

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

October 10, 2002

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on October 10, 2002. Governor-Chairman, John Hoeven, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor John Hoeven, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Larry Hanson, Member from Williston
Curtis Hofstad, Member from Starkweather
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

STATE WATER COMMISSION MEMBERS ABSENT:

Charles Halcrow, Member from Drayton
Elmer Hillesland, Member from Grand Forks
Robert Thompson, Member from Page

OTHERS PRESENT:

State Water Commission Staff
Approximately 30 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, Governor Hoeven announced the agenda approved as presented.

**CONSIDERATION OF FINAL DRAFT
MINUTES OF AUGUST 15, 2002 STATE
WATER COMMISSION MEETING -
APPROVED**

The final draft minutes of the August 15, 2002 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Swenson, and unanimously carried, that the final draft minutes of the August 15, 2002 State Water Commission meeting be approved as prepared.

**FINANCIAL STATEMENT -
AGENCY PROGRAM
BUDGET EXPENDITURES**

David Laschkewitsch, accounting manager, State Water Commission's Administrative Services Division, presented and discussed the Program

Budget Expenditures for the period ending August 31, 2002, reflecting 58 percent of the 2001-2003 biennium. All expenditures are within the authorized budget amounts. **SEE APPENDIX "A"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds.

**FINANCIAL STATEMENT -
2001-2003 RESOURCES TRUST
FUND REVENUES**

David Laschkewitsch stated the oil extraction tax deposits into the Resources Trust Fund are currently \$1,171,865, or 22.22 percent behind the

budgeted revenues. Revised projections prepared by Economy.com show the oil extraction deposits increasing above budgeted figures beginning in November, 2002 and remaining above budget through the end of the biennium. These revised projections could allow the recovery of some of the current shortfall, and completing the biennium \$694,082 below the budgeted oil extraction tax figures. Even with this expected shortfall, the total revenues into the Resources Trust Fund are projected to exceed the agency's spending authority by approximately \$3.7 million. This is primarily due to a larger biennium beginning balance than was anticipated.

**FINANCIAL STATEMENT -
2001-2003 WATER DEVELOPMENT
TRUST FUND REVENUES**

David Laschkewitsch reported that deposits into the Water Development Trust Fund total \$12,051,320, which is an increase of more than \$109,920 of the

budgeted revenues for the first year of the biennium. The next scheduled payment is anticipated in January, 2003 and is projected to be \$3.5 million. The 1999 Legislature placed a restriction on the funds the State Water Commission

may obligate from the Water Development Trust Fund. That restriction allows the commitment of 75 percent of the appropriated amount. The remaining 25 percent may be obligated to the extent the uncommitted funds are available in the Water Development Trust Fund.

**DRAFT 2003-2005 WATER
DEVELOPMENT BIENNIAL
REPORT
(SWC Project No. 322)**

In order to maintain the 1999 State Water Management Plan and to meet the requirements of 1999 Senate Bill 2188, the draft 2003-2005 Water Development Biennial Report was presented

for the Commission's consideration. Section 10, Statewide Water Development Program-Legislative Intent, of ch. 535 of the 1999 Legislative Session Laws (Senate Bill 2188) states:

"The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this act are completed."

Secretary Frink stated section 57-51.1-07.1(2) of the North Dakota Century Code requires that "every legislative bill appropriating moneys from the Resources Trust Fund, pursuant to subsection one, must be accompanied by a State Water Commission report." Secretary Frink explained that although the format has changed from previous reports, the draft 2003-2005 Water Development Biennial Report will satisfy the requirements for funding from the Resources Trust Fund for the 2003-2005 biennium, and 1999 Senate Bill 2188 and 1999 House Bill 1475, which are codified in N.D.C.C. §§ 61-02-26 and 61-02-14. The draft report, dated October 10, 2002, is attached to these minutes as **APPENDIX "C"**.

**FINANCIAL STATEMENT -
2003-2005 BUDGET**

The State Water Commission submitted its 2003-2005 budget to the Office of Management and Budget on August

15, 2002. The budget included a five percent reduction in general funds as required from all state agencies. The budget request included optional adjustments to address items that were affected by the five percent reduction with the most significant cuts in salaries, travel and equipment.

A meeting was held on September 20, 2002 with representatives of the Office of Management and Budget and the Legislative Council concerning the agency budget and the optional adjustment package.

The issue of statewide weed control was discussed. Secretary Frink explained that the State Engineer has the authority for sovereign lands management, which involves those areas, including beds and islands, lying within the ordinary high watermark of navigable lakes and streams. Funds were allocated in the 2001-2003 biennium for the purpose of weed control in the sovereign land areas.

**DEVILS LAKE
HYDROLOGIC UPDATE
(SWC Project No. 416-01)**

Todd Sando, assistant state engineer, reported that Devils Lake is currently at elevation 1447.0 feet msl.

At this elevation, the lake has a surface area of 124,000 acres and storage of 2.43 million acre-feet of water. The Devils Lake basin has received above normal precipitation since August, 2002. The total precipitation throughout the basin for August and September ranges from six to eight inches, which is well above the normal for this time of year. Not only did these heavy rains raise the lake level, they also filled up most of the available storage in the upper basin.

The National Weather Service released their long-range probabilistic forecast for Devils Lake on July 24, 2002. The current 50 percent exceedance elevation is 1447.2 feet msl, and the 10 percent exceedance elevation is 1448.2 feet msl. Next year's spring runoff will depend on the amount of precipitation the basin receives this fall and winter.

Devils Lake continues to flow east through the Jerusalem channel into Stump Lake. Approximately 15 cubic feet per second is being measured by the U.S. Geological Survey's gauge. The current elevation of Stump Lake is 1413.5 feet msl. At this elevation, Stump Lake covers 8,000 acres and storage of 138,000 acre-feet of water.

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

On February 26, 2002, the Corps of Engineers released the draft *Integrated Planning Report and Environmental Impact Statement* (EIS) for the

permanent Devils Lake emergency outlet. This document estimates the cost and benefits of a permanent 300 cubic feet per second outlet from Pelican Lake to the Sheyenne River and describes the potential environmental impacts. A series of public meetings were held in April, 2002 to present the results of the draft EIS and to provide an opportunity for public comments. The Corps was scheduled to release a final EIS in August, 2002, and have a Record of Decision (ROD) completed by September, 2002.

On August 12, 2002, Governor Hoeven was notified that the Corps of Engineers had delayed their recommendations regarding the permanent outlet to January, 2003. If the Corps recommends that the outlet proceed, the project would then be referred to the International Joint Commission for review, which will require approximately 6 to 12 months. Secretary Frink explained that as a result of these delays, the spring of 2004 would be the earliest construction could begin on the federal outlet project.

The Corps of Engineers is continuing to work on the final design for the project. The State Water Commission, as the local sponsor, has applied for a water quality discharge permit for the project. The Commission staff met with the Environmental Protection Agency, Minnesota agencies, North Dakota Health Department, and the Corps to discuss the permit and the potential operating plan for the Pelican Lake outlet project. Concerns have been expressed by the Minnesota representatives relative to the water quality in the Red River.

**DEVILS LAKE STATE TEMPORARY
EMERGENCY OUTLET PROJECT
(SWC Project No. 416-01)**

On August 16, 2001, the State Water Commission approved the selection of Bartlett & West Engineers, Inc./Boyle Engineering Corporation as the engineer for the state's Devils Lake temporary emergency outlet project.

neer for the state's Devils Lake temporary emergency outlet project.

Todd Sando stated that work continues on the final design of the state's temporary emergency phased outlet project out of West Bay to the Sheyenne River. The first phase of construction on a 100 cubic feet per second temporary emergency outlet involves a grading project at the Round Lake pump station, which is 3 miles south of Minnewaukan.

At its meeting on August 15, 2002, the State Water Commission passed the following motion toward the implementation of the state's temporary outlet for Devils Lake:

- 1) approved up to \$150,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the bidding and construction of Phase I of the project, which includes the grading of the Round Lake pumping plant site; approval of this expenditure is contingent upon the availability of funds;
- 2) approved an additional \$470,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to complete the final design of the project, contingent upon a thorough evaluation of the specific authorization by the State Engineer, and the availability of funds;

- 3) approved Resolution No. 2002-8-500, Devils Lake Outlet Project C o n - demnation Authority, which authorizes the Chief Engineer and Secretary to the State Water Commission to initiate condemnation proceedings to acquire interests in property needed for the construction of the Devils Lake outlet upon failure to acquire those interests by negotiation; and
- 4) that the Chief Engineer and Secretary to the State Water Commission continue to consult with the U.S. Army Corps of Engineers in regard to the Devils Lake federal permanent outlet project.

On September 19, 2002, bids were opened for the Round Lake pump station site grading project. The contract was awarded to Wanzek Construction, Inc., Fargo, ND, who submitted the low bid of \$79,500. Construction is scheduled to commence in mid-October, 2002, and completion is anticipated by November 30, 2002.

The State Water Commission has applied for a water quality discharge permit from the North Dakota Health Department. The Corps of Engineers and the U.S. Geological Survey have provided modeling results for the state's 100 cfs outlet out of West Bay constrained to 300 mg/L of sulfate at the insertion point on the Sheyenne River. This information will assist in assessing potential downstream impacts and concerns.

**DEVILS LAKE UPPER BASIN
WATER UTILIZATION AND
ENHANCEMENT PROJECT
(SWC Project No. 1882-02)**

On February 20, 2002, the State Water Commission passed a motion to approve up to \$25,000 with the Devils Lake Basin Joint Water Resource Board in a reconnaissance

study to determine the potential of using irrigation as a means of water utilization and management in the Devils Lake basin.

The proposal for the study and the objectives of the reconnaissance study have been completed by Bartlett & West Engineers. Their report depicts that water utilization in the Devils Lake basin, through irrigation, may be feasible and recommends moving forward with a small test project in order to monitor and study the crop water use characteristics of irrigated crops versus dryland crops. The test project would consist of eight sites, with two sites in each of the four potential project areas. Each site would consist of one center pivot system irrigating approximately 130 acres. Alternative crops would be used to determine which crops utilize the most water. The estimated cost of the test project would be approximately \$150,000 per site for a total of \$1.2 million.

Resolutions of support for the project have been received from the city of Devils Lake, North Central Planning, county commissions, and numerous county and local level economic development groups. The Devils Lake Joint Board is currently attempting to secure funding for the test project.

In discussion, it was the general consensus of the State Water Commission members that concerns relating to the project's concept, feasibility and other issues need to be addressed before the Commission evaluates whether to proceed with the test project.

**DEVILS LAKE BIOTA
TRANSFER RISK ANALYSIS
(SWC Project No. 416-01)**

On August 15, 2002, Ken Solberg, North Dakota Senator from Rugby, ND, and representing District 7, appeared before the State Water Com-

mission to express concerns relative to the Devils Lake biota transfer. Biota transfer from the Devils Lake subbasin to the Hudson Bay basin is one of the major concerns that the opposition to both the federal and state emergency outlets have raised. Senator Solberg recommended that the State Water Commission conduct a thorough biotic survey of not only the Devils Lake subbasin, but the Hudson Bay basin as well.

A meeting was held on September 24, 2002 with Senator Ken Solberg and the staffs of the Governor's office and the State Water Commission to provide a briefing on the Devils Lake biota transfer risk analysis.

Michael Noone, State Water Commission's Planning Division, provided a briefing and powerpoint presentation regarding various biota transfer studies that have been done in the state, as well as studies involving interbasin water diversions that currently exist in or near the Hudson Bay drainage. The staff memorandum, dated October 2, 2002, summarizing the Devils Lake biota transfer risk analysis and the studies is attached to these minutes as **APPENDIX "D"**.

**APPROVAL OF EXEMPTION
OF THE REQUIREMENT OF
NEW IRRIGATED LAND IN
THE AGPACE PROGRAM
(SWC Project No. 1389)**

At its meeting on May 1, 2002, the State Water Commission considered expanding the agency's part of the AgPACE program with the Bank of North Dakota to include the equipment required to convert land irrigated

by the gravity method to the sprinkler method. It was concluded that the issue required additional study and referred it to the newly-formed committee on irrigation cost share. The committee members are Commissioners Hanson, Hillesland, Hofstad, and Thompson.

The Buford-Trenton Irrigation District previously requested an exemption from the State Water Commission to the requirement that funding for the AgPACE program apply only to new irrigation. Portions of the district located below the main water supply canal have a high water table as a result of water levels in Lake Sakakawea. This part of the district is irrigated by the gravity method, which results in an excessively high water table in topographically low areas or in areas with poor drainage. The high water table results in an adverse effect on crop production.

The committee met on July 23, 2002 in Bismarck and on August 28, 2002 in Carrington. Representatives of the North Dakota Irrigation Caucus, the Garrison Diversion Conservancy District, and the Dickey-Sargent Irrigation District participated in the meeting at Carrington. Some of the representatives are also irrigators.

The conversion of gravity irrigation to sprinkler irrigation was discussed at length. It was pointed out that converting to sprinkler irrigation would increase opportunities for the land to be used for the production of additional crops. For example, french fry potato processing companies require that the potatoes be grown under sprinkler irrigation because a better yield and quality can be achieved. The same result is achieved with other crops when the irrigation water is applied with greater precision. There are approximately 40,000 acres irrigated by the gravity method in North Dakota.

The irrigators explained that much of the irrigation infrastructure installed in the mid-1970s and early 1980s is in need of replacement because it is technologically outdated and becoming very worn. This particularly applies to the center pivot systems and, in some cases, the pumps. It was recommended by the irrigators that the State Water Commission's part of the AgPACE program be expanded to include the replacement of irrigation equipment. Replacement of the equipment would increase energy and water use efficiency, which would strengthen existing irrigation.

Secretary Frink stated that information provided by the Bank of North Dakota indicates that as of August 31, 2002, 14 months into the 2001-2003 biennium, the Bank has funded or committed to 26 AgPACE loans for irrigation projects. Seven of the loans involve the State Water Commission's part of the program resulting in a total commitment of \$74,286. Two of the seven loans reached the limit of \$20,000. Secretary Frink explained that it is program policy that the interest buy down limit can be used only once in a lifetime.

Based on the information presented at the two meetings, it was recommended by the committee that the State Water Commission approve the expansion of its part of the AgPACE program to include the conversion of any land currently irrigated by the gravity method to the

sprinkler method. It was further recommended by the committee that the State Water Commission's part of the AgPACE program be expanded to include the replacement of equipment on land currently under irrigation.

In discussion of the committee's recommendations, Secretary Frink stated that the replacement of existing irrigation equipment is outside of the original purpose of the program, which is to promote the development of new irrigation in the state. There are approximately 190,000 acres currently under sprinkler irrigation in North Dakota, and making the program available to support the replacement of equipment on land currently irrigated by sprinkler may limit the availability of funds for its original purpose. Although the conversion from gravity to sprinkler irrigation does not entirely meet the original program purpose, irrigated acreage will be lost without the conversion to sprinkler in some cases.

It was the recommendation of the State Engineer that the State Water Commission approve an exemption of the requirement for new irrigation in its part of the AgPACE program to allow the conversion of land currently irrigated by the gravity method to irrigation by the sprinkler method. It was also the recommendation of the State Engineer that the State Water Commission's part of the AgPACE program not be applied to the replacement of equipment on land currently under irrigation.

It was moved by Commissioner Hanson and seconded by Commissioner Johnson that the State Water Commission approve an exemption to the requirement for new irrigation in its part of the AgPACE program to allow the conversion of land currently irrigated by the gravity method to irrigation by the sprinkler method.

Commissioners Hanson, Hofstad, Johnson, Olin, Swenson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROGRAM -
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:

Contract 4-1B - Final Phase of Construction, Raw Water Pumping Stations: As the Southwest Pipeline Project continues to grow and expand, the need for additional raw water capacity has become more and more apparent. When the pumping facilities were first constructed, they were only built to provide capacity that would be used initially. An intermediate phase added pumps at Dodge and Richardton in 1996. Contract 4-1B will complete the

ultimate design capacity of the raw water pumping facilities. The contract will add pumps at the intake, Dodge, and Richardton pump stations. At the intake, one 200 Hp pump will be added in the Basin Electric intake facility and a 600 Hp pump will be added to the intake booster pump station. At Dodge, one 700 Hp pump will be added and at Richardton one 900 Hp pump will be added. Pumping capacities will be increased from 7,850 gallons per minute (gpm) to 10,500 gpm at the intake, and from 6,150 gpm to 8,950 gpm at Dodge and Richardton.

A 26-ton carbon dioxide tank will be added in the next year at the Dickinson water treatment plant to provide additional capacity. The plant currently has only a 13-ton tank. Carbon dioxide is used to lower the pH and stabilize the water after lime softening. Contract 4-1B will include the foundation and piping work for this tank.

As an alternate bid schedule, the contract will also include an additional 350 Hp pump for the Jung Lake pump station, bringing that facility from 1,900 gpm to 2,350 gpm. This pump will complete the ultimate design capacity of that facility and will be necessary when both the Perkins County Rural Water System usage (400 gpm) has been developed and either the city of Bowman connects or there is significant energy development in the area. This pump will be bid as an alternate, although it may be deferred until later.

The estimated construction cost of contract 4-1B is \$1,250,000 and the estimated project cost is \$1,480,000. Draft plans and specifications for this contract have been completed and are being reviewed. A mid-November, 2002 bid date is planned.

Contract 5-13A - Second Davis Buttes Reservoir: This contract is for a 1,000,000 gallon potable water reservoir 60 feet in diameter and 48 feet high, located on Davis Butte just north of Dickinson and immediately adjacent to the existing Davis Butte tank. Draft plans and specifications for this contract have been completed. Bidders will be allowed to bid on either a welded steel tank or glass fused bolted steel tank as alternates. The estimated construction cost for this contract is about \$550,000 and the estimated project cost is \$680,000. This reservoir was originally planned for construction as part of the Bowman-Scranton phase, but funding is not adequate to include it. This is partly a result of more rural water connections than were originally planned in the Bowman-Scranton area. This contract will be deferred until a later phase of the project.

Contract 7-7A - Twin Buttes Service Area, Rural Water Distribution System: Contract 7-7A consists of approximately 124 miles of rural water distribution pipelines ranging in size from 1 1/2 inches to 8 inches in diameter. When completed, the contract will serve about 116 rural water connections. All pipe installation has been completed. All of the rural water connections, with the exception of three for service in the outskirts of Bowman and added during the course of construction, have been turned over for service. The three remaining users should be turned over this fall.

Contract 7-7B/7-3C - Twin Buttes Service Area and West Rainy Butte Booster Area, Phase II: Contract 7-7B/7-3C is for about 267 miles of rural distribution pipelines ranging in size from 1 1/2 inches to 8 inches in diameter. When completed, the contract will serve about 160 rural water connections. The contract was awarded to Abbot, Arne, & Schwindt on May 31, 2002. The contract has intermediate completion dates of September 1, 2002 for 40 connections, August 1, 2003 for the remaining connections, and a substantial completion date of September 15, 2003 for the entire contract. About 105 miles of pipeline have been installed. No connections were turned over for service by the intermediate completion date. Due to administrative difficulties encountered in obtaining insurance for a railroad crossing on the west side of Bowman, the contractor was instructed to concentrate on the 7-7A connections. Twenty-one (21) rural water connections were turned over for service on October 8, 2002.

Perkins County, South Dakota, Rural Water System: In 1996-1998, Perkins County Rural Water System (PCRWS) paid the State Water Commission over \$866,000 to put in extra capacity for them on contracts 2-4A, 2-4B and 7-4. On contract 7-4, the extra items included a meter vault to measure water delivered to South Dakota and 4,000 feet of pipeline to the border. At PCRWS's request, these items were deleted from contract 7-4 by change order. The cost of these items was \$81,000. PCRWS will need these items installed in the near future as they proceed with construction of their system. It is our intention to add these items to our current 7-7B/7-3C contract with a change order. PCRWS will pay the entire amount of these items as soon as they are constructed.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF CAPITAL REPAYMENT
RATES, AND REPLACEMENT AND
EXTRAORDINARY MAINTENANCE
RATE FOR 2003
(SWC Project No. 1736)**

Under the Agreement for the Transfer of Management, Operations, and Maintenance Responsibilities for the Southwest Pipeline Project, 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 is currently preparing its budget.

On October 19, 1998, the State Water Commission approved an amendment to the Transfer of Operations Agreement, which changed the Consumer Price Index date used for calculating the project's capital repayment rates from January 1 to September 1. This amendment was necessary to bring the Transfer of Operations Agreement into line with the water service contracts and to streamline the budget process.

The contract specifies that the water rates for capital repayment be adjusted annually based on the Consumer Price Index. The State Water Commission has the responsibility of adjusting the capital repayment rates annually.

The rate for replacement and extraordinary maintenance was approved by the State Water Commission at its February 9, 1999 meeting at \$0.35 per thousand gallons. The original rate of \$0.30 per thousand gallons was approved in 1991. The rate of \$0.35 per thousand gallons is satisfactory and, therefore, no change was recommended at this time.

The following projected capital repayment rates, and the replacement and extraordinary maintenance rate for 2003 were presented for the Commission's consideration:

Contract Users:	\$ 0.87	per thousand gallons
Rural Users:	\$ 26.50	per month
Replacement and Extraordinary Maintenance:	\$ 0.35	per thousand gallons

It was the recommendation of the State Engineer that the State Water Commission approve the projected capital repayment rates for 2003 for the Southwest Pipeline Project of \$0.87 per thousand gallons for contract users; \$26.50 per month for rural users; and a rate for replacement and extraordinary maintenance of \$0.35 per thousand gallons.

It was moved by Commissioner Hofstad and seconded by Commissioner Olin that the State Water Commission approve the following capital repayment rates, and the replacement and extraordinary maintenance rate for 2003 for the Southwest Pipeline Project:

- 1) Contract Users: \$ 0.87 per thousand gallons***
- 2) Rural Users: \$ 26.50 per month***
- 3) Replacement and Extraordinary Maintenance Rate:
\$ 0.35 per thousand gallons***

Commissioners Hanson, Hofstad, Johnson, Olin, Swenson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

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

James Lennington, project manager for the Northwest Area Water Supply (NAWS) project, provided the following status report:

Contract 2-1A- First Main Transmission Line: The award of contract 2-1A was authorized by the State Water Commission on February 20, 2002 to S. J. Louis Construction, St. Cloud, Minnesota, contingent upon the written concurrence by the Bureau of Reclamation (received on March 28, 2002) and upon completion of the contract documents.

The contractor has completed construction of about 6.5 miles of the 7.5 miles of pipeline in contract 2-1A. The contractor has less than 1 mile of pipeline construction remaining on contract 2-1A. The contract documents allow for change orders increasing the contract amount by up to 25 percent. A change order is being prepared which will add 2 miles of pipeline to this contract. All change orders require the approval of the Bureau of Reclamation. The added pipe will extend the contract to the east side of US Highway 83 and then south 2 miles.

Contract 2-1A has a completion date of November 15, 2002. The change order is being written to have a completion date of July 15, 2003 for the added portion.

Project Intake: There are several options being considered for the Lake Sakakawea intake including a separate intake located to the north of the existing Snake Creek pumping plant (SCPP); the removal of one of the three pumps in the SCPP and the installation of several pumps for NAWS in its place; and attaching the NAWS intake externally on the SCPP facility.

Meetings have been held relative to using the Garrison facilities for the NAWS intake; however, any use of Garrison facilities will require either a water purchase contract or a repayment contract with the Bureau of Reclamation. The Garrison Diversion Conservancy District has raised a question about payment for use of surplus facilities. The basis of negotiation is being developed for the possible repayment contract.

The separate intake alternative does not use any Garrison facilities other than the dredged channel and access road and will not require a contract.

Project Design: The construction schedule for 2003 includes a 3 million gallon pretreated water reservoir just north of the Continental Divide and approximately 10 miles of main transmission pipeline from the end of contract 2-1A to approximately the intersection of ND Highway 23. The preliminary estimated construction cost for contract 2-1B is \$6.5 to \$7 million. The estimated construction cost of the reservoir is \$2 million. Preliminary plans and specifications for contract 2-1B are being reviewed, and it is anticipated these plans will be submitted to the Bureau of Reclamation in mid-October, 2002. Plans and specifications for the reservoir should be received in mid-October, 2002.

Based on the availability of funding, the project construction schedule for 2003 may focus on the design of additional pipeline miles for the project and, therefore, construction of the pretreated water reservoir could be delayed.

2003 LEGISLATION

Secretary Frink provided the following summary of proposed legislation being discussed at the staff level for consideration to the 2003 legislative session, which are under the authority of the State Engineer and the State Water Commission. The bill drafts are attached to these minutes as **APPENDIX "E"**.

Under the authority of the State Engineer:

- **Amendment of subsection 3 of N.D.C.C. § 61-04-05 and subsection 3 of N.D.C.C. § 61-04-05.1 relating to notice of application for a water permit; and requesting a hearing on a water permit application:**
(Attachment 1)

N.D.C.C. § 61-04-05(3) currently requires that notice of a water permit application be provided by certified mail to all public water use facilities in the county in which the proposed appropriation is to occur. When the proposed appropriation is near the county line, the public water use systems in the adjacent county are not notified, even though its point of appropriation may be quite close to a proposed appropriation in the other county. The amendment will require notification of public water use facilities within a radius of 12 miles of the proposed appropriation instead of those in the entire county. This will ensure that those public water use facilities that may have an interest in a proposed appropriation will be notified.

The amendment to N.D.C.C. § 61-04-05.1(3) requires that any person requesting a hearing on the State Engineer's recommended decision on a water permit application must state how they will be aggrieved by the decision and must state the issues, facts, and points of law to be presented at the hearing.

- **Amendment of N.D.C.C. §§ 61-16.1-38 and 61-16.1-53 relating to permits to construct or modify a dam, dike, or other device; and notice and hearing of removal of a noncomplying dike or dam:** (Attachment 2)

The intent of amending N.D.C.C. §§ 61-16.1-38 and 61-16.1-53 is to raise the permitting threshold for dams, dikes, and water control devices from a diverting capacity of 12.5 acre-feet to 25.0 acre-feet. This increase would bring North Dakota's permitting threshold more into line with the threshold in other states.

Language is also being added to N.D.C.C. § 61-16.1-53 to require that the plans and specifications for any structure meeting the permitting threshold must be prepared by a registered professional engineer. This requirement will protect public safety. The hydrologic and hydraulic analysis required to properly design a dam constitutes the practice of engineering and, therefore, should be completed by qualified professional engineers.

- **Amendment of N.D.C.C. § 24-03-08 relating to determinations of surface water flow and appropriate highway construction:** (Attachment 3)

This section authorizes landowners and various political subdivisions to request the State Engineer to make flow determinations for road crossings. The proposed amendment would allow only water resource districts to make these requests. Limiting the ability to request a flow determination by the State Engineer to only water resource districts would facilitate greater cooperation between the local road authorities and the water resource districts.

- **Amendment of N.D.C.C. §§ 61-02-76 and 61-03-22 relating to appeals from decisions of the State Engineer and the State Water Commission:** (Attachment 4)

These sections allow a person aggrieved by a decision of the Commission (61-02-76) or State Engineer (61-03-22) to request a hearing, but a time limit for the request is not provided. The proposed amendments provide the request must be made within 15 days of the Commission's or the State Engineer's decision.

The State Water Commission suggested a more appropriate time limit to provide the request for a hearing would be 30 days (rather than 15 days) within the Commission's or the State Engineer's decision.

- **Amendment of subsection 6 of N.D.C.C. § 61-04-01.1 relating to the definition of “irrigation use”:** (Attachment 5)

The definition of “irrigation use” in this subsection currently applies only to agricultural crops. Water is also used to maintain the growth of grass, shrubs, trees, and flowers on athletic fields, golf courses, parks, and similar types of areas. The use of water for these areas does not meet the current definition of irrigation use. In practice, the State Engineer has issued either a municipal use water permit for irrigation of athletic fields and golf courses when the golf course is owned by the municipality or, if not owned by a municipality, the State Engineer has issued an irrigation use permit. The municipal purpose was determined from legislative intent. The proposed amendment specifically identifies the water used for the maintenance of the above areas as an irrigation purpose.

Under the authority of the State Water Commission:

- **Amendment to N.D.C.C. § 61-02-14.1 and creation of a new section to N.D.C.C. ch. 61-16.1 relating to the procedure by a water resource board to release easements assigned to the board from the state for the construction, operation, and maintenance of dams; and to the procedure by the State Water Commission to assign easements granted to the state for the construction, operation, and maintenance of dams to water resource boards:** (Attachment 6)

This bill provides the authority to the State Water Commission to assign easements granted to the state for the construction, operation, and maintenance of dams, as well as access to the dams when it would be in the best interests of the state. Many of the easements held by the Commission date back to Works Progress and Civilian Conservation Corps projects of the 1940s. Most of the currently functioning dams constructed by these programs are now the responsibility of the respective county water resource districts or they are in poor repair or washed out so they no longer store water. In some instances, other entities are interested in repairing these dams for fish, wildlife, and recreation purposes. In certain areas, it would be most effective to have the easement held by the same entity that is responsible for the dam which, in most instances, is the county water resource board.

Creation of a new section to ch. 61-16.1 provides the authority to the water resource boards to release easements assigned to them from the state if the dams built on the easement areas are no longer useful.

Secretary Frink said it is also intended to request the Office of Management and Budget (OMB) to include in the Commission's appropriation bill language to remove the funding limit on the Devils Lake outlet project, provide the agency with bonding authority of \$60 million, and establish a line of credit with the Bank of North Dakota for interim financing until bonds are issued. The request would also include a statement of intent to provide up to \$16 million during the next two bienniums for Fargo flood control. OMB would have the final approval, including any fiscal amounts.

It was the recommendation of the State Engineer that the State Water Commission approve the bill drafts as presented, which are under the authority of the State Engineer and the State Water Commission, for submittal to the 2003 Legislature.

It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve the following bill drafts, which are under the authority of the State Engineer and the State Water Commission, for submittal to the 2003 Legislature:

- ***A bill relating to notice of application for a water permit; and requesting a hearing on a water permit application***
- ***A bill relating to permits to construct or modify a dam, dike, or other device; and notice and hearing of removal of a noncomplying dike or dam***
- ***A bill relating to determinations of surface water flow and appropriate highway construction***
- ***A bill relating to appeals from decisions of the State Water Commission and the State Engineer***
- ***A bill relating to the definition of "irrigation use"***
- ***A bill relating to the procedure by a water resource board to release easements assigned to the board from the state for the construction, operation, and maintenance of dams; and to the procedure by the State Water Commission to assign easements granted to the state for the construction, operation, and maintenance of dams to water resource boards***

Commissioners Hanson, Hofstad, Johnson, Olin, Swenson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.

**GARRISON DIVERSION
CONSERVANCY DISTRICT
REPORT
(SWC Project No. 237)**

The Dakota Water Resources Act of 2000 directed the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in

North Dakota. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation will be the sole preparer of the Needs and Options report, while the State of North Dakota and the Bureau will jointly prepare the EIS.

During the week of October 7, 2002, the State Water Commission and the Bureau of Reclamation held water user meetings to discuss the Red River Valley Water Supply Project. The purpose of the meetings was to inform interested Red River valley water users about the Red River Project studies and how water users can participate in the study process.

Dave Koland, Garrison Diversion Conservancy District deputy manager, reported that the Bureau of Reclamation and the Conservancy District will hold public meetings during October 28-30 and November 6-8, 2002 to inform the public of the National Environmental Policy Act (NEPA) and water supply processes, and other significant issues which may be addressed in the Red River Valley Water Supply project EIS. Mr. Koland stressed that public input is essential for identifying issues and alternatives to meet the water quality and quantity needs of the Red River valley for the future.

On August 20, 2002, the Bureau of Reclamation hosted a workshop relative to the Memorandum of Understanding (MOU) between the State of North Dakota and the Bureau of Reclamation specific to the requirements in the Dakota Water Resources Act of 2000 to begin the process on the Red River Valley Water Supply study. Mr. Koland said it is anticipated the MOU will be finalized for execution in mid-October, 2002.

**RED RIVER BASIN
COMMISSION REPORT
(SWC File RBB)**

The Red River Basin Commission (RRBC) was formed by consolidating the efforts of The International Coalition, the Red River Basin Board, and

the Red River Water Resources Council into the new RRBC. The new RRBC will have 10 local representatives from Manitoba, Minnesota and North Dakota, and 1 from South Dakota. The local representatives will include 3 cities; 2

counties; 2 water resource districts; 1 environmental; and 1 tribal (all appointed); and 1 at large (elected). The RRBC will operate on a consensus strategy that is backed up by voting when consensus cannot be reached. Each project, program, study, and/or activity that RRBC is asked to support will follow this process. The RRBC is creating a basin-wide vision, develop support for that vision, and promote the vision with a unified voice.

Lance Yohe, executive director, presented the Red River Basin Commission activity report, which is attached hereto as **APPENDIX "F"**.

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

Todd Sando reported that the drought conditions persist in the Missouri River basin. As of September 30, 2002,

system storage in the six mainstem reservoirs was 45.5 million acre-feet (MAF), 13.3 MAF below the average system storage for the end of September and 6.35 MAF less than last year. Lake Sakakawea was at an elevation of 1827.5 feet msl, 4.3 feet lower than a year ago and 12.8 feet below its average end of September elevation. The elevation of Lake Oahe was 1586.4 feet msl on September 30, 2002, 16.5 feet lower than last year and 17.5 feet lower than its average end of September elevation. Fort Peck Lake was at an elevation of 2217.6 feet msl on September 26, 2002, 3.1 feet lower than a year ago and 18.2 feet below its average end of September elevation.

The Corps of Engineers released the draft 2002-2003 Annual Operating Plan (AOP) for the Missouri River. Mr. Sando reported that the draft AOP continues to define operations based on the outdated Master Manual and makes no provisions for conserving water other than reducing the navigation releases to a minimum service level as called for in the current Master Manual. He said this is unfortunate because the Corps's models in the AOP indicate Lake Sakakawea reached an elevation of 1832.2 feet msl at the end of July, falling to 1831.1 feet msl by the end of August, and ending the year at 1829.2 feet msl under the median runoff scenario. Under the lower decile scenario, Lake Sakakawea would reach only 1823.4 feet msl at the end of July and fall to 1816.3 feet msl by the end of the year. These levels are critical because at an elevation of approximately 1825 during warm weather, the cold water fishery is in extreme danger of elimination. The Corps has scheduled public meetings in Bismarck, North Dakota (October 15, 2002), Omaha, Nebraska, and Jefferson City, Missouri to review the draft AOP. Governor Hoeven will provide testimony on behalf of the State of North Dakota at the Bismarck hearing.

The litigants from the various lawsuits filed against the Corps of Engineers met with the Justice Department and the Corps of Engineers on September 17-18, 2002 in Kansas City in an attempt to improve communications and to avoid a similar situation in the future. Mr.

Sando explained that while the Justice Department would like to avoid future lawsuits, they would especially like to avoid a repeat of the situation this past spring when the federal judges in the various states issued restraining orders that were in conflict with each other, and may have even been appealed in different appellate courts.

**SECTION 404 ASSUMPTION
(SWC Project No. 1855)**

During the 2001 North Dakota legislative session, legislation was passed that provided funding and authorized

the hiring of full-time employees to administer the Section 404 permitting program. The funding and hiring authority would be provided once the State Engineer certifies to the Governor that a program has been designed to effectively assume the responsibility for the Section 404 program. Commissioner Thompson requested that staff provide an update on the assumption process at each Commission meeting.

The elements which are required for a complete submission for assumption of the 404 program include a letter from the Governor requesting program assumption; a complete program description; an Attorney General's statement; Memorandum of Agreements with the Environmental Protection Agency and the Corps of Engineers; and copies of applicable statutes and regulations.

Todd Sando reported that the Commission staff review of the updated draft administrative rules was completed, and the draft administrative rules have been made available to state and federal agencies and associations requesting their comments by November 1, 2002. Once the comments have been reviewed and any resulting changes have been made to the draft rules, the formal rule adoption process will be initiated.

The Environmental Protection Agency (EPA) conducted a training course on the Section 404 regulatory program, which was attended by one Commission staff member. The course served as a primer for the 404 program and provided some insight as to the manner in which EPA views the program and the interrelationship between the two federal agencies.

**NEXT STATE WATER
COMMISSION MEETING**

The next meeting of the State Water Commission is scheduled December 6, 2002 at the Best Western Ramkota

Hotel (formerly the Radisson Inn) in Bismarck, ND. The meeting is being held in conjunction with the North Dakota Joint Water Convention scheduled for December 4-6, 2002.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 3:45 PM.

John Hoeven, Governor
Chairman, State Water Commission

SEAL

Dale L. Frink
North Dakota State Engineer, and
Chief Engineer-Secretary to the
State Water Commission