

## MINUTES

### North Dakota State Water Commission Bismarck, North Dakota

January 27, 1999

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on January 27, 1999. Governor-Chairman, Edward T. Schafer, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

#### MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman  
Roger Johnson, Commissioner, Department of Agriculture, Bismarck  
Mike Ames, Member from Williston  
Judith DeWitz, Member from Tappen  
Elmer Hillesland, Member from Grand Forks  
Jack Olin, Member from Dickinson  
Robert Thompson, Member from Page  
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### MEMBERS ABSENT:

Florenz Bjornson, Member from West Fargo  
Harley Swenson, Member from Bismarck

#### OTHERS PRESENT:

State Water Commission Staff  
Approximately 50 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.

**DESIGNATION OF VICE CHAIRMAN  
OF THE STATE WATER COMMISSION**

Chapter 61-02-05 of the North Dakota Century Code, relating to the Chairman of the State Water Commission, states:

The governor shall be the chairman of the commission. The governor shall designate a vice chairman who shall be a member of the commission. The state engineer shall be the secretary of the commission.

Governor Schafer designated State Water Commission member Jack Olin as the Vice Chairman of the Commission.

**DEFERRAL OF REQUEST  
FROM TRAILL COUNTY  
WATER RESOURCE DISTRICT  
FOR COST SHARE IN TRAILL  
COUNTY DRAIN NO. 57A  
CONSTRUCTION PROJECT  
(SWC Project No. 1903)**

A request from the Traill County Water Resource District was presented for the Commission's consideration for cost share in the construction of the Traill County Drain No. 57A project.

The engineer's project cost estimate is \$723,661, of which \$642,669 is eligible for cost share to construct approximately 9 miles of the drain. Under the State Water Commission's policy and guidelines for cost share, 35 percent of the eligible costs qualify for cost share in the amount of \$224,934. The current guidelines also limits the amount of cost share per biennium to 5 percent of new funding available for general projects not to exceed \$150,000 from the Contract Fund. The request before the State Water Commission is to cost share in the amount of \$150,000.

Secretary Sprynczynatyk reviewed the revenue situation in the Contract Fund and noted the State Water Commission typically does not obligate \$250,000 until after the spring snowmelt for emergencies. Therefore, it was the recommendation of the State Engineer that the State Water Commission defer action on the request for cost share for the Traill County Drain No. 57A project.

**APPROVAL OF REQUEST FROM  
BUFORD-TRENTON IRRIGATION  
DISTRICT FOR COST SHARE ON  
IMPROVEMENT PROJECT  
(SWC Project No. 222)**

A request from the Buford-Trenton Irrigation District was presented for the Commission's consideration for improvements to the district involving the construction of a pipeline to connect a drain canal to the main

distribution canal. The existing pump station will be used to transfer a maximum of 9,000 gallons per minute to the main canal, and the amount of water pumped will depend on the drain capacity and irrigation demand. The project will provide the district with an additional water supply pumping station that will increase the overall capacity and efficiency of the existing irrigation project.

The engineer's cost estimate is \$90,000, of which all of the items are eligible for cost share. The Buford-Trenton Irrigation District has secured \$15,000 from the North Dakota Game and Fish Department and arrangements for the local costs are being pursued. Under the State Water Commission's policy and guidelines for cost share, 40 percent of the eligible costs qualify for cost share. The request before the State Water Commission is to cost share in the amount of \$36,000.

Commissioner Ames stated that because of his personal involvement in this project and, therefore, to avoid a conflict of interest, he requested to be excused from discussion of the project and that an abstention vote be recorded.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 40 percent of the eligible costs, not to exceed \$36,000 from the Contract Fund, for the Buford-Trenton Irrigation District improvement project, contingent upon the availability of funds.

*It was moved by Commissioner Johnson and seconded by Commissioner DeWitz that the State Water Commission approve cost share of 40 percent of the eligible items, not to exceed \$36,000 from the Contract Fund, for the Buford-Trenton Irrigation District improvement project. This motion is contingent upon the availability of funds.*

*Commissioners DeWitz, Hillesland, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. Commissioner Ames abstained from voting. The Chairman declared the motion carried.*

**RED RIVER VALLEY RURAL  
RING DIKES PROJECT  
(SWC Project Nos. 1271 & 1312)**

On December 21, 1998, the State Water Commission approved funds for the construction of farmstead ring dikes in Cass County. On August 13, 1998, the Commission considered and approved funds for a similar project in Walsh County. In both actions, cost share was limited to 25 percent. Concern was expressed on behalf of the landowners that the level of funding approved would not be adequate for the landowners to pursue the program. The State Water Commission directed the State Engineer to pursue options for a partnership of funding for the program that could involve the Red River Joint Water Resource Board, the local water resource district, the landowner, and the state.

Secretary Sprynczynatyk reported the Red River Joint Water Resource Board considered the request to provide funds for farmstead ring dikes in the Red River area at its meeting on January 13, 1999. Because of concerns expressed relative to the Board's funding limitations, action was deferred by the Board until its April, 1999 meeting.

**APPROVAL OF REQUEST FROM  
HIGH VALUE IRRIGATED CROPS  
TASK FORCE FOR EXPENDITURE  
OF \$2,000 TO SUPPORT ACTIVITIES  
FOR 1999**

**(SWC Project No. 1389)**

A request was presented for the Commission's consideration from the High Value Irrigated Crops Task Force for cost share for 1999. The State Water Commission has supported the efforts of the task force during the past seven years in the amount of \$2,000 each year.

The task force is made up of representatives of organizations from the public and private sector. They include rural electric cooperatives, investor-owned electric utilities, local economic development organizations, and governmental entities. Funds from these organizations match funds from the NDSU Extension Service to support one full-time coordinator.

Through the coordinator, the task force was involved in a number of projects in 1998, all of which may result in opportunities for North Dakota. The projects include the Alfalfa New Products Initiative, completed a study on dehydrated vegetables with the Specialty Crop Coalition, working with the Minnesota Fruit and Vegetable Growers Association to create a two-state association, and assistance in the start-up of irrigation district associations.

It was the recommendation of the State Engineer that because the activities of the task force are continuing to be successful in developing opportunities in expanding the state's economy through high value crops and associated utilization of water resources, the State Water Commission approve the expenditure of \$2,000 for 1999 from the Contract Fund.

*It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission support the activities of the High Value Irrigated Crops Task Force, and approve the expenditure of \$2,000 for 1999 from the Contract Fund. This motion is contingent upon the availability of funds.*

*Commissioners Ames, DeWitz, Hillesland, Johnson, Olin, Thompson, 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)**

On November 10, 1997, the North Dakota congressional delegation introduced legislation in the United States Senate and House of Representatives (S 1515 and HR 3012) that will re-focus and complete the Garrison Diversion Project. The bills were introduced as amendments to the Garrison Diversion Reformulation Act of 1986, which is an amendment to the 1965 Act. The "Dakota Water Resources Act of 1997" is the final product of years of negotiations and represents broad, bipartisan consensus on the future of the project.

Field hearings on the Dakota Water Resources Act were held February 19, 1998 in Fargo, ND, and on August 11, 1998 in Minot, ND. The hearings were convened to receive testimony from interested parties in North Dakota and the region on the legislation to complete the Garrison Diversion Project.

The Dakota Water Resources Act was heard before the Subcommittee on Water and Power of the U.S. Senate Committee on Energy and Natural Resources on July 14, 1998 in Washington, DC. The Act was heard before the Subcommittee on Water and Power of the U.S. House of Representatives Committee on Resources on September 29, 1998.

The Garrison Diversion Conservancy staff and others continue to address the comments and remarks from the Administration during the hearings and prepare the necessary steps for re-introduction in Congress and early passage of the bill.

Warren Jamison, Manager, Garrison Conservancy District, provided information relative to the costs associated with the Dakota Water Resources Act. A brochure titled "Limitations on the Use of North Dakota Water" was distributed to the Commission members addressing the trans-basin biota issue.

**GARRISON DIVERSION PROJECT -  
MR&I WATER SUPPLY PROGRAM  
(SWC Project No. 237-03)**

Jeffrey Mattern, Coordinator for the MR&I Water Supply program, provided the following program report:

**All Seasons Rural Water:** The project will provide water to 24 rural residents and the city of Bisbee, and will involve a reservoir/pump station, pipelines, and in-line booster stations. The project construction bid opening was held.

**Missouri West Rural Water, Phase II:** The construction contract is scheduled to be completed in July, 1999.

**Northwest Area Water Supply, Phase I (Rugby Component):** The project is anticipated to be completed in August, 1999.

**Northwest Area Water Supply, Phase II (Minot Component):** The project is being reviewed for compliance with the National Environmental Policy Act.

**North Valley Water Association/Walhalla-Neché Branch:** The project reclamation is anticipated to be completed in the spring of 1999.

**Ramsey County Rural Water:** The project engineer is working on the feasibility study of the proposed rural water expansion project into Eddy and Foster Counties. The estimated project cost is \$3.3 million.

**Ransom-Sargent Rural Water:** The core service area includes a water treatment plant expansion in Lisbon, a new well field, and a raw water transmission pipeline. The well field area potentially impacts 94 acres of prairie orchid habitat and 24 acres of wetlands habitat. The Bureau of Reclamation and the U.S. Fish and Wildlife Service are working on the mitigation measures. The environmental assessment process is scheduled for completion in March, 1999.

**Southwest Pipeline Project:** The city of Glen Ullin is scheduled to receive water on March 3, 1999.

**GARRISON DIVERSION PROJECT-  
MR&I COMMITTEE UPDATE  
(SWC Project No. 237-03)**

The Garrison Municipal, Rural and Industrial (MR&I) Water Supply program committees of the State Water Commission and the Garrison Conservancy District met on January 7, 1999.

The committees discussed the Northwest Area Water Supply project and considered a resolution of support for the project. The resolution states that upon commencement of construction of Phase II (Minot), a recommendation will be made to the Secretary of the Interior that a minimum of \$26,730,000 of the MR&I federal funds, if appropriated and received after Fiscal Year 1998, will be used to fund Phase II (Minot) of the project. The resolution was adopted by the Garrison Conservancy District's Board of Directors on January 7, 1999.

A status report for providing water to central and southern Benson County, Cando, Munich, and Rock Lake was presented to the committees. The city of Cando is considering improvement and expansion of its existing water treatment plant using Rural Development funding. The Benson County board has elected to begin development on the southern Benson project area which involves the Central Plains Water District. Meetings will be held with the interested parties to discuss the projects.

**GARRISON DIVERSION PROJECT -  
 APPROVAL OF FISCAL YEAR 1999  
 MR&I WATER SUPPLY PROGRAM  
 BUDGET  
 (SWC Project No. 237-03)**

Secretary Sprynczynatyk presented the following allocation breakdown for the proposed funding budget for the Fiscal Year 1999 MR&I Water Supply program for the Commission's consideration. He stated that

although the final figures have not been received, the Bureau of Reclamation has indicated an assurance of approximately \$7 million for Fiscal Year 1999:

<u>Project</u>	<u>Activity</u>	<u>MR&amp;I Grant</u>
Ransom-Sargent Rural Water	D&C	\$ 4,500,000
NAWS, Phase II (Minot)	D&C	2,500,000
Administration		<u>200,000</u>
Total		\$ 7,200,000

The Ransom-Sargent Rural Water Users requested MR&I grant funding for a 1999 phase for the pipeline distribution system. The estimated cost of the 1999 phase is \$16.6 million, with a 65 percent MR&I grant, not to exceed \$4.5 million. The phased project previously received a MR&I grant of \$1.5 million in 1998 to connect water users to the existing rural water system; and the estimated cost for the 2000 phase for water treatment and supply is \$6.7 million. The total project cost is estimated at \$25.7 million. The 1999 phase request for a MR&I grant of 65 percent was approved by the MR&I committees on January 7, 1999.

The Northwest Area Water Supply project is being reviewed for compliance with the National Environmental Policy Act. The Garrison Joint Technical Committee is drafting a letter to the United States and Canada co-chairs of the Garrison Consultative Group addressing issues of compliance relating to the Boundary Waters Treaty of 1909. The project is scheduled to begin construction in 1999, and an allocation of \$2,500,000 from the MR&I Fiscal Year 1999 budget would allow the project to move forward, pending compliance of NEPA requirements.

It was the recommendation of the State Engineer that the State Water Commission approve the proposed \$7.2 million Fiscal Year 1999 MR&I Water Supply program budget as presented, contingent upon the availability of federal funds and subject to future revisions.

***It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve the recommendation of the State Engineer of the proposed \$7.2 million Fiscal Year 1999 MR&I Water Supply program budget as presented, contingent upon the availability of federal funds and subject to future revisions.***

*Commissioners Ames, DeWitz, Hillesland, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**GARRISON DIVERSION PROJECT -  
APPROVAL OF ADDITIONAL  
FUNDING FROM MR&I INTEREST  
ACCOUNT FOR VALUE  
ENGINEERING STUDY  
(SWC Project No. 237-03)**

The State Water Commission and the Garrison Diversion Conservancy District approved the expenditure of \$60,000 from the MR&I program interest account for an independent value engineering study for MR&I projects including the Benson Rural

Water System and the Ransom-Sargent Rural Water System. The final cost for the studies was \$66,504.21.

A request was presented for the State Water Commission's consideration for additional funding of \$6,504.21 from the MR&I program interest account for the value engineering study. The request was approved by the MR&I committees on January 7, 1999. Secretary Sprynczynatyk stated as is the current practice, the State Water Commission and the Garrison Conservancy District must approve expenditures from the MR&I interest account, and recommended the State Water Commission's favorable consideration of the request as presented.

*It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission approve the additional expenditure, not to exceed \$6,504.21 from the MR&I Water Supply program interest account, for the value engineering study.*

*Commissioners Ames, DeWitz, Hillesland, Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.*

**GARRISON DIVERSION PROJECT -  
PROMISED PAYMENT PLAN (PPP)  
FOR WATER PROJECTS  
(SWC Project No. 237-03)**

Dave Koland, Executive Director, North Dakota Rural Water Systems Association, presented the Promised Payment Plan (PPP) for MR&I water supply projects to the State Water

Commission at its December 21, 1998 meeting. Under the PPP, a four-year construction schedule and MR&I budget would be developed based on the \$53 million federal MR&I commitment. If, in any one year of the proposed budget, the federal payment fell short of the budgeted amount, the state would promise to cover the shortage until the federal dollars were received. The project sponsors



would then be able to plan their projects to take full advantage of North Dakota's short construction season. The net result is more costly projects and the delay of water delivery. The PPP program would advance funds to allow expedited project construction and water delivery.

Secretary Sprynczynatyk stated that similarly, the State of South Dakota has used the practice of awarding contracts that total more than the federal funding immediately available. This has been used as a lobbying tool in Washington to show the importance of projects, their commitment to build the projects, and the need for the expedient appropriation of funds. A memorandum to the State Water Commission members and attachments providing technical and supporting information relative to the PPP program was presented by Secretary Sprynczynatyk. Those documents are attached hereto as **APPENDIX "A"**.

Secretary Sprynczynatyk stated that the future reliability of receiving the total authorized federal funding of \$200 million is unknown, although the first MR&I appropriation was received in 1987 and \$147 million has been received through Fiscal Year 1998. The average appropriation has been \$12.2 million. The remaining \$53 million will likely be received within the next five or six years.

The start of some projects has been stalled because the available MR&I funding timetable is uncertain. Secretary Sprynczynatyk said some of the projects are ready to proceed, but have not proceeded because the sponsors are not able to assume the funding risk in completing the feasibility study and design with out-of-pocket funds and be ready for construction. Most of the projects are proposing to serve a large group of new users, have a board consisting of volunteers, have no staff, and operate with a small limited budget created by collecting users fees. These fees are typically consumed by the initial assessments and preliminary engineering reports. The systems have no other means to generate a revenue stream to secure funding until the project begins to deliver water. The boards generally do not have enough funding through user fees to complete the environmental requirements necessary to move projects to design. The environmental costs range from \$50,000 to \$200,000, and design costs have a range of \$250,000 to \$1,500,000 depending on the project size.

Dave Koland discussed the idea of developing a PPP funding pool of approximately \$25 million with financial groups that have experience with this type of pool funding. The pool may be able to obtain a tax-exempt bond interest rate of around 4 percent. The funding would be reinvested at approximately 5-6 percent during the short term while the pool funds are distributed for project construction. The project net interest would be 1 percent to 2 percent less than the bond interest rate, after the reinvested interest is used to pay interest during construction owed by the pool fund. The principal payment would be repaid with the annual federal MR&I grant appropriations.

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Benefits identified by the North Dakota Rural Water Systems Association include full utilization of North Dakota's short construction season, lower project costs, better project design, increased initial signup of members, and orderly water development, which would allow the best use of anticipated municipal, rural and industrial water supply funds.

Secretary Sprynczynatyk stated the Legislative Interim Garrison Diversion Overview Committee, which includes all of the legislative leadership, reviewed the PPP concept this past year. The committee concluded the State Water Commission has the statutory authority to implement the plan. The committee noted that if more explicit statutory authorization or approval is desired, then consideration should be given to amending the powers and duties of the Commission. As a result, the committee passed a motion expressing its support for the State Water Commission to go forward to implement the Promised Payment Plan. (The minutes and action of the committee supporting the plan are included under **APPENDIX "A"**).

The State Water Commission's staff attorney completed a review on the State Water Commission's authority and determined the Commission has the necessary authority and that the Commission could utilize the PPP program. (The memorandum prepared by the staff attorney is included under **APPENDIX "A"**).

House Bill 1455 was introduced to create and amend sections of the North Dakota Century Code relating to the State Water Commission's bonding authority and allows the Commission to guarantee indebtedness undertaken by not-for-profit organizations in order to further enhance the Commission's ability to implement the PPP program if it so desires. House Bill 1455 is included under **APPENDIX "A"**, which allows the Commission to guarantee evidences of indebtedness issued or other obligations undertaken for establishing a pool program or other financing programs for owners of water projects. The guarantee is authorized by resolution of the Commission and evidenced by a written agreement. The pledge of revenue would be the security for a guarantee or note. The bill also addresses the reserve fund to handle the funding and provide funds for debt service. Secretary Sprynczynatyk testified before the House Appropriations Committee on January 25, 1999, and indicated to the committee that the State Water Commission had not taken a formal position on the PPP program and that the issue would be considered at this meeting.

Secretary Sprynczynatyk stated the concept of setting up a line of credit to accomplish the PPP program funding concept was discussed with the President of the Bank of North Dakota. The bank would need a secondary repayment source if the federal government does not come through with funding in a timely manner.

It was the recommendation of the State Engineer that the State Water Commission allow the State Engineer and staff to further explore and develop a plan to utilize the PPP concept for MR&I water supply projects scheduled to be constructed within the remaining \$53 million of MR&I funding. The plan would be presented to the Commission for further consideration.

The PPP concept was discussed at considerable length. John Hoven, President of the Bank of North Dakota, and Tom Tudor, North Dakota Municipal Bond Bank, provided technical information relating to the bond programs offered by their institutions, benefits and problems foreseen with the PPP concept, as well as outlining a process for the concept to become viable.

Governor Schafer expressed concerns regarding the future of the remaining federal appropriations of \$53 million for the MR&I program. The Governor made reference to the bonding authorities in the state and questioned the possible consolidation of the bonding authorities. Concerns were also voiced by the Governor relative to the effects and impacts that bonding has on the overall operations of the state. The Commission members voiced concurrence with the concerns that were expressed by the Governor.

*It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission authorize the State Engineer and staff to explore and develop a plan to utilize the Promised Payment Plan (PPP) concept for MR&I water supply projects scheduled to be constructed within the remaining \$53 million of MR&I funding. The plan is to be presented for the Commission's consideration at a future meeting.*

*Commissioners Hillesland, Olin and Thompson voted aye. Commissioners Ames, DeWitz, Johnson, and Chairman Schafer voted nay. The recorded vote was 3 ayes and 4 nays. The Chairman declared the motion failed.*

## **1999 LEGISLATION**

Secretary Sprynczynatyk provided a legislative status report on bills relating to the authority of the State Water Commission and the State Engineer, as well as other water-related bills.

At its meeting on December 21, 1998, Commissioner Ames discussed a proposal that would provide the State Water

Commission authority to sell bonds to finance irrigation development for irrigation districts. The Commission staff was requested by Commissioner Ames to develop the required legislative language to provide the Commission the authority to sell bonds to finance individual irrigation systems similar to the program in Montana, which is administered by the Montana Department of Natural Resources. In discussion of the proposal, it was requested that the information relative to Montana's program be provided to the Commission members. The Commission also discussed a similar program that is funded through the North Dakota Municipal Bond Bank.

Secretary Sprynczynatyk explained that the program implemented in Montana is backed by the general obligation funds of the state from revenue generated by the severance tax to retire the debt in the event there is default on the part of the individual irrigator. He said the State Water Commission does not have this ability for the general obligation funds, therefore, it would be difficult for the State Water Commission to institute a program for private irrigation development. House Bill 1476 relates to agriculture loans and would provide a \$2 million appropriation for private irrigation development if passed.

Secretary Sprynczynatyk referenced House Bill 1281, which is a bill for an Act to create and enact a new chapter to Title 61 of the North Dakota Century Code relating to the creation of an irrigation district finance program. He explained the bill would provide a bond program, implemented by the State Water Commission, for the purpose of providing financing to irrigation districts. The bill would also expand the State Water Commission's authority to finance irrigation districts.

Michael Dwyer, Executive Director of the North Dakota Irrigation Caucus, reported on its efforts to support legislation relating to irrigation development. He referenced the Ag Pace Program, included in House Bill 1476, which proposes that the program be expanded to provide irrigation loans for individual irrigation development at a favorable interest rate, with a total appropriation of \$3.5 million. He said the Caucus supports Senate Bill 2107, introduced by the State Engineer, to streamline the water permit application process.

Governor Schafer reiterated the comments he voiced during the discussion of the Promised Payment Plan relating to bonding and the bonding authorities in the state. He also questioned during discussion of House Bill 1281 if the bonding authority should go to the State Water Commission or be left with the Municipal Bond Bank.

Due to a previously scheduled commitment, Governor Schafer left the meeting. The presiding gavel was turned over to the Vice Chairman, Commissioner Jack Olin.

**CONSIDERATION OF MINUTES  
OF DECEMBER 21, 1998 STATE  
WATER COMMISSION MEETING -  
APPROVED**

The minutes of the December 21, 1998 State Water Commission meeting were approved by the following motion:

*It was moved by Commissioner DeWitz, seconded by Commissioner Thompson, and unanimously carried, that the minutes of the December 21, 1998 State Water Commission meeting be approved as prepared.*

**FINANCIAL STATEMENT -  
AGENCY PROGRAM BUDGET  
EXPENDITURES**

Dale Frink, Assistant State Engineer, presented and discussed the Program Budget Expenditures for the period ending November 30, 1998, reflecting

71 percent of the 1997-1999 biennium. **SEE APPENDIX "B"**

**FINANCIAL STATEMENT -  
RESOURCES TRUST FUND**

Dale Frink reported that the Office of Management and Budget's latest revenue projections for the oil

extraction taxes includes revenues for the Resources Trust Fund of \$5,224,449, which is a net decline of \$8,829 that was reported at the December 21, 1998 State Water Commission meeting.

Mr. Frink stated the unobligated balance for general projects in the Contract Fund is approximately \$290,000. This includes \$38,000 of cost share requests approved by the Commission at this meeting. No new State Engineer approvals have occurred since the December 21, 1998 Commission meeting. The State Water Commission typically does not obligate \$250,000 until after the spring snowmelt period for emergencies. **SEE APPENDIX "C"**

**FINANCIAL STATEMENT -  
1999-2001 BIENNIUM BUDGET**

On December 10, 1998, Governor Schafer released his executive budget recommendations during the 1999-

2001 biennium. Secretary Sprynczynatyk reiterated that the executive budget is very favorable for the State Water Commission and, if approved by the Legislature, will allow enhancement of the agency's operations in some areas.

On January 20, 1999, Senate Bill 2023, the State Water Commission's appropriation, was heard before the Senate Appropriations Committee. Secretary Sprynczynatyk commented the hearing went well, and that a subcommittee was appointed to further review the agency's appropriation.

**COST SHARE POLICY FOR  
DRAINAGE PROJECTS  
(SWC FILE SWC/POL)**

At its August 13, 1998 meeting, the State Water Commission passed a motion to approve changes to the cost share policy for drainage projects.

On December 21, 1998, the Commission members discussed the cost share change relating to the limitation per biennium of any project to 5 percent of new funding available to the State Water Commission. Because the intent of the cost share limitation on phased projects was unclear, as approved on August 13, 1998, the Commission directed the State Engineer to prepare written guidelines to clarify the 5 percent limitation issue relating to the state and the local sponsor. The Commission requested that the guidelines be made available at its January 27, 1999 meeting.

In response to the Commission's direction relative to the new drainage cost share policy, Secretary Sprynczynatyk provided an explanation and the attached memorandum, **APPENDIX "D"**, relating to the cost share limitation on phased projects.

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

James Lennington, Project Manager for the Southwest Pipeline Project, provided the following contract, construction and project status report:

**Contracts 2-3H and 7-5A - Transmission Pipeline to Hebron and Glen Ullin and the Rural Distribution Systems in the East Taylor Service Area:**

Winter conditions have slowed progress on contracts 2-3H and 7-5A. The contractor, Karas Construction of Larimore, ND, is installing a service line through a wet area where cold weather actually assists construction.

**Contract 4-4 - Jung Lake Pump Station:** The mechanical contractor has yet to install the exhaust fans and some plumbing and insulation work remains. Payments in November and December were withheld to encourage resolution of these items. The general and electrical contractors have completed their portions of the contract.

**Contract 5-4 - Jung Lake Reservoir:** Because of the inclement winter conditions, the contractor has shut down operations. The majority of the reservoir exterior remains to be painted, but the interior of the tank has been painted and the tank has been put into service. Next spring the contractor will complete the exterior painting of the reservoir.

**Contract 7-4/7-3A - Bucyrus and Three Pocket Service Area Rural Distribution:**

The contractor for contract 7-4/7-3A, Northern Improvement, Inc., has shut down operations for the winter. A prefinal inspection on all portions of the contract, excluding the East Rainy Butte Pocket No. 2, was conducted in December, 1998. The contractor will review the results of the inspection and next spring will address the items listed which remain to be completed. On the East Rainy Butte Pocket No. 2 service area, the contractor will pick up where they left off this winter, and work is anticipated to be completed in July, 1999.

The Southwest Water Authority Board of Directors and the Dickinson City Commission voted to negotiate the transfer of the operations and maintenance of the Dickinson water treatment plant to the Authority. The issue has been under study by two committees formed by the board in late 1997 after being approached by city officials. The committees found no reasons, technical or otherwise, that would preclude the Authority from taking over the operations and maintenance of the plant. Incorporating the operations of the water treatment plant into those of the pipeline project should improve service to the customers of the Authority and may result in lower costs.

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF SOUTHWEST  
WATER AUTHORITY OPERATIONS  
BUDGET AND BASE WATER RATE  
FOR REPLACEMENT AND EXTRA-  
ORDINARY MAINTENANCE  
(SWC Project No. 1736)**

Under the Transfer of Operations Agreement, the Southwest Water Authority is required to submit a budget to the Secretary of the State Water Commission by December 15 of each year. The budget is deemed approved unless the Secretary of the Commission notifies the Authority of

its disapproval by February 15. The Southwest Water Authority has satisfactorily complied with this provision.

At its meeting on October 19, 1998, the Commission approved the capital repayment rates and the debt service credit for 1999. The September 1998 Consumer Price Index was used to calculate the capital repayment rate for 1999, which resulted in a capital repayment rate of \$0.79 per thousand gallons for contract users and \$23.96 per month for rural users. These compare with the 1998 rates of \$0.78 per thousand gallons for contract users and \$23.64 per month for rural users. Approval of the capital repayment rates before the Authority's budget is submitted to the Commission allows the new rates to be incorporated into the budget.

Bartlett & West/Boyle Engineering Corporation is conducting a study for the State Water Commission of the water rate charged for the replacement and extraordinary maintenance. Although the study has not been completed, preliminary information indicates the rate should be increased from \$0.30 to \$0.35 per thousand gallons. James Lennington

stated this rate has remained unchanged since 1991. Based on the preliminary study information, Mr. Lennington said it would be appropriate for the State Water Commission to consider the increased rate at this time, and the study will be provided to the Commission upon completion. The water rate for replacement and extraordinary maintenance for distribution (rural users) would remain unchanged.

Mr. Lennington indicated the Southwest Water Authority hired Bartlett & West/Boyle Engineering Corporation to conduct an analysis of the water rate charged for operations and maintenance (O&M). The rate study indicated the Authority is undercharging users for its costs of O&M. Using the information provided by the study, the Authority's Board of Directors voted to increase the water rates for 1999. At the same time, the board voted to increase its reserve funds to reduce the amount of the increase and allow for better cash flow to cover fixed costs in months of low water sales. To accomplish this, a reserve fund component was added to the water rates for both contracts and rural users. The target reserves are sufficient to cover the operating expenses for four months. The amount charged should be sufficient to reach the targets within five years.

Mr. Lennington explained the following rates for 1999. The water rate charged by the Authority for transmission operations and maintenance will increase from \$0.83 to \$0.88, and the rate charged for distribution operations and maintenance will increase from \$0.81 to \$1.01. Treatment will increase by \$0.04. The amount charged for the newly established transmission reserve component is \$0.05. These increases, coupled with the increase in the capital repayment rates and the proposed \$0.05 increase in the rate for replacement and extraordinary maintenance, results in increases for the 1999 water rates in the transmission (contract users) and distribution (rural users) of \$2.63 and \$3.05 per thousand gallons, respectively.

It was the recommendation of the State Engineer that the State Water Commission approve an increase in the base water rate for replacement and extraordinary maintenance for transmission replacement from \$0.30 to \$0.35 per each one thousand gallons.

***It was moved by Commissioner Johnson and seconded by Commissioner Ames that the State Water Commission approve an increase in the base water rate for replacement and extraordinary maintenance for transmission replacement from \$0.30 to \$0.35 per each one thousand gallons.***

***Commissioners Ames, DeWitz, Hillesland, Johnson, Thompson, and Vice Chairman Olin voted aye. There were no nay votes. The Vice Chairman declared the motion unanimously carried.***



**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF \$300,000 FROM  
RESERVE FUND FOR REPLACEMENT  
AND EXTRAORDINARY MAINTEN-  
ANCE FOR CLEANING OF EAST  
SLUDGE POND AT DICKINSON  
WATER TREATMENT PLANT; AND  
COMMITMENT OF ADDITIONAL  
\$100,000 FROM SOURCE TO BE  
DETERMINED AT LATER DATE  
(SWC Project No. 1736)**

The Southwest Water Authority collects and maintains a reserve fund for "replacement and extraordinary maintenance". This fund exists because over the life of the project there will occur replacement and maintenance items that will exceed annually budgeted amounts. These items need to be pre-funded. The expenditures from this fund are to be approved by the State Water Commission.

Representatives of the Southwest Water Authority and the city of Dickinson held a meeting on December 7, 1998 to discuss the sludge ponds at the Dickinson water treatment plant. Sludge is produced at the plant by the softening and filtration process and is presently disposed of by pumping to the two ponds across the Heart River from the plant. The two ponds, west and east, were constructed in the 1970s and are 4.4 acres and 4.8 acres in size, respectively. In 1986, the east pond was filled and the city began using the west pond. In 1991, the water treatment plant started treating water from the Southwest Pipeline Project. At that time, the remaining capacity in the west pond was sufficient to meet the Ten States Standards for a temporary sludge pond. The west pond is nearing capacity at this time and a decision has been made to excavate the sludge from the east pond in order to provide storage capacity for future sludge production. The excavated sludge is to be buried in an inert landfill to the south of the city.

A commitment was obtained from city officials at its meeting on December 7, 1998 to support the dedication of a portion of the land proposed for the sludge landfill for the presently proposed and future sludge disposal and also to make the land available at no cost to the project. The estimated cost of removing the sludge and disposing it at the proposed landfill site is approximately \$400,000.

At its January 4, 1999 meeting, the Southwest Water Authority Board of Directors approved a recommendation that the ponds be cleaned within 18 months, with the costs to be shared by the city of Dickinson, the State Water Commission, and the Southwest Pipeline Project replacement and extraordinary maintenance fund. James Lennington explained that the city's costs can include engineering services and the landfill site. The Southwest Pipeline Project's replacement and extraordinary maintenance fund can be used to fund up to \$300,000 to clean the east sludge pond.

Mr. Lennington explained that when the plant began treating water for the project, its east pond was full and the west pond was about 60 percent full. The remaining capacity of the west pond still met the Ten States Standards for temporary sludge ponds and, therefore, did not

require cleaning by the city as a deferred maintenance item. The interpretation of whether the proposed work is an operations item or a construction item has generated some discussions with the Authority. Removing the sludge generated after the plant started treating project water is clearly a maintenance item. The proposal does not do that since the east pond was filled by 1986. Sludge removal from ponds is an ongoing maintenance item and the proposed cleaning of the east pond could be seen as creating capacity for future sludge generation as an operations cost. Mr. Lennington said if it were the west pond which was being cleaned, then 40 percent of the cost would clearly be maintenance and the remainder could be interpreted as new construction.

Budgetary limitations may preclude construction funding for this item in 1999 and, therefore, the project reserve fund for replacement and extraordinary maintenance will be a primary source of funding for the sludge pond cleaning. A request from the Southwest Water Authority was presented for the Commission's consideration for the use of the reserve funds for this item. Availability of construction funds for the sludge pond cleanout will not be determined until the present construction contracts have been completed. At that time, a decision can be made on how to fund the remaining \$100,000.

It was the recommendation of the State Engineer that the State Water Commission approve up to \$300,000 from the reserve fund for replacement and extraordinary maintenance for cleaning of the east sludge pond at the Dickinson water treatment plant. It was also the recommendation of the State Engineer that the State Water Commission approve the commitment of an additional \$100,000 from either construction funds or the reserve fund for replacement and extraordinary maintenance, which is to be determined at a later date. He said an action of commitment by the State Water Commission at this time will allow construction of the project to move forward.

***It was moved by Commissioner Johnson and seconded by Commissioner DeWitz that the State Water Commission:***

- 1) approve up to \$300,000 from the Southwest Pipeline Project's reserve fund for replacement and extraordinary maintenance for cleaning of the east sludge pond at the Dickinson water treatment plant; and***
- 2) approve a commitment of an additional \$100,000 from either construction funds or the reserve fund for replacement and extraordinary maintenance, which is to be determined at a later date.***

*Commissioners Ames, DeWitz, Hillesland, Johnson, Thompson, and Vice Chairman Olin voted aye. There were no nay votes. The Vice Chairman declared the motion unanimously carried.*

**SOUTHWEST PIPELINE PROJECT -  
APPROVAL OF \$40,250 FROM  
RESERVE FUND FOR REPLACEMENT  
AND EXTRAORDINARY MAINTEN-  
ANCE FOR PURCHASE OF TRACTOR  
SWC Project No. 1736)**

pipeline surface reclamation work including settlement repair, rock removal, and grass seeding. The grass drill will be used to reseed grass in those areas disturbed by reclamation activities in pasture and hayland. These items were anticipated for reimbursement from the reserve fund at the time the operations were transferred to the Authority.

A request from the Southwest Water Authority was presented for the Commission's consideration of reimbursement from the reserve fund for replacement and extraordinary maintenance for a tractor and grass drill. The tractor will be used for

James Lennington stated the tractor was purchased at a farm liquidation auction this past fall for \$40,250. The drill will be purchased new and is estimated to cost \$12,609. After the drill is purchased, it will be submitted to the State Water Commission for consideration of reimbursement from the reserve fund.

It was the recommendation of the State Engineer that the State Water Commission approve the reimbursement of \$40,250 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for the purchase of a tractor.

*It was moved by Commissioner Johnson and seconded by Commissioner DeWitz that the State Water Commission approve the reimbursement of \$40,250 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for the purchase of a tractor.*

*Commissioners Ames, DeWitz, Hillesland, Johnson, Thompson, and Vice Chairman Olin voted aye. There were no nay votes. The Vice Chairman declared the motion unanimously carried.*

**NORTHWEST AREA WATER  
SUPPLY PROJECT UPDATE  
(SWC Project No. 237-04)**

James Lennington reported that the revised Biota Transfer Control Facilities and Criteria report, a draft Finding of No Significant Impact,

and a proposed final Environmental Assessment were distributed to the Garrison Joint Technical Committee (GJTC) on September 18, 1998. The GJTC held a meeting on November 20, 1998 to discuss these documents.

The Canadian section of the committee presented a list of issues and concerns they have with the project as it is proposed. The committee agreed to draft a joint letter of finding to the Garrison United States-Canada Consultative Group. The Bureau of Reclamation, as the responsible federal agency, will provide a statement of its intentions concerning the National Environmental Policy Act (NEPA) decision document, as well as a draft copy of the document. According to the 1986 Garrison Diversion Reformulation Act, construction may begin after the project has received clearance from the United States section of the Consultative Group assuring that the Administrator of EPA and the Secretaries of State and Interior have determined that the project will meet the requirements of the Boundary Waters Treaty of 1909.

Mr. Lennington reported that the United States section of the Garrison Joint Technical Committee held a conference call on January 19, 1999 to finalize the draft letter to the United States/Canada Consultative Group. The letter was executed by the United States co-chair on January 20, 1999, and submitted to the Canada co-chair for approval. Upon execution by both the United States and the Canada co-chairs, the letter will be forwarded the United States/Canada Consultative Group requesting that a meeting be scheduled at the earliest possible time. He said it is possible that if a decision of the Consultative Group can be obtained in the next month or two, that construction on the project could begin in the spring of 1999.

**NORTHWEST AREA WATER  
SUPPLY PROJECT -  
APPROVAL OF INTERIM  
FINANCING CONTRACT  
WITH CITY OF MINOT  
(SWC Project No. 237-04)**

James Lennington stated that the Northwest Area Water Supply water service contract, approved by the city of Minot in 1994, was developed during the prefinal design of the project. Revenue bonding was being considered as an option for the local

share of construction. Under the contracts, the users would start to repay the capital costs of the project once they begin receiving water. As the project developed and the option of revenue bonding was further explored, it was determined by the Commission's financial advisor and the underwriter that as

the contracts were written, the project would not be able to begin generating revenue until the pipeline reached Minot. A four or five year construction time table for reaching Minot would be impacted by any delays or reductions in MR&I funding, which could result in an unfavorable rating on the bonds and preclude bonding as an option.

Mr. Lennington explained that an addendum to Minot's contract was drafted, which guaranteed the payment of capital costs if it became necessary. Under this addendum, if construction was delayed beyond four years, Minot would begin making principal and interest payments on the bonds. Discussion of this addendum led to the development of a separate contract with Minot for financing the costs of the project during the period of construction of the pipeline from the intake to Minot's water treatment plant.

The draft interim financing contract was presented for the State Water Commission's consideration. Mr. Lennington explained that under the interim financing contract, the Commission would commit, upon commencement of construction, to keeping the current allocation for NAWS, Phase II (Minot) of \$26,730,000 in the five-year plan for expending MR&I funds, subject to annual reductions equal to the amount expended. The Commission would also commit, upon commencement of construction, to recommend to the Secretary of the Interior that a minimum of \$26,730,000 of the MR&I federal funds authorized under the Act, if appropriated and received after Fiscal Year 1998, be used to fund NAWS, Phase II (Minot). If favorable action is taken by the Commission on the contract, the city of Minot would agree to underwrite the local share of the capital costs incurred by the Commission.

The city of Minot intends to use a \$0.01 sales tax to meet its obligation under this contract. The tax would begin on January 1, 2000, after the present \$0.01 sales tax for improvements to the All Seasons Arena sunsets. The sales tax is expected to generate \$4.0 to \$4.5 million a year. The current cost estimate for NAWS, Phase II (Minot) is approximately \$52 million. Mr. Lennington stated approval of the interim financing contract and the sales tax will allow construction to begin in 1999, pending compliance with the National Environmental Policy Act.

The Garrison Diversion Conservancy District Board of Directors passed a resolution in support of the interim financing contract at its meeting on January 7, 1999.

The water service contract for Minot is being developed. After review and approval by the advisory committee, the contract will be presented for the Commission's consideration.

It was the recommendation of the State Engineer that the State Water Commission approve the Northwest Area Water Supply interim financing contract with the city of Minot.

*It was moved by Commissioner Johnson and seconded by Commissioner Hillesland that the State Water Commission approve the Northwest Area Water Supply interim financing contract with the city of Minot. SEE APPENDIX "E"*

*Commissioners Ames, DeWitz, Hillesland, Johnson, Thompson, and Vice Chairman Olin voted aye. There were no nay votes. The Vice Chairman declared the motion unanimously carried.*

**NORTHWEST AREA WATER  
SUPPLY PROJECT -  
WATER PERMIT APPLICATIONS  
(SWC Project No. 237-04)**

Conditional water permit No. 1416 originally authorized the U.S. Bureau of Reclamation to divert up to 3,145,000 acre-feet of water for the Garrison Diversion project. The

primary source of water was the Missouri River from a point of diversion in Section 28, Township 148 North, Range 83 West, the location of the Snake Creek pumping plant. The Souris, Sheyenne and James Rivers were also identified as sources of water, but only as streams from which return flows would be captured. Permit No. 1416 did not include the right to divert the natural flow of these secondary streams.

In response to the reduced project scale resulting from the Garrison Diversion Reformulation Act of 1986, a portion of permit No. 1416 was assigned to the North Dakota State Water Commission for future development, and became permit No. 1416A. This permit authorizes the North Dakota State Water Commission to divert up to 1,932,652 acre-feet of water for irrigation, municipal and industrial purposes, fish and wildlife, recreation, power generation, pollution abatement, and other authorized purposes. A total of 36,307 acre-feet of water were assigned for municipal, rural and industrial use. This total was divided between the Missouri, Devils Lake, Sheyenne/Red, and Souris basins. Based on the relative populations, the total quantity assigned for municipal, rural and industrial use for the Souris River was 15,490 acre-feet of water.

Two conditional water permit applications were recently filed for the Northwest Area Water Supply project. Each application requests the right to use 12,000 acre-feet of water annually. One application requests point(s) of diversion from Lake Sakakawea at the Snake

Creek pumping plant, and the other requests point(s) of diversion in Lake Audubon. Both sites fall within the NW1/4 of Section 28, Township 148 North, Range 83 West. Two applications were filed because of the uncertainty surrounding the ultimate diversion point.

Secretary Sprynczynatyk explained it has been proposed that development of the NAWS project could proceed under the authority of water permit No. 1416A. The quantity of water requested is less than the quantity set aside for municipal use in the Souris basin. The intake, whether it be in Lake Sakakawea or Lake Audubon, is within the legal point(s) of diversion for water permit No. 1416A.

Due to the remaining uncertainty surrounding the fate of the Garrison project, and the likelihood of development of the NAWS project, the State Engineer extended the beneficial use date to December 31, 2008 for water permit No. 1416A. Secretary Sprynczynatyk stated the NAWS project, as proposed, can proceed under the authority of water permit No. 1416A without any amendments being necessary.

**DEVILS LAKE  
HYDROLOGIC UPDATE  
(SWC Project No. 416-02)**

Secretary Sprynczynatyk reported the current level of Devils Lake is 1443.9. The lake receded approximately 10 inches since its all time recorded daily high of 1444.7 that occurred in July, 1998, although its elevation has remained relatively consistent since mid-November.

Snow depths within the basin averages approximately 12 inches. The State Water Commission staff completed two snowpack surveys last winter and is scheduled to complete a survey of this year's snowpack the first week of February. The survey will assist in providing an estimate of snow depth and water content throughout the basin. The National Weather Service will issue its spring flood outlook for the state in early February. The outlook should provide an estimate for the spring runoff based on average precipitation occurring between the outlook release date and the spring melt.

**DEVILS LAKE -  
POTENTIAL LEGAL ACTION  
BY DEVILS LAKE PROPERTY  
OWNERS TO RECOVER DAMAGES  
DUE TO FLOODING  
(SWC Project No. 416)**

At its December 21, 1998 meeting, the Commission members were informed of potential legal action being pursued by Devils Lake lakeshore property owners in anticipation to recover damages due to flooding. Secretary Sprynczynatyk stated approximately 60 people have entered into an agreement intervening the services of the St. Cloud, Minnesota-based law firm, Rinke-Noonan, with the intention to file the lawsuit by February 1, 1999.

**CORPS OF ENGINEERS DEVILS  
LAKE EMERGENCY OUTLET  
(SWC Project No. 416-01)**

Secretary Sprynczynatyk reported the Corps of Engineers and their consultant, Barr Engineering, are continuing the engineering work on the

proposed emergency outlet for Devils Lake. The proposed outlet will follow the Peterson Coulee corridor and will consist of a pump station located on the shore of the west bay south of Minnewaukan, approximately 13 miles of pipeline, and an energy dissipation structure located adjacent to the Sheyenne River. The pipeline will have a maximum pumping capacity of 300 cubic feet per second, but the flow will be controlled to maintain the 450 mg/l sulfate standard and 600 cubic feet per second channel capacity in the Sheyenne River.

The State Water Commission staff continues to meet with the Corps and Barr Engineering to discuss the state's interests in the design of the outlet. The most recent meeting with the Corps of Engineers and Barr Engineering occurred on January 10-12, 1999 to review the Devils Lake outlet in an effort to enhance its effectiveness and reduce its cost.

The meeting participants first identified potential changes to the project which may be beneficial, identified criteria by which to rank them, and weighed factors for the criteria. This evolved in the elimination and grouping process, which produced a set of alternatives for the pump station, pipeline, source water, and some other independent actions. Responsibility for evaluating these alternatives was divided between the Corps of Engineers and Barr Engineering. The next step in the process will be determined by the outcome of these evaluations. The results of this value engineering process will be used in the Report to Congress, which is due the end of April, 1999.

The engineering documentation for the entire project is anticipated to be completed in January, 1999. The final scoping document is expected to be released near the end of January, 1999, which will include the details of the process used to determine the scope of issues that will be included in the Environmental Impact Statement (EIS) for the project. Future milestones in the EIS process for the emergency outlet are currently set as:

September, 1999	Draft EIS out for public review
October, 1999	Public review meetings
February, 2000	Final EIS distributed
May, 2000	Record of Decision



**DEVILS LAKE TO STUMP  
LAKE EMERGENCY OUTLET  
(SWC Project No. 416-01)**

If Devils Lake reaches an elevation of 1446.6 feet msl, it will begin to spill into Stump Lake. In an effort to reduce or delay flood damages

around Devils Lake and to provide time for the Peterson Coulee outlet to be constructed, the State Water Commission staff has been investigating the possibility of an emergency plan to move up to four feet of floodwater from Devils Lake to Stump Lake. The intention is to raise Stump Lake to an elevation between 1441 and 1448 feet msl, depending on the inflow to Devils Lake over the next several years.

The project will require compensating landowners around Stump Lake whose land will be inundated by the project. To establish the cost of the land, appraisals were conducted, and a contract with Reilly Appraisals Consultants, Inc., was executed by the State Engineer on August 31, 1998. The contract called for appraisals of three tracts of land for the Devils Lake to Stump Lake emergency outlet including: 1) a tract along the channel; 2) a large tract on West Stump Lake consisting of a farmstead cropland and hayland; and 3) a wooded tract on East Stump Lake. The contract was completed October 12, 1998.

A preliminary cost estimate of \$8 million has been developed for the project, which is based upon a preliminary project design, an estimate of project mitigation requirements, a county-wide average of land values, and \$2 million to raise State Highway 1 east of Stump Lake.

At its meeting on December 21, 1998, Secretary Sprynczynatyk informed the Commission members that on December 11, 1998, a response was received from Roger Hollovoet, District Manager, U.S. Fish and Wildlife Service, Devils Lake, ND, addressing the request of refuge compatibility in the proposed plan to move water from Devils Lake to Stump Lake where the Stump Lake National Wildlife Refuge is located. In part, the letter stated:

"The solicitor's opinion determined that your proposal is a refuge compatibility issue. Therefore, we have to determine if the proposed action will interfere with or detract from the mission of the National Wildlife Refuge System or the purposes of the individual National Wildlife Refuge. Stump Lake NWR was established under Executive Order 296A by President Theodore Roosevelt on March 9, 1905 for the purpose of a preserve and breeding grounds for native birds.

We are mandated to carry out the mission of the National Wildlife Refuge System and the purpose of Stump Lake NWR. Your proposal will inundate the Refuge for several years and will not allow the refuge to carry out its

designed purpose, therefore, it is determined that this proposed action is not compatible. This decision is based on the Refuge's purpose, the National Wildlife Refuge Administration Act and the National Wildlife Refuge Improvement Act. After various discussions, I have also determined that we cannot mitigate or negotiate the loss of an entire Refuge unless Congress requires us to do so."

In an effort to estimate the effects of the proposed project, it was assumed that the annual increase in volume of Devils Lake will be 263,000 acre-feet, which is the same as the average volume increase over the last five years. Monthly water surface elevations for Devils Lake and Stump Lake were calculated using this volume increase. Through the use of plot maps, Secretary Spryncynatyk explained that the project would result in Devils Lake elevations up to two feet lower, allowing time for the Peterson Coulee outlet to be constructed. Stump Lake would rise to elevation 1444 feet msl by the end of 2000 under this scenario.

**DEVILS LAKE AVAILABLE  
STORAGE ACREAGE PROGRAM  
(SWC Project No. 1882-01)**

On December 21, 1998 the State Water Commission passed a motion to approve the reallocation of up to \$950,000 from the previous Available

Storage Acreage Program (ASAP) contingency fund, from money earmarked to Devils Lake projects, and from the general projects fund, as needed, to the ASAP program to continue the program through 1999.

Letters were sent to the 1998 participants following the Commission's approval of funding the program into 1999 to inform them of the status of their site and the state's intentions of continued storage in 1999. To date, approximately 100 of the 231 people notified have agreed to continue storing water in 1999.

The water storage sites that were determined to be ineffective were not given the option of renewing their contracts. These sites include those that have not filled to specified levels and sites below elevation 1446 feet msl. Sites below 1446 feet msl were assumed to be ineffective because of potential inundation by Devils Lake after the spring rise. Landowners with ineffective sites may be offered reduced payments for the benefits the sites do provide.

As funding for ASAP was being considered for the fourth consecutive year, some questions of the program were asked by the Commission members in making its decision to continue the program into 1999. Brett Hovde, State Water Commission Planner, provided a review of the purpose and goals of the program to clarify what has been done. He said maintaining the program is important because it does keep water from

Devils Lake, it helps to reduce flooding on the way to Devils Lake, and it provides some compensation for farmers who wish to forego the use of their land. He said it is also important to note that since the inception of the program, the inflows into Devils Lake have been reduced by somewhere between 40,000-50,000 acre-feet, which kept the lake from rising about four to five inches. The 40,000-50,000 acre-foot counts only the volume of water stored in the first year and an estimate of the amount of water lost to evapotranspiration in subsequent years.

**DEVILS LAKE SUBBASINS  
WATER MANAGEMENT PLANS  
(SWC Project No. 1882-01)**

Secretary Sprynczynatyk reported that in 1997 each subbasin within the Devils Lake watershed established a subbasin advisory board to oversee the

“on the ground” activity that would occur with the implementation of the overall Devils Lake Basin Water Management Plan. Members of each advisory board live within the watershed they represent to help ensure they are familiar with the landscape and the people living within those areas. The subbasin boards will help to manage the waters in their respective watershed. The legal control of the watershed remains with the Devils Lake Basin Joint Water Resource Board.

After the subbasin advisory boards were formed, initial meetings were held to provide information as to the need for their services. The St. Joe/Calio Coulee advisory board began by conducting an inventory of drains and road crossings to better understand how water moves through their subbasin. Secretary Sprynczynatyk said the other boards have accomplished little since the organization meeting.

On January 11, 1999, the Commission staff met with members of the Devils Lake Joint Water Resource Board to discuss ways to increase the activity of the subbasin boards. Clarification of the direction of the boards and specific tasks, which support the plan, were discussed. The first task identified was to encourage each board to define problem areas, or “hot zones”, within each subbasin. To further encourage activity by the subbasin boards, the Joint Board approved a \$25 per meeting stipend and mileage reimbursement for the subbasin advisory board members.

**APPROVAL OF RELEASE OF  
EASEMENT AND DEDICATION OF  
FRENZEL DAM, STARK COUNTY  
(SWC Project No. 1307)**

A request was presented for the State Water Commission’s consideration to release the easement and dedication concerning the Frenzel Dam, located in the NW1/4 of Section 13, Township

138 North, Range 96 West, in Stark County. The Federal Emergency Relief Administration constructed the dam in or about 1934, and the dam was breached in 1936. Ralph Frenzel, Jr., the landowner, indicated in his request that the dam is washed out and is no longer of public use.

Comments were solicited from the State Historical Society, State Health Department, State Game and Fish Department, State Parks and Recreation, State Land Department, Stark County Commission and the Stark County Water Resource District. Because of the comments received and the results of an independent evaluation, it does not appear that the dam has been or will provide public benefits.

It was the recommendation of the State Engineer that the State Water Commission approve the release of easement and dedication for the Frenzel Dam. This action is pursuant to North Dakota Century Code section 61-02-14.1.

***It was moved by Commissioner Thompson and seconded by Commissioner Johnson that the State Water Commission approve the release of easement and dedication for the Frenzel Dam in Stark County. SEE APPENDIX "F"***

***Commissioners Ames, DeWitz, Hillesland, Johnson, Thompson, and Vice Chairman Olin voted aye. There were no nay votes. The Vice Chairman declared the motion unanimously carried.***

**1999 STATE WATER  
MANAGEMENT PLAN  
(SWC Project No. 322)**

At its December 21, 1998 meeting, the State Water Commission approved the adoption of the draft 1999 State Water Management Plan Executive

Summary and its use in displaying North Dakota's water management needs.

The previous update to the plan in 1992 focused on water projects. The 1999 State Water Plan focuses on water management for the 21st century. It outlines current management policies, problems with those policies, and will help serve as a guide for decision-makers. It is intended to be a realistic vision of water management with emphasis on regional and local projects that are appropriate to the plan's goals and objectives.

The 1999 State Water Management Plan has three principal goals: 1) to comprehensively illustrate how North Dakota water resources are currently managed and the responsibilities associated with that management; 2) to provide a vision or direction for how water could be managed into the 21st century; and 3) to reinforce the framework for implementation of the current water management plan and water development program, per the Fifty-fifth North Dakota Legislative Assembly Session laws, Chapter 15, Section 9, which reads as follows:

*The legislative assembly finds that there is a critical need to develop a comprehensive statewide water development program. The state water commission shall develop and implement a comprehensive statewide water development program. The commission shall design the program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to its proper share of Missouri River water.*

LeRoy Klapprodt, State Water Commission's Planning and Education Division Director, reported that the Executive Summary has been completed and copies were made available to the legislative assembly and others. Mr. Klapprodt said the staff has now shifted its effort to finalizing the complete plan. Organizing the compiled information into an easy-to-understand format is essentially the last task to complete. The complete 1999 State Water Management Plan is scheduled for release by March 1, 1999.

The Commission members were provided a map depicting the proposed State Water Management Plan projects for the 1999-2001 timeframe. The map is attached hereto as **APPENDIX "G"**.

**RED RIVER BASIN BOARD  
(SWC File AOC/RBB)**

The Red River Basin Board was organized to develop and cause to be implemented, a comprehensive water management plan for the Red River basin addressing the needs on a watershed basis and to facilitate and pursue the resolution of inter-jurisdictional issues.

The board contracted with Eugene Krenz, former State Water Commission employee, to develop the Red River Basin Water Management Plan and coordinate the efforts for implementation of the plan. An inventory task force, with several subcommittees, is working on the initial phases on the new plan.

The Red River Basin Board has established special task forces to address watershed issues involving Devils Lake, Pembina River, and Lake Traverse.

The board held a retreat on September 30 and October 1, 1998 in Grand Forks, and agreed to continue its relationship with The International Coalition and to hire an executive director to oversee the tasks of the board. Public workshops were held October 27-29, 1998 to discuss the guiding principles that were established by the board and to inform the public on the board's direction.

**INTERNATIONAL JOINT  
COMMISSION RED RIVER  
BASIN TASK FORCE  
(SWC Project No. 1431-08)  
(SWC File AOC/RRB)**

The federal governments of the United States and Canada have formally requested the International Joint Commission to examine and report on the causes and effects of the flooding in the Red River basin and to

make recommendations to the two governments by the end of 1998 on the means of reducing future risks from flooding. The International Joint Commission is a bi-national United States-Canada organization established by the Boundary Waters Treaty of 1909 and assists the governments in managing waters along the border for the benefit of both countries. It has built its reputation by producing cooperation among a variety of interests on both sides of the border.

To assist the International Joint Commission with the work, the Commission appointed an International Red River Basin Task Force consisting of United States and Canada flood experts from a variety of backgrounds in public policy and water resource management. Task force members serve the Commission in their personal and professional capacities, not as representatives of their agencies or employers. Secretary Sprynczynatyk is a member of the task force.

Efforts of the task force focused on flood forecasting, flood controls, emergency preparedness, land use practices, and related issues. The task force submitted an interim report to the International Joint Commission entitled *Interim Report of the International Red River Basin Task Force to the International Joint Commission - Red River Flooding Short-Term Measures, dated December, 1997.*

The interim report includes 40 recommendations developed by the task force regarding flood forecasting, monitoring improvements, emergency measures and planning, environmental concerns, and floodplain management including zoning, legislation and enforcement. The interim report includes a draft plan of study to highlight issues that need more attention and that will form part of the final report. The draft plan proposes the development of a database, models and studies to assist future management of the river basin.

The International Joint Commission and the task force held public consultations in the Red River basin to receive public comments. The written comments were accepted until February 27, 1998. The task force is undertaking studies to support the preparation of its final report on the problems relating to flooding in the Red River in North Dakota, Minnesota, and Manitoba. The IJC has proposed that its final report will be submitted by June 30, 1999.

**RED RIVER BASIN  
MITIGATION INITIATIVE  
(SWC File AOC/RRB)**

Secretary Sprynczynatyk reported that the Federal Emergency Management Agency (FEMA) has organized the Red River Mitigation Initiative, under the coordination of the North Dakota Consensus Council, to create a model that communities and regions can use for disaster prevention in the future. The Initiative includes representatives from North Dakota, Minnesota and Manitoba. Secretary Sprynczynatyk is a member of the Initiative. The organizational meeting was held on December 14, 1998, and the next scheduled meeting is January 29, 1999 in Fargo, ND.

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

In 1994, the U.S. Army Corps of Engineers circulated a draft Environmental Impact Statement (EIS), which identified a preferred alternative for the future operation of the Missouri River mainstem reservoir system. As required by the National Environmental Policy Act, the draft EIS was subject to full public review. In response to the public comments, the Corps agreed to conduct additional technical studies, re-initiate the alternative analysis, and prepare a revised draft EIS. The Corps agreed that the revised draft EIS would present a preferred alternative for public review and comment.

Current efforts of the Missouri River Basin Association and other interest groups have shown considerable progress in regard for the potential for consensus building in the basin. To maximize the potential for consensus building regarding the operation of the reservoir system, the Corps of Engineers elected to prepare and circulate a preliminary revised draft EIS, which does not present a preferred alternative, but presents data on eight alternatives that represent the range of interests in the basin. At its August 13, 1998 meeting, the Commission members were provided the "Summary of the Preliminary Revised Draft Environmental Impact Statement Master Water Control Manual Missouri River", dated August, 1998.

A six-month public coordination period followed the release of the preliminary revised draft EIS, with a series of public workshops held throughout the Missouri River basin. The public workshops were held in North Dakota in September, 1998 at New Town, Williston, Garrison and Bismarck. Informational material, prepared by the Commission staff relative to North Dakota's perspective, was made available at the workshops. The preliminary revised draft EIS is part of the Corps' effort to build consensus to facilitate the identification of a preferred alternative. State agencies developed the official state's position to ensure that North Dakota's interests are considered in the new Master Manual. When a preferred alternative has been identified and the revised draft EIS completed, the Corps of Engineers will hold public hearings, currently scheduled for October, 1999 through March, 2000.

The Missouri River Basin Association held a conference in Kansas City, Missouri, on December 14 and 15, 1998. Approximately 150 Missouri River constituents participated in the conference to address the Corps of Engineers Master Manual review for the operations of the Missouri River system. Secretary Sprynczynatyk commented that it was a positive conference, and the Missouri River Basin Association will continue to review the recommendations at its next meeting scheduled for March 8, 1999. He said the goal of the Missouri River Basin Association is to make a final recommendation to the Corps of Engineers by May 31, 1999.

**GRAND FORKS FLOOD  
CONTROL PROJECT; AND  
APPROVAL OF RESOLUTION  
OF SUPPORT  
(SWC Project No. 830)  
(SWC Resolution No. 99-1-482)**

Ken Vein, Grand Forks City Engineer, provided a status report on the permanent flood protection project for the cities of Grand Forks and East Grand Forks. The estimated project cost is \$342 million, with a non-federal share of \$116

million. In December, 1998, Governor Schafer recommended a \$52 million state contribution during the 1999-2001 biennium for the project through the sale of bonds.

Senate Bill 2165 authorizes the State Water Commission to issue bonds for flood control projects for cities that suffered major damage as a result of the 1997 flood. Secretary Sprynczynatyk said at this time, Grand Forks is the only project to meet the criteria for projects outlined in the bill. The bill contains the executive recommendation for the Grand Forks flood control project, and provides for up to \$52 million, through bonding, to be used as the state contribution for the non-federal cost share requirements of flood control projects. Senate Bill 2165 was heard before the Senate Appropriations committee on January 20, 1999.

A draft resolution of support of the Grand Forks flood control project was presented for the State Water Commission's consideration. Affirmative action by the Commission would recognize that the current plan proposed by the Corps of Engineers is the most cost effective means to provide flood control to the cities of Grand Forks and East Grand Forks. The resolution supports the city of Grand Forks in its efforts to provide flood control for its citizens, endorses the city's selected plan, and urges expedient implementation to include state funding of a portion of the non-federal cost share.

It was the recommendation of the State Engineer that the State Water Commission approve Resolution No. 99-1-482 supporting the Grand Forks flood control project.



*It was moved by Commissioner Johnson, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission approve Resolution No. 99-1-482, In Support of the Grand Forks Flood Control Project. SEE APPENDIX "H"*

**1998 WATER PERMIT  
APPLICATIONS SUMMARY  
(SWC Project No. 1400)**

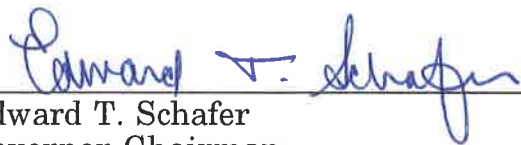
applications filed to irrigate 16,110 acres. The remaining applications were for various other uses including flood control, industrial, livestock, municipal, recreation, and rural domestic. **SEE APPENDIX "I"**

A summary of the 1998 water permit applications filed was provided to the Commission members. A total of 115 applications were filed, with 78

**NEXT STATE WATER  
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled for March 24, 1999 in Bismarck, ND.

There being no further business to come before the State Water Commission, Vice Chairman Olin adjourned the meeting at 4:10 PM.



Edward T. Schafer  
Governor-Chairman

SEAL



David A. Sprynczynatyk  
State Engineer, and  
Chief Engineer-Secretary



Office of the State Engineer

MEMORANDUM

**TO:** Governor Edward T. Schafer  
Members of the State Water Commission

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

**SUBJECT:** Promised Payment Plan for Water Projects

**DATE:** January 25, 1999

Dave Koland, Executive Director, North Dakota Rural Water Systems Association, presented the Promised Payment Plan (PPP) for MR&I water supply projects to the State Water Commission at its December 21, 1998 meeting. The plan is intended to address the lag in annual federal MR&I appropriations causing water supply projects to be broken into small phases because of the limited annual appropriations. The net result is more costly projects and the delay of water delivery. The PPP program would advance funds to allow expedited project construction and water delivery.

Similarly, the State of South Dakota has used the practice of awarding contracts that total more than the federal funding immediately available. This has been used as a lobbying tool in Washington to show the importance of projects, their commitment to build the projects, and the need for the expedient appropriation of funds. The question is, how much risk is the state willing to take regarding future federal appropriations.

The major factor in determining whether and how a water supply project will be built is the availability of MR&I grants. The planning window for a project is about 14 months from when a sponsor receives the notice of limited funding to proceed and until construction can actually be started. This time is needed to complete the final environmental review, design, and bidding process. This requires project sponsors to start planning in April of any given year in order to begin construction in the spring of the following year. The concept of the PPP program is to give the project sponsor a commitment with the start of the program and allow the project sponsor to proceed through construction as efficiently as possible.

The remaining \$53 million will likely be received within the next five or six years. The following table shows the current plan for project development:

<u>Project</u>	<u>MR&amp;I Grant</u>
Benson Rural Water	\$ 8,200,000
Northwest Area Water Supply	27,000,000
Pierce Rural Water	3,000,000
Ransom-Sargent Rural Water	13,000,000
Rugby Water Supply (NAWS-Phase I)	800,000
Administration	<u>1,000,000</u>
Total	\$53,000,000

Making MR&I funds available soon in a more timely manner, would save construction costs and bring residents water service sooner. The Ransom-Sargent project engineer estimated that by bidding the project in one \$16 million phase, instead of bidding three smaller phases, a cost savings of \$2 million may be realized. Another factor in keeping down the cost of manufacturing pipe is the amount of pipe the supplier produces in a job. The low price of oil affects the raw material cost of PVC pipe and is reflected in the recent good bid prices of PVC pipe.

Mr. Koland states the project sponsors are willing to pay the interest costs that occur in borrowing interim funding to cover the MR&I grant portion of a project. This cost, they believe, would be offset by the project cost savings because of being able to contract for the whole project. The cost of PPP funding would be included in the project repayment costs. This would keep the Commission's setup and implementation costs for the PPP to a minimum, mainly only Commission staff time.

The start of some projects has been stalled because the available MR&I funding timetable is unsure. Mr. Koland said that some projects are ready to proceed, but have not proceeded because the sponsors are not able to assume the funding risk in completing the feasibility study and design with out-of-pocket funds and be ready for construction. Most projects are proposing to serve a large group of new users, have a board consisting of volunteers, have no staff, and operate with a small limited budget created by collecting users fees. These fees are typically consumed by the initial assessments and preliminary engineering reports. The systems have no other means to generate a revenue stream to secure funding until the project begins to deliver water. The boards generally do not have enough funding through user fees to complete the environmental requirements necessary to move projects to design. Environmental costs range

MEMORANDUM

January 25, 1999

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resolution of the Commission and evidenced by a written agreement. The pledge of revenue would be the security for a guarantee or note. The bill also addresses the reserve fund to handle the funding and provide funds for debt service.

The Bank of North Dakota has been informally approached about the concept of setting up a line of credit to accomplish the PPP program funding concept. The bank would need a secondary repayment source if the federal government does not come through with funding in a timely manner. I will be meeting with the bank's president to learn more about what the bank may be able to do.

Benefits of the Promised Payment Plan identified by the North Dakota Rural Water Systems Association include full utilization of North Dakota's short construction season, lower project costs, better project design, increased initial signup of members, and orderly water development which would allow the best use of anticipated municipal, rural, and industrial water supply funds.

**I recommend the State Water Commission authorize the State Engineer and staff to further explore and develop a plan to utilize the Promised Payment Plan concept for MR&I water supply projects scheduled to be constructed within the remaining \$53 million of MR&I funding. The Plan is then to be brought back to the Commission for further consideration.**

DAS:JNM/sl/237-3

Attachments

# RANSOM SARGENT

21-Jan-99

DRAFT

	Capital	Grant 0.65%	Loan 0.35%	
1998	\$2,396,786	\$1,500,000	\$896,786	FY98 Grant is fixed at \$1.5 million which is not 65%
1999	16,568,233	\$10,769,351	\$5,798,882	
2000	6,692,696	\$4,350,252	\$2,342,444	
	<b>\$25,657,715</b>	<b>\$16,619,604</b>	<b>\$9,038,111</b>	

	Total	Grant	Loan	Sum Grant
1999				
Jan				
Feb	\$5,000	\$3,250	\$1,750	\$3,250
Mar	\$172,000	\$111,800	\$60,200	\$115,050
Apr	\$186,000	\$120,900	\$65,100	\$235,950
May	\$13,000	\$8,450	\$4,550	\$244,400
Jun	\$395,000	\$256,750	\$138,250	\$501,150
Jul	\$740,000	\$481,000	\$259,000	\$982,150
Aug	\$437,500	\$284,375	\$153,125	\$1,266,525
Sep	\$628,000	\$408,200	\$219,800	\$1,674,725
Oct	\$265,000	\$172,250	\$92,750	\$1,846,975
Nov	\$257,500	\$167,375	\$90,125	\$2,014,350
Dec	\$256,000	\$166,400	\$89,600	\$2,180,750
2000				
Jan	\$452,000	\$293,800	\$158,200	\$2,474,550
Feb	\$40,000	\$26,000	\$14,000	\$2,500,550
Mar	\$50,000	\$32,500	\$17,500	\$2,533,050
Apr	\$61,000	\$39,650	\$21,350	\$2,572,700
May	\$265,000	\$172,250	\$92,750	\$2,744,950
Jun	\$1,460,000	\$949,000	\$511,000	\$3,693,950
Jul	\$1,695,000	\$1,101,750	\$593,250	\$4,795,700
Aug	\$1,545,000	\$1,004,250	\$540,750	\$5,799,950
Sep	\$1,775,000	\$1,153,750	\$621,250	\$6,953,700
Oct	\$1,046,000	\$679,900	\$366,100	\$7,633,600
Nov	\$935,000	\$607,750	\$327,250	\$8,241,350
Dec	\$350,000	\$227,500	\$122,500	\$8,468,850
2001				
Jan	\$230,000	\$149,500	\$80,500	\$8,618,350
Feb	\$220,000	\$143,000	\$77,000	\$8,761,350
Mar	\$135,000	\$87,750	\$47,250	\$8,849,100
Apr	\$200,000	\$130,000	\$70,000	\$8,979,100
May	\$440,000	\$286,000	\$154,000	\$9,265,100
Jun	\$1,395,000	\$906,750	\$488,250	\$10,171,850
Jul	\$1,495,000	\$971,750	\$523,250	\$11,143,600
Aug	\$1,710,000	\$1,111,500	\$598,500	\$12,255,100
Sep	\$1,025,000	\$666,250	\$358,750	\$12,921,350
Oct	\$790,000	\$513,500	\$276,500	\$13,434,850
Nov	\$710,000	\$461,500	\$248,500	\$13,896,350
Dec	\$335,000	\$217,750	\$117,250	\$14,114,100
2002				
Jan	\$30,000	\$19,500	\$10,500	\$14,133,600
Feb	\$20,000	\$13,000	\$7,000	\$14,146,600
Mar	\$40,000	\$26,000	\$14,000	\$14,172,600
Apr	\$140,000	\$91,000	\$49,000	\$14,263,600
May	\$345,000	\$224,250	\$120,750	\$14,487,850
Jun	\$860,000	\$559,000	\$301,000	\$15,046,850
Jul	\$885,000	\$575,250	\$309,750	\$15,622,100
Aug	\$750,000	\$487,500	\$262,500	\$16,109,600
Sep	\$270,000	\$175,500	\$94,500	\$16,285,100
Oct	\$175,000	\$113,750	\$61,250	\$16,398,850
Nov	\$230,000	\$149,500	\$80,500	\$16,548,350
Dec	\$205,000	\$133,250	\$71,750	\$16,681,600
	<b>\$25,664,000</b>	<b>\$16,681,600</b>	<b>\$8,982,400</b>	

## AUTHORITY OF THE STATE WATER COMMISSION TO IMPLEMENT THE PROMISED PAYMENT PLAN

This memorandum discusses the authority of the State Water Commission to implement the promised payment plan as envisioned by the North Dakota Rural Water Systems Association. Under the promised payment plan, a four-year construction schedule and municipal, rural, and industrial water supply budget would be developed based on the \$66 million federal municipal, rural, and industrial water supply authorization contained in the Garrison Diversion Reformulation Act of 1986. If in any one year of the proposed four-year budget the federal payment fell short of the budgeted amount, the state would promise to cover the shortage until the federal dollars were received. Benefits of the promised payment plan identified by the North Dakota Rural Water Systems Association include full utilization of North Dakota's short construction season, lower project costs, better project design, increased initial sign-up of members, and orderly water development which would allow the best use of limited municipal, rural, and industrial water supply funds. The feasibility of this plan hinges on whether the State Water Commission has statutory authority to provide interim financing to implement the promised payment plan.

North Dakota Century Code (NDCC) Section 61-02-68.1 provides that the State Water Commission:

Pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state as provided in this chapter, may borrow money and issue interim financing notes . . . in evidence thereof in order to provide owners with tax-exempt construction period financing. Such construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

North Dakota Century Code Section 61-02-68.2 provides that the commission may enter into interim financing and loan agreements with any owner or owners to loan the proceeds of the commission's interim financing notes to any owner or owners for works or projects authorized by Chapter 61-02 anywhere within the state and to adopt the necessary resolution therefore without regard to limitations, provisions, or requirements of any law, except those of Chapter 61-02. However, before any such agreement may be entered into, an agency or instrumentality of the United States government or an agency of the state, including the Bank of North Dakota, must have committed itself to make a grant or loan to such owner or owners. In addition, the commission may only provide interim financing less than or equal to the federal or state grant or loan commitment on each project and may not apply the proceeds of the notes and financing to any purpose other than expenses allowed by Section 61-02-68.1 and the project or works for which the loan agreement is made.

North Dakota Century Code Section 61-02-68.4 requires the commission to conduct a review of the feasibility of the project or works to ensure the projected water consumption, operating costs, construction costs, revenues, and other statistics are reliable and that the project will be able to pay its expenses before it may issue any interim financing notes pursuant to Section 61-02-68.1. Section 61-02-68.5 requires any interim financing agreement provide that the owner

## GARRISON DIVERSION OVERVIEW COMMITTEE

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code (NDCC) Section 54-35-02.7, which statutorily created the committee. The committee is responsible for legislative overview of the Garrison Diversion Unit Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Under NDCC Section 54-35-02.7, the committee consists of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

In addition to its statutory responsibilities, the Legislative Council assigned to the committee Senate Concurrent Resolution No. 4041, which directed a study of the establishment of watershed districts to manage water based on watershed boundaries.

Committee members were Representatives Pam Gulleson (Chairman), Merle Boucher, John Dorso, Eugene Nicholas, Alice Olson, and Mike Timm and Senators Aaron Krauter, Tim Mathern, Gary J. Nelson, David E. Nething, John T. Traynor, and Terry M. Wanzek. Senator William G. Goetz, prior to his resignation on July 10, 1997, and Representative Tom D. Freier, prior to his resignation on April 6, 1998, were members of the committee.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

### HISTORY OF THE PROJECT

#### Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in the state were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852).

Testimony by Dave Koland, Executive Director  
**North Dakota Rural Water Systems Association**

To the

**Garrison Diversion Overview Committee**

Roughrider Room, State Capitol, Bismarck  
December 11, 1997

Madam Chairman, members of the committee; My name is Dave Koland. I serve as the Executive Director of North Dakota Rural Water Systems Association. Our association has a membership of 30 rural water systems and 226 municipal water systems.

My purpose today is to direct your attention to a potentially fatal funding lag in obtaining assurances of federal funding under the Municipal, Rural and Industrial program (MR&I). The importance of MR&I grant money to the affordability of most large scale water projects in North Dakota makes the availability of MR&I funding the chief determining factor on when the project will be built.

The uncertain nature of the congressional budgeting and appropriations process has resulted in reducing the time available to project sponsors to an unacceptably short time span. Most sponsors would agree that 10 months is generally needed to complete the necessary final design, environmental work, and bidding process.



The state may have several options to obtain the funds if needed. They could use the same bonding mechanism that was used to provide funds for dealing with the Devils Lake flooding situation. The State Water Commission may already have authority under the Water Project Development chapter, Statewide Water Development Program, or it could issue Interim Financing Notes. There may also be additional options available under the Drinking Water State Revolving Fund.

The PPP would get water projects back on a sensible development schedule saving precious dollars by taking advantage of more favorable bid letting times. PPP would enable project construction to begin at the start of the construction season and reduce the need for contractors to build in undue amounts of overtime work or winter construction. The time available for preliminary engineering and design work would be increased to a more practical level.

It is my belief that PPP would result in reducing the overall cost of water projects, improves the effectiveness of water projects, and would bring safe clean water to more people in North Dakota.

MEMORANDUM

TO: David Sprynczynatyk, State Engineer

FROM: *JK* Julie A. Krenz, Assistant Attorney General

DATE: February 4, 1998

RE: Promised Payment Plan

Under the Promised Payment Plan (PPP), a four year construction schedule and MR&I budget would be developed based on the \$66 million federal MR&I authorization under the Garrison Diversion Reformulation Act of 1986. If in any one year of the proposed budget the federal payment fell short of the budgeted amount the state would promise to cover the shortage until the federal dollars were received. You asked whether the State Water Commission could provide interim financing to facilitate the PPP.

N.D.C.C. § 61-02-68.1 provides:

The commission, pursuant to appropriate resolution, and in order to carry out the business of developing the water resources of this state. . . may borrow money and issue interim financing notes . . . in evidence thereof in order to provide owners with tax-exempt construction period financing. Such construction period financing may include the costs of construction of works or projects, funding of debt service reserves and capitalized interest, and the payment of the costs of issuance.

The SWC can enter into interim financing and loan agreements with any owner to loan the proceeds of the Commission's interim financing notes to the owner of the works. N.D.C.C. § 61-02-68.2. Before the Commission can enter into any loan agreement, an agency of the United States or any agency of North Dakota, including the Bank of North Dakota, must have committed itself to make a grant or loan to the owner. *Id.* The amount of interim financing the Commission can provide must be equal to or less than the federal or state loan or grant commitment for each project. *Id.* Under state law, the maturity date of the interim financing notes may not exceed three years from the date of issue, however the date can be extended for two years. N.D.C.C. § 61-02-68.6. Bond counsel will need to be consulted to determine whether interim financing notes can be issued for these lengths of time under federal tax law and regulations without affecting their tax-exempt status. The notes must be secured by a pledge of the grant or loan to be made by the state or federal agency.

The key here is that a commitment for long-term financing must be obtained before the Commission can issue interim financing notes. If the Commission was sure that

HOUSE BILL NO. 1455

Introduced by

Representatives Severson, Pollert

Senators Heitkamp, Klein

1 A BILL for an Act to create and enact sections 61-02-68.14, 61-02-68.15, 61-02-68.16,  
2 61-02-68.17, and 61-02-68.18 of the North Dakota Century Code, relating to state water  
3 commission bonding authority; to amend and reenact section 61-02-68.1 of the North Dakota  
4 Century Code, relating to guarantees of evidences of indebtedness by the state water  
5 commission; and to declare an emergency.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 SECTION 1. AMENDMENT. Section 61-02-68.1 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 61-02-68.1. Borrowing on interim notes - Expenses paid and loans made from  
10 proceeds - Issuance of notes. The commission, pursuant to appropriate resolution, and in  
11 order to carry out the business of developing the water resources of this state as provided in  
12 this chapter, may guarantee evidences of indebtedness issued or other obligations undertaken  
13 by the owners of water projects, or provide a guarantee to the indebtedness issued or other  
14 obligations undertaken by a not-for-profit organization establishing a pool program or other  
15 financing program for the owners of the water projects, may borrow money and issue interim  
16 financing notes (the terms "interim notes" or "notes" ~~may~~, unless the context demands  
17 otherwise requires, may be used in sections 61-02-68.1 through ~~61-02-68.13~~ 61-02-68.18 in  
18 lieu of the term "interim financing notes") in evidence thereof in order to provide owners with  
19 ~~tax-exempt~~ construction period financing. Such construction period financing may include the  
20 costs of construction of works or projects, funding of debt service reserves and capitalized  
21 interest, and the payment of the costs of issuance.

22 SECTION 2. Section 61-02-68.14 of the North Dakota Century Code is created and  
23 enacted as follows:

1           commission. Moneys in the reserve fund may not be withdrawn if the withdrawal  
2           would reduce the amount in the reserve fund to an amount less than the required  
3           debt service reserve, except for payment of interest due and payable on notes and  
4           the principal of notes maturing and payable and sinking fund payments and for the  
5           retirement of notes in accordance with the terms of a contract between the  
6           commission and its noteholders, for the payment of principal and interest on  
7           municipal securities or obligations of an owner of water projects for which a  
8           guarantee has been issued by the commission, and for payment of interest or  
9           principal or sinking fund payments or retirement of notes or execution of a  
10           guarantee, for which other moneys of the commission are not then available in  
11           accordance with the terms of the contract. The reserve fund may not be used for  
12           the payment of a guarantee by the commission unless the commission has  
13           determined that notes of the commission cannot be issued under acceptable terms  
14           for the payment of the guarantee or that the payment of the guarantee will not  
15           reduce the reserve fund to an amount less than the required debt service reserve.  
16           The required debt service reserve must be an aggregate amount equal to at least  
17           the largest amount of money required by the terms of all contracts between the  
18           commission and its noteholders to be raised in the current or any succeeding  
19           calendar year for the payment of interest on and maturing principal of outstanding  
20           notes and the payment required by the terms of any contract to a sinking fund  
21           established for the payment or redemption of the notes.

- 22           2. If the establishment of the reserve fund for an issue or the maintenance of an  
23           existing reserve fund at a required level under this section would necessitate the  
24           investment of all or any portion of a new reserve fund or all or any portion of an  
25           existing reserve fund at a restricted yield, because to not restrict the yield may  
26           cause the notes to be taxable under the Internal Revenue Code, then at the  
27           discretion of the commission a reserve fund does not need to be established  
28           before the issuance of notes or the reserve fund need not be funded to the levels  
29           required by other subsections of this section or an existing reserve fund may be  
30           reduced.

1 convenient to further the accomplishment of the purposes of the commission to comply with the  
2 provisions of an agreement made by or a resolution of the commission.

3       **SECTION 6.** Section 61-02-68.18 of the North Dakota Century Code is created and  
4 enacted as follows:

5       **61-02-68.18. Protection of service during term of guarantee or loan.**

- 6       1. The service provided or made available by owners of water projects through the  
7 construction or acquisition of an improvement, or the improvement revenues,  
8 financed in whole or in part with a guarantee or loan to the owners of water  
9 projects from the commission or any other state entity, may not be curtailed or  
10 limited by inclusion of all or any part of the area served by the owners of water  
11 projects within the boundaries of any other owners of water projects, or by the  
12 granting of any private franchise for similar service within the area served by the  
13 owners of water projects, during the term of the guarantee or loan. The owners of  
14 water projects providing the service may not be required to obtain or secure a  
15 franchise, license, or permit as a condition of continuing to serve the area if it is  
16 included within the boundaries of another owner of a water project during the term  
17 of the guarantee or loan.
- 18       2. Under the circumstances described in subsection 1, nothing prevents the two  
19 owners of water projects and the commission or other state entity from negotiating  
20 an agreement for the right or obligation to provide the service in question, provided  
21 that an agreement is invalid unless the commission or other state agency or  
22 enterprise is a party to the agreement and unless the agreement contains  
23 adequate safeguards to ensure the security and timely payment of any outstanding  
24 notes of the commission issued to fund the loan.

25       **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

STATE WATER COMMISSION  
 PROGRAM BUDGET EXPENDITURES  
 FOR THE PERIOD ENDED NOVEMBER 30, 1998  
 BIENNIUM COMPLETE: 71%

PROGRAM	WAGES	OPERATING EXPENSES	EQUIPMENT	GRANTS & CONTRACTS	PROGRAM TOTALS
<b>ADMINISTRATION</b>					
Budget	816,877	431,881	28,500	0	1,277,258
Expended	553,309	291,851	26,650	0	871,809
Percent	68%	68%	94%	0%	68%
				Funding Source:	
				General Fund:	799,463
				Federal Fund:	287,461
				Special Fund:	(215,115)
<b>PLANNING AND EDUCATION</b>					
Budget	684,804	198,016	8,000	0	890,820
Expended	481,743	98,079	1,868	0	581,689
Percent	70%	50%	23%	0%	65%
				Funding Source:	
				General Fund:	490,915
				Federal Fund:	79,805
				Special Fund:	10,969
<b>WATER APPROPRIATION</b>					
Budget	2,315,017	317,700	52,500	685,000	3,370,217
Expended	1,595,300	231,015	29,356	388,771	2,244,442
Percent	69%	73%	56%	57%	67%
				Funding Source:	
				General Fund:	1,855,670
				Federal Fund:	0
				Special Fund:	388,771
<b>WATER DEVELOPMENT</b>					
Budget	2,832,086	367,003	27,000	11,882,678	15,108,767
Expended	1,895,852	227,266	3,013	2,095,379	4,221,510
Percent	67%	62%	11%	18%	28%
				Funding Source:	
				General Fund:	2,100,847
				Federal Fund:	484,797
				Special Fund:	1,635,866
<b>ATMOSPHERIC RESOURCE</b>					
Budget	497,527	460,200	11,250	4,396,768	5,365,745
Expended	332,048	240,432	2,415	618,157	1,193,051
Percent	67%	52%	21%	14%	22%
				Funding Source:	
				General Fund:	481,140
				Federal Fund:	0
				Special Fund:	711,911
<b>SOUTHWEST PIPELINE</b>					
Budget	373,338	3,269,024	15,000	12,600,000	16,257,362
Expended	256,416	568,617	0	2,284,555	3,109,587
Percent	69%	17%	0%	18%	19%
				General Fund:	710
				Federal Fund:	2,234,752
				Special Fund:	874,126
<b>NORTHWEST AREA WATER SUPPLY</b>					
Budget	197,394	3,233,029	10,000	19,900,000	23,340,423
Expended	36,566	885,536	0	41,773	963,875
Percent	19%	27%	0%	0%	4%
				Funding Source:	
				General Fund:	916,712
				Special Fund:	47,163
<b>DEVILS LAKE BOND PAYMENTS</b>					
Budget				2,000,000	2,000,000
Expended				0	0
Percent				0	0
<b>PROGRAM TOTALS</b>					
BUDGET	7,717,043	8,276,853	152,250	51,464,446	67,610,592
EXPENDED	5,151,233	2,542,794	63,302	5,428,634	13,185,963
PERCENT	67%	31%	42%	11%	20%
<b>FUNDING SOURCE:</b>					
GENERAL FUND	9,022,067	5,728,745	3,293,322	GENERAL FUND:	11,219
FEDERAL FUND	25,246,946	4,003,526	21,243,420	FEDERAL FUND:	3,625,844
SPECIAL FUND	33,341,579	3,453,692	29,887,887	SPECIAL FUND:	4,424,346
TOTAL	67,610,592	13,185,963	54,424,629	TOTAL:	8,061,409

STATE WATER COMMISSION  
GRANTS/CONTRACT FUND  
1997-1999 Biennium

FUNDING SOURCES

	RTE	General Funds	General Fund Carryover	Federal Funds	Other Funds	Totals
Legislative Appropriation Contract Committee	13,473,548	1,195,241		717,000	30,000	15,415,789
Approved Carryover			224,134			224,134
Devils Lake Bonding					2,000,000	2,000,000
<b>TOTAL FUNDING</b>	<b>13,473,548</b>	<b>1,195,241</b>	<b>224,134</b>	<b>717,000</b>	<b>2,030,000</b>	<b>17,639,923</b>

PROGRAMS AND PROJECTS

	RTE	General Funds	General Fund Carryover	Federal Funds	Other Funds	Totals
Atmospheric Resources	125,000					125,000
Hydrologic Investigations	699,318				30,000	699,318
Devils Lake	2,399,791		224,134			2,623,925
Devils Lake Bonding					2,000,000	2,000,000
Maple River Flood Control	2,096,706					2,096,706
Nesson Valley Irrigation	1,500,000					1,500,000
Northwest Area Water Supply	69,216					69,216
Southwest Pipeline	1,400,000					1,400,000
EPA				407,500		407,500
Flood Mitigation Assistance Program	43,134			258,800		301,934
General Projects Obligated	696,785	1,195,241				1,892,026
General Projects Unobligated	328,130	0		50,700		378,830
SWPP Bond Payments	1,200,000					1,200,000
Previous Biennium Expenditures	550,727					550,727
Oil Extraction Tax Shortfall	2,394,741					2,394,741
<b>TOTAL PROGRAMS AND PROJECTS</b>	<b>13,473,548</b>	<b>1,195,241</b>	<b>224,134</b>	<b>717,000</b>	<b>2,030,000</b>	<b>17,639,923</b>

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SUMMARY

	DESIGNATED	OBLIGATED	REMAINING	OBLIGATION EXPENDITURES	REMAIN. OBL. PAYMENTS
Atmospheric Resources	125,000	125,000	0	125,000	0
Hydrologic Investigations	699,318	699,318	0	386,771	312,547
Devils Lake	2,623,925	2,623,925	0	1,314,534	1,309,391
Devils Lake Bonding	2,000,000	0	2,000,000	0	0
Maple River Flood Control	2,096,706	96,706	2,000,000	25,975	70,731
Nesson Valley Irrigation	1,500,000	1,500,000	0	0	1,500,000
Northwest Area Water Supply	69,216	69,216	0	47,163	22,053
Southwest Pipeline	1,400,000	1,300,000	100,000	762,447	537,553
EPA	407,500	407,500	0	264,887	142,613
Flood Mitigation Assistance Program	301,934	301,934	0	6,206	295,728
General Projects Obligated	1,892,026	1,892,026	(0)	472,123	1,419,902
General Projects Unobligated	328,130		328,130		
Federal Project Unobligated	50,700		50,700		
SWPP Bond Payments	1,200,000				
Previous Biennium Expenditures	550,727				
Shortfall	2,394,741				
<b>TOTALS</b>	<b>17,639,923</b>	<b>9,015,624</b>	<b>4,478,831</b>	<b>3,405,108</b>	<b>5,610,517</b>

**STATE WATER COMMISSION**  
**GRANTS/CONTRACT FUND**  
 1997-1999 Biennium

**PROGRAM OBLIGATION**

Approved By	SWC No		Initial Approval	Amount Approved	Payments	Balance
SWC		Atmospheric Resources	09/11/97	125,000	125,000	0
		Atmospheric Resources Subtotal		125,000	125,000	0
SWC	1395	Hydrologic Investigations	07/19/95	699,318	386,771	312,547
		Hydrologic Investigations Subtotal		699,318	386,771	312,547
SWC	416-1	Devils Lake Basin Joint WRB Manager (Ramsey)	09/11/97	23,000	12,837	10,163
SWC	416-1	Devils Lake Basin Joint WRB Manager (Ramsey)(19	12/21/98	23,000	0	23,000
SE	41699	Devils Lake Office Cost Share (Ramsey)	11/17/97	9,000	0	9,000
SWC	416-1	Devils Lake Long Term Studies	02/04/92	69,484	8,800	60,684
SE	416-1	Devils Lake - LEMC (Ramsey)	05/21/97	429	0	429
SWC	416-1	Starkweather Coulee Basin Analysis (Ramsey)	07/22/97	90,000	34,300	55,700
SWC	416-2	Devils Lake Levee Ralse (Phase II)	03/26/97	65,921	0	65,921
SE	416-2	Dike Realignment Feasibility Study (Ramsey)	07/01/97	7,500	3,034	4,466
SWC	1882-01	Available Storage Acreage Program (Ramsey)	05/07/97	36,304	36,304	0
SWC	1882-01	Available Storage Acreage Program (Ramsey)(Gen.	06/11/97	162,299	162,299	0
SWC	1882-01	Available Storage Acreage Program (Ramsey)Rene	09/11/97	1,001,021	1,001,021	0
SWC	1882-01	Available Storage Acreage Program (Ramsey)(1999)	12/21/98	950,000	0	950,000
SWC	1882-02	Devils Lake Emergency Response Plan (Ramsey)	11/29/95	8,646	660	7,986
SWC	1882-03	Devils Lake Prairie Wetland Restoration	02/23/96	50,000	10,000	40,000
SWC	1804	Grand Harbor #1 (Ramsey)	04/06/93	4,518	0	4,518
SE	1882-1	Cox Wetland Tax Payment	03/25/98	984	0	984
SWC	1832	Hammer - Sullivan (Ramsey)	07/02/93	6,079	3,182	2,897
SWC	416-05	Devils Lake Outlet Awareness Manager	12/22/97	15,000	15,000	0
SWC	416-05	Devils Lake Outlet Awareness Manager(1999)	12/21/98	15,000	0	15,000
SWC	416-05	Devils Lake Outlet Awareness Manager	08/13/98	30,000	20,397	9,603
SE	416-1	Devils Lake Emer Outlet Consult BW/BEC	06/08/98	4,700	4,700	0
SE	416-1	Devils Lake - USGS Water Quality Bulletin	02/06/98	2,000	2,000	0
SE	416-1	Devils Lake - USGS 1997 Satellite Imagery	08/20/98	1,040	0	1,040
SWC	416	Devils Lake Historian	10/19/98	47,000		47,000
		Devils Lake Subtotal		2,623,925	1,314,534	1,309,391
		Devils Lake Bonding				
SWC	1344	Maple River Flood Control	02/04/92	96,706	25,975	70,731
SWC	IRR/NES (1858)	Nesson Valley Irrigation	09/11/96	1,500,000	0	1,500,000
SWC	237-4	Northwest Area Water Supply Total	09/04/96	69,216	47,163	22,053
SWC	1736	Southwest Pipeline Project	07/22/97	550,000	550,000	0
SWC	1736	South Dakota Revenue/Expenses	03/26/97	750,000	212,447	537,553
		Southwest Pipeline Subtotal		1,300,000	762,447	537,553
SWC	1500-1	EPA WETLANDS GRANT Game & Fish (CRP)		19,726	19,726	0
	1500-2	Water Education Foundation Game & Fish		6,754	6,753	0
		Devils Lake Coordinator		45,000	45,000	1
		Grand Harbor		15,000	15,000	0
		Health Dept		29,858	15,657	14,201
		NDSU		37,500	31,842	5,658
				28,000	27,152	848
	1500-3	Wetland Capacity Evaluation (Devils Lake)		55,600	0	55,600
		Red River Water Coordinator		45,000	45,000	0
		Wetland Education & Information		63,000	58,758	4,242
		Index of Wetland Integrity		62,062	0	62,062
		EPA Subtotal		407,500	264,887	142,613
SWC	1896	Flood Mitigation Assistance Program (1997)	10/29/97	20,500	1,552	18,949
SWC	1896	Flood Mitigation Assistance Program (1998)	08/13/98	22,634		22,634
SWC	1896	Flood Mitigation Assistance Program (FEDERAL)	08/13/98	258,800	4,655	254,145
		Flood Mitigation Assistance Program Subtotal		301,934	6,206	295,728
		Page 2 Subtotal		7,123,599	2,932,984	4,190,614



**STATE WATER COMMISSION**  
**GRANTS/CONTRACT FUND**  
 1997-1999 Biennium

**GENERAL PROJECT OBLIGATIONS**

Approved By	SWC No	General Projects	Initial Approval	Amount Approved	Payments	Balance
SWC	1803	Belfield Flood Control (Stark)	12/20/91	38,800	0	38,800
SWC	1840	North Loma (Cavalier)	07/09/93	7,960	0	7,960
SE	1577-10	Langdon Floodplain Management Study (Cavalier)	12/02/93	4,100	0	4,100
SWC	1182	Richland County Drain #12 (Richland)	07/19/95	46,799	0	46,799
SWC	828	Homme Dam (Walsh)	11/29/95	28,000	0	28,000
SE	1401	International Drainage	04/23/96	1,725	0	1,725
SE	1486	Cooperstown Area Drain Project (Griggs)	07/11/96	5,200	0	5,200
SWC	1857	Elk, Charbonneau, Timber Creek Irrigation Study (McKenzi)	12/04/96	25,000	12,288	12,712
SE	1292	Nygren Dam (Morton)	12/11/96	1,000	0	1,000
SWC	1315	Twelve Mile & Truax Township Pipeline (Williams)	01/27/97	87,800	0	87,800
SE	1270	Burnt Creek Floodplain Study (Burlingame)	02/17/97	9,125	0	9,125
SWC	1889	Fargo Midtown Dam (Cass)	07/22/97	30,000	0	30,000
SWC	1900(1174)	Richland County Drain #95 (Richland)	07/22/97	100,000	51,172	48,828
SWC	1891	Steele County Drain #8 (Steele)	09/11/97	86,200	0	86,200
SWC	1893	Trall County Drain #55 (Trall)FINAL	09/11/97	64,888	0	64,888
SWC	1892	Trall County Drain #56 (Trall)FINAL	09/11/97	24,000	21,143	2,857
SE	AOC/MRB	MRB Conference Attendees	10/29/97	4,200	2,963	1,237
SWC	1889	Fargo Midtown Dam (Cass)	10/29/97	20,000	0	20,000
SE	Various	Right of Way Consultant	01/06/98	10,000	8,288	1,712
		416-1	01/06/98		3,226	
		1736-07-02	01/06/98		619	
		1882-02	01/06/98		4,444	
		1882-01	01/06/98			
SWC	1431-08	Water Resources Research Institute (NDSU)	02/13/98	16,500	11,085	5,415
SWC	1813	Cass County Joint Water Resource Dist	02/13/98	95,300		95,300
SWC	576	Missouri River Coordinated Resource Management Program	10/19/98	30,000		30,000
SWC	300	Baldhill Dam (Sheyenne River Joint Water Resource District)	04/30/98	43,302	10,259	33,043
SWC	1898	Mercer/Oliver Counties Reconnaissance Study.	04/30/98	10,000		10,000
SWC	950	Denitrification Research Elk Valley (UND)	08/13/98	4,077		4,077
SE	1579	Modification of Dam Inventory Database	08/25/98	5,000	4,550	450
SE	1054	Meadow Lake Flood Control (Barnes County)	09/02/98	4,825		4,825
SWC	AOC/TIC	International Coalition	08/13/98	10,000	5,000	5,000
SWC	1312	Phase I, Rural Ring Dike Project (Walsh County WRD)	08/13/98	175,000		175,000
SWC	AOC/WEF	North Dakota Water Magazine	08/13/98	18,000		18,000
SWC	295	Horsehead Irrigation Project (Feasibility Study) (Emmons)	08/13/98	90,000		90,000
SWC	1826	Wetlands Trust Allocation (FY 1998)	12/21/98	12,950		12,950
SWC	1894	Tri-County Flood Control Project Phase II	12/21/98	47,400		47,400
SWC	1271	Ring Dike Cost-Share North Cass WRD	12/21/98	162,500		162,500
SWC	1901	Steele County Drain # 13	12/21/98	27,000		27,000
SWC	1900	Richland County Drain # 95	12/21/98	50,000		50,000
SWC	1063	Cass County Drain # 13 Reconstruction	12/21/98	150,000		150,000
						0
						0
		Subtotal General Projects		1,546,651	126,749	1,419,902
		Completed General Projects(from page 4)		345,375	345,375	0
		Approved General Projects Subtotal		1,892,026	472,123	1,419,902
		Subtotal from page 2		7,123,599	2,932,984	4,190,614
		<b>TOTAL APPROVED PROJECTS</b>		<b>9,015,624</b>	<b>3,405,108</b>	<b>5,610,517</b>

**STATE WATER COMMISSION**  
**GRANTS/CONTRACT FUND**  
*1997-1999 Biennium*

**COMPLETED GENERAL PROJECTS**

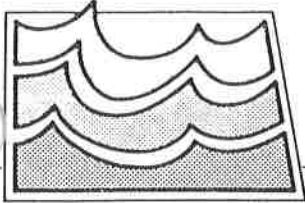
Approved By	SWC No	General Projects	Initial Approval	Amount Approved	Payments	Turnback Balance
SWC	1800	Carrington Creek Project (Foster)	7-19-95	1,880	1,880	0
SE	AOC/WEF	Water Education Foundation 1997 Tours	9-11-97	2,500	2,500	0
SE	480	James River Snagging & Clearing (Stutsman)	3-03-97	3,750	0	3,750
SWC	AOC/WEF	North Dakota Water Magazine	7-22-97	18,000	18,000	0
SWC	1888	Dresden Township Drain #1 (Cavalier)	7-22-97	17,700	17,700	0
SWC	AOC/TIC	International Coalition	7-22-97	10,000	10,000	0
SWC	1389	High Value Irrigated Crops Task Force	2-13-98	2,000	2,000	0
SWC	1299	Coburn Drain #2 (Ransom)	10-29-97	3,290	3,290	0
SE	1172	Shenford & McLeod Flood Control Study (Ranso	05-05-97	5,000	5,000	0
SE	1665	Steele County Drain #6 (Steele)	1-7-98	704	704	0
SWC	1800	Carrington Creek Project (Foster)	12-01-97	5,621	5,621	0
SWC	295	Horsehead Irrigation Reconnaissance Study (E	07-22-97	10,000	10,000	0
SWC	300	Baldhill Hill Dam (Barnes)	1-27-95	5,092	0	5,092
SWC	1826	ND Wetlands Trust		12,150	12,150	0
SWC	1737	Stone Creek - White Spur Drain (Bottineau)	7-19-95	57,730	20,870	36,860
SE	1172	Shenford & McLeod Flood Control Study (Ranso	02-22-98	3,000	3,000	0
SE	1270	Hay Creek Impact Evaluation Project (Burleigh)	10/11/95	2,643	0	2,643
SE	1431-08-02	Iverson Dam (Benson County)	02-17-98	2,789	2,789	0
SWC	1223	Steele County Drain #12 (Steele)	01-27-97	33,626	33,626	0
SWC	1293	Mountrail County Irrigation Development (Mount	07-22-97	7,500	7,500	0
SE	1895	Richland County Drain #10 (Richland)	09-11-97	2,200	2,200	0
SWC	237-3	Will & Carlson	10-29-97	25,000	25,000	0
SE	AOC/WEF	ND Water Education Foundation, 1998 Tours	04/27/98	2,500	2,500	0
SE	1157	Pembina County Drain #47 Flood Repairs, Pemb	02/10/98	4,580	4,580	0
SWC	AS/SWC/AR	North Dakota Cloud Modification Project	02/13/98	57,000	57,000	0
SWC	237-3	Garrison Diversion /National Guard	12-01-97	20,000	0	20,000
SE	1577-3	Lower Forest River FP (Walsh & Grand Forks)	01/26/93	5,200	5,200	0
SWC	1894	Tri-County Flood Control Proj Phase 1 (Cass,Ra	12/01/97	20,000	20,000	0
	1307	Bank Stabilization - City of Gladstone	05/14/98	5,400	5,400	0
SE	1435	Green Lake Water Control Investigation	08/25/97	2,130	2,130	0
SWC	576	Bis/Man Flood Hazard Survey Costs	02/27/98	14,000	10,681	3,319
SE	1288	Flood Control Project, Ashley, McIntosh County(	07/27/98	3,346	3,346	0
SWC	1751	City of Wahpeton, Digital Aerial Survey	04/30/98	14,756	14,717	39
SWC	1102	Elliott Drain (Dickey)	09/04/96	3,522	3,522	0
SWC	1102	Elliott Drain Rehab & Extension Project (Dickey)	08/13/98	13,100	13,046	54
SE	1577-05	Halliday NCRS Study (Dunn)	06/18/96	1,462	1,460	2
SE	AOC/MRB	MRB Conference Attendees	10/29/97	4,200	2,963	1,237
SWC	AOC/RRB(15	Red River Basin Board	07/22/97	15,000	15,000	0

*Completed General Projects Subtotal*

418,371

345,375

72,996




# North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696

## MEMORANDUM

**To:** Governor Edward T. Schafer  
Members of the State Water Commission

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

**Subject:** Cost Share Policy for Drainage Permits

**Date:** January 20, 1999

At the State Water Commission meeting held on August 13, 1998, the Commission approved changes to the cost share policy for drainage projects. The changes included making costs for drainage structures through section lines and certain engineering costs eligible for a cost share. Also, the cost share percentage of eligible costs was reduced from 40% to 35% and a limit of 5% of new funding available for general projects per biennium was imposed.

Several questions have been raised by the Commission regarding the new drainage cost share policy. They include:

**Can the project sponsors return toward the end of the biennium for additional funding?**

Yes, I believe the Commission can act to exceed the 5% cost share limitation if funds remain near the end of the biennium. This would be an appropriate consideration.

**Can sponsors return in following bienniums to obtain additional funding if the full 35% was not allocated?**

Yes, the sponsors should be able to return and request additional cost share funds in subsequent bienniums, but the projects would be subject to the new limitations of the biennium. A follow on question would be whether or not their projects would be given the first priority in the new biennium. I do not think this would be the case, if so, all of the funds in a new biennium could have been previously spoken for; priorities would have to be set each biennium.

# NORTHWEST AREA WATER SUPPLY INTERIM FINANCING CONTRACT

## 1. 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, hereafter referred to as the "Commission," acting through the North Dakota State Engineer; and the City of Minot, hereafter referred to as the "City".

## 2. INTRODUCTION

### 2.1. Statutory Authority.

North Dakota Century Code (N.D.C.C.) Chapter 61-24.6 authorizes the Commission to develop a project to deliver water throughout northwest North Dakota for multiple purposes, including domestic, rural water districts, and municipal uses. This water project is known as the Northwest Area Water Supply Project ("the Project"). The Commission, pursuant to N.D.C.C. Chapter 61-02 and Chapter 61-24.6 may enter into water service contracts to finance the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.

### 2.2. Preliminary Actions.

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. The Commission has entered into or will be entering into formal contracts with various of these entities pursuant to which the Project will be built and the entities will be supplied with water.

### 2.3. Need for Interim Financing.

Sixty-five percent (65%) of the capital costs of the Project will be paid from federal funds and thirty-five percent (35%) from local funds. Ultimately, in effect, the local funds will take the form of user charges (or possibly a City of Minot sales and use tax), but until such time as the project can be built and put into operation so as to generate user charges (or such sales and use tax revenues become available), it will be necessary to obtain interim financing of the local share of the Project costs.

### 2.4. Interim Financing Assistance from City.

The City agrees to underwrite the Local Share of Capital Costs incurred by the Commission after the execution of this contract with respect to the portion of the Project extending from the Project water intake (at Lake Audubon or Lake Sakakawea) to the City's water treatment plant or the City's other designated point of delivery.

**4.2. Time of Performance.**

The City will make payments to the Commission in fulfillment of its obligation under this agreement in installments (which may be irregular in timing and amounts), within thirty (30) days of being called upon by the Commission to make such, upon a construction cost reimbursement basis. The city agrees to levy and collect all necessary taxes and assessments, and set rates and charges, and use all its authority and resources available to meet its obligations under this contract and will make in full all payments to be made pursuant to this contract on or before such payments are due.

**4.3. Commission to Commit Federal Funds.**

The Commission and District have dedicated \$3,230,000 of the Municipal, Rural and Industrial (MR&I) federal funds appropriated to the state in fiscal years 1996, 1997, and 1998 under the 1986 Garrison Diversion Reformulation Act to the portion or segment of the Project referenced in Section 4. 1. The 1999 Five Year Plan for expending MR&I funds submitted by the Commission to the Secretary of the Interior includes a total of \$26,730,000 of MR&I funds for the portion or segment of the Project referenced in Subsection 4.1. The Commission will commit upon Commencement of Construction, to keeping this amount in future Five Year Plans, subject to annual reductions equal to the amount expended for the portion or segment of the Project referenced in Subsection 4.1, and to recommend to the Secretary of Interior, or the Secretary's designee, that a minimum of \$26,730,000 of the MR&I federal funds authorized under the Act, if all funds authorized under the Act are appropriated, to be used to fund the portion or segment of the Project referenced in Subsection 4. . Also attached is a resolution of the District in further support of funding for the project, passed January 7, 1999.

**5. TERM OF CONTRACT**

This contract shall remain in effect until all the payments required herein have been completed.

**6. TERMINATION**

**6.1. Abandonment of Project.**

**6.6. Termination by Commission.**

The Commission may abandon the Project and terminate this contract effective upon written notice to the City prior to the Commencement of Construction.

**7. BURDEN OF LOSS.**

**7.1. Third-Party Claims.**

Each party agrees to assume its own liability for any and all claims of any nature from third parties, including all costs, expenses, and attorney's fees which may in any manner result from or arise out of this agreement. Hence the right of equitable contribution which each may have against the other is limited to accomplishing the result contemplated by the prior sentence.

**7.2. Early Termination Claims.**

**7.2.1. No Fault Termination.**

In the event of early termination through no fault of either party, because of, for example, the failure of anticipated federal funding, such that the Commission is unable to deliver water and thus generate revenue from operation of the Project, the Commission shall immediately take all reasonable steps within its power to mitigate damages to it or to the City or both, such as, for example, canceling contracts and purchase orders, when prudent to do so. The City shall continue to be obligated to make the reimbursement payments to the Commission called for under this contract (just as though an early termination of this contract had not occurred) to the extent that the Commission, acting in good faith, cannot or could not through such mitigation efforts avoid the costs for which it seeks reimbursement. If the City lives up to its promise under this paragraph the Commission will assign and transfer all of its right, title, and interest in the Project to the City, provided it is allowed to do so under governing law.

**7.2.2. Termination for Fault.**

If the early termination is due to fault on the part of one party (the breaching party) but not the other (the non-breaching party), such as, for example, an unexcused repudiation of the contract, then the non-breaching party shall have the right to recover from the breaching party damages measured by its non-avoidable detrimental reliance costs incurred after the execution of this contract by both parties, to the extent the same may fairly be attributed to the breaching party.

9. **MERGER CLAUSE**

This contract constitutes the entire contract 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 contract.

**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: Edmond T. Schaefer

Title: Chairman, North Dakota State Water Commission

Date: 9 Feb 99

Approved and entered into by resolution of the State Water Commission this 27th day of January, 1999.

David M. [Signature]  
Secretary and State Engineer

Dated at Minot, North Dakota, this 18<sup>th</sup> day of January, 1999.

**CITY OF MINOT**

By: Carroll W. Erickson  
Carroll W. Erickson, Mayor

RELEASE OF EASEMENT AND DEDICATION

By Easement and Dedication entered into between Joseph Frenzel as Lessor, and the State of North Dakota, as Lessee, dated August 181, 1934, granted to the State of North Dakota, the right and easement to inundate so much of the West½ of Section 13, and the SE¼ of Section 14, the NW¼ of Section 24, and the NE¼ of Section 23, all in Township 138 North, Range 96 West, as the construction and maintenance of a dam will cause to be inundated;

The State of North Dakota no longer uses nor has a need for the rights and interests granted in the Easement and Dedication and has abandoned said lands.

In consideration of the payment of one dollar (\$1.00), paid by Ralph Frenzel Jr., receipt of which is acknowledged, the State of North Dakota releases unto the present owners, their successors, and assigns, all of its rights, title, and interest in the Easement and Dedication covering the following described lands in Stark County, State of North Dakota.

Township 159 North, Range 76 West

- Section 13: W½
- Section 14: SE¼
- Section 23: NE¼
- Section 24: NW¼

STATE OF NORTH DAKOTA

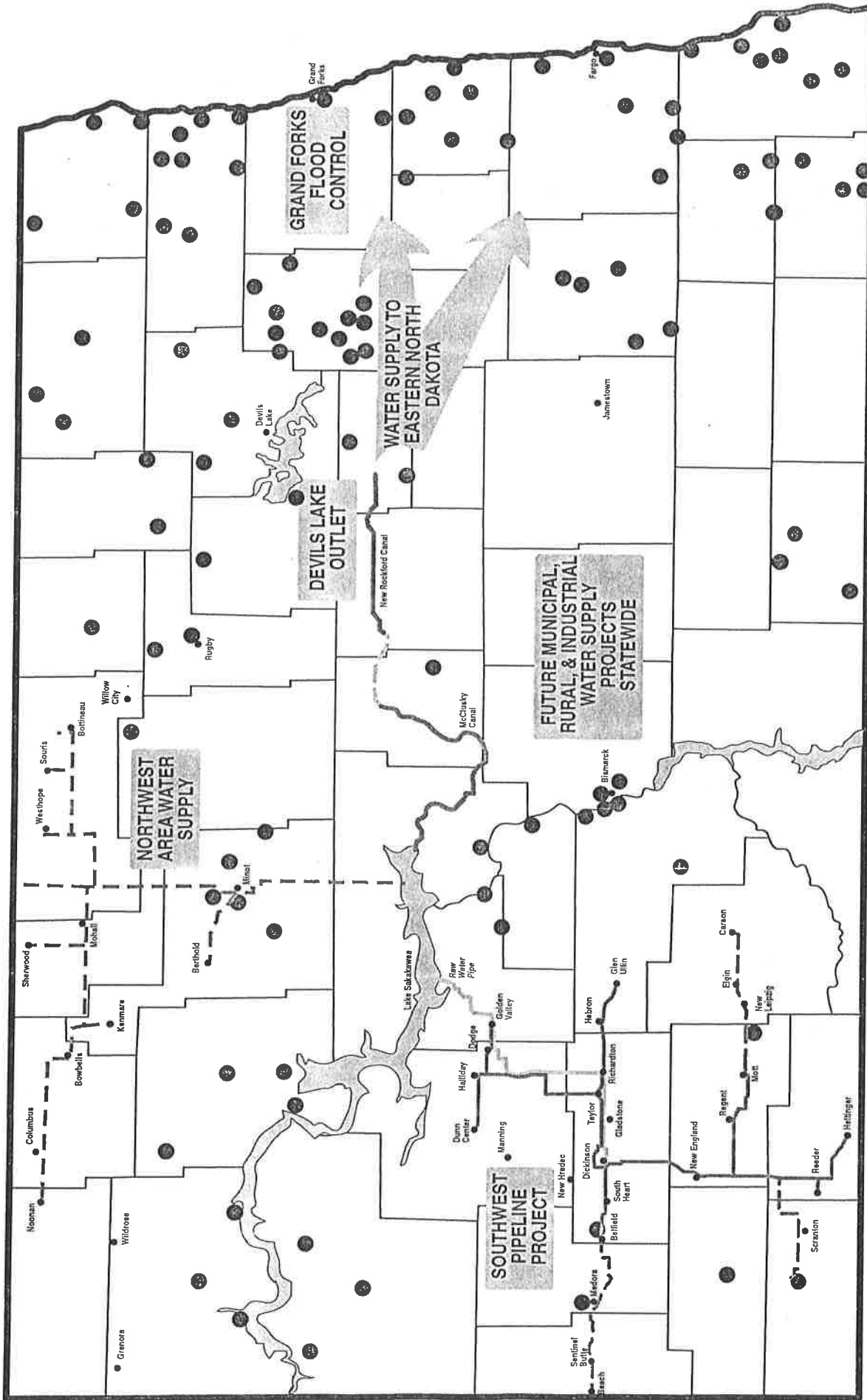
By: Edward T. Schafer  
Edward T. Schafer, Governor

Date: 2 Feb 99

ATTEST:

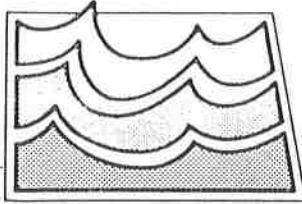
Alvin B. Jaeger  
Al Jaeger  
Secretary of State





# 1999 STATE WATER MANAGEMENT PLAN PROJECTS

● Proposed SWMP Projects, 1999-2001 Timeframe



# North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696

## RESOLUTION NO. 99-1-482

### In Support of Grand Forks Flood Control Project

**WHEREAS**, the city of Grand Forks has a history of flooding problems that was most graphically illustrated in the disastrous 1997 flood; and


**WHEREAS**, Grand Forks and East Grand Forks citizens and local officials wish to provide a consistent and high level of reliable flood protection to their metropolitan area; and

**WHEREAS**, the United States Army Corps of Engineers, with extensive consultation with local citizens and authorities, has developed a preferred plan involving a permanent levee and floodwall system that would provide protection against future floods of a magnitude similar to the 1997 flood.


**NOW, THEREFORE, BE IT RESOLVED** that the North Dakota State Water Commission, its Chairman, Edward T. Schafer, and State Engineer, David A. Sprynczynatyk, at a meeting held on January 27, 1999, in Bismarck, North Dakota, recognizes that the current plan proposed by the United States Army Corps of Engineers is the most cost effective means to provide critical flood control to the cities of Grand Forks and East Grand Forks; and

**BE IT FURTHER RESOLVED** that the State Water Commission supports the city of Grand Forks in its efforts to provide flood control for its citizens, endorses the city's selected plan, and urges expedient implementation to include state funding of a portion of the non-federal cost share.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:

  
\_\_\_\_\_  
Edward T. Schafer  
Governor-Chairman

SEAL

  
\_\_\_\_\_  
David A. Sprynczynatyk  
State Engineer, and  
Chief Engineer-Secretary

**WATER PERMIT REQUESTS  
 1998 SUMMARY**

TOTAL APPLICATIONS FILED ----- 115

Total Requested From Ground Water ----- 75  
 Total Requested From Surface Water ----- 40

\*\*\*\*\*

TOTAL APPLICATIONS FILED FOR IRRIGATION ----- 78

Total Requested From Ground Water ----- 61  
 Total Requested From Surface Water ----- 17

TOTAL ACRES REQUESTED FOR IRRIGATION ----- 16,110.3

Total Acres Requested From Ground Water --- 13,107.2  
 Total Acres Requested From Surface Water --- 3,003.1

TOTAL APPLICATIONS FILED FOR FLOOD CONTROL USE --- 1

Total Requested From Ground Water ----- 0  
 Total Requested From Surface Water ----- 1

TOTAL APPLICATIONS FILED FOR INDUSTRIAL USE ----- 11

Total Requested From Ground Water ----- 11  
 Total Requested From Surface Water ----- 0

TOTAL APPLICATIONS FILED FOR LIVESTOCK USE ----- 1

Total Requested From Ground Water ----- 1  
 Total Requested From Surface Water ----- 0

TOTAL APPLICATIONS FILED FOR MUNICIPAL USE ----- 0

Total Requested From Ground Water ----- 0  
 Total Requested From Surface Water ----- 0

TOTAL APPLICATIONS FILED FOR RECREATION USE ----- 22

Total Requested From Ground Water ----- 0  
 Total Requested From Surface Water ----- 22

TOTAL APPLICATIONS FILED FOR RURAL DOMESTIC USE -- 2

Total Requested From Ground Water ----- 2  
 Total Requested From Surface Water ----- 0