address the needs. It was the consensus of the

State Water Commission members that the MR&I priority criteria used for making recommendations for funding the water supply

projects be reviewed. Chairman Schafer had directed the State Engineer to appoint a committee of three Commission members and the Manager of the Garrison Diversion Conservancy District to review the criteria.

The following were appointed to the MR&I Priority Criteria Review Committee: Commissioners Vogel, Swenson and Dewitz, Warren Jamison, and Secretary Sprynczynatyk. The Garrison Diversion Conservancy District is represented on the Committee by Directors Rick Anderson and Frank Orthmeyer.

Secretary Sprynczynatyk reported the MR&I Priority Criteria Review Committee met on August 25, 1993. He summarized the committee's discussion. The committee requested the staff develop alternative priority ranking schemes which could be considered at a future State Water Commission meeting. The committee is scheduled to meet again on October 25, 1993.

**CONSIDERATION AND APPROVAL
OF REQUEST FROM MORTON COUNTY
WATER RESOURCE DISTRICT FOR
COST SHARING IN WILLOW ROAD
FLOODWAY PROJECT
(SWC Project No. 1292)**

A request was presented from the Morton County Water Resource District for the Commission's consideration to cost share in the Willow Road Floodway Project.

Cary Backstrand, State Water Commission Water Development Division, presented the project. Residential development adjacent to the Missouri River north of Mandan in Morton County has been progressing at a rapid pace. As this development occurs, problems with flooding have been encountered along the poorly defined channels conveying runoff from upland areas to the Missouri River. These problems have been aggravated, in part, by undersizing of roadway culverts. Although minor flooding has been experienced in the past, the heavy rains which occurred in July of this year reinforced the need for channel improvements to prevent flooding of these subdivisions north of Mandan.

The project is located in the SE1/4 of Section 33, Township 140 North, Range 81 West, and consists of channel excavation, levee construction, drop structures, and culvert installation along an unnamed stream channel which passes through the residential area, under Willow Road, and thence into the Missouri River. The project will reduce the amount of sediment reaching the Missouri River, reduce erosion of the river bank, protect private land and homes, and provide protection to Willow Road.

The estimated project costs are \$69,675, of which \$54,212 would normally be considered eligible for cost sharing. Non-eligible items consist of roadway culverts and installation, totalling \$15,583. The State Water Commission's cost share would be 50 percent of the eligible costs, totalling \$27,106.

Andy Mork, Chairman of the Morton County Water Resource Board, provided additional information relative to the project and requested the Commission's favorable consideration of the cost sharing request.

It was the recommendation of the State Engineer that the State Water Commission approve 50 percent of the eligible costs, not to exceed \$27,106 from the Contract Fund, for the Willow Road Floodway Project. Approval of the request is contingent upon the availability of funds.

It was moved by Commissioner Vogel and seconded by Commissioner Ames that the State Water Commission approve cost sharing of 50 percent of the eligible costs, not to exceed \$27,106 from the Contract Fund, for the Willow Road Floodway Project in Morton County.

Commissioners Ames, Bjornson, Dewitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**NORTHWEST AREA WATER
SUPPLY PROJECT
(SWC Project No. 237-4)**

Secretary Sprynczynatyk provided a status report on the Northwest Area Water Supply Project. Work on the pre-final design is proceeding on schedule. Recent activity by the engineering consultants includes: completion of the water needs assessment update of those communities and rural water systems signing agreements of intent; formulating water usage design criteria based in part on population projections for use in sizing project facilities; evaluating water treatment facilities in Minot, Williston and Parshall for possible use by the project; developing plan and profile drawings for the pipeline; and drafting an environmental assessment.

The Commission members were provided copies of the 1993 Community Needs Assessment Report, dated July, 1993, which is a part of the pre-final design, and provides information from those communities and rural water systems signing agreements of intent for the project.

Consultant work in the next several months will include: evaluation of alternative groundwater sources for the project; continuation of work on the environmental assessment and plan and profile drawings; determining project design criteria; and determination of water treatment requirements for Lake Audubon water.

Secretary Sprynczynatyk stated that one of the key issues remaining to be addressed is whether concerns over biota transfer will require treatment of Lake Audubon water at the intake. The City of Minot has expressed its desire to explore the possibility of treatment at the existing city facilities. He said resolution of this issue will impact the environmental assessment, pipeline routing, and some design criteria on work that is underway.

Secretary Sprynczynatyk briefed the Commission members on the Garrison Joint Technical Committee meeting held on July 29, 1993. He said the Canadian representatives did not rule out the possibility of treatment of water at Minot, but they did express concern as to how the treatment process at Minot could be modified to ensure no transfer of biota. The engineer will take these concerns into consideration for one pre-final design alternative incorporating the treatment facility at Minot.

**BALDHILL DAM SAFETY PROJECT
(SWC Project No. 300)**

Secretary Sprynczynatyk provided a status report on the Baldhill Dam Safety Project.

For the past three years, he said the state has been negotiating with the US Army Corps of Engineers on the project and has successfully negotiated the non-federal cost share down to approximately \$318,750, from having started at \$1.6 million. On September 15, 1992 the State Water Commission agreed to act as the non-federal sponsor for the project and requested that the remaining original water use sponsors for the project (Valley City, Lisbon, Fargo, Grand Forks and West Fargo) be asked to share in the non-federal cost. On June 9, 1993, the Commission approved the cost share arrangement with the five remaining water user entities and the Red River Joint Board, which has been executed by all of the entities.

The final negotiated agreement for the project between the Corps of Engineers and the State Water Commission was presented for the Commission's consideration. Secretary Sprynczynatyk stated a review of the agreement by the State Engineer, staff, and the Special Assistant Attorney General finds the agreement acceptable. It was the recommendation of the State Engineer that the State Water Commission approve the agreement and authorize the State Engineer to execute the agreement on behalf of the Commission.

It is the intent of the Corps of Engineers to begin final design of the \$32 million project as soon as the agreement is executed so that construction can begin in the fall of 1994.

It was moved by Commissioner Thompson and seconded by Commissioner Bjornson that the State Water Commission approve the Project Cooperation Agreement between the United States Department of the Army and the North Dakota State Water Commission for construction of modifications to Baldhill Dam; and that State Water Commission authorize the State Engineer to execute the Project Cooperation Agreement on behalf of the State Water Commission.

Commissioners Ames, Bjornson, Dewitz, Hillesland, Olin, Swenson, Thompson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**NORTH DAKOTA COMPREHENSIVE
WETLANDS CONSERVATION PLAN -
PLAN UPDATE
(SWC Project No. 1489-5)**

Environmental Protection Agency has awarded to the State Water Commission to aid in the development of the North Dakota Comprehensive Wetlands Conservation Plan. This information is attached hereto as **APPENDIX "D"**.

**FEDERAL WETLANDS POLICY
(SWC Project No. 1489)**

Secretary Sprynczynatyk provided the Commission members with information relating to the federal wetlands policy released August 24, 1993 by the White House Office on Environmental Policy. A summary of the federal policy is attached hereto as **APPENDIX "E"**.

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**STATE ASSUMPTION OF CORPS OF
ENGINEERS SECTION 404 PROGRAM
OF THE CLEAN WATER ACT
(SWC Project No. 1855)**

Secretary Sprynczynatyk provided background information on the possibility of North Dakota assuming jurisdiction for the Section 404 Program of the Clean Water Act. The 1993

Legislative Assembly enacted enabling legislation, signed by the Governor, which provides adequate authority for the state to assume the Section 404 Program. Secretary Sprynczynatyk explained the steps that must be taken before the state can assume the program, which include the development of implementing regulations, policies and procedures. He said this process will require considerable public input and participation to ensure that the program satisfies the requirements for state assumption and addresses all issues of concern expressed by groups and individuals.

The State Engineer has organized a Section 404 Advisory Committee, consisting of a representative from the following entities:

North Dakota Wildlife Society
National Wildlife Federation
North Dakota Farmers Union
North Dakota Farm Bureau
North Dakota Water Users Association
North Dakota Water Resource Districts Association

North Dakota Game and Fish Department
North Dakota Department of Health
North Dakota Agriculture Department
Office of Attorney General
North Dakota State Engineer

Serving on the committee as technical advisors are representatives of the US Army Corps of Engineers, the US Soil Conservation Service, and the US Fish and Wildlife Service. The role of the committee is to:

- 1) Identify tasks which need to be undertaken in the process of seeking state Section 404 approval.
- 2) Develop a time table for various tasks to be completed.
- 3) Identify critical issues to be addressed in implementing regulations.
- 4) Provide thorough review of draft regulations.

Secretary Sprynczynatyk stated the committee's role is critical in providing insight and recommendations to address the concerns raised during this

process, although the final decisions will be the responsibility of the State Engineer. The committee's initial meeting is scheduled for September 3, 1993.

**NORTH DAKOTA NO-NET
LOSS OF WETLANDS PROGRAM
(SWC Project No. 1489-6)**

At the July 1, 1993 meeting, the Commission discussed the North Dakota No-Net Loss of Wetlands Program. Commissioner

Hillesland made the suggestion that we review the wetlands programs at the state and federal level and explore additional efforts that could be taken to make the North Dakota No-Net Loss of Wetlands Program successful.

Commissioner Hillesland presented and discussed a draft resolution for the Commission's review, which is attached hereto as **APPENDIX "F"**. The Commission members were asked to provide comments on the draft resolution prior to the October 26, 1993 State Water Commission meeting.

**DEVILS LAKE STABILIZATION
PROJECT
(SWC Project No. 1712)**

At the July 2, 1993 meeting the State Water Commission authorized the State Engineer to enter into an agreement with

the US Army Corps of Engineers for Phase I of the Devils Lake Feasibility Study, and to provide the cost sharing assurances from the \$500,000 allocated from the Resources Trust Fund for this study.

Secretary Sprynczynatyk reported it appears that the State Water Commission and the Corps of Engineers are close to executing an agreement for the Phase I feasibility study of Devils Lake. Considerable discussion has occurred regarding whether the US Geological Survey or the Corps' Hydrologic Engineering Center will do the hydrologic evaluation of the project. He said it is likely that the US Geological Survey will do the work due to its familiarity with Devils Lake and its office locations in North Dakota. Once the agreement is signed, the Phase I study will begin, which is scheduled for completion in approximately one year. If Phase I shows that the project is feasible, the main feasibility study, Phase II, will commence and will take at least two years to complete.

Secretary Sprynczynatyk said it appears that the Phase I efforts will not be as costly for the State Water Commission as previously thought. The current estimate is that the State Water Commission will pay the US Geological Survey \$49,000 and the Corps of Engineers less than \$10,000.

Secretary Sprynczynatyk said the Corps of Engineers believes it must base the feasibility of an inlet/outlet on only the flood control aspects of an outlet. The recent flooding in the basin should help to obtain feasibility but, unfortunately, the ongoing flooding has also increased the chances of continued flooding next spring.

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

Secretary Sprynczynatyk briefed the Commission members on the Missouri River Basin Association meeting held August 20, 1993, to discuss the Corps of Engineers 1994 Annual Operating Plan for the Missouri River mainstem dams. A letter from the Association to Colonel John Schaufelberger of the Omaha District Corps of Engineers is attached hereto as **APPENDIX "G"**.

Secretary Sprynczynatyk reported that due to flooding in the Missouri and Mississippi River Basins, the Corps of Engineers postponed the meeting scheduled for August 3-5, 1993, to discuss 307 alternatives that are being considered in the preliminary draft Environmental Impact Statement of the Missouri River Master Water Control Manual review. The meeting has been rescheduled for September 29 - October 1, 1993 in Omaha.

The Upper Missouri River Basin Governors Association is scheduled to meet in Rapid City, South Dakota, on September 7, 1993.

**FUTURE STATE WATER
COMMISSION MEETINGS**

The next meeting of the State Water Commission is scheduled for October 26, 1993 in Dickinson, ND.

The State Water Commission will also meet on December 8, 1993 in Minot, ND, in conjunction with the North Dakota Water Users Association and North Dakota Water Resource Districts Association annual convention.

**U.S. V. SARGENT COUNTY LAWSUIT
(SWC Project No. 1222)**

Secretary Sprynczynatyk provided background information and a status report on the U.S. v. Sargent County lawsuit. The state has been involved in settlement negotiations regarding the case since April, 1992. The attorney for Sargent County and the state have considered, and agreed to, correspondence from the attorney for the US Justice Department suggesting the three parties pursue nonbinding mediation. All parties have agreed upon a mediator and a meeting has been scheduled with the mediator for September 17, 1993 in Minneapolis.

The court ordered the pretrial conference, scheduled for August 24, 1993, and the trial, scheduled to begin September 27, 1993, to be postponed for at least 120 days.

**NATIONAL WATER EDUCATION
FOR TEACHERS (WET) BROCHURE
(SWC Project No. 1862)**

Secretary Sprynczynatyk provided the Commission members with a National Water Education for Teachers (WET) brochure. He

noted that credit is given to the State Water Commission for having initiated and developed the idea of water education for teachers in 1984. Secretary Sprynczynatyk serves on the National Project WET Advisory Board.

**INQUIRY BY COMMISSIONER
DEWITZ RELATIVE TO POSSIBLE
CONFLICT OF INTEREST**

At the July 2, 1993 meeting, the Commission members were informed that when Commissioner Dewitz was appointed by

Governor Schafer to serve as a member of the State Water Commission, it was realized there could be a possible conflict of interest since Commissioner Dewitz has, since 1984, worked under contract for the State Water Commission monitoring groundwater observation wells. Commissioner Dewitz is currently under contract with the State Water Commission until December, 1993 to provide data collection services.

Secretary Sprynczynatyk explained that although these contracts are between Commissioner Dewitz and the State Water Commission, they have never been approved by the Commission. Instead, they have been executed by the State Engineer on behalf of the Commission. Secretary Sprynczynatyk stated he asked Julie Krenz, Special Assistant Attorney General, to review the situation to determine whether there is a conflict of interest if Commissioner Dewitz serves as a water commissioner while remaining under contract with the Water Commission.

Secretary Sprynczynatyk stated Julie Krenz has reviewed the situation and provided a copy of her memorandum to Attorney General Heitkamp, since she felt the Attorney General should be aware of the situation because of her general interest in the issue of ethics. Attorney General Heitkamp indicated the existing contract with Commissioner Dewitz should be terminated because of the possible conflict of interest and the appearance of impropriety. The alternative would be for Commissioner Dewitz to resign from the State Water Commission. Secretary Sprynczynatyk indicated he has visited with Commissioner Dewitz and she has indicated a willingness to terminate her contract with the Commission.

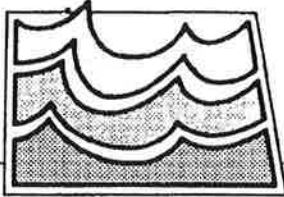
Secretary Sprynczynatyk stated it is his recommendation that Commissioner Dewitz's contract continue through the observation season and be terminated at the end of the year. Secretary Sprynczynatyk stated the Governor's Legal Counsel has been informed of the situation, and he is agreeable with the recommendation.

There being no further business to come before the State Water Commission, it was moved by Commissioner Vogel, seconded by Commissioner Olin, and unanimously carried, that the State Water Commission meeting adjourn at 3:00 PM.


Edward T. Schafer
Governor-Chairman

SEAL


David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary



North Dakota State Water Commission

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

August 26, 1993
1:30 PM, Central Daylight Time

AGENDA

- A. Roll Call
- B. Approval of Agenda
- C. *Consideration of Minutes of Following Meetings:*
 - 1) *State Water Commission and Garrison Diversion Conservancy District Joint Meeting of July 1, 1993* **
 - 2) *State Water Commission Meeting of July 2, 1992* **
- D. Financial Statement:
 - 1) Agency Operations ** ***
 - 2) Resources Trust Fund **
 - 3) Contract Fund **
- E. 1993 Flood Update
- F. Southwest Pipeline Project:
 - 1) Project/Construction Status Report **
 - 2) *Water Service Contracts/Amendments* **
- G. Garrison Diversion Project:
 - 1) Project Update ***
 - 2) MR&I Water Supply Program Update **
 - 3) MR&I Priority Criteria Review Committee Report
- H. *Consideration of Following Request for Cost Sharing:*
 - 1) *Willow Road Floodway - Morton County* ** ***
- I. Northwest Area Water Supply Project **
- J. *Baldhill Dam Safety Project* **
- K. Comprehensive State Wetlands Conservation Plan:
 - 1) Plan Update **
 - 2) White House Policy ***
 - 3) North Dakota No-Net Loss of Wetlands
 - 4) State Assumption of Section 404

GOVERNOR EDWARD T. SCHAFER
CHAIRMAN

DAVID A. SPRYNCZYNYATYK, P.E.
SECRETARY & STATE ENGINEER

AGENDA - PAGE 2

- L. Devils Lake Stabilization Update **
- M. Missouri River Update
- N. Other Business:
 - 1) Future Meetings:
 - a) October 26, 1993, Dickinson
 - b) December 8, 1993, Minot
 - 2) Sargent County Lawsuit
- O. Adjournment

* * * * *

- ** MATERIAL PREVIOUSLY PROVIDED IN BRIEFING FOLDER
- ** *ITALICIZED, BOLD-FACED ITEMS REQUIRE SWC ACTION*
- *** MATERIAL PROVIDED IN TODAY'S FOLDER

If auxiliary aids or services such as readers, signers, or Braille material is required, please contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505; or call (701) 224-4940 at least five (5) working days prior to the meeting. TDD phone number is (701) 224-3696.

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE August 26, 1993 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
VERN FAIRY	Bism	GDCD
Neal Bauer	Bis	Standing Rock Sioux Tribe
Wally D. Lunsd	Bis	AMERICAN ENGINEERING MORTON COUNTY W.R.D.
Fletcher Poling	"	Basin Electric Power Coop
Dave Koland	Bismarck	ND Rural Water Systems Assoc.
Wille Maskel	Dechloron	SW Waterworks
Don Taylor	Taylor	SWA
W. David Johnson	Carrington	GDCD
CHARLES VEIN	414 UNIVERSITY AVE GRAND FORKS, ND	ADVANCED ENGINEERING
Scott Elsted	Bismarck	USFWS
Lee Klapprodt	Bis	SWC
CHUCK RYDELL	BISMARCK	STATE WATER COMMISSION
Andy Mork	Mandan	Morton Co W R B

APPENDIX "A"

August 26, 1993 - 121

STATE WATER COMMISSION
PROGRAM BUDGET EXPENDITURES JUNE 30, 1993
BIENNIUM TIME 100.0%
FINAL (ADJUSTED)*

FINANCIAL STATEMENT
SWC File #C5-1.4
08-03-1993

AGENCY PROGRAM	SALARIES & WAGES	INFORMATION SERVICES	OPERATING EXPENSE	EQUIPMENT	CONTRACTS	PROGRAM TOTAL
Administration						
Budget	\$584,488	\$81,133	\$299,242	\$38,500	\$0	\$1,003,363
Expended	\$569,699	\$75,774	\$286,066	\$38,237	\$0	\$969,777
Percent	97	93	96	99	0	97
Water Education						
Budget	\$599,097	\$0	\$157,532	\$6,000	\$130,100	\$892,729
Expended	\$563,874	\$0	\$141,556	\$5,820	\$99,471	\$630,720
Percent	97	0	90	97	76	93
Water Appropriation						
Budget	\$2,138,156	\$24,192	\$468,824	\$164,700	\$760,946	\$3,556,818
Expended	\$2,024,526	\$17,569	\$468,563	\$164,544	\$754,240	\$3,429,441
Percent	95	73	100	100	99	96
Water Development						
Budget	\$2,451,105	\$3,500	\$385,367	\$106,500	\$13,957,514	\$16,904,286
Expended	\$2,378,909	\$1,763	\$375,773	\$106,423	\$7,613,076	\$10,475,950
Percent	97	50	98	100	55	62
Atmospheric Resources						
Budget	\$344,592	\$27,175	\$1,229,220	\$11,672	\$3,050,000	\$4,662,659
Expended	\$328,632	\$22,861	\$968,886	\$6,933	\$1,003,353	\$2,330,667
Percent	95	84	79	58	33	50
Southwest Pipeline						
Budget	\$614,047	\$0	\$3,772,489	\$114,100	\$27,240,000	\$31,740,636
Expended	\$524,461	\$0	\$3,196,114	\$81,555	\$10,062,140	\$13,864,323
Percent	85	0	85	72	37	44
Contract Carryover						
Budget	\$0	\$0	\$0	\$0	\$2,769,132	\$2,769,132
Expended	\$0	\$0	\$0	\$0	\$550,667	\$550,667
Percent	0	0	0	0	20	20
Agency Totals						
Budget	\$6,731,485	\$136,000	\$6,312,674	\$441,972	\$47,907,692	\$61,529,823
Expended	\$6,410,120	\$117,969	\$5,436,958	\$403,551	\$20,102,966	\$32,471,564
Percent	95	87	86	91	42	53
FUNDING SOURCE:	APPROPRIATION	EXPENDITURES	BALANCE	FEDERAL FUND REVENUE:	\$16,573,022	
General Fund	\$5,809,811	\$5,695,291	\$114,520	SPECIAL FUND REVENUE:	\$11,772,662	
Federal Fund	\$34,966,595	\$15,553,620	\$19,412,975	GENERAL FUND REVENUE:	\$5,266	
Special Fund	\$20,753,417	\$11,222,654	\$9,530,763	TOTAL:	\$28,350,949	
TOTAL	\$61,529,823	\$32,471,564	\$29,058,258			

* Reflects internal budget adjustments not shown in final SAMIS report for 1991-93 biennium.

APPENDIX "B"

August 26, 1993 - 122

STATE WATER COMMISSION
PROGRAM BUDGET EXPENDITURES JULY 31, 1993
BIENNIUM TIME 4.2%

FINANCIAL STATEMENT
SWC File #C5-1.4
08-26-1993

AGENCY PROGRAM	SALARIES & WAGES	INFORMATION SERVICES	OPERATING EXPENSE	EQUIPMENT	CONTRACTS	PROGRAM TOTAL
Administration						
Budget	\$633,590	\$75,792	\$293,465	\$3,000	\$0	\$1,005,847
Expended	\$24,252	\$0	\$13,596	\$0	\$0	\$37,849
Percent	4	0	5	0	0	4
Water Education						
Budget	\$624,858	\$0	\$142,264	\$12,750	\$25,000	\$804,872
Expended	\$22,814	\$0	\$638	\$0	\$0	\$23,452
Percent	4	0	0	0	0	3
Water Appropriation						
Budget	\$2,178,891	\$3,955	\$408,500	\$33,000	\$660,000	\$3,284,346
Expended	\$95,800	\$0	\$7,522	\$0	\$640	\$103,962
Percent	4	0	2	0	0	3
Water Development						
Budget	\$2,486,884	\$2,500	\$316,700	\$57,100	\$8,612,509	\$11,475,693
Expended	\$104,817	\$0	\$2,047	\$0	\$7,842	\$114,707
Percent	4	0	1	0	0	1
Atmospheric Resources						
Budget	\$384,452	\$11,500	\$1,700,701	\$10,500	\$3,050,000	\$5,157,153
Expended	\$22,698	\$0	\$53,164	\$0	\$2,619	\$78,480
Percent	6	0	3	0	0	2
Southwest Pipeline						
Budget	\$736,047	\$0	\$4,617,020	\$110,000	\$26,600,000	\$32,063,067
Expended	\$23,762	\$0	\$99,678	\$0	\$473,903	\$597,343
Percent	3	0	2	0	2	2
Contract Carryover						
Budget	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Expended	\$0	\$0	\$0	\$0	\$0	\$0
Percent	0	0	0	0	0	0
Agency Totals						
Budget	\$7,044,722	\$93,747	\$7,478,650	\$226,350	\$39,447,509	\$54,290,978
Expended	\$294,143	\$0	\$176,645	\$0	\$485,005	\$955,793
Percent	4	0	2	0	1	2
FUNDING SOURCE:	APPROPRIATION	EXPENDITURES	BALANCE	FEDERAL FUND REVENUE:		\$0
General Fund	\$5,532,084	\$149,219	\$5,382,865	SPECIAL FUND REVENUE:		\$77,400
Federal Fund	\$32,775,404	\$598,196	\$32,177,208	GENERAL FUND REVENUE:		\$0
Special Fund	\$15,983,490	\$208,378	\$15,775,112	TOTAL:		\$77,400
TOTAL	\$54,290,978	\$955,793	\$53,335,185			

STATE WATER COMMISSION
1991 - 1993 Grants

Approved by SWC: 09-15-92

	RTF	General Funds	Other Funds	Reimbursement	Totals
MR&I Program (Fed FY 93)	\$7,501,441			\$1,219,490	\$8,720,931
Maple River Dam	\$500,000				\$500,000
Southwest Pipeline	\$0			\$2,384,219	\$2,384,219
General Projects	\$739,915		\$40,000		\$779,915
EPA Wetlands Grant			\$291,825		\$291,825
Devils Lake Feas. St	\$500,000				\$500,000
Na chinn Hunn-Dakota	\$50,000				\$50,000
Souris River FC	\$1,637,924				\$1,637,924
Drought Livestock Prog.	\$300,000				\$300,000
Hydrologic Invest	\$486,446		\$274,500		\$760,946
Biota Transfer Studies		\$100,000			\$100,000
SWC Grants Totals	\$11,715,726	\$100,000	\$506,325	\$3,603,709	\$16,025,760

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
WATER DEVELOPMENT DIVISION						
MR&I Program						
		Unallocated Balance		\$0.00		\$0.00
SWC	237-5	Ramsey Co Rural Water	9-15-92	\$3,487,596.00	\$2,552,837.14	\$936,758.86
SWC	237-12	Agassiz Rural Water (Final)	3-13-91	204,750.00	204,750.00	0.00
SWC	237-15	North Valley Water Assoc (Final)	9-17-91	496,800.00	490,527.05	6,272.95
SWC	237-17	Tri-County Rural Water (Final)	9-15-92	123,480.00	114,258.46	6,221.54
SWC	237-27	Missouri West	9-15-92	2,625,565.00	1,151,616.02	1,473,948.98
SWC	237-38	Grandin (Final)	3-13-91	36,190.00	28,136.59	8,053.41
SWC	237-40	Kindred (Final)	9-15-92	36,050.00	30,151.41	5,898.59
SWC	237-36	Stanley	10-21-91	1,011,500.00	340,327.89	671,172.11
SWC	237-42	Garrison Rural Water	9-15-92	700,000.00	175,770.24	524,229.76
		MR&I SUBTOTAL		\$8,720,931.00	\$5,088,374.80	\$3,632,556.20
SWC	237-4	Na Chinn Hunn-Dakota (NAWS)	2-04-92	500,000.00	\$0.00	\$500,000.00
SWC	416	Devils Lake Flood Control	2-04-92	500,000.00	0.00	500,000.00
SWC	1344	Maple River Flood Control	2-04-92	500,000.00	173,390.00	326,610.00
SWC	1798	Souris River Flood Control	2-04-92	1,637,924.00	1,637,923.50	0.50
SWC	1736	Southwest Pipeline Project	2-04-92	2,384,219.00	2,384,219.00	0.00
SWC	1851	Drought Livestock Program	6-24-91	300,000.00	284,435.00	15,565.00
		SUBTOTAL		\$5,372,143.00	\$4,479,967.50	\$892,175.50
EPA Wetlands Grant						
		Unallocated Balance		\$0.00		\$0.00
SWC	1489-5	Wetlands Education	9-15-92	\$77,550.00	\$23,725.56	\$53,824.44
		Technical Services		14,400.00	5,527.50	8,872.50
		Water Quality Analysis		14,325.00	0.00	14,325.00
		Grand Harbor		71,775.00	2,051.72	69,723.28
		Adopt-a-Pothole		24,000.00	0.00	24,000.00
		Private Lands		31,950.00	4,995.26	26,954.74
		Devils Lake Basin		45,825.00	21,164.67	27,660.33
		Attorney General		9,000.00	1,951.48	7,048.52
		GRANT TOTAL		\$291,825.00	\$59,416.19	\$232,408.81

STATE WATER COMMISSION
1991 - 1993 Grants

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
		Unallocated Balance		\$58,096.00	\$0.00	\$58,096.00
SWC	237	Garrison Consultant	8-22-91	\$40,000.00	\$32,051.42	\$7,948.58
SE	237	Water/Wildlife Program		\$1,160.00	\$1,154.00	\$6.00
SWC	237	Garrison Coalition	12-19-92	\$10,000.00	\$10,000.00	\$0.00
SWC	237-99	Miller:P/E (F)	2-08-93	\$20,000.00	\$20,000.00	\$0.00
SE	237-99	Miller:P/E II (F)	4-01-93	\$10,000.00	\$10,000.00	\$0.00
SWC	300	Baldhill Dam	9-15-92	\$184,000.00	\$0.00	\$184,000.00
SWC	322	Planning Consultant	6-24-91	\$26,100.00	\$26,999.28	-\$899.28
SWC	416	Devils Lake Water Quality (F)	12-20-91	\$19,800.00	\$19,800.00	\$0.00
SE	475	Golden Lake (F)	2-09-93	\$865.00	\$865.00	\$0.00
SWC	662	Snag & Clear Park River	4-02-92	\$14,958.00	\$4,841.00	\$10,117.00
SWC	662	Snag & Clear Park River #2	5-23-92	\$4,625.00	\$0.00	\$4,625.00
SE	847	Absarraka Dam (F)	12-10-91	\$2,098.00	\$2,098.00	\$0.00
	988	Antelope Creek Cleanout (F)	1-07-92	\$2,400.00	\$1,778.00	\$622.00
	1217	Tri-County Drain #6 (F)	12-10-91	\$1,556.00	\$1,556.00	\$0.00
SWC	1280	Turtle River Snag & Clear (F)	2-05-92	\$438.00	\$438.00	\$0.00
	1311	Trall County (Elm)	9-15-92	\$5,590.00	\$0.00	\$5,590.00
	1311	Trall County (Bing)	9-15-92	\$4,900.00	\$0.00	\$4,900.00
SWC	1346	Mount Carmel	4-02-92	\$14,350.00	\$15,295.00	-\$945.00
SWC	1389	Irrigation District (F)	4-02-92	\$2,000.00	\$2,000.00	\$0.00
SWC	1496	Lake Elsie		\$11,500.00	\$0.00	\$11,500.00
SE	1751-G	Williston Floodplain	2-24-93	\$1,000.00	\$0.00	\$1,000.00
	1588-1	International Coalition (F)	2-04-92	\$5,000.00	\$5,000.00	\$0.00
	1701	Statewide Communication Plan (F)	2-04-92	\$15,000.00	\$15,000.00	\$0.00
	1701	UNET/Barkaw Visit Walsh (F)	8-01-91	\$1,464.00	\$1,464.00	\$0.00
	1701	UNET/Walsh Co (F)	6-23-92	\$3,139.00	\$3,139.00	\$0.00
	1730	Section 22 (FY 92) (F)	2-04-92	\$32,300.00	\$32,300.00	\$0.00
SE	1730	Section 22 (FY 91) (F)	8-29-91	\$3,500.00	\$3,500.00	\$0.00
SE	1730	Section 22 (FY 92) Parshall (F)	7-28-92	\$3,562.50	\$3,562.50	\$0.00
SE	1730	Section 22 (FY 92) Washburn (F)	5-29-92	\$1,687.50	\$1,687.50	\$0.00
SWC	1730	Section 22 (FY 93) (F)	4-06-93	\$10,000.00	\$10,000.00	\$0.00
SE	1751-H	Lower Forest River FP		\$5,200.00	\$0.00	\$5,200.00
SE	1791	TRS 5% Cost Share (F)	5-30-91	\$9,400.00	\$9,400.00	\$0.00
SWC	1802	Lake Irvine Outlet Structure	2-04-92	\$26,900.00	\$2,000.00	\$24,900.00
SWC	1804	Grand Harbor (F)	4-02-92	\$5,500.00	\$5,500.00	\$0.00
SWC	1804	Grand Harbor #1	4-06-93	\$68,826.00	\$48,186.00	\$20,640.00
SWC	1803	Belfield Flood Control	12-20-91	\$38,800.00	\$0.00	\$38,800.00
SE	1813	Cass County Snagging & Clearing	11-25-91	\$3,750.00	\$3,425.00	\$325.00
SWC	1815-4	Sheyenne Snagging & Clearing	12-09-92	\$4,836.00	\$0.00	\$4,836.00
SWC	1816-3	Sheyenne Snagging & Clearing (F)	12-20-91	\$5,508.00	\$4,595.00	\$913.00
SWC	1816-4	Sheyenne Snagging & Clearing (F)	12-09-92	\$3,000.00	\$3,000.00	\$0.00
SWC	1822	Devils Lake Hydrolic Study (F)	4-06-93	\$15,000.00	\$15,000.00	\$0.00
SWC	1826	Wetlands	4-06-93	\$10,000.00	\$10,000.00	\$0.00
SWC	1842-3	Wild Rice Snagging & Clearing III	2-04-92	\$31,000.00	\$18,236.00	\$12,764.00
SWC	1842-4	Wild Rice Snagging & Clearing	12-09-92	\$725.00	\$0.00	\$725.00
SE	1852	Water Strategy TF	4-26-91	\$13,056.00	\$12,083.86	\$972.14
SE	1859	Water Quality Task Force	11-25-91	\$1,000.00	\$445.34	\$554.66
SWC	1865	Belfield Dam	4-02-92	\$11,000.00	\$1,030.80	\$9,969.20
SWC	1868-3	Wild Rice Snagging & Clear (F)	12-09-92	\$2,600.00	\$352.00	\$2,248.00
SWC	1868	Wild Rice Snagging & Clear (F)	12-20-91	\$12,725.00	\$994.00	\$11,731.00
GENERAL PROJECTS SUBTOTAL				\$779,915.00	\$358,776.70	\$421,138.30
DIVISION TOTALS				\$15,164,814.00	\$9,986,535.19	\$5,178,278.81

1828	PLANNING & EDUCATION DIVISION Biota Transfer Studies	\$100,000.00	\$99,470.54	\$529.46
1395	WATER APPROPRIATION DIVISION USGS Coop Program	\$460,000.00	\$420,134.05	\$39,865.95
1854	Project Contracts	\$300,946.00	\$257,516.48	\$43,429.52
	Division Totals	\$760,946.00	\$677,650.53	\$83,295.47
SWC GRANT LINE TOTALS (Water Development, Water Appropriations & Planning)		\$16,025,760.00	\$10,763,656.26	\$5,262,103.74



Office of the State Engineer

MEMORANDUM

TO: Governor Edward T. Schafer
State Water Commission Members

FROM: David A. Sprynczynatyk, State Engineer

SUBJECT: SWC #1489-5, State Wetland Conservation Plan

DATE: August 12, 1993

This memo is an update on the grants EPA has awarded to the State Water Commission to aid development of the North Dakota Comprehensive Wetland Conservation Plan.

I am pleased to report that EPA has formally approved the grant proposal for FY93 funding to assist North Dakota in developing its state wetland conservation plan. The proposal was submitted cooperatively by the Game and Fish Department and the State Water Commission. The State Water Commission has been named the lead agency for the project. During the Commission's April 6th meeting a motion passed authorizing the receipt and expenditure of the grant funds. After final technical review, I will sign and return the formal agreement to EPA.

Tasks included under the FY93 grant include continued development of the Commission's geographic information system to aid in regulating wetland resources; continued work in wetland education through North Dakota Water Users; continued support for the Game and Fish Department's private lands initiative program; identification of CRP tracts providing the greatest waterfowl and wildlife benefits; and further development of a wetland water quality data base including field testing.

The FY93 grant total is \$253,334, with \$190,000 federal funds to be matched by \$63,334 in-kind services and cash expenditures provided through the non-federal recipients. State Water Commission staff will manage the grant and develop the geographic information system.

In a recent meeting with Mr. John Peters, EPA grant coordinator, we covered the State's proposed Section 404 assumption outreach program and our progress in developing North Dakota's wetland conservation plan document. The potential for continued funding in FY94 was also discussed.

In our discussion, Mr. Peters indicated that EPA had received letters from wildlife and environmental interest groups who were critical of how North Dakota was proceeding with its application for 404 assumption. As you know, the recent session of the North Dakota State Legislature passed HB 1142 which provides the mechanism for the state to assume the Section 404 program under the Federal Clean Water Act.

To assume the program, North Dakota must file a formal application with the Environmental Protection Agency. The application must include details of how the state will operate the program. In our approach to 404 assumption we felt it necessary to obtain legislative support before we proceeded. Now that we have state legislation in place we are beginning to develop the required implementing regulations, procedures, and policies for Section 404 state assumption.

In this phase of our assumption process we are actively seeking input from the various interest groups who wish to be involved in the development of a North Dakota 404 program. I have initiated an outreach program that will facilitate broad input into designing regulations, procedures, and policies that address all of the critical issues relating to Section 404 and wetlands protection.

Among other things, I am establishing an advisory committee to help identify tasks and critical issues that must be considered. It is a fundamental requirement that rules and regulations developed for state 404 administration must be consistent with the requirements of federal law. However, in designing the state 404 program, I am asking both conservation and agriculture representatives on the advisory committee to help address their special concerns. This will help shape our overall program making it more responsive to circumstances in North Dakota and as efficient and effective as possible.

In addressing our progress in developing North Dakota's Comprehensive Wetland Conservation Plan we provided a detailed outline and explanation of what the final document will contain. In our process to develop the plan we will arrange coordination through three advisory committees. These committees will receive leadership from the State Water Commission and the North Dakota Game and Fish Department.

The first advisory committee is being established to develop recommendations for North Dakota wetland regulatory programs. They will evaluate existing federal and state programs, permitting requirements, water quality standards, and the wetland mitigation and banking policies. The committee will provide specific recommendation for inclusion in the state plan. The ND Chapter of the Wildlife Society, National Wildlife Federation, ND Water Users Assoc., ND Farm Bureau, and ND Farmers Union have been asked to participate.

The second advisory committee will be involved in non-regulatory wetland protection and enhancement components of the state plan. This advisory committee will oversee wetland restoration and creation, private land initiatives, landowner incentive opportunities, and enhancement opportunities on public land.

The third committee will involve the ND Wetlands Institute. This group will develop recommendations relating to future wetland planning activities and wetland education and information programs. Communication and coordination, education strategy development, watershed/river basin cooperative plans, and identification of funding sources will be addressed.

The prospects for continual grant support in FY94 was the last major item discussed with Mr. Peters. I am very pleased with EPA's wish to continue their support of our activities associated with the state wetland conservation plan. Mr. Peters indicated that we can expect a FY94 grant equal to at least our FY93 allotment of \$190,000 federal dollars. The application process will change this year requiring a pre-application. In the pre-application we are asked to request funding for all wetland management activities we would like to pursue. Funds available to EPA Region VIII will dictate our basic grant but additional items we include will compete at the national level from available supplemental funds.

All activities associated with our FY92 grant are on track. However, we have requested an extension in project time period due to delays in start-up and to some readjustments of work assignments. Please contact me if you have any specific question I have not addressed in this memo.

DAK:LK:dp/1489-5

August 26, 1993 - 12

THE WHITE HOUSE
OFFICE ON ENVIRONMENTAL POLICY

FOR IMMEDIATE RELEASE
TUESDAY, August 24, 1993

**NEW FEDERAL WETLANDS POLICY OFFERS FAIR, FLEXIBLE APPROACH
ENDS AGENCY INFIGHTING AND GRIDLOCK WITH STRONG AGREEMENT**

WASHINGTON -- A new federal policy that offers a fair, flexible and comprehensive approach to managing America's wetlands was unveiled today (8/24) by nine federal agencies, ending years of agency infighting and gridlock.

"This plan is balanced and fair. By bringing together all the interested parties, we've moved beyond polarization and paralysis and arrived at a plan that is flexible and effective," said Kathleen McGinty, Director of the Office on Environmental Policy.

Nine federal agencies were involved in the development of the new wetlands initiative announced today, including the U.S. Environmental Protection Agency, the Department of Agriculture, and the Army Corps of Engineers. Since June, an interagency group convened by the White House Office on Environmental Policy has heard from farmers, environmentalists, developers, scientists, state and local public officials, and members of Congress about our nation's wetlands.

The interagency working group was formed in response to a request to President Clinton from seven U.S. Senators asking that the White House take the lead in resolving the contentious wetlands issues that have been the center of controversy and disagreements for years.

"The new agreement is a significant advance in protecting American wetlands, which are currently being lost at a rate of nearly 300,000 acres per year," said Carol M. Browner, Administrator of the U.S. Environmental Protection Agency. "The agreement is fair to landowners at the same time that it protects our water quality and wildlife."

Agriculture Secretary Mike Espy said, "This new wetlands policy is meaningful reform -- for the environment and for the farmers and ranchers of America. It is a fair and flexible policy that simplifies the process of identifying wetlands and provides farmers a simpler method for identifying federal requirements for wetland conservation."

(MORE)

The wetlands initiative includes more than 40 changes to current wetlands policy, including establishing a more effective process so that landowners and farmers can seek review of permit decisions without having to go to court.

Wetlands protection efforts in recent years have been controversial, leading to years of protracted disagreements between federal agencies that undercut the effectiveness of the program and caused confusion and frustration among the states and with the public. The plan unveiled today breaks the gridlock caused in the past by warring federal agencies and reflects a new consensus on a wide-ranging set of improvements to the program.

"The cooperation fostered in the interagency working group will translate into better coordination in the field, more effective wetlands protection, and a more efficient regulatory program," said G. Edward Dickey, Acting Assistant Secretary of the Army for Civil Works.

Gerald B. Digerness, President of the National Association of Conservation Districts and a dairy farmer said, "After years of confusion and conflict regarding wetlands protection and regulation, America's conservation districts welcome what appears to be a fair, flexible and technically feasible approach that recognizes the environmental, economic and social benefits of these valuable resources."

The plan will better protect wetlands by closing a loophole in regulations that allowed certain destructive activities, such as draining wetlands, to go unregulated. It also expands a wetlands reserve program to allow farmers to sell easements to the government for wetlands restoration purposes.

The plan includes several administrative actions that will take effect over the next several months, as well as legislative recommendations for Congress this fall as part of the reauthorization of the Clean Water Act.

Specifically, the wetlands plan will:

-- Establish a new, efficient, money- and time-saving administrative appeals process so that farmers and other landowners can seek review of permit decisions without going to court;

-- Continue use by all agencies of the 1987 wetlands delineation manual pending completion and review of the National Academy of Sciences study, expected in September 1994. Any future revisions to the manual will be subject to a public rule-making process;

(MORE)

-- Impose deadlines and provide additional guidance so that permitting decisions will be made in a timely and more predictable fashion;

-- Increase emphasis on state, tribal and local government roles, as well as voluntary wetlands protection and restoration programs with landowners;

-- Reduce duplication and inconsistency for American farmers, by designating the Soil Conservation Service of the U.S. Department of Agriculture as the lead agency for wetlands determinations on agricultural lands;

-- Withdraw a proposed rule that would have left critical Alaskan wetlands unprotected.

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A SUMMARY OF

"PROTECTING AMERICA'S WETLANDS: A FAIR, FLEXIBLE, AND EFFECTIVE APPROACH"

August 24, 1993

INTRODUCTION

The Clinton Administration is proposing a comprehensive package of improvements to the Federal wetlands program that reflects a new broad-based consensus among Federal agencies. For years, many have argued that the Federal government badly needed to improve its wetlands program to make it fairer and more effective. But for too long, contradictory policies from feuding Federal agencies have blocked progress, creating uncertainty and confusion. This wetlands package reflects a sharp break through the past gridlock caused by warring Federal agencies and contains a balanced, common sense, workable set of improvements that will make the program simpler, fairer, better coordinated with state and local efforts and more effective at protecting wetlands.

ACKGROUND

The Nation's wetlands perform many functions that are important to society, such as improving water quality, recharging groundwater, providing natural flood control, and supporting a wide variety of fish, wildlife and plants. The economic importance of wetlands to commercial fisheries and recreational uses is also enormous.

The Nation has lost nearly half of the wetland acreage that existed in the lower 48 States prior to European settlement. The Nation's wetlands continue to be lost at a rate of hundreds of thousands of acres per year due to both human activity and natural processes. This continued loss occurs at great cost to society.

Notwithstanding the importance of wetland resources, Federal regulatory programs to protect wetlands have caused considerable controversy. Critics of Federal wetlands regulatory programs have effectively characterized those programs as unfair, inflexible, inconsistent, and confusing. Supporters of wetlands protection have responded — with equal effectiveness — by emphasizing the environmental and economic benefits associated with protecting the Nation's wetlands.

As both sides have voiced their strongly held opinions, the debate over Federal wetlands policy has become increasingly divisive, with agencies fighting agencies and generating enormous confusion among the public and the states and stalling needed reforms in the program. In short, wetlands policy had become one of the most controversial environmental issues facing the Federal government, slowing work on the reauthorization of the overall Clean Water Act.

THE INTERAGENCY WORKING GROUP ON FEDERAL WETLANDS POLICY

The Administration convened the Interagency Working Group on Federal Wetlands Policy in early June with the goal of developing a package of Clinton Administration initiatives to end the wetlands wars, break the deadlock over Federal wetlands policy and develop a set of workable improvements to the program. The group has been chaired by the White House Office on Environmental Policy and has included the participation of the Environmental Protection Agency (EPA), the Army Corps of Engineers (Corps), the Office of Management and Budget, and the Departments of Agriculture (USDA), Commerce, Energy, Interior, Justice, and Transportation.

The working group sought the views of a broad range of stakeholders representing all perspectives in the wetlands debate. For example, the group has received presentations that have included: a bipartisan group of eight members of the U.S. Congress; representatives of State and local government; environmentalists; the development community; agricultural interests; scientists; and others.

After listening to this broad range of interests, the working group established five principles that serve as the framework for the Administration's comprehensive package of wetlands reform initiatives.

FIVE PRINCIPLES FOR FEDERAL WETLANDS POLICY

The Clinton Administration supports the interim goal of no overall net loss of the Nation's remaining wetlands, and the long-term goal of increasing the quality and quantity of the Nation's wetlands resource base;

- 2) Regulatory programs must be efficient, fair, flexible, and predictable, and must be administered in a manner that avoids unnecessary impacts upon private property and the regulated public, and minimizes those effects that cannot be avoided, while providing effective protection for wetlands. Duplication among regulatory agencies must be avoided and the public must have a clear understanding of regulatory requirements and various agency roles;
- 3) Non-regulatory programs, such as advance planning; wetlands restoration, inventory, and research; and public/private cooperative efforts must be encouraged to reduce the Federal government's reliance upon regulatory programs as the primary means to protect wetlands resources and to accomplish long-term wetlands gains;
- 4) The Federal government should expand partnerships with State, Tribal, and local governments, the private sector and individual citizens and approach wetlands protection and restoration in an ecosystem/watershed context; and
- 5) Federal wetlands policy should be based upon the best scientific information available.

A COMPREHENSIVE PACKAGE OF REFORMS

Building upon these principles, the working group has developed a comprehensive package of initiatives that will significantly reform Federal wetlands policy, while maintaining protection of this vital natural resource. This package includes regulatory reforms and innovative, non-regulatory policy approaches; it includes administrative actions that will take effect immediately, and legislative recommendations for Congress to consider during the reauthorization of the Clean Water Act. The Clinton Administration looks forward to working closely with the Congress to implement this new approach to Federal wetlands policy.

The reform package includes the following initiatives:

- To affirm its commitment to conserving wetlands resources, the Administration will issue an Executive Order embracing the interim goal of no overall net loss of the Nation's remaining wetlands resource base, and a long-term goal of increasing the quality and quantity of the Nation's wetlands;
- To increase fairness in the wetlands permitting process, the Corps will establish an administrative appeals process so that landowners can seek speedy recourse if permits are denied without having to go to court;
- To make sure that decisions are made without delay, the Corps will establish deadlines for wetlands permitting decisions under the Clean Water Act;
- To reduce uncertainty for American farmers, yesterday the Corps and EPA issued a final regulation ensuring that approximately 53 million acres of prior converted cropland — areas which no longer exhibit wetlands characteristics — will not be subject to wetlands regulations;
- To reduce duplication and inconsistency for American farmers, the Soil Conservation Service will be the lead Federal agency responsible for identifying wetlands on agricultural lands under both the Clean Water Act and the Food Security Act;
- To close a loophole that has led to the degradation and destruction of wetlands, yesterday the Corps and EPA issued a final regulation to clarify the scope of activities regulated under the Clean Water Act;
- To emphasize that all wetlands are not of equal value, yesterday EPA and the Corps issued guidance to field staff highlighting the flexibility that exists to apply less vigorous permit review to small projects with minor environmental impacts;
- To ensure consistency and fairness, the Army Corps of Engineers, the Environmental Protection Agency, the Soil Conservation Service, and the Fish and Wildlife Service will all use the same procedures to identify wetland areas;

- To increase the predictability and environmental effectiveness of the Clean Water Act regulatory program and to help attain the no overall net loss goal, the Administration endorses the use of mitigation banks;
- To reduce the conflict that can result between wetlands protection and development when decisions are made on a permit-by-permit basis, the Administration strongly supports incentives for States and localities to engage in watershed planning;
- To provide effective incentives for farmers to restore wetlands on their property, the Administration will continue to support increased funding for the USDA's Wetland Reserve Program; and
- To help attain the long-term goal of increasing the quantity and quality of the Nation's wetlands, the Administration will promote the restoration of damaged wetland areas through voluntary, non-regulatory programs.

CONCLUSION

This package breaks the gridlock that has paralyzed wetland policy in the past and represents a major advance in reforming and improving the wetlands program nationwide. It reflects the President's broader commitment to "reinventing" government to make it more responsive, more active and more efficient.

The critics of the wetlands regulatory program have performed a service to the country by highlighting the need for meaningful reform in the administration of wetland regulatory programs. Many of the much needed reforms contained in this package -- such as permit deadlines, an appeals process, mitigation banking, and increasing the role of state and local government in wetlands regulation -- have been proposed by those seeking improvements in the operation of the current regulatory program.

The supporters of wetlands protection have also performed a service by helping to inform the Nation of the environmental and economic importance of wetlands, a valuable natural resource that was once routinely destroyed. Their strong commitment to protecting and restoring this vital resource is also reflected in this package. For example, a loophole has been closed in Federal regulations that allowed the degradation and destruction of wetlands; the "Alaska 1% rule," which would have greatly relaxed wetlands protection in Alaska, will be withdrawn; and the Administration will draft an Executive Order affirming its commitment to the preservation and restoration of wetland areas.

By adopting an approach based upon the effective protection of an important natural resource in a manner that is fair and flexible, the Clinton Administration proposes a wetlands policy that recognizes both the value of wetland resources and the need to minimize regulatory burdens.

Resolution

WHEREAS, North Dakota's no net loss of wetlands law was enacted by the North Dakota Legislature in 1987; and

WHEREAS, as part of the no net loss of wetlands program, the North Dakota Legislature authorized the development of a uniform wetland classification system for North Dakota, upgraded wetland drainage enforcement laws, established wetlands policy for North Dakota, and established a wetlands mitigation banking system; and

WHEREAS, wetlands conservation objectives of the North American Waterfowl Management Plan, the North Dakota Wetlands Trust, the North Dakota Game and Fish Department, the Partners for Wildlife Program, the Adopt a Pothole Program, and other wetland protection and enhancement initiatives depend significantly on the cooperation and support of local governments and landowners; and

WHEREAS, no net loss of wetlands is an essential component of the overall wetlands protection strategy in North Dakota and provides significant opportunity to achieve solutions for long term wetlands conservation objectives; and

WHEREAS, the efforts of the North Dakota wetlands management committee, and other initiatives, have shown significant benefits in North Dakota; and

WHEREAS, North Dakota's no net loss of wetlands legislation could be improved for better implementation and effectiveness of the no net loss of wetlands program; and

WHEREAS, many landowners are willing to mitigate for wetland losses, but circumstances applicable to the prairie pothole region in North Dakota make it extremely difficult to comply with the requirements for mitigation of wetland conversion under the Swampbuster provisions of the 1990 Farm Bill; and

WHEREAS, the State of North Dakota has entered into a series of agreements with the U.S. Fish and Wildlife Service on wetland management, that have provided a basis for on-going dialogue between the State and the Service.

WHEREAS, the Clinton Administration, through the White House office on Environmental Policy, has proposed a wetlands policy that, among other things, supports the goal of no overall net loss of the Nation's remaining wetlands; encourages public/private cooperative efforts; recommends expansion of partnerships between the Federal government, state, tribal, and local governments, and the private sector; recommends that wetlands protection and restoration be approached in the context of watersheds and ecosystems; and emphasizes that regulatory programs must be efficient, fair, flexible, and predictable, and must avoid unnecessary impacts upon private property and the regulated public.

DRAFT

NOW THEREFORE BE IT RESOLVED, as follows:

1. No net loss of wetlands is an important component of North Dakota's wetland conservation strategy.
2. Cooperation of landowners and local governments is essential to achieve wetlands conservation objectives.
3. A review of North Dakota's no net loss of wetlands program should be undertaken to determine areas of improvement.
4. A review shall also be undertaken of the requirements for mitigation under the Swampbuster provisions of the 1990 Farm Bill, and recommendations for increased flexibility shall be submitted to North Dakota's congressional delegation for consideration and inclusion in the 1995 Farm Bill process.

BE IT FURTHER RESOLVED, that the Governor's wetlands management committee be reconvened to further address the issues and recommendations of this resolution.

MRBA

Missouri River Basin Association

August 26, 1993

Colonel John E. Schaufelberger
Missouri River Division Engineer
US Army Corps of Engineers
12565 West Center Road
Omaha, NE 68144-3869

Dear Colonel Schaufelberger:

On behalf of the Missouri River Basin Association (MRBA), I thank you for providing the Association the opportunity to participate in the development of the 1994 Annual Operating Plan (AOP) for the Missouri River mainstem dams. As always, Duane Sveum and his staff at the reservoir control center were extremely helpful in providing us with the data we needed for our discussions.

Unlike the past two years, the MRBA directors were unable to arrive at a consensus on recommendations for the 1994 AOP. No longer united by our shared concern for weathering the severe drought, the rapid refilling of the reservoirs and preoccupation with flooding issues actually made our task more, rather than less difficult. Despite our lack of consensus, we did find agreement on many aspects of the 1994 AOP. I will summarize our deliberations to help you understand where our members stand on the issues addressed by the AOP.

We began by giving serious consideration to the proposal offered by the Missouri River Natural Resources Committee (MRNRC). Although appreciative of the MRNRC's plan to incorporate environmental concerns, protect economic values, and balance the needs of threatened and endangered species along the river, we ultimately rejected the plan for two reasons. First, we could not support a plan which would result in even a remote likelihood of increased flooding as this plan does, especially along the Nebraska City stretch. Second, several of our members raised questions about the legality of such a radical change in river operations under the context of an AOP. Although it may not be appropriate for consideration under the current AOP process, we encourage the Corps to take a hard look at this type of environmental operating scenario in the ongoing review of the Master Manual.

Colonel John E. Schaufelberger
August 26, 1993
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The other two proposals we considered were what we called Option 1, which calls for following the existing Master Manual, and Option 5, which is aimed at conservation during low runoff conditions and which imposes an early closing of the navigation season of two weeks, four weeks, and five weeks under median, lower quartile, and lower decile inflows, respectively.

All of us agreed that the Corps should provide a full navigation season with full service if inflows are above median. Where we disagreed is how to manage the river if inflows above Sioux City are below normal. Our board is torn between those who are compelled to provide relief to a navigation industry which has not had a full season in five years and has suffered a major disruption this year, and those who are committed to seeing that the reservoir system does not return to critical system storage levels such as occurred during the past five years. Some members felt that the navigation season length should not be tied to inflow conditions but to a check of system storage as directed by the Master Manual.

Rather than call for a vote that would have been split between upper and lower basin states, we agreed to disagree and to not offer you 1994 AOP recommendations. I might add that our discussions were neither bitter nor rancorous. Indeed, they were honest and productive and we look forward to continued participation in the development of future Annual Operation Plans.

Thank you, again, for the cooperation and support your staff provided to us, our Technical Committee, and the Missouri River Natural Resources Committee.

Sincerely,


David A. Sprynczynatyk, President
Missouri River Basin Association

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Copy: MRBA Directors
Gene Zuerlein, Chairman, MRNRC