

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 9, 2005

The North Dakota State Water Commission held a meeting at the Best Western Ramkota Hotel, Bismarck, North Dakota, on December 9, 2005. Governor John Hoeven, Chairman, called the meeting to order at 9:00 AM, 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,
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
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

STATE WATER COMMISSION MEMBER ABSENT:

Charles Halcrow, Member from Drayton

OTHERS PRESENT:

State Water Commission Staff
Approximately 75 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 AUGUST 30, 2005 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the August 30, 2005 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Swenson, and unanimously carried, that the draft minutes of the August 30, 2005 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF DRAFT MINUTES
OF NOVEMBER 1, 2005 STATE WATER
COMMISSION AUDIO CONFERENCE
CALL MEETING - APPROVED**

The draft minutes of the November 1, 2005 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Swenson, and unanimously carried, that the draft minutes of the November 1, 2005 State Water Commission audio conference call meeting be approved as prepared.

**STATE WATER COMMISSION
ALLOCATED PROGRAM
BUDGET EXPENDITURES,
2005-2007 BIENNIUM**

In the 2005-2007 biennium, the State Water Commission has two special line items - administrative and support services, and water and atmospheric resources expenditures. The allocated program expenditures for the period ending October 31, 2005, reflecting 17 percent of the 2005-2007 biennium, were presented and discussed by David Laschkewitsch, State Water Commission accounting manager. All expenditures are within the authorized budget. **SEE APPENDIX "A"**

In the 2005-2007 biennium, the State Water Commission has two special line items - administrative and support services, and water and atmospheric resources expenditures. The allocated

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 \$42,767,642, leaving a balance of \$30,317,547 available to commit to projects.

Secretary Frink discussed the proposed schedule for water projects funding for the 2005-2007 biennium, attached hereto as **APPENDIX "C"**.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2005-2007 BIENNIUM**

The oil extraction tax deposits into the Resources Trust Fund total \$3,900,596 and are currently \$17,526, or 0.5 percent behind the budgeted revenues.

Deposits into the Water Development Trust Fund total \$117,923,934, which was not anticipated. The first scheduled payment is anticipated in April, 2006 and is projected to be \$10,300,000.

**APPROVAL OF NORTH DAKOTA
NATURAL RESOURCES TRUST
ALLOCATION (\$17,958.67) FOR
FISCAL YEAR 2005
(SWC Project No. 1826)**

In 1986, the Garrison Diversion project was reformulated by Congress. Two new features of the project were the Municipal, Rural and Industrial (MR&I) Water Supply program and the Wetlands Trust. Both features are wide-

spread programs benefiting much of the state. The Dakota Water Resources Act of 2000 changed the name to the North Dakota Natural Resources Trust.

The North Dakota Natural Resources Trust is a program that provides for the preservation, enhancement, restoration, and management of wetlands and associated wildlife habitat in the state. The Natural Resources Trust operates off of the interest from a trust fund that will eventually reach \$13,200,000. Of the \$13,200,000, \$12,000,000 is to come from the federal government and \$1,200,000 from the State of North Dakota.

In 1993, the Garrison Diversion Conservancy District, the State Water Commission, and the North Dakota Game and Fish Department entered into a memorandum of agreement in which the three entities agreed to share equally the state's commitment in accordance with the terms set out in a February 14, 1991 agreement between the State of North Dakota, the Bureau of Reclamation, and the North Dakota Wetlands Trust. That agreement provides that the state's share shall be based on 0.15 percent of the federal Garrison Diversion Unit (GDU) appropriation. The Fiscal Year 2005 state's commitment is \$53,876; the State Water Commission's one-third share is \$17,958.67.

Commissioner Olin disclosed that he currently serves on the North Dakota Natural Resources Trust board of directors, and questioned if a conflict of interest exists relative to this project. Governor Hoeven ruled that this disclosure would not be considered as a conflict of interest.

It was the recommendation of the State Engineer that the State Water Commission approve an allocation of \$17,958.67 for one-third of the state's Fiscal Year 2005 North Dakota Natural Resources Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

It was moved by Commissioner Swenson and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission approve an allocation of \$17,958.67 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for one-third of the state's Fiscal Year 2005 contribution to the North Dakota Natural Resources Trust. This motion is contingent upon the availability of funds, and an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

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.

***ELM RIVER SNAGGING AND
CLEARING PROJECT (TRAILL
COUNTY) - APPROVAL OF STATE
COST PARTICIPATION (\$21,875)
(SWC Project No. 1934)***

A request from the Traill County Water Resource District was presented for the State Water Commission's consideration for state cost participation in snagging and clearing the Elm River from the Red River upstream to N.D. Highway 18.

The snagging and clearing work involves approximately 24 miles of the north branch and 17 miles of the south branch consisting of tree removal and disposal, beaver eradication and beaver dam removal, channel bottom sedimentation removal, cattail control, and other miscellaneous items for channel maintenance.

The project engineer's estimate is \$95,000, of which \$87,500 is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$21,875). The request before the State Water Commission is for a 25 percent state cost participation in the amount of \$21,875.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation in the Elm River snagging and clearing project in Traill county at 25 percent of the eligible costs, not to exceed an allocation of \$21,875 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was moved by Commissioner Hillesland and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation in the Elm River snagging and clearing project in Traill county at 25 percent of the eligible costs, not to

exceed an allocation of \$21,875 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). 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.

***SHEYENNE RIVER SNAGGING
AND CLEARING PROJECT (CASS
COUNTY) - APPROVAL OF STATE
COST PARTICIPATION (\$60,000)
(SWC Project No. 568)***

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in a snagging and clearing project on the Sheyenne River. The Sheyenne River

requires regular snagging and clearing to maintain the channel's capacity during floods. The proposed project will complete the river reach east of Cass County Highway 31 in Section 13 of Harwood Township, beginning in Section 31 of Reed Township north of West Fargo and proceeding upstream to the Cass-Richland county line.

The snagging work includes the removal of fallen trees and standing trees in eminent danger of falling into the channel, driftwood, snags, loose stumps and trunks, and standing stumps or objectionable material which is encountered within the river channel between the upstream and downstream limits. Bank clearing will include the removal of fallen trees and driftwood lodged on the immediate bank slopes of the channel, and the removal of prominently leaning trees overhanging the channel and are in danger of falling into the channel area.

The project engineer's estimate is \$240,000, of which all is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$60,000). The request before the State Water Commission is for a 25 percent state cost participation in the amount of \$60,000.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation in the Sheyenne River snagging and clearing project in Cass county at 25 percent of the eligible costs, not to exceed an allocation of \$60,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission approve state cost participation in the Sheyenne River snagging and clearing project in Cass county at 25 percent of the eligible costs, not to

exceed an allocation of \$60,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). 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.

**STEELE COUNTY DRAIN NO. 3
IMPROVEMENT, RECONSTRUCTION
AND EXTENSION PROJECT -
APPROVAL OF STATE COST
PARTICIPATION (\$132,300)
(SWC Project No. 1552)**

A request from the Steele County Water Resource District was presented for the State Water Commission's consideration in the improvement, reconstruction and extension of Steele County Drain No. 3, an assessment drain located in Enger and Golden Lake townships. The

purpose of the project is to reduce flood damages in the upstream watershed by the spring of 2007.

Steele County Drain No. 3, which is approximately 2.5 miles in length, is located in Sections 28, 29, 31, and 32 in Tier 147 North, Range 54 West (Enger Township), outletting into the middle branch of the Goose River in Section 28. The existing drain will be reconstructed to adjust the grade line, establish 4:1 side slopes, and a 10-foot bottom width. Further improvements includes resizing of culverts, establishment of backwater protection for the fields from the channels, and other miscellaneous construction items.

The channel will be extended further upstream in the watershed. An extension of approximately 1.5 miles in length will be constructed to the west of the existing drain in Section 31 of Enger Township and Section 36 in Golden Lake Township. The extension to the south, approximately one-half mile in length, will be constructed in Section 31 of Enger Township. The extensions will be constructed with 4:1 side slopes and 10-foot bottom widths. The entire length of the Steele County Drain No. 3, with the constructed extensions and laterals, will be approximately 4.5 miles.

According to the District, the formal procedure to create a new assessment district of the watershed will follow the State Water Commission's consideration of the request. Conditional approval of rural flood control projects is allowed, subject to a six-month time limit for receiving a positive local assessment vote. A drainage permit and sediment analysis will be submitted upon a positive assessment vote at which time right-of-way will be acquired. Final approval will be acknowledged upon notification of a positive local assessment vote, satisfaction of permit requirements, receipt of the sediment analysis, and the project's final engineering design.

The project engineer's cost estimate is \$420,000, of which \$378,000 is determined eligible for conditional state cost participation as a rural flood control project at 35 percent of the eligible costs (\$132,300). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$132,300.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$132,300 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Steele County Drain No. 3 improvement, reconstruction and extension project.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$132,300 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Steele County Drain No. 3 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 conditional funding approval, satisfaction of the required permit(s), receipt of a sediment analysis, and approval of the project's final engineering 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.

**NASH DRAIN EXTENSION
CONSTRUCTION PROJECT
(NELSON COUNTY) -
REQUEST WITHDRAWN
(SWC Project No. 1936)**

On August 9, 2005, the Nelson County Water Resource District submitted a request to the Office of the State Engineer for state cost participation in a project to construct an extension to the existing Nash Drain to provide flood relief for the city of Petersburg. According to the correspondence, the project consists of constructing an extension to the existing rural drain (Nash) to reduce the amount of excess surface water runoff that has affected the city since 1992. The water that has ponded in the areas surrounding the city has threatened the waste water treatment system, streets, and the health, wealth and property of the residents.

Secretary Frink explained that because of the relatively high initial project cost estimate, the Nelson County Water Resource District has decided to redesign the project. Therefore, the request for state cost participation was withdrawn at this time.

CENTRAL-HAMLIN RURAL FLOOD CONTROL DRAIN CONSTRUCTION (NELSON COUNTY) - APPROVAL OF STATE COST PARTICIPATION (\$67,171) (SWC Project No. 1131)

A request from the Nelson County Water Resource District was presented for the State Water Commission's consideration for state cost participation to construct a rural flood control drain that will allow for the lowering of the

water surface elevations of Olsen, Berkland, and Dahl sloughs, and Knudson Lake. According to the District, the Central and Hamlin Townships designed the project with assistance of the U.S. Fish and Wildlife Service for the purpose of reducing the impact of excessive sheetwater in the townships.

The rural flood control drain will be located in Section 35 (Nelson County, Central Township), Township 151 North, Range 59 West, and in Sections 21, 22, 15, 11, and 2 (Nelson County, Hamlin Township), Township 150 North, Range 59 West. Olsen slough will be lowered by installing a 24-inch CMP culvert between it and Berkland slough. Berkland slough will be lowered by installing a culvert at the bottom of the road ditch allowing the lake to flow south to Knudson Lake/Dahl slough. Currently, the road is acting as a dam. Knudson Lake/Dahl slough will be lowered by constructing a series of channels and 18-inch HDPE pipe between Section 15 and the existing Highway 22 culvert on the Sections 20/21 line upstream from Silver creek. Sluice gates will be installed at the outlet ends of the lakes. The open channel portion of the drain will be approximately 1.4 miles in length, and 2,725 feet of HDPE pipe will be installed. The permit application indicates a drainage area of 11,040 acres. The drain will be constructed with a cut of 6 to 19 feet, 3:1 to 8:1 side slopes, and a 10-foot bottom width.

The project engineer's cost estimate is \$134,342, of which all is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$47,020). The District requested a 50 percent cost share participation, of which 15 percent is typically considered non-eligible (construction of rural flood control drains is cost shared at 35 percent). The request before the State Water Commission is for a 35 percent state cost participation of the eligible costs (\$47,020) from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), and an additional 15 percent of the eligible costs (\$20,151) obligated by the State Water Commission on August 11, 2005 for water-related damage to the infrastructure in Nelson county (H.B. 1021), for a total state cost participation of \$67,171.

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 \$67,171, of which \$47,020 (35 percent of the eligible costs) shall be allocated from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021); and, an additional allocation of \$20,151 from the funds obligated for the water-related damage to the infrastructure in Nelson county (H.B. 1021).

It was moved by Commissioner Swenson and seconded by Commissioner Hillesland that the State Water Commission conditionally approve state cost participation not to exceed a total allocation of \$67,171, of which \$47,020 (35 percent of the eligible costs) shall be allocated from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021); and, an additional allocation of \$20,151 (15 percent of the eligible costs) from the funds obligated for the water-related damage to the infrastructure in Nelson county (H.B. 1021). This motion is contingent upon the availability of funds, issuance of the required drain permit, 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.

**HARWOOD TOWNSHIP DRAIN
CONSTRUCTION PROJECT
(CASS COUNTY) - APPROVAL OF
STATE COST PARTICIPATION
(\$70,875)
(SWC Project No. 1935)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in the construction of the Harwood township drain. The existing road ditches are inadequate for agricultural drainage

due to the general grade irregularities and culvert elevations. The proposed project will improve agricultural lands by addressing sheetwater removal.

The drain, located in Sections 22, 23, and 14, Tier 141 North, Range 49 West (Harwood Township, Cass County), will be approximately 2 miles in length, with an outlet drop structure to the Sheyenne River and a road crossing at the Section 14/23 quarter line. The project drainage area is 1,005 acres and has a 10-year design. The drain will be constructed with a 10-foot bottom width, 4:1 side slopes, and a design grade of 0.05 percent. A drain permit application is currently being processed. Conditional approval of rural flood control projects is allowed, subject to a six-month time limit for receiving a positive local assessment vote. The

assessment district vote is scheduled in January, 2006. Final approval will be acknowledged upon notification of a positive local assessment vote, issuance of the drain permit, and receipt/approval of the project's final engineering design.

The project engineer's cost estimate is \$235,000, of which \$202,500 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$70,875). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$70,875.

It was the recommendation of the State Engineer that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$70,875 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the construction of the Harwood Township drain project.

It was moved by Commissioner Hanson and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation of 35 percent of the eligible costs, not to exceed an allocation of \$70,875 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the construction of the Harwood Township drain 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 conditional funding approval, satisfaction of the required permit(s), and approval of the project's final engineering 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.

**SWEETBRIAR CREEK DAM
(MORTON COUNTY) - APPROVAL
OF ADDITIONAL STATE COST
PARTICIPATION (\$80,000)
FOR CONSULTANT SERVICES
(SWC Project No. 642-01)**

Sweetbriar Creek Dam is located in Morton county approximately 17 miles west of Mandan, ND. 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).

The Department of Transportation built Sweetbriar Creek Dam in 1960. Morton county, the North Dakota Game and Fish Department, and the State Water Commission are responsible for maintenance of the

dam. Sweetbriar Lake, which was created by the damming of Sweetbriar Creek, has a surface area of 250 acres, is approximately 40 feet deep, and has a volume of 2,000 - 3,000 acre-feet of water. The lake was drawn down several feet in 2005 to alleviate pressure on the dam.

A joint inspection by the staffs of DOT and the Commission was conducted in May, 2002, 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 was scheduled for the 2003 construction season at this location. Previous State Water Commission approvals include: March 5, 2003, an allocation of \$43,333, of which \$25,333 was from the funds appropriated to the State Water Commission in the 2001-2003 biennium, and \$18,000 was for in-kind services provide by the Commission; May 11, 2005, an additional allocation of \$4,010.33, from the funds appropriated to the State Water Commission in the 2003-2005 biennium; and November 1, 2005, an additional allocation of \$20,000 to proceed with the engineering process from the funds appropriated to the State Water Commission in the 2005-2007 biennium. (The allocated \$20,000 to proceed with the engineering process were not expended.)

A contract was executed with GEI Consultants, Inc. to inspect Sweetbriar Creek Dam, Epping Dam, and Big Coulee Dam, which have similar designs as Mount Carmel Dam. The field investigation indicated significant seepage problems with Sweetbriar Creek Dam. Materials located downstream indicated holes were being created under the embankment forming the dam, which lies beneath U.S. Interstate 94. The dam appears to be stable and that there is no imminent threat to U.S. Interstate 94.

A request for engineering services was advertised for additional repairs and modifications. Bartlett and West/Boyle Engineers, Inc. was selected as the consulting engineers for Sweetbriar Creek Dam.

On November 30, 2005, staffs of the State Water Commission, State Game and Fish Department, Department of Transportation, and the Morton County Park Board met to discuss the proposed schedule, scope of work, and the funding of the project. The cost estimate for the geotechnical investigation is \$110,000. Secretary Frink explained that if ground water is found to be the source of seepage, the engineering design costs could be \$200,000 or less, and if the seepage is reservoir-related, the cost for additional soil borings could exceed \$200,000, which is an indication construction costs could approach \$2,000,000. He said the large expense is because of the dam's association with U.S. Interstate 94.

It was the recommendation of the State Engineer that the State Water Commission approve a 33.33 percent state cost participation for consultant services (\$240,000) for the repairs and modifications at Sweetbriar Creek Dam, not to exceed an additional allocation of \$80,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). Affirmative action by the State Water Commission would include approval for the engineering proposals process, scoring/ranking of firms, and the execution of the engineer-owner contract with the consultant. Other funding sources include the North Dakota Department of Transportation - 25 percent, and the North Dakota Game and Fish Department and the Morton County Park Board - 41.67 percent.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve a 33.33 percent state cost participation for consultant services (\$240,000) for the repairs and modifications at Sweetbriar Creek Dam, not to exceed an additional allocation of \$80,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). 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.

***NORTH DAKOTA IRRIGATION
ASSOCIATION - APPROVAL OF
\$100,000 IN 2005-2007 BIENNIUM
FOR STRATEGIC PLAN INITIATIVES
FOR IRRIGATION DEVELOPMENT IN
NORTH DAKOTA
(SWC File AOC/IRR)***

A request from the North Dakota Irrigation Association was presented for the State Water Commission's consideration for state cost participation in the amount of \$100,000 from July 1, 2005 through June 30, 2007 to pursue the initiatives outlined in the Strategic Plan for Irrigation Development in North

Dakota. The Strategic Plan summary is attached to these minutes as ***APPENDIX "D"***.

The North Dakota Irrigation Association's Strategic Plan identified six important components necessary for the development of irrigation and diversification of the state's economic base. These components include communications and coordination, irrigation development, marketing, funding and financing, research related to irrigation, and the pursuit of federal hydropower and affordable energy. These elements provide the basis for substantially increasing the irrigated acreage and economic output in North Dakota.

It was the recommendation of the State Engineer that the State Water Commission support the efforts of the North Dakota Irrigation Association with an allocation not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), from July 1, 2005 through June 30, 2007, in pursuance of the activities outlined in the Strategic Plan for Irrigation Development in North Dakota.

It was moved by Commissioner Hanson and seconded by Commissioner Hofstad that the State Water Commission support the efforts of the North Dakota Irrigation Association and approve an allocation not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), from July 1, 2005 through June 30, 2007, in pursuance of the activities outlined in the Strategic Plan for Irrigation Development in North Dakota. 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 ALLOCATION
(\$150,000) TO RED RIVER BASIN
COMMISSION FROM JANUARY 1,
2006 THROUGH JUNE 30, 2007
(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 Resource 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 states of North Dakota and Minnesota, the Province of Manitoba, and the local governments in the three major jurisdictions have participated in funding the activities of the Red River Basin Board/Commission for several years. Contributions of \$100,000 per year are requested of each of the six primary sponsors to fund the Red River Basin Commission's operating costs for projects.

On December 10, 2004, the State Water Commission considered a request from the Red River Basin Commission to provide an allocation of \$100,000 from January 1, 2005 through December 31, 2005 (\$50,000 in the 2003-2005 biennium, and \$50,000 in the 2005-2007 biennium) to support the Red

River Basin Commission's Natural Resource Framework Plan activities. Because of budget constraints, the Commission approved the allocation of \$50,000 from January 1, 2005 through June 30, 2005. On June 22, 2005, the State Water Commission approved an additional allocation of \$50,000 from July 1, 2005 through December 31, 2005.

Lance Yohe, executive director of the Red River Basin Commission, presented a request for the State Water Commission's consideration to provide an allocation of \$150,000 from January 1, 2006 through June 30, 2007 to support the Red River Basin Commission's Natural Resource Framework Plan (NRFP) efforts. Mr. Yohe explained that the draft plan is now complete and the comments received are being incorporated. The review process, identifying and connecting to what others are doing, and working on implementing the plan will become the priority. The Commission is involved in 12 projects that address specific goals and objectives in the plan, which are outlined in **APPENDIX "E"**.

It was the recommendation of the State Engineer that the State Water Commission approve an allocation not to exceed \$150,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to support the Red River Basin Commission's Natural Resource Framework Plan efforts from January 1, 2006 through June 30, 2007. The Commission's approval of this allocation will be contingent upon the availability of funds.

It was moved by Commissioner Thompson and seconded by Commissioner Swenson that the State Water Commission approve an allocation not to exceed \$150,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to support the Red River Basin Commission's Natural Resource Framework Plan efforts from January 1, 2006 through June 30, 2007. 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.

**MAPLE RIVER DAM (CASS COUNTY) -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$8,675,000)
(SWC Project No. 1878)**

A request from the Cass County Joint Water Resource District was presented for the State Water Commission's consideration for additional state cost participation of the unfunded balance for the Maple River Dam project. The District is constructing the dam to reduce flood stages and areas inundated within the Maple River, Sheyenne River, and the Red River valley floodplain areas due to the Maple River flows.

The Maple River Dam is located in the NE1/4 of Section 14, Tier 137 North, Range 54 West, in Cass county, approximately 7 miles east and 4 miles north of the city of Enderlin. The watershed area for the Maple River Dam comprises of 901.8 square miles, or 577,152 acres. The project consists of the construction of an embankment, principal spillway, an auxiliary chute spillway, and an emergency spillway. Other construction work includes an access road, clearing and grubbing, main channel creation, Cass County Road 16 and 50th Street southeast raises, ND Highway 46 embankment, and slope protection.

The cost share proposals for the construction of the dam have followed the approved cost shares for the preliminary work (engineering, environmental impact statement, soils investigation, mitigation plans, utility relocations, archaeological investigations, and contingencies). On June 24, 2004, the State Water Commission approved partial funding in the amount of \$4,500,000 for the actual construction. Previously approved cost share actions by the State Water Commission for costs incurred and reimbursed under the previous Maple River Dam study project total \$1,500,000 and include: May 26, 1992 - \$300,000; October 16, 1996 - \$200,000; December 8, 2000 - \$500,000; and March 5, 2003 - \$500,000. To date, the approved state cost participation totals \$6,000,000 for the Maple River Dam project.

The total estimated cost to date for the Maple River Dam project (preliminary and construction work) is \$29,500,000. Of this amount, \$25,350,000 has been determined to be eligible for state cost participation as a rural flood control project at 50 percent of the eligible costs (\$12,675,000), less the approved previous amount for other costs (\$6,000,000). The remaining unfunded balance of \$6,675,000 is considered eligible for state cost participation. The ineligible costs of \$4,150,000 are for the estimated administration expenses (\$150,000), legal fees (\$500,000), and land rights (\$3,500,000).

On August 16, 2004, the State Water Commission tentatively approved \$11,175,000 for the Maple River Dam project. This represented 50 percent of the total cost estimate at that time (\$22,350,000) for all items including land rights (\$3,500,000) and legal fees (\$500,000). The administration expenses (\$150,000) were considered as ineligible costs.

Thomas Fischer, North Dakota Senate, District 46, and chair of the Cass County Joint Water Resource Board, provided technical status information relating to the project features and downstream benefits, projected schedule, and project funding. Four of the five construction contracts have been currently awarded and are under construction, with the anticipation that the final construction contract will be let by early spring of 2006. The project should be operational by the fall of 2006 with all construction completed by the summer of 2007. Senator Fischer presented a request for the State Water Commission's consideration to provide state cost participation in the Maple River Dam project (\$29,500,000), at 50

percent of the eligible costs (\$29,350,000) including land rights (\$3,500,000) and legal costs (\$500,000)), for a total state cost participation of \$14,675,000. The request excludes administration expenses of \$150,000.

It was the recommendation of the State Engineer that the State Water Commission approve state cost participation in the Maple River Dam project (\$29,500,000) at 50 percent of the eligible costs (\$25,350,000) exclusive of land rights, legal fees, and administration expenses, not to exceed an allocation of \$12,675,000, less the previous total cost share approvals (\$6,000,000), for an unfunded balance for additional state cost participation of \$6,675,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). Affirmative action by the State Water Commission is contingent upon the availability of funds.

It was moved by Commissioner Swenson and seconded by Commissioner Hanson that the State Water Commission approve state cost participation in the Maple River Dam project (\$29,500,000) at 50 percent of the eligible costs (\$25,350,000) exclusive of land rights, legal fees, and administration expenses, not to exceed an allocation of \$12,675,000, less the previous total cost share approvals (\$6,000,000), for an unfunded balance of \$6,675,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), contingent upon the availability of funds; and, that the Rural Flood Control Committee and others revisit the State Water Commission's policy and guidelines as it relates to state cost participation for water retention structures, with the inclusion of land acquisition costs as an eligible project cost share item.

A substitute amendment to the original motion was offered by Commissioner Thompson and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation in the Maple River Dam project (\$29,500,000) at 50 percent of the eligible costs (\$29,350,000) with the inclusion of land rights (\$3,500,000) and legal fees (\$500,000), not to exceed a total allocation of \$14,675,000, less the previous cost share approvals (\$6,000,000), for an unfunded balance of \$8,675,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). Administration costs (\$150,000) shall be considered as an ineligible cost share item. This motion is contingent upon the availability of funds.

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

Commissioners Hillesland, Hofstad, Olin, Thompson, and Governor Hoeven voted aye. Commissioners Hanson, Jeff Olson representing Commissioner Johnson, and Swenson voted nay. Recorded vote was 5 ayes; 3 nays. Governor Hoeven announced the substitute amendment to the original motion carried.

Governor Hoeven called the question on the original motion, as amended, and asked for a roll call vote:

Commissioners Hanson, Hillesland, Hofstad, Jeff Olson representing Commissioner Johnson, Olin, Thompson, and Governor Hoeven voted aye. Commissioner Swenson voted nay. Recorded vote was 7 ayes; 1 nay. Governor Hoeven announced the original motion, as amended, carried.

This action increases the total state cost participation to \$14,675,000 for the Maple River Dam project.

Governor Hoeven directed the Rural Flood Control Committee (Commissioners Halcrow, Hillesland, Swenson, and Thompson) and others to revisit the State Water Commission's policy and guidelines as it relates to state cost participation for water retention structures, with the inclusion of land acquisition costs as an eligible project cost share item.

***DAM REHABILITATION NEEDS
(SWC Project No. 1579)***

At the May 11, 2005 meeting, the State Water Commission members discussed and expressed concerns relating to recreational dam maintenance and state cost participation. Dams that were constructed in the 1960s and 1970s could begin to experience problems in the future, which could result in significant costs to state and local entities for repairs and maintenance. The Commission members recognized the need for long-range planning including a recreational dam inventory, projected cost estimates, and the solicitation of information from potential stakeholders relating to impoundment priority and maintenance cost share. The Commission members also suggested that a state cost participation policy for recreational dams may need to be considered. The State Engineer and the Commission staff were directed to provide an inventory of recreational dams in the state including, but not limited to pertinent information relating to dam description, construction date, usage, maintenance issues, and potential stakeholders for cost share.

The State Water Commission members were provided with information relating to 134 dams in the state that are inspected on a regular basis by the Commission staff, which is attached hereto as ***APPENDIX "F"***.

Secretary Frink explained that approximately 50 percent of the dams listed on the inventory are for recreational purposes. The information includes dams with high and significant hazard potentials, and a summary of the documented problems of each dam. Since many of the problems would require a detailed engineering study to determine the repair cost, estimates are included to restore the dam to its original working condition, and to rehabilitate the dam to satisfy current dam safety standards. The total estimated cost to rehabilitate these 134 dams is approximately \$32,000,000. Secretary Frink explained this estimate is only for a portion of the dams in the state and that the estimate is based on current known problems.

The State Water Commission members discussed the dam rehabilitation information, and further directed the State Engineer and staff to proceed in the development of a priority schedule and time line for addressing dam repair issues for presentation to the Commission at a future meeting.

***SAFE DRINKING WATER ACT -
APPROVAL OF PROJECT
PRIORITY LIST IN FY 2006
INTENDED USE PLAN,
DATED NOVEMBER 28, 2005
(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 application process. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on November 28, 2005; no comments were received.

The State Water Commission's role in the program is defined in subsections 3 and 4 of ch. 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.

David Bruschwein, North Dakota Department of Health, presented the Fiscal Year 2006 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated November 28, 2005, for the State Water Commission's consideration. The 2006 Intended Use Plan is attached hereto as **APPENDIX "G"**. The comprehensive project priority list includes 82 projects, with a cumulative total project cost of \$224,000,000 for Fiscal Years 1997 through 2006. The fundable list for Fiscal Year 2006 includes 26 projects at a cost of \$48,200,000.

It was the recommendation of the State Engineer that the State Water Commission approve the project priority list for Fiscal Year 2006 as listed in the Intended Use Plan, dated November 28, 2005, and authorize the Department to administer and disburse Fiscal Years 1997 through 2006 program funds pursuant to the Fiscal Year 2006 Intended Use Plan.

It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve the project priority list for Fiscal Year 2006 as listed in the Intended Use Plan, dated November 28, 2005; and authorize the North Dakota Department of Health to administer and disburse Fiscal Years 1997 through 2006 program funds pursuant to the Fiscal Year 2006 Intended Use Plan.

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

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

Contract 2-5B - Main Transmission Pipeline, Medora-Beach, Phase I:
Contract 2-5B was for 46.4 miles of 12-inch through 6-inch diameter PVC pipe. The contract included two booster pump stations and several pressure reducing valve vaults, three tank control vaults, as well as meter vaults for the cities of Medora, Sentinel Butte, and Beach. The contractor, Northern Improvement Company, Bismarck, ND, completed all construction on this contract in the fall of 2004. The contract was substantially complete in October, 2004, and the final inspection was held in January, 2005.

In processing the final payment on the contract in July, 2005, it was noted that the contractor did not obtain all of the required landowner release forms, which release the contractor from further claims by landowners for reclamation, fencing, and other damage claims. The sum of \$20,000 was withheld from the final payment to this contractor for a period of one year to pay any landowner claims which may arise.

Contract 7-8A - Fryburg Service Area, Phase I: Contract 7-8A was for approximately 44 miles of PVC pipe ranging in size from 6 inches to 1 ½ inches in diameter serving 71 rural water users in the general area from Belfield to west of Medora. The contractor, Abbot, Arne, Schwindt, Inc., Moorhead, Minnesota, completed all construction in the fall of 2005. The contract was substantially complete in October 2004, and the final inspection was held in January, 2005. The contractor has not signed the final pay estimate issued on July 1, 2005 and the final change order adjusting the quantities.

Contract 7-8B - Beach, Golva, and Fryburg Service Areas: Contract 7-8B was awarded by the State Water Commission to Abbot, Arne, Schwindt, Inc., Moorhead, Minnesota, on August 30, 2005, for \$4,769,783. Change Order No. 1 added 18 users and about 6 miles of pipe, increasing the contract amount to \$4,880,004.50. This contract is for approximately 283 miles of 8-inch through 1 ½-inch pipe and one VFD booster pump station serving 236 rural users and the city of Golva. The contract has an intermediate completion date of August 30, 2006, which was revised under Change Order No. 1 for 90 users in the Beach service area, and has a substantial completion date of July 15, 2007. To date, the contractor has installed about 47 miles of pipe in the Beach service area. Construction operations have been shut down for the winter.

Because of the limited budget situation, additional users include only those users who signed up during construction with a construction cost of less than \$3,500. If a new user's cost is higher than that amount, they will need to wait until near the end of construction, in order to ensure that there are sufficient funds to cover other contingencies.

Contract 7-8C - Junction Inn Service Area and the Tower Hill and North Crown Butte VFD Pocket Areas (Morton County Areas): Contract 7-8C was awarded by the State Water Commission to Northern Improvement Company, Bismarck, ND, on August 30, 2005, for \$2,480,278.95. Change Order No. 1 added 21 users and 5.8 miles of pipe, which increased the total contract amount to \$2,587,062.31. The contract is for approximately 160 miles of 6-inch through 1 1/2-inch pipe and two VFD booster pump stations serving 131 rural users. The contract has an intermediate completion date of August 20, 2006 for 15 users in the Crown Butte Pocket area, and a revised substantial completion date of September 7, 2007 (Change Order No. 1). The contractor has installed most of the pipe in the North Crown Butte VFD pocket area and has installed about 3 miles of 6-inch pipe in the Junction Inn service area. The contractor has shut down construction operations for the winter.

As on contract 7-8B, additional users include only those users who signed up during construction with a construction cost of less than \$3,500.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF CAPITAL REPAYMENT
RATES, AND REPLACEMENT AND
EXTRAORDINARY MAINTENANCE
RATE FOR 2006
(SWC Project No. 1736)**

Under the Agreement for the Transfer of Management, Operations, and Maintenance Responsibilities for the Southwest Pipeline Project, the Southwest Water Authority is required to submit a budget to the Secretary of the State Water Commission by December 15 of each

year. The budget is deemed approved unless the Secretary of the Commission notifies the Authority of his disapproval by February 15. The Southwest Water Authority submitted its budget on November 27, 2005.

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

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

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

At the June 22, 2005 meeting, the State Water Commission approved the 2005 capital repayment rate for rural users in Morton county receiving water through the Missouri West water system transmission pipelines at \$22.00 per month. Applying the Consumer Price Index adjustment to this figure results in a 2006 rate for these users of \$22.80 per month.

The following projected capital repayment rates, and the replacement and extraordinary maintenance rate for 2006 for the Southwest Pipeline Project were presented for the State Water Commission's consideration:

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

On June 22, 2005, the State Water Commission approved the development of the Beulah interim service area conditioned on receiving a 45 percent grant from USDA, Rural Development. On August 31, 2005, notice was received

that the project was approved for a total of \$1,034,000, of which \$572,000 would be a loan secured by revenue bonds, and a \$462,000 grant.

James Lennington explained that although the \$462,000 grant amount calculates to 44.7 percent of the funding package, it is adequate to satisfy to Commission's intent in its previous action. There is no state or other match required for this funding, therefore, any costs in excess of \$1,034,000 will be the responsibility of the State Water Commission. Mr. Lennington stated that although it is not intended to advertise for bids on the Beulah interim service project until 2006, engineering design costs are being incurred and, therefore, it is appropriate at this time to complete the process and get the sale of the bonds approved.

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. Mr. Lennington explained this action streamlined the completed application process for the 2005 Series B bond, which is to be used to fund construction of the Beulah interim service area.

In order to meet the obligations of USDA, Rural Development funding for construction of the Beulah interim service area, the remaining documents to authorize the sale of the 2005 Series B bond require State Water Commission action. The 2005 Series B bond resolution was presented for the Commission's consideration which, if approved, will authorize the sale of \$572,000 in bonds with an interest rate not to exceed 4.125 percent.

The 2005 Series B bond documents received final approval from USDA, Rural Development, and closing instructions have been issued. Closing on the 2005 Series B bond is scheduled for December 31, 2005.

It was the recommendation of the State Engineer that the State Water Commission adopt and approve the execution of the 2005 Series B 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 Thompson and seconded by Commissioner Swenson that the State Water Commission adopt and approve the execution of the 2005 Series B bond resolution for the North Dakota State Water Commission Water Development Revenue Bonds, Southwest Pipeline Project, Beulah Interim Service Area. (Executed bond resolution is attached hereto as APPENDIX "H")

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 -
APPROVAL OF CITY OF MEDORA
2005 MINIMUM WATER PURCHASE
OF 9,750,000 GALLONS
(SWC Project No. 1736)***

The Southwest Pipeline Project water service contract for the city of Medora is not a sole source service contract as most contracts with cities are. The contract requires the city to purchase and make payment for a minimum of

13,000,000 gallons of project water per year. This type of contract allows the city to blend water with water from its own source.

James Lennington explained that the city of Medora's water service contract requires that the State Water Commission provide the city with a 90-day notice of water availability, which allows the city time to make its final arrangements for converting over to project water. On July 15, 2004, the city of Medora was sent the 90-day notice informing them that water should be available by mid-October, 2004. The city was installing water meters in the fall of 2004 and had previously requested that service not begin until January 1, 2005. Water was made available to the city of Medora on September 7, 2004.

The city was completing the installation of water meters in the first few months of 2005. The city also had problems getting control instrumentation to work between the project meter vault and their elevated tank. The city did not begin using project water until late March, 2005 and was blending project water with water from their wells. The 2000 census population for the city of Medora is 100. At an expected usage rate of 100 gallons per capita per day, the city's usage during the off-tourist season months should be 300,000 or higher depending on economic activity and public buildings.

At the beginning of August, 2005, the Southwest Water Authority contacted the city and informed them that based on their water usage they projected that the city was going to have a difficult time using the 13,000,000 gallons they are required to pay for in the contract. On August 18, 2005, the city of Medora switched over to 100 percent project water.

Mr. Lennington presented a request for the State Water Commission's consideration to prorate the 13,000,000 gallons minimum water purchase for the city of Medora in 2005 based on the 9 months the city actually used project water, making their minimum usage equivalent to 9/12ths of 13,000,000, or 9,750,000 gallons. This is a lesser amount than they expect to use and they have indicated that they will continue to use only project water for the remainder of 2005. Mr. Lennington explained that if the usage exceeds 9,750,000 gallons, their payment for water will be based on actual water usage. In 2006, it is the city's intention to use 100 percent project water until they are confident that they will meet the 13,000,000 gallon minimum before blending.

It was the recommendation of the State Engineer that the State Water Commission approve prorating the city of Medora's Southwest Pipeline Project minimum water purchase for 2005 to 9,750,000 gallons, with the understanding that the city is expected to honor the 13,000,000 gallon minimum from this point forward or convert to a sole source contract. Water use in excess of 9,750,000 gallons will result in payment for actual water use. The Southwest Water Authority approved the request on December 5, 2005.

It was moved by Commissioner Swenson and seconded by Commissioner Hanson that the State Water Commission prorate the city of Medora's Southwest Pipeline Project minimum water purchase for 2005 to 9,750,000 gallons. Water use in excess of 9,750,000 gallons will result in payment for actual water use.

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.

Secretary Frink explained that based on the State Water Commission's action, a letter will be provided to the city of Medora informing them of the Commission's action and outlining its expectations.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT 1736-30 AMENDMENT
FOR CITY OF ZAP
(SWC Project No. 1736)***

The city of Zap originally contacted the State Water Commission and the Southwest Water Authority in 2000 about the possibility of service from the Southwest Pipeline Project. The city's "green sand" filter water treatment facility is aging and requires considerable maintenance. Several alternatives were considered for supplying the city with project water early, but all of the alternatives had drawbacks and it was decided to wait for the development of the Oliver-Mercer-North Dunn regional service area. The city of Zap held an election in November, 2001 to

consider joining the Southwest Pipeline Project and the measure was approved by a vote of 72 for and 35 against. A water service contract was approved by the State Water Commission at its August 15, 2002 meeting.

James Lennington explained that the city of Zap will be supplied on an interim basis by construction of the Beulah interim service area. This will provide flexibility to adjust the water rate for the city.

It was the recommendation of the State Engineer that the State Water Commission approve an amendment to Southwest Pipeline Project contract 1736-30, City of Zap, for interim service from Beulah through the Southwest Pipeline Project.

It was moved by Commissioner Hofstad and seconded by Commissioner Thompson that the State Water Commission approve an amendment to Southwest Pipeline Project water service contract 1736-30, City of Zap, for interim service from Beulah through the Southwest Pipeline Project. SEE APPENDIX "I"

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 2-1C - Pretreated Water Pipeline Station 1600+00 to Max Pumping Station: Contract 2-1C was awarded by the State Water Commission to Winter Brothers Underground, Sioux Falls, SD, for \$6,088,848, 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. Contract 2-1C consists of approximately 61,006 feet (about 11.6 miles) of 36-inch ductile iron pipe extending from just south of N.D. Highway 23 to just north of N.D. Highway 53 at the city of Max. The railroad crossing at Max and approximately 1,200 feet of pipe from the railroad crossing south was deleted from this contract and added to contract 2-1D.

The contractor completed pipelaying on contract 2-1C in December, 2004, and worked on vaults, appurtenances, and reclamation in the 2005 construction season. The north 2.7 miles on this contract have been tested while the remaining 9 miles have not passed the pressure test. The contractor is trying to locate leaks on this segment to be followed by more 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 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 July, 2005, and has approximately 16,000 feet of pipe installed. Temporary reclamation of the disturbed areas is being completed before winter shut down of the operations.

Further Construction and Time Line: 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 before any other project construction may proceed, the government must return to the court to demonstrate why the proposed additional construction would not influence or alter the agency's ability to choose between water treatment options and, furthermore, provide the court with an update on the status of the ongoing NEPA review.

North Dakota's response to Manitoba's memorandum in support of its motion for a permanent injunction included the argument that several elements of the project could proceed without impacting future treatment decisions. These elements included the South Prairie reservoir, the high service pumping facility in Minot, and a booster pump station within the Missouri River basin. Other materials submitted to the court also listed those elements which could be constructed without impacting a treatment decision and included other facilities such as the pipeline distribution systems to towns and rural water systems.

A letter is being prepared for transmittal to the Bureau of Reclamation listing a number of project elements to be presented to Judge Collyer in anticipation that she would allow construction while the government proceeds with the NEPA review. These elements include the Minot high service pump station, portions of the pipeline distribution system conveying water to the south and north regions of Minot, the pipeline to the Minot Air Force Base, and a portion of the distribution system west of Minot between the cities of Des Lacs and Berthold, which would include a pump station at Des Lacs.

At its August 30, 2005 meeting, 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. James Lennington presented and discussed two scenarios, representing two possible time lines for getting water to Minot, in conjunction with the legal process and the environmental review. **SEE APPENDIX "J"**

NAWS Advisory Committee: The NAWS advisory committee met on August 24, 2005 and on November 14, 2005. Tom Ritter, a member of the Williston city council, was appointed by the State Engineer on November 2, 2005 to represent the city of Williston on the NAWS advisory committee replacing Jim Yochim.

The committee considered several rural service criteria which would specify how water was to be delivered to rural water systems in the NAWS area. These criteria are to be discussed further with the managers of North Prairie Rural Water District, Upper Souris Water Users, and All Seasons Water Users Association before coming back to the committee for a recommendation to the State Water Commission. It is intended to have these criteria presented to the Commission in the summer of 2006.

**RESOLUTION OF APPRECIATION
TO JAMES C. LENNINGTON, STATE
WATER COMMISSION EMPLOYEE
(SWC Resolution No. 2005-12-516)**

A resolution of appreciation to James C. Lennington was presented for the State Water Commission's consideration. Mr. Lennington has admirably served the State of North Dakota and the State

Water Commission for 17 years (serving as the project manager for the Southwest Pipeline project for 9 years, and coordinator/project manager for the Northwest Area Water Supply Project for 13 years). Mr. Lennington announced his resignation from the State Water Commission, effective December 31, 2005.

It was moved by Commissioner Hanson, seconded by Commissioner Swenson, and unanimously carried, that the State Water Commission approve Resolution No. 2005-12-516, Resolution of Appreciation to James C. Lennington. SEE APPENDIX "K"

Secretary Frink informed the State Water Commission that Michelle Klose was hired for the position as manager of the Northwest Area Water Supply Project vacated by Mr. Lennington. The position of manager of the Southwest Pipeline Project, also vacated by Mr. Lennington, will be reclassified and advertised in the near future.

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

Devils Lake is currently at an elevation of 1448.12 feet msl. At its current elevation, Devils Lake has a surface area of 132,500 acres and storage of 2.58 million acre-feet of water.

The current elevation of Stump Lake is 1435.20 feet msl. At this elevation, Stump Lake has a surface area of 11,400 acres and is storing 342,000 acre-feet of water. The gage on the Jerusalem channel is registering flows around 200 cubic feet per second (cfs).

The National Weather Service issued a hydrologic projection for Devils Lake on October 25, 2005, which predicts a lake level of 1447.89 - 1448.00 feet msl by the end of January, 2006. This is consistent with the lake dropping the same amount now through freeze up as it did in 2005.

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

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. The project was based on a three-year construction time line with construction commencing in the fall of 2002. Continuous operation of outlet, within the guidelines of the water quality discharge permit, began on August 15, 2005.

(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.)

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. The sulfate levels in west Devils Lake and the Sheyenne River are both high enough to restrict discharges into the river. Therefore, the outlet was not able to operate after September 1, 2005 due to high sulfate levels in the Sheyenne River and to avoid water quality problems.

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, it could remove up to four inches of water from the lake annually.

The North Dakota Devils Lake outlet project is nearly complete with some minor work remaining on the telemetry and fencing around the canal. Excel Construction has reburied some of the pipeline that was not

installed to proper grade. Punch lists are being completed and construction contracts are being closed out. The outlet was winterized, which included removal of the intake structure and drainage of the pipelines.

Devils Lake was sampled for 13 targeted biota of concern during July, 2005 by the Council on Environmental Quality (CEQ), North Dakota Game and Fish Department, North Dakota Department of Health, Minnesota Department of Natural Resources, and the Province of Manitoba. A report documenting the sampling was released by CEQ in November, 2005.

**APPROVAL OF EXTENSION OF
DEVILS LAKE OUTLET AWARENESS
PROJECT MANAGER'S CONTRACT
FROM JANUARY 1, 2006 THROUGH
DECEMBER 31, 2006
(SWC Project No. 416-05)**

In 1998, the State Water Commission, the Garrison Diversion Conservancy District, the Devils Lake Basin Joint Water Resource Board, and the Forward Devils Lake Corporation initiated cost sharing in a contract securing the services of the Devils Lake outlet

awareness project manager, which is occupied by Joe Belford. The state has completed construction and operates a permanent emergency outlet on the west end of Devils Lake. Secretary Frink expressed the importance to continue to provide factual information to all downstream interests in North Dakota, Minnesota and Manitoba. The downstream education efforts provide a critical mechanism to dispense information and for people downstream to communicate their concerns.

A request from the Devils Lake Joint Water Resource Board was presented for the State Water Commission's consideration to continue funding for the Devils Lake outlet awareness project manager from January 1, 2006 through December 31, 2006, with a 33 percent state cost participation (\$15,000). All other parties to the previous agreement have indicated their intentions to continue this effort through 2006.

It was the recommendation of the State Engineer that the State Water Commission approve a contract extension from January 1, 2006 through December 31, 2006 for the Devils Lake outlet awareness project manager, with a 33 percent state cost participation, not to exceed an allocation of \$15,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was moved by Commissioner Hillesland and seconded by Commissioner Hofstad that the State Water Commission approve a contract extension from January 1, 2006 through December 31, 2006 for the Devils Lake outlet awareness project manager, with a 33 percent state cost participation, not to exceed an allocation of

\$15,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). 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 EXTENSION OF
DEVILS LAKE BASIN MANAGER
CONTRACT FROM JANUARY 1, 2006
THROUGH DECEMBER 31, 2006
(SWC Project No. 416-01)***

Since 1998, the State Water Commission has participated with the Devils Lake Joint Water Resource Board in cost sharing for a full-time Devils Lake basin manager and an office for the board. Michael J. Connor occupies that position and an office has been maintained in the Ramsey county courthouse. The Joint Board formally requested continued state cost participation from January 1, 2006 through December 31, 2006.

The state cost participation arrangement would remain at 40 percent provided by the State Water Commission for one year, not to exceed \$26,000. The Commission would pay the Joint Board for the actual expenses based on quarterly expense reports approved by the Commission. The remaining funds would be provided by the Devils Lake Basin Joint Board.

It was the recommendation of the State Engineer that the State Water Commission approve a contract extension from January 1, 2006 through December 31, 2006 for the Devils Lake basin manager, with a 40 percent state cost participation, not to exceed an allocation of \$26,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was moved by Commissioner Olin and seconded by Jeff Olson representing Commissioner Johnson that the State Water Commission approve a contract extension from January 1, 2006 through December 31, 2006 for the Devils Lake basin manager, with a 40 percent state cost participation, not to exceed an allocation of \$26,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). 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.

**DEVILS LAKE HYDRAULIC MODEL -
APPROVAL OF STATE COST
PARTICIPATION (\$100,000)
(SWC Project No. 416-11)**

A request was presented for the State Water Commission's consideration for state cost participation in a proposal prepared by the U.S. Geological Survey for the development and application of a

two-dimensional unsteady flow model for simulation of water levels and circulation in Devils Lake. The objective of the proposed investigation is to develop and apply a circulation model of Devils Lake, which would be constructed and tested using detailed hydrologic data collected over a one-year time frame. The model would provide information on water movement patterns, lake level variations, and the transport of dissolved materials throughout the lake under a variety of weather, inflow, and lake level conditions.

The U.S. Geological Survey proposes a three-year development schedule at an estimated total cost of \$610,000. The Survey has agreed to contribute 50 percent of costs, with the remaining costs contributed by the State Water Commission, the North Dakota Department of Transportation (DOT), and other agencies. The DOT has agreed to contribute \$100,000. The request before the State Water Commission is for state cost participation in the amount of \$100,000.

It was the recommendation of the State Engineer that the State Water Commission approve an allocation not to exceed \$100,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the U.S. Geological Survey to develop a two-dimensional unsteady flow model of Devils Lake.

It was moved by Commissioner Thompson and seconded by Commissioner Olin that the State Water Commission approve state cost participation not to exceed an allocation of \$100,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the U.S. Geological Survey proposal for the development and application of a two-dimensional unsteady flow model for simulation of water levels and circulation in Devils Lake. 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.

**MR&I WATER SUPPLY PROGRAM -
MR&I COMMITTEE REPORT
(SWC Project No. 237-03)**

to discuss the status and funding of MR&I projects. The committee recommended funding for the city of LaMoure, Traill Rural Water District, Walsh Rural Water District, and the city of Williston. The project recommendations were addressed by the State Water Commission on December 9, 2005.

**APPROVAL OF ALLOCATION
(\$500,000) FROM STATE FUNDS
(H.B. 1021); AND ALLOCATION
(\$500,000) FROM WATER DEVELOP-
MENT AND RESEARCH FUND FOR
CITY OF LAMOURE WATER SUPPLY
(SWC Project No. 237-03)**

The State Water Commission and the Garrison Diversion Conservancy District Municipal Rural and Industrial (MR&I) committee met on November 30, 2005,

A request was presented for the State Water Commission's consideration for an allocation of \$500,000 from state funds (H.B. 1021), and authorization for the allocation of \$500,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the city of LaMoure water supply.

The city of LaMoure is considering water supply options to address the Environmental Protection Agency (EPA) water quality regulations for 2006. The options includes the incorporation into a regional water system and also to build a water treatment plant for the city. The estimated total project cost for the regional water system concept is \$4,220,000. Proposed funding sources include the USDA, Rural Development grant and loan, the Drinking Water State Revolving Loan fund, and a State and Tribal Assistance Grant (STAG) from the EPA. The city of LaMoure has requested a 28 percent grant in the amount of \$1,000,000 for the eligible costs for incorporation into a regional water system. The city of LaMoure has until March 1, 2006 to make its decision as to which water supply option will best satisfy the EPA water quality regulations.

It was the recommendation of the State Engineer that the State Water Commission approve funding of 28 percent of the eligible project costs, not to exceed an allocation of \$500,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), and the allocation of \$500,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) to the city of LaMoure for incorporation into a regional water system. 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 Olin and seconded by Commissioner Hofstad that the State Water Commission approve funding of 28 percent of the eligible project costs, not to exceed an allocation of

\$500,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), and the allocation of \$500,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) to the city of LaMoure for incorporation into a regional water system. 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.

APPROVAL OF ADDITIONAL ALLOCATION (\$91,750) FROM THE WATER DEVELOPMENT AND RESEARCH FUND FOR THE TRAILL RURAL WATER DISTRICT WATER STUDY AND FEASIBILITY STUDY (SWC Project No. 237-03)

The Traill Rural Water District received a grant of 65 percent, not to exceed \$42,250 (approved by the State Water Commission on November 3, 2003) from the Water Development and Research Fund to conduct a water study for a regional system to meet the water needs of the cities of Hillsboro, Mayville,

Galesburg, and Grandin to address the future Environmental Protection Agency (EPA) water quality regulations. The preliminary studies have been completed and indicate that the Galesburg aquifer can meet the projected water needs. The water study has a revised cost of \$91,154 (65 percent grant in the amount of \$59,250, for an additional \$17,000). The Traill County Water District also intends to proceed with the feasibility study at an estimated cost of \$115,000. The District requested a 65 percent grant in the amount of \$91,750 from the Water Development and Research Fund, which would include an additional \$17,000 for the water study and \$74,750 for the feasibility study.

It was the recommendation of the State Engineer that the State Water Commission approve a 65 percent grant, not to exceed an additional allocation of \$91,750 from the Water Development and Research Fund, for the Traill Rural Water District water study (an additional \$17,000) and the feasibility study (\$74,750). Affirmative action would increase the total allocation from the Water Development and Research Fund to \$134,000 for the Traill Rural Water District studies. 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 Hanson and seconded by Commissioner Hillesland that the State Water Commission approve a 65 percent grant, not to exceed an additional allocation of \$91,750 from the Water Development and Research Fund, for the Traill Rural

Water District water study (an additional \$17,000) and the feasibility study (\$74,750). This motion is contingent upon the availability of funds, and is subject to future revisions.

This action increases the total allocation from the Water Development and Research Fund to \$134,000, not to exceed a 65 percent grant, for the Traill Rural Water District.

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 ALLOCATION
(\$750,000) FROM THE WATER
DEVELOPMENT AND RESEARCH
FUND FOR WALSH RURAL WATER
DISTRICT (CITY OF PARK RIVER
COMPONENT)
(SWC Project No. 237-03)**

A request was presented for the State Water Commission's consideration for a 26 percent grant of \$750,000 from the Water Development and Research Fund (Garrison Diversion Conservancy District) for the Walsh Rural Water District to purchase its bulk water supply from the city of Park River.

The city of Park River is constructing a project to use the Fordville aquifer as its new primary source of water at an estimated cost of \$4,035,000. The city's current water supply is from the Homme reservoir, which has quality and potential quantity problems. The city received a grant of 55 percent from the Environmental Protection Agency (EPA) in the amount of \$2,216,800, and a 15 percent grant of \$550,000 from the Water Development and Research Fund (approved by the State Water Commission on November 3, 2003). Discussions relative to a regional system concept have pursued between the Walsh Rural Water District and the city of Park River whereby the District would purchase its bulk water supply from the city. This concept would increase the city of Park River component by an additional \$2,900,000. The Walsh Rural Water District requested a 26 percent grant (\$750,000) to purchase its bulk water supply from the city of Park River to match their portion of a State and Tribal Assistance Grant (STAG) from the Environmental Protection Agency.

It was the recommendation of the State Engineer that the State Water Commission approve a 26 percent grant, not to exceed an allocation of \$750,000 from the Water Development and Research Fund, for the Walsh Rural Water District to purchase its bulk water supply from the city of Park River. 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 Thompson and seconded by Commissioner Swenson that the State Water Commission approve a 26 percent grant, not to exceed an allocation of \$750,000 from the Water Development and Research Fund, for the Walsh Rural Water District to purchase its bulk water supply from the city of Park River. 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.

***CITY OF WILLISTON WATER
SYSTEM IMPROVEMENTS -
APPROVAL OF PARTIAL
ADVANCE OF STATE FUNDS
(\$1,000,000)
(SWC Project No. 237-04)***

The city of Williston is in the process of constructing major improvements to its water treatment plant and transmission line. The improvements cover regulatory, optimization, and expansion of the water system. Phase I improvements in 2002 were for filter upgrades using

Drinking Water State Revolving loan funds of approximately \$4,000,000. A new 36-inch transmission main line was completed in 2004 at a cost of \$4,000,000. Design for the \$21,500,000, Phase II, optimization/expansion project is anticipated for completion in September, 2006. Work on Phase III, in the amount of \$10,800,000, is scheduled for 2011-2015 and includes backwash reclaim, solids contact, basin expansion, filter expansion, and transfer pumps, which is contingent upon the future regulatory requirements and expansion growth demands.

At its meeting on August 15, 2002, the State Water Commission approved eligibility of the city of Williston for future reimbursement of a federal MR&I grant of up to \$5,000,000 of the eligible project costs. The approval was subject to the future availability of federal funds and that the city of Williston satisfy all MR&I program requirements.

It was the recommendation of the State Engineer that the State Water Commission approve a partial advance of the \$5,000,000 grant, not to exceed an allocation of \$1,000,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the city of Williston for its water system improvements project. Affirmative action is contingent upon the availability of funds, and is subject to future revisions. It is intended that the State of North Dakota be reimbursed \$1,000,000 using future federal MR&I grant funding authorized under the Dakota Water Resources Act of 2000. The projects are required to satisfy federal requirements during the entire process.

It was moved by Commissioner Hanson and seconded by Commissioner Olin that the State Water Commission approve a partial advance of the \$5,000,000 grant (approved by the State Water Commission on August 15, 2002), not to exceed an allocation of \$1,000,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the city of Williston water system improvements project. This motion is contingent upon the availability of funds, subject to future revisions, and that the State of North Dakota be reimbursed \$1,000,000 using future federal MR&I grant funding authorized under the Dakota Water Resources Act of 2000.

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. The Bureau of Reclamation has finalized the *Report on Red River Valley Water Needs and Options*.

The draft EIS was released in December, 2005, and public hearings are scheduled for February, 2006. There will be a 60-day comment period, with an estimated deadline for comments of March 1, 2006.

Dave Koland, general manager, Garrison Diversion Conservancy District, provided a status report on the specific efforts of the Red River Valley Water Supply Project and the studies, which is attached hereto as **APPENDIX "L"**.

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

Bruce Engelhardt, State Water Commission water development division, reported that although the pool level in Lake

Sakakawea held steady through October and November, 2005, the elevation of the lake and the Missouri River system storage remains well below average. The National Weather Service Climate Prediction Center's seasonal drought outlook through February, 2006, predicts that impacts of the drought will ease in North Dakota and eastern Montana, while in eastern Wyoming, west central South Dakota, southern Nebraska and southern Iowa the drought will likely persist. Early season mountain snow pack is above average, particularly in western Montana and northwestern Wyoming, however, the short-term outlook calls for below normal precipitation, while the forecast for the next 13 months predicts an equal probability of a wet or dry scenario.

The Missouri River runoff above Sioux City for October, 2005, was 1.2 million acre-feet (MAF), 102 percent of normal. The Corps of Engineers November 1 forecast is predicting runoff above Sioux City for 2005 to be 20.0 MAF, 80 percent of normal.

On November 23, 2005, system storage in the six mainstem reservoirs was 36.4 MAF, an increase of 0.7 MAF from last year, but 18.2 MAF below the average system storage for the end of November.

On November 23, 2005, Lake Sakakawea was at an elevation of 1814.0 feet msl. This elevation is 1.2 feet higher than a year ago, but 22.6 feet below the average elevation for the end of November. Under the basic simulation released November 1, the Corps is estimating that Lake Sakakawea will fall to an elevation of 1812.0 feet msl by the end of December, 2005, and to 1810.2 feet msl by the end of February, 2006. The lower basic simulation shows the lake falling to 1811.6 feet msl by the end of December, 2005, and to 1809.0 feet msl by the end of February, 2006.

The elevation of Lake Oahe was 1575.3 feet msl on November 23, 2005, which is 0.8 feet lower than a year ago and 24.7 feet lower than its average elevation for the end of November. Under the basic simulation released on November 1, 2005, the Corps is estimating that Lake Oahe will gradually rise to 1579.0 feet msl by the end of February, 2006.

Fort Peck Lake was at an elevation of 2202.8 feet msl on November 23, 2005, which is 3.0 feet higher than a year ago and 29.5 feet below its average elevation for the end of November. Under the basic simulation released November 1, 2005, the Corps is estimating that Fort Peck Lake will fall to elevation 2200.9 feet msl by the end of February, 2006.

The Garrison Dam trash rack modification project, implemented in July, 2005 to conserve cold water fish habitat in Lake Sakakawea, was successful. Although one of the two modified intakes was out of service for nearly two months, an estimated 400,000 acre-feet of cold water habitat was retained by the installed plywood barriers integrated with daily variable discharges from the dam. Lowering the head gates in two of the unmodified intakes also contributed to cold water savings. It was determined that the cost to remove the plywood barriers and replace them the following year is comparable to lost power generation due to decreased efficiency, therefore, the plywood barriers will be left in place over the winter and inspected in the spring to ensure structural integrity.

The draft 2005-2006 annual operating plan (AOP) was released by the Corps of Engineers on October 24, 2005, which included technical criteria for the spring rise. A public meeting was held on November 17, 2005 in Bismarck, ND to provide an update of the 2005 system operation and anticipated regulation through 2006. Comments that were provided on the draft AOP by Governor John Hoeven and Dale Frink, State Engineer, included urging the Corps to further develop conservation measures for the Missouri River system storage, reservoir habitat enhancement, and to balance the requirements of the upper and lower basin states in times of drought.

***APPROVAL OF RESOLUTION
OF SUPPORT FOR CONTINUING
EFFORTS OF THE MISSOURI
SEDIMENTATION ACTION
COALITION
(SWC Project Nos. 322 & 1392)
(SWC Resolution No. 2005-12-515)***

adjacent property and water supply intakes in the Williston area in North Dakota and in other communities along the Missouri River system. Sediment buildup and related water table changes in south Bismarck, ND are expected to become an increasing problem.

The Missouri River mainstem reservoirs including Lake Sakakawea continue to be impacted by sediment from the river and its tributaries. Silt-laden waters in streams entering the reservoirs deposit hundreds of tons of sediment annually. This sediment accumulation has already had serious ramifications affecting

The Missouri Sedimentation Action Coalition has been formed to raise awareness of this issue and promote efforts that can mitigate this problem. The Coalition is multi-state with a broad spectrum of members.

Andy Mork, member of the Missouri River Joint Board, appeared before the State Water Commission to provide comments relating to the sedimentation problems in North Dakota, particularly in the Bismarck and Williston areas. Mr. Mork said it is important that North Dakota support the efforts of the Missouri Sedimentation Action Coalition and requested the Commission's favorable consideration of the resolution being considered. Mr. Mork briefed the Commission members on project efforts that are being pursued by the newly-formed Missouri River Joint Board.

Because of the severe impacts that have resulted from sedimentation in Lake Sakakawea and Lake Oahe, Secretary Frink said it would be advantageous for the State Water Commission to be directly involved in the Missouri Sedimentation Action Coalition. Therefore, it was the recommendation of the State Engineer that the State Water Commission approve Resolution 2005-12-515 supporting the coordinating efforts of the Missouri Sedimentation Action Coalition to raise awareness of Missouri River sedimentation problems and promote efforts to reduce impacts facing public and private entities.

It was moved by Commissioner Olin, seconded by Commissioner Hanson, and unanimously carried, that the State Water Commission approve Resolution No. 2005-12-515, Support of the Missouri Sedimentation Action Coalition; and, that the State Engineer be directed to seek a Class I membership, states-resolution of support, in the Missouri Sedimentation Action Coalition reserved for various public entities. SEE APPENDIX "M"

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

On January 3, 2005, the North Dakota Office of the 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's 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 the 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 as 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 is coordinating the developing 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 staffs from several state agencies and others will identify the critical resource management issues and special management considerations that the State Engineer should consider while developing the plan.

A subcommittee was also formed to develop guidelines for the ordinary high water mark delineations, since no guidelines currently exist in North Dakota. This is a critical element of the plan since the state has control over all land between the ordinary high water marks on all navigable waters.

The time frame for completion of the plan will be dependent on the commitment from the agencies involved. A draft North Dakota Sovereign Land Management plan is anticipated in early spring, 2006.

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 11:58 AM.

John Hoeven, Governor
Chairman, State Water Commission

SEAL

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

