MINUTES

North Dakota State Water Commission
Oakes, North Dakota

July 27, 1994

The North Dakota State Water Commission held a meeting at the Guest-Haus Ye Olde Cafe, Oakes, North Dakota, on July 27, 1994. Governor-Chairman, Edward T. Schafer, called the meeting to order at 10:45 AM, and requested State Engineer and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

David Ross, Mayor, welcomed the State Water Commission to Oakes.

MEMBERS PRESENT:
Governor Edward T. Schafer, Chairman
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
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

MEMBERS ABSENT:
Mike Ames, Member from Williston

GARRISON DIVERSION CONSERVANCY DISTRICT EXECUTIVE COMMITTEE MEMBERS PRESENT:
Robert Strand, Chairman
Norman Haak, Vice Chairman
Steve Metzger, Second Vice Chairman
Milton Lochow
Connie Sprynczynatyk
Warren Jamison, Manager, Garrison Diversion Conservancy District

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

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

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

CONSIDERATION OF MINUTES OF MAY 24, 1994, MEETING - APPROVED The minutes of the May 24, 1994, State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Vogel, seconded by Commissioner Thompson, and unanimously carried, that the minutes of the May 24, 1994, State Water Commission meeting be approved as circulated.

CONSIDERATION OF MINUTES OF JUNE 8, 1994, TELEPHONE CONFERENCE CALL MEETING - APPROVED The minutes of the June 8, 1994, State Water Commission telephone conference call meeting were approved by the following motion:

It was moved by Commissioner Vogel, seconded by Commissioner Thompson, and unanimously carried, that the minutes of the June 8, 1994, State Water Commission telephone conference call meeting be approved as circulated.

FINANCIAL STATEMENT - AGENCY OPERATIONS Secretary Sprynczynatyk presented and discussed the Program Budget Expenditures, dated June 14, 1994, reflecting 45.8 percent of the 1993-1995 biennium. ***SEE APPENDIX "A".***

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".***

The last revenue forecast by the Office of Management and Budget was made January 24, 1994, and the next forecast is scheduled for July, 1994. Mr. Frink indicated that because of declining oil production and prices, the January forecast predicted a $972,000 shortfall. Approximately $1.3 million remains unallocated from the Resources Trust Fund, but Mr. Frink said this will likely be lost due to reduced revenues.

Mr. Frink expressed concern regarding the Resources Trust Fund revenue situation. He said there are several high priority projects in various stages of development, and traditionally the State Water Commission holds about $250,000 as unallocated through the spring snowmelt period of the second year of the biennium for emergency repair projects.

It was the recommendation of the State Engineer that the State Water Commission defer approving cost share requests from the Contract Fund until such time as revenue forecasts show that adequate funds will be available.

FINANCIAL STATEMENT - 1995-1997 BUDGET UPDATE

The preliminary 1995-1997 biennium budget for the State Water Commission was submitted to the Office of Management and Budget on July 15, 1994.

Secretary Sprynczynatyk indicated the budget information reflects a general fund budget for the 1995-1997 biennium of 95 percent of the agency's general fund appropriation for the current biennium. This reduction was made in accordance with the requirements of the Office of Management and Budget. He said the agency is also anticipating reductions in federal funds and special funds. The federal funds reductions reflects a greater percentage of municipal, rural, and industrial funds being allocated to other projects across the state, in addition to a more conservative estimate of federal funds expected to be available for the Southwest Pipeline Project. The reduction in special funds is due to the projected decrease in revenue to the Oil Tax Resources Trust Fund as a result of low oil prices and production.

Secretary Sprynczynatyk said the budget does allow for continuation of the three percent salary increase given to agency personnel on July 1, 1994. Funds to support this increase during the 1993-1995 biennium were available because of vacant positions within the agency. However, he said these positions have either been filled or are expected to be filled in the near future, which will make it difficult to continue the salary increase into the 1995-1997 biennium.

The staff is preparing the Optional Adjustment proposals, which will be submitted to the

Office of Management and Budget in August. Secretary Sprynczynatyk indicated that the Office of Management and Budget will conduct a budget hearing for the agency in August or September.

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 contracts:

Contracts 2-3E and 2-3F - Transmission Lines Extending South from Dickinson to Highway 21: These transmission line contracts are complete.

Contracts 2-7B - Transmission Line Extending from Dickinson to Richardton; and 5-3 and 5-13 - New England and Davis Buttes Reservoirs: These contracts are complete, however, notice of completion is pending upon final lien waivers, landowner releases, and resolution of minor items.

Contract 2-6A - Transmission Line from Highway 21-22 Junction to Mott: This contract is approximately 97 percent complete.

Contract 2-7C - Transmission Line from Taylor to the Cities North of the Knife River: This contract is approximately 54 percent complete.

Contract 4-3 - Dickinson Triple Pump Station: This contract consists of three contracts: general, electrical and mechanical. The contract is approximately 94 percent complete. The remaining work is primarily related to testing, final painting, and adjustments.

Contract 7-1B - Rural Distribution System in New Hradec, Davis Buttes and Taylor Areas: This contract is approximately 35 percent complete. Although 20 percent of the time has elapsed, progress on the contract has been a concern. Conditions have improved recently and it is hoped the contractor will be able to maintain good progress.

Contract 8-1: This contract is for two steel reservoirs, one for the Contract 2-7C transmission system, and one for the 7-1B rural distribution system. The contract has been awarded and the contractor's submittals are under review. The tank is scheduled to arrive on site in mid-August.

Mr. Fay briefed the Commission members on future construction contracts. Contract 2-5, the transmission line from Dickinson to Belfield, has been approved by the Bureau of Reclamation and the State Health Department. If additional federal funds are made available, it will be advertised for bidding to commit those funds before the end of September.

SOUTHWEST PIPELINE PROJECT - SOIL CONSERVATION SERVICE PL-566 TAYLOR WATERSHED PROJECT (SWC Project No. 1736)

Tim Fay reported that bids were opened on June 24, 1994, for the Soil Conservation Service PL-566 Taylor Watershed project. The apparent low bidder was Northern Improvement, with a bid of $1,633,155. The Soil Conservation Service is in the process of awarding the contract with construction to begin soon.

SOUTHWEST PIPELINE PROJECT - APPROVAL OF WATER SERVICE AMENDMENT WITH CITY OF SENTINEL BUTTE FOR SOLE-SOURCE SERVICE (SWC Project No. 1736)

Tim Fay presented a request from the City of Sentinel Butte for a sole-source amendment to their water service contract. Mr. Fay stated capacity is available in the lines which will serve the city, and will result in greater water use and better service to the city.

It was the recommendation of the State Engineer that the State Water Commission approve an amendment to the City of Sentinel Butte's water service contract for sole-source service.

It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission approve an amendment to the City of Sentinel Butte's water service contract for sole-source service.

Commissioners 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 - TRANSFER OF OPERATIONS (SWC Project No. 1736)

The transfer of the Southwest Pipeline Project's management, operation, and maintenance responsibilities from the State Water Commission to the Southwest Water Authority is scheduled for January 1, 1996. Tim Fay said that an agreement to accomplish this transfer is required.

In preparation for development of the agreement, an outline of areas to be included in the final agreement has been drafted, attached hereto as ***APPENDIX "C"***. Mr. Fay said the outline will keep the Commission members informed of the areas under consideration for inclusion in the agreement. The draft agreement is in the preliminary stages and status reports will be provided to the Commission members.

SOUTHWEST PIPELINE PROJECT - APPROVAL TO DEVELOP SPECIFICATION FOR PLOWED INSTALLATION OF PIPE FOR TRIAL BASIS FOR CONTRACT 7-2 (BELFIELD/NEW ENGLAND AREA) (SWC Project No. 1736)

Tim Fay stated that the rural water design criteria for the Southwest Pipeline Project does not allow plowed installation of pipe. He said this is due to concerns about pipe bedding conditions, depth of bury, and joint integrity.

Although the uncertainty of the end product is not the same quality as that of conventional construction due to unknowns, if the cost savings are significant and the uncertainties acceptable, Mr. Fay said that plowed installation may be a valid construction technique for the Southwest Pipeline Project.

Contract 7-2, Belfield/New England rural water service area, will be bid this fall. Mr. Fay indicated this presents the opportunity to allow plowed pipe installation on a trial basis, if cost savings can be realized. When the contract is advertised, it can include an alternate specification which would allow plowed installation. This specification would include provisions such as additional depth of bury and excavation provisions, which would attempt to manage the uncertainties to an acceptable level. Mr. Fay explained that the alternate would be awarded if offered a cost reduction of at least five percent compared to the next lowest bid for conventional construction. Although this would complicate the bidding process somewhat, Mr. Fay said it would allow the financial advantages of the method to be evaluated and adopted if they are adequate.

It was the recommendation of the State Engineer that the State Water Commission, with Bartlett and West/Boyle Engineering, develop a specification for plowed installation of pipe, and to apply it on a trial basis for Contract 7-2 as an alternate if the cost savings are at least five percent as compared to the next lowest bid for conventional construction.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission, with Bartlett and

West/Boyle Engineering, develop a specification for the Southwest Pipeline Project rural water criteria for plowed installation of pipe. The plowed installation of pipe will be applied on a trial basis for Southwest Pipeline Project Contract 7-2 as an alternate if the cost savings are at least five percent as compared to the next lowest bid for conventional construction.

Commissioners 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 DEFERRAL OF REQUEST FROM RICHLAND COUNTY WATER RESOURCE DISTRICT FOR COST SHARING FOR RECONSTRUCTION OF RICHLAND COUNTY DRAIN NO. 31 (SWC Project No. 1191)

A request from the Richland County Water Resource District was presented for the Commission's consideration for cost sharing in the reconstruction of Richland County Drain No. 31.

Dale Frink presented the request. The proposed work consists of restoring the bottom grade to original, flatten the side slopes, and stabilize field inlets by installing corrugated metal pipe and riprap to the 1945 era drain. The total estimated cost of the project is $140,000, with eligible costs of $139,000. At 40 percent cost sharing of eligible items, the cost to the State Water Commission would be $55,600.

It was the recommendation of the State Engineer that due to the revenue situation for the Resources Trust Fund that the State Water Commission defer action on the request for cost sharing for the reconstruction of the Richland County Drain No. 31.

It was moved by Commissioner Olin and seconded by Commissioner Vogel that the State Water Commission defer action on the request for cost sharing for the reconstruction of Richland County Drain No. 31.

Commissioners 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 DEFERRAL OF REQUEST FROM RICHLAND COUNTY WATER RESOURCE DISTRICT FOR COST SHARING FOR BRANDENBURG TOWNSHIP CRITICAL AREA TREATMENT (SWC Project No. 1301)

A request from the Richland County Water Resource District was presented for the Commission's consideration for cost sharing for the Brandenburg Township Critical Area Treatment in Section 30, Township 131 North, Range 49 West, where an eroding road ditch outlets into the Wild Rice River. There are no wetlands in this area, so a drain permit was not required.

Dale Frink presented the request and indicated that the proposed work consists of installing a drop structure and improving the inlet channel by shaping, seeding and spreading mulch. The total estimated cost of the project is $63,750, with eligible costs of $37,500. The Soil Conservation Service RC&D funds will pay $12,500 in construction, $10,000 in estimated engineering costs, and 78 percent of the administrative costs of the project. At 40 percent cost sharing of eligible items, the cost to the State Water Commission would be $15,000.

It was the recommendation of the State Engineer that due to the revenue situation for the Resources Trust Fund that the State Water Commission defer action on the request for cost sharing for the Brandenburg Township Critical Area Treatment project in Richland County.

It was moved by Commissioner Olin and seconded by Commissioner Vogel that the State Water Commission defer action on the request for cost sharing for the Brandenburg Township Critical Area Treatment project in Richland County.

Commissioners 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 DEVILS LAKE JOINT WATER RESOURCE BOARD FOR COST SHARING IN PHASES I AND II OF THE LOWER MAUVAIS COULEE IMPROVEMENT PROJECT IN BENSON AND RAMSEY COUNTIES (SWC Project No. 1614)

A request from the Devils Lake Joint Water Resource Board was presented for the Commission's consideration for cost sharing in Phases I and II of the Lower Mauvais Coulee Improvement Project in Benson and Ramsey Counties.

Dale Frink presented the request and stated that Phase I consists of installing three new bridges in Benson County. Phase II involves the construction of a bridge and water control structure at the outlet of Lake Irvine in Ramsey County. Phases III and IV, which are not included in this request, involve channel cleanout and vegetation control. The total construction costs of Phases I and II are $706,000.

The Devils Lake Joint Board has received a commitment from the Office of Intergovernmental Assistance for $510,000 from the Federal Flood Disaster Assistance Program. The North Dakota Department of Transportation has agreed to provide 80 percent of the costs of a bridge structure in Benson County.

Secretary Sprynczynatyk explained that the policy of the State Water Commission has been not to cost share in structures on section lines except for features that control the flow of water such as drop inlets, gate structures and riprapping. However, because of the severe flooding and hardships, it was recommended by the State Engineer that the State Water Commission cost share in 50 percent of the local costs for construction of the three bridges in Benson County and the bridge and water control structure at the outlet of Lake Irvine in Ramsey County, not to exceed $41,800. The bridges are designed to maintain a consistent 400 square-foot opening. The Lake Irvine control structure will allow management of the lake for flood control and wildlife management. The control structure will require a permit from the State Engineer and require an operation plan approved by the State Engineer. He said the State Water Commission's cost share for the Mauvais Coulee project is an integral part of the overall funding package.

Dale Anderson, Towner County Water Resource Board, provided comments on the project and requested the Commission's favorable consideration of the cost sharing request.

Richard Regan, Ramsey County Water Resource Board, stated flooding has been an ongoing problem for many years. He said, "This project is a result of cooperation from the locals in the community and in the basin, and we must take advantage of the one-time grant from the Federal Flood Disaster Assistance Program to assist in funding the project. Any assistance for this project from the State Water Commission would be very much appreciated."

It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission approve cost sharing of 50 percent of the local costs for the construction of Phases I and II of the Lower

Mauvais Coulee bridges and Lake Irvine control structure in Benson and Ramsey Counties, not to exceed $41,800. This motion is contingent upon the availability of funds.

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

STATE WATER COMMISSION COST SHARING POLICY (SWC Project No. 1753)

At the May 24, 1994, meeting, the State Water Commission's cost share policy for projects was discussed. The Commission requested that additional information be provided, which is attached hereto as ***APPENDIX "D"***.

Cost sharing for rural economic development projects was discussed. Although "rural economic development" is not referred to specifically in the State Water Commission's cost share policy, Secretary Sprynczynatyk explained that when the Commission approves funding for water supply, irrigation, recreation, and drainage projects, as categorized in the cost share policy, the Commission is actually contributing funds to rural economic development.

POTENTIAL WATER RESOURCE PROJECTS FOR 1995-1997 BIENNIUM (SWC Project No. 322)

Dale Frink indicated that in March, 1994, all water resource districts and joint water resource boards were contacted requesting their assistance in identifying potential water resource projects they expect to pursue in the 1995-1997 biennium. The purpose was to assist the State Water Commission in the preparation of the agency's budget request to the 1995-1997 Legislative Assembly. The information will be used to estimate the potential State Water Commission's anticipated cost share commitment in the next biennium.

Potential projects submitted by the water resource districts and the joint water resource boards totalled 100, with an estimated cost of $82,289,350. The State Water Commission's cost share is estimated at $25,074,490 and is based upon the current cost share policy.

Mr. Frink indicated that major projects such as the Southwest Pipeline Project, the Northwest Area Water Supply Project, the Devils Lake Stabilization Project, the Garrison Diversion MR&I Program, the Turtle Lake Conceptual

Plan, and the Williams/McKenzie Irrigation Project are considered regional projects and, therefore, were not included. Inclusion of these major projects significantly increases the total cost of the identified water resource management and development projects.

As anticipated, Mr. Frink stated there remains a tremendous shortfall between what the State Water Commission's appropriation has been historically and what local entities have identified as water resource management and development needs in North Dakota. In the current biennium, the State Water Commission had a total of $9,797,508 appropriated for study and implementation of all water resource management and development projects throughout the state.

WATER PROJECT FUNDING NEEDS FOR 1995-1997 BIENNIUM (SWC Project No. 322)

Dale Frink discussed the Resources Trust Fund. He said it is currently estimated that revenues into the Resources Trust Fund for the 1995-1997 biennium will be approximately $4.7 million.

The State Water Commission's budget request for the 1995-1997 biennium includes the following allocation of funds from the Resources Trust Fund:

General Projects (Including Economic Development)	$ 1,552,000
Hydrology Contracts	432,000
Agency Operations	1,766,000
Southwest Pipeline Project	950,000
Total	$ 4,700,000

Mr. Frink discussed funding for several water projects across the state that are close to implementation during the 1995-1997 biennium. Those projects include the Northwest Area Water Supply Project, uncompleted segments of the Southwest Pipeline Project, the Devils Lake inlet-outlet feasibility study, the five-foot raise of Baldhill Dam, and the Maple River Dam.

Funding for general water projects is very important since the majority of these funds are used for the numerous smaller water management projects across the state. Mr. Frink said since the State Water Commission is deferring funding on general projects in the current biennium, the need during the next biennium will be further increased. Also in the next biennium, Mr. Frink said the state is expecting to have an opportunity to play a greater role in North Dakota's economic development efforts, which could come about if the corn wet milling plant is located in the state.

Mr. Frink provided the following table which shows what could be available next biennium and the estimated need and shortfall in funding, which is nearly $10 million:

Project	Anticipated Amt Avail (95-97)	Estimated Need (95-97)	Shortfall (95-97)	Future Commitment Needs (>97)
Southwest Pipeline	$ 950,000	$ 1,600,000	$ 650,000	$ 0
NAWS	0	1,400,000	1,400,000	3,100,000
General Projects (Including Economic Development)	1,552,000	4,000,000	2,448,000	0
Hydrology Contracts	432,000	600,000	168,000	0
Devils Lake	0	700,000	700,000	0
Baldhill Dam	0	1,000,000	1,000,000	1,000,000
Maple River Dam	0	3,500,000	3,500,000	2,500,000
Totals	$2,934,000	$12,800,000	$9,866,000	$6,600,000

Mr. Frink said it is clear the need for funds for water projects is high during the 1995-1997 biennium and it is unlikely that funds will be available to meet all of the needs; therefore, it may be necessary to carefully prioritize the projects.

Secretary Sprynczynatyk indicated that the staff is in the process of developing the Resources Trust Fund report for the 1995-1997 biennium. This report is required by law and will be submitted to the Legislature.

PROJECT BONDING SCENARIOS AND LEGISLATIVE AMENDMENTS TO EXISTING LEGISLATION (SWC Project Nos. 237-4, 322 and 1736)

Secretary Sprynczynatyk stated that two of the most significant water supply projects in the state are the Southwest Pipeline Project and the Northwest Area Water Supply Project. Approximately $63.86 million is needed to complete the SWPP project and $163.9 million will be needed to construct the NAWS project. He said within the current and historical budgets of the State Water Commission, the revenue is simply not available to complete these projects and, unfortunately, the revenue picture does not appear to be promising. The primary source of funds, the Resources Trust Fund, has substantially decreased because of the depressed oil activity in the state. The reality is that revenue

is not available to either complete the Southwest Pipeline Project or begin the Northwest Area Water Supply Project.

Other avenues of funding will have to be studied to determine if some type of financial program will be feasible. Efforts in 1992 to pass an Initiated Measure to dedicate a one-half percent sales tax for water resource development failed; therefore, the options are limited. As a result, Secretary Sprynczynatyk said the issuance of long-term debt, or bonding, must seriously be evaluated as a potential solution. Because of the high costs of construction associated with these projects, a government entity, such as the State Water Commission, is not able to raise sufficient funds from current revenues to pay for construction and acquisition and replacement of these types of major projects. The issuance of long-term debt in the form of bonds allows for construction as needed, rather than having to sustain delays in construction or stretching out the construction period because revenue was not available to implement the project in a timely manner.

The Municipal Bond Bank was contacted in January, 1994, to assist the State Water Commission in developing various financing scenarios that may be feasible to utilize bonding to fund these projects. Linda Weispfenning, State Water Commission's Planning and Education Division, provided the Commission members with information regarding the bonding financing scenarios that have been developed for the Southwest Pipeline Project and the Northwest Area Water Supply Project.

Ms. Weispfenning indicated a review of existing legislation is ongoing to determine if current legislation is adequate. The State Water Commission has the authority to issue revenue bonds to pay for these types of projects. However, the bonding program developed may require additional legislation. If the State Water Commission determines that bonding is an avenue of financing for the SWPP and the NAWS project, and other projects in the state, any legislative changes that may be required must be presented to the 1995 Legislative Assembly. The ongoing study will assure that the State Water Commission will have the necessary legislation available, if needed, to introduce to the 1995 Legislative Assembly.

It was the recommendation of the State Engineer, and concurrence of the State Water Commission, that the concept of bonding be pursued for completion of the Southwest Pipeline Project and the construction of the Northwest Area Water Supply Project.

The Commission meeting was recessed at 12:30 PM; and was reconvened at 2:00 PM in joint session with members of the Garrison Diversion Conservancy District Executive Board. The following members of the Board were

present in addition to Warren Jamison, Manager of the Garrison Conservancy District: Robert Strand, Chairman, Norman Haak, Vice Chairman, Steve Metzger, Second Vice Chairman, Milton Lochow and Connie Sprynczynatyk.

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

James Lennington, Northwest Area Water Supply Project Coordinator, provided a status report on the Northwest Area Water Supply Project. The engineering team has delivered revised drafts of the pre-final design report, the design criteria task report, the water sources task report, and the draft executive summary. These reports will be finalized after comments are received from the State Water Commission and the Garrison Diversion Conservancy District. Work is continuing on refining the cost estimates, operation plan, and construction schedule. The current schedule for the pre-final design has the final report completed by September 30, 1994.

Mr. Lennington reported that the Water Commission staff has been working with the North Dakota Bond Bank and their financial consultant in an effort to determine the feasibility of bonding as a method of financing the project's construction. He said one thing that has become clear in this exercise is that construction should be scheduled to get as many people on line as soon as possible in order to generate an income stream and, for this reason, the first priority should be to deliver water to Minot.

The report of the Engineering and Biology Task Group of the Garrison Joint Technical Committee was completed in April, 1994, and submitted to the Committee. The Committee met on April 26, 1994, to discuss the report and the findings of the Task Group, and agreed that pre-treating the Missouri River water with chloramination near the intake to current drinking water disinfection standards was technically adequate. The report with a letter from the Committee was sent to the Canada-United States Consultative Group on June 6, 1994, and is expected to meet in late July or August to consider the findings in the report. If the findings of the Committee are acceptable to the Consultative Group, Mr. Lennington said the State Water Commission will initiate testing to determine whether chloramination of unfiltered Missouri River water can meet current drinking water disinfection standards.

The public hearing for the Northwest Area Water Supply Project's administrative rules is scheduled for August 8, 1994, at 1:30 PM, in the lower level conference room of the State Office Building.

NORTHWEST AREA WATER SUPPLY PROJECT - CONSIDERATION AND APPROVAL OF DRAFT NAWS WATER SERVICE AGREEMENT (SWC Project No. 237-4)

James Lennington presented the draft Northwest Area Water Supply Water Service Agreement for the Commission's consideration. See ***APPENDIX "E"***.

Mr. Lennington explained the provisions of the agreement and stated that if approved by the Commission, the agreement will be presented to communities and rural water associations who have signed agreements of intent to purchase water from the project. Communities choosing to do so, can place the issue of granting their city the authority to enter into a water service contract on their November 8, 1994, ballot. Depending on the results of the election, the city would then sign the agreement and return it to the Water Commission. Once all of the agreements have been accounted for, the Water Commission may reconfigure the project depending on the location of the communities and rural water associations signing the agreements and the amount of water they purchase. The current estimate for the water rate, which will be presented in the agreement, is $2.25 per one thousand gallons, including operation, maintenance, and treatment, $0.24 for replacement, and $0.05 for water charges to the federal government for the Garrison Diversion Project.

It was the recommendation of the State Engineer that the State Water Commission approve the draft Northwest Area Water Supply Water Service Agreement as presented.

It was moved by Commissioner Olin and seconded by Commissioner Vogel that the State Water Commission approve the draft Northwest Area Water Supply Water Service Agreement for use in soliciting communities intending to purchase water from the Northwest Area Water Supply Project if constructed.

Commissioners 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 - APPROVAL OF SPECIFIC AUTHORIZATION FOR UPGRADING CITY OF PARSHALL WATER TREATMENT PLANT (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 Northwest Area Water Supply water in Minot. Two alternatives for this option were presented.

The first option, Option 3 presented at the December meeting, included a treated water pipeline from Minot back to the south along Highway 83 to Highway 23 and thence west to supply the cities of Plaza, Makoti, Parshall and New Town.

The second option, Option 4 presented at the December meeting, included expansion of the existing Parshall water treatment plant and a pipeline system to supply Plaza, Makoti and New Town from Parshall. These two alternatives have similar cost estimates. Option 4, which includes the Parshall water treatment plant, was perceived by the Water Commission staff to have several advantages. Some local economic benefits would be derived in Parshall and on the Fort Berthold Indian Reservation. For these reasons, Option 4 was chosen for further development.

James Lennington explained that the current agreement for engineering services does not cover the design of an upgraded and expanded Parshall water treatment plant; therefore, a specific authorization will need to be added to the agreement for engineering services to cover this work. It is estimated that the cost of this specific authorization will be $11,900. Mr. Lennington indicated this specific authorization would be in addition to the $581,000 previously approved. He said all funds for the Northwest Area Water Supply 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, estimated to cost $11,900, to the Northwest Area Water Supply Agreement for Engineering Services for the work of preliminary designs for upgrading the Parshall water treatment plant. Funding will be provided by the MR&I interest account.

It was moved by Commissioner Vogel and seconded by Commissioner Olin that the State Water Commission approve the addition of a specific authorization, not to exceed $11,900, to the Northwest Area Water Supply Agreement for Engineering Services for the work of preliminary designs for upgrading the Parshall water treatment plant. Funding will be provided by the MR&I interest account, and is contingent upon the availability of funds.

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

Commissioner Bjornson expressed concern that by moving the Northwest Area Water Supply Project forward the Commission may be prioritizing the project over the delivery of water to eastern North Dakota. Secretary Sprynczynatyk indicated that he did not believe that was the case and that the delivery of water to northwest North Dakota was a part of the MR&I program where the delivery of water to eastern North Dakota was part of a much bigger concept specifically identified in federal law. Chairman Schafer stated we are dealing with two separate and distinct projects; the one a top priority for the state, delivery of water to eastern North Dakota, and the other, a subset of the MR&I program, providing a water supply to the northwest part of the state.

DEVILS LAKE STABILIZATION PROJECT (SWC Project No. 1712)

Dale Frink provided information relative to the lake levels of Devils Lake and the problems that the high level of the lake are causing throughout the Devils Lake Basin.

Mr. Frink stated the fluctuation of Devils Lake the past year shows the need to be able to manage and stabilize the lake. The US Army Corps of Engineers is currently working on Stage 1 of the feasibility study for the stabilization of Devils Lake. Stage 1 was initiated in 1993 and is scheduled for completion in the fall of 1994. This stage of the feasibility study will determine the economic feasibility of an outlet. Mr. Frink said that although the feasibility of an outlet has improved with the rising lake levels, it is still questionable whether the Corps will conclude that the project is feasible from a federal standpoint.

If the Corps determines feasibility, the next step is Stage 2 of the feasibility study, which is considerably more detailed and will include the impacts of both an inlet and an outlet for the lake. Stage 2 of the feasibility study will take approximately two years to complete, with the current cost estimate of Stage 2 of $2 million of which 50 percent must be non-federal. Stage 2 will include the development of detailed cost estimates and an environmental impact statement for constructing a method of stabilizing Devils Lake.

Mr. Frink said if the Corps of Engineers determines the project is feasible, construction of an inlet-outlet for Devils Lake is at least three to four years away. If the Corps determines the project is not feasible, it will be up to the state and the locals to build the project or live with a widely fluctuating lake level.

The state has strongly supported the development of an inlet and an outlet to stabilize Devils Lake for years and has worked toward achieving that goal. Devils Lake represents more than a $42 million-per-year-recreation industry that is very important to the state. The economic value of Devils Lake will likely increase if the lake is stabilized. The State Water Commission presently is the project sponsor for the Corps' project.

Secretary Sprynczynatyk indicated that the state has attempted to include the stabilization of Devils Lake as part of the Garrison Diversion Project. The water supply to stabilize the lake would be the Missouri River via Garrison Diversion. Prior to 1986, Devils Lake was a part of the Garrison Project but it was not included specifically in the 1986 Reformulation because of the misunderstanding of intent. Efforts are continuing to try to bring it back into the Garrison Diversion Project.

Secretary Sprynczynatyk said the state needs to continue to strongly and expeditiously pursue the stabilization of Devils Lake and, in doing so, the state will work closely with the people in the Devils Lake area as well as the federal agencies involved with the lake, and continue to pursue all alternatives and schemes to protect the area.

Secretary Sprynczynatyk informed the Commission members that he has directed the staff to develop an emergency outlet plan from East Devils Lake to East Stump Lake in an attempt to provide emergency temporary relief for Devils Lake, and to coordinate planning with other appropriate state agencies as well as the US Fish and Wildlife Service and the US Environmental Protection Agency. He said although this provides only temporary relief, it may be the only immediate action available to the state and the people of the area.

It was also the recommendation of the State Engineer that the State Water Commission seek technical assistance under PL-99 from the US Army Corps of Engineers to develop a contingency plan for the emergency action to alleviate the flood damage around Devils Lake.

It was moved by Commissioner Thompson and seconded by Commissioner Olin that the State Water Commission concur with the efforts of the State Engineer to develop a contingency plan for the emergency action to alleviate the flood damage around Devils Lake; and that the State Water Commission seek technical assistance under PL-99 from the US Army Corps of Engineers in this effort.

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

The Commission members were provided information relative to a proposal developed by Gordon Berg, Devils Lake, ND, for addressing flood control, water quality and drought contingency concerns for the waterfowl, fisheries and the people of the Devils Lake, Sheyenne River and Red River Basins.

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

Secretary Sprynczynatyk 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.

The efforts that were proposed under the Fiscal Year 1992 Wetlands Conservation grant essentially have been completed.

The Fiscal Year 1993 Wetlands Conservation grant was approved in July, 1993, totalling $253,344, with a requirement for a 75 percent federal/25 percent non-federal cost share. Cost share is provided by the State Water Commission, the North Dakota Water Education Foundation, the Department of Heath and Consolidated Laboratories, and the North Dakota Game and Fish Department for their respective portions of the grant. 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 wetlands resources.

Secretary Sprynczynatyk addressed the following objectives that are being supported by the Fiscal Year 1993 grant:

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

At the March 9, 1994, meeting, the Commission members were informed that a grant proposal had been submitted to the US Environmental Protection Agency for continued funding in 1994 for the development and implementation of a North Dakota Comprehensive Conservation Wetlands Plan. The Commission passed a motion authorizing receipt of the pending Fiscal Year 1994 grant award from EPA.

Secretary Sprynczynatyk reported that the Environmental Protection Agency has approved the Fiscal Year 1994 grant proposal, totalling $292,500, of which $234,000 are federal funds to be matched by $58,500 non-federal cash or in-kind services. A final contract is expected from the Environmental Protection Agency in the near future. Upon execution of the agreement, the contracts will be formalized with the appropriate parties to accomplish the work. The specific tasks include:

* expanded Wetlands Education and Outreach programs throughout the North Dakota Water Education Foundation's Wetland Institute;
* continued development and application assessment of the Water Commission's GIS capability by assessing wetlands management objectives in the Devils Lake Basin;
* expanded work by the ND Game and Fish Department to prioritize CRP tracts important to wetlands watershed protection and development of the Private Lands Initiative Program; and
* continuation of the Devils Lake Coordinator position.

MISSOURI RIVER UPDATE (SWC Project No. 1392)

Secretary Sprynczynatyk reported the Corps of Engineers has released the draft Environmental Impact Statement and the Executive Summary for the Missouri River Master Water Control Manual review and update. The Corps' preferred alternative supports shortening the navigation season by one month and supports a slower drawdown of the reservoirs during drought years. He said, on the other hand, the Corps supports greater releases in the spring to mimic pre-dam conditions and has not changed the maximum drawdown of the system. In a mild drought period, such as was experienced the past several years, the drawdown of Lake Sakakawea would have been about nine feet less under the new plan compared to what was actually experienced under the existing plan. Secretary Sprynczynatyk said that overall the preferred plan could have gone much further, but is at least a step in the right direction.

A series of public meetings have been scheduled during September and October, 1994, in each of the Missouri basin states. Secretary Sprynczynatyk reiterated the fact that at those meetings it will be very important for the people to be heard on the upper basin's needs for the Missouri River operations.

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

Linda Weispfenning provided a status report on the Cannonball River Basin Study. She indicated that the Cannonball River Basin Water Management Study Scoping Document has been finalized. The document is the result of several meetings with study participants which focused on the study goals and objectives. She said it is intended that the document will provide general guidelines for conducting the study. The scoping document will be revised as necessary to reflect changes that may occur during the course of the study. A summary of the scoping document is attached hereto as ***APPENDIX "F"***.

The Bureau of Reclamation and the Standing Rock Sioux Tribe continue to negotiate terms of the 638 Contract agreement. After the 638 Contract has been finalized, the Memorandum of Understanding between the Bureau of Reclamation and the State Water Commission will be finalized for in-kind services that will be provided by the Commission in this study effort. Ms. Weispfenning indicated it is estimated the State Water Commission's in-kind services will be equivalent to approximately $35,000 per year in staff time over the 2 1/2-year study effort.

The Cannonball Study Team participants continue to compile existing hydrologic, economic, demographic, environmental, land use, social, cultural and water use data which will be used in the study.

Study participants are developing criteria for the hydrologic model, which will be very useful to the Model Team as they review and evaluate capabilities of existing hydrologic models that could be used for this study. Due to budget restraints, Ms. Weispfenning indicated the model will likely not accomplish everything desired, but this approach will help to identify what is important and determine the most significant model components. The study participants are also evaluating the development of a Geographic Information System (GIS) database for the study.

Ms. Weispfenning discussed the public involvement process, which will involve a survey of public attitudes and concerns regarding water and natural resources and management of those resources in the basin. Public meetings will be held throughout the basin, which is a significant component of the study. She stressed the importance of obtaining input from the public in the development of various management scenarios that will evolve during the study effort.

CONDITIONS OF DAMS STATUS REPORT (SWC Project No. 1579)

Dale Frink provided the Commission members with information relative to the status of dams in North Dakota, attached hereto as ***APPENDIX "G"***.

Mr. Frink indicated there are over 500 dams in North Dakota with a storage capacity greater than 50 acre-feet of water. Although the State Water Commission does not own any of the dams, the Commission has traditionally cost shared on major dam maintenance requirements. Staff inspections have observed a steadily deteriorated condition of many of the dams and, in many cases, significant repair is needed to update the projects to current standards. While the need for repairs is increasing, Mr. Frink said the funds available to support the work are decreasing.

The Commission members discussed the dam safety process and future funding for water projects, and directed the State Engineer to provide updated information at future meetings on the status of the dams.

REPEAL APPROVAL OF NORTH DAKOTA ADMINISTRATIVE CODE CHAPTER 89-07-01 RELATING TO ATMOSPHERIC RESOURCE BOARD

Secretary Sprynczynatyk explained that the North Dakota Administrative Code chapter 89-07-01 contains practices and procedures for hearings held by the Atmospheric Resource Board. North Dakota Century Code chapter 54-57, enacted by the 1981 Legislative Assembly, established an Office of Administrative Hearings and required that office to adopt uniform rules governing the practices and procedures of administrative agencies. A public hearing was held regarding the appeal of chapter 89-07-01 and no comments were received.

It was the recommendation of the State Engineer that the State Water Commission approve the repeal of North Dakota Administrative Code chapter 89-07-01 for the Atmospheric Resource Board in order that the agency will be operating under the same rules.

It was moved by Commissioner Vogel and seconded by Commissioner Olin that the State Water Commission approve the repeal of North Dakota Administrative Code chapter 89-07-01 for the Atmospheric Resource Board as recommended by the State Engineer.

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

STATE ASSUMPTION OF SECTION 404 PROGRAM (SWC Project No. 1855)

Section 404 of the Clean Water Act regulates the disposal of dredge and fill materials into the Nation's waters including wetlands. The 404 program was originally established in federal law as an amendment to the Water Pollution Control Act in 1972. In 1977, further amendments were added and the name of the act was changed to the Clean Water Act. The purpose of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's water.

Secretary Sprynczynatyk explained the Section 404 program, which is administered in North Dakota for the Environmental Protection Agency by the US Army Corps of Engineers. The Clean Water Act provides for state assumption of the program and, to date, only the states of Michigan and New Jersey have assumed the program. However, Secretary Sprynczynatyk said a number of states, including North Dakota, reviewed the 404 program for possible state assumption in the early 1980's and, at that time, a decision was made not to assume the program. Since that time, the program has been expanded to include all waters and wetlands in the state. He said the program is more comprehensive and far-reaching today than it was in the early 1980's. As a result, there has been renewed interest not only in North Dakota, but also in other states to reconsider assumption of the program.

Secretary Sprynczynatyk explained the procedure for a state to assume the program. One of the assumption criteria is the promulgation of rules to administer a state program. To assist in this task, the State Engineer organized a Section 404 Advisory Committee consisting of representatives from the North Dakota Wildlife Society, the National Wildlife Federation, the North Dakota Farm Bureau, the Farmers Union, the Water Users Association, and the Water Resource Districts Association. State agencies are represented by the North Dakota Game and Fish Department, the Department of Health and Consolidated Laboratories, the Agriculture Department, the Attorney General, and the State Engineer. Also serving on the committee as technical advisors are representatives from the US Army Corps of Engineers, the US Soil Conservation Service, and the US Fish and Wildlife Service. The draft rules have been submitted to the committee members for their review and comments. Secretary Sprynczynatyk said that it is hoped the final draft will be completed in October, 1994, which will be submitted to the public at a round of public hearings pursuant to state statutes governing development and implementation of rules.

Secretary Sprynczynatyk stated that a major concern in administering the state program is financing. It is anticipated the program will require the addition of four full-time positions, and the total cost of the

program has been estimated at $400,000 per biennium. He said this does not include enforcement, which is another major item that needs further investigation. At the present time, the Clean Water Act is up for reauthorization and the Senate bill, which is in mark-up, provides for $20 million for states to operate and administer the 404 program.

The advantages and disadvantages of the state assuming the Section 404 program were discussed. Secretary Sprynczynatyk stated that if the State Water Commission decides to continue with the process, the next step would be public hearings on the rules in October, 1994. If additional legislation is required to administer or fund the program, legislation could be drafted.

It was the recommendation of the State Engineer that the State Water Commission approve continuation of the rules promulgation, moving toward public hearings in October, 1994. The hearing notice should make specific reference that this is not a formal application to the Environmental Protection Agency for state assumption of the Section 404 program. It was also the recommendation of the State Engineer that draft legislation be prepared to allow full administration of the program and to provide for funding for the program based upon cost sharing with the federal government under the provisions of a reauthorized Clean Water Act.

It was moved by Commissioner Vogel and seconded by Commissioner Hillesland that:

1) the State Water Commission approve continuation of the rules promulgation for the state assumption of the Section 404 program, moving toward public hearings in October, 1994. The hearing notice shall make specific reference that this is not a formal application to the Environmental Protection Agency for state assumption of the Section 404 program; and

2) draft legislation shall be prepared to allow full administration of the program and to provide for funding for the program based upon cost sharing with the federal government under the provisions of a reauthorized Clean Water Act.

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

NORTH DAKOTA WATER COALITION

Denise Bjornson, Executive Director of the North Dakota Water Coalition, provided background information regarding the ND Water Coalition. The purpose of the ND Water Coalition is to complete North Dakota's water infrastructure for economic stability and growth, and quality of life. The objectives of the ND Water Coalition are:

1) Implement the flagship initiatives of the North Dakota Vision 2000 report concerning water infrastructure to secure and enhance North Dakota's future economic well-being and quality of life.

2) Develop and maintain statewide organizational support for a statewide water supply and water supply distribution.

3) Establish a mechanism for the exchange of information, discussion, and ideas amongst organizations concerning water supply and water distribution issues and projects, and to provide information and education concerning these matters to federal, state, and local decision-makers.

At the December 9, 1992, meeting, the State Water Commission approved a total expenditure of $10,000 from the Contract Fund for the two-year effort.

Ms. Bjornson reported that on July 5, 1994, the ND Water Coalition held its kick-off meeting, with its current membership at 27. She briefed the Commission members on projects and efforts that the ND Water Coalition is involved in to meet its objectives.

NORTH DAKOTA WATER MAGAZINE (SWC Project 1863)

At the October 26, 1993 meeting the State Water Commission authorized the expenditure of $5,000 for 1994 for the North Dakota Water magazine.

Denise Bjornson reported that the North Dakota Water magazine has been very successful. The basic circulation is currently at 5,000, with a goal of 15,000 in the next two years of circulation. She provided a general briefing on magazine articles, and commented on the annual photo contest, with the winning photo for 1994 on the cover of the July issue.

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

Secretary Sprynczynatyk provided the following MR&I Water Supply Program status report:

Dickey Rural Water Project: This project provides for water service to Dickey County and the southern portion of LaMoure County. Sign-ups include the communities of Ellendale, Edgeley, Fullerton, Kulm, Monango, and 429 rural users. The total estimated project cost is $16,980,000. The project could be built in two phases. Fiscal Year 1994 funding is for Phase I construction and will consist of a new well field, main transmission pipeline, and a water treatment plant. Phase II would be the pipeline distribution system from the main transmission pipeline. An aquifer test has been completed on the site of the well field and shows good water quality and quantity. Plans and specifications have been submitted for review and approval.

Fargo Water Supply Project: This project consists of construction of a new high service pump and a raw water intake. The high service pump contractor has to finish electrical controls, make connections to existing city piping, and complete the landscaping. The raw water intake contractor is working on the building foundation.

Garrison Rural Water Project: A new water supply system will supply water to 270 users in the Garrison area, including Fort Stevenson State Park. The City of Garrison provides bulk water service to the rural system. The contractor is working on final reclamation.

Grand Forks Water Treatment Project: The project's purpose is to achieve compliance with disinfection requirements of the Surface Water Treatment Rule at the Grand Forks water treatment plant. The city will use a chlorine/chloramine disinfection system that requires construction of an additional seven million gallons in clearwell storage. The city is working on upgrading their water treatment plant control system that may help to reduce the size of the new clearwell.

Langdon Water Treatment Project: The project's purpose is to achieve compliance with disinfection requirements of the Surface Water Treatment Rule at the Langdon water treatment plant. The city will use a chlorine/chloramine disinfection system that requires construction of an additional 250,000 gallons in clearwell storage. The city has decided to increase the clearwell to 500,000 gallons and will pay for the additional cost. The project's bid opening is scheduled in July, 1994.

Missouri West Rural Water Project: A new water supply system will supply water to New Salem, Crown Butte Subdivision, Riverview Heights Subdivision, Captain's Landing Township, and 386 rural users in northern Morton

County. The community of Almont has requested bulk water service from Missouri West. The Morton County Water Resource Board has requested funding assistance for the addition of Almont and other water users.

Missouri West has requested MR&I grant funding for Phase II. The Morton County Water Resource Board has completed canvassing for Phase II sign-ups. Good intention fees have been received from 65 percent of the potential users, which includes the City of Flasher and 365 rural users. The schedule is to complete the feasibility study and prepare for construction in the spring of 1996.

Ramsey County Rural Water Project: The system will serve Churchs Ferry, Penn, Tolna, Grahams Island State Park, Shelvers Grove State Park, and 740 rural users. The contractor is working on the walls and floor of the clearwell of the water treatment plant. Some additional water users will be added in the area north of the water treatment plant northwest of Tolna.

Stanley Water Supply Project: The water transmission pipeline from the Ray-Tioga water system to Stanley has been completed and the final inspection should be in July, 1994.

Secretary Sprynczynatyk advised the Commission members that a rural water system is proposed in Ransom and Sargent Counties with approximately 550 members.

GARRISON DIVERSION PROJECT - CONSIDERATION AND APPROVAL OF REQUEST FROM MORTON COUNTY WATER RESOURCE DISTRICT FOR FUNDING ASSISTANCE FOR ADDITION OF CITY OF ALMONT AND OTHER USERS TO MISSOURI WEST RURAL WATER SYSTEM PROJECT (SWC Project No. 237-27)

Secretary Sprynczynatyk presented a request from the Morton County Water Resource District for funding assistance for the addition of the City of Almont and other water users to the Missouri West Rural Water System. The estimated project cost is $100,000. Funding would be in the form of a 65 percent grant from the MR&I Water Supply Program and a 35 percent State Water Commission loan. Funding would be available from other MR&I projects that are near completion.

It was the recommendation of the State Engineer that the State Water Commission approve the addition of the City of Almont and other water users to the Missouri West Rural Water System, and that additional funding be approved in the form of a 65 percent MR&I grant, not to exceed

$65,000, and a 35 percent State Water Commission loan, not to exceed $35,000. The Garrison Diversion Conservancy District Board of Directors approved the 65 percent grant on July 8, 1994.

It was moved by Commission Olin and seconded by Commissioner Thompson that the State Water Commission approve the addition of the City of Almont and other water users to the Missouri West Rural Water System, and that additional funding be approved in the form of a 65 percent MR&I grant, not to exceed $65,000, and a 35 percent State Water Commission loan, not to exceed $35,000. This motion is contingent upon the availability of funds.

Commissioners 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 FUNDING FOR FY 1995 (SWC Project No. 237-3)

The Garrison Diversion Unit federal appropriation for Fiscal Year 1995 is estimated to be $32 million, which includes funding for the Municipal, Rural and Industrial (MR&I) Water Supply Program.

Secretary Sprynczynatyk reported that the Bureau of Reclamation has indicated two possible MR&I funding levels of $12.5 or $15 million. The Board of Directors of the Garrison Diversion Conservancy District approved this budget on July 8, 1994.

The State Engineer presented and recommended tentative approval of the following projects that qualify for Fiscal Year 1995 funding, contingent upon approval of a federal Fiscal Year 1995 appropriation for the Garrison Diversion Project and subject to future revisions:

	$12.5 Million	$15.0 Million
Dickey Rural Water Project	$ 6,416,768	$ 7,657,000
Northwest Area Water Supply	250,000	419,768
Southwest Pipeline Project	4,500,000	5,590,000
Fargo Water Supply Project	908,232	908,232
Missouri West Rural Water	150,000	150,000
Burleigh Rural Water Project	100,000	100,000
Administration	175,000	175,000

It was moved by Commissioner Vogel and seconded by Commissioner Bjornson that the State Water Commission approve the State Engineer's recommendation for tentative approval of the Fiscal Year 1995 Garrison MR&I Water Supply Program budget. This motion is contingent upon approval of a federal Fiscal Year 1995 appropriation for the Garrison Diversion Unit Project and is subject to future revisions.

Commissioners 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 - CONSIDERATION AND APPROVAL TO CONTINUE CONSULTING AGREEMENT WITH WILL & MUYS THROUGH DECEMBER 31, 1994 (SWC Project No. 237)

At the July 2, 1993, meeting, the State Water Commission approved obligating $40,000 from the Contract Fund towards extending the consulting agreement for the firm of Will & Muys through December 31, 1994. Secretary Sprynczynatyk stated that extending the agreement was based upon cost sharing by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department, with the District paying one-half of the costs, the Department paying one-third of the costs, and the Commission paying one-third of the costs.

Secretary Sprynczynatyk informed the Commission members that he received word from the State Game and Fish Department that it would not be able to fund its share of the costs of the Will & Muys agreement beyond June 30, 1994. He said since the balance of the funds from the Commission's earlier obligation are still available and since the Department will not be able to cost share through December 31, 1994, it will be necessary for the Commission to reconsider its earlier action.

Secretary Sprynczynatyk said Peter Carlson, representing Will & Muys, has provided timely and valuable information on the Garrison Diversion Project efforts in Washington, DC, and on other water resource legislation being considered by Congress and, therefore, the agreement with Will & Muys has been beneficial.

It was the recommendation of the State Engineer that the State Water Commission continue its obligation of $40,000 from the Contract Fund, contingent upon the

availability of funds, toward the consulting agreement for the firm of Will & Muys through December 31, 1994. The funds would be used to cost share with the Garrison Conservancy District, with the District paying two-thirds and the Commission paying one-third.

Commissioner Vogel expressed concern that when the Commission approved the obligation of $40,000 it was agreed that the three entities would cost share. She said the State Game and Fish Department benefits from the information that is provided and hopes that the Department will reconsider its action.

It was moved by Commissioner Thompson and seconded by Commissioner Olin that the State Water Commission continue its obligation of $40,000 from the Contract Fund, contingent upon the availability of funds, toward the consulting agreement for the firm of Will & Muys through December 31, 1994. The funds would be used to cost share with the Garrison Conservancy District, with the District paying two-thirds of the costs and the Commission paying one-third of the costs.

Commissioners 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.

The North Dakota water management collaborative process efforts to refocus the direction of the Garrison Diversion Project were discussed. Mr. Jamison stated that currently the district, state, federal and tribal officials, along with citizens' organizations with interests in the Garrison Diversion Project, are jointly seeking to resolve their differences through a collaborative process. He said the objective is to develop a win-win water program that will have broad support in the state and at the national level.

Chairman Schafer briefed the group on discussions with the Congressional Delegation and the Bureau of Reclamation in an attempt to resolve procedural problems in the collaboration process.

Mr. Jamison said that although the project is not yet completed, the Garrison Diversion Project still provides many public benefits. Studies to better define future water needs in the Sheyenne, James and Red Rivers are planned, but the Garrison Diversion Conservancy District's core goal remains the delivery of Missouri River water to areas of need in the state. He said the long-term goal is to stimulate and enhance economic development by utilizing state and non-federal resources.

There being no further business to come before the State Water Commission, it was moved by Commissioner Vogel, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission meeting adjourn at 3:10 PM.

GARRISON DIVERSION PROJECT - TOUR OF OAKES TEST AREA (SWC Project No. 237)

Following the meeting, the State Water Commission members participated in a tour of the Oakes Test Area.

Edward T. Schafer
Governor-Chairman

SEAL

David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary

North Dakota State Water Commission

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

Meeting To Be Held At
Guest-Haus Ye Olde Cafe
601 Main Avenue
Oakes, North Dakota

July 27, 1994
10:30 AM, Central Daylight Time

AGENDA

A.	Roll Call		
B.	Consideration of Agenda		
C.	***Consideration of Minutes of Following Meetings:***		
	1) State Water Commission Meeting of May 24, 1994		**
	2) State Water Commission Telephone Conference Call Meeting of June 8, 1994		**
D.	Financial Statement:		
	1) Agency Operations		**
	2) Resources Trust Fund Revenue Update		**
	3) 1995-1997 Budget Update		**
E.	Southwest Pipeline Project:		
	1) Status Report		**
	2) Water Service Agreements		**
	3) Transfer of Operations		**
	4) Rural Water Criteria	***	**
F.	***Consideration of Following Requests for Cost Sharing:***		
	1) Drain No. 31 - Richland County		**
	2) Brandenburg CAT - Richland County		**
	3) Lower Mauvais Coulee Bridges - Benson & Ramsey Cos.		**
G.	Funding for Water Development Projects:		
	1) Current Cost Share Policies		**
	2) Future Funding		**
	3) Project Bonding		**
H.	Northwest Area Water Supply Project:		**
	1) Project Update		
	2) Water Service Agreement		
	3) City of Parshall Water Treatment Plant		
I.	***Devils Lake Stabilization Update***	***	**
J.	Comprehensive State Wetlands Conservation Plan Update		**

(Over)

K.	Missouri River Update		***
L.	Cannonball River Study Update		**
M.	Conditions of Dams Report		**
N.	***Atmospheric Resource Board Rules***		**
O.	***State Assumption of Section 404***	***	**
P.	Garrison Diversion Project:		
	0) North Dakota Water Coalition - Denise Bjornson		
	1) MR&I Water Supply Program Update		**
	2) Missouri West Addition		**
	3) Fiscal Year 1995 Funding		**
	4) Will & Muys Agreement		**
	5) Project Update: Collaborative Process		**
	6) Oakes Area Tour		**
Q.	Other Business		
R.	Adjournment		

* *

** MATERIAL PROVIDED IN BRIEFING BINDER

** ***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 July 27, 1994 PLACE Oakes, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Richard Regan	316 E 12th St Devils Lake	Ramsey Co Water Resource Dist
Dale Anderson	Boyd Stutsman Co	Towner Co Water Bd.
MERLE L. [illegible]	207 7th ST. DEVILS LAKE	DEVILS LAKE BASIN JOINT BOARD
MARY SCHMITZ	Box 657	The OAKES TIMES
HANK TRANGSRUD	P.O. 5054 FARGO, ND 58105	HOUSTON ENGINEERING
Hetcher Poling	Bismarck	Basin Electric Power Cooperative
CHARLES S. VEIN	GRAND FORKS, ND	ADVANCED ENGINEERING
Tim Fay	Bismarck	SWC Staff
Dave Ross	Oakes	City of Oakes
Jim Lennington	Bismarck	SWC Staff
Orcan Erie	Leeds	Benson County
Ken Wendel	RR1, Box 96 Kathryn, N.D	Ransom/Sargent Rural Water Users
Milt Sochrod	1550 - Skyline Jamestown, ND 58401	Stutsman Co. - GDCD Director
Lester Anderson	1221 - 6th Ave SW Minot, ND	Bottineau
Russ Dushinske	Devils Lake	G.D.C.D

SWC Form No. 83 (500/9-84)

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

_____ PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Charles Klasterman	Mandan ND 7835 Co. Rd 1	SDCD

SWC Form No. 83

(500/9-84.)

STATE WATER COMMISSION
PROGRAM BUDGET EXPENDITURES MAY 31, 1994
BIENNIUM TIME 45.8%

FINANCIAL STATEMENT
SWC File ACT/FIN
06-14-1994

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	$272,999	$31,468	$107,123	$0	$0	$411,590
Percent	43	42	37	0	0	41
Water Education						
Budget	$624,858	$0	$142,264	$12,750	$25,000	$804,872
Expended	$250,619	$0	$37,658	$7,008	$18,876	$314,161
Percent	40	0	26	55	76	39
Water Appropriation						
Budget	$2,178,891	$3,955	$408,500	$33,000	$660,000	$3,284,346
Expended	$982,914	$300	$132,240	$1,541	$110,683	$1,227,679
Percent	45	8	32	5	17	37
Water Development						
Budget	$2,486,884	$2,500	$316,700	$57,100	$8,612,509	$11,475,693
Expended	$1,133,103	$0	$108,080	$14,947	$2,161,058	$3,417,188
Percent	46	0	34	26	25	30
Atmospheric Resources						
Budget	$393,452	$2,500	$1,700,701	$10,500	$3,050,000	$5,157,153
Expended	$164,731	$1,133	$293,809	$2,359	$563,506	$1,025,538
Percent	42	45	17	22	18	20
Southwest Pipeline						
Budget	$727,047	$9,000	$4,617,020	$110,000	$26,600,000	$32,063,067
Expended	$281,288	$4,006	$1,283,373	$8,444	$3,898,976	$5,476,087
Percent	39	45	28	8	15	17
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	$3,085,654	$36,907	$1,962,283	$34,299	$7,253,099	$12,372,242
Percent	44	39	26	15	18	23

FUNDING SOURCE:	APPROPRIATION	EXPENDITURES	BALANCE
General Fund	$5,532,084	$2,146,670	$3,385,414
Federal Fund	$32,775,404	$6,060,346	$26,715,058
Special Fund	$15,983,490	$4,165,226	$11,818,264
TOTAL	$54,290,978	$12,372,242	$41,918,736

FEDERAL FUND REVENUE:	$4,890,081
SPECIAL FUND REVENUE:	$4,702,654
GENERAL FUND REVENUE:	$7,370
TOTAL:	$9,600,105

STATE WATER COMMISSION
1993 - 1995 Grants/Contract Fund

FUNDING SOURCES

	RTP	General Funds	Federal Funds	Other Funds	Carryover	Totals
Inter Basin Transfer	$0	$25,000				$25,000
Hyrologic Investigation	$600,000			$60,000		$660,000
MR&I Program	$3,106,110				$500,000	$3,606,110
EPA Wetlands Grant	$0		$416,360			$416,360
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	$2,565,750	$0	$26,000	$96,000		$2,687,750
SWC Grants Totals	$8,674,148	$25,000	$442,360	$156,000	$500,000	$9,797,508

PROGRAM COMMITTMENTS

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
SWC	1828	Inter Basin Transfer		$25,000	$18,876	$6,124
SWC	1395	Hydrologic Investigations		$656,000	$184,122	$471,878
SWC	1589	USGS Data Collections: FY '94 & FY '95 High Value Irrigated Crop Development		$4,000	$2,000	$2,000
			HYDRO SUBTOTAL	$660,000	$186,122	$473,878
		MR&I Program				
SWC	237-5	Ramsey Co Rural Water	9-15-92	$1,094,259	$552,186	$542,073
SWC	237-27	Missouri West	9-15-92	$1,438,949	$1,093,638	$345,311
SWC	237-36	Stanley	10-21-91	$548,672	$260,311	$288,361
SWC	237-42	Garrison Rural Water	9-15-92	$524,230	$460,845	$63,384
			MR&I SUBTOTAL	$3,606,110	$2,366,980	$1,239,130
		EPA WETLANDS GRANT				
SWC	1489-5	Wetlands Education	9-15-92	$65,824	$65,821	$3
		Technical Services		$8,873	$8,873	$0
		Water Quality Analysis		$14,325	$14,325	$0
		Grand Harbor		$69,723	$44,984	$24,739
		Private Lands		$26,955	$26,955	$0
		Devils Lake Basin (Conservation Plan)		$27,660	$22,738	$4,922
		Adopt-A-Pothole		$25,000	$25,000	$0
	1489-9	Devils Lake Basin (Midwest Flood)		$50,000	$21,103	$28,897
	1489-7	Health Dept		$27,000	$4,494	$22,506
		Water Education Fundation		$50,000	$21,810	$28,190
		Game & Fish (CRP)		$17,000	$0	$17,000
		Game & Fish (Private Lands)		$34,000	$0	$34,000
			EPA SUBTOTAL	$416,360	$256,103	$160,258
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	$17,450	$44,550
			DEVILS LAKE SUBTOTAL	$500,000	$27,850	$472,150
SWC	1344	Maple River Flood Control	2-04-92	$326,610	$10,761	$315,849
SWC	1736	Southwest Pipeline Project	2-04-92	$1,525,678	$0	$1,525,678

PROGRAM COMMITTMENTS

APPROVD BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
		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	1246	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	1293	Willow Road Floodway (Morton)	8-26-93	$32,641	$32,641	$0
SWC	300	Baldhill Dam (Barnes)	9-15-92	$184,000	$35,000	$149,000
SE	1311	Bingham CAT (Traill)	9-15-92	$4,900	$0	$4,900
SE	1311	Elm 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-N	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	$19,106	$20,894
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	$59,122	$2,878
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-S	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
SWC	1246	Mt Carmel Dam (Cavalier)	03-09-94	$250,000	$0	$250,000
SWC	222	Buford-Trenton Irrigation (Williams)	04-07-94	$39,240	$0	$39,240
SE	1270	Hay Creek Watershed (Burleigh)	04-22-94	$9,750	$0	$9,750
SE	1875	Castle Rock (Mettinger)	05-03-94	$4,579	$0	$4,579
SE	820	Oak Creek Snagging & Clearing (Bottineau)	05-17-94	$475	$0	$475
SE	1701-2	Red River UNET Study (Walsh)	05-23-94	$6,250	$0	$6,250
		APPROVED GENERAL PROJECTS SUBTOTAL		$881,591	$66,461	$695,802
		Unallocated Balance (Total-Approved-Shortfall)		$1,174,344		
SWC GRANTS TOTALS				$5,757,508	$2,933,152	$6,864,356

"DRAFT"
July 15, 1994

AGREEMENT FOR THE TRANSFER OF MANAGEMENT, OPERATIONS, AND MAINTENANCE RESPONSIBILITIES FOR THE SOUTHWEST PIPELINE, NORTH DAKOTA, FROM THE NORTH DAKOTA STATE WATER COMMISSION TO THE SOUTHWEST WATER AUTHORITY

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North Dakota State Water Commission
900 EAST BOULEVARD · BISMARCK, ND 58505-0850 · 701-224-2750 · FAX 701-224-3696

MEMORANDUM

TO: Governor Edward T. Schafer
State Water Commission Members

FROM: David A. Sprynczynatyk, State Engineer

SUBJECT: State Water Commission Cost-Sharing Policy

DATE: July 18, 1994

The cost-sharing policy or guidelines that we use today has been developed over the years. When the State Water Commission was first formed in 1937, its primary effort was devoted to irrigation development. Financial activities of the Commission during that time were limited to use of revenue bond proceeds for irrigation construction, which constituted loans which had to be paid back.

In 1943, the legislature for the first time, appropriated money to the State Water Commission for local cost-sharing on a grant basis. The 1943 legislature provided $50,000 to promote the maintenance of existing drainage channels in good agricultural lands and to construct any needed channels. In expending those funds, the Commission required counties or drain districts or cooperative farmer groups to pay 60 percent of the cost of maintenance or construction, and the Commission paid the remaining 40 percent.

The 1945 legislature appropriated $240,000 to the State Water Commission for assistance on reconstruction of drains and irrigation. Between 1947 and 1953, the legislature appropriated $440,000 to the State Water Commission for cost-sharing for drainage and irrigation works. In addition, the 1947 legislature appropriated $45,000 for maintenance of existing dams. Since the majority of the money appropriated was used for drainage projects, the Commission adopted cost-sharing criteria and policies in 1952. The policy required local entities to submit plans that meet certain design standards. The policy indicated that state funds shall be available up to 40 percent of the cost on the following items:

1) Excavation;
2) Drops, regulating and control structures to prevent erosion in the drain;
3) Cleaning and grubbing;
4) Leveling spoil banks;
5) Culvert inverts from field drains or natural watercourses;
6) Field drain inlets;

7) Farmstead, driveways or crossings;
8) Moving and reconstructing fence lines; and
9) Purchase of right of way.

The policy also indicated that state funds shall not be available for:

1) Installation of bridges or culverts across section lines;
2) Administrative or legal expenses in connection with any drain; and
3) Paying any cost of drainage works involved in court action.

It is apparent that these State Water Commission policies provide the basis for current State Water Commission guidelines on cost-sharing.

In 1957, the legislature combined all of its line-item appropriations for water related projects into a separate appropriation bill and created the "multipurpose cooperative fund." In 1965, the legislature eliminated the "multipurpose cooperative fund" and the State Water Commission "administrative fund," and replaced it with the "contract fund." Between 1958 and 1960, the Commission amended and expanded its 1952 policies governing cost-sharing for drainage projects.

The new policies were much more detailed in the information required and the standards used for designing drainage projects. The items listed as eligible for 40 percent cost-share were:

1) Excavation;
2) Drops, regulating and control structures, to prevent erosion in the drain;
3) Clearing and grubbing when it is not a normal maintenance item;
4) Leveling spoil banks;
5) Culvert inlet from field drains or natural watercourses;
6) Field drain inlets;
7) Farmstead, driveways or crossings; and
8) Moving and reconstructing fence lines.

Items considered not eligible were:

1) Installation of bridges or culverts across section lines unless funds are appropriated for this specific purpose;
2) Administrative or legal expenses in connection with any drain;
3) Paying any costs of drainage work involved in court action; and
4) The ditch maintenance or repairs resulting from deferred maintenance.

The difference between the 1952 and the 1960 cost-share policies appeared to be the removal of purchase of right of way as an eligible item. However, it was not listed in the 1960 policies as an ineligible item. Also, maintenance was clearly defined as an ineligible item.

In 1978, the Commission discussed cost-sharing at the September 14th meeting. The subject was further discussed at the Commission's meeting on October 20, 1978. Although no decisions were made, a memo from David Sprynczynatyk concerning cost-sharing was provided to the Commission. The attached October 1978 memo, Appendix A, lists the criteria used to evaluate water resource projects for possible cost participation.

As a result of those discussions, a document entitled "State Water Commission Cost-Sharing Guidelines for Water Related Works and Facilities," dated November 8, 1982, was developed. This document is attached as Appendix B. As a result of discussions at the State Water Commission meeting on December 7, 1983, and final action on May 3, 1984, engineering costs became an eligible item for cost-sharing. This change became effective on July 1, 1985. The 1982 cost-sharing guidelines were revised. These revisions are indicated in the document by a different type set, on page 10, chapter 3, paragraph 1, subparagraphs c and d were added. Also, revisions were made to chapter 4, on page 12, and a new chapter 7 on page 14 was added.

The guidelines, as revised, provide for 40 percent of eligible items for drainage projects, 50 percent of eligible items for water supply projects, 50 percent of eligible items for flood control projects, 33 percent of eligible items for recreation projects, and 25 percent of eligible items for snagging and clearing and channel changes.

DAS:CB:dm/1753

Appendix A

NORTH DAKOTA STATE WATER COMMISSION

OFFICE MEMO

MEMO TO: Vern Fahy, State Engineer
FROM: David A. Sprynczynatyk, Director, Engineering Division
SUBJECT: Cost Participation in Development of Water Resource Projects
SWC Project #1
DATE: October 17, 1978

At the last Water Commission meeting it was requested that the Staff prepare a listing of criteria used to evaluate water resource projects for possible cost participation. I will attempt to address the involvement of the Engineering Division in this process.

The first cost participation by the Commission in a water resource project is normally in the preliminary investigative study of the project. When a local entity develops interest in a project for one reason or another they will come to the Commission and request that we do a preliminary engineering study of the project to determine the estimated cost, benefits and other factors relating to the project. After the request is received we prepare an investigation agreement, asking for a deposit from the local entity. The amount of the deposit asked is normally equal to 50% of the estimated "field costs" that will be encountered to do the study. "Field costs" are surveyor's time, per diem and expenses, inspectors field time, etc. and necessary field soil exploration expenses. Although the intent is not to recover all field costs associated with investigation, it does force each local entity to determine local interest before any money is expended. This in turn discourages local entities from making a large number of requests for engineering assistance.

Once a preliminary engineering study is completed, the local entity must decide if they wish to go ahead with the project. If they decide to proceed, they will ask for further cost participation from the Commission, the percentage of which is dependent on the type of project. The Commission staff

will then determine in more detail the benefits of the project, the amount of eligible cost share items, and prepare a recommendation to the Commission. Since eligible cost share items are different for different types of projects, I will address each individually.

Water based recreation projects probably have the most complex cost share arrangement of any type project. Before consideration of the project is given by the staff the project area must exhibit a strong demand for this type of recreation. This must be a regional demand and is determined with the State Game and Fish Department and the State Outdoor Parks and Recreation Agency. Next the engineering feasibility of the project must be determined: can the project be built without any major problems; are soils foundations good; will natural runoff sustain a viable pool; and etc? This determination will also yield a biological determination if the Game and Fish Department is involved. Next the question of whether the benefits will offset the costs is addressed. This is usually done by the State Outdoor Parks and Recreation Agency. Environmental factors are also determined at this point. The Game and Fish Department determines whether or not the necessary land around the project can be obtained. If all answers to the above questions are positive, financial arrangements are discussed. Normally the Game and Fish Department acquires all land for the project. Fifty percent of all remaining costs for construction is usually funded by the Heritage Conservation and Recreation Service (formally Bureau of Outdoor Recreation). The remaining 50% is usually split three ways, between the State Water Commission, the State Outdoor Recreation Agency, and the local entity. If two local entities are involved, the split could be four ways. Thus normal participation by the State Water Commission ranges from 10% to 20% depending on the particular project.

Municipal water supply projects are normally split on a fifty-fifty basis

between the State Water Commission and the city if no other benefits are associated with the project. But before a recommendation is made by the staff for financial participation, the demand and need for the project is determined. The engineering feasibility is also determined as well as the environmental effects. Although the staff does not employ a professional biologist, our engineers have become somewhat educated in what to look for regarding environmental problems, and biologists from the Game and Fish Department have been consulted as the need arises. We also try to determine if there is any other alternative water supply that would be more feasible.

Flood control projects are also normally split on a fifty-fifty basis between the State Water Commission and the local entity if only one local entity is involved. We try to split the costs three or four ways if other entities can be involved. Questions answered before a recommendation for cost sharing is presented to the Commission include those such as: Is there a strong local need and desire for the project? Can the project be designed to be feasible engineering-wise? Will the benefits offset the costs? Are there any environmental problems that would be encountered by construction of the project? Will there be any additional flooding problems created by completion of this project? Is this the best alternative for flood control?

Many of these same questions are answered regarding drainage projects before a recommendation for funding is made. The determination of local interest and need is made, the engineering design and feasibility is done, the benefited area is delineated. Although we do not have access to an economist, we determine the benefit areas and try to compare them with the project costs. If a project will only benefit one or two individuals the project is not considered. The environmental effects in the immediate area are determined as well as possible downstream effects. This question is normally quite hard to answer, especially since there may be a cumulative effect with other drains in

the area, some of which no information is available. If the project is set up as a legal drain, a majority of the landowners in the assessed area must be in favor of the project before final design is completed. Once these questions are answered, consideration is given to a maximum 40% cost sharing on eligible costs. Eligible costs are defined as those which are a part of the project, and for which other agency funds are not available, such as State or county highway funds, township road funds or railroad construction funds.

It should be noted that it is not always the Commission staff that completes the preliminary investigations and final engineering design on these types of projects. But even if a request for funding comes into our office we go through the same review procedure of the project.

River snagging and clearing participation by the Commission is again somewhat different. On these projects the same questions as those for drainage are answered. If the decision is made to go ahead, the recent policy has been that an agreement is prepared that requires the State Water Commission to only provide technical assistance and supervision of workers supplied by the County Water Management Board. We will also supply equipment if it is available. The agreement is prepared in this manner to encourage local Boards to set up their own stream maintenance program utilizing their own equipment and forces.

Cost sharing for project maintenance is generally based on the orginal cost sharing arrangement by the project sponsors if the maintenance is considered to be major. Major maintenance is considered to be that which results from complete failure of part of the project by an extreme hydrologic event or by design failure. Normal wear and tear on a project and the resulting required maintenance is the responsibility of the local owner of the project as spelled out in the original agreement with the Commission.

David A. Sprynczyhatyk
Director, Engineering Division

DAS:dm
Dist.
VF:MS:ME:GK:DAS:MOL:MD

Appendix B

November 8, 1982
Rv. 1985

STATE WATER COMMISSION COST-SHARING GUIDELINES FOR WATER-RELATED WORKS & FACILITIES

TABLE OF CONTENTS

Chapter 1. General Considerations

Chapter 2. Procedure and General Requirements

Chapter 3. Eligible Items for Cost-Sharing

Chapter 4. Projects and Investigations

Chapter 1
GENERAL CONSIDERATIONS

1. AUTHORITY. The contract fund was established by the Legislative Assembly by the enactment of §61-02-64.1 of the NDCC, and provides in part:

> 61-02-64.1. CONTRACT FUND - PURPOSE - REIMBURSEMENTS TO BE DEPOSITED WITH THE STATE TREASURER. All contractual obligations of the commission, excepting salaries and expenses of commission employees and the cost of any supplies, materials and equipment, shall be paid from the contract fund. The moneys in the contract fund shall be paid out or disbursed in such manner as may be determined by the commission.
> * * *

It is through the contract fund that the SWC provides financial assistance on a cost-sharing basis with local Water Resource Districts and other entities for water-related investigations, studies, projects, and programs.

2. INTENT. The intent of these guidelines is to establish procedures and criteria for the State Water Commission and the State Engineer in the handling of applications to the State Water Commission for cost-sharing from the contract fund for water-related works and programs.

Since funds available to the State Water Commission through the contract fund will not satisfy all requests, criteria for considering applications for cost-sharing will be helpful in achieving maximum benefit of public funds for water-related works and programs. Procedures for applications for cost-sharing will be helpful in establishing a consistent process for the State Water Commission to consider requests for cost-sharing, and will also provide a method by which the State Water Commission can include the priorities of the state water plan in making decisions on such requests.

3. DEFINITIONS. The following definitions will apply to these guidelines:

   a. "Commission" means the State Water Commission.

   b. "State Engineer" means the State Engineer appointed pursuant to §61-03-01 NDCC, who is also the chief engineer and secretary of the Commission.

   c. "District" means a water resource district.

   d. "Board of Managers" means the board of managers of a Water Resource District.

   e. "Assessment Drain" means a drain constructed in accordance with the procedures of Chapter 61-16.1 or Chapter 61-21 and which is paid for by special assessments levied against the lands benefited by the drain.

   f. "Maintenance" of a project means the necessary upkeep to protect the integrity of the project and to ensure the project carries out the purpose for which it was constructed. Maintenance of assessment drains also means the periodic removal of sediment or other obstructions from the drain.

g. "Deferred maintenance" of a project means reconstruction, repair, or restoration which is required to return the project to its original specifications and purpose due to a failure to properly maintain the project.

h. "Reconstruction" of a project means the alterations of the project to increase its capacity for storing or carrying water or other changes in the original specifications or purpose of the project.

i. "State Water Plan" means the comprehensive statewide plan for the management and development of the state's water resources.

j. "Master Plan" means a plan developed by a water resource district for a specific water management activity, such as drainage, flood control, water supply, recreation, etc., within the jurisdiction of such water resource district, which includes, among other things, a statement of goals and objectives.

k. "General Investigations" shall mean all studies and investigations to obtain data and information for hydrologic analysis, groundwater availability, flood reduction and floodplain management, watershed planning, or other related activities. It shall not include studies on investigation for specific project development.

l. "Plans and Specifications" means the drawings or reproductions of drawings, including all notes thereon, and all directions, provisions, and requirements approved by the State Engineer for construction and completion of water resource projects.

m. "Preliminary Engineering" means the engineering study and designs for specific water resource projects which are primarily used to establish feasibility and which require additional engineering design prior to construction.

n. "Final Design and Construction Engineering" means the preparation and development of the necessary calculations, specifications, and drawings required for construction of specific water resource projects, and the engineering inspection and quality control during project construction which ensures that the project is constructed in accordance with final plans and specifications.

4. STATE WATER PLAN. The state water plan is a comprehensive statewide plan currently being developed by the SWC for the proper and balanced management and future development of North Dakota's water resources. The state water plan will include guidelines which are designed to provide a long-range and overall program for future conservation, protection, and wise use of North Dakota's ground and surface waters. The state water plan will address all aspects of water resource management and development, including municipal and industrial water demands; rural, domestic, and livestock water needs; floodplain management; irrigation requirements; soil erosion; wetlands and wetland values; fish and wildlife; flood control; water quality; energy development; weather modification; water-based recreation; in-stream flows; and drainage.

The state water plan will identify current water resource problems, alternative solutions to resolve these water resource problems, and opportunities for water resource development to satisfy projected water demands. It is intended that the state water plan, with the leadership and assistance of the SWC, will provide guidance for future water management and development in North Dakota.

Chapter 2
PROCEDURE AND GENERAL REQUIREMENTS

1. APPLICATION REQUIRED. The Commission will not consider any request for cost-sharing for water-related works or programs unless an application is first made to the State Engineer. The applicant must be a political subdivision, including, but not limited to, water resource districts, irrigation districts, and municipalities.

2. PERMITS. An application to the Commission for cost-sharing must be accompanied by all necessary permits for the proposed project, including water permits, drainage permits, construction permits for dikes or dams, and any other necessary permits from local political subdivisions or state agencies. Upon receiving an application for cost-sharing, the State Engineer will investigate to ensure that all necessary permits for the proposed project from local political subdivisions or state agencies have been obtained.

3. CONTENTS OF APPLICATON. An application for cost-sharing must be in writing, but is not required to be in a prescribed format. The application must include the following:

a. Description and location of the proposed project.

b. Purpose of the proposed project.

c. Delineation of benefits.

d. Delineation of beneficiaries.

e. Delineation of costs.

f. Preliminary designs, if the request is for cost-sharing on the construction of a project.

g. Final design, plans and specifications if available.

h. Legal description of land to be acquired by fee title or easement.

The State Engineer may require such additional information as he deems appropriate.

4. REVIEW. Upon receiving an application for cost-sharing, the State Engineer shall review the application and accompanying information. If the State Engineer is satisfied that the application and proposal meet all requirements of these guidelines, he shall present the application to the Commission at the first Commission meeting after he has completed his review and investigation of the application. The State Engineer's review of the application will include the following items, and any other considerations which the State Engineer deems necessary and appropriate.

a. If the application for cost-sharing is for project construction, a field inspection will be made, if deemed necessary by the State Engineer. Previous field inspections made by the State Engineer as part of a permit application may satisfy this requirement.

b. Engineering plans and specifications will be reviewed to ensure that such plans and specifications are consistent with the plans and specifications of the State Engineer for such projects.

c. If the request is for an investigation, the State Engineer will review the application to ensure that the results of the

investigation and study can be utilized for a water-related program or activity.

5. NOTICE & APPEARANCE OF PROJECT SPONSOR. The State Engineer shall place any application for cost-sharing on the tentative agenda of the State Water Commission meeting at which the application will be presented. At the Commission meeting when an application is presented to the Commission by the State Engineer, the applicant and project sponsor shall appear before the Commission and explain the local need and support for the project or program. The State Engineer shall give notice to such applicant and project sponsor when the application will be presented to the Commission.

6. STATE ENGINEER'S RECOMMENDATION. The State Engineer will make a recommendation to the Commission on an application for cost-sharing at the first meeting of the Commission when such application for cost-sharing is presented. The Commission will take the application under advisement, unless the Commission feels that it has sufficient information at the first meeting to make a final determination on such application.

7. LITIGATION. If a project for which an application for cost-sharing has been submitted is the subject of litigation, the application will be deferred until the litigation is resolved. If a project for which the Commission has approved a cost-sharing request becomes the subject of litigation before the funds approved by the Commission have been disbursed, the State Engineer will withhold such funds until the litigation is resolved. If funds have been disbursed and the litigation is resolved against the project, the project sponsor will return to the Commission

the cost-sharing funds disbursed that are in excess of the percentage allocated for the eligible items in place.

8. ENGINEERING DESIGNS, PLANS & SPECIFICATIONS. Engineering designs, plans, and specifications which accompany applications for cost-sharing for the construction of a project must have been developed by a registered professional engineer, and approved by the State Engineer.

9. CONTRACTS. When an application for cost-sharing has been approved by the Commission, the project sponsor, upon awarding of a contract for the construction or other work to be performed, shall file a copy of such contract with the State Engineer before any funds will be disbursed for the project.

10. COST SHARING BY OTHER AGENCIES. All applications for cost-sharing shall be reviewed to determine if other local or state agencies can participate in the project costs. If so, the Commission will take this into account, and may reduce the percentage of Commission cost-sharing accordingly.

11. PARTIAL & FINAL PAYMENTS. The State Engineer may make partial payment of cost-sharing funds as he deems appropriate. Upon notice by the project sponsor that all work or construction has been completed, the State Engineer may conduct a final field inspection. If the State Engineer is satisfied that construction has been completed in accordance with the designs, plans and specifications for the project, the final payment for cost-sharing as approved by the Commission shall be disbursed to the project sponsor, less any partial payments previously made.

12. MASTER PLANS. Section 61-16.1-13 of the North Dakota Century Code requires each Water Resource District to prepare and adopt a master plan, which shall include a statement of goals and objectives, for each of the various water management activities in the district, such as drainage, flood control, water supply, and recreation. Section 61-16.1-13 also requires each Water Resource District to prepare and adopt a two-year priority schedule, which shall summarize planned district projects for at least the following two years. The priority schedule must be filed with the State Engineer on or before May 1 of each even-numbered year, and is intended to assist the State Engineer in developing the budget request for the State Water Commission contract fund for the next biennium. Finally, Section 61-16.1-13 provides that no state funds shall be allocated or disbursed to a Water Resource District after July 1, 1985, unless that Water Resource District has submitted a master plan for the specific water management activity for which cost-sharing funds are requested, and the Commission has determined that the project or program for which funds are requested is in conformance with the plans of the Commission and the appropriate Water Resource District. Thus, upon receiving an application for cost-sharing, the State Engineer shall review the application to determine whether the request is consistent with the master plan of the appropriate Water Resource District and the state water plan of the Commission. The State Engineer's recommendation to the Commission shall include a statement concerning whether or not the requirements of this paragraph have been satisfied.

13. MAINTENANCE. Except as otherwise provided, the Commission shall require that the applicant for cost-sharing shall be responsible for maintaining the project.

Chapter 3
ELIGIBILITY FOR COST-SHARING

1. ELIGIBLE ITEMS. The following items shall be eligible for cost-sharing by the Commission:

a. Construction costs. This includes, but is not limited to, such things as earthwork, concrete, mobilization and demobilization, dewatering, materials, seeding, rip-rap, and other items and services provided by the contractor.

b. Utility relocation. This includes, but is not limited to, such things as electrical transmission lines, storm and sanitary sewer systems, and other underground utilities and conveyance systems.

c. *General Investigations.*

d. *Preliminary engineering.*

2. NON-ELIGIBLE ITEMS. The following items shall not be eligible for cost-sharing by the Commission:

a. Land acquisition. Acquisition of property interests in fee or easement for projects shall not be an eligible item for cost-sharing.

b. Final engineering designs and construction engineering and inspection shall not be an eligible item for cost-sharing.

c. Administrative and legal expenses incurred in connection with any project shall not be an eligible item for cost-sharing.

d. Installation of bridges or culverts on state highways and county and township roads.

e. Maintenance and deferred maintenance. Maintenance work and deferred maintenance on any project which has previously received cost-sharing assistance from the Commission shall not be an eligible item for cost-sharing, except for maintenance that may be required as a result of an unusual climatological event.

f. General Investigations.

g. Preliminary engineering.

Chapter 4
PROJECTS AND INVESTIGATIONS

1. WILDLIFE MITIGATION MEASURES. By virtue of Resolution No. 66-11-233, updated by Resolution No. 68-5-254, the Commission has previously adopted a formal position regarding wildlife mitigation measures, establishing that it is "favorable toward including wildlife habitat mitigation measures in the planning for any water management project which may threaten wildlife habitat, and particularly those values related to the production of wetlands wildfowl." Resolution No. 66-11-233 provides that "evaluation [of waterfowl habitat] by agencies involved should be based upon the production and protection of waterfowl and upland game in terms of game production rather than land area..." These guidelines continue the favorable position of the State Water Commission toward mitigation measures for wildlife habitat in accordance with its previously adopted position.

2. DRAINAGE PROJECTS. The Commission will provide cost-sharing for up to 40% of the eligible items of any cost-sharing application for drainage

projects. A Water Resource District applying for cost-sharing for an assessment drain must certify that the district has an active and diligent enforcement program for drainage regulatory statutes, specifically §§61-16.1-41, 61-16.1-51, and 61-16.1-52. If an assessment drain is to be established within two or more districts and financial assistance is sought from the Commission, each water resource board involved must join in the application for financial assistance. The applicant must also certify that control measures, such as gated structures, culvert sizing, channel sizing, etc., and upstream temporary or permanent storage of water on the land has been duly considered, and if appropriate, included in the design and operation of the proposed drainage project. The applicant for cost-sharing must also certify that a permit to drain has been secured from the State Engineer and appropriate Water Resource District and that the application has been processed as an application of statewide significance. *To provide for uniform and best distribution of Commission funds for drainage projects, the following types of drainage projects shall not be eligible for cost-sharing, except in overriding circumstances:*

a. *New project which places non-contributing drainage areas not previously farmed into production.*

b. *A project which will drain a Type IV or V wetland.*

c. *Removal of sediment, woody vegetation (snagging & clearing), or waterborne debris from artificial drainage projects which has been deposited over a number of years and has reduced the hydraulic capacity of the drain, and any other deferred maintenance.*

3. WATER SUPPLY PROJECTS. The Commission will provide cost-sharing for up to 50% of the eligible items of any cost-sharing application for water supply projects. If sufficient funds are not available for competing cost-sharing applications, water supply projects for domestic, municipal, and rural uses shall receive highest priority.

4. FLOOD CONTROL PROJECTS. The Commission will provide cost-sharing for up to 50% of the eligible items of any cost-sharing application for flood control projects.

5. RECREATION PROJECTS. The Commission will provide cost-sharing for up to 33% of the eligible items of any cost-sharing application for recreation projects.

6. SNAGGING & CLEARING AND CHANNEL CHANGES. The Commission will provide cost-sharing for up to 25% of the eligible items of any cost-sharing application for snagging and clearing and channel changes.

7. GENERAL INVESTIGATIONS, PRELIMINARY ENGINEERING, AND FINAL DESIGN AND CONSTRUCTION ENGINEERING. Preliminary engineering and final design and construction engineering are not eligible for cost-sharing. However, if the project sponsor for a water resource project requests from the State Engineer, investigations, surveys, or preliminary design, the sponsor will be required to make a deposit with the State Engineer equal to 50% of the estimated field costs to be encountered in the investigations or design. Field costs include, but shall not be limited to, surveys, salaries, expenses, per diem, inspections, field time, travel, and soil

exploration expenses. If the project sponsor requests from the State Engineer final design and construction engineering, costs associated with these items will be considered project costs and shared at the same percentage as approved eligible items.

7. GENERAL INVESTIGATIONS, PRELIMINARY ENGINEERING, AND FINAL DESIGN AND CONSTRUCTION ENGINEERING. The Commission will provide cost-sharing for up to the same percentages as included in paragraphs 2 through 6 of this chapter for preliminary engineering designs and studies for specific water resource projects. The Commission will provide cost-sharing for up to 50% of any general investigation. The report, study, or any other result, or copy thereof, of a general investigation, preliminary engineering design or feasbility study which receives cost-sharing from the Commission shall be provided to the State Engineer upon completion.

DRAFT

APPENDIX "E"
July 27, 1994 - 120

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NORTHWEST AREA WATER SUPPLY PROJECT
WATER SERVICE CONTRACT

Contract No: 237-4-
Water User Entity: _____

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I. PARTIES

This contract is by and between the North Dakota State Water Commission, a state agency created and existing pursuant to North Dakota Century Code chapter 61-02, here after referred to as the "Commission," acting through the North Dakota State Engineer; and the _____; hereafter referred to as the "User."

II. INTRODUCTION

1. The North Dakota Legislative Assembly of 1991 (1991 N.D. Sess. Laws ch 704, §1 through §5; found at N.D.C.C. ch 61-24.6), provided that the Commission was to develop a pipeline transmission and delivery system to deliver water supplies from the Missouri River and other sources to areas and localities in northwestern North Dakota for multiple purposes, including domestic, rural water districts, and municipal users. This water pipeline and delivery system is known as the Northwest Area Water Supply Project.

2. As of July 1994, the Commission has developed the prefinal design for the Northwest Area Water Supply project. Forty-one communities and nine rural water associations in northwestern North Dakota have signed agreements of intent with the Commission for the purpose of inclusion in the design of the project.

3. The Commission, pursuant to NDCC ch 61-02 and ch 61-24.6 may enter into water service contracts for the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.

4. The User enters into this water service contract, pursuant to the laws of the State of North Dakota, for a water supply from the Northwest Area Water Supply Project for use by the User. The User will make payment to the Commission at the rates and pursuant to the terms and conditions set forth in this contract for this water service. The User has presented the question of participation in this agreement to its electorate and participation has been approved.

NOW THEREFORE, in consideration of the mutual covenants contained in this contract, it is mutually agreed by and between the parties to this contract as follows:

III. DEFINITIONS

1. **"Additional water"** means water purchased by the User in addition to its minimum annual water purchase.

2. **"Capital costs"** means all costs incurred by the Commission which are properly chargeable, in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, costs of issuance and financing in connection with any bonds issued to finance the project, and essential legal, administrative and financial work in connection therewith.

3. **"Estimated water rate for OM&R"** means the estimated rate per each one thousand (1,000) gallons of water for the operation and maintenance of the Project and for the accumulation and maintenance of a reserve fund for replacement purposes. This rate is determined by dividing total costs the Commission estimates it will incur during a year for operation, maintenance, and replacement by the total number of one thousand gallon units of water which the Commission estimates it will sell to water user entities during the same year.

4. **"Manager"** means the person employed by the Commission to be in charge of and supervise the operation and maintenance of the Project.

5. **"Maximum flow rate"** means the maximum number of gallons of water which may be delivered through the Project by the Commission to a water user entity during any one minute time period.

6. **"Minimum annual water purchase"** means the minimum percentage of total annual water usage, which a water user entity agrees to purchase and pay for during a year. The minimum percentage for which an agreement will be offered to a User is fifty-one percent (51%).

7. **"Operation, maintenance, and replacement costs," hereafter referred to as OM&R costs** means all operation costs incurred by the Commission, including all energy costs incurred by the Commission for pumping water through the Project, for the treatment of water, for the maintenance and administration of the Project, and for any amounts that the Commission determines are necessary to establish reserve funds to meet anticipated replacement costs and extraordinary maintenance of Project works.

8. **"Project"** means _____ of the Prefinal Design Final Report for the Northwest Area Water Supply Project, State Water Commission Project No. 237-4, dated _____ 1994, incorporating a design to supply water to forty-one communities and nine rural water associations in northwestern North Dakota who have signed agreements of intent with the Commission. Authorization of the Northwest Area Water Supply Project by the Legislative Assembly, substantially in accordance with _____ of such Engineering Report, as recommended by the Commission, shall constitute the "Project" as it is defined herein.

9. **"Qualifying water supply facilities"** means water supply facilities determined by the Commission to qualify for a credit against the User's payments for water and capital costs. Qualifying water supply facilities shall include such things as surface water reservoirs, wells, raw water pumps, water transmission pipelines from the source to the distribution system, water treatment plants, and pipelines and controls necessary to connect the User's system to the delivery point for Project water.

10. **"Unallocated capacity"** means the capacity of the pipeline which is not allocated nor contractually committed to individual water user entities by virtue of water service contracts.

11. **"Water rate for capital costs"** means the rate per each 1,000 gallons of water to be paid by water user entities for capital costs of the Project.

12. **"Water user entities"** means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the Commission for the purchase of water from the Project.

13. **"Water system"** means a discrete assemblage of intakes, treatment facilities, transmission pipelines, storage facilities, etc. The Northwest Area Water Supply Project is proposed to have three "water systems," the East system, West system, and Parshall system, each separate from the others.

14. **"Year"** means the period from January 1 through December 31, both dates inclusive.

IV. TERM OF CONTRACT

1. **Effective Date**.

This contract shall remain in effect for forty (40) years after the date of the first water delivery to the User, unless terminated sooner by mutual agreement of the parties.

2. **Renewal**.

Under terms and conditions mutually agreeable to the parties to this contract, renewals of this contract may be made for successive periods not to exceed forty (40) years each.

V. TERMINATION

1. **Termination by not Constructing**.

If any segment of the Project is not constructed for whatever reason, even though authorized, thereby preventing delivery of water to the User, the Commission and the User shall be relieved of all obligations under this contract.

2. **Termination by Change of Circumstances**.

The Commission may terminate this contract effective upon delivery of written notice to the User, or at such later date as may be established by the Commission, under any of the following conditions:

a. If Commission funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for water delivery to the User pursuant to this contract. The contract may be modified to accommodate a reduction in funds by mutual consent of the User and the Commission.

b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the water delivery is no longer allowable nor appropriate for purchase under this contract or is no longer eligible for funding proposed by this contract.

c. If any license or certificate required by law or regulation to be held by the User to participate in this contract is for any reason denied, revoked, or not renewed.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

3. **Termination**.

This contract may be terminated by mutual consent of both parties, in writing.

The Commission, by written notice of default (including breach of contract) to the User, may terminate the whole or any part of this agreement:

a. If the User fails to make payment as called for by this contract within the time specified herein or any extension thereof; or

b. If the User fails to perform any of the other provisions of this contract, or so fails to pursue a provision of this contract as to endanger performance of this contract in accordance with its terms, and after receipt of written notice form the Commission fails to correct such failures within ten days or such longer period as the Commission may authorize.

The rights and remedies of the Commission provided in the above clause related to defaults (including breach of contract) by the User shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

VI. WATER SERVICE: DELIVERY OF WATER

The Commission and the User agree that water will be delivered to the User in accordance with the following terms and provisions:

1. **Quality of Water**.

All water delivered to the User pursuant to this contract, or any renewal, extension, or modification thereof, shall be potable treated water which meets applicable water quality standards of the North Dakota Health and Consolidated Laboratories Department.

2. **Quantity of Water and Flow Rate**.

a. **Minimum annual water purchase**. The User hereby agrees to purchase and make payment for not less than _____ percent of the User's total annual water usage (minimum annual water purchase) during the entire term of this contract. The minimum percentage for which an agreement will be offered to a User is fifty-one percent (51%).

b. **Maximum flow rate**. The maximum flow rate to be provided by the Commission to the User shall not exceed _____ gallons per minute. This flow rate is sustainable on a continuous basis.

3. **Point of Delivery and Pressure**.

The Commission will furnish water to the User at a pressure range of _____ at a point located _____ _____, hereafter referred to as the point of delivery. If greater pressure than the range specified herein at the point of delivery is required by the User, the cost of providing such greater pressure shall be borne by the User.

4. **Additional Water**.

The Commission will deliver to the User any additional water which the User desires to purchase, at a flow rate not to exceed the flow rate specified in this contract. If there is unallocated capacity in the Project to the User's point of delivery, the Commission may allow delivery of water at a flow rate greater than the maximum flow rate specified in this contract. The User shall have no contractual right to any unallocated capacity which it purchases as additional water, and delivery of such additional water shall not contractually or in any other way obligate the Commission to deliver water at a greater flow rate than the maximum flow rate specified in this contract. If the User desires to secure a contractual right to a greater maximum flow rate than specified in this contract, this contract must be amended to provide a greater minimum annual water purchase.

5. **Water Shortages**.

a. **No liability for shortages**. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from any water shortages or other interruptions in water deliveries resulting from accident to or failure of Project works and facilities, whether or not attributable to negligence of officers, agents, or employees of the Commission, or from any other cause. The contractual obligations of the User under this contract shall not be reduced or altered by reason of such shortages or interruptions.

b. **Proportional sharing of water shortage**. The Commission shall have the right during times of water shortage from any cause to allocate and distribute the available water supply to water user entities on the affected water system on a proportionate basis with respect to the proportion that the minimum annual water purchase of each

water user entity bears to the total minimum annual water purchase of all water service contracts on the affected water system.

6. **Curtailment of Delivery for Maintenance Purposes**.

The Commission may temporarily discontinue or reduce the amount of water to be furnished to the User for the purpose of maintaining, repairing, replacing, investigating, or inspecting any of the facilities and works necessary for the furnishing of water to the User. To the extent possible, the Commission will give to the User reasonable notice in advance of any such temporary discontinuance or reduction. No advance notice will be required to be given in the case of an emergency. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from such temporary discontinuance or reduction for maintenance and repair purposes.

7. **Measurement of Water**.

The Commission shall furnish, install, operate, and maintain, at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the User.

The Commission shall calibrate the metering equipment at least every other year unless the User is otherwise notified in writing.

a. **Access**. The Commission and the User shall have access to the metering equipment belonging to the Commission or the User at all reasonable times for the purpose of verifying readings of both project water deliveries and total water usage. Access includes all reasonable means of access including any necessary easement. In addition, the Commission will have the same access to the point of delivery to the User's distribution system.

b. **Dispute over measurement of water**. If the User believes the measurement of water delivered to the User to be in error the Commission will cause the meter to be calibrated. The User shall pay for the cost of the calibration. However, if the meter is found to over-register by more than two percent (2%) of the correct volume, the User's payment for the cost of calibration will be refunded to the User.

c. **Claim of error after a payment is delinquent**. A claim of error presented after a payment has become delinquent shall not prevent discontinuance of service or civil action as provided in this contract. The User agrees to continue to make payments for water service after a claim of error has been presented, however, it may do so under protest, and such payments will not prejudice the User's claim of error.

d. **Correction of meter readings**. If the calibration of any meter establishes that the previous readings of such meter over-registered by more than two percent (2%) the correct volume of water delivered to the User, the meter readings for that meter shall be corrected to the beginning of the year current to the calibration by the percentage of inaccuracy found in such tests. The amount of any overpayment by the User because the meter over-registered the amount of water delivered to the User, for the period of time for which the correction is applied, shall be applied first to any delinquent payments for water service, and any remaining amounts shall, at the option of the User, be refunded to the User or credited upon future payments for water service by the User in the ensuing years.

d. **Failure of meter**. If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Commission and the User shall agree upon a different amount.

8. **Responsibility for Distribution and Use of Water**.

The User shall be responsible for the control, distribution, and use of all water delivered to the User by the Commission under this contract, beyond the point of delivery, and all services, maintenance, and repair of the User's distribution system.

The User shall hold the Commission, its officers, agents, employees and successors, and assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, distribution, and use of water delivered under this contract, and the operation, maintenance, and replacement of the User's distribution system. The User's distribution system includes all works extending from the point of delivery of water to the User by the Project.

VII. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER SERVICE

The User agrees to make payments for water service in accordance with the following terms and conditions:

1. **Notice of First Delivery of Water and Beginning of Water Service Payments**.

Ninety (90) days prior to completion of the Project to the point of delivery to the User, the Commission shall notify the User, in writing, by certified mail, the date when water will be first available to the User. The User will make payment for water service, in accordance with the terms of this contract, beginning at the expiration of the ninety (90) day notice, or beginning at such time when water is available to the User, whichever is later in time. The minimum payment for water for the first payment shall be pro-rated on a per day basis over a one month period, ending on the last day of the month in which water is first available to the User.

2. **Payment for Water Service**.

The User's water service payment for each month shall equal the sum of the following:

a. The User's proportionate share of the OM&R costs; plus

b. The User's payment for capital costs.

3. **Minimum Annual Water Purchase: Minimum Payment for Water**.

The User will make payment for the minimum annual water purchase specified in this contract in accordance with the rates and terms for payment of water specified in this contract, regardless of whether or not the User actually uses the amount of the minimum annual water purchase.

4. **Payment for Operation, Maintenance, and Replacement (OM&R)**.

The User will make monthly payments to the Commission for its share of the OM&R costs for the Project. The payment will be determined by the Commission and based upon actual and forecasted OM&R costs and may be adjusted annually. The amount of the monthly payment will be determined as follows:

a. **OM&R budget**. Prior to December 1 of each year, the Commission shall establish and adopt a budget for OM&R for the Project for the next ensuing year. The Commission will then estimate the total annual water sales for the next ensuing year, and calculate the "estimated water rate for OM&R" for the Project. At the end of each year, the Commission shall prepare a statement of the actual cost for OM&R for that same year.

b. **Reserve fund**. The Commission shall have the authority to include in the OM&R budget for each year an amount to be accumulated and maintained in a reserve fund for the purpose of replacement and for extraordinary maintenance of project works. The reserve fund shall be deposited and maintained in a separate account.

c. **Monthly payment**. The User's monthly payment for OM&R shall be determined by multiplying the amount of water actually delivered to the User for each month by the "estimated water rate for OM&R."

d. **Adjustment for underuse**. At the end of each year, if the amount of water actually delivered to the User is less than the amount of the minimum annual water purchase, the User shall pay an amount equal to the "estimated water rate for OM&R" multiplied by the difference. This payment shall be applied, in equal increments, to the User's next four (4) monthly statements.

5. **Payment for Capital Costs**.

The User will pay to the Commission a water rate for capital costs of the Project. The revenues shall be deposited by the Commission, in an appropriate account, such as the Resources Trust Fund.

a. **Base water rate for capital costs**. The base water rate for capital costs shall be _____ per each one thousand (1,000) gallons of water. This rate is based upon the July 1994, cost estimate of the project.

b. **Adjustment of the water rate for capital costs**. The Commission shall have the authority to adjust the water rate for capital costs annually in accordance with the increase or decrease in total capital costs of the project. When total capital cost obligations of the project are met, payments for capital costs will cease.

The Commission shall also have the authority to adjust the water rate if the project is redesigned as specified in section IX of this contract. The User and the Commission must mutually agree to any change of water rate for capital costs resulting from a redesign.

c. **Adjustment for underuse**. At the end of each year, if the amount of water actually delivered to the User is less than the amount of the minimum annual water purchase, the User shall pay an amount equal to the "estimated water rate for capital costs" multiplied by the difference. This payment shall be applied, in equal increments, to the User's next four (4) monthly statements.

d. **Credit for qualifying water supply facility debt service cost**. A credit for debt service costs of the User's qualifying water supply facilities shall be applied to the monthly water payment for capital costs, upon approval by the Commission. The amount of such monthly credit shall be determined by dividing seventy-five percent (75%) of the total annual debt service cost for "qualifying water supply facilities" in the immediate ensuing year by twelve (12). However, in no event shall any credit exceed the total monthly water payment for capital costs, nor can any credit be transferred or assigned to any other water user entity. In order to receive a credit as provided herein, the User must submit a request for credit, with supporting documentation, to the Commission, no later than December 1 of the year preceding each year in which a credit is to be applied. The Commission will terminate all credits ten (10) years after first delivery of water to the User.

6. **Billing Procedure**.

The Commission will furnish to the User, at the address shown on the signature page of this contract, not later than the tenth day of each month, an itemized statement of the payment due from the User for water service for the preceding month. The metering equipment at the point of delivery to the User shall be read monthly by the Commission.

7. **When Payments Are Due**.

All payments for water service shall be made no later than the 10th day of the month following receipt of the statement from the Commission. Payments not made by such date shall be considered delinquent and in default.

8. **Delinquent Payments and Default: Suspension of Water Service**.

The User shall cause to be levied and collected all necessary taxes, assessments, and water charges, and will use all of the authority and resources available to it to meet its obligations under this contract, and will make in full all payments to be made pursuant to this contract on or before the date such payments become due.

In the event of any default by the User in making payments as required under this contract, the Commission, in its discretion, may suspend delivery of water to the User through the Project during the time when the User is in default, or bring a civil action against the User in a North Dakota state district court.

During any period when the User is in default, the User shall remain obligated to make all payments required under this contract. Any action of the Commission pursuant to this section shall not limit or waive any remedy provided by the contract or by law for the recovery of money due or which may become due under this contract.

9. **Penalty for Late Payment**.

Every payment required to be paid by the User to the Commission under this contract, which is unpaid after its due date shall be imposed a penalty of one percent (1%) per month of the amount of such delinquent payment from and after the date when the same becomes due and payable, provided that no penalty shall be chargeable against any adjustment made pursuant to Section VI (7) of this contract.

10. **Refusal of Water**.

The User's failure or refusal to accept delivery of water to which it is entitled under this contract shall in no way relieve the User's obligation to make payments to the Commission as provided in this contract.

VIII. GENERAL PROVISIONS

1. **Rules and Regulations**.

The Commission will have the authority to develop and adopt such rules and regulations as the Commission may deem proper and necessary to carry out this contract and to govern the administration of this contract, pursuant to N.D.C.C. ch 61-24.6. Such rules and regulations shall not be inconsistent with this contract. The User agrees to comply with all rules and regulations promulgated pursuant to N.D.C.C. ch 61-24.6.

2. **Access to and Inspection of Books and Records**.

Each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

3. **Remedies not Exclusive**.

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

4. **Amendments**.

This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing or executed by the parties.

5. **Waiver of Rights**.

Any waiver at any time by either party of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

6. **Notices**.

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be in writing. All such notices shall be deemed to have been given and delivered, if delivered personally or if delivered by registered or certified mail. All notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

7. **Assignment**.

The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the Commission. The Commission may assign its rights under this contract. The Commission shall not approve any assignment or transfer by the User to any water user entity unless and until the water user entity to which it is proposed that this contract be transferred or assigned has the necessary ability to satisfy the obligations of this contract.

IX. ADJUSTMENT OF DESIGN

The Commission reserves the right to redesign the project based upon the number and location of Users signing water service contracts.

X. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing, signed by the parties, and attached herein. Such waiver, consent, modification, or change, if made, shall be effective only in a

specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

IN WITNESS WHEREOF, the parties execute this contract on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505

By: _____

Title: _____

Date: _____

Approved and entered into by resolution of the State Water Commission this _____ day of _____, 199__.

_____
Secretary and State Engineer

USER:

By: _____

Title: _____

Date: _____

Cannonball River Basin Water Management Study
Scoping Document

May 1994

Mission Statement

To cooperatively develop data, information and tools to assist in the management of water and other natural resources of the Cannonball River basin in North and South Dakota. This study will emphasize basin-wide resource management that can be accomplished in an environmentally, socio-economically and culturally sound manner, consistent with Federal, State and Tribal laws, and in a manner which will promote State/Tribal governmental relations.

Goals

1. Establish thorough understanding of waters and related natural resources in the Cannonball River basin.

2. Identify management opportunities and develop scenarios. (The term "management", for purposes of this study, will include consideration of resource development, conservation, preservation, etc. "Scenarios" consist of combinations of one or more opportunities which address identified water resource related problems and/or needs within the basin).

3. Cooperatively develop tools and identify ongoing processes that will aid in making resource management decisions within the basin.

4. Community empowerment. Decisions about management, conservation, and/or development of water and related resources within the Cannonball River basin will continue to be made at the "grass roots" local level, consistent with Federal, State and Tribal regulatory and financial constraints. Locals will retain control of their destiny and stay involved in the decision making process through public involvement initiatives planned throughout the study period.

5. This study will not quantify water rights on the Standing Rock Indian Reservation (Information provided by Tribe for purposes of Management Study only).

6. Identify potential funding alternatives for management scenarios.

Study Objective (i.e. major tasks necessary to accomplish study goals)

1. Compile existing data and information and identify data gaps.

   A. Inventory surface water and groundwater quantity, distribution and timing (basin hydrology and hydraulics). This includes documenting physical characteristics (climate, geology, topography, geomorphology, etc.) which affect the quantity, distribution and/or timing of surface and ground water.

B. Inventory surface water and groundwater quality and identify sources of impairment.

C. Compile data on socio-economics and cultural resources (demographics).

D. Inventory of historic and existing environmental habitat, fish and wildlife, flora and fauna (including State and Federal lands).

E. Inventory of land resources and use (including agriculture, mineral/mining/oil, forestry, etc.).

F. Inventory of recreation resources.

G. Document existing water demands (actual uses - both consumptive and non-consumptive)

- Municipal domestic water use (domestic water supply systems (municipal and rural water systems) providing water for residential, commercial, public and industrial use)
- Rural domestic water use (individual residential supplies provided by wells, water hauling, etc.)
- Agricultural water use (irrigation, livestock watering, etc.)
- Industrial/Commercial water use (water supplies provided by individual industrial or commercial water users)
- Recreation related water use
- Environmental/Fish and Wildlife related water use
- Cultural/Religious water use
- Water used from other basin (water importation)

2. Define baseline - future without [i.e. future conditions (e.g. social, economic, environmental, cultural, water and land resources, etc.) without changes in resource management within the basin]. Future without conditions will be based upon recent trends and other defined assumptions.

3. Develop a tool(s) for assessing the impacts/affects of management scenarios (i.e. different combinations of 1 or more opportunities).
   e.g. * develop hydrologic/water quality model of surface water resources;
   * develop hydrologic/water quality model of groundwater resources;
   * develop methodology for assessing impacts/affects of changes in surface and groundwater quantity and quality on the environment, the economy, culture, recreation, etc. (cross-impact matrices).

4. Identify and document water resource related Problems, Needs and Opportunities within the basin through record searches and public involvement.

5. Develop and assess management scenarios. Various management scenarios will be developed based on information gathered through objective #4. Each scenario will consist of combinations of one or more opportunities (i.e. projects, programs, etc.) that were identified to solve a water resources related problem(s) and meet current and future water needs within the basin (i.e. problems, needs and

opportunities will drive the development of management scenarios). The affects of each scenario will be evaluated using the tools developed through objective #3. The study should also include an analysis of the cumulative affects that the management scenarios may have on the environment, economy, culture, etc.

6. Identify potential Federal, State, Tribal, and local funding mechanisms for pursuing further planning/design/implementation of resource management scenarios.

7. Identify potential administrative structures and/or mechanisms that may facilitate ongoing coordination and communication of water management issues in the Cannonball River basin among the cooperating entities (Federal, Tribal, State and local).

Anticipated Study Products

The following anticipated products of the Cannonball River Basin Water Management Study will be provided to all parties involved.

1. Baseline Study and Data Report. This report will present existing data and information that was compiled and/or developed, and findings associated with accomplishment of objectives 2 and 3 listed above. This report should be completed by the end of the first year of study (i.e. September 1994).

2. Problems and Opportunities Report. This report will present details associated with water resource related problems and needs within the basin and describe opportunities that may exist for solving those problems and meeting the needs (current and future). This report should be completed in the middle of the second year of study (March 1995).

3. Model Development/Methodology Report. This report will document the selection, development, calibration and application of the model(s) used to assess the affects of management scenarios on basin-wide water quantity and quality. The Model Development/Methodology Report should be completed by the end of the second year of study (September 1995).

4. Basin-wide Water Management Planning Report (Final Report - Findings and Recommendations). The report will strive to solve existing water resource related problems and meet current and future water needs (e.g. domestic water supply, agricultural water supply, fish and wildlife, recreation, etc.) to the mutual and equitable benefit of all people in the basin. This report will provide information which will help Tribal, State and local leaders understand how certain water resource management decisions may affect other water dependent opportunities or resources elsewhere in the basin. This report, and the management tools (i.e. models) developed as part of this study, will provide guidance to Tribal, State and local leaders in making future water resource management decisions within the basin. The Basin-wide Water Management Planning report should be completed by the middle of the third year of study (March 1996).

North Dakota State Water Commission
900 EAST BOULEVARD · BISMARCK, ND 58505-0850 · 701-224-2750 · FAX 701-224-3696

MEMORANDUM

TO: Governor Edward T. Schafer
State Water Commission Members

FROM: David A. Sprynczynatyk, State Engineer

SUBJECT: Conditions of Dams Report

DATE: July 15, 1994

There are over 500 dams in North Dakota with a storage capacity greater than 50 acre-feet. Of these, 20 percent are federal, 10 percent state, 50 percent county or local, and 20 percent are privately owned. Most of the state dams are owned by the North Dakota Game and Fish Department, while the local dams are generally owned by county water resource districts or cities. Although the State Water Commission does not own any dams, the Commission has traditionally cost-shared on the majority of major maintenance requirements.

The State Water Commission inspects about 115 local and state owned dams on one to five-year schedule (25 each year), depending on the dam's size and hazard potential. In the past few years we have observed a steadily deteriorated condition of many of the dams. Several of the dams were built in the 1930s under the WPA and have since been turned over to the county for maintenance (NDCC 61-16.1-40). Although most dams are low hazard and have been repaired at least once, many of these facilities are in poor condition. In the 1950s and 1960s, many recreation dams were constructed across the state. Typically, they were designed by the State Water Commission, but all O&M costs are the responsibility of the local sponsor. These dams are currently 30-40 years old and, in many cases, significant repair is needed to update the projects to current standards.

While the need for repairs is increasing, the funds available to support the work is decreasing. Game and Fish funds are very limited, the State Water Commission is nearly out of funds in our contract fund, and most cities and counties have very limited budgets/funds.

The State Engineer has the authority to order the maintenance or require the breach of a dam. However, this can become a highly controversial issue. Due to the high costs of repair, breaching is often the best solution in view of public safety and a lack of funds. The majority of the dams are repairable and they do serve a useful purpose. Virtually all lakes have water quality problems, but most still support

fishing and receive a considerable amount of activity throughout the year. The State Water Commission normally relies on the advice of the Game and Fish Department regarding the fishing potential of a lake and its value compared to the cost of repair.

At the present time, we are aware of the need for immediate repair at the following dams: Crown Butte, Blacktail, Kota-Ray, McGregor, Minto, Niagara, Mount Carmel, Cedar Lake, McVille, Riverside Park, Arnegard, North Lemmon Lake, and Burlington Dams 1 and 2. The cost of repair for these dams can vary from a few thousand dollars to several hundred thousand dollars. The State Water Commission is scheduled to replace the spillway of Mount Carmel Dam in Cavalier County at a cost of $600,000. The estimated cost to repair North Lemmon Lake is $200,000 to $300,000. Crown Butte Dam in Morton County has a potentially severe problem, especially considering its embankment is part of I-94. The dam was constructed in the 1960s by the State Highway Department, but the State Water Commission and Morton County signed an agreement for all future maintenance requirements of the dam and spillway pipe. The main spillway pipe has separated from the inlet pipe section. Sinkholes have also developed along the downstream embankment slope, and a suspicious crack has developed across the pavement of I-94. The State Water Commission recently requested proposals for an investigation of the problems, and we feel this is an urgent problem that needs immediate attention. The cost of the repair and availability of funds to make the repairs is not known at this time.

We are also aware of deficiencies with numerous other projects. While the State Water Commission is not directly responsible for the maintenance of most projects, we have traditionally cost-shared on these repairs and we should anticipate several requests in the next few years.

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