

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

March 9, 1994

The North Dakota State Water Commission held a meeting in the lower level conference room in the State Office Building, Bismarck, North Dakota, on March 9, 1994. 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 people 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.

CONSIDERATION OF AGENDA

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

CONSIDERATION OF MINUTES OF DECEMBER 8, 1993 - APPROVED

The minutes of the December 8, 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 December 8, 1993, State Water Commission meeting be approved as circulated.

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CONSIDERATION OF MINUTES
OF DECEMBER 29, 1993 TELEPHONE
CONFERENCE CALL MEETING -
APPROVED

The minutes of the December 29, 1993, State Water Commission telephone conference call 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 December 29, 1993, State Water Commission telephone conference call meeting be approved as circulated.

CONSIDERATION OF MINUTES
OF FEBRUARY 17, 1994 TELEPHONE
CONFERENCE CALL MEETING -

The minutes of the February 17, 1994, State Water Commission telephone conference call 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 February 17, 1994, State Water Commission telephone conference call meeting be approved as circulated.

FINANCIAL STATEMENT -
AGENCY OPERATIONS

Charles Rydell, Assistant State Engineer, presented and discussed the Program Budget Expenditures, dated February 15, 1994, reflecting 29.2 percent of the 1993-1995 biennium. **SEE APPENDIX "A"**.

AGENCY FINANCIAL STATEMENT -
CONTRACT FUND; AND RESOURCES
TRUST FUND REVENUE UPDATE

Dale Frink, State Water Commission's Water Development Division, reviewed and discussed the Contract Fund expenditures for the 1993-1995 biennium. **SEE APPENDIX "B"**.

As of January 1, 1994, revenue projections for the Resources Trust Fund have decreased due to declining oil production and prices. Mr. Frink indicated that the shortfall is currently estimated at \$972,176 below the spending authority of the State Water Commission. He said this decrease has been partially offset by an increase in grants from the Environmental Protection Agency and increased collections from local water resource districts. The net shortfall for grants is

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estimated at \$631,815. Approximately \$1.6 million remains available for allocation to new projects from a total grant authorization of \$9.8 million. To date, about \$2.6 million has been paid from the Contract Fund.

**CONSIDERATION AND APPROVAL
OF REQUEST FROM MORTON COUNTY
WATER RESOURCE DISTRICT FOR
ADDITIONAL 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 for additional cost sharing for the Willow Road Floodway project.

Jim Lindseth, State Water Commission's Water Development Division, presented the request. At the August 26, 1993, meeting, the State Water Commission approved \$27,106 for the project. The project is complete and the actual eligible costs for the project are \$65,282, of which 50 percent is \$32,641. Due to cost overruns, the Morton County Water Resource District has requested additional funding of \$5,535.

Andy Mork, Chairman of the Morton County Water Resource District, provided project information and requested the Commission's favorable consideration of the request for additional funding.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$5,535 from the Contract Fund for the Willow Road Floodway project, for a total State Water Commission allocation of \$32,641.

It was moved by Commissioner Swenson and seconded by Commissioner Vogel that the State Water Commission approve an additional cost sharing of \$5,535 from the Contract Fund for the Willow Road Floodway project in Morton County, for a total State Water Commission allocation of \$32,641. This motion is contingent upon the availability of funds.

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.

**CONSIDERATION AND APPROVAL
OF REQUEST FROM HIGH VALUE
IRRIGATED CROP DEVELOPMENT
TASK FORCE FOR COST SHARING
FROM CONTRACT FUND FOR
1994 AND 1995
(SWC Project No. 1389)**

A request was presented for the Commission's consideration from the High Value Irrigated Crops Development Task Force for cost sharing in 1994 and 1995.

Milton Lindvig, State Water Commission Water Appropriation Division, presented the request for cost sharing of \$2,000 per year for the next two years. The State Water Commission has supported the efforts of the High Value Irrigated Crops Development Task Force during the past two years.

Mr. Lindvig provided background information and said the project has been successful in identifying and educating producers, processors and buyers of vegetable products. Many valuable contacts have been made and the network within the industry continues to develop.

The diversification of the state's agricultural production base to high value crops and their processing is a significant component of economic development activities. Much of the production base for these crops will be irrigated acreage, and the creation of a market for high value crops will stimulate new irrigation development. Some of this development could occur through the formation of irrigation districts.

It was the recommendation of the State Engineer that because this is a constructive effort toward the development of the state's water resources and economic development, the State Water Commission approve the expenditure of \$4,000 from the Contract Fund, with \$2,000 being paid in 1994 and \$2,000 being paid in 1995.

It was moved by Commissioner Thompson and seconded by Commissioner Vogel that the State Water Commission support the activities of the High Value Irrigated Crops Development Task Force, and approve the expenditure of \$4,000 from the Contract Fund, with \$2,000 being paid in 1994 and \$2,000 being paid in 1995. This motion is contingent upon the availability of funds.

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.

**CONSIDERATION AND APPROVAL
OF REQUEST FROM CAVALIER
COUNTY WATER RESOURCE
DISTRICT FOR COST SHARING
IN MT. CARMEL DAM PROJECT
(SWC Project No. 1346)**

A request was presented from the Cavalier County Water Resource District for the Commission's consideration to cost share in a project to raise the elevation of Mt. Carmel Dam and to meet dam safety requirements.

Dale Frink presented the request and provided background information. The State Water Commission has conducted preliminary engineering studies and, if the project is approved, will also supply final design, construction engineering and contract administration. The estimated cost of the project is \$700,000. The proposed cost sharing breakdown is \$330,000 from the State Water Commission, \$40,000 from the Game and Fish Department, and \$330,000 from the local sponsors.

Mr. Frink stated it is estimated that the State Water Commission's in-kind services would be approximately \$80,000 to cover engineering and contract administration expenses, and \$250,000 would be required from the Contract Fund, for a total commitment of \$330,000.

Bill Hardy, Chairman of the Cavalier County Water Resource District, provided information regarding the proposed project and requested the Commission's favorable consideration for cost sharing.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing in the Mt. Carmel Dam project for a total cost of \$330,000, of which approximately \$80,000 will be in-kind services and \$250,000 will be allocated from the Contract Fund.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve cost sharing for the Mt. Carmel Dam, not to exceed \$330,000, of which \$80,000 will be for in-kind services and \$250,000 will be allocated from the Contract Fund. This motion is contingent upon the availability of funds.

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.

Mr. Jamison reported the Administration's Fiscal Year 1995 proposed budget includes \$30 million for the Garrison Diversion Project. He said this level of funding support from the Administration is encouraging. Hearings are scheduled before the US House and Senate Subcommittees on Energy and Water Development of the Committees on Appropriations on April 12, 1994, in Washington, DC.

The North Dakota water management collaborative process efforts to refocus the direction of the Garrison Diversion Unit were discussed. Mr. Jamison said the process is going well and it is anticipated that a draft conceptual water development plan will be completed by June 1, 1994.

The Bureau of Reclamation is involved in efforts for the continuation of the Oakes test area beyond 1995, and an environmental process to evaluate mitigation impacts on the Arrowwood Refuge. The final report on the Sykeston Canal alternatives is anticipated to be released in March, 1994. Mr. Jamison said the Bureau considers the report an informational document and the Bureau has stated an environmental impact statement would be required for any further action.

The Garrison Diversion Conservancy District is hosting a Pick-Sloan Financial Workshop in Carrington on April 7, 1994. The purpose of the workshop is to provide participants with a base understanding that will help prepare for financial decisions which may be placed before them in the future.

**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 program status report:

Garrison Rural Water Project: The project is providing water service to most of its 270 users and Fort Stevenson State Park. Some minor work items will be completed this spring, including the addition of several water users.

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. Pre-final inspection has been completed on the service area north of Mandan and most users are receiving water. Construction progress on the service area west to New Salem has been substantially delayed due to the weather. Two storage reservoirs have been completed.

Ramsey County Rural Water Project, Phase II: Construction of two groundwater wells and 23 miles of water transmission pipeline have been completed on Phase II of the Ramsey County Rural Water project. The contractor will try to do the roadway boring for Highway No. 2, weather permitting. If the pipeline can be pressure tested and chlorinated, it will be used this winter.

Stanley Water Supply Project: The transmission pipeline for the Stanley Water Supply project has been installed. A portion of the pipeline has developed leaks and the contractor is working on the repairs. Water service was delayed, but it is hoped that water could be available to the city this spring.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM
FISCAL YEAR 1994 FUNDING; AND
APPROVAL OF ADDITIONAL MR&I
GRANT AND SWC LOAN FOR RAMSEY
RURAL WATER PROJECT
(SWC Project Nos. 237-3 & 237-5)**

The Garrison Diversion Unit federal appropriation for Fiscal Year 1994 included \$14,550,000 for the MR&I Water Supply Program. In addition, \$1,352,482 from Fiscal Year 1993 funding is available for the MR&I Program, bringing the

total funds available for 1994 to \$15,902,482. At the October 26, 1993, meeting, the State Water Commission approved the following projects for funding in Fiscal Year 1994, pending receipt of this level of funding:

Langdon Water Treatment	\$ 265,533
Grand Forks Water Treatment	944,611
Southwest Pipeline Project	7,275,000
Dickey Rural Water	3,380,000
Glenfield Water Supply	146,250
Hannaford Water Supply	150,800
Fargo Water Supply	3,502,070
Feasibility Studies	25,000
Administration	166,500
Unallocated Funding	<u>46,718</u>

Total \$15,902,482

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Jeffrey Mattern stated that Ramsey County Rural Water has requested an additional \$450,000, based on the engineer's estimate, to include the City of Tolna, 94 rural water users, and potential increased costs for the water treatment plant. Ramsey County opened bids for the new water treatment plant on January 18, 1994. The request is for a \$292,500 MR&I grant and a \$157,500 State Water Commission loan.

In reviewing the current MR&I projects, Mr. Mattern indicated funds can be made available to support the request from the Ramsey County Rural Water.

It was the recommendation of the State Engineer that the State Water Commission approve an additional MR&I grant of 65 percent, not to exceed \$292,500; and an additional 35 percent State Water Commission loan, not to exceed \$157,500, for the Ramsey County Rural Water project. The Garrison Diversion Conservancy District approved the MR&I grant request at its January 6, 1994, meeting.

It was moved by Commissioner Hillesland and seconded by Commissioner Olin that the State Water Commission approve an additional 65 percent MR&I grant, not to exceed \$292,500; and an additional 35 percent State Water Commission loan, not to exceed \$157,500, for the Ramsey County Rural Water project. This motion is contingent upon the availability of funds.

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.

It was the recommendation of the State Engineer that the State Water Commission approve the reallocation of MR&I project funding for Fiscal Year 1994 as follows:

Langdon Water Treatment	\$ 265,533
Grand Forks Water Treatment	944,611
Southwest Pipeline Project	7,275,000
Dickey Rural Water	3,380,000
Glenfield Water Supply	146,250
Ramsey County Rural Water	197,518
Fargo Water Supply	3,502,070
Feasibility Studies	25,000
Administration	<u>166,500</u>
Total	\$15,902,482

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It was moved by Commissioner Hillesland and seconded by Commissioner Olin that the State Water Commission approve the reallocation of MR&I Water Supply Program funding for Fiscal Year 1994 as recommended by the State Engineer.

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

The MR&I Priority Criteria Review Committee completed its review of the current priority system and presented an alternative priority ranking system

for the Commission's consideration.

Secretary Sprynczynatyk reviewed and explained the following adjustments to the priority criteria recommended by the committee. It was also the consensus of the committee that the priority ranking system be reviewed on a regular basis:

The points assigned to water quality were decreased to give more emphasis to water quantity problems.

New points were assigned to the creation of a new regional water system.

Points were dropped for local funding contribution for feasibility study and design costs.

Points were dropped for service area population size and median household income.

New points were assigned to account for high water rates.

Points were dropped for special circumstances.

New points were assigned for having water conservation measures.

Commissioners Bjornson, Hillesland and Thompson expressed concern of the alternative to decrease points assigned to water quality to give more emphasis to water quantity problems, primarily because of the EPA requirements for the drinking water standards.

Francis Schwindt, North Dakota State Department of Health and Consolidated Laboratories, expressed concern that water quality problems should be ranked equally with water quantity problems as in the current priority ranking system. He said the only exception to that would be for those water systems that have lost or are in eminent danger of losing their water supply.

Mr. Schwindt indicated that the Department of Health's review of the drinking water quality information for communities in North Dakota indicates that there will soon be significant costs for communities to meet proposed and existing EPA drinking water standards. Inability to meet the standards would put public water systems in jeopardy of enforcement actions.

Mr. Schwindt expressed concern that the priority points given to the user cost per month would encourage the development of high-priced systems, and that points should not be awarded based on whether the project is located within the Garrison Diversion Conservancy District.

It was moved by Commissioner Olin and seconded by Commissioner Ames that the State Water Commission adopt the MR&I Priority Criteria Review Committee's alternative priority ranking system for the MR&I Water Supply Program as presented. This would be effective starting with Fiscal Year 1995 funding appropriations.

Commissioners Ames, DeWitz, Olin, Swenson, Vogel, and Chairman Schafer voted aye. Commissioners Bjornson, Hillesland and Thompson voted nay. The recorded vote was six ayes; three nays. The Chairman declared the motion passed. SEE APPENDIX "C".

**GARRISON DIVERSION PROJECT -
APPROVAL OF MR&I WATER SUPPLY
PROGRAM DRAFT ADMINISTRATIVE
RULES
SWC Project No. 237-3)**

the administrative rules as soon as possible.

At the December 8, 1993, meeting, the Commission adopted the MR&I Water Supply Program draft administrative rules, and directed the State Engineer to begin the hearing process on

Secretary Sprynczynatyk explained that the rules are based on the current MR&I program process. The rules address the process for allocating funds and only reference a priority ranking system, which would allow the

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Commission the opportunity to periodically review the priority criteria. Secretary Sprynczynatyk explained the draft administrative rules before the Commission addresses all comments received to date, and the period for written comments is open until March 10, 1994.

It was moved by Commissioner Thompson and seconded by Commissioner Vogel that the State Water Commission adopt the draft MR&I Water Supply Program administrative rules, contingent that no additional comments are received that require a change in the rules as determined by the State Engineer. SEE APPENDIX "D".

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.

1994 SPRING RUNOFF

Dale Frink briefed the Commission members on meetings with the Corps of Engineers and the National Weather Service regarding the 1994 spring flood outlook for the state. He said of specific concern are the James River, lower Sheyenne River and Devils Lake.

Commissioner Ames discussed the current flooding situation in Williams County.

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

LeRoy Klapprodt, State Water Commission's Planning and Education Division, provided the Commission members with a status report on the grants the US 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 "E"**.

NORTH DAKOTA COMPREHENSIVE WETLANDS CONSERVATION PLAN - APPROVAL OF FY '94 GRANT (SWC Project No. 1489-8)

LeRoy Klapprodt discussed the grant proposal which has been submitted to the Environmental Protection Agency for continued funding in 1994 to develop a North Dakota Comprehensive Wetlands Conservation Plan. The entities involved in the submittal are the State Water Commission,

the Game and Fish Department, the Department of Health and Consolidated Laboratories, the Agriculture Department, the North Dakota Water Users Association, and the North Dakota Water Education Foundation. The current proposal is an extension of the work funded under FY '92 and FY '93 EPA grants.

Mr. Klapprodt said that if funding is approved, it will support the following tasks:

- 1) Expanded Wetlands Education and Outreach programs through the North Dakota Water Education Foundation's Wetlands Institute;
- 2) Continued development and application of the State Water Commission's GIS capability by assessing wetlands management objectives in the Devils Lake Basin;
- 3) Expanded work by the Game and Fish Department to prioritize CRP tracts important to wetlands and habitat protection, and further development of the Private Lands Initiative Program;
- 4) Watershed demonstration projects in the Devils Lake Basin and in the Sheyenne River Basin upstream from Harvey Dam.

Mr. Klapprodt said the projected cost of the tasks totals \$504,000. EPA's cost share policy under the wetlands conservation program is 75 percent federal and 25 percent non-federal. Each entity involved in the submittal will furnish the non-federal share for the tasks they have proposed. Mr. Klapprodt indicated that based on discussions with EPA's Region VIII office, there is a strong probability of receiving funding for grant administration, GIS, Wetlands Education and Outreach, and the private lands/CRP prioritization components of the proposal. Because of limited EPA funding, funding may not be received for the demonstration projects.

It was the recommendation of the State Engineer that the State Water Commission authorize receipt of the pending Fiscal Year 1994 grant award for the work tasks identified and expenditures necessary to carryout those tasks.

It was moved by Commissioner Bjornson and seconded by Commissioner Ames that the State Water Commission authorize receipt of the pending Fiscal Year 1994 grant award from the Environmental Protection Agency for the work tasks identified and the expenditures required to carryout those tasks in the continuation of efforts to develop a North Dakota Wetlands Conservation Plan.

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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.

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 project contracts:

Construction Contracts 2-3E and 2-3F - the transmission lines from Dickinson to Highway 21; 2-7B - the transmission line from Davis Buttes to Richardton; and 5-3 and 5-13 - the New England and Davis Buttes Reservoirs: These contracts are all near completion and the remaining items will be completed in the spring.

Contract 2-7C - Transmission Line from Taylor to the Cities North of the Knife River: This contract has been awarded and the contractor is currently working on his submittals.

Contract 4-3 - Dickinson Triple Pump Station: This is the only contract on which construction is currently taking place. The contractor is assembling the steel building as weather conditions allow.

Contract 4-3 - Rural Distribution System in New Hradec, Davis Buttes and Taylor Areas: The contract has been awarded and the contract documents are currently being prepared.

SOUTHWEST PIPELINE PROJECT -
SCS PL-566 TAYLOR WATERSHED
PROJECT PLAN
(SWC Project No. 1736)

Tim Fay reported that the Soil Conservation Service PL-566 Taylor Watershed Project Plan agreement was signed on January 11, 1994. The project is in

its final design phase and has been submitted for funding and construction authorization.

SOUTHWEST PIPELINE PROJECT -
SERVICE TO SOUTH DAKOTA
(SWC Project No. 1736)

The authorizing legislation for the Southwest Pipeline Project allows service to a region in South Dakota, which was identified in the project's preliminary engineering report. Tim Fay

stated interest in this area has been sporadic since construction

began; however, currently a well-organized attempt to develop a rural water system is underway. A preliminary engineering report has been developed for the system, although it is not the recommended one. Mr. Fay indicated that South Dakota officials and the local sponsors are still interested in the pipeline.

Mr. Fay stated that issues relating to capacity and funding need to be resolved regarding service to South Dakota.

The current design does not include South Dakota, although it does include capacity to serve all contracted cities with sole-source service at 250 gallons per capita per day, and the capacity to serve the rural service areas. Mr. Fay said that because of this, the project can currently deliver more water than is contracted; however, dedication of flow capacity to South Dakota would impact growth capacity elsewhere in North Dakota.

The authorizing legislation allows service to South Dakota if they enter into a water service contract "whereby no less than the total additional capital costs of increasing the capacity of the southwest pipeline" to provide the service. Mr. Fay said this amount would need to be quantified.

Mr. Fay reported on a meeting held January 11, 1994, with representatives from the South Dakota Department of Natural Resources to discuss these issues. The capacity question is currently being evaluated and the funding questions will be examined if the capacity is available.

**SOUTHWEST PIPELINE PROJECT -
1993 ANNUAL OPERATING REPORT
(SWC Project No. 1736)**

Pinkie Evans-Curry, Assistant Project Manager for the Southwest Pipeline Project, presented and discussed the 1993

Annual Operating Report for the Southwest Pipeline Project. The report reviewed the costs for 1993, and recommended the following proposed projections for 1994. The report is attached hereto as **APPENDIX "F"**:

<u>ITEM</u>	<u>CURRENT</u>	<u>PROJECTED</u>
Operation and Maintenance	\$ 0.50	\$ 0.60
Treatment	0.64	0.64
Replacement	0.30	0.30
Capital Repayment	<u>0.68</u>	<u>0.70</u>
Total	\$ 2.12	\$ 2.24

Mrs. Evans-Curry explained that the operation and maintenance rate for 1993 was \$0.50 per thousand gallons of water, while the actual audited cost for 1993 was \$0.46 per thousand gallons of water. Additional staff requirements in 1994 and associated expenses are expected to add approximately \$60,000. The purchase of certain critical electrical spare parts and equipment will add approximately \$20,000 to the 1994 operating costs. Based on experience of 1993, the projected amount of water delivered in 1994 has been set at 580,000,000 gallons rather than 600,000,000 projected in 1993. Applying the expected costs for 1994 indicate an increase in the operation and maintenance fee to \$0.60 per thousand gallons of water for 1994.

The treatment rate will be reviewed and adjusted, if necessary, in March, 1994. Mrs. Evans-Curry stated that the replacement fund deposit rate of \$0.30 per thousand gallons, which is deposited into the account for replacement and extraordinary maintenance, does not need to be changed. The capital repayment is deposited into the Resources Trust Fund, and the projected rate for 1994 has been adjusted by \$0.02 for inflation as described in the water service agreements with the users.

It was moved by Commissioner Thompson and seconded by Commissioner Olin that the State Water Commission approve:

- 1) *The 1993 Annual Operating Report for the Southwest Pipeline Project;*
- 2) *The operation and maintenance rate be adjusted to \$0.60 for 1994; and*
- 3) *The capital repayment rate be adjusted to \$0.70 for 1994.*

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; AND
APPROVAL OF ADDITIONAL
\$48,000 TO NAWA AGREEMENT
FOR ENGINEERING SERVICES
(SWC Project No. 237-4)**

At the December 8, 1993, meeting the State Water Commission voted to proceed with the development of the option of treatment of the East NAWA water supply in Minot. At its December 15, 1993, meeting in

Bismarck, the Garrison Joint Technical Committee considered the potential this option would have for a transfer of biota into Canadian waters. The committee created an Engineering/Biology Task Group to evaluate and consider safeguards to reduce or eliminate this potential. The committee met twice in February and will meet once again in April before documenting its findings in a draft report to the Garrison Joint Technical Committee by April 9, 1994.

Secretary Sprynczynatyk indicated the NAWS engineering team has attended the two meetings of the committee to provide information and answer questions on proposed NAWS features. They have also prepared drawings and estimated costs on some of the features being considered to prevent a transfer of biota. The agreement for engineering services, which the Commission has with the engineering team, does not cover the work of the engineering team in this capacity. Secretary Sprynczynatyk explained that a specific authorization will have to be added to the agreement for engineering services to cover this work by the engineering team. It is estimated that the specific authorization will be \$48,000. This cost will be added to the \$533,000 approved previously for this agreement. Secretary Sprynczynatyk stated that all funds for the NAWS pre-final design will be paid by the Garrison Diversion Conservancy District from its MR&I interest account.

It was the recommendation of the State Engineer that the State Water Commission approve the addition of a specific authorization, not to exceed \$48,000, to the NAWS agreement for engineering services for the work item of providing information to the Garrison Joint Technical Committee Engineering/Biology Task Group relating to development of the Minot treatment option for the East NAWS.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve the addition of a specific authorization, not to exceed \$48,000 from the MR&I Water Supply Program interest account, to the NAWS agreement for engineering services for the work item of providing information to the Garrison Joint Technical Committee Engineering/Biology Task Group relating to development of the Minot treatment option for the East NAWS system. This motion is contingent upon the availability of funds.

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 -
REQUIRMENT FOR CITIES TO
HOLD AN ELECTION PRIOR TO
SIGNING A NAWA WATER SERVICE
AGREEMENT UNLESS CITY HAS A
HOME RULE CHARTER
(SWC Project No. 237-4)

Secretary Sprynczynatyk indicated an issue facing the State Water Commission is the question of whether to require that cities hold an election prior to signing a NAWA water service agreement at the conclusion of the pre-final design.

40-33-16 states, in part:

North Dakota Century Code

Any city owning a system for the distribution of water ... may contract to purchase water at wholesale for such purposes from any person, firm, or public or private corporation able and willing to furnish the same Any such contract shall be authorized by an ordinance submitted to the voters for approval by a majority of those voting on the proposition before it takes effect.

Secretary Sprynczynatyk stated this question was put to Julie Krenz, Assistant Attorney General, whose memo response is attached hereto as **APPENDIX "G"**. In summary, her response states, in part, ... a city that has home rule may sign a water service contract without an election provided the city's charter authorizes the city to engage in that enterprise and the charter's implementing ordinance provides assurances that the activity has a public purpose, details the manner of implementing the activity, and provides for supervisory controls to ensure the public purpose is met.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission concur with these findings and require cities to hold an election prior to signing a NAWA water service agreement unless the city has an ordinance adopted under its home rule charter.

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.

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**SHEYENNE RIVER FLOOD CONTROL -
BALDHILL DAM SAFETY PROJECT
UPDATE
(SWC Project No. 300)**

Dale Frink reported on a meeting held December 14, 1993, in Valley City with the local officials to discuss the proposed five-foot raise of the flood pool at Baldhill Dam.

In January, 1994, the State Water Commission sent a letter to several cities, water resources boards, and interested groups requesting their recommendations by March 1, 1994, on the proposed flood pool raise, requesting a resolution of support or opposition to the project, along with a preference for a local sponsor.

Mr. Frink reported that to date, letters or resolutions of support have been received from West Fargo, the Southeast Cass Water Resource District, the Steele County Water Resource District, and the Red River Joint Water Resource Board. Valley City has verbally indicated support for the project and may be interested in becoming the local sponsor. Mr. Frink said there is also interest in forming a joint water resource board for this project. Fargo has expressed some interest although Mr. Frink said the city would not benefit directly from a flood control project on the Sheyenne River. Fargo does have a significant interest in water supply from Baldhill Dam.

A meeting will be held in March, 1994, to discuss the future direction of the project. The Corps of Engineers is currently estimating a non-federal requirement of \$4-5 million.

**SHEYENNE RIVER FLOOD CONTROL -
LOWER SHEYENNE 1993 FLOOD
ANALYSIS
(SWC Project No. 1344)**

Dale Frink provided the Commission members with information from the Corps of Engineers on the status and the preliminary results of the Corps's analysis of the 1993 summer flood on the lower Sheyenne River and the effects of the Sheyenne River levee and diversion projects on 1993 flood levels north of West Fargo. The analysis is summarized in the "Preliminary Summary Report", attached hereto as **APPENDIX "H"**.

Mr. Frink stated the key findings in the analysis are that the Horace and West Fargo levee and diversion projects did not affect flood levels north of West Fargo, that runoff from the Maple, Rush and lower Rush Rivers was the principal cause of the high flood levels north of West Fargo, and that the summer, 1975, flood was higher than the summer 1993 flood.

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

Secretary Sprynczynatyk reported that the agreement between the State Water Commission and the Corps of Engineers was executed on October 6, 1993, for Phase I of the Devils Lake Feasibility Study. The \$273,000 study is scheduled for completion by November, 1994, with the main purpose to determine whether there is adequate federal interest for the Corps to do a feasibility study. Of this amount, approximately \$62,500 will be required from the allocation from the Contract Fund.

The US Geological Survey in Bismarck is developing the lake elevation frequency analysis for the study under contract with the State Water Commission. This will be part of the State Water Commission's contribution towards the overall study. The US Geological Survey began the study November 1, 1993, and the analysis will be completed by May, 1994. This input will be used to evaluate the frequency of damage that may result from high lake levels.

Secretary Sprynczynatyk reported that the President's budget request for 1995 includes funding for the continuation of the feasibility study for the Devils Lake stabilization project.

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

Secretary Sprynczynatyk reported the Corps of Engineers is continuing its review of the Master Manual for the operations of the Missouri River Basin. The draft Environmental Impact Statement is expected to be released by the Corps in June, 1994. The Corps will then make its decision in 1995 or 1996.

**CANNONBALL RIVER BASIN
COOPERATIVE STUDY
(SWC Project No. 322-1)**

Linda Weispfenning, State Water Commission's Planning and Education Division, reported that several meetings have been held with the Bureau of Reclamation staff and representatives of the Standing Rock Sioux Tribe and other interested state agencies to continue discussions regarding the Cannonball River Basin Cooperative Study. The study participants are currently in the process of defining the goals and objectives of the study effort. Ms. Weispfenning stated the meetings have been very productive and the study Scoping Document should be completed within the next month. The focus of the study will be to determine and inventory what the water and related land resources are in the Cannonball Basin, followed by identifying options to utilize these resources in the wisest manner. It is expected the study will identify opportunities for economic development and opportunities for environmental and cultural enhancements.

Ms. Weispfenning reported on a meeting held February 14, 1994, at Carson, North Dakota, to meet with the local water resource districts and soil conservation district supervisors in the Cannonball Basin to inform them of the cooperative study effort and to encourage them to actively participate in the study process.

A survey will be conducted of the water resource districts and the soil conservation districts in the Cannonball River Basin to help identify water and conservation concerns, needs, and opportunities in the basin as perceived by the locals. The survey will focus on the water and conservation uses such as irrigation, municipal and recreation. Ms. Weispfenning indicated this information will offer the opportunity to incorporate specifics offered by the local entities into the planning effort. The local entities will be directly involved through the study.

After all study participants agree to the study Scoping Document, a Memorandum of Understanding will be developed. It is anticipated that the State Water Commission's participation will be in-kind services during this three-year effort.

**WILLIAMS COUNTY IRRIGATION
RECONNAISSANCE REPORT
(SWC Project No. 1858)**

The Commission members were provided copies of the Williams County Irrigation Reconnaissance Report dated March, 1994.

Secretary Sprynczynatyk provided background information on the project. The Buford-Trenton Irrigation project was constructed by the Bureau of Reclamation in 1940-1943. At full development, the project irrigated approximately 10,000 acres of land near Williston. After the closure of the Garrison Dam in 1953, Lake Sakakawea began filling, and the lake first reached its maximum normal operating elevation at 1850 msl in 1965. In 1958, the Corps of Engineers acquired the East Bottom of the Buford-Trenton project for the Garrison Dam-Lake Sakakawea project, reducing the irrigated area to approximately 7,100 acres. Currently, 9,876 acres are being served with water. Continuing problems with the high water table caused by Lake Sakakawea are threatening the remaining area of the Buford-Trenton project. The Upper Missouri Lake Sakakawea Planning Committee recognized the danger to the irrigation district and the potential impact it would have on the local economy. The committee has been working to prevent the loss of irrigation, and has approached the Williams and McKenzie County Water Resource Districts and proposed new irrigation districts to replace the Buford-Trenton District, if necessary. They are also interested in enhancing the local economy and realize the potential irrigation holds for economic development.

In August, 1991, the Williams County Water Resource District requested that the State Water Commission conduct a study to determine the feasibility of creating new irrigation districts in Williams County. In December, 1991, the Commission entered into an agreement with the District to conduct a reconnaissance investigation of irrigation in Williams County.

The possibility of developing irrigation in four areas in Williams County was investigated, including the Lower Little Muddy, the Nesson Valley, the Buford-Trenton, and the North Little Muddy. Secretary Sprynczynatyk stated that it appears that it may be feasible to develop irrigation in the Nesson Valley and Buford-Trenton areas. He said that if there is local interest in developing irrigation in Williams County, it is recommended that a feasibility study be done on these areas. Because of limited funds, it is recommended that the Buford-Trenton area be given a higher priority. The Williams County Water Resource District, the Upper Missouri Lake Sakakawea Planning Committee, the local irrigation district, and the individuals who are interested in irrigating will need to work together to develop any of these projects. Secretary Sprynczynatyk indicated that staff has met with the Williams County Water Resource District, and the District has expressed support for the development of irrigation projects and is in the process of setting up meetings to inform landowners in the two areas of the possibility of developing a project.

**BUFORD-TRENTON IRRIGATION
DISTRICT RECONNAISSANCE
REPORT, DECEMBER, 1993
(SWC Project No. 222)**

The Corps of Engineers has completed a reconnaissance study of the Missouri River Buford-Trenton Irrigation District, dated December, 1993. The

purpose of the study is to re-assess the aggradation-related problems in the Buford-Trenton Irrigation District at the upstream end of Lake Sakakawea on the Missouri River and to evaluate potential solutions to the problems. Aggradation has contributed to a rising ground-water table and has caused difficulty in farming operations. It is the feeling of the farmers and landowners within the District that the higher ground-water table has adversely affected crop yields. Aggradation has also decreased channel capacity and increased stages, thereby increasing the frequency of open-flow and ice-jam flooding.

The summary report of the study states, in part:

The study concludes that the high ground water and increased flooding problems in the District have been caused by construction and operation of the Garrison Dam-Lake Sakakawea project.

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Numerous ground water and flood control measures were evaluated. Most of these measures were either economically infeasible, would not have an acceptable level of dependability, or would not provide permanent solutions to the problems.

The selected plan would include acquisition of the lands in the District on a willing seller basis. Willing seller landowners would have two options: (1) fee title acquisition within a 10-year period; or (2) a two-phase buyout consisting of a flowage easement within a 10-year period and fee title acquisition of the remaining value during the following 15-year period. Acquisition is the only alternative that would provide a permanent solution to the problems in the District.

The report recommends approval as a basis for requesting congressional authority to acquire the lands within the District, in accordance with the conditions outlined in the selected plan of the report, and for requesting appropriation of funds to prepare a Real Estate Design Memorandum and acquire the lands.

Commissioner Ames commented on the Corps's reconnaissance report. He said that the Buford-Trenton Irrigation District Board of Directors and the landowners of the District basically support the study, but they are opposed to the idea of a fee acquisition as the only solution to the problems. The District and the landowners are proposing an acquisition of a perpetual flowage easement by the Corps of Engineers for the Buford-Trenton Irrigation District. He said the irrigation project provides a strong economic base to Williston and the surrounding communities and that base needs to be preserved for as long as possible.

Secretary Sprynczynatyk stated that the Governor, the Commissioner of Agriculture and the State Engineer responded to an earlier draft of the study made by the Corps of Engineers when it first began to re-assess the aggradation-related problems in the area. At that time, the state objected to the removal of lands in the private sector because it would cause a severe economic impact to the area. He said the state also felt there was not sufficient hydrogeologic and other studies to support one plan to the exclusion of all others, the Corps report did not adequately address all structural measures that could be implemented, and that the Corps should consider all other alternatives.

The State Water Commission staff is currently reviewing the most recent Corps of Engineers Reconnaissance Study. Secretary Sprynczynatyk suggested that when the staff has completed its review, a meeting will be held with the Buford-Trenton Irrigation District.

**"CITATION OF EXCELLENCE" AWARD
FROM ADVERTISING FEDERATION
OF BISMARCK AND MANDAN
PRESENTED TO BRENDA BOSWORTH
AND STATE WATER COMMISSION**

Brenda Bosworth, staff Graphic Artist, and the State Water Commission, recently received the "Citation of Excellence" Award from the Advertising Federation of Bismarck-Mandan for the March, 1993, issue of

The Oxbow magazine. Secretary Sprynczynatyk stated the Advertising Federation is a national organization that presents awards annually for creativity and design in several media categories including radio, television, and print. He said on the national level, it is the advertising industry's largest and most representative competition for creative excellence. The Commission members expressed congratulations to Brenda for her efforts.

**NEXT STATE WATER
COMMISSION MEETING**

Commissioner Ames extended an invitation to the Commission to meet in Williston in May. The

meeting has been scheduled for May 24, 1994, at the Williston Community Library, beginning at 1:30 PM.

There being no further business to come before the Commission, it was moved by Commissioner Vogel, seconded by Commissioner Hillesland, and unanimously carried, that the State Water Commission meeting adjourn at 4:30 PM.


Edward T. Schafer
Governor-Chairman

SEAL


David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary

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North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-224-2750 • FAX 701-224-3696

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

March 9, 1994
1:30 PM, Central Standard Time

AGENDA

- A. Roll Call
- B. Approval of Agenda
- C. *Consideration of Minutes of Following Meetings:*
 - 1) *State Water Commission Meeting of December 8, 1993* **
 - 2) *State Water Commission Telephone Conference Call Meeting of December 29, 1993* **
 - 3) *State Water Commission Telephone Conference Call Meeting of February 17, 1994* **
- D. *Financial Statement:*
 - 1) *Agency Operations* **
 - 2) *Resources Trust Fund Revenue Update* **
- E. *Consideration of Following Requests for Cost Sharing:*
 - 1) *Willow Road - Morton County* **
 - 2) *High Value Irrigation Development Task Force* **
 - 3) *Mt. Carmel Dam Enhancement - Cavalier County* **
- F. *Garrison Diversion Project:*
 - 1) *Project Update: Collaborative Process* *** **
 - 2) *MR&I Water Supply Program Update and Funding for Fiscal Year 1994* **
 - 3) *MR&I Priority Criteria Review Committee Report* **
 - 4) *Consideration of MR&I Program Draft Rules* **
- G. *1994 Spring Runoff* *** **
- H. *Comprehensive State Wetlands Conservation Plan:*
 - 1) *Plan Update* *** **
 - 2) *Consideration of Fiscal Year 1994 Grant* **
- I. *Southwest Pipeline Project:*
 - 1) *Status Report* **
 - 2) *Service to South Dakota from Project* **
 - 3) *1993 Annual Report* **

(OVER)

GOVERNOR EDWARD T. SCHAFER
CHAIRMAN

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

AGENDA - PAGE 2

- J. Northwest Area Water Supply Project **
- K. Sheyenne River Flood Control:
 - 1) Baldhill Dam Safety Project **
 - 2) Baldhill Dam Flood Pool Raise **
 - 3) Lower Sheyenne 1993 Flood Analysis **
- L. Devils Lake Stabilization Update
- M. Missouri River Update
- N. Cannonball River Study Update **
- O. Other Business:
 - 1) Pick-Sloan Financial Workshop - April 7, 1994 ***
 - 2) Williams County Irrigation Reconnaissance Report
- P. Adjournment

* * * * *

- ** MATERIAL PROVIDED PREVIOUSLY
- ** *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 are required, please contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505; or call (701) 224-4940 at least seven (7) working days prior to the meeting. TDD telephone number is (701) 224-3696.

NORTH DAKOTA-STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE March 9, 1994 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
PINKIE EVANS-CURRY	900 G BOULEVARD BISMARCK	SWC
Tim Fay	Bismarck	SWC STAFF
CHUCK RYDELL	900 E BOULEVARD BISMARCK	SWC STAFF
Jeffrey Mattern	"	SWC
JIM LINDSETH	BISMARCK	SE/SW STAFF
LENER DOLLINGER	BISMARCK	Atmospheric Resource Board
Andy Mork	Madaw	Morton Co WRB
MILTON LINDVIC	Bismarck	SWC
JOE BICHLER	BISMARCK	BARTLETT & WEST ENG.
RONALD FRENCH	DEVILS LAKE	MIDWEST ENGINEERING, INC.
Donald Lee	Devils Lake	Ramsey County Water Board
Richard Regan	Devils Lake	Ramsey Co. Water Ass. Board
Doug Weibauer	Bis mark	Beauregard Water Users Coop.
CHARLES VEIN	GRAND FORKS	ADVANCED ENGINEERING
Ken Vein	Grand Forks	City of Grand Forks

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT _____

DATE 3-9-94 PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Jack Long	Bismarck	State Health Dept
Bill Hardy	Wahalla	Cashier co WRB
Winston Engert	Bismarck	state Water Commn
WARREN L. JAMISON	ARREINGTON	GARRISON DIVISION C. DIST
Willie Mastel	DICKINSON	Southwest water Authority
Dave Koland	Bismarck	ND Rural Water Systems
Arnold Morgan	HC Box 3 New Town, N.D. 58763	Three Affiliated Tribes
Francis Schwindt	Bismarck	state Health
Gene Krenz	Bismarck	State Water Commission
Julie Krenz	Bismarck	Attorney General's Office

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STATE WATER COMMISSION
PROGRAM BUDGET EXPENDITURES JANUARY 31, 1994
BIENNIUM TIME 29.2%

FINANCIAL STATEMENT
SWC File ACT/FIN
02-15-1994

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	\$172,768	\$22,273	\$80,824	\$0	\$0	\$275,865
Percent	27	29	28	0	0	27
Water Education						
Budget	\$624,858	\$0	\$142,264	\$12,750	\$25,000	\$804,872
Expended	\$160,076	\$0	\$22,776	\$5,335	\$0	\$188,187
Percent	26	0	16	0	0	23
Water Appropriation						
Budget	\$2,178,891	\$3,955	\$408,500	\$33,000	\$660,000	\$3,284,346
Expended	\$639,382	\$270	\$103,557	\$643	\$102,074	\$845,926
Percent	29	7	25	2	15	26
Water Development						
Budget	\$2,486,884	\$2,500	\$316,700	\$57,100	\$8,612,509	\$11,475,693
Expended	\$729,177	\$0	\$77,297	\$447	\$1,837,204	\$2,644,125
Percent	29	0	24	1	21	23
Atmospheric Resources						
Budget	\$384,452	\$11,500	\$1,700,701	\$10,500	\$3,050,000	\$5,157,153
Expended	\$110,016	\$859	\$283,562	\$2,109	\$486,188	\$882,735
Percent	29	7	17	20	16	17
Southwest Pipeline						
Budget	\$736,047	\$0	\$4,617,020	\$110,000	\$26,600,000	\$32,063,057
Expended	\$175,913	\$0	\$919,610	\$3,950	\$3,023,722	\$4,123,195
Percent	24	0	20	4	11	13
Contract Carryover						
Budget	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Expended	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Percent	0	0	0	0	100	100
Agency Totals						
Budget	\$7,044,722	\$93,747	\$7,478,650	\$226,350	\$39,447,509	\$54,290,978
Expended	\$1,987,332	\$23,403	\$1,487,626	\$12,484	\$5,949,187	\$9,460,032
Percent	28	25	20	6	15	17
FUNDING SOURCE:						
APPROPRIATION		EXPENDITURES	BALANCE	FEDERAL FUND REVENUE:	\$2,940,503	
General Fund	\$5,532,084	\$1,445,166	\$4,086,918	SPECIAL FUND REVENUE:	\$3,603,321	
Federal Fund	\$32,775,404	\$4,520,275	\$28,255,129	GENERAL FUND REVENUE:	\$1,297	
Special Fund	\$15,983,490	\$3,494,591	\$12,488,899	TOTAL:	\$6,545,121	
TOTAL	\$54,290,978	\$9,460,032	\$44,830,946			

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STATE WATER COMMISSION
1993 - 1995 Grants/Contract FundPage 1
17-FEB-1994

FUNDING SOURCES

	RTF	General Funds	Federal Funds	Other Funds	Carryover	Totals
Inter Basin Transfer	\$0	\$25,000				\$25,000
Hydrologic Investigation	\$600,000					\$600,000
MR&I Program	\$3,106,110			\$60,000		\$3,166,110
EPA Wetlands Grant	\$0		\$288,360		\$500,000	\$788,360
NAWS	\$50,000					\$50,000
Devils Lake	\$500,000					\$500,000
Maple River Dam	\$326,610					\$326,610
Southwest Pipeline	\$1,525,678					\$1,525,678
General Projects	\$2,693,750	\$0	\$26,000	\$96,000		\$2,815,750
SWC Grants Totals	\$8,802,148	\$25,000	\$314,360	\$156,000	\$500,000	\$9,797,508

PROGRAM COMMITMENTS

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
SWC	1828	Inter Basin Transfer		\$25,000	\$0	\$25,000
SWC	1395	Hydrologic Investigations USGS Data Collections: FY '94 & FY '95		\$660,000	\$172,409	\$487,591
		MR&I Program				
SWC	237-5	Ramsey Co Rural Water	9-15-92	\$936,759	\$455,107	\$481,652
SWC	237-27	Missouri West	9-15-92	\$1,473,949	\$960,063	\$513,886
SWC	237-36	Stanley	10-21-91	\$671,172	\$229,122	\$442,050
SWC	237-42	Garrison Rural Water	9-15-92	\$524,230	\$454,301	\$69,929
		MR&I SUBTOTAL		\$3,606,110	\$2,098,593	\$1,507,517
		EPA WETLANDS GRANT				
SWC	1489-5	Wetlands Education	9-15-92	\$65,824	\$64,440	\$1,384
		Technical Services		\$8,873	\$7,808	\$1,065
		Water Quality Analysis		\$14,325	\$12,998	\$1,327
		Grand Harbor		\$69,723	\$8,806	\$60,917
		Private Lands		\$26,955	\$15,635	\$11,320
		Devils Lake Basin (Conservation Plan)		\$27,660	\$22,738	\$4,922
		Adopt-A-Pothole		\$25,000	\$25,000	\$0
		Devils Lake Basin (Midwest Flood)		\$50,000	\$13,114	\$36,886
		EPA SUBTOTAL		\$288,360	\$170,539	\$117,821
SWC	237-4	NAWS	2-04-92	\$50,000	\$0	\$50,000
SWC	416	Devils Lake Flood Control	2-04-92	\$438,000	\$10,400	\$427,600
SWC	1712	Frequency Analysis Devils Lake	10-26-93	\$62,000	\$12,250	\$49,750
		DEVILS LAKE SUBTOTAL		\$500,000	\$22,650	\$477,350

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
SWC	1344	Maple River Flood Control	2-04-92	\$326,610	\$0	\$326,610
SWC	1736	Southwest Pipeline Project	2-04-92	\$1,525,678	\$0	\$1,525,678
GENERAL PROJECTS						
		Shortfall		\$631,815	\$0	\$631,815
SWC	237	Garrison Consultant (91-93)	8-22-91	\$7,842	\$7,842	\$0
SWC	1803	Belfield Flood Control (Stark)	12-20-91	\$38,800	\$0	\$38,800
SWC	1346	Mount Carmel (Cavalier)	4-02-92	\$4,395	\$0	\$4,395
SWC	662	Park River Snagging & Clearing (Walsh)	4-02-92	\$10,117	\$0	\$10,117
SWC	662	Park River #2 Snagging & Clearing (Walsh)	5-23-92	\$4,625	\$0	\$4,625
SWC	1496	Lake Elsie (Richland) (F)	8-05-92	\$11,500	\$2,811	\$8,689
SWC	1292	Willow Road Floodway (Morton)	8-26-93	\$27,106	\$27,106	\$0
SWC	300	Baldhill Dam (Barnes)	9-15-92	\$184,000	\$0	\$184,000
SE	1311	Bingham CAT (Traill)	9-15-92	\$4,900	\$0	\$4,900
SE	1311	Ela CAT (Traill) (F)	9-15-92	\$5,590	\$5,590	\$0
SWC	237	Garrison Coalition	12-09-92	\$10,000	\$0	\$10,000
SWC	1815-4	Sheyenne River Snagging & Clearing (Ransom)	12-09-92	\$4,836	\$0	\$4,836
SWC	1842-4	Wild Rice Snagging & Clearing (Richland)	12-09-92	\$725	\$0	\$725
SE	1751-H	Lower Forest River FP (Walsh)	1-26-93	\$5,200	\$0	\$5,200
SE	1751-C	Williston Floodplain (Williston)	2-24-93	\$1,000	\$1,000	\$0
SWC	1804	Grand Harbor #1 (Ramsey)	4-06-93	\$20,640	\$0	\$20,640
SWC	237	Garrison Consultant (93-95)	7-02-93	\$40,000	\$12,801	\$27,199
SWC	1832	Hammer - Sullivan (Ramsey)	7-02-93	\$21,231	\$0	\$21,231
SWC	1840	North Loma (Cavalier)	7-09-93	\$7,960	\$0	\$7,960
SE	543	North Lemmon Lake Dam (Adams)	7-08-93	\$9,933	\$9,933	\$0
SE	263	Patterson Lake Management (Stark)	8-24-93	\$500	\$500	\$0
SE	266	Tolna Dam (Nelson)	9-28-93	\$2,000	\$0	\$2,000
SWC	1588-1	International Coalition	10-26-93	\$10,000	\$7,500	\$2,500
SE	1392	Missouri River Master Manual Review	10-20-93	\$1,413	\$1,413	\$0
SWC	1865	Belfield Dam (Stark)	11-19-93	\$62,000	\$29,796	\$32,204
SE	1577	Langdon Floodplain Management Study (Cavalier)	12-20-93	\$4,100	\$0	\$4,100
SWC	1245	Nelson Drain (Traill)	12-08-93	\$37,627	\$0	\$37,627
SWC	1826	Wetlands Trust	12-08-93	\$3,330	\$3,330	\$0
SWC	1545	Drain #72 (Richland)	12-08-93	\$10,017	\$0	\$10,017
SE	1816-5	Sheyenne River Snagging & Clearing (Barnes)	01-19-94	\$8,500	\$0	\$8,500
SE	1868-4	Wild Rice Snagging & Clearing (Cass)	01-25-94	\$5,875	\$0	\$5,875
APPROVED GENERAL PROJECTS SUBTOTAL				\$565,762	\$109,622	\$456,140
Unallocated Balance (Total-Approved-Shortfall)				\$1,618,173		
SWC GRANTS TOTALS				\$9,797,508	\$2,561,563	\$7,173,945

**Point Rating System
For Prioritizing
Garrison Diversion Municipal, Rural,
and Industrial Water Supply Projects
March 1994**

Total Possible Score = 111 Points

Definitions:

Multiple User Delivery System - Water supply delivery system consisting of a central water supply source and distribution lines to multiple users.

Shortage - Deficit water delivery resulting in rationing or critical operational problem for domestic water supply.

GPCPD - Gallons per capita per day.

Category I Through IV Water Quality Standard Violations - As defined in the enclosed sheets.

The project type number is determined by matching the project to the highest applicable point value project description. Every project will fall within one project type only and will receive that project type's point value. A project cannot receive more than one project type point value.

**Part I: Project Need
Weight = 58 Points**

Proposed Project Type Involves:

Description	Points
1. Correction of a problem involving the loss or imminent loss of a water supply in the near future to an existing multiple user delivery system.	<u>58</u>
2. Correction of a severe quantity problem. The quantity problem results in severe shortages every year for an existing multiple user delivery system (Current source provides less than 75 GPCPD).	<u>55</u>
3. Construction of a new regional water system.	<u>50</u>

4.	Correction to a quantity problem which does or will result in shortages more than once every two years on the average (Current source provides 75 to 100 GPCPD).	<u>48</u>
5.	Construction of a new rural water system.	<u>45</u>
6.	Correction of a Category I water quality condition for a multiple user delivery system (Violate a primary water quality standard).	<u>46</u>
7.	Significant expansion of a water system (Increase users more than 25 percent).	<u>30</u>
8.	Correction of a Category II water quality condition for a multiple user system (Violation of three secondary standards and Total Dissolved Solids exceeds 1500 mg/l).	<u>30</u>
9.	Correction of a Category III water quality condition for a multiple user system (Violation of three secondary standards and Total Dissolved Solids exceeds 1000 mg/l).	<u>25</u>
10.	Correction of a Category IV water quality condition for a multiple user system (Iron greater than 0.6 mg/l or manganese greater than 0.1 mg/l).	<u>20</u>
11.	Significant improvement of a water system (25 percent increase).	<u>15</u>
12.	Minor system expansion or system improvement (Current source provides greater than 100 GPCPD or a system increase of users of less than 25 percent).	<u>10</u>

(Secondary standard of pH is not considered in violation)

Part II: Secondary Considerations
Weight = 53 Points

A. Matching Funds:

1. Local contribution to project.

50% of construction costs	5
45% of construction costs	4
40% of construction costs	3
35% of construction costs	0

B. Location:

Within C-District	4
Both within and outside of C-District	2
Outside C-District	0

C. Equitable Distribution of MR&I Funds:

1) MR&I project costs.

Less than \$.3 million	5
\$.3 million to \$1 million	3
Greater than \$1 million	0

2) Cost per capita benefitted.

Less than \$500/person	2
\$1000/person to \$500/person	1
Greater than \$1000/person or recreation project	0

D. Ability to Pay:

1) Monthly water user rates.

<u>Community</u>	<u>Rural</u>	
\$30.01 & above	\$50.01 & above	4
\$20.01 - \$30.00	\$40.01 - \$50.00	2
\$ 0.00 - \$20.00	\$ 0.00 - \$40.00	0

2) Water Rate Impact.

\$6.01 & above	15
\$4.01 - \$6.00	10
\$2.01 - \$4.00	5
\$0.00 - \$2.00	0

E. Economic Development: Improve or expand primary sector business.

- | | |
|--|----------|
| 1. Project will result in large scale economic development. | <u>8</u> |
| 2. Project will result in moderate scale economic development. | <u>4</u> |
| 3. Project will result in low scale economic development. | <u>2</u> |

F. Other

- | | |
|---|----------|
| 1. Project phased due to MR&I funding restrictions. | <u>2</u> |
| 2. Have a water conservation plan. | <u>2</u> |
| 3. Non-declining block water rates. | <u>3</u> |
| 4. Have a leak detection program. | <u>2</u> |
| 5. Have water meters system wide. | <u>1</u> |

APPENDIX "D"

March 9, 1994 - 31

**NORTH DAKOTA STATE WATER COMMISSION
AND STATE ENGINEER**

**Proposed rules to the
North Dakota Administrative Code**

1994

Municipal, Rural and Industrial Water Supply Program

ARTICLE 89-__

MUNICIPAL, RURAL, AND INDUSTRIAL WATER SUPPLY PROGRAM

Chapter

89-__-__ **Municipal, Rural, and Industrial Water Supply
Program**

CHAPTER 89-__-__

**MUNICIPAL, RURAL, AND INDUSTRIAL
WATER SUPPLY PROGRAM**

Section

89-__-__-__ **Definitions**
89-__-__-__ **Eligibility for Program Funds**
89-__-__-__ **Application**
89-__-__-__ **Application to Determine Eligibility - Initial
Review by the State Engineer**
89-__-__-__ **Preliminary Engineering Reports - Initial Review
by State Engineer - Bureau Requirements**
89-__-__-__ **Feasibility Study - Review - Report**
89-__-__-__ **Design and Construction Requirements**
89-__-__-__ **Funding - Priority**
89-__-__-__ **Reports to Commission and C-District**
89-__-__-__ **Contract Awards**

89-__-__-__. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. **"Applicant"** means the party submitting a proposal.

2. **"Bureau"** means the Bureau of Reclamation or its duly authorized agent.
3. **"C-district"** means the Garrison Diversion Conservancy District or its duly authorized agent.
4. **"City"** means any city organized under the laws of this state.
5. **"Commission"** means the North Dakota state water commission or its designee.
6. **"Design and construction"** means preparation of the final design plans and the ultimate construction of a project.
7. **"Feasibility study"** means a report of sufficient detail to provide a sound estimate of capital costs, water costs to users, and operation, maintenance, and replacement costs.
8. **"MR&I"** means municipal, rural, and industrial water supply.
9. **"Preliminary engineering report"** means a reconnaissance level report containing sufficient information to determine whether additional detailed studies are merited.
10. **"Program funds"** means money available for MR&I projects including money available through the Garrison Diversion Reformulation Act of 1986.
11. **"Proposal"** means an application submitted to the commission for financial assistance from program funds for MR&I projects and associated costs.

12. **"Public water system"** means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals.
13. **"Regional water system"** is a system that provides water to at least four public water systems and may also include rural water users.
14. **"Rural water users"** means all users including farms, unincorporated cities, villages, trailer courts, and livestock, excluding cities.
15. **"State engineer"** means the individual appointed by the commission pursuant to North Dakota Century Code section 61-03-01 or the state engineer's designee.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1, 61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. **Eligibility for program funds.** The following projects and associated costs are eligible for financial assistance from program funds:

1. Water supply projects.
 - a. Design and construction of projects for supplying water including:
 - (1) New ground water wells including mechanical and electrical components.

- (2) Pipelines from water sources to public water systems and principal supply works for rural water systems.
 - (3) Booster pumping plants for supply lines.
 - (4) Intake works and pumping plants for new surface water source.
 - (5) New or enlarged storage facilities.
 - (6) New rural water systems or enlargements or extensions of rural water systems.
 - (7) New regional water systems or enlargements or extensions of regional water systems.
- b. Design and construction of water treatment projects including:
- (1) New water treatment plants.
 - (2) Modifications to and upgrades of existing water treatment plants.
2. Program funds may be used for engineering, legal, and right-of-way costs, excluding the purchase of easements, and costs incurred in conducting environmental reviews or cultural resources investigations associated with the planning and design and construction of projects listed in subdivisions a and b of subsection 1.
 3. Program funds are not available for costs associated with operation, maintenance, and replacement of water supply or treatment systems or with the preparation of the preliminary engineering report.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1,
61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Application.

1. An applicant must submit an application for program funds to the state engineer at the following address:
North Dakota State Water Commission, 900 East Boulevard
Avenue, Bismarck, North Dakota 58505-0850.

The application must include the following:

- a. Information explaining the need for the proposal, including its objectives and benefits.
- b. The area to be served by the proposal.
- c. Maps, diagrams, or other illustrated documentation if these will make the proposal more understandable.
- d. The approximate cost of carrying out the proposal, if available.
- e. The amount of funding sought from program funds and the amount the applicant intends to contribute to carry out the proposal.
- f. Efforts made, and the results, to secure funds from sources other than program funds. If available, provide the current rate schedule for the water supply and treatment system.

g. Other information the applicant believes pertinent or requested by the state engineer.

2. A copy of the application must also be sent to the c-district at the following address: Garrison Diversion Conservancy District, PO Box 140, Carrington, North Dakota 58421.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1, 61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Application to determine eligibility - Initial review by the state engineer. After the initial review of an application, the state engineer may decide:

1. The proposal is eligible for funding from program funds. If the proposal is eligible for funding, the state engineer shall notify the applicant in writing.
2. The information provided is inadequate to review the proposal and may order the applicant to provide more information, or may obtain more information.
3. The proposal is not eligible for funding from program funds. The state engineer shall notify the applicant of and include the reasons for ineligibility in writing.
4. The state engineer shall submit a copy of all notifications to the c-district.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1,
61-02-24.1, 61-24-08, 54-40-01

89-__-__--__. Preliminary engineering reports - Initial review by state engineer - Bureau requirements.

1. An applicant notified that its project is eligible for funding must submit a preliminary engineering report to the state engineer. The applicant shall contact the bureau at the initiation of the preliminary engineering report to discuss applicable federal requirements. The preliminary engineering report must contain:

- a. Name of the project sponsor and contact persons.
- b. A brief summary of the proposed project including:
 - (1) Identification of the use of water and estimated water for each use.
 - (2) Description of existing water quantity and quality.
 - (3) Explanation of inadequacy of existing supplies.
 - (4) Estimate of potential users.
 - (5) User interest and how it was determined.
- c. A map of the project area showing:
 - (1) Water sources (aquifers, lake, stream, other systems).

- (2) Proposed facilities.
 - (3) Distribution systems.
 - (4) Alternatives.
- d. Preliminary cost estimate for feasibility study, capital costs, and costs for all alternatives.
 - e. Repayment concepts.
 - f. Funding source for the applicant's share.
 - g. Proposed project schedule.
 - h. Identification of entity responsible for applicable reports or studies.
 - i. Availability and cost of construction material.
 - j. Social and local economic climate.
 - k. Special or unusual considerations such as public and construction safety, repayment contracts, biota transfer, and environmental.
 - l. Special site conditions such as groundwater table, soil conditions, right-of-way, and zoning constraints, and manmade features.
 - m. Project's energy requirements and date of service.
 - n. Documentation of the engineering selection process.
 - o. Project's potential effect on economic development

- within project area.
- p. Documentation of cultural resources in the affected project area.
 - q. An outline of the water conservation plan.
 - r. Action necessary and action taken to comply with all applicable state and federal laws including the National Environmental Policy Act, Fish and Wildlife Coordination Act, Endangered Species Act, Clean Water Act, and state and federal laws pertaining to identification and preservation of cultural resources with letters from the appropriate agencies.
 - s. Other information requested by the state engineer.
2. The applicant must consider whether an alternative project could satisfy the objectives of the applicant. The preliminary engineering report must set forth a general discussion of all other alternatives considered before and during report preparation, a description of the preferred alternative, and a no action alternative.
 3. The applicant shall submit one copy of the preliminary engineering report to the c-district and copies to the bureau as specified by the state engineer.
 4. After initial review of the preliminary engineering report, the state engineer may decide:
 - a. The proposal or parts of the proposal are eligible for program funds. The state engineer shall notify the applicant in writing that the proposal or parts of it are eligible for funding.

- b. The information provided is inadequate and may order the applicant to provide more information, or may obtain more information.
- c. The proposal or parts of the proposal are not eligible for program funds. The state engineer shall notify the applicant and include the reasons for ineligibility in writing.
- d. The state engineer shall submit a copy of all notifications to the c-district.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1, 61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Feasibility study - Review - Report.

- 1. An applicant whose project is eligible to receive program funds must submit a copy of a feasibility study to the state engineer. The feasibility study must include the following information:
 - a. All the information required by subdivisions a, b, c, e, f, g, h, i, j, k, l, m, n, o, and r of subsection 1 of section 89-__-__-__. This information, however, must be updated and submitted in more detail and clarity.
 - b. Project plans and alternative plans with a description of the preferred alternative.
 - c. A description of proposed water treatment and

storage facilities.

- d. Design criteria including population projections and water demands.
 - e. Ability and willingness of beneficiaries to pay capital and other costs.
 - f. Cost estimates for capital and other costs.
 - g. Economic and engineering project cost analyses.
 - h. Design and operation alternatives.
 - i. Methods of construction.
 - j. Operation, maintenance, and replacement plan.
 - k. Entity responsible for operation, maintenance, and replacement.
 - l. Entity responsible for administration of contracts.
 - m. A county soil map with prime farm land indicated.
 - n. Water conservation plan.
 - o. Any other information requested by the state engineer.
2. For projects that deliver Missouri River water to the Hudson Bay drainage area, a determination must be made that treatment will be provided to meet requirements of the Boundary Waters Treaty Act of 1909.

3. The applicant shall submit one copy of the feasibility study to the c-district and copies to the bureau as specified by the state engineer.
4. After review of the feasibility study, the state engineer shall prepare a report setting forth its recommendations regarding the project. The report shall address whether the project is consistent with statewide plans and programs.
5. The state engineer shall provide a copy of the report to the commission and c-district.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1, 61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Design and construction requirements.

1. In order to receive program funds for design and construction, an applicant must submit to the state engineer:
 - a. Documentation of the engineering selection process for design and construction engineering services and a copy of the contract for engineering services for design and construction.
 - b. Engineering plans, designs, and specifications not less than 40 days prior to the start of the invitation to bid date.
2. No construction contract may be awarded or construction

initiated until the plans, designs, and specifications have been approved by the state engineer, c-district, and bureau. Any changes in plans must be approved by the state engineer, c-district, and bureau.

3. Construction contracts over \$2,000 must incorporate the Davis-Bacon wage rate unless otherwise specified.
4. The entity responsible for operation, maintenance, and replacement shall contract with water users for payment of:
 - a. Water delivery.
 - b. Hookup.
 - c. Standby service charges.
 - d. Other fees necessary.
5. Documentation of the following must be made available to the state engineer and c-district prior to the applicant receiving construction funds:
 - a. Procurement process for services and goods.
 - b. Necessary state water right permits.
 - c. Necessary state permits controlling diversion and distribution.
 - d. Rights-of-way for construction (easements).
 - e. All contracts relating to the project.
 - f. Applicable federal permits.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1,
61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Funding - Priority.

1. The commission shall evaluate each eligible project based on the following criteria:
 - a. Need for improving water supply quantity and quality problems or both.
 - b. Local contribution to project funding.
 - c. Location of project.
 - d. Equitable distribution of MR&I funds.
 - e. Ability to pay.
 - f. Economic development.
 - g. Water conservation plan.
 - h. Other criteria determined to be relevant by the commission.

Based upon these evaluations, the commission shall rank the eligible projects in priority order which, based on its judgment, are in most need of funding. A report ranking the eligible projects must be in writing and include data substantiating the determinations. This data must be available to the public upon written

request.

2. Program funds shall be provided to eligible projects to the extent funding is available as determined by the commission, after consultation with c-district. Program funds may be provided in the form of grants or loans, or both, and may be provided for a feasibility study or for design or construction of a project, or a combination of the three. The commission, after consultation with c-district, shall decide whether to provide program funds to an applicant for a feasibility study or for design or construction of a project, or a combination of the three, and the amount of funding.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1, 61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Reports to commission and c-district. After a project has been determined to be eligible for program funds, a report must be submitted to the commission and c-district by the end of each quarter regardless of whether funds have been requested. The quarterly report must include:

1. A schedule and cost of work for the upcoming quarter.
2. A written report describing progress during the preceding quarter and the cost of work performed during the preceding quarter.
3. Other information requested by the commission.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1,
61-02-24.1, 61-24-08, 54-40-01

89-__-__-__. Contract awards.

1. Prior to the award of any contract, the applicant shall provide the state engineer and c-district the following:
 - a. A bid abstract.
 - b. A statement of the low bidder's qualifications even if the contract is not awarded to the low bidder.
 - c. A statement of intent to award the contract at least fifteen days prior to proposed contract award.
 - d. A written justification describing the reasons for non-selection of the low bidder, and reasons for the proposed selection if the applicant plans to award the contract to other than the low bidder.
2. Contracts must be pursuant to applicable federal procurement laws.
3. The following items must be submitted to the state engineer and c-district after the award of the contract:
 - a. The contractor's performance and payment bond.
 - b. The contractor's certificate of insurance.

- c. The contractor's license.
 - d. The contract.
4. A construction management plan must be submitted to the state engineer and bureau within thirty days after the award of the contract. The construction management plan must include the following:
- a. Construction schedules.
 - b. Contract requirements.
 - c. Contractor qualifications, duties, and responsibilities.
 - d. Agreement for engineering services, including description of coordination activities with the commission.
 - e. Field office location, addresses, and phone numbers of project personnel.
 - f. Resumes of professional staff.
 - g. Safety program.
 - h. Other information requested by the state engineer.

History: Effective _____, 1994

General Authority: NDCC 28-32-02, 61-02-14

Law Implemented: NDCC 61-02-14, 61-02-64, 57-51.1-07.1, 61-02-24.1, 61-24-08, 54-40-01



APPENDIX "E"

March 9, 1994 - 32

Office of the State Engineer

M E M O R A N D U M

TO: Governor Edward T. Schafer and State Water Commission Members

FROM: *David* David A. Sprynczynatyk, State Engineer

SUBJECT: State Wetland Conservation Plan

DATE: February 1, 1994

This memo is provided to give you an update on the FY 93 Wetland Conservation Grant that EPA awarded the State Water Commission to aid in the development of a state wetland conservation plan. This grant, approved in July 1993, totals \$253,334 with a requirement for a 75 percent federal/25 percent non-federal cost share. Cost share is provide by the State Water Commission, North Dakota Water Education Foundation, Department of Health and Consolidated Laboratories, and the Game and Fish Department for their respective portions of the grant. Grant administration is handled by Lee Klapprodt in the Planning and Education Division.

Efforts supported by this grant are directed towards development of a state comprehensive wetlands conservation plan. The involvement of several state agencies and other wetland interests in this work is helping build and reinforce partnerships necessary in managing North Dakota's wetland resources. Work supported by the FY 93 grant will:

- * expand North Dakota's wetland education program development;
- * enhance geographic information system and further develop capabilities to administer state wetland management programs aimed at conserving these resources;
- * establish and field test North Dakota wetland water quality standards;
- * advance North Dakota's private lands initiative program; and
- * advance prioritization of existing Conservation Reserve Program tracts to identify those most critical to wetland watershed protection and migratory birds.

I will address each of these work objectives individually beginning with the North Dakota wetland education program.

WETLAND EDUCATION

A contract negotiated with between the State Water Commission and the North Dakota Water Education Foundation was signed in early November 1993. This agreement will expand on the work previously done by the North Dakota Water Users Association.

Major components include dissemination of wetlands information to the public, particularly landowners, through various mechanisms including brochures, the North Dakota Water Magazine, and other materials. The Foundation will assist the State Water Commission in outreach and education efforts pertaining to Section 404 assumption. Other efforts will include: promotion and distribution of activity guides to K-12 teachers; preparation of grant proposals to enhance and expand wetland education programs through the Wetland Institute; and facilitate the coordination of federal, state, local government and private interests through a forum for ongoing public input and consensus building.

Current efforts are focused on the public outreach program for the Section 404 and for gathering public input in the State Wetland Conservation Planning process.

The budget provides a total of \$66,667 (\$50,000 EPA/\$16,667 Water Education Foundation).

GEOGRAPHIC INFORMATION SYSTEM

The FY 93 grant provides for expansion and further development of a Geographic Information System (GIS) to improve wetland management capabilities. The grant supports acquisition on the hardware end of the GIS system and work necessary to expand the wetland data base to include additional hydrologic information.

A graphical digitizer, high capacity tape backup, CD-ROM reader, optical disk drive read/write capabilities, and additional server memory have all been received as in-kind from the EPA and are installed on the State Water Commission's system. Training on the Informix database program has begun.

The SWC's databases (ex. wetland bank and dam permits) are currently being normalized for importing into Informix. This will establish a direct link with the GRASS GIS software package. The SWC has also purchased a mylar of the North Dakota Hydrologic basin map developed by the United States Geological Survey. The map will be digitized to include additional hydrologic unit information important for watershed management of wetland resources.

The budget provides a total of \$56,800 (\$42,600 EPA/\$14,200 State Water Commission).

WETLAND WATER QUALITY STANDARDS

A contract was finalized in November between the State Water Commission and the North Dakota State Department of Health and Consolidated Laboratories (Department). This agreement

calls for the Department to conduct several tasks associated with establishing state wetland water quality standards.

Specifically, the Department will field test water quality guidelines developed under the FY 92 wetlands grant. Finalizing standards will require coordination between the several agencies dealing with wetlands and water quantity/quality management issues. Work under this agreement will expand the water quality database for wetlands, test and verify methodology for numeric criteria for wetlands, and test and verify methodology for applying biological criteria to wetlands to protect aquatic life. Finally, this work will develop implementation criteria and procedures for water quality standard compliance in the event North Dakota assumes the Section 404 program.

The budget provides a total of \$36,000 (\$27,000 EPA/\$9,000 Health Department).

PRIVATE LANDS INITIATIVE PROGRAM

A contract was finalized in November between the State Water Commission and the North Dakota Game and Fish Department to advance the Departments private land initiative program.

Under this agreement, the Game and Fish Department will maintain an individual to work with landowners concerning the various landowner-wildlife conservation programs available today. The individual will provide strategic planning, educate landowners, and aid in regulatory and watershed protection functions.

The budget provides a total of \$45,333 (\$34,000 EPA/\$11,333 Game and Fish Department).

PRIORITIZE CRP TRACTS

A contract was finalized in November 1993 between the State Water Commission and the North Dakota Game and Fish Department to begin work prioritizing existing Conservation Reserve Program (CRP) tracts. Under this agreement, the Game and Fish Department will provide information needed by North Dakota in discussions pertaining to continuation of CRP at state and national levels. An assessment of CRP value in meeting population objectives outlined in the North American Waterfowl Management Plan is a task under this agreement. On-the-ground data collection will look at nesting conditions for various species. Work will be coordinated with the United States Fish and Wildlife Service.

The budget provides a total of \$22,667 (\$17,000 EPA/\$5,667 Game and Fish Department).

The State Water Commission is the state administrator of this grant and will receive grant funding to support administration

efforts. The budget for this totals \$25,867 (\$19,400 EPA/\$6,467 State Water Commission).

Should there be any questions regarding this status report or any of the work called for in our agreements, please contact me at your convenience.



**1993
Annual
Operating
Report**

ND STATE WATER COMMISSION

Southwest Pipeline Project

Organizational Chart

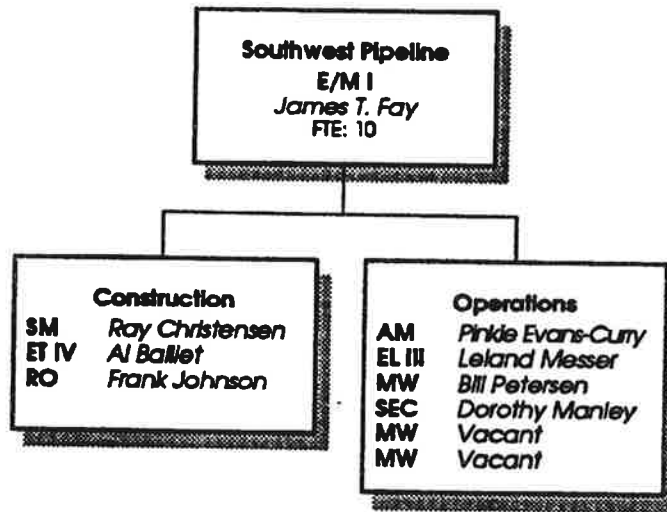


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**SOUTHWEST PIPELINE PROJECT
ANNUAL OPERATING REPORT**

I. 1993

A. Service:

1. Summary of Delivery:

The Southwest Pipeline served the city of Dickinson and the Roshau Subdivision with potable water in 1993. In addition, the Taylor Nursery of Taylor and the Sacred Heart Monastery of Richardton were served with raw water. The total water delivered was 523,308,100 gallons. This represents 99.42% of the water that was withdrawn from Lake Sakakawea.

Summary of 1993 Volume by User.

Treated Water

City of Dickinson 522,830,000 gallons (1)

Raw Water

Taylor Nursery 350,100 gallons

Sacred Heart Monastery 128,000 gallons

(1) Includes 1,992,000 gallons delivered to Roshau Subdivision.

2. Summary of Operations:

Operations in 1993, as previously, were governed by the goals of service reliability and cost efficiency. Service reliability was attained by close coordination with the operators at the Dickinson Water Treatment Plant. This was particularly important during June, when the city of Dickinson had its six million gallon storage tank out of service for repairs. The Southwest Pipeline Zap reservoir was also taken out of service for painting and the East Dickinson Reservoir for one day for cleaning, all without interrupting service.

The goal of cost efficiency was attained by relying on gravity flow from the Zap reservoir to the Richardton reservoir as much as possible, using the smallest pumps at the intake pump station, and minimizing use of the Dodge pump station. The Dodge pumps were operated for testing purposes in February, and were required for service in June and July. The large pumps at the intake pump station were required for service in June, July, and August.

3. Summary of Maintenance:

Maintenance activities in 1993 included the routine exercise of air/vacuum and blowoff valves, equipment inspection, grounds maintenance, and minor repairs. In October the 4.8 million gallon East Dickinson Reservoir was drained for cleaning. It was discovered that accumulation of sediments was minimal. As a result of this finding, future draining of this tank will be scheduled for 3-year intervals, more for inspection than for cleaning.

The piping at the Intake pump station which is located in the Basin Electric building is exposed to an influx of outside air under certain weather conditions. In December, this piping was equipped with insulation and heat tape to prevent freezing.

B. Rates

Dickinson was provided with a total of 522,830,000 gallons of water in 1993 under the rate schedule described in the 1992 Annual Operating Report:

Operation & Maintenance	\$0.50
Replacement & Ext. Maintenance	\$0.30
Treatment	\$0.56
Capital Repayment	\$0.68

for a total of \$2.04 per thousand gallons. In March the city of Dickinson documented treatment cost as \$0.64 per thousand gallons, rather than \$0.56. This new treatment rate was applied beginning in March, resulting in a new rate of \$2.12 per thousand gallons.

The billings to Dickinson in January, February, March, and April were also affected by the reimbursement of excess collections in 1992. A total of \$185,864.00 was reimbursed. An operating reserve of \$75,000 was retained in the operations account. Operations in 1993 indicated that this reserve should be increased to cover operation expenses for three months and treatment costs for six weeks, or \$121,000 to avoid cash-flow problems.

A total of 1,992,000 gallons was delivered to the users in the Roshau Subdivision under the rural water rules of service of the Southwest Water Authority. This water was purchased from the city of Dickinson at a rate of \$2.50 per thousand gallons. This water is delivered to users at a rate

of \$2.50 per thousand gallons, plus \$25 per user per month, of which \$20 is for capital repayment and \$5.00 is for the replacement fund. The purchase of Roshau's water from Dickinson is a temporary arrangement that will end when the Dickinson Pump Station and Davis Butte Reservoir are brought into service.

Raw water service in 1993 amounted to 350,100 gallons to the Taylor Nursery and 128,000 gallons to the Sacred Heart Monastery. The rate for raw water is determined by subtracting the cost of treatment from the rate for water to contract users. In 1993, the rate was \$1.48 per thousand gallons.

C. Fiscal Summary:

1. 1993 Revenue

	<u>Rate</u>	<u>Collected</u> (1)
Operation and Maintenance	\$0.50	\$ 33,925
Treatment	0.64 (2)	331,901
Replacement and Ext. Maint.	0.30	147,524
Capital Repayment	<u>0.68</u> (3)	<u>195,974</u>
Subtotal	\$2.12	\$709,324
Rural Water Service (4)		3,268
SWA Contract (5)		<u>5,643</u>
Total Revenue		\$718,235

- (1) Amounts collected do not equal rate x gallons because of the following reasons:
- (a) \$83,183 received in February 1993 was for December 1992 billings;
 - (b) \$185,864 overcharge for 1992 was used as credit against treatment and O&M costs in 1993; and
 - (c) \$141,643.21 due for November and December 1993 billings was still outstanding as of December 31, 1993.
- (2) Rate was \$0.56 January and February 1993.
- (3) A debt service credit against capital repayment in the amount of \$12,552 per month was applied to the billings to Dickinson. This amounts to a discount of \$.26 per thousand gallons, for an actual rate of \$1.86 per thousand gallons for the city of Dickinson.
- (4) Rural water rates vary with usage. Minimum monthly charge is \$25.00, then \$2.50/k gal. up to 10,000 gal, and \$2/k gal. over 10,000 gal.
- (5) Currently, State Water Commission and the Southwest Water Authority share a secretary at the O&M Center

in Dickinson. This figure represents salary and benefits paid by Southwest Water Authority in 1993.

2. 1993 Expenses

	<u>Disbursements</u>
Operations & Maintenance(1)	\$232,836
Treatment (2)	282,119
Capital Repayment (3)	<u>195,974</u>
Total Expenses	\$710,929

- (1) Includes WAPA, wheeling, electricity, telephone, heat, fuel, and electric service for cathodic protection and incidental use, salaries, travel, insurance, building, supplies, equipment, vehicle, maintenance, and miscellaneous.
- (2) Paid to Dickinson.
- (3) Deposited into Resources Trust Fund.

3. Account Summary

Operations & Maintenance Account

December 31, 1992 Balance	\$260,864
1993 Revenue	374,737 (1)
1993 Expenses	<u>514,956 (2)</u>
December 31, 1993 Balance	\$120,645

- (1) Includes amounts collected from Operation and Maintenance (\$33,925), Treatment (\$331,901), Rural Water Service (\$3268), and Southwest Water Authority Contract (\$5643).
- (2) Includes expenses from Operations & Maintenance (\$232,836) and Treatment (\$282,119).

Replacement & Ext. Maintenance Account

December 31, 1992 Balance	\$196,692
1993 Revenue	147,524
1993 Expenses	<u>-0-</u>
December 31, 1993 Balance	\$344,216

D. Construction

Construction year 1993 began with 10 contracts in force. Two of these were continuing construction from 1992 on the transmission piping from Dickinson to the junction of State Highways 21 and 22 and one was continuing construction on the second steel reservoir north of Zap. Two additional pipe contracts began construction in 1993: one extending from the Highway 21-22 junction to the city

of Mott, and one from Davis Butte, near Dickinson, to Richardton. New contracts for construction of steel reservoirs on Davis Butte and north of New England were also awarded as were three contracts for the construction of a combined pump station at Dickinson (one contract covering the general construction, one for mechanical construction, and one for electrical construction).

All contracts were affected to some degree by the wet weather in the summer, and none of the 10 had been issued completion notices by the end of 1993. Construction on the second Zap tank was complete with only paperwork remaining at the end of the year. The piping from Dickinson to the Highway 21-22 junction and the piping from Davis Butte to Richardton await final cleanup in the spring of 1994, and the steel reservoirs at Davis Butte and New England will receive cleanup and paint touch-up in the spring of 1994.

Work on the Dickinson pump station included completion of the below-ground concrete clear well and erection of the steel building frames. The pumps and some of the mechanical equipment had also been delivered.

Progress on the piping contract extending from the Highway 21-22 junction to Mott was impeded by poor quality pipe materials first discovered in the spring. Problems continued and by July construction stopped completely. The problems were finally resolved in December, and construction will resume in the spring of 1994.

Late in the year the contract for construction of piping extending from Taylor north to the cities of Dunn Center, Halliday, Dodge, and Golden Valley was awarded, with construction to begin in the spring of 1994.

Important progress on development of rural water distribution was also achieved in 1993. A set of design criteria was adopted by the State Water Commission to guide the design of rural service areas. In addition, a phased development plan based on rural service areas was adopted. This development plan permits the assigning of priorities to individual service areas to provide a sequence of construction for the remainder of the project.

II. 1994

A. Service:

1. Summary of Delivery:

The project development plan calls for potable water service to be extended to the cities of Golden Valley, Dodge, Halliday, Dunn Center, Richardton, Taylor, Gladstone, New England, Regent, Mott, Manning, New Hradec, the Assumption Abbey and the Sacred Heart Monastery. In addition, a rural water service area encompassing approximately 500 users will begin operations at about the same time. Projected water delivery for all users in 1994 is 580,000,000 gallons.

2. Summary of Operations:

Operation of this new phase of the project will require at least one new staff position, to be filled some time in 1994. In December 1993, Pinkie Evans-Curry was hired as Assistant Project Manager in charge of operations functions. Salaries for these two positions are included in the projected operation costs for 1994.

3. Summary of Maintenance:

The high-voltage electrical equipment in the Intake, Dodge, and Richardton pump stations include a number of parts which are critical to the operation of the stations. Failure of these parts could cause interruption of service. Some of these parts have a delivery time of several months. A plan for acquiring spare parts over a period of two years has been incorporated into the operation costs for 1994.

B. Rates

The projected water user fee for operation and maintenance for 1994 is:

Operation & Maintenance	\$0.60
Treatment	\$0.64
Replacement & Ext. Maintenance	<u>\$0.30</u>
Total Operation & Maintenance	\$1.54

The review of the operations finances for 1993 revealed a need for a cash reserve equivalent to three months operations costs and six weeks treatment costs in order

,8

for operations to be truly self-supporting. This amounts to \$121,000. In order to accumulate this reserve before operations functions are transferred to the Southwest Water Authority, the balance of \$120,645 will be retained in the operation and maintenance account.

Other costs have been projected based on current operations practices.

The Consumer Price Index for December 1993 was 145.8, for an annual inflation rate of 2.75 percent. Applying this inflation rate to the capital repayment fee results in a rate of \$.70 for 1994.

The schedule of debt service credits approved for Dickinson calls for a total of \$152,100 to be credited over the year. This amounts to a monthly discount against capital repayment of \$12,675.

Total Water Use Fee for 1994:

The combined water use fee for 1994, not including debt service credits, is \$2.24 per thousand gallons.

C. Fiscal Summary

1. 1994 Revenue

	<u>Rate</u>	<u>Income</u>
Operation and Maintenance	\$0.60	\$348,000
Treatment	0.64	371,200
Replacement and Ext. Maint.	0.30	174,000
Capital Repayment	<u>0.70</u>	<u>406,000</u>
Total Revenue	\$2.24	\$1,299,200

2. 1994 Expenses

Operations & Maintenance	\$347,645
Treatment	371,200
Capital Repayment	<u>406,000</u>
Total Expenses	\$1,124,845

3. Projected 1994 Account Summary

Operations & Maintenance Account

December 31, 1993 Balance	\$120,645
1994 Projected Revenue	719,200
1994 Projected Expenses	<u>718,845</u>
December 31, 1994 Projected Balance	\$121,000

Replacement & Ext. Maintenance Account

December 31, 1993 Balance	\$344,216
1994 Projected Revenue	174,000
1994 Projected Expenses	<u>-0-</u>
December 31, 1994 Projected Balance	\$518,216

D. Construction

Construction in 1994 will include the completion of all previously awarded contracts. It will also include construction of a rural water distribution system serving approximately 500 rural users in the Davis Buttes, New Hradec, and Taylor areas. In addition, a cooperative effort with the Soil Conservation Service to develop a rural water service area with special emphasis on livestock watering near Taylor is in progress and will likely see construction in 1994. Completion of these contracts, combined with completion of the current contracts will enable service to be provided to more than 5,000 new users, including the cities cited by the Environmental Protection Agency in 1990 for excessive fluoride content in their drinking water.

I. 1993

A. Service:

1. Summary of Delivery:

The Southwest Pipeline served the city of Dickinson and the Roshau Subdivision with potable water in 1993. In addition, the Taylor Nursery of Taylor and the Sacred Heart Monastery of Richardton were served with raw water. The total water delivered was 523,308,100 gallons. This represents 99.42% of the water that was withdrawn from Lake Sakakawea.

Summary of 1993 Volume by User.

Treated Water

City of Dickinson 522,830,000 gallons (1)

Raw Water

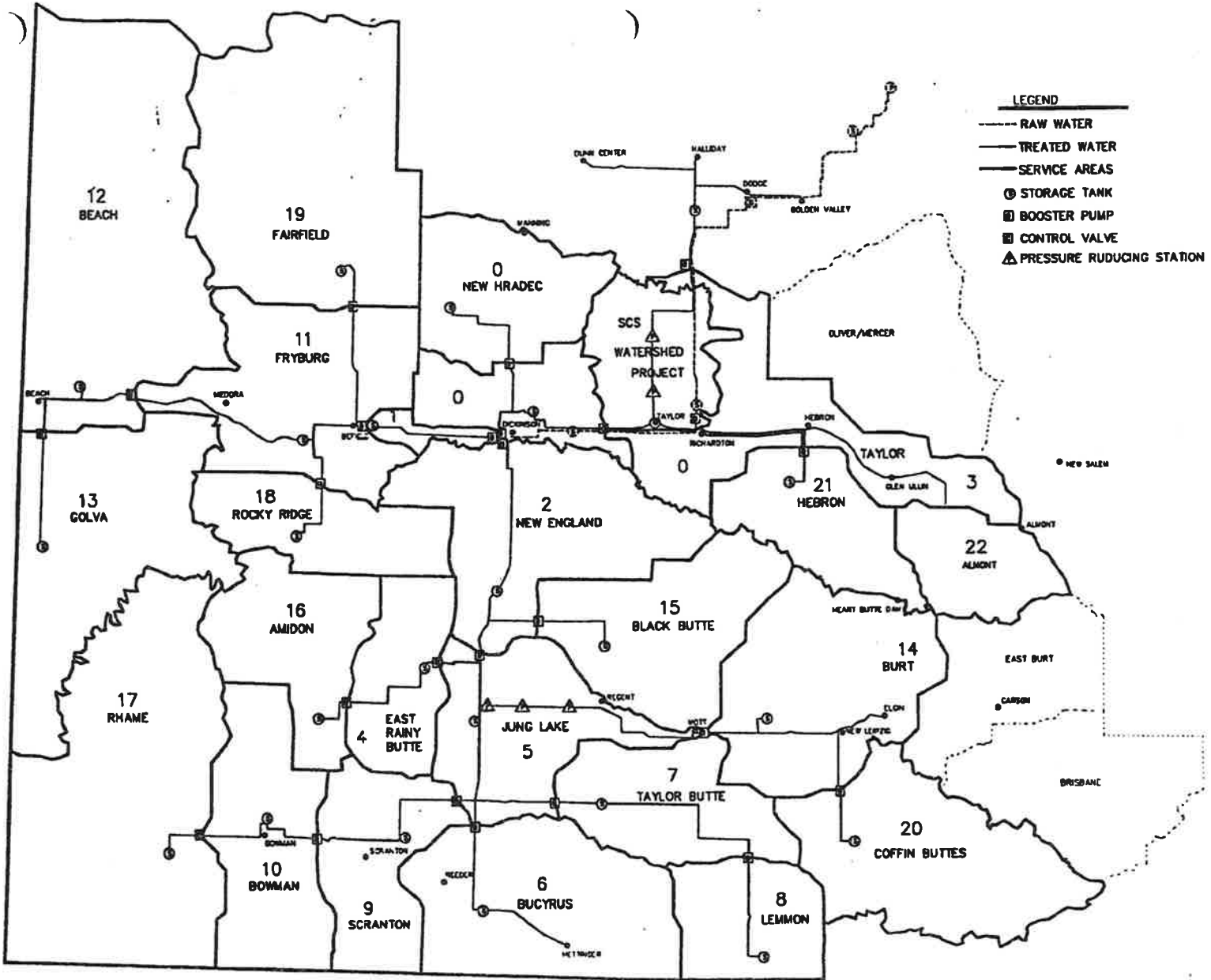
Taylor Nursery 350,100 gallons
Sacred Heart Monastery 128,000 gallons

(1) Includes 1,992,000 gallons delivered to Roshau Subdivision.

**SOUTHWEST PIPELINE PROJECT
PHASED DEVELOPMENT PLAN**

SERVICE AREA	ZONE	PRIORITY	ESU *	EST. COST
7-1B Taylor w/o PL-566	North	0	36.00	\$883,200
Davis Butte	North	0	308.50	\$2,848,600
New Hradec	North	0	122.90	\$2,815,400
Belfield	West	1	76.65	\$2,195,400
New England	South	2	227.75	\$3,914,200
Remaining Taylor w/o PL-566	North	3	238.41	\$3,494,200
East Rainy Butte	South	4	49.25	\$1,826,600
Jung Lake w/o NE Grant Co.	South	5	72.00	\$4,623,800
Bucyrus	South	6	361.19	\$5,492,600
Taylor Butte	South	7	65.50	\$3,057,900
Lemmon	South	8	50.88	\$1,707,200
Scranton	South	9	92.40	\$3,685,500
Bowman	South	10	245.56	\$3,471,800
Fryburg	West	11	137.66	\$4,766,800
Beach	West	12	243.70	\$5,624,200
Golva	West	13	90.65	\$2,525,500
Burt w/o NE Grant Co.	South	14	205.00	\$4,760,100
Stony Butte	South	15	71.75	\$2,442,800
Amidon	South	16	37.63	\$1,653,900
Rhame	South	17	63.38	\$2,086,900
Rocky Ridge	West	18	8.50	\$761,300
Fairfield	West	19	2.50	\$500,400
Coffin Buttes	South	20	87.50	\$3,568,800
Hebron	North	21	15.25	\$992,200
Almont	North	22	16.50	\$726,100
TOTALS			2927.0	\$70,425,400

* ESU = Equivalent Service Unit



- LEGEND**
- RAW WATER
 - TREATED WATER
 - SERVICE AREAS
 - ⊙ STORAGE TANK
 - ⊠ BOOSTER PUMP
 - ⊠ CONTROL VALVE
 - △ PRESSURE REDUCING STATION

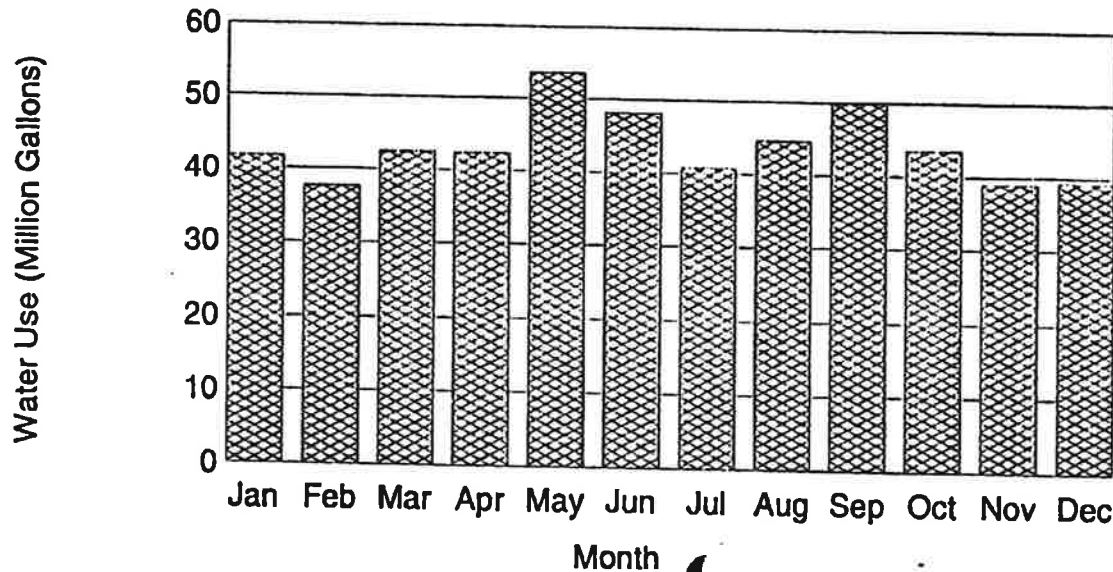
**SOUTHWEST PIPELINE PROJECT
SERVICE BILLS SUMMARY**

Dickinson 1993

02/11/94
10:30

Month	Meter	Use (kgal)	Billed (kgal)	D.S. Credit: O&M Refund: O&M \$0.50	Treat. \$0.64	Refund Adj. O&M	Repl. \$0.30	Capital (adj) \$0.68	Total
Jan	27.4	41,660	41,660	\$20,830.00	\$23,329.60	\$46,466.00 (\$2,306.40)	\$10,191.60	\$15,776.80	\$25,968.40
Feb	64.98	37,580	37,580	\$18,790.00	\$21,044.80	\$46,466.00 (\$6,631.20)	\$11,274.00	\$13,002.40	\$17,645.20
Mar	107.45	42,470	42,470	\$21,235.00	\$27,180.80	\$46,466.00 \$1,949.80	\$12,741.00	\$16,327.60	\$31,018.40
Apr	149.85	42,400	42,400	\$21,200.00	\$27,136.00	\$46,466.00 \$1,870.00	\$12,720.00	\$16,280.00	\$30,870.00
May	203.45	53,600	53,600	\$26,800.00	\$34,304.00	\$61,104.00	\$16,080.00	\$23,896.00	\$101,080.00
Jun	251.58	48,130	48,130	\$24,065.00	\$30,803.20	\$54,868.20	\$14,439.00	\$20,176.40	\$89,483.60
Jul	292.3	40,720	40,720	\$20,360.00	\$26,060.80	\$46,420.80	\$12,216.00	\$15,137.60	\$73,774.40
Aug	336.9	44,600	44,600	\$22,300.00	\$28,544.00	\$50,844.00	\$13,380.00	\$17,776.00	\$82,000.00
Sep	386.83	49,930	49,930	\$24,965.00	\$31,955.20	\$56,920.20	\$14,979.00	\$21,400.40	\$93,299.60
Oct	430.28	43,450	43,450	\$21,725.00	\$27,808.00	\$49,533.00	\$13,035.00	\$16,994.00	\$79,562.00
Nov	469.31	39,030	39,030	\$19,515.00	\$24,979.20	\$44,494.20	\$11,709.00	\$13,988.40	\$70,191.60
Dec	508.57	39,260	39,260	\$19,630.00	\$25,126.40	\$44,756.40	\$11,778.00	\$14,144.80	\$70,679.20
		522,830	522,830	\$261,415.00	\$328,272.00	\$185,864.00 \$403,823.00	\$154,542.60	\$204,900.40	\$765,572.40

DICKINSON WATER USE 1993



**SOUTHWEST PIPELINE PROJECT
RAW WATER SERVICE BILLS SUMMARY
TAYLOR NURSERY**

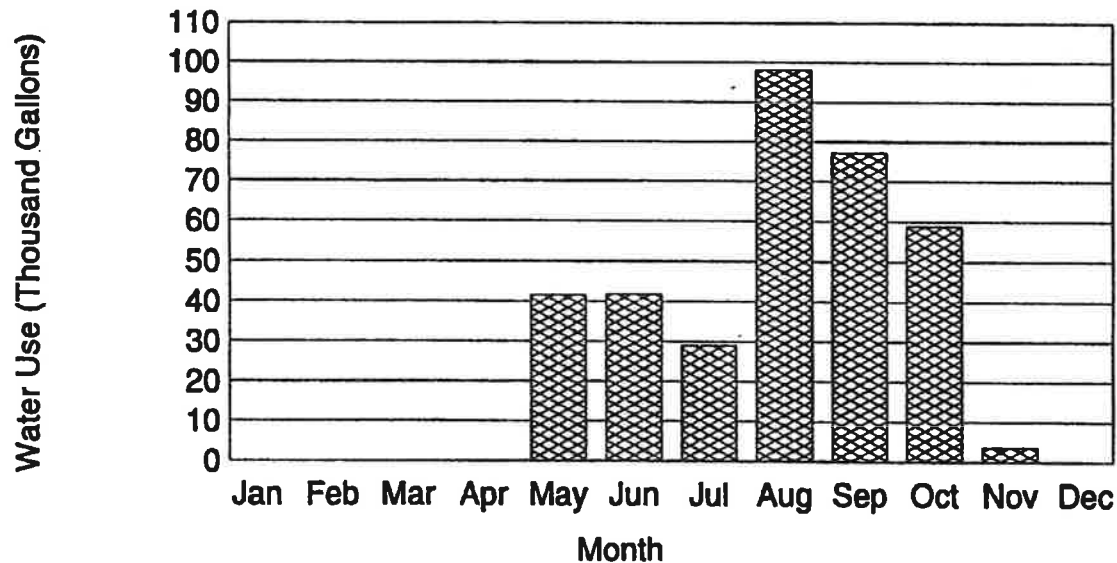
02/11/94

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Month	Meter	Use (kgal)	Billed (kgal)	O&M Refund:		Refund Adj. O&M	Repl.	Capital (adj)	Total	
				O&M	Treat.					
				\$0.50	\$0.00		\$0.30	\$0.68	\$1.48	
Jan	190.4	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Feb	190.4	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Mar	190.4	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Apr	190.4	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
May	232.0	41.6	41.6	\$20.80	\$0.00	\$20.80	\$12.48	\$28.29	\$61.57	
Jun	273.8	41.8	41.8	\$20.90	\$0.00	\$20.90	\$12.54	\$28.42	\$61.86	
Jul	302.7	28.9	28.9	\$14.45	\$0.00	\$14.45	\$8.67	\$19.65	\$42.77	
Aug	400.8	98.1	98.1	\$49.05	\$0.00	\$49.05	\$29.43	\$66.71	\$145.19	
Sep	478.0	77.2	77.2	\$38.60	\$0.00	\$38.60	\$23.16	\$52.50	\$114.26	
Oct	536.8	58.8	58.8	\$29.40	\$0.00	\$29.40	\$17.64	\$39.98	\$87.02	
Nov	540.5	3.7	3.7	\$1.85	\$0.00	\$1.85	\$1.11	\$2.52	\$5.48	
Dec	540.5	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
		350.1	350.1	\$175.05	\$0.00	\$0.00	\$175.05	\$105.03	\$238.07	\$518.15

ATTACHMENT 4

TAYLOR NURSERY RAW WATER USE

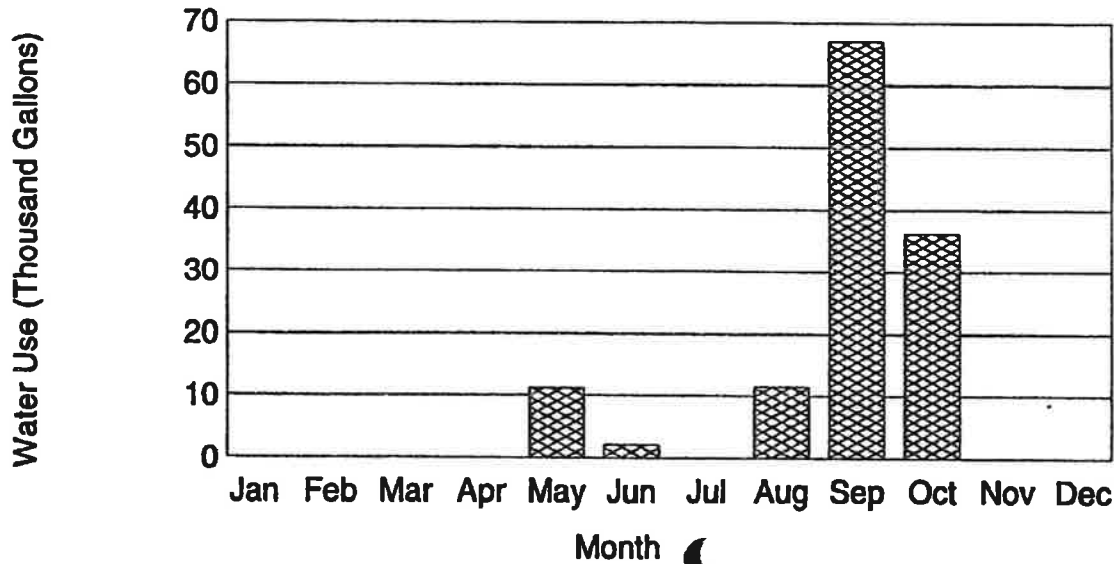


**SOUTHWEST PIPELINE PROJECT
RAW WATER SERVICE BILLS SUMMARY
SACRED HEART MONASTERY**

02/11/94
17:00

Month	Meter	Use (kgal)	Billed (kgal)	O&M Refund:		Refund Adj. O&M	Repl.	Capital (adj)	Total
				O&M	Treat.				
	0			\$0.50	\$0.00		\$0.30	\$0.68	\$1.48
Jan	0.0	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Feb	0.0	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Mar	0.0	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Apr	0.0	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
May	11.2	11.2	11.2	\$5.60	\$0.00	\$5.60	\$3.36	\$7.62	\$16.58
Jun	13.3	2.1	2.1	\$1.05	\$0.00	\$1.05	\$0.63	\$1.43	\$3.11
Jul	13.3	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Aug	24.8	11.5	11.5	\$5.75	\$0.00	\$5.75	\$3.45	\$7.82	\$17.02
Sep	91.7	66.9	66.9	\$33.45	\$0.00	\$33.45	\$20.07	\$45.49	\$99.01
Oct	128.0	36.3	36.3	\$18.15	\$0.00	\$18.15	\$10.89	\$24.68	\$53.72
Nov	128.0	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Dec	128.0	0.0	0.0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
		128.0	128.0	\$64.00	\$0.00	\$0.00	\$38.40	\$87.04	\$189.44

SACRED HEART MONASTERY RAW WATER USE



**SOUTHWEST PIPELINE PROJECT
CAPITAL REPAYMENT**

Adjustment for Inflation

December, 1993 CPI:		145.8
Adjustment to Base:	0.333827	436.8
Change from 274.4:		1.59
Correction:		\$0.26
Base Capital Repayment Rate:		\$0.44
Adjusted Capital Repayment Rate:		\$0.70

Debt Service Credit

Year	Annual	Monthly
1991	\$29,252	
1992	\$153,177	\$12,765
1993	\$150,626	\$12,552
1994	\$152,100	\$12,675
1995	\$149,787	\$12,482
1996	\$147,309	\$12,276
1997	\$93,654	\$7,805
1998	\$93,654	\$7,805
1999	\$93,654	\$7,805
2000	\$93,654	\$7,805
2001	\$93,654	\$7,805

SOUTHWEST PIPELINE BUDGET -- OPERATIONS AND MAINTENANCE

	ACTUAL 1992	PROJECTED 1993	ACTUAL 1993	PROJECTED 1994
WATER DELIVERED (Kgal)	655,640	600,000	523,308	580,000
UTILITIES				
Power (Pump stations incl. wheeling)	cost/yr \$108,446	cost/yr \$96,000	cost/yr \$82,703	cost/yr \$90,000
C&M, Dickinson Res, Cathodic Prot.)	\$7,743	\$8,000	\$6,860	\$8,000
Other Utility				
Phone	\$1,693	\$6,000	\$872	\$6,500
Heat	\$2,878	\$3,500	\$3,134	\$3,500
Misc. Util.	(216)	\$1,200		\$500
TOTAL UTILITIES:	<u>\$120,544</u>	<u>\$114,700</u>	<u>\$93,569</u>	<u>\$108,500</u>
OPERATIONS				
Salaries	\$84,257	\$118,000	\$99,288	\$150,000
Travel	\$14,187	\$17,000	\$13,717	\$17,800
Insurance	\$7,361	\$10,000	\$4,196	\$7,000
Supplies	\$5,722	\$2,000	\$887	\$1,000
Building	\$10,580	\$5,000	\$5,036	\$5,500
Equipment	\$7,291	\$10,000	\$8,864	\$24,600
Equip. Maint.	\$8,557	\$1,200	\$1,276	\$2,000
Fuel	\$2,698	\$3,500	\$3,115	\$4,000
Basin Site Serv.	\$0	\$7,500	\$33	\$25,000
Maintenance	\$1,326	\$10,000	\$2,321	\$3,000
Misc.	\$1,125	\$3,000	\$505	\$750
Other		0	\$29	\$100
TOTAL SUPPORT:	<u>\$143,104</u>	<u>\$187,200</u>	<u>\$139,267</u>	<u>\$240,750</u>
Repl. & Ext. Maint.	\$196,692	\$180,000	\$171,169	\$174,000
Treatment	\$367,158	\$336,000	\$330,530	\$371,200
TOTALS:	\$827,498	\$817,900	\$734,535	\$894,450
COST PER KGAL:	\$1.26	\$1.36	\$1.40 (1)	\$1.54

(1) Actual charge for 1993 was \$1.44. Rate was increased over projection because of an increase in treatment costs.

SOUTHWEST PIPELINE OPERATIONS & MAINTENANCE REPORT -- INCOME

	JAN 93	FEB 93	MAR 93	APR 93	MAY 93	JUNE 93	JULY 93	AUG 93	SEPT 93	OCT 93	NOV 93	DEC 93	1993 TOTAL
(1) INCOME -- CITIES													
Treatment (.56) Mar-Dec (.64)	(2) 0	23519	0	0	0	49796	0	54868	46421	107764	0	49533	331901
O&M (.50)	0	33688	0	0	0	0	0	0	0	0	0	0	33688
Replacement Fund (0.30)	0	12633	10192	8149	14891	32282	0	14439	12216	28359	0	13035	145996
Capital Repayment	0	13343	15777	13002	6631	49872	0	20176	15138	39176	0	16994	190110
TOTAL INCOME -- CITIES	0	83183	25968	21151	21322	131950	0	89484	73774	175300	0	79562	701695
INCOME -- RURAL WATER													
Service					307	788	0	370	785	0	451	589	3268
Replacement Fund					170	350	0	185	335	0	165	180	1385
Capital Repayment					680	1400	0	740	1340	0	860	720	5540
Secretarial Services					0	218	0	705	1411	0	705	705	5643
TOTAL INCOME -- RURAL WATER					1157	4654	0	2000	3850	0	1981	2194	15838
INCOME -- RAW WATER													
O&M (.50)						48	0	14	55	72	48	0	237
Replacement Fund (.30)						20	0	9	33	43	29	0	143
Capital Repayment						68	0	20	75	98	65	0	324
TOTAL INCOME -- RAW WATER						143	0	43	163	213	142	0	704
Treatment	0	23519	0	0	0	49796	0	54868	46421	107764	0	49533	331901
O&M	0	33688	0	0	307	2952	0	1090	2230	72	1204	1294	42836
Replacement Fund	0	12633	10192	8149	14891	32661	0	14633	12584	28402	194	13215	147526
Capital Repayment	0	13343	15777	13002	7311	51338	0	20936	16553	39274	725	17714	195974
TOTAL INCOME -- ALL SOURCES	0	83183	25968	21151	22479	136747	0	91527	77787	175913	2123	81758	718235
(4) BALANCE FORWARD													
Operating Income	260864	301945	281037	258765	248164	209250	121011	164982	163865	224961	174788	171551	635601
-Expenses	16126	20908	22272	10908	91662	86239	11987	49768	46740	51377	54064	50905	514956
Net Operating Income	260864	244738	281037	258765	247857	136502	121011	109024	115214	117125	173584	120724	120645
Replacement Fund Balance	196692	196692	209325	219517	227666	242527	275188	275188	289821	302405	330807	331001	344216
Resources Trust Fund	224065	224065	237408	253185	266187	273498	324836	324836	345772	362325	401599	402324	420038
Reimbursement Credit (6) (1992 credit)	46,466	46,466	46,466	46,466									185864

- (1) Income has been separated to show the three sources of income: cities, rural water, and raw water.
- (2) Income is indicated in the month payment was actually received instead of the month in which the customer was billed.
- (3) See Item (6).
- (4) The balance forward is from 1992 only.
- (5) Net operating income becomes the O&M Reserve at the end of the year. Income is received two months after the bills are sent. The O&M Reserve will remain at \$121,000 in order to cover approximate expenses for three months operations and maintenance and six weeks treatment.
- (6) The reimbursement credit was the 1992 overcharge to the city of Dickinson. Operations and Maintenance income was low in 1993 because of this reimbursement credit.

SOUTHWEST PIPELINE OPERATIONS & MAINTENANCE REPORT -- EXPENSES

1993

EXPENSES	JAN 93	FEB 93	MAR 93	APR 93	MAY 93	JUNE 93	JULY 93	AUG 93	SEPT 93	OCT 93	NOV 93	DEC 93	TOTAL
A. UTILITIES													
INTAKE													
a. WAPA	667	1888	3634	0	1812	3378	0	2869	2538	1817	1684	1665	21761
b. Wheeling	1630	1885	3220	0	1656	3115	0	1869	1598	0	1741	1604	18318
c. Telephone	28	27	31	21	21	83	0	29	55	39	32	0	365
d. Fuel	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL	2326	3800	6885	21	3489	6576	0	4567	4189	1856	3467	3269	40444
DODGE													
a. WAPA	41	259	413	0	51	81	0	45	312	81	32	39	1760
b. Wheeling	0	2000	1000	1000	1000	2000	0	1000	1000	1000	1000	1000	12000
c. Telephone	0	0	16	41	32	45	0	48	28	23	0	0	232
d. Fuel	0	0	0	0	0	0	0	0	0	0	0	0	0
e. Other	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL	41	2259	1429	1041	1083	2126	0	1500	1340	1104	1032	1039	13992
RICHARDTON													
a. WAPA	1276	1280	2550	0	1303	2634	0	1445	1358	1450	1343	1282	15970
b. Wheeling	0	2600	1000	1000	1020	2197	0	1247	1100	1266	1103	1000	12934
c. Telephone	25	24	23	26	23	49	0	23	31	23	0	28	275
d. Fuel	0	0	0	0	0	0	0	0	0	0	0	0	0
e. Other	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL	1303	3311	3573	1026	2346	4880	0	2715	2490	2739	2446	2310	29139
O&M HQ													
a. Electricity	677506503	301	289	227	330	788	430	0	1089	0	0	233	3928
b. Gas	657	433	448	32	128	54	41	27	27	0	466	535	3134
c. Water	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL	961	678	666	609	458	842	470	27	1116	0	466	771	7062
DICKINSON RES													
a. Electricity	600400800	83	121	119	80	16	30	15	0	45	0	15	523
b. Other	0	0	0	0	0	0	0	0	0	0	0	0	0
SUBTOTAL	83	121	119	80	16	30	15	0	45	0	0	15	524
CATHODIC PROTECTION													
a. Ant Cr	18018101	0	79	33	28	18	22	18	20	15	19	33	312
b. Gold Val	21001100	0	25	12	12	12	12	12	13	12	13	12	149
c. Dod So	240600200	19	23	20	21	23	41	22	0	79	0	0	277
e. Ny 8	232100200	16	18	16	17	18	34	18	0	54	0	0	211
f. Alk Fl	477700100	14	15	14	14	15	29	15	0	44	0	0	176
g. East Tay	515500100	39	43	40	40	42	81	43	0	127	0	0	509
h. Gladstone	523200100	19	14	21	22	24	45	24	0	84	0	0	260
i. East Auto	671200600	29	30	29	31	32	59	30	0	89	0	0	352
j. Zap	10080100	0	24	12	12	12	12	12	12	12	12	12	142
SUBTOTAL	137	272	196	198	197	335	191	45	501	44	58	235	2408
TOTAL	4851	10441	12868	2975	7589	14789	876	8854	9681	5743	7489	7639	93969
EXPENSES													
Salaries	7363	8666	7543	6954	4377	7225	6813	7488	6531	14374	9891	12062	99288
Travel	1985	745	980	280	977	2729	10	139	2531	957	1439	936	13717
Insurance	0	0	0	0	0	0	4073	46	78	0	0	0	4196
Office Supplies	137	72	75	0	0	0	0	103	63	298	0	169	887
Building	74	72	0	188	26	672	25	1816	701	764	698	0	5036
Equipment	237	129	0	0	575	360	235	0	0	182	1635	335	8864
Equip Main	10	0	260	34	0	97	0	0	0	0	0	875	1276
Fuel	1194	668	390	322	0	8	0	10	71	65	0	386	3115
Cathodic Pro	33	0	0	0	0	0	0	0	0	0	0	0	33
Maintenance	207	146	146	154	129	308	155	146	154	146	446	184	2321
Miscellaneous	35	0	0	0	0	29	0	0	307	0	133	23	505
SUBTOTAL	11275	10467	9404	7933	11259	11435	11311	9748	10436	16787	14242	14970	139267
SUBTOTAL EXPENSES	16126	20908	22272	10908	18848	26224	11987	18602	20117	22530	21711	22609	232836
Treatment	0	0	0	0	71553	61440	0	30803	26061	28544	31955	27808	278166
Roshaw Purchase (1)	0	0	0	0	1259	575	0	363	563	303	398	488	3946
TOTAL EXPENSES	16126	20908	22272	10908	91662	88239	11987	49768	46740	51377	54064	50905	514948

(1) Treatment expenses have been separated to show the cost of treatment to the city of Dickinson and the cost of service for rural water.



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Heidi Heitkamp
ATTORNEY GENERAL

MEMORANDUM

CAPITOL TOWER
State Capitol
600 East Boulevard
Bismarck, ND 58505-0040
701-224-2210
FAX 701-224-2226

Consumer Fraud
and Antitrust Section
701-224-3404 (V/TDD)
800-472-2800 (V/TDD)
Toll Free in North Dakota

Gaming Section
701-224-4848

Licensing Section
701-224-2210

Racing Commission
701-224-4290

CAPITOL COMPLEX
State Office Building
900 East Boulevard
Bismarck, ND 58505-0040
FAX 701-224-4300

Civil Litigation
701-224-3640

Natural Resources
701-224-3640

Child Sexual Abuse Team
701-224-2729

Bureau of Criminal
Investigation
P.O. Box 1054
Bismarck, ND 58502-1054
701-221-6180
800-472-2185
Toll Free in North Dakota
FAX 701-221-6158

Fire Marshal
1835 Bismarck Expressway
Bismarck, ND 58504-6708
701-221-5390
(701-221-5383

TO: Jim Lennington, NAWS Coordinator
FROM: *JL* Julie A. Krenz, Assistant Attorney General
RE: Whether a Home Rule City Must Hold an Election in Order to Sign a Water Service Agreement for NAWS
DATE: December 6, 1993

I reviewed Kris's files and could not find a file on this issue. There was, however, a file on the issue of whether a vote of a city council creates a valid water service contract between the city and the State Water Commission for the purpose of receiving water from the Southwest Pipeline. With regard to NAWS, it is my opinion that a city that has home rule may sign a water service contract without an election pursuant to an ordinance adopted under its home rule charter provided the charter authorizes the city to engage in that enterprise and the implementing ordinance provides assurances that the activity has a public purpose, details the manner of implementing the activity, and provides for supervisory controls to ensure the public purpose is met. See 1993 N.D. Op. Att'y Gen. 93-11, copy attached. Without such authority in the charter and implementing ordinance, a city with home rule is required to hold an election in order to sign a water service agreement.

N.D.C.C. § 40-33-16 provides, in part:

Any city owning a system for the distribution of water for fire protection and other public purposes and for selling water to its inhabitants and industries, but for which the water supply is unsuitable or inadequate, may contract to purchase water at wholesale for such purposes from any person, firm, or public or private corporation able and willing to furnish the same. . . . Any such contract shall be authorized by an ordinance submitted to the voters for approval by a majority of those voting on the proposition before it takes effect.

Jim Lennington
Page 2
December 6, 1993

A city may become a home rule city by following the procedures in N.D.C.C. ch. 40-05.1. Cities that adopt home rule charters may have the powers set forth in N.D.C.C. § 40-05.1-06. The powers must be in the city's charter. One of those powers is the power to "engage in any utility, business, or enterprise permitted by the constitution and not prohibited by statute . . ." N.D.C.C. § 40-05.1-06(10). The provisions of home rule cities in their charters and implementing ordinances supersede statutory provisions. N.D.C.C. § 40-05.1-06.

In the Attorney General's Opinion attached, the Attorney General discussed what constitutes an enterprise and how detailed an ordinance must be in order to be properly implemented. The Attorney General defined enterprise as any activity which does not violate the North Dakota Constitution or statutes and which is of some scope, complication, or risk. 1993 N.D. Op. Atty' Gen. 93-11 at 42. It appears that entering into a water service agreement would fall within the definition of enterprise. However, the implementing ordinance must be sufficiently detailed so that the public is properly informed of the authority and limits of the enterprise. Id. When a city is attempting to draft an ordinance to implement a provision in its home rule charter, it may be helpful to review other statutes on the same subject matter. If the statutes are sufficiently detailed to inform the public of the authority and limits of the enterprise, then the city may choose to pattern its ordinance after the statute. Id.

JK:rp
Attachment

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 93-11

Date issued: August 11, 1993
Requested by: Michel W. Stefonowicz, Crosby City Attorney

- QUESTION PRESENTED -

Whether a home rule city which has not created a job development authority may give grants and make loans to private entities pursuant to an ordinance adopted under its home rule charter.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a home rule city which has not created a job development authority, may engage in the enterprise of giving grants and making loans to private entities pursuant to an ordinance adopted under its home rule charter provided the home rule charter authorizes the home rule city to engage in enterprises and the implementing ordinance, authorizing the city to engage in the proposed enterprise, provides assurance that the activity has a public purpose, details the manner of implementing the activity, and provides for supervisory controls to ensure the public purpose is met.

- ANALYSIS -

Four legal sources are relevant to the determination of whether a home rule city may give grants or make loans: the North Dakota Constitution, North Dakota statutes, the particular home rule city charter, and the particular home rule city ordinance. Article X, Section 18 of the North Dakota Constitution permits "making loans or giving credit . . . [or making donations to private entities] in connection with the city's engaging in any permissible industry, enterprise, or business, but not otherwise." Gripentrog v. City of Wahpeton, 126 N.W.2d 230, 237-38 (N.D. 1964). A city that is not home rule may make loans or give credit or make donations to private entities if that particular activity is authorized by statute. Letter from Attorney General Heidi Heitkamp to Walter M. Lipp (April 12, 1993). That activity may be conducted through city job development authorities pursuant to N.D.C.C. ch. 40-57.4.

Home rule cities are authorized by the North Dakota Constitution and statutes. N.D. Const. Art. VII, § 6 and N.D.C.C. ch 40-05.1. A home rule city may be authorized in its home rule charter to

"engage in any utility, business, or enterprise permitted by the constitution or not prohibited by statute." N.D.C.C. § 40-05.1-06(10). If a home rule city wants to engage in an enterprise not authorized by statute, it must have such authorization in its charter, and the proposed enterprise must be implemented through an ordinance. N.D.C.C. §§ 40-05.1-06, 40-05.1-06(10).

The home rule charter considered here is almost identical to N.D.C.C. § 40-05.1-06(10). It provides that the city may "engage in any utility or enterprise permitted by the constitution or not prohibited by statute" No statute prohibits a home rule city from creating a utility, business, or enterprise through which a city could make grants or loans to private entities. Thus, under the home rule charter considered here, a city may engage in an enterprise whereby grants could be given and loans could be made to private entities if the charter is properly implemented through an ordinance.

The meaning of the term "enterprise" in the home rule charter must be consistent with its meaning in article X, section 18, of the constitutional provision. Words in a statute or constitutional provision should be given their common, ordinary meaning. N.D.C.C. § 1-02-02, McCarney v. Meier, 286 N.W.2d 780 (N.D. 1979). The meaning of those words can also be attained from North Dakota Supreme Court opinions, Attorney General opinions, and other statutes. N.D.C.C. § 1-02-39(4).

"Enterprise" is generally defined as "[a]n undertaking, esp. one of some scope, complication, and risk." The American Heritage Dictionary, 456 (2d coll. ed. 1991). Interpretations of the term "enterprise" by the North Dakota Supreme Court, the Legislature and the Attorney General are consistent with the ordinary definition. A city engages in an enterprise, as that term is used in Article X, Section 18 of the North Dakota Constitution, when it leases a sugar processing plant. Gripentrog v. City of Wahpeton, 126 N.W.2d 230 (N.D. 1964). Housing finance programs are enterprises. N.D.C.C. §§ 54-17-01, 54-17-07.1 through 54-17-07.9. Educational assistance is an enterprise. 1981 N.D. Op. Att'y Gen. 53, 54, N.D.C.C. chs. 15-62.2, 15-62.3. "The investment activities of the Land Board concerning the coal severance tax trust fund . . . constitute a lawful enterprise" 1992 N.D. Op. Att'y Gen. 57, 63, N.D.C.C. §§ 15-02-08, 15-03-04, 15-03-04.1, 15-03-14 through 15-03-18, and 21-10-06. Historical promotion and historical work of a county is an enterprise. Letter from Attorney General Olson to James E. Sperry (March 7, 1973), N.D.C.C. ch. 11-11. A city is

ATTORNEY GENERAL'S OPINION 93-11

August 11, 1993

Page 3

engaging in an enterprise when it enters into an urban renewal project. 1982 N.D. Op. Att'y Gen. 74, 76, N.D.C.C. ch. 40-58.

Given the foregoing authorities, it is my opinion the term "enterprise" means any activity which does not violate the North Dakota Constitution or statutes and which is of some scope, complication, or risk. It is my further opinion that a home rule city with proper authority in its charter can engage in the enterprise of giving grants and making loans if that enterprise is properly implemented through an ordinance.

The remainder of this opinion addresses the requirements of an ordinance implementing the authority to engage in an enterprise and whether the language in section X of the ordinance meets those requirements.

A city may not engage in an enterprise unless it is for a public purpose. See Kelly v. Guy, 133 N.W.2d 853 (N.D. 1965); Ferch v. Housing Authority of Cass County, 59 N.W.2d 849 (N.D. 1953); Green v. Frazier, 176 N.W. 11 (N.D. 1920); 1992 N.D. Op. Att'y Gen. 57. An ordinance permitting a home rule city to engage in a particular enterprise must provide for supervisory controls to ensure that the public purpose is met. See Kelly v. Guy, 133 N.W.2d 853 (N.D. 1965).

Finally, the implementing ordinance must be sufficiently detailed so that the public is properly informed of the authority and limits of the enterprise, Litten v. City of Fargo, 294 N.W.2d 628, 634 (N.D. 1980). When a city is attempting to draft an ordinance to implement a provision in its home rule charter, it may be helpful to review other statutes on the same subject matter. If the statutes are sufficiently detailed to inform the public of the authority and limits of the enterprise, then the city may choose to pattern its ordinance after the statute. The particular terms of the ordinance need not be the same as those in the statute, however. See City of Fargo v. Fahrlander, 199 N.W.2d 30 (N.D. 1972) (ordinance need not repeat exact language of similar state statute to be valid).

In conclusion, it is my opinion that although it has not created a job development authority, a home rule city may engage in the enterprise of giving grants and making loans to private entities if the home rule charter authorizes the home rule city to engage in enterprises and the implementing ordinance: (1) authorizes the city to engage in the proposed enterprise, (2) provides assurance that the activity has a public purpose, (3) sufficiently details

the manner of implementing the activity, and (4) provides for supervisory controls to ensure the public purpose is met.

Sections I through IX of the ordinance implementing the charter considered here provides for and details matters regarding a city sales and use tax. Section X provides:

Section X: DEDICATION OF TAX PROCEEDS

All revenues raised and collected under this article, less administrative expenses shall be dedicated to jobs development, jobs retention, and capitol [sic] expenses for the City. All revenues shall be placed in a separate sales and use tax fund.

The City Council shall establish a six member board, to be known as the Sales Tax Board, to screen applications for grants or loans from this fund. The City Council shall retain veto power over any decision of the Sales Tax Board within 30 days of any funding approval by said Board.

This ordinance dedicates the sales and use tax revenues to jobs development, jobs retention, and the city's capital expenses. These are all public purposes. The 30-day veto authority of the city council can be used to ensure that these public purposes are met.

Section X of the ordinance does not contain sufficient detail to implement the language in the home rule charter. It does not inform the public of the authority and limits of the enterprise. In contrast, N.D.C.C. ch. 40-57.4 which provides the statutory scheme for a city's economic development authority provides sufficient detail. That chapter specifies that the board of directors of a city job development authority are appointed and indicates the qualifications necessary for appointment. The term of the directors and to what extent the directors will be reimbursed is also specified. N.D.C.C. ch. 40-57.4 also lists specifically the powers of the city job development authority, including the power to make loans and grants, to make and execute contracts, and to sue and be sued.

The ordinance considered here does not include these details. The ordinance merely provides that the Sales Tax Board will screen applications for grants or loans and give or deny funding approval which is subject to veto by the City Council. The specific powers of the Sales Tax Board, including any limits on the power to make grants and loans, are not enumerated. No mention is made of who

ATTORNEY GENERAL'S OPINION 93-11
August 11, 1993
Page 5

will set the guidelines for the screening process, the terms, or any limitations on the grants or loans.

It is my opinion that the ordinance considered here is not sufficiently detailed to properly inform the public of its scope. It is my further opinion that, although the city's home rule charter includes the proper provisions and the implementing ordinance authorizes the proposed enterprise, provides assurance that there is a public purpose, and provides for supervisory controls to ensure the public purpose is met, the city may not give grants or make loans pursuant to this ordinance because this ordinance does not sufficiently detail the manner of implementing the activity.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Leah Ann Schneider
Assistant Attorney General

Rosellen M. Sand
Assistant Attorney General

jfl

PRELIMINARY SUMMARY REPORT
ANALYSIS OF 1993 SUMMER FLOOD
ON LOWER SHEYENNE RIVER
AND
EFFECTS OF WEST FARGO AND HORACE
LEVEE AND DIVERSION PROJECTS ON
AREAS NORTH OF WEST FARGO

St. Paul District, Corps of Engineers
February 4, 1994

**Preliminary Summary Report
Analysis of 1993 Summer Flood on Lower Sheyenne River
and
Effects of Horace and West Fargo Levee and Diversion Projects
on Area North of West Fargo, ND**

INTRODUCTION

During July, 1993, there were two periods of heavy rain over the watersheds of the Maple, Rush, Lower Rush, and Sheyenne Rivers. The first event was the most severe and occurred on the 13th to 17th of July. The second event occurred from the 23rd to the 27th of July. The first event caused significant runoff on the Maple, Rush, Lower Rush, and Sheyenne River, and caused the Horace and West Fargo Levee and Diversion projects to perform for the second time since their completion. Very high flood levels in the area downstream of the diversion projects generated concern from those who reside downstream of the projects about the effect the project may have had on flows from the Sheyenne River and corresponding flood levels from West Fargo through Harwood.

This report summarizes the preliminary findings of a detailed hydrologic and hydraulic analysis of the 1993 summer flood on the Lower Sheyenne River and of the effects of the Horace and West Fargo Levee and Diversion projects on the area downstream of the projects. The concerns of the downstream residents are addressed through an analysis of the Horace and West Fargo Levee and Diversion projects' effects on flows and corresponding flood levels downstream. An account of the peak flood stages in the Harwood area is discussed through a comparison of West Fargo and Harwood flows and water surface elevations. The relative severity of this 1993 summer flood is compared with the 1975 summer flood for the area north of West Fargo.

DOWNSTREAM FLOW EFFECTS

Computer simulations were made using a U.S. Army Corps of Engineers (USACE) water surface profile model (HEC-2) and streamflow routing model (HEC-1) to simulate the operation of the Horace and West Fargo Levee and Diversion projects. Flows measured upstream of the Horace diversion structure by the U.S. Geological Survey were routed through the system for the with- and without-project condition. The routing technique used storage-outflow relationships for the designated reaches that were provided by the HEC-2 model. PLATE 1 shows the without-project flows compared to the with-project flows at the Burlington Northern Bridge downstream of the confluence with Drain 21 and the Sheyenne River. The results of this simulation show that the Horace and West Fargo Levee and Diversion projects had virtually no effect on the downstream flows and; therefore, no effect on the downstream flood levels.

WEST FARGO/HARWOOD WATER SURFACE ELEVATION AND DISCHARGE COMPARISON

The primary cause of peak flood stages in the Harwood area was runoff from the Maple, Rush and Lower Rush Rivers. The peak observed water surface elevation at both West Fargo and Harwood occurred more than two weeks before the Sheyenne River reached its peak discharge at West Fargo. However, the peak observed water surface elevations at both locations occurred when the Sheyenne River at I-29 (which included the flows of the Maple, Rush, and Lower Rush Rivers) was at or very near its peak discharge. As shown in the upper right graph on PLATE 2, the peak discharge at I-29 is about 4500 cfs more than the corresponding discharge at West Fargo. This additional 4500 cfs discharge is runoff from the Maple, Rush and Lower Rush Rivers. The two left hand graphs on PLATE 2 show that the water surface elevation at both West Fargo and Harwood had decreased by the time the Sheyenne River at West Fargo had reached its peak flow. At West Fargo, the water surface elevation decreased by about 1.3 feet and at Harwood the water surface elevation decreased by about 4.4 feet. These points indicate that the peak water

surface elevation at West Fargo was due in part to backwater from downstream conditions, largely caused by the Maple, Rush and Lower Rush River flows.

1975 & 1993 HIGHWATER MARK & DISCHARGE COMPARISON

The peak flood levels for the 1975 and 1993 summer floods between Harwood and West Fargo are compared in the following table. The 1993 flood was generally about 0.5 feet lower than the 1975 flood for the reach downstream of West Fargo. Note that the County Highway 22, County Highway 17, and 12th Avenue North highwater marks were adjusted based on the results of surveys during and after the flood.

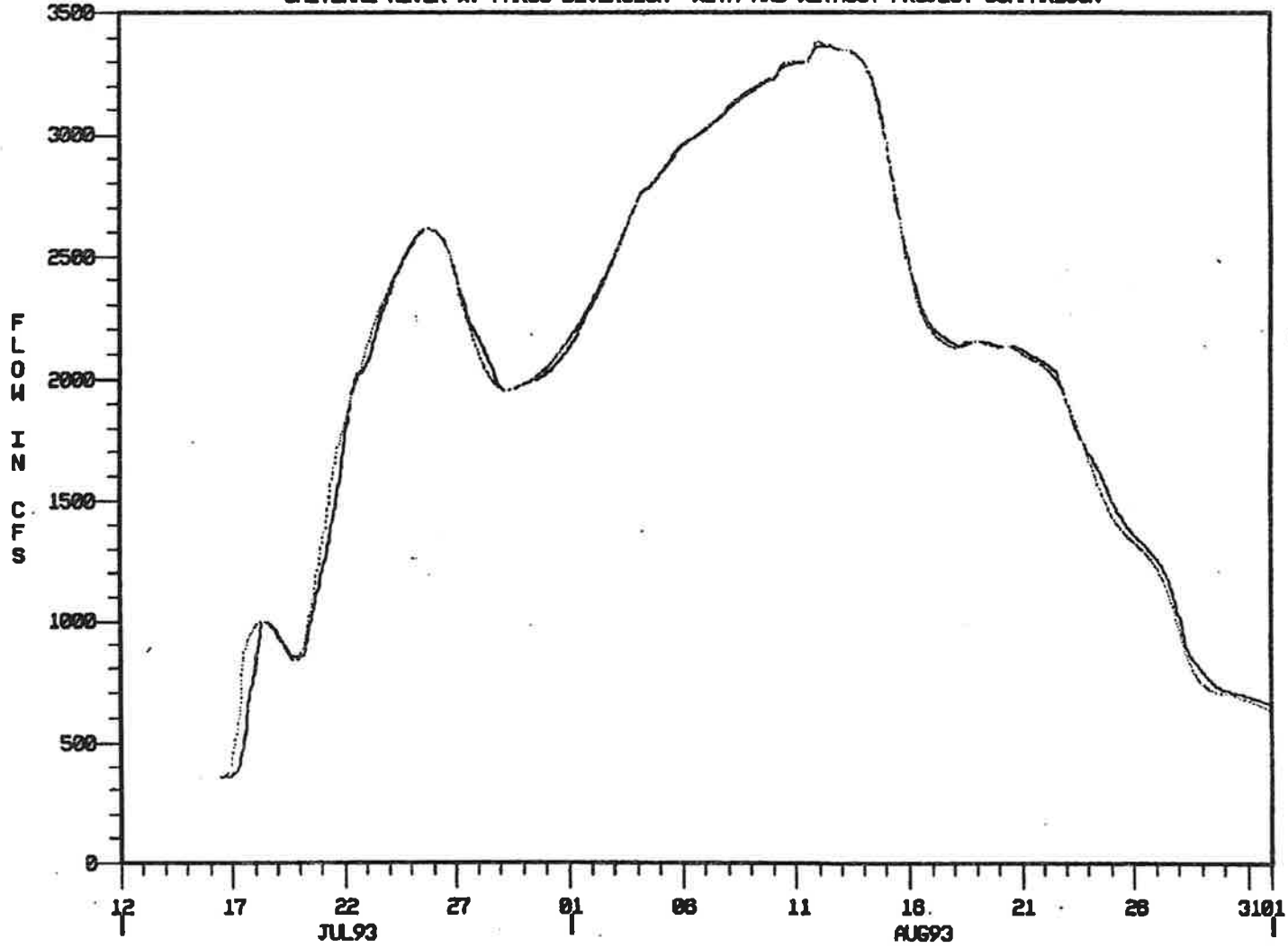
JULY 1975 & JULY 1993 HIGHWATER MARK COMPARISON

Location	July 1975	July 1993
U.S. Hwy. 81	889.37	889.37
I-29	889.46	889.15
Cty. Hwy. 22	892.03	891.56
Cty. Hwy. 17	~894.1	893.62
Township Road	894.71	--
Township Road	896.75	--
BNRR Bridge	897.54	--
19th Ave. No.	898.47	898.17
12th Ave. No.	899.44	898.88

CONCLUSION

In summary, there are three main conclusions from this analysis. First, the hydraulic analysis combined with the hydrologic analysis indicates that the Sheyenne River discharge downstream of the project is essentially the same for with- and without-project conditions, and that the Horace and West Fargo Levee and Diversion channel projects did not make conditions worse at Harwood. Second, the primary cause of peak flood stages in the Harwood area was runoff from the Maple, Rush and Lower Rush Rivers. And, third, that the 1975 summer event was more severe on the Lower Sheyenne River in terms of peak flood levels than the 1993 summer event.

SHEYENNE RIVER W. FARGO DIVERSION WITH AND WITHOUT PROJECT COMPARISON



— DOWNSTREAM OF DIVERSION CHANNEL WITH PROJECT CONDITION AT BNRR BRIDGE
..... DOWNSTREAM OF DIVERSION CHANNEL WITHOUT PROJECT CONDITION AT BNRR BRIDGE

