

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

August 30, 2005

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on August 30, 2005. Governor John Hoeven, Chairman, 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
Jeff Olson, representing Roger Johnson, Commissioner,
North Dakota Department of Agriculture, Bismarck
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Curtis Hofstad, Member from Devils Lake
Jack Olin, Member from Dickinson
Robert Thompson, Member from Page
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

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

the agenda approved as presented.

There being no additional items for the agenda, Governor Hoeven announced

**CONSIDERATION OF DRAFT MINUTES
OF JUNE 22, 2005 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the June 22, 2005 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the draft minutes of the June 22, 2005 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF DRAFT MINUTES
OF AUGUST 11, 2005 STATE WATER
COMMISSION AUDIO CONFERENCE
CALL MEETING - APPROVED**

The draft minutes of the August 11, 2005 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the draft minutes of the August 11, 2005 State Water Commission audio conference call meeting be approved as prepared.

**RESOLUTION OF APPRECIATION
TO DAVID P. RIPLEY, STATE
WATER COMMISSION EMPLOYEE
(SWC Resolution No. 2005-08-514)**

A resolution of appreciation to David P. Ripley was presented for the State Water Commission's consideration. Mr. Ripley admirably served the State of North Dakota and the State Water

Commission for 31 years, and directed the water resource efforts of the Commission's appropriation division for 2 years. Mr. Ripley announced his retirement from the State Water Commission, effective August 1, 2005.

It was moved by Commissioner Olin, seconded by Commissioner Swenson, and unanimously carried, that the State Water Commission approve Resolution No. 2005-08-514, Resolution of Appreciation to David P. Ripley. SEE APPENDIX "A"

Secretary Frink informed the State Water Commission that Robert Shaver, presently hydrologist manager with the State Water Commission's water appropriation division, was hired for the position vacated by Mr. Ripley.

**STATE WATER COMMISSION
AGENCY PROGRAM EXPENDITURES,
2003-2005 BIENNIUM**

In the 2003-2005 biennium, the State Water Commission had two special line items - administrative and support services, and water and atmospheric

resources. David Laschkewitsch, State Water Commission accounting manager, presented and discussed the agency program expenditures for the period ending June 30, 2005, reflecting 100 percent of the 2003-2005 biennium. **SEE APPENDIX "B"**

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

**RESOURCES TRUST FUND RECAP,
2003-2005 BIENNIUM**

David Laschkewitsch presented the following Resources Trust Fund recap for the 2003-2005 biennium:

| | |
|--|---------------------|
| Beginning balance - July 1, 2003 | \$20,129,911 |
| Total revenue received during 2003-2005 biennium | 16,613,262 |
| Expenditures | <u>(0)</u> |
| Balance in Resources Trust Fund - June 30, 2005 | \$36,743,173 |

**RESOURCES TRUST FUND
PROJECTED REVENUES,
2005-2007 BIENNIUM**

David Laschkewitsch presented the following summarization of projected revenues for the Resources Trust Fund for the 2005-2007 biennium:

| | |
|--|---------------------|
| Beginning balance - July 1, 2005 | \$36,743,173 |
| Oil extraction tax estimate | 16,435,556 |
| MR&I loan revenue | 995,000 |
| Southwest Pipeline Project revenue | 1,000,000 |
| Interest revenue | <u>824,975</u> |
| Total Revenue Estimate | \$55,998,704 |
| Resources Trust Fund Authority In Agency Budget | \$54,019,575 |

Mr. Laschkewitsch explained that the estimated revenue exceeds the agency's spending authority by \$1,979,129. This is a result of the beginning balance being approximately \$600,000 higher than was estimated due to increased oil extraction collections in the 2003-2005 biennium, and the projected oil extraction revenues were increased by approximately \$1,400,000 in the legislative session for the 2005-2007 biennium, although the Commission's budget authority was not changed.

Section 4 of House Bill 1021, the State Water Commission's appropriation bill, provides that any additional amount in the Resources Trust Fund in excess of \$54,019,575 is appropriated to the State Water Commission. This is new legislative language for the 2005-2007 biennium, therefore, the State Water Commission will pursue an increase in its spending authority to fully utilize the cash in the Resources Trust Fund.

***WATER DEVELOPMENT TRUST
FUND RECAP, 2003-2005 BIENNIUM***

David Laschkewitsch presented the following Water Development Trust Fund recap for the 2003-2005 biennium:

| | |
|--|---------------------|
| Beginning balance - July 1, 2003 | \$ 9,409,511 |
| Total revenue received during 2003-2005 biennium | 20,839,504 |
| Expenditures and transfers | <u>(17,048,776)</u> |
| Balance in Water Development Trust Fund - June 30, 2005 | \$13,200,239 |

***WATER DEVELOPMENT TRUST
FUND PROJECTED REVENUES,
2005-2007 BIENNIUM***

David Laschkewitsch presented the following summarization of projected revenues for the Water Development Trust Fund for the 2005-2007 biennium:

| | |
|--|---------------------|
| Beginning balance - July 1, 2005 | \$13,200,239 |
| Estimated biennium revenue | <u>20,674,860</u> |
| Total Revenue Estimate | \$33,875,099 |
| Water Development Trust Fund Authority in Agency Budget | \$30,029,795 |

Mr. Laschkewitsch explained that the estimated revenue exceeds the agency's spending authority by \$3,845,304, which is a result of a larger beginning balance due to project expenditures that were budgeted in the 2003-2005 biennium being delayed. This will require that the agency increase its spending authority for the 2005-2007 biennium. Section 5 of House Bill 1021, the State Water Commission's appropriation bill, provides that any additional amount in the Water Development Trust Fund that becomes available is appropriated to the State Water Commission.

MISSOURI RIVER JOINT WATER BOARD - APPROVAL OF STATE COST PARTICIPATION (\$20,000) (SWC Project No. 322)

On July 28, 2005, the counties of Burleigh, Dunn, Emmons, Mercer, Morton, Mountrail, Oliver, and Sioux entered into a joint powers agreement which created the Missouri River Joint Water Board. The purpose of the board is to provide a cooperative and coordinated approach to water and related land management in the Missouri River basin portion of North Dakota.

A request was presented for the State Water Commission's consideration for state cost participation to retain a water resource consultant and secretary-treasurer, develop an action plan and bylaws, and assist with operating costs to get the board properly functioning. The request before the State Water Commission is for a 50 percent state cost participation of the eligible costs in the amount of \$20,000.

Secretary Frink stated that in consideration of how valuable a resource the Missouri River is to North Dakota, the organization of this type of a board is long overdue. He said the agency's budget does include funding to support the efforts as those being pursued by the new board. It was the recommendation of the State Engineer that the State Water Commission approve state cost participation of 50 percent of the eligible costs, not to exceed an allocation of \$20,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to the Missouri River Joint Water Board.

It was moved by Commissioner Hanson and seconded by Commissioner Swenson that the State Water Commission approve state cost participation of 50 percent of the eligible costs, not to exceed an allocation of \$20,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to the Missouri River Joint Water Board to retain a water resource consultant and secretary-treasurer, develop an action plan and bylaws, and assist with operating costs to get the board properly functioning. This motion is contingent upon the availability of funds.

Commissioners Hanson, Hillesland, Hofstad, Jeff Olson representing Commissioner Johnson, 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 NONPOINT SOURCE
POLLUTION TASK FORCE FOR
SECTION 319 FUNDING (\$200,000)
(SWC Project No. 1859)***

A request from the North Dakota Non-point Source Pollution Task Force was presented for the State Water Commission's consideration for state cost participation in the amount of \$200,000 for the 2005-2007 biennium for projects

authorized under Section 319 of the federal Water Pollution Act.

On June 22, 2005, the request was considered by the State Water Commission. Although support for the program was expressed, the Commission questioned whether this is the appropriate agency to provide funds for a state match in the Section 319 program. The State Water Commission members generally felt that more information was needed on the program and, therefore, the request was tabled at the June 22, 2005 meeting.

One of the greatest challenges for current water quality management in North Dakota is meeting the new Environmental Protection Agency's (EPA) regulations limiting runoff from concentrated animal feeding operations (CAFO). Failure to meet these regulations not only affects water quality, but also incurs the risk of large fines and even the possible loss of economic viability for some livestock operations. A large portion of the state-apportioned EPA Section 319 funding has, in recent years, been allocated for engineering assistance and cost share to help livestock producers comply with federal regulations. The updating of the state's CAFO and animal waste facilities is a major undertaking which will be ongoing for several years.

The most critical need at the present time is for engineering assistance. The demand for design assistance is too high to be met by currently available programs funded by Section 319 and other sources. Assistance is particularly needed with medium and small-sized CAFOs, which are often insufficiently capitalized to afford the full cost of design and construction.

Dennis Fewless, director, North Dakota State Health Department Division of Water Quality, appeared before the State Water Commission to explain the program criteria, and to request the Commission's favorable consideration to provide \$200,000 in the 2005-2007 biennium to support the local sponsorships increase their availability of time and affordable engineering assistance and achieve their water quality goals.

Secretary Frink explained that during the 2001-2003 biennium, funding of \$200,000 was specifically appropriated to the State Water Commission for distribution to the North Dakota Nonpoint Source Pollution task force for a Section 319 match. In the 2003-2005 biennium, no funding was specifically appropriated for this purpose, but the same level of funding was requested as a general cost share for augmentation of the current engineering assistance program. On August 3, 2003, the State Water Commission approved an allocation of \$200,000 to the North Dakota Nonpoint Source Pollution Management Program of the North Dakota Department of Health for a state match in the Section 319 program.

Although the State Health Department received legislative authority for the 2005-2007 biennium, the authority did not include an appropriation. Secretary Frink explained that the State Water Commission does have the legal authority to fund the program under North Dakota Century Code section 61-02-14, powers and duties of the Commission. He also explained the correlation between the Commission and the Department in developing the water quality standards as they relate to minimum flows in the rivers and streams in the state, as well as cooperation of the two agencies in other water-related projects.

It was the recommendation of the State Engineer that the State Water Commission provide an allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to the North Dakota Nonpoint Source Pollution Management Program of the North Dakota Department of Health for a state match in the Section 319 program. Secretary Frink stated that the funds allocated for this use will provide a maximum benefit for the improvement of water quality, and also for ensuring the economic viability of many North Dakota animal feeding operations, while complying with federal regulations.

It was moved by Commissioner Hofstad and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission approve an allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, to the North Dakota Nonpoint Source Pollution Management program of the North Dakota Department of Health for a state match in the Section 319 program. This motion is contingent upon the availability of funds.

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

**MICHIGAN SPILLWAY RURAL FLOOD
ASSESSMENT DRAIN CONSTRUCTION -
APPROVAL OF STATE COST PARTICI-
PATION (\$461,696)
(SWC Project No. 1932)**

A request from the Nelson County Water Resource District was presented for the State Water Commission's consideration for state cost participation in the construction of the Michigan spillway rural flood control assessment

drain. The project consists of constructing a drain to address sheetwater runoff and to reduce flood damage to agricultural properties, roads and railroads, and the city of Michigan's infrastructure.

The proposed work will be constructed to accommodate a flow of 50 cubic feet per second in Enterprise and Sarnia townships in Walsh county, beginning about 800 feet north of the center of the south line of Section 34 in Enterprise township and meandering northeasterly following existing re-graded drains along the south roadway ditch along the north line of Sections 25, 26 and 35 in Enterprise township. The drain crosses a section line road into Sarnia township in Section 31 and continues northeast along a natural waterway in Section 30 outletting into a tributary of the Forest River in Section 20 via a 72-inch culvert located under N.D. Highway 35. The constructed drain will be approximately 6.3 miles in length with a drainage area of 34,500 acres.

Application to Drain No. 3027 is currently being reviewed. The drain will be constructed with a maximum cut of 14 feet, 3:1 side slopes, and a 10-foot bottom width. The project work consists of 288,052 cubic yards of excavation, clearing and grubbing, the installation of culverts under existing roads, the installation of control gates at two locations to regulate the flow and temporarily store water, seeding, road surface gravelling, land acquisition, engineering, legal and administration services. A 100-foot wide strip of the right-of-way is recommended for a seeder buffer strip to reduce the intrusion of silt into the channel. It is anticipated that construction will be completed by the spring of 2006.

The slope of the land is approximately 0.5 feet per mile. Because of the flat slopes, drainage is virtually non-existent. Lake Loretta and McHugh Slough could, during dry years, accommodate runoff from the contributing area but, as a result of the wet cycle, these holding areas are full. The District fully understands that because of the flat gradient, maintenance may be higher than normal.

The preliminary engineering plan and specifications have been completed, and the project assessment vote is scheduled for September 20, 2005. Conditional approval of rural flood control projects is allowed, and final approval will be granted upon issuance of the drain permit, notification of a positive assessment vote, and approval of the project's final design.

The project engineer's cost estimate is \$919,741, of which \$779,241 is considered eligible for state cost participation as a rural flood control project at 40 percent of the eligible costs (\$311,696 - 35 percent for a rural flood control project and 5 percent for the flood control benefits to the city of Michigan). Due to the flood control benefits of this project, an exception to the Commission's policy limiting the amount of cost share approval from the 2005-2007 biennium to \$230,000 is granted. The request before the State Water Commission is for a 40 percent state cost participation in the amount of \$311,696 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and an additional \$150,000 obligated by the State Water Commission on August 11, 2005 for water-related damage to infrastructure in Nelson county, for a total amount of \$461,696. The typical non-eligible items will be considered eligible, per the legislative intent of House Bill 1021, and reimbursed at 100 percent up to the estimated cost of \$8,000 for bonding, \$17,000 for legal and administrative costs, \$105,000 for land purchases, and \$10,500 for permanent right-of-way, totaling \$140,500. The remaining \$9,500 will be used to increase the cost share percentage from 41.22 percent on the items not reimbursed at 100 percent.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation not to exceed a total allocation of \$461,696, of which \$311,696 (40 percent of eligible costs) shall be expended from the funds appropriated to the State Water Commission in the 2005-2007 biennium; and, an additional \$150,000 from the funds obligated for the water-related damage to infrastructure in Nelson county (House Bill 1021).

It was moved by Commissioner Hillesland and seconded by Commissioner Olin that the State Water Commission conditionally approve state cost participation not to exceed a total allocation of \$461,696, of which \$311,696 (40 percent of the eligible costs) shall be allocated from the funds appropriated to the State Water Commission in the 2005-2007 biennium; and, an additional allocation of \$150,000 from the funds obligated for the water-related damage to infrastructure in Nelson county (House Bill 1021). This motion is contingent upon the availability of funds, issuance of the required drain permit, attainment of a positive assessment vote, and approval of the project's final design.

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

**CASS COUNTY DRAIN NO. 40
IMPROVEMENT RECONSTRUCTION
PROJECT - APPROVAL OF ADDITIONAL
STATE COST PARTICIPATION (\$124,500)
(SWC Project No. 1090)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for additional state cost participation in the Cass County Drain No. 40 improvement reconstruction project. The project is located in Sections 4, 9, 10, 15, 22, and 27 of Tier 140 North, Range 49 West, Reed township in Cass county.

Approximately five miles of Drain No. 40, between 19th Avenue North in Fargo and the downstream U.S. Interstate 29 road crossing, will be reconstructed. This work is necessary because the drain has degraded substantially since its last reconstruction in 1986 and is below design grade at all locations. The proposed project will modify the existing drain by establishing a new channel bottom elevation of approximately 4 to 4.5 feet below the previous design elevation. All side slopes will be flattened to a uniform 4:1 slope, and new concrete box culverts will be installed through Cass County Highway 20 and through an approach to a communications tower.

The total estimated cost of the project was \$1,200,000, of which \$1,070,000 was considered eligible for a 35 percent state cost participation (\$374,500). The State Water Commission approved an allocation of \$250,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. An unfunded eligible balance of \$124,500 remains for additional state cost participation consideration. Less the previous state cost participation of \$250,000, the request before the State Water Commission is for a 35 percent state cost participation not to exceed an additional allocation of \$124,500. Affirmative action by the State Water Commission will increase the total state contribution to \$374,500.

It was the recommendation of the State Engineer that the State Water Commission approve a 35 percent state cost participation, not to exceed an additional allocation of \$124,500 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the Cass County Drain No. 40 improvement reconstruction project.

It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve a 35 percent state cost participation, not to exceed an additional allocation of \$124,500 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the Cass County Drain No. 40 improvement reconstruction project. This motion is contingent upon the availability of funds.

This action increases the state cost participation contribution to \$374,500.

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

**STEELE-TRAILL DRAIN NO. 2
CONSTRUCTION PROJECT -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$101,750)
(SWC Project No. 1926)**

A request from the Steele County Water Resource District was presented for the State Water Commission's consideration for cost participation in the construction of Steele-Trail Drain No. 2. This is a rural flood control project of which the

entire drain will exist within Steele county. The drainage area and the assessment district extends into Traill county. Work has been completed in the past by local farm groups in the unnamed natural waterway, which resulted in poor drainage and non-standard channel configurations.

The proposed work, located in Sections 24, 25, and 36, Township 146 North, Range 54 West, and in Sections 1, 12, 13, 24, 25, and 36, Township 145 North, Range 54 West, will be within and adjacent to an unnamed, natural waterway creating a drain 59,000 feet in length. Approximately 175,000 cubic yards of material will be excavated to construct the main channel and three small laterals, which will be constructed to a bottom width of 14 feet, 6:1 side slopes, and a depth of 3 feet. The project includes road crossing work, culvert installation, and a wetland mitigation plan. The proposed work, located near the confluence with the south branch of the Goose River, involves the installation of a low overfall grade stabilization under the roadway and creates a grassed waterway between the structure and the south branch of the Goose River to maintain the design gradient level.

The project engineer's cost estimate is \$1,175,000, of which \$1,005,000 is considered eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$351,750). On March 10, 2005, the State Water Commission approved an allocation of \$250,000 from the funds appropriated to the State Water Commission in the 2003-2005 biennium. An unfunded eligible balance of \$101,750 exists for additional state cost participation consideration. Less the previous state cost participation of \$250,000, the request before the State Water Commission is for a 35 percent state cost participation not to exceed an additional allocation of \$101,750. Affirmative action by the State Water Commission will increase the total state contribution to \$351,750.

It was the recommendation of the State Engineer that the State Water Commission approve a 35 percent state cost participation, not to exceed an additional allocation of \$101,750 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the Steele-Trail Drain No. 2 construction project.

It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve a 35 percent state cost participation, not to exceed an additional allocation of \$101,750 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for the Steele-Trail Drain No. 2 construction project. This motion is contingent upon the availability of funds.

This action increases the state cost participation contribution to \$351,750.

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

***WALSH COUNTY DRAIN NO. 27
IMPROVEMENT RECONSTRUCTION
PROJECT - APPROVAL OF ADDITIONAL
STATE COST PARTICIPATION (\$22,744)
(SWC Project No. 1258)***

On November 3, 2003, the State Water Commission approved a request from the Walsh County Water Resource District for state cost participation in the amount of \$34,836 for the Walsh County Drain No. 27 improvement reconstruc-

tion project. The purpose of the project is to reduce flood damage to agricultural properties, and the approved Permit to Drain (No. 2987) is on file. The estimated total cost of the project was \$100,896, of which \$99,531 was considered eligible as a rural flood control project at a 35 percent cost share not to exceed \$34,836 in state funds.

Walsh County Drain No. 27 was originally constructed in 1961 in Sections 7, 8, 9, 10, 11, and 14 of Tier 156 North, Range 51 West, Pulaski township - Walsh county. The drain is approximately 4.5 miles in length and outlets into the Forest River through a concrete chute. The project consisted of reconstructing the channel to a 6-foot bottom width and flattening the side slopes to 3:1. Work consisted of removing the sod on the inslope, excavation, seeding, engineering, surveying and quality control, and some ditch cleaning in farm laterals.

The project engineer's revised estimated project cost is \$178,193, of which \$164,514 is considered eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$57,580). The project is completed, and the overrun on costs resulted primarily from underestimated culvert and fieldwork, acres to be seeded, and the redesign of the channel flow line in a section. A request from the Walsh County Water Resource District was presented for the State Water Commission's consideration for additional state cost participation of \$22,744 for the Walsh County Drain No. 27 improvement reconstruction project.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 35 percent of the eligible costs, not to exceed an additional allocation of \$22,744 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, for state cost participation in the Walsh County Drain No. 27 improvement reconstruction project. Affirmative action by the State Water Commission would increase the state's cost share contribution to \$57,580.

It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve state cost participation in the Walsh County Drain No. 27 improvement reconstruction project at 35 percent of the eligible costs, not to exceed an additional allocation of \$24,744 from the funds appropriated to the State Water Commission in the 2005-2007 biennium. This motion is contingent upon the availability of funds.

This action increases the state cost participation contribution to \$57,580.

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

**STATUS REPORT ON ACTIVE
COST SHARE PROJECTS; AND
CASS COUNTY RING DIKE PROGRAMS
(SWC Project Nos. 1271 and 1753)**

specifically address the Cass County ring dike programs. There are currently 66 active cost share projects, which are summarized in the spreadsheets attached to these minutes as **APPENDIX "D"**.

At its June 22, 2005 meeting, the State Water Commission directed the State Engineer and the Commission staff to provide a status report of the 2005-2007 biennium active cost share projects and

The Southeast Cass ring dike program is completing the construction of one ring dike and two projects are planned for construction; the Rush River ring dike program completed one ring dike project; and the Maple River ring dike program currently has one project under construction and two other sites were sent agreements for the construction of dikes.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND STATUS REPORT
(SWC Project No. 1736)**

James Lennington, project manager for the Southwest Pipeline Project, provided the following project status report:

Red Trail Energy - The Red Trail Energy, LLC, is constructing an ethanol plant on the outskirts of the city of Richardton, and intends to purchase between 450 and 600 gallons per minute of raw water, which would be between 236 million gallons (726 acre-feet) and 315 million gallons (968 acre-feet) of water per year. This would make Red Trail Energy the second largest customer of the Southwest Water Authority behind the city of Dickinson, which used approximately 656 million gallons in 2003.

Red Trail Energy has entered into an engineering agreement with Bartlett & West Engineers for construction of the raw water pipeline connecting the ethanol plant at Richardton to the Southwest Pipeline Project's raw water main transmission pipeline at the junction of N.D. Highway 8 and "Old Highway 10" just to the west of Richardton. Red Trail's raw water pipeline will be approximately 2 miles in length and is estimated to cost about \$400,000 to construct. Red Trail is currently reviewing a Southwest Water Pipeline water service contract. It is possible that Red Trail may decide to turn ownership of their raw water pipeline to the State Water Commission after construction.

Declining Block Water Rate - In July, 2002, the Southwest Water Authority adopted a declining block rate for rural water users on a three-year trial basis ending June 30, 2005. The rate for water use above 10,000 gallons was reduced from \$3.60 to \$2.60 per thousand gallons. The results of this trial will be reviewed as part of the annual budget review.

The goals of the declining block rate were outlined in a February 2, 2002 memorandum prepared by the Southwest Water Authority board of directors. The memorandum stated that in 2001 there were 165 users exceeding 10,000 gallons per month and the goal was to exceed this amount by 10 percent after the first year, 20 percent the second year, and 30 percent after the third year. The other goal was to also exceed the consumptive use by the same amounts. The success was to be measured by evaluating existing system users, i.e. those who used water in 2001. The memorandum also listed the goals numerically based on 2001 calendar year use.

The memorandum did not specially address pasture tap users. If the criteria were expanded to include pasture taps, the 10,000 gallons per month would be adjusted to 60,000 gallons for pasture taps (six months at 10,000 gallons per month). The Southwest Water Authority has been applying the declining block rate to pasture taps on this basis.

The goals established by the Southwest Water Authority board of directors have been met. The Authority has reviewed financial data and determined that the declining block rate was a success with income exceeding expenses.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF GENERAL
AUTHORIZATION RESOLUTION
FOR 2005 SERIES A BOND
(SWC Project No. 1736)***

On June 22, 2005, the State Water Commission approved a funding package for the Medora-Beach regional service area, Phase II, which includes state funding up to \$5,300,000 and USDA, Rural Development funding of \$3,523,000. The Rural Development funding consists of a \$1,999,000 loan secured by revenue bonds and a \$1,524,000 grant. Awarding the rural water distribution contracts 7-8B and 7-8C for the Medora-Beach regional service area, Phase II, will exceed the amount of state funding approved for the project in the 2005-2007 biennium, therefore, the USDA, Rural Development funding will be required.

At its December 8, 2000 meeting, the State Water Commission authorized the project officers identified in the Southwest Pipeline Project Water Development Revenue Bond documents to execute all USDA, Rural Development documents in the loan and grant assistance application process up to, but not including, the sale of the bonds. The obligation of the State Water Commission does not occur until the bonds are approved for sale and have been closed. James Lennington explained this action streamlined the completed application process for the 2005 Series A bond, which is to be used to fund construction of the Medora-Beach regional service area, Phase II.

In order to meet the obligations of the USDA, Rural Development funding for construction of the Medora-Beach regional service area, Phase II, the remaining documents to authorize the sale of the 2005 Series A bond require State Water Commission action. The 2005 Series A bond resolution was presented for the Commission's consideration which, if approved, will authorize the sale of \$1,999,000 in bonds with an interest rate not to exceed 4.25 percent.

The 2005 Series A bond documents have not yet received final approval from USDA, Rural Development. Mr. Lennington said no significant revisions are anticipated. Closing on the 2005 Series A bond is scheduled for August 31, 2005.

It was the recommendation of the State Engineer that the State Water Commission adopt and approve the execution of the 2005 Series A bond resolution as presented, which has been satisfactorily reviewed by the State Water Commission's bond counsel and assistant attorney general.

It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission adopt and approve the execution of the Series A bond resolution for the North Dakota State Water Commission Water Development Revenue Bonds, Southwest Pipeline Project, Medora-Beach Regional Service Area, Phase II. (Executed bond resolution is attached hereto as APPENDIX "E")

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

***SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 7-8B,
MEDORA-BEACH, PHASE II,
(BEACH, GOLVA AND FRYBURG
SERVICE AREAS); AND AWARD OF
CONTRACT 7-8C, MEDORA-BEACH,
PHASE II, MORTON COUNTY AREAS
(JUNCTION INN SERVICE AREA,
NORTH CROWN BUTTE AND TOWER
HILL BOOSTER AREAS)
(SWC Project No. 1736)***

On July 30, 2005, bids were opened for Southwest Pipeline Project contract 7-8B, Medora-Beach regional service area, Phase II, Beach, Golva and Fryburg service areas, rural water distribution system. The contract was separated into three individual bid schedules: Bid Schedule 1 - Beach and Golva service areas; Bid Schedule 2 - North Fryburg pocket; and Bid Schedule 3 - South Fryburg pocket. This was done to give the State Water

Commission flexibility in awarding the contracts based on the availability of funding. Service was deferred until Phase III of the project to approximately 30 users in the South Fryburg service area. An alternate for a hinged manhole lid was also included as a convenience to operations.

James Lennington explained that the bid package for the Beach and Golva service area included capacity for the Trotters pocket service area, as the Trotters pocket receives water through the Beach service area pipelines. Signup in the Trotters pocket is 88 percent, although it does not meet the feasibility criteria for the maximum cost per user, which is \$34,570 as of July, 2005. The Trotters pocket estimate is about \$36,900 per user not including upsizing costs. The bid package for the North Fryburg pocket included capacity for the Fairfield pocket area, north of the city of Belfield, which receives water through the Fryburg service area pipelines. The Fairfield pocket area also has high costs at about \$36,500 per user not including upsizing costs. The Southwest Water Authority voted at its May 2, 2005 meeting to recommend that the State Water Commission include the upsizing costs for Trotters and Fairfield so that those two pockets can be considered for future service.

There were two bids received from the following for contract 7-8B: Abbot, Arne, Schwindt, Inc., Moorhead, MN; and Northern Improvement Co., Fargo, ND. The bids are summarized in the following tables:

SWPP Contract 7-8B
Schedule 1 - Beach and Golva Service Areas
(162 users, 217 miles)

| <u>Bidder</u> | <u>Bid</u> | <u>Amount Higher Than Low Bid</u> |
|---|----------------|-----------------------------------|
| Abbot, Arne, Schwindt, Inc. Moorhead, MN | \$3,712,028.35 | \$ 0.00 |
| Northern Improvement Co. Fargo, ND | \$4,010,909.00 | \$298,880.65 |
| Engineer's Estimate | \$3,917,202.75 | \$205,174.40 |

Schedule 2 - North Fryburg Pocket
(48 users, 47 miles)

| <u>Bidder</u> | <u>Bid</u> | <u>Amount Higher Than Low Bid</u> |
|---|---------------|-----------------------------------|
| Abbot, Arne, Schwindt, Inc. Moorhead, MN | \$ 821,580.10 | \$ 0.00 |
| Northern Improvement Co. Fargo, ND | \$ 931,906.00 | \$110,325.90 |
| Engineer's Estimate | \$ 874,009.00 | \$ 52,428.90 |

Schedule 3 - South Fryburg Pocket
(8 users, 13 miles)

| <u>Bidder</u> | <u>Bid</u> | <u>Amount Higher Than Low Bid</u> |
|---|---------------|-----------------------------------|
| Abbot, Arne, Schwindt, Inc. Moorhead, MN | \$ 236,174.55 | \$ 0.00 |
| Northern Improvement Co. Fargo, ND | \$ 284,970.00 | \$ 48,795.45 |
| Engineer's Estimate | \$ 248,095.00 | \$ 11,920.45 |

Mr. Lennington explained that the contract documents allow the State Water Commission to select the most advantageous bid for Schedule 1 or a combination of Schedules 1 & 2, 1 & 3, or 1, 2 & 3. The bid received from Abbot, Arne & Schwindt, Inc., was the lowest for all three bid schedules individually and for all three combinations of bid schedules. The upsize costs for the Trotters and Fairfield pockets were calculated using the unit prices in the bid, which are \$102,234.20 and \$55,899.50, respectively. Since the upsized pipe was included in the bid package, eliminating the future option of serving these two service areas would be a reduction in Bid Schedules 1 and 2, respectively. These costs compare with estimated upsize costs of \$159,000 and \$96,000 reported at the June 22, 2005 Commission meeting.

Mr. Lennington stated that the bid price submitted by Abbot, Arne, Schwindt for the alternate manhole lids was an extra \$675 per lid. It was determined that this extra cost outweighs the convenience benefit of the lids and it was decided not to consider that alternative further. The following table summarizes the possible bid combinations for contract 7-8B:

| SWPP Contract 7-8B | | | | |
|---|-------------------|------------------|------------------|---------------------|
| Possible Combination of Schedules | | | | |
| <u>Bidder</u> | <u>Schedule 1</u> | <u>1 & 2</u> | <u>1 & 3</u> | <u>1, 2 & 3</u> |
| Abbot, Arne, Schwindt, Inc. Moorhead, MN | \$3,712,028.35 | \$4,533,608.45 | \$3,948,202.90 | \$4,769,783.00 |
| Northern Improvement Co. Fargo, ND | \$4,010,909.00 | \$4,942,815.00 | \$4,295,879.00 | \$5,227,785.00 |
| Engineer's Estimate | \$3,917,202.75 | \$4,791,211.75 | \$4,165,297.75 | \$5,039,306.75 |

On August 11, 2005, bids were opened for Southwest Pipeline Project contract 7-8C, Medora-Beach regional service area, Phase II, Morton County Areas (Junction Inn service area, North Crown Butte and Tower Hill booster areas).

There were three bids received from the following for contract 7-8C: Abbot, Arne, Schwindt, Inc., Moorhead, MN; Northern Improvement Co., Bismarck, ND; and Carstensen Contracting, Inc., Pipestone, MN. The bid received from Carstensen Contracting did not have the proper bid bond documents and, therefore, the bid was not opened. The two opened bids are summarized in the following table:

**SWPP Contract 7-8C
Morton County Areas
(110 users, 154 miles)**

| <u>Bidder</u> | <u>Schedule 1</u> | <u>Amount Higher Than Low Bid</u> |
|---|-------------------|-----------------------------------|
| Northern Improvement Co. Bismarck, ND | \$2,480,278.95 | \$ 0.00 |
| Abbot, Arne, Schwindt, Inc. Moorhead, MN | \$2,836,111.25 | \$355,832.30 |
| Engineer's Estimate | \$2,731,737.50 | \$251,458.55 |

The project engineer reviewed the bids received for contracts 7-8B and 7-8C and noted that in both contracts the unit prices for pipe are comparable to those received on contract 7-8A that was bid in February, 2004, and slightly higher than those for contract 7-7B/7-3C that was bid in April, 2002.

At the June 22, 2005 meeting, the State Water Commission approved a funding package for the 2005-2007 biennium for construction of the Medora-Beach regional service area, Phase II, of the Southwest Pipeline Project, which includes total state funding up to \$5,300,000. The funding package also includes USDA, Rural Development funding totaling \$3,523,000 (\$1,999,000 loan secured by revenue bonds and a \$1,524,000 grant), which requires a state contribution of \$4,917,000. The funding package is summarized in the following table:

**Medora-Beach Funding
(Approved June 22, 2005)**

| <u>Total Funding</u> | <u>State Grant</u> | <u>SWA Cash</u> | <u>USDA Loan</u> | <u>USDA Grant</u> |
|----------------------|--------------------|-----------------|------------------|-------------------|
| \$8,440,000 | \$4,800,000 | \$117,000 | \$1,999,000 | \$1,524,000 |

As part of the state funding contribution, USDA is requiring a contribution of \$117,000, equivalent to the signup fees collected by the Southwest Water Authority from the rural water users in the area. Mr. Lennington stated that this contribution can come from either the Southwest Water Authority or the State Water Commission, but is most appropriate coming from the Commission. The total state budget for the Southwest Pipeline Project for the 2005-2007 biennium is \$5,300,000. Agency operations for the pipeline have been approximately \$600,000 per biennium in the past, which will have to be reduced to meet the obligation to USDA, Rural Development and still meet budget requirements.

Mr. Lennington discussed the order of construction priority for the Medora-Beach regional service area, Phase II. The Beach service area has the highest priority followed by the Morton county areas, Golva service area, and the Fryburg service area. Part of the reason that the Fryburg service area was given a lower priority was the sign-up percentage in the north and the cost per user in the south. There have been 17 new signups (9 in the south and 8 in the north since contract 7-8B was advertised). This has resulted in the north pocket exceeding the sign-up percentage criteria and will likely have a positive effect on the costs in the south. The portion of the south pocket, which was included in the contract 7-8B bid package as Schedule 3, meets the feasibility criteria.

Mr. Lennington explained that the decision of which bid schedule combination to award for contract 7-8B is dependent upon the available funding, which is affected by the bids received for contract 7-8C, therefore, he said the award of contracts 7-8B and 7-8C should be considered jointly by the Commission. Project costs, which include administrative, legal, and engineering costs, along with telemetry have been estimated for Medora-Beach, Phase II. Contingencies of approximately \$362,500 have also been included in project costs. The following table summarizes the funding situation based upon the funding package providing \$8,440,000 for construction of Medora-Beach, Phase II. Project costs in the following table include reimbursement to the Southwest Water Authority of \$99,398 for the pipeline which was installed to the Home on the Range near Sentinel Butte:

Medora-Beach, Phase II, Project Costs

| <u>Schedules</u> | <u>Contract 7-8B Costs</u> | <u>Contract 7-8C</u> | <u>Estimated Project Costs</u> | <u>Funding Excess/Shortfall</u> |
|------------------|--------------------------------|----------------------|------------------------------------|-------------------------------------|
| 1 | \$3,712,028.35 | \$2,480,278.95 | \$8,194,442 | \$ 245,558 |
| 1 & 2 | \$4,533,608.45 | \$2,480,278.95 | \$9,236,312 | (\$796,312) |
| 1 & 3 | \$3,948,202.90 | \$2,480,278.95 | \$8,489,124 | (\$ 49,124) |
| 1, 2 & 3 | \$4,769,783.00 | \$2,480,278.95 | \$9,530,993 | (\$1,090,993) |

The award of the contracts and notices to proceed are dependent on the completion of the contract documents, approval by USDA, Rural Development, and a legal review. The 7-8B contract documents specify that the contract must be substantially complete no later than July 15, 2007, with service to 90 users in the Beach service area by August 20, 2006. The 7-8C contract documents specify that the contract must be substantially complete no later than September 1, 2007, with service to 15 users in the North Crown Butte pocket by August 20, 2006.

It was the recommendation of the State Engineer that the State Water Commission award Southwest Pipeline Project contract 7-8B, Medora-Beach regional service area, Phase II, to Abbot, Arne, Schwindt, Inc., Moorhead, MN, based on Bid Schedules 1 and 2 (Beach and Golva service areas, and North Fryburg pocket, respectively) in the amount of \$4,533,608.45; and award Southwest Pipeline Project contract 7-8C, Medora-Beach regional service area, Phase II, Morton county areas (Junction Inn service area, North Crown Butte and Tower Hill booster areas) to Northern Improvement Co., Bismarck, ND, in the amount of \$2,480,278.95.

It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve the award of Southwest Pipeline Project contract 7-8B, Medora-Beach regional service area, Phase II, to Abbot, Arne, Schwindt, Inc., Moorhead, MN, based on Bid Schedules 1 and 2 (Beach and Golva service areas, and North Fryburg pocket, respectively) in the amount of \$4,533,608.45; and the award of Southwest Pipeline Project contract 7-8C, Medora-Beach regional service area, Phase II, Morton county areas (Junction Inn service area, North Crown Butte and Tower Hill booster areas) to Northern Improvement Co., Bismarck, ND, in the amount of \$2,480,278.95.

In discussion of the motion, the Commission members referenced the competitive bids that were received for contracts 7-8B and 7-8C. Bid Schedule 3, South Fryburg pocket (\$236,175.55), was further discussed and it was the general consensus of the Commission members to take advantage of the competitive bids and construct the portion of the South Fryburg pocket in Bid Schedule 3. The Commission also affirmed that the contracts should include the upsize costs to serve the Trotters and Fairfield pockets. The inclusion of Bid Schedule 3, with the upsize costs, would increase the total contract 7-8B amount to \$4,769,783.00. Secretary Frink discussed funding options that could be made available if contract 7-8B based on a combination of Bid Schedules 1, 2 and 3, and contract 7-8C were awarded, resulting in additional funds in the amount of \$1,090,993. Mr. Lenington pointed out that this action would increase the total state funding commitment to about \$6.3 million.

A substitute amendment to the original motion was offered by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve the award of Southwest Pipeline Project contract 7-8B, Medora-Beach regional service area, Phase II, to Abbot, Arne, Schwindt, Inc., Moorhead, MN, based on Bid Schedules 1, 2 and 3 (Beach and Golva service areas, North Fryburg pocket, and South Fryburg pocket, respectively) in the amount of

\$4,769,783.00; and the award of Southwest Pipeline Project contract 7-8C, Medora-Beach regional service area, Phase II, Morton county areas (Junction Inn service area, North Crown Butte and Tower Hill booster areas) to Northern Improvement Co., Bismarck, ND, in the amount of \$2,480,278.95. The award of contracts 7-8B and 7-8C are contingent on the closing of the 2005 Series A bond.

Governor Hoeven called the question on the substitute amendment to the original motion and asked for a roll call vote.

Commissioners Hanson, Hillesland, Hofstad, Jeff Olson representing Commissioner Johnson, Olin, Swenson, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the substitute amendment to the original motion unanimously carried.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR
REPLACEMENT AND EXTRA-
ORDINARY MAINTENANCE FOR
REPLACEMENT OF LIME SLAKERS AT
DICKINSON WATER TREATMENT PLANT
(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 the cost is low, it should be considered an 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. 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.

James Lennington presented a request from the Southwest Water Authority for the State Water Commission's consideration for the expenditure of funds from the reserve fund for replacement and extraordinary maintenance (REM) for replacing the lime slakers at the Dickinson water treatment plant. The lime slakers have been estimated to cost \$80,000 to \$100,000 each.

Under the agreement which transferred management, operations and maintenance responsibilities for the Dickinson water treatment plant to the Southwest Water Authority in March, 2000, the Authority makes an initial determination whether a proposed project qualifies for payment from the REM fund and then forwards its determination to the Commission for concurrence. Also, under the agreement, the Authority will obtain approval of the Commission before awarding a contract and for determining final completion of the work. The Authority must also notify the city before making any improvements that cost more than \$100,000.

The REM reserve fund is currently ahead of the projection calculated in 1998, but the projection did not include an item for replacing the lime slakers at the Dickinson water treatment plant. Mr. Lennington explained that the request is a legitimate use of the funds, but the projection should be updated to include those items which may not have been included.

It was the recommendation of the State Engineer that the State Water Commission concur in the determination that the replacement of the lime slakers at the Dickinson water treatment plant is eligible for reimbursement from the reserve fund for replacement and extraordinary maintenance; and, that the State Engineer be authorized to approve the award of the lime slakers contract and determine the final completion of the work.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission concur in the determination that the replacement of the lime slakers at the Dickinson water treatment plant is eligible for reimbursement from the reserve fund for replacement and extraordinary maintenance; and, that the State Engineer be authorized to approve the award of the lime slakers contract and determine the final completion of the work.

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

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

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

Contract 2-1B - Pretreated Water Pipeline: On April 23, 2003, the State Water Commission authorized the award of contract 2-1B to Coughlin Construction, Minot, ND. The contract is for approximately 9.5 miles of 30-inch and 36-inch ductile iron pipe extending from the end of contract 2-1A to a point just south of N.D. Highway 23. Approximately 65 percent of the pipe in this contract was installed in 2003. The contract included an above ground pressure reducing valve vault located adjacent to U.S. Highway 83 just south of the bored and cased highway crossing at Ward County Road 16.

The contractor completed pipe laying on June 26, 2004, and completed testing of the facilities on November 22, 2004, which signified substantial completion of the project. The original completion date for contract 2-1B was October 31, 2004. There were some time delays due to weather and some changed conditions during execution of the contract, as well as added facilities. The primary reason for the contract being over one year beyond the completion date was low production in pipeline by the contractor.

The final outstanding items on contract 2-1B, including forfeiture due to delay and two change orders, have been negotiated with the contractor. The final pay estimate has been prepared and is awaiting the final walk-through on the contract scheduled September 1, 2005.

Disturbed areas of the contract, which originally were grass, were re-seeded into grass in the fall of 2004. Heavy rains in June, 2005 caused extensive damage to these areas, which will be repaired this fall. The estimates for repairing the damaged areas range from \$30,000 to \$50,000.

Contract 2-1C - Pretreated Water Pipeline Station 1600+00 to Max Pumping Station: Contract 2-1C consists of approximately 61,006 feet (about 11.6 miles) of 36-inch ductile iron pipe extending from N.D. Highway 23 to the south side of the city of Max. At its March 11, 2004 meeting, the State Water Commission authorized the award of contract 2-1C to Winter Brothers Underground, Sioux Falls, SD, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation. The contract was executed by the State Engineer on April 6, 2004.

The contractor completed pipelaying on contract 2-1C in December, 2004. The contractor is currently working on finishing up painting metal surfaces, pigging the lines, and pressure testing.

Contract 2-1D - Pretreated Water Main Transmission Pipeline from City of Max Pump Station to Lake Sakakawea Intake: Contract 2-1D consists of approximately 14.9 miles of 36-inch pipe extending from just north of N.D. Highway 53 at Max, ND, to a point just south of the Totten Trail Restaurant at the Snake Creek embankment. At its March 10, 2005 meeting, the State Water Commission authorized the State Engineer discretionary approval to award contract 2-1D, which was awarded to Molstad Excavating, Inc., Grand Forks, ND, on April 18, 2005.

The contractor began laying pipe in June, 2005 and has approximately 5,100 feet of pipe installed, with about 300-400 feet of pipe being installed per day. Beginning in mid-September, 2005, a second crew is to begin pipe laying about half way along the contract proceeding southward.

High Service Pump Station: Judge Rosemary Collyer ruled in April, 2005 that an injunction stopping all construction activity on the project was not appropriate and, therefore, she allowed construction to proceed on existing contracts and on contract 2-1D. Judge Collyer also stated that construction could proceed on other features of the project if the government could demonstrate why the proposed additional construction would not influence the ability to choose water treatment options in the ongoing NEPA review.

The next item which would be constructed is a high service pump station east of the Minot water treatment plant. This would be a joint facility with pumps serving the city of Minot and the NAWS project, and would provide for future installation of ultra-violet (UV) disinfection equipment. Development patterns in south Minot are such that new water distribution facilities will need to be constructed in a few years and these facilities will require the joint high service facility. The city could construct a separate booster pump station but would save money through the joint facility. The high service pump station will be required for NAWS no matter where treatment occurs.

In discussion of the NAWS project construction schedule, Governor Hoeven directed the State Engineer and the Commission staff to work with the North Dakota Office of the Attorney General relative to the time line for the legal issues in the Manitoba lawsuit.

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

Devils Lake is currently at an elevation of 1449.20 feet msl. At its current elevation, Devils Lake has a surface area of 138,100 acres and storage of 2.68 million acre-feet of water.

The current elevation of Stump Lake is 1432.46 feet msl. At this elevation, Stump Lake has a surface area of 10,700 acres and is storing 311,600 acre-feet of water. The gage on the Jerusalem channel is registering flows of 294 cubic feet per second (cfs), and averaged 300 cfs for June, July and August, 2005.

**NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT STATUS
(SWC Project No. 416-07)**

The State of North Dakota has pursued an emergency phased outlet project from West Bay to the Sheyenne River. The project was based on a three-year

construction timeline, with construction commencing in the fall of 2002.

(Note: The State of North Dakota Devils Lake outlet project progress is documented in State Water Commission meeting minutes dated 2001 through June 22, 2005.)

Secretary Frink reported that the North Dakota Devils Lake outlet project is nearly completed. The pump tests were conducted on August 4, 2005 with a small amount of water being discharged into the Sheyenne River on August 5 and 6, 2005. Continuous operation of outlet, within the guidelines of the water quality discharge permit, began on August 15, 2005.

The North Dakota Department of Health permit that governs the outlet's operation specifies that the water may not have an average weekly sulfate concentration of more than 300 milligrams per liter. Secretary Frink explained that the sulfate levels in west Devils Lake and the Sheyenne River are both high enough to restrict discharges into the river and, therefore, the outlet's water flow into the Sheyenne River was reduced to avoid water quality problems. He described the water quality as typical for the summertime, and when the Sheyenne River flows are lessened, the sulfate content tends to be higher.

The Department's permit also limits the outlet's flow in 2005 to 50 cubic feet per second (cfs) and pumping operations must cease from December through April. If the outlet pumps to its capacity, which increases to 100 cfs in 2006, Secretary Frink said it could remove up to four inches of water from the lake annually.

Devils Lake was sampled for biota during July 25-30, 2005 by multiple crews from North Dakota, Minnesota, and Manitoba. The only potential species of concern found was the *Ligula intestinalis* parasite, which has already been cited as being present in fish of Lake Dauphin adjacent to Lake Winnipeg. The definitive hosts of parasite are fish-eating birds such as pelicans and cormorants, which are extremely likely to transport the parasite across any type of boundary.

Governor Hoeven expressed appreciation to the State Water Commission, the State Game and Fish Department, and the State Health Department for the expeditious and professional manner in which the agencies' staff accomplished the efforts and issues relating to the North Dakota Devils Lake outlet project. Commissioner Hofstad reiterated the appreciative comments and stated that "for the first time, I think you see a glimmer of hope, and even that small amount of water removed from Devils Lake was significant locally."

***BILLINGS LAKE SURVEY
(SWC Project No. 1882-01)***

In October, 2004, the State Water Commission staff and the Devils Lake Basin Joint Water Resource Board became aware of a possible pathway for the introduction of an aquatic nuisance species into Devils Lake. The pathway exists in the incorporated city limits of Loma between the Snowflake Creek and Billing Lake watersheds. A wetland in the northeast corner of Section 35, Township 160 North, Range 61 West is fed by a coulee coming from Nekoma and can either discharge north through a culvert through a township road into the Snowflake Creek watershed tributary, which is a tributary to the Pembina River, or discharge overland to the southwest into the Billings Lake watershed, which feeds the Edmore Coulee and Devils Lake. The area is dominated by wetland grasses and indistinct topography. Carp have been found within a mile of the township road and culvert. No carp have been found in the Devils Lake subbasin. Carp compete with desirable game fish and the introduction of carp into Devils Lake could potentially be devastating to the \$30 million/year fishery.

The Devils Lake Joint Board formed a Billings Lake subcommittee consisting of representatives of the Board, Ramsey and Cavalier county commissions and water resource districts, and the local landowners to develop a solution acceptable to local interests. The State Water Commission and the State Game and Fish Department serve as technical advisors to this committee. An agreement was drafted between the Commission and the Joint Board where the Commission staff would survey the divide area to determine the downstream effects of how much water would be redirected if the culvert near the divide was blocked and to develop models to determine the downstream effects. The Joint Board secured rights-of-entry, one of which was through court action, and raised the funds through local entities to pay for the deposit required by the Commission for one-half of the field costs associated with the survey which is currently underway.

**APPROVAL OF ALLOCATION OF
\$200,000 FROM STATE FUNDS; AND
EXPENDITURE OF \$200,000 FROM
WATER DEVELOPMENT AND
RESEARCH FUND FOR ALL SEASONS
WATER USERS DISTRICT SYSTEM V
(PIERCE COUNTY)
(SWC Project No. 237-04)**

A request was presented for the State Water Commission's consideration for an allocation of \$200,000 from state funds, and authorization for the expenditure of \$200,000 (70 percent grant) from the Water Development and Research Fund (Garrison Diversion Conservancy District) for All Seasons Water Users District System V (Pierce County).

The new rural water system proposes to serve 452 rural water users, the city of Willow City, and will have the capacity to provide future service for the city of Leeds. The project is currently planning for an additional 60 users with an estimated cost of \$571,500, requiring an additional grant of \$400,000. The city of Rugby intends to supply System V with a bulk water supply. Construction is anticipated to be completed this year. The estimated total project cost is \$10,250,000. The project has been approved for \$35,750 for the feasibility study, a federal MR&I grant of up to \$6,055,700 for design and construction, \$630,000 from the Water Development and Research Fund which is to be repaid with future federal MR&I funding, and a \$40,000 Water Development and Research fund grant to add future capacity for the city of Leeds which is to be repaid when the city receives water service. All Seasons Water Users District requested a 70 percent grant to cover the non-federal share (\$400,000) for capacity to serve the additional users.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation of 35 percent of the eligible items not to exceed an allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and a 35 percent grant, not to exceed an expenditure of \$200,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) to the All Seasons Water Users District System V (Pierce County) to provide capacity to additional users. It is intended that the State of North Dakota would be reimbursed \$400,000 using future federal MR&I grant funding authorized under the Dakota Water Resources Act of 2000. The projects are required to satisfy federal criteria during the entire process. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund.

It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation of 35 percent of the eligible items, not to exceed an allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium; and a 35 percent grant, not to exceed an expenditure of \$200,000 from the Water Development

and Research Fund (Garrison Diversion Conservancy District), for All Season Water Users District System V (Pierce County). This motion is contingent upon the availability of funds, subject to future revisions, and that the State of North Dakota be reimbursed \$400,000 from future federal MR&I funding.

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

***APPROVAL OF EXPENDITURE (\$30,800)
FROM THE WATER DEVELOPMENT AND
RESEARCH FUND FOR NORTH
VALLEY WATER DISTRICT - CAPACITY
FOR SERVICE TO PEMBINA
(SWC Project No. 237-03)***

A request was presented for the State Water Commission's consideration for the expenditure of \$30,800 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the North Valley Water District for capacity for service to the city of Pembina.

North Valley Water District uses the Akra System-Neché Branch to serve the north half of Pembina county. In 1998, capacity was included in the water system for future water service to the city of Pembina. The city currently uses the Red River as their water source which may not comply with surface water regulations. The estimated cost was \$394,000 to bring water service into a new building on the city's existing reservoir for the meter and controls and abandon the existing water treatment plant building. A grant of 70 percent (\$275,000) from the Water Development and Research Fund was approved for design and construction of the project. After opening bids, the revised project cost estimate is \$438,000 (an additional \$44,000). North Valley Water District requested a 70 percent grant to cover the non-federal share of the project (an additional \$30,800) for design and construction to serve the city of Pembina.

It was the recommendation of the State Engineer that the State Water Commission approve a 70 percent grant, not to exceed an additional expenditure of \$30,800 from the Water Development and Research Fund, for the North Valley Water District to include capacity for the city of Pembina. Affirmative action is contingent upon the availability of funds, and is subject to future revisions. As is the current practice, the State Water Commission and the Garrison Diversion Conservancy District must approve expenditures from the Water Development and Research Fund.

It was moved by Commissioner Hillesland and seconded by Commissioner Hanson that the State Water Commission approve a 70 percent grant, not to exceed an additional expenditure of \$30,800 from the Water Development and Research Fund, for the North Valley Water District for capacity for service to the city of Pembina. This motion is contingent upon the availability of funds, and is subject to future revisions.

Commissioners Hanson, Hillesland, Hofstad, Jeff Olson representing Commissioner Johnson, Olin, Swenson, Thompson, 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 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 is the sole preparer of the Needs and Options report, while the State of North Dakota and the Bureau are jointly preparing the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

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 the study needs assessment, hydrology, engineering, environmental, financial analysis, and biota transfer issues. The preparation of these reports essentially began in January, 2003, and the reports are scheduled for completion in December, 2005.

Dave Koland, general manager, 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 "F"**.

The Bureau of Reclamation distributed the draft report on the Red River Valley Water Needs & Options on May 27, 2005. Public comments on the draft report are due by October 3, 2005. The draft report details the projected water supply needs in the Red River valley through 2050, and contains engineering and cost estimates on the action alternatives. Mr. Koland summarized the

action alternatives and said the costs range from \$500 million to \$2.5 billion. The total annualized costs, including operation and maintenance, range from \$32.7 million to \$173.3 million per year. To date, the most cost effective alternative appears to be the GDU Import to the Sheyenne River alternative, with an estimated cost of \$504 million for Scenario 1 and \$660 million for Scenario 2 water demands. The total annualized costs for this alternative ranges from \$32.7 million to \$42.6 million. These costs do not include any environmental commitments other than the operation of the biota water treatment plant.

Mr. Koland reviewed the Red River Valley Water Supply Project timeline which includes September, 2005 - state alternative selected; November, 2005 - Final Needs & Options Report issued; December, 2005 - draft Environmental Impact Statement distributed; and December, 2006 - final Environmental Impact Statement due.

It was the consensus of the State Water Commission members that a briefing session on the Red River Valley Water Supply Study and the Needs & Options draft report be provided for the Commission's information to assist in the decision-making process of recommending an alternative that will be identified in the draft environmental impact statement as the state's preferred alternative. The briefing session is scheduled for October 18, 2005 at the Garrison Diversion Conservancy District headquarters in Carrington, ND.

***APPROVAL OF RELEASE OF
EASEMENTS AND DEDICATION
FOR THE ERDMAN-BOECK DAM,
CENTER, ND (OLIVER COUNTY)
(SWC Project No. 1295)***

On June 6, 1934, easements for inundating lands to construct a dam in Oliver county were given to the State of North Dakota by Robert Erdman and Julius Boeck in the following described premises:

East Half of Auditor's Lot D in the Southeast quarter of the Southeast quarter of Section 15, Township 142 North, Range 84 West, Oliver County, North Dakota; (Julius Boeck); and

West Half of Auditor's Lot D in the Southeast quarter of the Southeast quarter of Section 15, Township 142 North, Range 84 West, Oliver County (Robert Erdman)

Letters were received in the Office of the State Engineer on March 29, 2005 and July 14, 2005 from the attorney representing Mr. Erdman and the estate of Rose F. Dilger, Center, ND, requesting that the State of North Dakota release the easements for the dam. The letters stated, in part, "that the dam, which was originally constructed on the above premise was removed/abandoned over 20 years ago." The State Water Commission's dam safety section inspected the site and reported that there is no longer a dam at this location.

A letter was sent to the following agencies and entities soliciting comments: North Dakota Land Department, North Dakota Department of Health, North Dakota Parks and Recreation, North Dakota Historical Society, Oliver County Water Resource District, and the Oliver County Commission. The deadline for comments was June 3, 2005.

Because the dam is no longer in existence and will not be reconstructed, it was the recommendation of the State Engineer that the State Water Commission approve the Release of Easements and Dedication, pursuant to North Dakota Century Code section 61-02-14.1, for the easements as described for the Erdman-Boeck Dam, Center, ND, Oliver county.

It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission approve the Release of Easements and Dedication, pursuant to North Dakota Century Code 61-02-14.1, for the easements as described for the Erdman-Boeck Dam, Center, ND, Oliver county.

Commissioners Hanson, Hillesland, Hofstad, Jeff Olson representing Commissioner Johnson, 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 briefed the Commission members on meetings that the Missouri River basin states and stakeholders held in an effort to develop a plan for a spring rise from Gavins Point Dam in 2006. The new Missouri River Master Water Control Manual and the biological opinion set a default spring rise in 2006 unless an alternative plan is developed and agreed to by the Corps of Engineers and the U.S. Fish and Wildlife Service. A spring rise from Gavins Point Dam during a drought will further reduce system storage and lake levels.

The Corps of Engineers, in conjunction with numerous federal and state agencies, reviewed several alternatives in an effort to preserve water quality in Lake Sakakawea that will sustain cold water habitat for the fishery. The alternative selected consisted of a barrier installation on the trash racks for two of the five intakes, integrated with variable daily flow releases from the power plant. These modifications took place in mid-July, 2005 and will be removed in the fall of 2005 following lake turnover. The initial cost estimate for the trash rack modification was \$146,070, which was funded by the Corps of Engineers.

On August 16, 2005, the 8th Circuit Court of Appeals upheld a district court ruling that the Corps of Engineers has the power to regulate the operation of the Missouri River. Some states, including North Dakota, Indian tribes, and environmental and commercial groups had filed lawsuits challenging the Corps control of the river.

Mr. Sando explained that the appeals court decision declares that the "dominant functions" of the Missouri River's reservoirs are controlling floods and supporting downstream shipping. Recreation, fish, wildlife and irrigation are secondary according to the ruling. Therefore, North Dakota cannot use federal anti-pollution laws to compel the Corp to divert less water from Lake Sakakawea into the Missouri River. He said these statements could hamstring North Dakota and the upstream states in their efforts to keep more water in their reservoirs for recreational uses. It is anticipated that the State of North Dakota will ask the United States Supreme Court to hear the case and that the state of South Dakota may also join the request.

***NORTH DAKOTA SOVEREIGN
LAND MANAGEMENT PLAN
(SWC Project No. 322)***

On January 3, 2005, the North Dakota Office of Attorney General responded to a request from Burleigh county regarding the ability of land developers to construct wildlife habitat on sovereign lands for mitigation requirements. Attorney General Opinion 2005-L-01 states, in part, "The state may allow land developers to construct wildlife habitat on the Missouri River sandbars to satisfy federal mitigation requirements provided the state permit is issued under a comprehensive river management plan."

Secretary Frink explained that in response to the request and in discussions with the North Dakota Office of Attorney General staff, it has been determined to be in the best interest of the state to pursue the development of a comprehensive statewide sovereign land management plan since no such plan currently exists. North Dakota's sovereign land, under the authority of the North Dakota State Engineer and subject to regulation, are those lands including the beds and islands lying within the ordinary high watermark of navigable lakes and streams.

The overall purpose of the plan will be to satisfy the requirements outlined in the Attorney General's Opinion; provide a greater consistency in the management of sovereign land and the administration of regulations; serve as a supplement to the state's administrative rules concerning sovereign land management; and generally improve management of the state's sovereign land for present and future generations.

The State Water Commission's planning and education division has begun the development of the plan with the primary efforts focusing on the purpose of the plan and management goals, the State Engineer's authority to manage sovereign lands, and an overview-inventory of lands subject to regulation. A technical work group consisting of agencies' representatives and others will identify the critical resource management issues and special management considerations. The time frame for completion of the plan will be dependent on the commitment from the agencies involved.

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

Governor John Hoeven
Chairman, State Water Commission

SEAL

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

