

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

March 5, 2003

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on March 5, 2003. 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
Charles Halcrow, Member from Drayton
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Curtis Hofstad, Member from Starkweather
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Roger Johnson, Commissioner, Department of Agriculture, 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, Governor Hoeven announced the agenda approved as presented.

**CONSIDERATION OF FINAL DRAFT
MINUTES OF DECEMBER 6, 2002
STATE WATER COMMISSION
MEETING -APPROVED**

The final draft minutes of the December 6, 2002 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Hanson, seconded by Commissioner Thompson, and unanimously carried, that the final draft minutes of the December 6, 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 January 31, 2003, reflecting 79 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. The total approved for projects is \$66,502,715, leaving a balance of \$24,336,741 available to commit to projects.

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

David Laschkewitsch stated the oil extraction tax deposits into the Resources Trust Fund are currently \$1,109,275, or 15.6 percent behind the

budgeted revenues. The February oil extraction revenue exceeded the budgeted revenue by \$29,845, and the revised projections prepared by Economy.com show the oil extraction deposits remaining above budget through the end of the 2001-2003 biennium. These revised projections could allow the recovery of some of the current shortfall, and completing the biennium \$763,357 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 \$3.6 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 the January, 2003 tobacco receipts deposited into the Water Development Trust Fund totalled \$3,523,434. This

brings the deposits for the 2001-2003 biennium to \$15,574,754, which is an increase of more than \$91,116 of the budgeted revenues. The next scheduled payment is

anticipated in April, 2003 and is projected to be \$8.4 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, thus the obligational authority was restricted to \$89,516,688. The remaining 25 percent may be obligated to the extent the uncommitted funds are available in the Water Development Trust Fund. The January, 2003 Water Development Trust Fund collections increased the restricted obligational authority to \$90,839,456.

**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 adjustments package.

On December 4, 2002, Governor Hoeven released the executive budget recommendations for the 2003-2005 biennium. Secretary Frink stated that because of the revenue situation in the general fund, the executive budget recommended the agency operations be funded from federal and special funds and, therefore, no general fund revenues were included in the agency budget for the 2003-2005 biennium. The executive budget also recommended only two line items - administrative and support services, and water and atmospheric resources. Federal Emergency Management Agency (FEMA) disaster deficiency payments incurred by the State of North Dakota totalling \$11 million were also included in the executive budget recommendation.

Senate Bill 2022 was heard before the Senate Appropriations Committee on January 21, 2003, and passed the Senate on February 19, 2003. The Senate changes to the bill included the removal of the recommended salary increases in the 2003-2005 biennium; transfer of the agency operations from the Water Development Trust Fund to the general fund allowing the removal of rent, audit and legal fees increases which were a result of being special funded; repeals NDCC chapter 61-38 relating to the assumption of the Section 404 program by the agency and eliminates the funding; reduction of the bonding authority from \$60 million to \$49.5 million; and included federal funding for a floodplain mapping position.

Engrossed Senate Bill 2022 will be heard before the House Appropriations Committee, Education and Environment Division, on March 6, 2003.

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

Devils Lake is currently at elevation 1446.8 feet msl. At this elevation, the lake has a surface area of 123,000 acres and storage of 2.40 million acre-

feet of water. The lake remains frozen so little change in elevation is anticipated for the next several weeks. The Devils Lake basin has received near normal precipitation since December, 2002, with the last major precipitation event occurring on January 26, 2003 that resulted in about six inches of snowfall basinwide. If the basin continues to receive near or normal precipitation for the remainder of the winter, the rise on the lake could be minimal. However, if the basin receives well-above normal precipitation for the remainder of the winter and spring, the lake could have a dramatic rise in its water surface elevation.

On February 21, 2003, the National Weather Service released its 180 day long-range probabilistic forecast for Devils Lake. The current 50 percent maximum daily elevation for Devils Lake is elevation 1447.8 feet msl.

The Commission staff took snow samples throughout the Devils Lake basin in February, 2003. The average depth of snow was six inches, which contained approximately 1.40 inches of water. Samples will continue to be taken throughout the basin as needed to assist in the forecasting efforts.

The current elevation of Stump Lake is 1413.2 feet msl. At this elevation, Stump Lake covers 7,950 acres and is storing 135,000 acre-feet of water.

**DEVILS LAKE OUTLET PROJECTS
(SWC Project No. 416-01)**

CORPS OF ENGINEERS PROJECT

On February 26, 2003, the Corps of Engineers announced that an outlet from Pelican Lake had been identified as the preferred alternative to alleviate flood damages at Devils Lake if the lake continues to rise. The Corps has indicated the final Environmental Impact Statement (EIS) will be released for public review in April, 2003. Following the review of the EIS, there will be a 30-day comment period after which time the Corps will prepare a Record of Decision (ROD) that will describe the Corps's final recommendation on a Devils Lake outlet. It is estimated that the ROD will be completed by September, 2003.

The total estimated cost for the Pelican Lake outlet project, indexed for inflation, is \$208.2 million. A Project Cooperative Agreement (PCA) must be executed by the local sponsor and the Corps in order for the Corps to

proceed with construction of the outlet project. Federal law requires the local sponsor to agree to cost share on the project at 35 percent, or \$73 million, and to indemnify the Corps. The cost estimate includes features that have been added since the draft EIS was released on February 26, 2002 that are intended to alleviate environmental concerns.

The State Water Commission has applied for the water quality certification from the North Dakota Department of Health. Issuance of the necessary permits generally require between three to six months. Legislative changes will be required to enable the State Water Commission to appropriate the funds for the non-federal cost share and to accept the liability of indemnifying the Corps. Without legislation, the State Water Commission cannot approve the PCA and/or authorize execution of the PCA by its secretary.

STATE OF NORTH DAKOTA PROJECT

The State of North Dakota is pursuing a temporary emergency phased outlet project from West Bay to the Sheyenne River. The project is based on a two-year construction timeline, with construction commencing in the spring of 2003 and operational by the spring of 2005.

Phase 1(a) - 300 cfs Open Channel Construction

The first phase includes the construction of approximately 4.2 miles of a 300 cubic feet per second (cfs) open channel from the termination point of the pipeline from the Round Lake pump station, to the Josephine pump station, and from the termination of the second pipeline to near the transition point with the 500 cfs channel.

Landowners on 1.7 miles of the Phase 1(a) open channel have signed the easement option. The quick-take authority that was previously approved by the State Water Commission for this project may be necessary to acquire some of the land needed for construction of this phase.

The total cost for the 300 cfs open channel construction of Phase 1(a) is approximately \$5 million.

Phase 1(b) - Power Supply

Phase 1(b) includes contracting with the local Rural Electric Cooperative (REC) for the electrical power supply to the two pump stations that would consist of 115 kV lines and a substation. Completion of the surveying, mapping, and design work of the power

facilities would allow for construction to begin in the summer of 2003 and completion by the summer of 2004. The total cost for the power supply portion of Phase 1(b) is approximately \$2.5 million.

The State Water Commission has applied for, and received a draft permit of the North Dakota Department of Health's Discharge Permit. The draft permit allows the discharge of up to 100 cfs into the Sheyenne River as long as Devils Lake is above elevation 1445, and that the sulfate level in the Sheyenne River does not exceed 300 mg/L after mixing. Because there will not be a discharge of fill material into any waters of the United States during the construction of this project, it appears that a 404 permit will not be necessary.

The State Water Commission deliberated at length on the Corps's preferred alternative for the federal outlet project. The Commission members expressed concern whether a federal outlet to ease Devils Lake flooding would ever be built and whether the state can afford \$73 million for the non-federal cost share. The state will not have to commit to participating in a federal outlet until the fall of 2003 when the Corps's decision to move forward with the project becomes official. The environmental factors that have increased the estimated cost of the federal outlet project were discussed, which include a sand filter to remove portions of the biological material from the Devils Lake water before it is released into the Sheyenne River.

The Commission considered the following alternatives to alleviate flood damages at Devils Lake, which are outlined in **APPENDIX "C"**:

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|---------------|--|
| Alternative 1 | move forward with the federal outlet |
| Alternative 2 | move forward with the state outlet |
| Alternative 3 | divert efforts and funding to upper basin water management and infrastructure protection |

It was the recommendation of the State Engineer that the State Water Commission approve the continued construction of the state outlet project, as described in Alternative 2, and approve the expenditure of \$7.5 million from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Phase 1(a) (300 cfs open channel construction - \$5.0 million) and Phase 1(b) (power supply - \$2.5 million), contingent upon the availability of funds, and pending final approval by the Governor and the State Engineer.

It was moved by Commissioner Hofstad and seconded by Commissioner Halcrow that the State Water Commission approve the continued construction of the State of North Dakota's Devils Lake outlet project, as described in Alternative 2, and approve the expenditure of \$7.5 million from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for Phase 1(a) (300 cfs open channel construction - \$5.0 million) and Phase 1(b) (power supply - \$2.5 million). This motion is contingent upon the availability of funds, and pending final approval by the Governor and the State Engineer.

The Commission discussed the draft North Dakota Department of Health's discharge permit required to drain water into the Sheyenne River, and questioned whether state funding should be authorized for construction work before the discharge permit has been obtained.

The electrical power supply to the pump stations was discussed. Based on the discussion and in an effort to reduce power supply costs, the State Engineer and staff were directed to explore the bid process option for power suppliers for surveying, mapping, and design work of the power facilities.

At its meeting on December 6, 2002, the State Water Commission passed a motion that the Commission, along with other entities, continue the efforts to actively pursue congressional authorization for the allocation of federal hydropower for statewide irrigation districts and the Devils Lake outlet project at the federal preference, or firm power rate utilized for other preference customers. Based on the discussion, Governor Hoeven directed the State Engineer and staff to explore the possibility of pursuing congressional authorization for the allocation of federal hydropower for the state's Devils Lake outlet project.

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

Joe Belford, Ramsey County Commission member, expressed the importance of maintaining the Corps of Engineers's involvement because additional dike and road work likely will be necessary in the flooded Devils Lake region. A public hearing is scheduled in Devils Lake on March 7, 2003 to discuss the federal outlet.

Governor Hoeven emphasized "that although we have elected to move forward with the state's outlet project, the state is not in a position at this time to forego the federal outlet totally. The state is not

relieving the Corps of Engineers of its obligations to help address the Devils Lake flooding issues, and we must continue to push the Corps in its involvement to solve this problem.”

In discussion of the construction schedule for the state’s outlet project, Governor Hoeven reiterated his comments from the December 6, 2002 Commission meeting “emphasizing the importance of developing the best management plan to aggressively move the state’s project forward in a realistic, sensible, and expeditious manner.”

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR
STATE COST PARTICIPATION
IN CASS COUNTY DRAIN NO. 9
DROP STRUCTURE CONSTRUCTION
(SWC Project No. 1066)**

A request from the Southeast Cass Water Resource District was presented for the Commission’s consideration for state cost participation to construct a drop structure on Cass County Drain No. 9. The project will solve instability problems on the banks of the channel at the outlet.

Cass County Drain No. 9, an assessed agricultural drain located in Tier 141 North, Range 49 West, Section 36, and Tier 140 North, Range 49 West, Sections 2, 10 and 11, drains approximately 2,112 acres. The State Water Commission denied cost share for modifications to Drain No. 9 in 1989 because the drain was perceived as primarily a discharge point for the city of Fargo’s lagoons. Although the city’s lagoons are in the drainage area, they no longer contribute to the drain. When the lagoons are discharged, the effluent is now piped directly to the Red River.

The outlet of Cass County Drain No. 9 has suffered severe erosion from large flow events and an ordinary repair will not solve long-term issues of bank stability. A pipe drop structure with a plunge pool will be installed in the NE1/4 of Section 36 in Harwood township, and reducing the channel depths and flattening the channel side slopes will also enhance stability at the site. A permit application for the proposed modifications has been received from the district and is being reviewed for downstream impacts. Construction work includes clearing and grubbing, excavation, embankment and spoil leveling, 60-inch corrugated metal pipe, riprap, and seeding.

The improvement project is authorized and is being completed with the assistance of the Federal Emergency Management Agency (FEMA). The estimated total cost of the project is \$95,000, of which \$59,827 is considered eligible for state cost share participation as a rural flood control project at 35 percent, for an amount not to exceed \$20,939 in state funds. The ineligible expenses consist of FEMA’s contribution of \$27,673, and administration, legal and right-of-way costs totalling \$7,500.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost share participation of 35 percent of the eligible costs, not to exceed \$20,939 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 9 drop structure construction project.

It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission conditionally approve a state cost share participation of 35 percent of the eligible costs, not to exceed \$20,939 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Cass County Drain No. 9 drop structure construction project. This motion is contingent upon the availability of funds, and the issuance of the required permit.

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

**APPROVAL OF REQUEST FROM
SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR
STATE COST PARTICIPATION
IN SHEYENNE RIVER SNAGGING
AND CLEARING PROJECT
(SWC Project No. 568)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for state cost participation in their snagging and clearing project on the Sheyenne River. The Sheyenne River requires regular snagging and clearing projects to maintain the channel capacity during floods.

The snagging and clearing work consists of the removal and disposal of tagged standing and fallen trees, snags, driftwood, stumps and debris occurring in the Sheyenne River channel in Reed, Stanley, and Barnes Townships in Cass County. The contractor will remove all items as shown in the specifications regardless of the number or locations of set-ups and approaches to the river required. All items which, in the opinion of the project engineer, are beneficial or helpful in reducing river bank erosion and which do not interfere with streamflow will be allowed to remain.

The project engineer's cost estimate is \$100,000, of which all is determined to be eligible for 25 percent state cost share assistance, in the amount of \$25,000. The request before the State Water Commission is for 25 percent state cost share assistance in the amount of \$25,000.

It was the recommendation of the State Engineer that the State Water Commission approve a 25 percent state cost share participation, in the amount of \$25,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium.

It was moved by Commissioner Hofstad and seconded by Commissioner Swenson that the State Water Commission approve a 25 percent state cost share participation of the eligible costs, in an amount not to exceed \$25,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Sheyenne River snagging and clearing project. This motion is contingent upon the availability of funds.

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

APPROVAL OF REQUEST FROM TRAILL COUNTY WATER RESOURCE DISTRICT FOR STATE COST PARTICIPATION IN THE IMPROVEMENT RECONSTRUCTION AND EXTENSION OF TRAILL COUNTY DRAIN NO. 13 (SWC Project No. 1232)

A request from the Traill County Water Resource District was presented for the Commission's consideration for state cost participation in the improvement reconstruction and extension of Traill County Drain No. 13. The purpose of the project is to reduce flood damages to agricultural properties.

The existing drain to be reconstructed is locally known as the Mickelson Drain and was originally constructed in the early 1900s. The outlet for this 2.5 mile drain is an unnamed tributary to the Red River. The drain will be reconstructed to flatten the channel side slopes, which vary from 1:1 to 4:1 to a continuous 4:1 slope, and widen the V-shaped channel bottom to 10 feet.

Mickelson Drain will also be extended westward along the north side of the east/west township road by 6 miles and east to the Red River approximately 0.5 mile, creating a drain with a total length of approximately 9.3 miles. The portion of the drain to be constructed will have 4:1 side slopes and a 10-foot bottom width. The project will require the installation of intercept culverts, roadway crossings through the township roads and County Highways No. 2 and 4, and an outfall structure to the Red River.

The District indicated the formal procedure to create a new assessment district is currently ongoing and the local assessment vote is scheduled in May, 2003. A drain permit is required for this project, and upon receipt of the drain permit application, the Red River Basin Joint Water Resource Board will be solicited to provide a project review.

The project engineer's cost estimate is \$1,150,000, of which \$968,777 is considered eligible for state cost participation as a rural flood control project at a 35 percent cost share, not to exceed \$339,072 in state funds. The current State Water Commission policy limits the amount of funds available for individual rural flood control projects in the 2001-2003 biennium to \$250,000 per project. The request before the State Water Commission is for a 35 percent cost share in the amount of \$250,000. The unfunded eligible balance of \$89,072 will be deferred for further consideration in the 2003-2005 biennium.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 35 percent of the eligible costs, not to exceed \$250,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Traill County Drain No. 13 improvement reconstruction and extension project. An affirmative vote would be contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfying all permit requirements, and approval of the project's final design.

On December 6, 2002, the State Water Commission considered the following recommendations from the Commission's rural flood control committee and adopted the rural flood control cost share policy statement relating to downstream impact analysis requirements:

State Water Commission's rural flood control committee recommendations: Because funding for a rural flood control project may be granted prior to the issuance of an associated drain permit, the Commission's rural flood control committee determined that it would be more appropriate to analyze any potential downstream impacts during the regulatory process, rather than during the cost share process. The committee additionally concluded that for projects located in the Red River valley, input from the Red River Basin Joint Water Resource Board should be solicited in order to bring a more regional perspective to the local water resource district's review of the drain permit application.

Rural flood control cost share policy statement: *It is the policy of the State Water Commission to provide financial support, contingent upon the availability of funds, for rural flood control projects. In order to provide a basinwide perspective to the regulatory review of proposed drainage projects, the State Engineer shall solicit, at his*

discretion, comments from the applicable joint powers board. It is anticipated that this additional basinwide perspective, in concert with the State Engineer's judgement, will help ensure that the issue of potential downstream impacts is properly addressed.

To address the questions and concerns expressed by the Commission members relative to the intent of the current policy for the downstream impact analysis requirements, Governor Hoeven directed the State Water Commission's rural flood control committee and others to revisit the policy.

It was moved by Commissioner Hillesland and seconded by Commissioner Halcrow that the State Water Commission conditionally approve a 35 percent state cost participation of the eligible costs, not to exceed \$250,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Traill County Drain No. 13 improvement reconstruction and extension project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfying all permit requirements, and approval of the project's final design.

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

APPROVAL OF REQUEST FROM TRAILL COUNTY WATER RESOURCE DISTRICT FOR STATE COST PARTICIPATION IN THE IMPROVEMENT RECONSTRUCTION AND EXTENSION OF TRAILL COUNTY DRAIN NO. 27 (SWC Project No. 1232)

A request from the Traill County Water Resource District was presented for the Commission's consideration for state cost participation in the improvement reconstruction and extension of Traill County Drain No. 27. The purpose of the project is to reduce flood damages to agricultural properties.

The existing drain to be reconstructed is locally known as the Moen Drain and was originally constructed in the early 1900s. The outlet for this 5.5 mile drain is an unnamed tributary to the Red River. The drain will be reconstructed to flatten the channel side slopes, which vary between nearly vertical and 4:1 to a continuous 4:1 slope, and to widen the channel bottom which varies between V-shaped and 15 feet to a uniform 10 feet.

Moen Drain will also be extended westward along the north side of Highway No. 17 by 2 miles and east to the Red River approximately 1/2 mile, creating a drain with a total length of approximately 8 miles. The portion of the drain to be constructed will have 4:1 side slopes and a 10-foot bottom width. The project will require the installation of intercept culverts, roadway crossings through the township roads and County Highways No. 2, 4, and 17, and an outfall structure to the Red River.

The District indicated the formal procedure to create a new assessment district is currently ongoing and the local assessment vote is scheduled in May, 2003. A drain permit is required for this project, and upon receipt of the drain permit application, the Red River Basin Joint Water Resource Board will be solicited to provide a project review.

The project engineer's cost estimate is \$1,125,000, of which \$968,205 is considered eligible for state cost participation as a rural flood control project at a 35 percent cost share, not to exceed \$338,872 in state funds. The current State Water Commission policy limits the amount of funds available for individual rural flood control projects in the 2001-2003 biennium to \$250,000 per project. The request before the State Water Commission is for a 35 percent cost share in the amount of \$250,000. The unfunded eligible balance of \$88,872 will be deferred for further consideration in the 2003-2005 biennium.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 35 percent of the eligible costs, not to exceed \$250,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Traill County Drain No. 27 improvement reconstruction and extension project. An affirmative vote would be contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfying all permit requirements, and approval of the project's final design.

The Commission members concurred that in addition to the contingencies recommended by the State Engineer, funding for the Traill County Drain No. 27 improvement reconstruction and extension project should also be contingent upon the Red River Joint Water Resource Board's approval, and that the downstream impact analysis include the potential impacts relating from one to five year storm events.

It was moved by Commissioner Swenson and seconded by Commissioner Hanson that the State Water Commission conditionally approve a 35 percent state cost participation of the eligible costs, not to exceed \$250,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Traill

County Drain No. 27 improvement reconstruction and extension project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfying all permit requirements, potential impacts from one to five year storm events shall be provided in the downstream impact analysis, approval of the project's final design, and project approval by the Red River Joint Water Resource Board.

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

APPROVAL OF REQUEST FROM TRAILL COUNTY WATER RESOURCE DISTRICT FOR STATE COST PARTICIPATION IN THE IMPROVEMENT RECONSTRUCTION AND EXTENSION OF TRAILL COUNTY DRAIN NO. 30 (SWC Project No. 1247)

A request from the Traill County Water Resource District was presented for the Commission's consideration for state cost participation in the improvement reconstruction and extension of Traill County Drain No. 30. The purpose of the project is to reduce flood damages to agricultural properties. A positive vote has been received for the assessment district.

The existing drain to be reconstructed is locally known as the Brooke Drain and was originally constructed in 1948. The outlet is an unnamed coulee that flows into the Red River. The existing channel was designed to meet the Soil Conservation Service's "S" curve standard.

Brooke Drain will be reconstructed to a 12-foot bottom width with 4:1 side slopes, and the channel will include a two-mile extension to the west. The total drain length, after extension, will be approximately 7 miles. Three drop structures will be constructed in the east 700 feet of the outlet channel. The bridges at County Road 32 and Station 1211+5 will be replaced with corrugated metal pipe arches. All culverts for crossings on the original drain will be removed and replaced with corrugated metal pipe arches, and the two miles of new channel will have the existing culverts removed and replaced with new culverts.

An application to permit this project has been received from the district and is being reviewed by the Red River Joint Water Resource Board for downstream impacts. The project engineer has provided a sediment analysis indicating the project will involve the removal of 1,800 cubic yards of sediment.

The project engineer's cost estimate is \$485,655, of which \$484,306 is considered eligible for state cost participation as a rural flood control project at a 35 percent cost share, not to exceed \$169,507 in state funds. The request before the State Water Commission is for a 35 percent cost share in the amount of \$169,507.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve a state cost participation of 35 percent of the eligible costs, not to exceed \$169,507 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Traill County Drain No. 30 improvement reconstruction and extension project. An affirmative vote would be contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfying all permit requirements, and approval of the project's final design.

The Commission members concurred that in addition to the contingencies recommended by the State Engineer, funding for the Traill County Drain No. 30 improvement reconstruction and extension project should also be contingent upon the Red River Joint Water Resource Board's approval, and that the downstream impact analysis include the potential impacts relating from one to five year storm events.

It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission conditionally approve a 35 percent state cost participation of the eligible costs, not to exceed \$169,507 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Traill County Drain No. 30 improvement reconstruction and extension project. This motion is contingent upon the availability of funds, attainment of a positive local assessment vote within six months of the State Water Commission's funding approval, satisfying all permit requirements, potential impacts from one to five year storm events shall be provided in the downstream impact analysis, approval of the project's final design, and project approval by the Red River Joint Water Resource Board.

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

**APPROVAL OF REQUEST FROM
RED RIVER BASIN COMMISSION
FOR EXPENDITURE OF \$100,000
FROM JULY 1, 2002 THROUGH
JULY 1, 2003
(SWC File AOC/RBB)**

The Red River Basin Commission (RRBC) was formed in 2001 to serve as a grassroots effort to address land and water issues in a basinwide context. The RRBC was originally known as the Red River Basin Board, and is a result of the amalgamation of the

Board, The International Coalition, and the Red River Water Resources Council. The organization is comprised of a 41-member board of directors representing a broad cross-section of local and state/provincial governments and other interests. The State Engineer is a member of the board appointed by Governor Hoeven.

The State Water Commission has participated in funding the activities of the Red River Basin Board for several years, as well as Minnesota, Manitoba and local governments in the three major jurisdictions. Equal contributions of \$100,000 per year are required of each of the six primary sponsors to fund the RRBC's operating costs for projects.

A request was presented for the State Water Commission's consideration to provide an allocation of \$100,000 to the Red River Basin Commission, beginning July 1, 2002 and ending June 1, 2003, to support the efforts to address water management Problems, Impediments, Roadblocks, and Challenges (PIRC) facing the Red River basin.

Bruce Furness, mayor of the city of Fargo and former chairman of the RRBC, and Lance Yohe, executive director of the RRBC, expressed appreciation to the State Water Commission for its past support. The goals and actions for the 2003 PIRC work plan were explained, which are attached hereto as **APPENDIX "D"**. Mr. Yohe stated that work on the PIRC is anticipated to have a significant positive effect in overcoming historic impediments to water management across the Red River basin.

It was the recommendation of the State Engineer that the State Water Commission approve \$100,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to support the Red River Basin Commission's planning activities to address the water management Problems, Impediments, Roadblocks, and Challenges facing the Red River basin, beginning July 1, 2002 through June 30, 2003. The Commission's approval of this expenditure will be contingent upon the availability of funds. It is expected that the primary sponsors will match any funds the State Water Commission contributes to the RRBC.

It was moved by Commissioner Hanson and seconded by Commissioner Hillesland that the State Water Commission approve the expenditure of \$100,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to support the Red River

Basin Commission's planning activities to address the water management Problems, Impediments, Road-blocks, and Challenges facing the Red River basin, from July 1, 2002 through June 30, 2003. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST
FROM NORTH DAKOTA WATER
EDUCATION FOUNDATION FOR
ALLOCATION OF \$18,000 FOR
PARTICIPATION IN NORTH
DAKOTA WATER MAGAZINE
FROM JULY 1, 2002 TO JUNE 30, 2003
(SWC File No. AOC/WEF)**

A request from the North Dakota Water Education Foundation was presented for the Commission's consideration to continue its participation in the *North Dakota Water* magazine from July 1, 2002 to June 30, 2003.

The State Water Commission has contributed to this effort since 1994 to support the magazine and its own pages, the monthly "Oxbow" section and the "Water Primer" section. Secretary Frink said that with the Commission's support, the *North Dakota Water* magazine provides continued communication among people interested in North Dakota's water resources.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$18,000 from the funds appropriated to the State Water Commission for the 2001-2003 biennium, to the North Dakota Water Education Foundation to assist in the publication of the *North Dakota Water* magazine for the period July 1, 2002 to June 30, 2003.

It was moved by Commissioner Olin and seconded by Commissioner Halcrow that the State Water Commission approve the allocation of \$18,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, to the North Dakota Water Education Foundation to assist in the publication of the North Dakota Water magazine for the period July 1, 2002 to June 30, 2003. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FROM
CASS COUNTY JOINT WATER
RESOURCE BOARD FOR THE
ALLOCATION OF AN ADDITIONAL
\$500,000 TO MAPLE RIVER DAM
(COMPONENT OF SHEYENNE
RIVER FLOOD CONTROL PROJECT)
(SWC Project No. 1344)**

On May 26, 1992, the State Water Commission approved \$500,000 for the Maple River Dam, a component of the Sheyenne River Flood Control project, for the preliminary engineering and design, geotechnical analysis, cultural resource studies, and associated contingency costs.

At its meeting on December 8, 2000, the State Water Commission approved the allocation of an additional \$500,000 for the project to include preliminary engineering and design, geotechnical analysis, environmental studies, road and utility relocation and modifications, and associated contingency costs. The \$1.0 million of approved state funding has been expended and invoices have been submitted for additional costs.

The project sponsors provided an updated cost estimate in 2002 for the entire project. At that time, the total project was estimated to cost \$20.8 million including \$10.5 million of construction costs and \$10.3 million of non-construction related costs including engineering, environmental compliance, legal, and land costs. Secretary Frink stated that although land and legal costs were identified as ineligible in the previous contracts, it may be appropriate for the Commission to consider legal costs eligible given the extensive delays in obtaining a Section 404 permit and the escalating legal costs that have resulted. He also said it may be necessary to include land purchases eligible for cost share following the issuance of the required permit.

Excluding the land costs, the eligible non-construction project costs were estimated to be \$7.6 million, which would be eligible for a 50 percent state cost share in the amount of \$3,812,500. Subtracting the \$1.0 million already expended leaves \$2,812,500 of potential state funding for activities leading to the actual project construction. A total of \$7,710,250 was earmarked for this project for the 2001-2003 biennium. The district indicated it will spend approximately \$1.0 million, excluding land costs, between now and the issuance of the Section 404 permit. At a 50 percent cost share, the request before the State Water Commission is for the allocation of an additional \$500,000 from the \$7,710,250 earmarked for the project.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of an additional \$500,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Maple River Dam project based on a 50 percent cost share of the eligible items to include the preliminary engineering and design, geotechnical analysis, environmental studies, road and utility relocation and modifications, legal, and associated contingency costs.

It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve the allocation of an additional \$500,000 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the Maple River Dam project based on a 50 percent cost share of the eligible items to include the preliminary engineering and design, geotechnical analysis, environmental studies, road and utility relocation and modifications, legal, and associated contingency costs. This motion is contingent upon the availability of funds.

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

**APPROVAL OF REQUEST FOR
EXPENDITURE OF FUNDS FOR
REPAIRS AND MODIFICATIONS
TO SWEETBRIAR DAM IN
MORTON COUNTY
(SWC Project No. 642)**

Sweetbriar Dam is located in Morton county approximately 17 miles west of Mandan. In the spring of 2002, a major crack in the upstream face of the concrete drop-inlet spillway was discovered by personnel from the North Dakota Department of Transportation (DOT).

A joint inspection by staffs of DOT and the Commission was conducted in May, 2002 in order to determine the extent of the damage. Based on the inspection, it was determined the structure needed to be repaired, and it was agreed the most feasible method to make the repairs was to include the work into the reconstruction of U.S. Interstate 94, which is scheduled for the 2003 construction season at this location.

Bids were opened for the reconstruction of Interstate 94 on November 15, 2002. The successful low bidder was Northern Improvement Company, Fargo, ND. The contractor submitted a cost estimate of \$101,700 to make the repairs to the spillway. In addition to the removal and replacement of the damaged concrete, the contractor has agreed to install a portion of a new low-level drawdown system at the dam. The Morton County Park Board will supply the materials for the low-level drawdown system, which are estimated at \$10,300. The Commission's construction crew will complete the installation of the low-level drawdown and repair two major cracks in the concrete spillway. The cost associated for the work performed by the Commission staff is estimated at \$18,000. The total estimated cost to make the repairs and modifications at Sweetbriar Dam is \$130,000.

Secretary Frink indicated that the Morton County Park Board and the North Dakota Game and Fish Department have agreed to an expenditure of \$43,333 from each agency (one-third of the total estimated cost of \$130,000). A request was presented for the State Water Commission's consideration for state cost participation in one-third of the estimated costs to repair the dam (\$43,333). This cost share would include \$25,333 from the funds appropriated to the State Water Commission in the 2001-2003 biennium, and \$18,000 of in-kind services provided by the Commission.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the expenditure of one-third of the eligible costs, not to exceed \$43,333, of which \$25,333 shall be expended from the funds appropriated to the State Water Commission in the 2001-2003 biennium, and \$18,000 shall be in-kind services provided by the State Water Commission, for the repairs and modifications to Sweetbriar Dam in Morton county. This motion is contingent upon the availability of funds.

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

**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:

Contract 4-1B - Final Phase of Construction at Raw Water and Jung Lake Pumping Facilities: Contract 4-1B was awarded to PKG Contracting, Inc., Fargo, ND, on January 9, 2003. The contract will add pumps at the intake, Dodge, and the 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. The contract includes an additional 350 Hp pump for the Jung Lake pump station, bringing that facility from 1,900 gpm to 2,350 gpm. The completion date for contract 4-1B is November 1, 2003.

The contractor has begun work by preparing and submitting the shop drawings for the work at the pump stations, which are being reviewed by the project engineer. The CO₂ tank has been ordered by State Purchasing

and is expected to be delivered in mid-May, 2003. Work is anticipated to begin on the tank foundation at the Dickinson water treatment plant when the frost comes out of the ground and work will then proceed to the pump stations.

Southwest Water Authority Operations Budget and Water Rates for 2003: Under the Transfer of Operations Agreement, the Southwest Water Authority must prepare a budget by December 15 of each year and submit it to the Secretary of the State Water Commission. The budget is deemed approved unless the Secretary of the State Water Commission notifies the Southwest Water Authority of his disapproval by February 15. The Southwest Water Authority submitted their budget, which was reviewed by the Commission staff. The Secretary of the State Water Commission indicated the budget was reasonable and adequate.

The capital repayment and replacement and extraordinary maintenance (REM) rates for 2003 were approved by the State Water Commission on October 10, 2002. The September, 2002, Consumer Price Index was used to calculate the capital repayment rate for 2003. This resulted in a capital repayment rate of \$0.87 per thousand gallons for contract users and \$26.50 per month for rural users. These compare with 2002 rates of \$0.85 per thousand gallons for contract users and \$26.03 per month for rural users. The water rate for REM will remain the same as it has been since 1999 at \$0.35 per thousand gallons.

The water rates charged by the Southwest Water Authority will remain the same as in 2002, with small reductions in reserve, operation, and maintenance rates to accommodate the capital repayment increases.

Declining Block Water Rate: A rate structure study committee was formed by the Southwest Water Authority in late 2001, with an established goal of stabilizing water rates. Several strategies were identified by the committee, one of which was selling more water. Livestock water users were targeted by the committee because it felt that they represent a potential for a substantial increase in consumption. As an incentive to producers, the Authority approved a declining block water rate in March, 2002, on a three-year experimental basis for all customers using over 10,000 gallons of water per month. The rate for water use above 10,000 gallons was reduced from \$3.60 to \$2.60 per thousand gallons. Water use for the same rural users increased overall by 12.4 percent from 2001 to 2002, while city use only increased by 0.54 percent. For pasture taps, the increase in water use was 96.4 percent. The dry conditions in 2002 may have had a large influence. Following the three-year experiment, the Authority will review the effects of the declining block rate on rural water use and expenses. As part of its budget review responsibilities, the State Water Commission staff will also evaluate the effect.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR REPLACEMENT AND EXTRAORDINARY
MAINTENANCE FOR PUMP MOTOR
AT RICHARDTON PUMP STATION
(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 prefunded. Expenditures from this fund are required to be authorized by the State Water Commission.

It is known that there will be maintenance costs each year, and an amount sufficient to cover the expected maintenance with some allowance for the unexpected is included in each year's operating budget. If an extremely unlikely event occurs, but its cost is low, it should be considered as ordinary maintenance since a certain number of unlikely events are bound to happen each year. The reserve fund is intended for use on extremely costly events which are too costly to be included in any year's operating budget.

In considering authorization to use the fund for the replacement of air vacuum/air release valves at its June 19, 1996 meeting, the State Water Commission adopted a criterion based on the cost of the event. The Southwest Water Authority calculates the maintenance, or replacement cost of an event and, based upon the State Engineer's review, if the eligible items exceed \$10,000, the Commission will authorize the maintenance or replacement. Lost water and vehicle replacement are not considered eligible for reimbursement.

The M2 pump motor at the Richardton pump station failed on August 22, 2002, and it was sent to the Western Engineered Solutions in Bismarck for repairs. This is the motor for one of the two large 900 Hp pumps at Richardton. The pump motor was "rewound" and returned on October 30, 2002. The cost of the repair was \$14,874, which was paid by the Southwest Water Authority in November, 2002.

James Lennington explained that the technicians at Western Engineered Solutions were not able to determine the cause of failure and the manufacturer, U.S. Motors, has been contacted. The pump is beyond the warranty period but had logged only a few hundred hours of use. Mr. Lennington said it is possible that the manufacturer will reimburse the Authority for a portion of the repair costs. In the event that the manufacturer rejects the appeal for relief, he said the entire amount is eligible for reimbursement from the reserve fund for replacement and extraordinary maintenance. The Authority will not withdraw the funds until they have resolved the issue with the manufacturer.

It was the recommendation of the State Engineer that the State Water Commission approve the reimbursement of \$14,874 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for the repair of the pump motor M2 at the Richardton pump station, contingent upon resolution of the issue with the manufacturer.

It was moved by Commissioner Swenson and seconded by Commissioner Hanson that the State Water Commission approve the reimbursement of \$14,874 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for the repair of the pump motor M2 at the Richardton pump station. This motion is contingent upon resolution of the issue with the manufacturer.

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

**SOUTHWEST PIPELINE PROJECT -
AUTHORIZATION FOR PREPAYMENT
OF PROJECT 1998 SERIES A BOND
(SWC Project No. 1736)**

The Southwest Pipeline Project has been issued eight revenue bond series since 1997. James Lennington explained that the first bond series, Series 1997A, was publicly sold on the bond market. Series 2000A was issued through the North Dakota Municipal Bond Bank as part of the State Revolving Loan Fund. The remaining bonds were issued through USDA, Rural Development's grant-loan program. Each bond account at the Trustee, Wells Fargo Bank, in Minneapolis, has an annual maintenance charge of \$2,200.

Mr. Lennington stated that the 1998 Series A bond was one of the USDA, Rural Development bonds issued for \$100,000 for the East Rainy Butte portion of the Bucyrus and Three Pockets Areas in the Hettinger-Reeder phase of the Southwest Pipeline Project. On this bond, the annual charge represents 2.2 percent of the par amount of the bond.

The anticipated revenue from capital repayments by the Southwest Water Authority would allow the 1998 Series A bond to be paid off in the current bond year. Therefore, it was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer, as a Project Officer under the Southwest Pipeline General Bond Resolution, to prepay the Southwest Pipeline Project 1998 Series A bond.

It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission authorize the State Engineer, as a Project Officer under the Southwest Pipeline General Bond Resolution, to prepay the Southwest Pipeline Project 1998 Series A bond.

Commissioners Halcrow, Hanson, Hillesland, Hofstad, Olin, Swenson, Thompson, 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: At the end of the 2002 construction season, the contractor, S. J. Louis Construction, St. Cloud, Minnesota, worked on the bored and cased crossing of U.S. Highway 83, which added 10,000 feet of pipe to contract 2-1A as well as the highway crossing. The cost of this change order was \$965,610, increasing the total cost of contract 2-1A (9.5 miles) to \$5,782,688.15. The completion date for this change order is July 15, 2003.

Contract 2-1B - Pretreated Water Pipeline: Plans and specifications for contract 2-1B were approved by the Dakotas Area Office of the Bureau of Reclamation on February 19, 2003, with permission to bid. Contract 2-1B is for approximately 9.5 miles of 30-inch and 36-inch pipe from the south end of contract 2-1A, which is about 4 miles south of the NDSU Agricultural Experiment Station to just across N.D. Highway 23. The contract includes a pressure reducing valve station on the 2-1A contract near the U.S. Highway 83 crossing. The estimated cost of contract 2-1B is approximately \$5.4 million. The bid opening has been scheduled for March 20, 2003.

Other Project Issues: On February 5, 2003, the State of North Dakota filed an unopposed motion in federal District Court in the District of Columbia to intervene as a defendant in the lawsuit filed by the Province of Manitoba against the Department of the Interior over the NAWS project.

On January 21, 2003, the NAWS project manager was deposed by the attorney for the "GO" Committee in their lawsuit versus the city of Minot. This lawsuit concerns the city's use of sales tax revenue collected for improvement of its water supply facilities including the local share of the NAWS project. The committee contends that the city's use of the sales tax

for some facilities at the Minot water treatment plant was illegal. Although this case does not directly affect the State Water Commission, it could affect future projects, besides NAWS, for which the city sales tax funds could be used.

On February 5, 2003, the first appeal by a landowner, First Baptist Church of Minot, condemned for NAWS pipeline easements, went to jury trial. The church was asking for \$150,000 in damages because it maintained that its future access to municipal sewer facilities was hampered by the presence of the pipeline. The church purchased the property in 2002 and there were no sewer facilities in the area. It was the state's contention that the requested damages were speculative and, therefore, inappropriate. The church was informed that the pipeline would not substantially affect sewer access and if they were hampered in, damages would be discussed at that time. The church was not willing to accept that situation and, therefore, the jury awarded the church \$50,000.

An engineering firm has been retained, as a subcontractor to the NAWS engineer, to analyze the effects on future sewer connections in southwestern Minot. The report from this analysis will be distributed to all landowners affected by easements.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF FEDERAL
MR&I GRANT OF \$4 MILLION
FOR NAWS, MINOT COMPONENT
(SWC Project 237-04)**

The Northwest Area Water Supply (NAWS) project, Minot component, was previously approved for a federal MR&I grant of \$8,356,498, not to exceed 65 percent of the eligible project costs, and subject to the availability of

funds. Of this federal grant amount, approximately \$1.0 million is uncommitted. A request was presented for the State Water Commission's consideration for an additional federal MR&I grant up to \$4.0 million, not to exceed 65 percent of the eligible project costs, for the Minot component, contract 2-1B and the remaining pipeline design to Lake Sakakawea. This will require a 35 percent cost share from the city of Minot.

It was recommended by the State Engineer that the State Water Commission approve an additional federal MR&I grant up to \$4.0 million, not to exceed 65 percent of the eligible project costs, for the Minot component, contract 2-1B and the remaining pipeline design to Lake Sakakawea. Affirmative action by the State Water Commission would increase the total federal MR&I grant to \$12,356,498.

It was moved by Commissioner Hillesland and seconded by Commissioner Hanson that the State Water Commission approve an additional federal MR&I grant up to \$4.0 million, not to exceed 65 percent of the eligible project costs, for the Northwest Area Water Supply project, Minot component, contract 2-1B and the remaining pipeline design to Lake Sakakawea. This motion is contingent upon the availability of federal funds, and is subject to future revisions.

This action increases the total federal MR&I grant to \$12,356,498 for the Northwest Area Water Supply project, Minot component.

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

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF FEDERAL
MR&I GRANT OF \$900,000
FOR NAWS, RUGBY COMPONENT
(SWC Project 237-04)**

The Northwest Area Water Supply (NAWS) project, Rugby component, was previously approved for a federal MR&I grant of \$2.6 million, not to exceed 65 percent of the eligible project costs, and subject to the availability of funds. Of this federal

grant amount, approximately \$0.91 million is uncommitted. The water treatment plant at the city of Rugby was the first component completed at a cost of \$2.59 million. The next component is the installation of a new water transmission pipeline to match the capacity of the expanded water treatment plant. This component includes pipeline installation, two wells, and dredging of the existing sludge pond at the treatment plant. Eligible costs are estimated at \$2.79 million, with a 65 percent federal MR&I grant being \$1.81 million. The total estimated project cost is \$5.38 million, with a 65 percent federal MR&I grant being \$3.5 million, requiring an additional \$900,000.

A request was presented for the State Water Commission's consideration for an additional federal MR&I grant up to \$900,000, not to exceed 65 percent of the eligible project costs, for the Rugby component.

It was recommended by the State Engineer that the State Water Commission approve an additional federal MR&I grant up to \$900,000, not to exceed 65 percent of the eligible project costs, for the Rugby component. Affirmative action by the Commission would increase the total federal MR&I grant to \$3.5 million.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission approve an additional federal MR&I grant up to \$900,000, not to exceed 65 percent of the eligible project costs, for the Northwest Area Water Supply project, Rugby component. This motion is contingent upon the availability of federal funds, and is subject to future revisions.

This action increases the total federal MR&I grant to \$3.5 million for the Northwest Area Water Supply project, Rugby component.

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

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF ADDITIONAL
FUNDING FOR MCKENZIE
COUNTY RURAL WATER SYSTEM
FEASIBILITY STUDY
(SWC Project No. 237-03)**

On May 1, 2002, the State Water Commission passed a motion approving a federal grant to the McKenzie County Rural Water System for up to \$1.47 million, not to exceed 70 percent of the eligible costs, for the design and construction of a rural water system

around Watford City. The proposed system will provide service to 90 rural water users in the vicinity of Watford City. The city would provide water from their water treatment plant including the operation and maintenance. The estimated project cost is \$2.1 million.

The initial cost estimate for the rural water feasibility study was \$50,000, which was approved for a 65 percent MR&I grant, not to exceed \$32,500. On August 15, 2002, State Water Commission approved an additional 65 percent federal MR&I grant, not to exceed \$22,750, for the revised eligible feasibility study costs of \$85,000. This action increased the total federal MR&I grant to \$55,250 for the McKenzie County Rural Water System feasibility study.

The McKenzie County Rural Water System has requested a federal MR&I grant for additional feasibility costs. The total revised estimated cost for the rural water feasibility study is \$89,600, with a 65 percent federal MR&I grant being \$58,240, or an additional \$2,990.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$2,990 to the McKenzie County Rural Water System for a rural water feasibility study, not to exceed a 65 percent federal MR&I grant of the eligible feasibility study costs. Affirmative action by the State Water Commission would increase the total federal MR&I grant to \$58,240.

It was moved by Commissioner Halcrow and seconded by Commissioner Hanson that the State Water Commission approve an additional \$2,990 to the McKenzie County Rural Water System for a rural feasibility study, not to exceed a 65 percent federal MR&I grant of the eligible feasibility study costs. This motion is contingent upon the availability of federal funds, and is subject to future revisions.

This action increases the total federal MR&I grant to \$58,240 for the McKenzie County Rural Water System feasibility study.

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

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF FUNDING FOR
NORTH CENTRAL RURAL WATER
CONSORTIUM FEASIBILITY STUDY
(SWC Project No. 237-03)**

A North Central Rural Water Consortium was formed with the Central Plains Water District, North Prairie Rural Water, and McLean-Sheridan Rural Water. The intent of the consortium is to provide a funding mechanism

and cooperative body to more efficiently serve the most users possible while allowing each system to remain independent. The three systems recognize that to serve the users in the voids between the three systems, additional users in higher concentrations throughout the individual systems are needed. The proposed cost estimate for the rural water feasibility study is \$45,000. A request was presented for the State Water Commission's consideration for a 65 percent grant in the amount of \$29,250 to McLean-Sheridan Rural Water.

It was the recommendation of the State Engineer that the State Water Commission approve \$29,250 to the McLean-Sheridan Rural Water for the North Central Rural Water Consortium feasibility study, not to exceed a 65 percent grant from the Water Development and Research fund with the Garrison Diversion Conservancy District.

It was moved by Commissioner Halcrow and seconded by Commissioner Hanson that the State Water Commission approve \$29,250 to the McLean-Sheridan Rural Water for the North Central Rural Water Consortium feasibility study, not to exceed a 65 percent grant from the Water Development and Research fund with the Garrison Diversion Conservancy District. This motion is contingent upon the availability of federal funds, and is subject to future revisions.

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

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF FUNDING FOR
RAMSEY RURAL WATER FOR
EMERGENCY WATER SUPPLY
FOR CITY OF DEVILS LAKE
(SWC Project No. 237-03)**

The water supply pipeline from the Warwick aquifer to the city of Devils Lake is currently under water. This involves approximately six miles, and it has been determined that if the pipeline were to fail, it would be essentially impossible to repair. A partial

solution would be to enlarge the connection between the city and the Ramsey Rural Water System's water treatment plant. The current connection can deliver 558,000 gallons per day to the city, with the city's average demand at 1,023,400 gallons per day. The city and the Ramsey Rural Water System have proposed increasing the capacity to 841,500 gallons of water per day by up-sizing the water treatment plant's generator and pumps, increasing the pipeline pressure, and operating the water treatment plant for 21 hours per day. The current rural water expansion project is anticipated for completion in 2003, and the proposed project would be completed during the current construction season. The estimated cost of the proposed project is \$172,500. A request was presented for the State Water Commission's consideration for a 65 percent grant in the amount of \$112,125 to the Ramsey Rural Water System.

It was the recommendation of the State Engineer that the State Water Commission approve \$112,125 to the Ramsey Rural Water System for the emergency water supply for the city of Devils Lake, not to exceed a 65 percent grant from the Water Development and Research fund with the Garrison Diversion Conservancy District.

It was moved by Commissioner Halcrow and seconded by Commissioner Hanson that the State Water Commission approve \$112,125 to the Ramsey Rural Water System for the emergency water supply for the city of Devils Lake, not to exceed a 65 percent grant from

the Water Development and Research fund with the Garrison Diversion Conservancy District. This motion is contingent upon the availability of federal funds, and is subject to future revisions.

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

**MR&I WATER SUPPLY PROGRAM -
APPROVAL OF FUNDS FOR SOUTH
CENTRAL REGIONAL RURAL WATER
SYSTEM FOR FEASIBILITY STUDY
(SWC Project No. 237-03)**

A regional water system is proposed to serve rural users and municipalities in the counties of Burleigh, Emmons, McIntosh, Kidder, and Logan. The estimated project cost is \$65.5 to \$73.1 million. The South Central

Regional Water District, formerly the Burleigh Water Users Cooperative, is developing the project with several other sponsors from various counties. The water supply option being studied includes using bulk water from the city of Bismarck in combination with a new water treatment plant using the Spring Creek aquifer in McIntosh county. The current sign-up is 1,621 new users and the municipalities of Ashley, Braddock, Hague, Hazelton, Linton, Napoleon, Strasburg, Venturia, Wishek and Wilton. Service will continue to the existing 2,816 South Central Regional Water District users. The preliminary engineering report and feasibility study were completed at a cost of \$104,174. The feasibility study portion of that cost was \$61,153. A request was presented for the State Water Commission's consideration for a 65 percent grant in the amount of \$39,750 for the South Central Regional Water District feasibility study.

It was the recommendation of the State Engineer that the State Water Commission approve \$39,750 to the South Central Regional Rural Water System for the eligible feasibility study costs, not to exceed a 65 percent grant from the Water Development and Research fund with the Garrison Diversion Conservancy District.

It was moved by Commissioner Halcrow and seconded by Commissioner Hanson that the State Water Commission approve \$39,750 to the South Central Rural Water System for the eligible feasibility study costs, not to exceed a 65 percent grant from the Water Development and Research fund with the Garrison Diversion Conservancy District. This motion is contingent upon the availability of federal funds, and is subject to future revisions.

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

**MR&I WATER SUPPLY PROGRAM -
PROGRAM STATUS REPORT; AND
FY 2003 MR&I FUNDING BUDGET
(SWC Project No. 237-03)**

Information relating to the MR&I Water Supply program projects and fiscal year 2003 funding is provided in a staff memorandum, dated March 4, 2003, and attached hereto as ***APPENDIX "E"***.

Governor Hoeven and Secretary Frink briefed the Commission members on meetings held on February 25-26, 2003 in Washington, DC with the Office of Management and Budget, appropriations committee staff, Bureau of Reclamation, and congressional delegation and staffs to discuss federal funding for fiscal year 2004 for North Dakota water projects. An outline of information presented at the meetings is attached hereto as ***APPENDIX "F"***.

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

The Dakota Water Resources Act of 2000 authorized 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 and possible options for meeting those needs. 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 (Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor) and the Bureau will jointly prepare the EIS.

The Red River Valley Water Supply Study will result in the completion of the Needs and Options Report and a draft EIS. These reports will consider and study needs assessment, hydrology, engineering, environmental, financial, and biota transfer issues. The preparation of these reports essentially began in January, 2003, and are scheduled for completion by December, 2005.

Maria Effertz Hanson, Garrison Diversion Conservancy District, provided a status report on the efforts of the Red River Valley Water Supply Study, which is attached hereto as ***APPENDIX "G"***.

On November 6, 2002, the Memorandum of Understanding (MOU) between the State of North Dakota and the Bureau of Reclamation was executed, which is specific to the requirements in the Dakota Water Resources Act of 2000 to begin the process on the Red River Valley Water Supply Study. A Master Cooperative Agreement and a Red River Valley Cooperative Agreement were also completed and executed to guide the work process and authorize the reimbursement of funds. Potential cooperating agencies have been identified and meetings were held to explain this process. A memorandum of agreement will be executed with those who wish to become cooperating agencies, which will provide those agencies with early access and input in the study process.

**SAFE DRINKING WATER ACT -
APPROVAL OF PROJECT
PRIORITY LIST IN FY 2003
INTENDED USE PLAN,
DATED JANUARY 9, 2003
(SWC File AS/HEA)**

The Drinking Water State Revolving Loan Fund was authorized by Congress in 1996 under the Safe Drinking Water Act with the intention of assisting public water systems in complying with the Act. Funding in North Dakota for public water systems

is in the form of a loan program administered by the Environmental Protection Agency through the North Dakota Department of Health. North Dakota Century Code ch. 61-28.1, Safe Drinking Water Act, gives the Department the powers and duties to administer and enforce the Safe Drinking Water program, and to administer the program.

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant agreement. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on December 30, 2002; no comments were received.

The State Water Commission's role in the program is defined in subsections 3 and 4 of § 61-28.1-12. Subsection 3 states that the Department shall administer and disburse funds with the approval of the State Water Commission. Subsection 4 states that the Department shall establish assistance priorities and expend grant funds pursuant to the priority list for the Drinking Water State Revolving Loan Fund after consulting with and obtaining the approval of the State Water Commission.

Jeff Hauge, North Dakota Department of Health, presented the fiscal year 2003 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated January 9, 2003, for the State Water Commission's consideration. The 2003 Intended Use Plan is attached

hereto as **APPENDIX "H"**. The comprehensive project priority list includes 82 projects, with a cumulative total project cost of \$211.4 million. The fundable list includes \$31.1 million for fiscal years 1997 through 2003.

It was the recommendation of the State Engineer that the State Water Commission approve the project priority list for fiscal year 2003 as listed in the Intended Use Plan, dated January 9, 2003, and authorize the Department to administer and disburse fiscal years 1997 through 2003 program funds pursuant to the fiscal year 2003 Intended Use Plan.

It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve the project priority list for fiscal year 2003 as listed in the Intended Use Plan for the North Dakota Drinking Water State Revolving Loan Fund, dated January 9, 2003; and authorize the North Dakota Department of Health to administer and disburse fiscal years 1997 through 2003 Drinking Water State Revolving Loan Fund program funds pursuant to the fiscal year 2003 Intended Use Plan.

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

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

Todd Sando reported that the drought conditions continue to persist in the Missouri River basin. As of February 20,

2003, system storage in the six mainstem reservoirs was 42.4 million acre-feet (MAF), 13.1 MAF below the average system storage for the end of February and 6.4 MAF less than last year. Lake Sakakawea was at an elevation of 1820.2 feet msl, 7.5 feet lower than a year ago and 13.7 feet below its average February elevation. The elevation of Lake Oahe was 1586.2 feet msl on February 20, 2003, 12.7 feet lower than last year and 17.5 feet lower than its average February elevation. Fort Peck Lake was at an elevation of 2211.7 feet msl on February 21, 2003, 6.9 feet lower than a year ago and 19.5 feet below its average February elevation.

The Corps of Engineers typically overestimates runoff during a drought by assuming that future precipitation will be normal. Mr. Sando explained that unless the drought ends (the National Weather Service Climate Prediction Center has indicated that the drought will persist at least through April, 2003), the runoff forecast will continue to drop as the year progresses.

The high probability of record low lake levels is a cause of great concern for the State of North Dakota. Governor Hoeven has asked the Commander of the Northwestern Division of the Corps of Engineers to shorten the navigation season by an absolute minimum of five weeks to conserve water. The Corps has been unwilling to provide this minimal amount of water conservation. As a result of the Corps's refusal to operate the system in an equitable manner, the state is pursuing in two lawsuits against the Corps.

The first lawsuit is a continuation of the suit filed last spring that resulted in the temporary restraining order requiring the Corps to prevent Lake Sakakawea from falling during the spawn. The lawsuit has been amended to request that the Corps be required to complete the Master Manual revision in a timely manner and treat all uses equally instead of providing preferential treatment to navigation.

The second lawsuit alleges that the Corps's operations of the Missouri River mainstem system will result in water quality violations on Lake Sakakawea and asks the court to restrain the Corps from causing these violations. If the court rules in North Dakota's favor, the Corps may be required to maintain Lake Sakakawea near an elevation of 1825 feet msl through the summer.

A coalition of regional and national conservation organizations, led by American Rivers, has also sued the Corps of Engineers and the U.S. Fish and Wildlife Service in federal District Court in Washington, DC. The lawsuit charges mismanagement of the Missouri River system is causing harm to the ecological values of the river and is imposing undo hardship on some riverfront communities. The suit also charges that the Corps favors the barge industry over other uses. This could become the largest of the lawsuits as many states and industries are expected to intervene.

**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 includes 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 (EPA) and the Corps of Engineers; and applicable statutes and regulations.

Todd Sando reported that the Commission's staff review of the updated draft administrative rules was completed. The draft administrative rules were made available to state and federal agencies and associations requesting their comments by November 1, 2002. The comment period was extended because of notification that the EPA, the U.S. Fish and Wildlife Service, and the North Dakota Game and Fish Department would be unable to meet the November 1 comment deadline. Comments were received from EPA on February 10, 2003, some of which may require changes to the draft rules. Comments have not been received from the U.S. Fish and Wildlife Service and the North Dakota Game and Fish Department to date. Once the comments have been reviewed and any resulting changes have been made to the draft rules, the formal rule adoption process will be promulgated.

Secretary Frink explained that the Senate amended Senate Bill 2022 repealing North Dakota Century Code chapter 61-38 relating to the assumption of the Section 404 program by the State Water Commission and removed all funding for assumption of the program. He said unless this changes, state assumption of the Section 404 program will not be pursued beyond the ongoing work related to the administrative rules.

**RESOLUTION OF APPRECIATION
TO MILTON O. LINDVIG, STATE
WATER COMMISSION EMPLOYEE
(SWC Resolution No. 2003-03-502)**

A resolution of appreciation to Milton O. Lindvig was presented for the Commission's consideration.

Mr. Lindvig has admirably served the State of North Dakota and the State Water Commission since 1963, and directed the water resource efforts of the Commission's Appropriations Division for 37 years. Mr. Lindvig announced his retirement from the State Water Commission, effective March 30, 2003.

It was moved by Commissioner Olin, seconded by Commissioner Hofstad, and unanimously carried, that the State Water Commission approve Resolution No. 2003-03-502, In Appreciation to Milton O. Lindvig, State Water Commission employee. SEE APPENDIX "I"

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 5:15 PM.

John Hoeven, Governor
Chairman, State Water Commission

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

State Water Commission