

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

March 22, 2006

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on March 22, 2006. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 1:30 PM, and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman
Roger Johnson, Commissioner, North Dakota Department of Agriculture, Bismarck
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 MEMBERS ABSENT:

Charles Halcrow, Member from Drayton
Larry Hanson, Member from Williston

OTHERS PRESENT:

State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF AGENDA

Lt. Governor Dalrymple stated that additional items on the agenda include the rural flood committee report, the Red Trail Energy water service contract, and the Beulah interim project water supply contract.

**CONSIDERATION OF DRAFT MINUTES
OF DECEMBER 9, 2005 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the December 9, 2005 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the draft minutes of the December 9, 2005 State Water Commission meeting be approved as prepared.

**STATE WATER COMMISSION
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 February 28, 2006, reflecting 33 percent of the 2005-2007 biennium, were presented and discussed by David Laschkewitsch, State Water Commission's Director of Administration. All expenditures are within the authorized budget. **SEE APPENDIX "A"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "B"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$57,109,937, leaving a balance of \$15,975,252 available to commit to projects.

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

The oil extraction tax deposits into the Resources Trust Fund total \$8,013,481 and are currently \$569,260, or 7.6 percent ahead of the budgeted revenues.

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

**APPROVAL OF ALLOCATION
(\$225,000) FOR NORTH DAKOTA
CLOUD MODIFICATION PROJECT
(SWC Files ACT/RES & AS/SWC/ARB)**

The North Dakota Cloud Modification project (NDCMP) is an operational summertime cloud seeding program designed to decrease hail damage and increase growing season rainfall. The

counties presently participating in the project include Bowman, McKenzie, Mountrail, Ward, Williams, and part of Slope. Many of these counties have participated in the project for more than 40 years.

Local funds for the project are generated through county tax levies, which are currently capped at seven mills. Counties are expected to commit more than \$900,000 to the project in the 2005-2007 biennium. The biennial costs are expected to total approximately \$1,350,000, or about 10 cents per acre per year.

In considering the funding needs for North Dakota water projects, the 2005 Legislature identified \$222,312 in the 2005-2007 biennium to partially meet the state's cost share of the NDCMP. The state has provided cost share to participating program counties since 1976.

Independent evaluations of the NDCMP indicate a 45 percent reduction in crop-hail damages, 6 percent increase in wheat yields, and up to a 10 percent increase in rainfall. A study conducted by the North Dakota State University in 1998 estimated the total economic benefit-to-cost ratio of the program at greater than 45:1.

It was the recommendation of Secretary Frink that the State Water Commission approve funding for the North Dakota Cloud Modification project, not to exceed an allocation of \$225,000 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 Commissioner Hofstad that the State Water Commission approve funding for the North Dakota Cloud Modification project, not to exceed an allocation of \$225,000 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 Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***NORTH DAKOTA WATER MAGAZINE -
APPROVAL OF ALLOCATION (\$36,000)
FROM JULY 1, 2005 TO JUNE 30, 2007
(SWC File AOC/WEF)***

A request from the North Dakota Water Education Foundation was presented for the State Water Commission's consideration to continue its participation in the *North Dakota Water* magazine from July 1, 2005 through June 30, 2007.

The State Water Commission has contributed to this effort since 1994 to support the magazine and its own pages, the "Oxbow" and the "Water Primer" sections, and to assist in the mailing distribution of the

magazine. Secretary Frink said that with the Commission's support, the *North Dakota Water* magazine will provide continued communication among people interested in North Dakota's water resources.

It was the recommendation of Secretary Frink that the State Water Commission approve funding to the North Dakota Water Education Foundation, not to exceed an allocation of \$36,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to assist in the publication of the *North Dakota Water* magazine from July 1, 2005 through June 30, 2007.

It was moved by Commissioner Johnson and seconded by Commissioner Thompson that the State Water Commission approve funding to the North Dakota Water Education Foundation, not to exceed an allocation of \$36,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to assist in the publication of the North Dakota Water magazine from July 1, 2005 through June 30, 2007. This motion is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***NORTH DAKOTA WATER RESOURCES
RESEARCH INSTITUTE 2006-2007
FELLOWSHIP PROGRAM THROUGH
NDSU - APPROVAL OF STATE COST
PARTICIPATION (\$13,850)
(SWC Project No. 1403)***

A request from the North Dakota Water Resources Research Institute (WRRI) was presented for the State Water Commission's consideration for state cost participation of their 2006-2007 academic year fellowship program administered through the North Dakota

State University (NDSU). The WRRI program requires a match of \$2.00 non-federal for each \$1.00 federal. NDSU's match is in monetary and in-kind services.

The WRRI is a program funded annually by a United States Geological Survey (USGS) 104B grant. Annual grants have varied from as little as \$20,000 to \$200,000 with recent funding at \$92,335. The total program costs for the current academic year is estimated at \$160,000. The \$92,335 federal grant is apportioned for administrative/personnel costs and for individual fellowships.

The fellowships support graduate students working on water resource related topics and are granted on the basis of the relevance of programs to the management of North Dakota water resources and the overall quality of the projects. Research topics have varied broadly including methods for improving municipal water treatment, methods for measuring organic contaminants in water in the field, research on climate change in North Dakota, effects of algae on lake oxygen levels in winter, and many other topics. Two priorities of the WRRRI are providing information useful for solving state regulatory and policy problems, and state support and participation.

In discussion of the water-related research projects supported by the fellowship program and the request for state cost participation, it was the request of the State Water Commission members that executive summaries of the project results be provided.

Anticipating the receipt of a USGS 104B grant in the amount of approximately \$92,335 for the 2006-2007 academic year, the WRRRI has requested a 15 percent state cost participation of the annual federal allocation (\$13,850). The intent of this request is to replace a portion of NDSU's in-kind services with the proposed cost share amount in order to provide more cash for fellowships.

Although the eligible state cost participation amount is less than \$20,000, Secretary Frink explained that because of the uncertainty of future federal allocations for the program, it is anticipated this will be an annual request for state cost participation. Therefore, the WRRRI will be required to submit an annual cost participation request for the State Water Commission's future consideration of support for the program.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation, not to exceed an allocation of \$13,850 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the North Dakota Water Resources Research Institute for their 2006-2007 academic year fellowship program administered through the North Dakota State University.

It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation, not to exceed an allocation of \$13,850 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the North Dakota Water Resources Research Institute for their 2006-2007 academic year fellowship program administered through the North Dakota State University. This motion is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

ELM RIVER SNAGGING AND CLEARING PROJECT (TRAILL COUNTY) - APPROVAL OF STATE COST PARTICIPATION (\$24,500) (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 a snagging and clearing project of approximately nine miles of the north branch of the Elm

River in Traill county from the Red River upstream to Section 3 in Kelso township. An assessment district has been created to finance the project.

The snagging and clearing work includes 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 \$100,000, of which \$98,000 is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$24,500). The request before the State Water Commission is for a 25 percent state cost participation in the amount of \$24,500.

It was the recommendation of Secretary Frink 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 \$24,500 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 Commissioner Thompson 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 \$24,500 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 Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**WILD RICE RIVER SNAGGING
AND CLEARING PROJECT
(RICHLAND COUNTY) -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$4,750)
(SWC Project No. 1842)**

A request from the Richland County Water Resource District was presented for the State Water Commission's consideration for state cost participation to snag and clear approximately four miles of the Wild Rice River. This project completes the river reach from

County Road No. 81 in Section 6, Tier 131 North, Range 48 West to the city of Great Bend in Section 23, Tier 131 North, Range 49 West.

The snagging work includes removal and disposal of fallen and standing trees, driftwood, snags, brush, loose stumps, and trunks encountered within the primary channel between the upstream and downstream limits as established. Bank clearing will include the removal and disposal of fallen trees and driftwood lodged on the immediate bank slopes of the channel, and the removal of prominently leaning trees overhanging the channel that are in danger of falling into the channel area.

The project engineer's original estimate was \$80,000, of which all was determined to be eligible for state cost participation at 25 percent of the eligible costs (\$20,000). A cost share participation request in the amount of \$20,000 was approved by the State Engineer on January 20, 2006.

Due to the condition of the ice and in order to take the contractor through the areas with an extensive amount of underestimated debris, the project engineer's revised estimate is \$99,000, all of which is determined to be eligible for state cost participation at 25 percent of the eligible costs (\$24,750). The request before the State Water Commission is for a 25 percent state cost participation in the amount of an additional \$4,750.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation in the Wild Rice River snagging and clearing project in Richland county at 25 percent of the eligible costs, not to exceed an additional allocation of \$4,750 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 Commissioner Hofstad that the State Water Commission approve state cost participation in the Wild Rice River snagging and clearing project in Richland county at 25 percent of the eligible costs, not to exceed an additional allocation of \$4,750 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 Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

This action increases the total state cost participation to \$24,750 for the Wild Rice River snagging and clearing project.

***HAY CREEK FLOOD INSURANCE
STUDY AND MAPPING PROJECT -
(BURLEIGH COUNTY) -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$10,000)
(SWC Project No. 331-01)***

A request from the Burleigh County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to revise and extend the current flood insurance rate maps for Hay Creek in Burleigh county. The area

studied encompasses Hay Creek from its confluence with Hay Creek to 57th Avenue northeast and for the north branch tributary from its confluence with Hay Creek to U.S. Highway 83.

Commissioner Swenson disclosed that because of previous business associations with an employee of the project engineer and, to avoid a conflict of interest, requested to be excused from discussion of the request and that an abstention vote be recorded for him.

The project engineer identified the following tasks inherent in the project: funding coordination, existing model assessment, updating the existing HEC-RAS model, extending the study, floodplain mapping, preparation of the flood insurance study report and mapping documents, and submittal of the report and mapping data to the Federal Emergency Management Agency.

The project engineer's original estimate of the project costs was \$48,300, of which \$46,800 was determined eligible for state cost participation at 33.33 percent of the eligible costs (\$15,598). A cost share participation request in the amount of \$15,598 was approved by the State Engineer on April 16, 2003.

As a result of various complications, the completion of the study has been delayed and increased costs will be incurred. The project engineer's revised estimate is \$78,300, of which \$76,800 is determined to be eligible for state cost participation at 33.33 percent of the eligible costs (\$25,598). The request before the State Water Commission is for a 33.33 percent state cost participation in the amount of an additional \$10,000.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation in the Burleigh County Hay Creek flood insurance study and mapping project at 33.33 percent of the eligible costs, not to exceed an additional allocation of \$10,000 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 Olin that the State Water Commission approve state cost participation in the Burleigh County Hay Creek flood insurance study and mapping project at 33.33 percent of the eligible costs, not to exceed an additional allocation of \$10,000 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 Hillesland, Hofstad, Johnson, Olin, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Commissioner Swenson abstained from voting. Lt. Governor Dalrymple announced the motion carried.

This action increases the total state cost participation to \$25,598 for the Hay Creek flood insurance study and mapping project.

***MULBERRY CREEK DRAIN
IMPROVEMENT RECONSTRUCTION
PROJECT (CAVALIER COUNTY) -
APPROVAL OF STATE COST
PARTICIPATION (\$88,107)
(SWC Project No. 1438)***

A request from the Cavalier County Water Resource District was presented for the State Water Commission's consideration in the six mile improvement and reconstruction of Mulberry Creek Drain. This is a rural flood control project designed to control

floodwaters by providing for the efficient removal of runoff.

The drain improvements of approximately 15.6 miles will be constructed in Sections 36, 1, 12, 13, 14, 23, 24 and 25 of Tiers 164 and 163 North, Range 61 West. The Mulberry Creek drain was originally constructed in 1979 and is approximately 17 miles long. The district is reconstructing the drain in phases. The headwaters of the Mulberry Creek drain are located approximately 5 miles southeast of Langdon and flows in a northerly direction to the Canadian border. Mulberry Creek empties into the Pembina River at a point approximately 4 miles north of the United States-Canada border.

In the reconstruction area, the bottom will be widened 20 to 50 feet and the side slopes will be constructed to a uniform 3:1. The drain will not be deepened. Two crossings (Nos. 2 and 8) impacted by the flow of

the channel will be reconstructed. Other project work includes seeding and engineering. No administration and land acquisition expenses are expected to be incurred. The project will be financed with maintenance funds and is anticipated to be completed in the fall of 2008.

The preliminary engineering has been completed, and a drainage permit application is currently being processed. Conditional approval of rural flood control projects is allowed, and final approval will be acknowledged upon issuance of the required drain permit.

The project engineer's cost estimate is \$251,735, of which all is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$88,107). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$88,107.

It was the recommendation of Secretary Frink that the State Water Commission conditionally approve state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$88,107 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Mulberry Creek drain improvement and reconstruction project.

It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission conditionally approve state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$88,107 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Mulberry Creek drain improvement and reconstruction project. This motion is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**TRI-COUNTY DRAIN NO. 6
IMPROVEMENT RECONSTRUCTION
PROJECT - APPROVAL OF STATE
COST PARTICIPATION (\$67,172)
(SWC Project No. 1217)**

A request from the Ransom, Richland and Sargent Tri-County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their improvement project to reconstruct a portion of

Tri-County Drain No. 6. This is a rural flood control project to reduce flood damages. The channel side slopes along the township road are creating safety hazards and maintenance problems.

The proposed improvements are located in Sections 14 and 23 of Sydna township in Ransom county. The reconstruction is for approximately 1.5 miles of Drain No. 6, which will begin at the northeast corner of Section 14 and run south along the west side of the township road. The drain crosses the Ransom County Road No. 133 through two 36-inch corrugated steel pipes. It continues south for approximately two-thirds of a mile where the drain turns southeast and crosses the township road. The improvements will end at the township road crossing.

The drain depth is 10 feet and the bottom width will be reconstructed to 8 feet. The side slopes will be reconstructed to 4:1 along the roadway inslope and 3:1 along the back slope. The channel flow line will be reconstructed to match the existing pipe elevations along the drain. Existing pipe will be replaced, relocated, or extended as required. The preliminary engineering and sediment analysis are on file, and the Tri-County Water Resource District executed Drain Permit No. 3096 on December 5, 2005.

The project engineer's cost estimate is \$212,754, of which \$191,921 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$67,172). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$67,172.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$67,172 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Ransom, Richland and Sargent Tri-County Drain No. 6 improvement and reconstruction project.

It was moved by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission approve state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$67,172 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Ransom, Richland and Sargent Tri-County Drain No. 6 improvement and reconstruction project. This motion is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**PEMBINA COUNTY DRAIN NO. 72 -
APPROVAL OF STATE COST
PARTICIPATION (\$62,825)
(SWC Project No. 1939)**

A request from the Pembina County Water Resource District was presented for the State Water Commission's consideration for construction of the Pembina County Drain No. 72.

Landowners in an area south of the city of Cavalier have suffered tremendous crop loss and soil erosion and recently petitioned the district for creation of this drain. This is a rural flood control project to provide for the efficient removal of runoff from agricultural lands.

Pembina County Drain No. 72 will be constructed in Sections 32, 33 and 34 in Tier 161 North, Range 54 West. The drain will be approximately 2.5 miles in length, and discharge into Pembina County Drain No. 66.

The drain depth is being constructed to 14 feet and the bottom width 8 to 18 feet. The side slopes will be constructed 4:1. Two drop chutes and a toe wall will be constructed at three different locations and corrugated metal pipes will be installed at two field crossings. The preliminary engineering is complete, and the Pembina County Water Resource District executed Drain Permit No. 3029 on August 24, 2004.

The project engineer's cost estimate is \$211,000, of which \$179,501 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$62,825). The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$62,825.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$62,825 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for construction of the Pembina County Drain No. 72 project.

It was moved by Commissioner Hofstad and seconded by Commissioner Swenson that the State Water Commission approve state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$62,825 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for construction of the Pembina County Drain No. 72 project. This motion is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***NASH DRAIN EXTENSION
CONSTRUCTION PROJECT
(NELSON COUNTY) -
APPROVAL OF STATE COST
PARTICIPATION (\$27,348)
(SWC Project No. 1936)***

A request from the Nelson County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to construct an extension to the existing Nash Drain to provide flood relief for the city of Petersburg.

Water has ponded in the areas surrounding the city since 1992 threatening the waste water treatment system, streets, and the health, wealth and property of the residents.

The extension project will be constructed to accommodate a flow of 47 cubic feet per second, and is located in Township 152 North, Range 57 West, Petersburg township, Nelson county. The constructed extension will be approximately 1 $\frac{3}{4}$ miles in length with a drainage area of 640 acres. The total length of Nash Drain, with the extension, will be approximately 3.5 miles. Nash Drain outlets into the north branch of the Turtle River.

Application to Drain No. 3091 was executed by the District on March 13, 2006. The drain extension will be constructed with a maximum cut of 4.9 feet, 4:1 in side slopes, 3:1 back slopes, and a 6-foot bottom width. Because of the flat gradient of the channel, the velocity of the flow will be less than the recommended two feet per second resulting in a higher degree of maintenance. The District will need to establish an ongoing program of continued maintenance for this project, which is considered essential to preserve the integrity of the project and the investment of the state. It is anticipated that construction will be completed in the fall of 2006.

Based on the State Water Commission policy, conditional approval of rural flood control/flood control drainage projects is allowed. Preliminary engineering plans have been submitted, and final approval will be acknowledged upon receipt of the project's final design. Because the project will not be assessed, cost share participants include the State Water Commission, the city of Petersburg, and the Nash Drain maintenance funds.

The project engineer's cost estimate is \$58,695, of which \$54,695 is determined eligible for conditional state cost participation as a flood control project at 50 percent of the eligible costs (\$27,348). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$27,348.

It was the recommendation of Secretary Frink that the State Water Commission conditionally approve state cost participation as a flood control project at 50 percent of the eligible costs, not to exceed an allocation of \$27,348 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the Nash Drain extension construction project.

It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission conditionally approve state cost participation as a flood control project at 50 percent of the eligible costs, not to exceed an allocation of \$27,348 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Nash Drain extension construction project. This motion is contingent upon the availability of funds, and approval of the project's final engineering design.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**APPROVAL OF ALLOCATION
(\$79,849) FOR WATER-RELATED
DAMAGE TO INFRASTRUCTURE
IN NELSON COUNTY (H.B. 1021)
(SWC Project No. 1131)**

A request from the Nelson County Water Resource District was presented for the State Water Commission's consideration for 100 percent funding for channel maintenance and miscellaneous projects. House Bill 1021, the State Water Commission's 2005-2007 appropriation bill, authorizes the State Water Commission to provide up to \$500,000 for water-related damage to infrastructure in Nelson county. On August 11, 2005, the State Water Commission obligated the \$500,000 and, of that amount, approved \$250,000 for road maintenance. The remaining \$250,000 was obligated for water projects. Of this amount, the State Water Commission approved \$150,000 for the Michigan spillway project on August 30, 2005, and \$20,151 for the Central-Hamlin rural flood control project on December 9, 2005. The remaining obligation of \$79,849 is available for projects addressing water-related damages in Nelson county.

A request from the Nelson County Water Resource District was presented for the State Water Commission's consideration for 100 percent funding for channel maintenance and miscellaneous projects. House Bill 1021, the

According to the District, the remaining obligation (\$79,849) will be used to fund the cleanout of Nash drain (\$11,050), the Wamduska natural waterway cleanout project (\$577), the northwest Aneta ditch cleaning project (\$424), the Tolna and Dayton County Road 23 cleanout project (\$5,657), the Sarina/Lillehaugen section line crossing cleaning project (\$7,376), and miscellaneous projects entailing channel maintenance, project construction and reconstruction, administrative, land, and legal costs (\$54,765).

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation not to exceed \$79,849 from the 2005-2007 biennium funds obligated for the water-related damage to the infrastructure in Nelson county (H.B. 1021) for channel maintenance and miscellaneous projects.

Secretary Frink explained that the State Water Commission's affirmative action of this request will allocate the entire \$500,000 authorized and obligated in House Bill 1021. The Nelson County Water Resource District is responsible to provide cost/payment verification of the projects completed under this cost share approval (\$79,849) prior to reimbursement. The District is also responsible and liable to satisfy all permits required for the projects.

It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission approve an allocation not to exceed \$79,849 from the 2005-2007 biennium funds obligated for the water-related damage to the infrastructure in Nelson county (H.B. 1021) for channel maintenance and miscellaneous projects. This motion is contingent upon the availability of funds.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**RURAL FLOOD CONTROL
POLICY COMMITTEE REPORT
AND RECOMMENDATIONS
(SWC Project No. 1753)**

During the August 16, 2004 State Water Commission meeting, concerns were expressed relative to counties and communities in North Dakota and their ability to afford the construction/project

development of water retention structures without further and/or additional financial assistance from the State Water Commission. Lt. Governor Dalrymple directed the rural flood control policy committee (Commissioners Halcrow, Hillesland, Swenson, and Thompson) and others to revisit the State Water Commission's policy and guidelines as it relates to cost share arrangements for water retention structures.

The rural flood control policy committee and others met on March 21, 2006 to discuss the cost share policies and procedures for funding water retention structures. The current policy was discussed which included issues relating to legislative budgeting and funding, ability of counties and communities to pay for projects at the local level, funding for project development and preliminary engineering, increasing cost share percentages per some established criteria, the eligibility of land and legal costs, benefit-cost ratios, mill levies, property taxes, the need for planning and priorities, and the level of flood protection in communities.

The committee recommended to amend the General Cost Share Policies and Procedures (Projects Eligible for Cost Share, Subsection III - Flood Control Projects) to include reimbursement of 50 percent of the studies/preliminary engineering for dams, dikes, levees, diversion channels, water retention structures/methods, dam repairs, drop structures, and programs. The study/preliminary engineering eligible costs would be reimbursed as incurred and requested by the political subdivision. These costs are currently reimbursed during construction rather than upon completion of the study/preliminary engineering.

The committee also recommended to allow land costs for flood control projects to be considered eligible for State Water Commission cost share funding not to exceed 50 percent. Reimbursement would be based on actual cost paid to the landowner.

It was the recommendation of Secretary Frink that the State Water Commission approve the rural flood control policy committee's recommendations to fund the study/preliminary engineering of flood control projects not to exceed 50 percent for dams, dikes, levees, diversion channels, water retention structures/methods, dam repairs, drop structures, and programs; and that land costs for flood control projects be considered an eligible item for state cost participation not to exceed 50 percent.

The State Water Commission members discussed the committee's recommendations at length and expressed considerable concerns that the proposal to cost share up to 50 percent of the land costs for flood control projects will clearly increase the costs for the state and could reduce the number of projects the state will be able to support in the future. Commissioner Johnson explained that policies are adopted to provide consistency when reviewing projects and deviating from or changing the established policy should require a clear rationale. He said if policy is changed for one project, it should be changed for subsequent projects.

Michael Dwyer, executive vice president, North Dakota Water Users Association, reiterated the role of the State Water Commission, and explained the correlation between the State Engineer, the Commission, and the North Dakota Water Coalition as it relates to developing a biennial comprehensive statewide water development program with priorities based on the funds authorized by the legislature. Mr. Dwyer said "this is a process that has worked and has allowed both small and large water resource projects in the state to move forward."

It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve funding the study/preliminary engineering of flood control projects up to 50 percent for dams, dikes, levees, diversion channels, water retention structures/methods, dam repairs, drop structures, and

programs (General Cost Share Policies and Procedures, Projects Eligible for Cost Share, Subsection III - Flood Control Projects); and, that land costs for flood control projects be considered an eligible item for state cost participation up to 50 percent.

It was the general consensus of the State Water Commission members that additional information is required to determine the impact of changing present policies to include previously exempt project costs and, therefore, directed Secretary Frink and the Commission staff to provide budgetary estimates of this potential change in policy for the Commission's further consideration, and that the rural flood control policy committee revisit the State Water Commission's policy and guidelines as it relates to cost share arrangements for water retention structures.

It was moved by Commissioner Olin and seconded by Commissioner Johnson to lay the question on the table.

Commissioners Hofstad, Johnson, Olin, and Lt. Governor Dalrymple voted aye. Commissioners Hillesland, Swenson, and Thompson voted nay. Recorded vote was 4 ayes; 3 nays. Lt. Governor Dalrymple announced the motion carried by majority vote.

Secretary Frink said it would be appropriate to appoint a member from the State Water Commission to serve on the rural flood control policy committee as an alternate member. Commissioner Olin agreed to serve as the alternate member on the committee.

***INTERNATIONAL BOUNDARY
ROADWAY DIKE PROJECT -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$100,000);
AND LETTER OF INTENT TO PAY
50 PERCENT FOR POTENTIAL
CANADIAN COSTS
(SWC Project No. 1401)***

A request from the Pembina County Water Resource District was presented for the State Water Commission's consideration for a 50 percent state cost participation for the legal costs and action of a lawsuit filed on behalf of Pembina county and others against the Minister of Canadian Conservancy and others seeking a court order for the removal of the dike that extends approximately 30 miles along the Canadian border west from Pembina. The dike was constructed between 1946 and 1966 and causes considerable flood damages to North Dakota landowners. Pembina county wants the entire dike removed rather than obtaining crossings through the dike.

On March 11, 2004, the State Water Commission approved an allocation of \$200,000 for a 50 percent state cost participation in the lawsuit. The legal action was estimated to cost \$400,000 in United States funds. According to the District, the original cost estimate was understated by \$200,000.

Engineering fees for the Canadian expert were underestimated because of the tremendous amount of engineering research required. The request before the State Water Commission is for a 50 percent state cost participation for an additional allocation of \$100,000 for plaintiff and expert costs in the lawsuit.

The court costs in the United States and Canada are calculated on a different basis. In Canada, the discovery fees, attorney fees, and other costs may be recovered. Canadian law requires out-of-country plaintiffs to either post a bond in an amount sufficient to cover these costs or provide an undertaking in which the plaintiffs agree to pay such costs if they are awarded against the plaintiffs. According to the District, it is estimated these costs could potentially approach \$250,000.

Neil Fleming, attorney at law for the Pembina County Water Resource District, appeared before the State Water Commission to request that the funding parties of the lawsuit (State Water Commission, Red River Joint Water Resource Board, and Pembina county) enter into an agreement with the plaintiffs agreeing that if costs should be awarded against the plaintiffs, the funding agencies would reimburse the plaintiffs for such costs. Mr. Fleming explained that the county does not have sufficient funding to pursue this lawsuit or to agree to provide such an undertaking unless there is an agreement by the funding parties to reimburse them for such costs if costs are awarded. A request from the Pembina County Water Resource District was presented for the State Water Commission's consideration to enter into an agreement to reimburse the plaintiffs for whatever costs may be assessed against them up to 50 percent.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation of 50 percent, not to exceed an additional allocation of \$100,000, for plaintiff legal and expert costs in the Pembina County Water Resource District's legal action to remove the international boundary roadway dike project; and that an allocation not to exceed \$125,000 (50 percent of the estimated costs - \$250,000) be reserved for potential Canadian costs if awarded by the court. Funding for the allocations would come from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and are contingent upon the availability of funds.

It was moved by Commissioner Thompson and seconded by Commissioner Swenson that the State Water Commission approve state cost participation of 50 percent, not to exceed an additional allocation of \$100,000, for the plaintiff's legal and expert costs in the Pembina County Water Resource District's legal action to remove the international boundary roadway dike project; and, that an allocation not to exceed \$125,000 (50 percent) be reserved for potential Canadian costs if awarded by the court. Funding for the allocations

would come from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and are contingent upon the availability of funds.

A substitute amendment to the original motion was offered by Commissioner Thompson and seconded by Commissioner Swenson that the State Water Commission approve state cost participation of 50 percent, not to exceed an additional allocation of \$100,000, for the plaintiff's legal and expert costs in the Pembina County Water Resource District's legal action to remove the international boundary roadway dike project; and, that the State Water Commission shall provide a letter of intent to Pembina county that the Commission intends to pay 50 percent of the Canadian costs if awarded by the court. Funding for the allocations would come from the funds appropriated to the State Water Commission in the 2005-2007 biennium, and shall be contingent upon the availability of funds.

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

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the substitute motion to the original motion unanimously carried.

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

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the original motion, as amended, unanimously carried.

This action increases the total state cost participation to \$300,000 for the plaintiff's legal and expert costs in the Pembina County Water Resource District's legal action to remove the international boundary roadway dike project. This action also approves a letter of intent regarding the potential Canadian court costs.

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

Tim Freije, project manager for the Southwest Pipeline Project, provided the following project status report:

Southwest Pipeline Project Manager: Tim Freije was hired for the position as manager of the Southwest Pipeline Project, effective March 1, 2006, vacated by James Lenington. Mr. Freije is a water resource engineer with the State Water Commission and was currently serving as the Devils Lake basin engineer.

Red Trail Energy: The raw water service contract for the Red Trail Energy is finalized and will be considered by the State Water Commission during its meeting on March 22, 2006. Bids were opened on March 15, 2006 for the pipeline to connect their facilities to the raw water transmission line.

Medora-Beach Regional Service Area:

Contract 2-5B, Main Transmission Pipeline, Medora-Beach, Phase I, and contract 7-8A, Fryburg Service Area, Phase I, have both been closed out.

Contract 7-8C - Junction Inn Service Area and the Tower Hill and North Crown Butte VFD Pocket Areas (Morton county areas) is approximately 40 percent complete with 25.9 miles of pipeline installed. It is anticipated that construction will resume in April, 2006. The water supply contract has not been executed by all parties as the USDA, Rural Development loan period is not the same as the time period remaining on the Missouri West water supply contract with the city of Mandan.

Sign ups continue to be collected for Phase III scheduled for 2007-2008. There has been good activity in the Trotters, south Fryburg, and Fairfield pockets, with Trotters having a sign up percentage of 89 percent. Additional sign ups are still required due to cost per equivalent service unit (ESU) exceeding the \$35,100 criterion based on the January, 2006 Consumer Price Index.

Oliver-Mercer-North Dunn Regional Service Area:

Contract 7-9A, Beulah Interim Service, has been advertised for bids, with the bid opening scheduled for March 29, 2006. The water purchase contract between the city of Beulah and the Southwest Water Authority has been executed by all parties.

Southwest Water Authority:

Under the agreement for the transfer of management, operations, and maintenance responsibilities for the Southwest Pipeline Project, the Southwest Water Authority must prepare a budget by December 15 of each year and submit it to the secretary of the State Water Commission. This budget is deemed approved unless the secretary notifies the Authority of the Commission's disapproval. The Commission approved the Authority's 2006 rates for capital

March 22, 2006 - 20

repayment and the replacement and extraordinary maintenance fund at its December 9, 2005 meeting.

The operating and maintenance budget was reviewed and no reason for disapproval was found. Increases in the capital repayment, based on the Consumer Price Index, were absorbed by the Authority by reducing the rates for the reserve fund, which continue to exceed their projected performance. This practice has been implemented every year since 2003, making 2005 the 5th consecutive year of consistent water rates for the consumers.

The draft annual report, required by the transfer agreement, is currently being reviewed, with the final report anticipated for distribution in May, 2006.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR
REPLACEMENT AND EXTRA-
ORDINARY MAINTENANCE FOR
BLOWOFF REPLACEMENTS
(SWC Project No. 1736)***

The Southwest Water Authority collects and maintains a reserve fund for replacement and extraordinary maintenance. This fund exists because over the life of the project infrastructure replacement and maintenance will occur that will exceed annually budgeted amounts. These items need to be prefunded.

Expenditures from this fund are required to be authorized by the State Water Commission.

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

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

At its August 13, 1998 meeting, the State Water Commission approved reimbursing the Southwest Water Authority, from the reserve fund for replacement and extraordinary maintenance, to replace several blowoff valves. The valves being repaired are of a style that has proven to be trouble-

some. There are a total of 80 of this style blowoff on the project. The valves are prone to leaking and some cannot be closed. Each blowoff includes two buried valves and repairing them involves excavations as deep as 18-20 feet. The repairs include modifying the blowoffs so that one valve is in a manhole so that it can be repaired in the future without excavation. A total of 28 of the 80 blowoffs have been replaced since 1998 for a total cost of \$135,178.03.

Tim Freije presented a request from the Southwest Water Authority for the State Water Commission's consideration for reimbursement of \$20,925.55 from the reserve fund for replacement and extraordinary maintenance for continuation of the blowoff modification program in 2005.

It was the recommendation of Secretary Frink that the State Water Commission approve the reimbursement of \$20,925.55 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for continuation of the blowoff modification program in 2005.

It was moved by Commissioner Hofstad and seconded by Commissioner Olin that the State Water Commission approve the reimbursement of \$20,925.55 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for continuation of the blowoff modification program in 2005.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR
REPLACEMENT AND EXTRA-
ORDINARY MAINTENANCE FOR A
REPLACEMENT TRANSFORMER
FOR RICHARDTON PUMP STATION
(SWC Project No. 1736)**

The Southwest Water Authority collects and maintains a reserve fund for replacement and extraordinary maintenance. This fund exists because over the life of the project infrastructure replacement and maintenance will occur that will exceed annually budgeted amounts. Expenditures from this fund are required to be authorized by the State Water Commission.

Tim Freije presented a request from the Southwest Water Authority for the State Water Commission's consideration requesting an expenditure of funds from the reserve fund for replacement and extraordinary maintenance for purchasing a replacement transformer for the Richardton pump station. Replacement transformer cost quotes include \$40,000 (used) and \$58,560 (new).

It was the recommendation of Secretary Frink that the State Water Commission concur in the determination that the purchase of a replacement transformer for the Richardton pump station is eligible for reimbursement from the reserve fund for replacement and extraordinary maintenance, and that the Commission's Secretary be authorized to approve the award of the purchase.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission concur in the determination that the purchase of a replacement transformer for the Richardton pump station is eligible for reimbursement from the reserve fund for replacement and extraordinary maintenance, and that the Commission's Secretary be authorized to approve the award of the purchase.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT RW-6 WITH RED
TRAIL ENERGY LLC
(SWC Project No. 1736)**

Red Trail Energy LLC has requested a raw water service contract from the State Water Commission and the Southwest Water Authority. Red Trail Energy LLC is located east of the city of Richardton and would be served by

construction of a pipeline from the project's raw water transmission line near the Richardton pump station.

The contract specifies a maximum flow rate of 600 gallons per minute and a minimum annual usage of 200 million gallons (equivalent to 380 gallons per minute) for the entire term of the contract. The 200 million usage minimum is an agreed upon amount that was felt to be reasonable and would protect the project's allocation of water to Red Trail Energy.

A deposit of \$80,000, which covers an estimated 45 days of usage, is required to be deposited with the Southwest Water Authority prior to the delivery of water. Red Trail Energy has also entered into a potable water contract with the Authority for office and employee needs.

It was the recommendation of Secretary Frink that the State Water Commission approve Southwest Pipeline Project Water Service Contract RW-6 with Red Trail Energy LLC.

It was moved by Commissioner Johnson and seconded by Commissioner Olin that the State Water Commission approve Southwest Pipeline Project Water Service Contract RW-6 with Red Trail Energy LLC. SEE APPENDIX "C"

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

***SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SUPPLY
CONTRACT WITH CITY OF BEULAH
(SWC Project No. 1736)***

An interim potable water supply contract between the Southwest Water Authority and the city of Beulah wherein the city will supply the Authority with potable water for the Beulah interim service area

until such time as Southwest Pipeline Project water becomes available to the Authority's customers was presented for the State Water Commission's consideration.

The Southwest Water Authority will be responsible for building a metering vault at the connection point to the city's 12-inch PVC potable water main. The city agrees to supply up to 150 gallons per minute of potable water at a normal operating pressure of 120 psi and static pressure of 145 psi. The Authority will pay a rate of \$1.50 per thousand gallons of water.

It was the recommendation of Secretary Frink that the State Water Commission approve the Southwest Pipeline Project water supply contract with the city of Beulah.

It was moved by Commissioner Hofstad and seconded by Commissioner Johnson that the State Water Commission approve the Southwest Pipeline Project water supply contract with the city of Beulah. SEE APPENDIX "D"

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

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

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

NAWS Project Manager: Michelle Klose was hired for the position as manager of the Northwest Area Water Supply (NAWS) Project, effective December 19, 2005, vacated by James Lennington.

NAWS Lawsuit: On February 3, 2005, Judge Rosemary M. Collyer issued her ruling on the NAWS lawsuit requiring additional environmental evaluations. However, a detailed review by attorneys in the Department of Justice and in the state indicated that Judge Collyer wants detailed environmental evaluations that are typically included in an environmental impact statement.

On June 13, 2005, the Department of Justice filed an intent to appeal this ruling, but this does not mean that the Department of Justice will actually proceed with the appeal. The Department of Justice announced that they will not proceed with the appeal.

For these reasons, the Bureau of Reclamation has informed Judge Collyer that the agency intends to do an environmental impact statement for the NAWS project, and asked Judge Collyer to allow continued construction of the project in the Minot area on components not affected by a decision related to the location of a water treatment plant or the type of treatment. A ruling is possible in the next 30 days.

Environmental Impact Statement: The Bureau of Reclamation published a notice of intent in the Federal Register on March 6, 2006 to initiate scoping for an environmental impact statement (EIS) on the NAWS project. Public scoping will be completed within 60 days from when the notice was published. Public scoping meetings are expected to be held between April 20 and May 5, 2006 in Minot, Bismarck, Mohall, Bottineau, and at the Fort Berthold and Standing Rock reservations.

Initial work on a 12-month water treatment study involving a pilot plant in the Snake Creek pumping plant was initiated on March 2, 2006, with an onsite visit by Montgomery Watson Harza, Houston Engineering, the Bureau of Reclamation, and the State Water Commission staff. The pilot plant is expected to be delivered and set up at the Snake Creek pumping plant during the week of March 27, 2006. The treated water quality will be evaluated as the monitored raw water quality in Lake Sakakawea changes over this next year. The results of this study will be used in the EIS. It is anticipated that the EIS process can be completed in two years.

NAWS Advisory Committee: The NAWS advisory committee met on March 13, 2006 in Minot. The committee has a new member, Daylon Spotted Bear, a tribal council member of the Three Affiliated Tribes. Mr. Spotted Bear was appointed by the State Engineer on March 6, 2006 to replace Austin Gillette.

The meeting agenda included an update of the February filings on the NAWS lawsuit, a description of the additional NEPA work the Bureau of Reclamation will initiate on the project, and a status report on the two ongoing construction contracts.

Contract 2-1C - Pretreated Water Pipeline Station 1600+00 to Max Pumping Station: The status report on contract 2-1C remains the same as reported at the State Water Commission meeting on December 9, 2005. Contract 2-1C was awarded by the State Water Commission to Winter Brothers Underground, Inc., Sioux Falls, SD, on March 11, 2004, for \$6,088,848. This contract is for approximately 11.6 miles of 36-inch pipe extending from just south of N.D. Highway 23 to just north of N.D. Highway 53 at Max, ND. The railroad crossing at Max and approximately 1,200 feet of pipe from the railroad crossing south were deleted from this contract and added to contract 2-1D. Pipelaying work on this contract ended in December, 2005. The contractor also worked on vaults, appurtenances, and reclamation this past 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 currently locating 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 was awarded by the State Water Commission to Molstad Excavating, Inc., Grand Forks, ND, on March 10, 2005 for \$9,578,241. This contract is for approximately 4.9 miles of 36-inch pipe extending from just north of N.D. Highway 53 at Max, ND, to a point just south of the Totten Trail restaurant at the Snake Creek embankment. The contractor began laying pipe in July, 2005, and approximately 16,000 feet of pipe have been installed. The pipe materials have been delivered along U.S. Highway 83 in preparation for the 2006 construction season.

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

Devils Lake is currently at an elevation of 1447.87 feet msl. At its current elevation, Devils Lake has a surface area of 130,000 acres and storage of 2.54 million acre-feet of water.

The current elevation of Stump Lake is 1437.66 feet msl. At this elevation, Stump Lake has a surface area of 12,000 acres and

is storing 370,000 acre-feet of water. The gage on the Jerusalem channel is affected by ice, but flows are approximately 90 cubic feet per second based on the response of the Stump Lake gage.

The combined volume of Devils Lake and Stump Lake is 2.910 million acre-feet, which is an increase of 123,500 acre-feet since last year. According to the Stump Lake gage, approximately 137,000 acre-feet of water has flowed from Devils Lake into Stump Lake since 2005. There is 140,000 acre-feet of storage available in Stump Lake between the current elevation and 1448.0 feet msl.

The National Weather Service issued hydrologic projections for Devils Lake and Stump Lake on March 7, 2006. The following table provides the exceedance probabilities for each lake (figures are in feet msl):

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake	1448.0	1448.5	1449.6
Stump Lake	1441.4	1443.6	1447.7

The State Water Commission's survey crew took snow samples in the Devils Lake basin on March 13 and 14, 2006 and it was determined there were approximately 1.9 inches of snow water over the entire basin.

Tim Larson was hired for the position as the Devils Lake basin engineer, effective March 1, 2006, vacated by Tim Freije. Mr. Larson is a water resource engineer with the State Water Commission.

***NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT STATUS; AND
APPROVAL OF CONTRACT WITH
GARRISON DIVERSION CONSERVANCY
DISTRICT FOR MAINTENANCE SERVICES
(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 the 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.

In December, 2005, it was discovered that the electrical components were damaged at the Josephine pump station. The electrical building was not properly sealed which allowed moisture and rodents to enter compartments of the building that caused a short across the components resulting in the damage. The damage has been repaired, the buildings will be properly sealed to minimize the risk of this event occurring in the future, and will be tested before start-up operation of the outlet on May 1, 2006. Since the equipment is under warranty, the cost will be paid by the contractor.

The North Dakota Devils Lake outlet project will begin operation on May 1, 2006 in accordance with the water quality discharge permit. Some work remains on fencing around the outlet canal and finishing details on the telemetry, which will be completed prior to start-up operations.

The State Water Commission is proposing to retain the services of the Garrison Diversion Conservancy District to provide maintenance of the outlet. The maintenance includes mowing the easement, spraying for weeds, and repairing the canal, if necessary. The cost of the services will be based on the hours required. The State Water Commission currently employs one full-time person for operation and maintenance.

It was the recommendation that Secretary Frink be authorized to execute a contract with the Garrison Diversion Conservancy District for maintenance services for the Devils Lake outlet.

It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission authorize the Commission's Secretary to execute a contract with the Garrison Diversion Conservancy District for maintenance services for the Devils Lake outlet. SEE APPENDIX "E"

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

**APPROVAL OF DEVILS LAKE
OUTLET EROSION MITIGATION PLAN
(SWC Project No. 416-07)**

Concerns raised by some of the landowners downstream of the Devils Lake outlet have been the potential for erosion caused by the outlet, which

is due in large part to the presence of existing natural erosion problems on the Sheyenne River.

Testimony provided by the State Water Commission at a September 22, 2003 hearing regarding Drain Permit No. 2986 for the outlet indicated that the state is prepared to mitigate as necessary for any erosion resulting from operation of the outlet. In the North Dakota Department of Health's findings and conclusions regarding the national pollutant discharge elimination system permit in the additional considerations section, it was recommended that the State Water Commission address mitigation of bank erosion.

Erosion is an ongoing and natural process on the Sheyenne River. It is the State Water Commission's goal to avoid artificially increasing the rate of erosion on the Sheyenne River. Consistent with the Application to Drain No. 2986, the Commission's staff developed a voluntary and proactive effort to give downstream landowners a means to mitigate erosion in the unlikely event that the outlet increases erosion rates. The draft Devils Lake Outlet Erosion Mitigation Plan provides a procedure whereby landowners may address potential complaints of erosion related to the operation of the Devils Lake outlet.

It was the recommendation of Secretary Frink that the State Water Commission approve the draft Devils Lake Outlet Erosion Mitigation Plan.

It was moved by Commissioner Swenson and seconded by Commissioner Hofstad that the State Water Commission approve the draft Devils Lake Outlet Erosion Mitigation Plan. SEE APPENDIX "F"

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple 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 were held in February and March, 2006. There will be a 60-day written comment period which will end on March 30, 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 "G"**.

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

The pool level in Lake Sakakawea and the Missouri River system storage are up slightly from 2005, although runoff forecasts indicate no significant improvement will occur in 2006. It is also likely that Lake Sakakawea will not reach the pool level seen in 2005. The Missouri River runoff above Sioux City for February, 2006 was 1.0 million acre-feet, 96 percent of normal. The Corps of Engineers March 1 runoff forecast is predicting runoff above Sioux City for 2006 to be 20.0 million acre-feet, 79 percent of normal. On March 9, 2006, system storage in the six mainstem reservoirs was 36.4 million acre-feet, an increase of 0.9 million acre-feet from 2005, but 17.8 million acre-feet below the average end of February system storage.

As of March 1, 2006, the snow pack in the basin was near normal levels for this time of year with 105 percent of normal above Fort Peck and 96 percent of normal in the reach from Fort Peck to Garrison. Snow pack in the plains of North Dakota and Montana is limited. The National Weather Service climate prediction center's seasonal drought outlook through May, 2006 predicts that impacts of the drought will ease in western Montana, western South Dakota, and Wyoming. Drought conditions in southern Nebraska, southern Iowa, Kansas, and eastern Missouri are likely to persist or intensify.

On March 9, 2006, Lake Sakakawea was at an elevation of 1810.3 feet msl. This elevation is 2.1 feet higher than a year ago, but 22.6 feet below the average elevation for March. Under the basic simulation released March 1, the Corps is estimating that Lake Sakakawea will peak at 1814.5 feet msl by the end of June, 2006, and will fall to an elevation of 1812.5 feet msl by the end of 2006. The lower basic simulation shows the lake holding relatively steady at its current level until the end of June, 2006, and falling to an all time low of 1804.1 feet msl by the end of December, 2006.

The elevation of Lake Oahe was 1577.4 feet msl on March 9, 2006, which is 1.2 feet higher than a year ago but 25.7 feet lower than its average elevation for the end of March. Under the basic simulation released on March 1, 2006, the Corps is estimating that Lake Oahe will end the year at 1578.7 feet msl.

Fort Peck Lake was at an elevation of 2200.6 feet msl on March 9, 2006, which is 2.1 feet higher than a year ago but 28.9 feet below its average elevation for March. The March 1 basic simulation calls for Fort Peck to end the year at 2202.1 feet msl.

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 the 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 2005-2006 annual operating plan for the Missouri River basin prescribes a spring rise below Gavins Point Dam, which is intended to enhance the spawning of the endangered pallid sturgeon. This event would include two pulses, one each in March and May, estimated to use an additional 160,000 acre-feet of system storage. For 2006, a system storage preclude of 36.5 million acre-feet has been selected for each pulse, with storage checks occurring on March 1 and May 1. On March 1, 2006, the Missouri River system storage was at 36.3 million acre-feet, which was below the storage preclude of 36.5 million acre-feet required for a spring pulse, therefore, the March 1 rise did not occur. According to the March 1 simulations for lake levels and system storage, the May spring rise is expected to occur under the Corps of Engineers basic and upper basic simulations, and will not occur under the lower basic simulation. To help offset the storage losses in the upper three reservoirs for the spring rise, staging water in Fort Randall is the preferred alternative. If this alternative is not feasible, water usage for the events would be split between the upper three reservoirs.

The navigation season was shortened a record 48 days in 2005 and is expected to be reduced between 14 and 58 days in 2006 depending on the runoff. Minimum service flows are expected for all runoff scenarios and consideration will be given to eliminating flow support for targets in the upper reaches of the navigation channel if no commercial navigation is scheduled.

The Missouri River Basin Association (MRBA) has decided to dissolve and form a new organization called the Missouri River Association of States and Tribes. The new organization will combine the MRBA membership (the state engineers from the various states) with the game and fish agency directors from the various states. The tribal representation will also be increased. Seven of the eight Missouri River basin states (with the exclusion of the state of Missouri) have agreed to the new organization.

***SWEETBRIAR CREEK DAM
(MORTON COUNTY) UPDATE
(SWC Project No. 642-01)***

Sweetbriar Creek Dam is located in Morton county approximately 17 miles west of Mandan, ND. The Department of Transportation (DOT) 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.

In the spring of 2002, a major crack in the upstream face of the concrete drop inlet spillway was discovered by personnel from the DOT. The concrete wall was repaired in 2003. In 2004, excessive seepage through the dam forced engineers to draw down the reservoir to alleviate pressure on the dam.

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 was not expended.) On December 9, 2005, the State Water Commission approved an allocation of \$80,000 for consultant services with Bartlett and West Engineers, Inc./Boyle Engineering Corporation.

Specific Authorization No. 1 was executed in January, 2006, authorizing the consultant to conduct an initial site investigation. The investigation included evaluating the site, gathering soil borings, installing piezometers, digging test pits, and testing water, soil, and concrete.

A meeting with all involved parties was held on March 8, 2006 to discuss the status of the project. Several items were addressed including seepage near the stilling basin, cracked concrete walls of the stilling basin, and spillway capacity.

Specific Authorization No. 2 will include the final geotechnical studies and preliminary designs with cost estimates of the various rehabilitation alternatives to address the issues. It is anticipated that construction will begin in the summer of 2006.

**2006 SPRING FLOOD OUTLOOK
(SWC Project No. 1431-08)**

The National Weather Service report released on March 10, 2006, indicates approximately 60 percent of the Red River basin in North Dakota is covered with snow containing 2 to 4 inches of snow water equivalent and approximately 30 percent of the basin has 2 inches or less snow water equivalent. Areas with 4 to 6 inches of snow water equivalent include scattered areas near Langdon, the south central region of the basin, and much of the southeastern corner of the state. The upper Sheyenne River basin and a small part of southeastern North Dakota is lacking snow cover.

The National Weather Service's hydrologic conditions for the Red, Sheyenne, Pembina, Devils Lake, Souris River, and Missouri River are summarized in a Commission staff memorandum dated March 13, 2006, and attached hereto as **APPENDIX "H"**.

**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 development of the plan with the primary efforts focusing on the purpose of the plan and management goals, the State Engineer's authority to manage sovereign lands, and an overview inventory of lands subject to regulation.

A technical work group consisting of staff members 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, with the final version expected by mid-summer, 2006.

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

As part of the State Water Commission's efforts to update and maintain the State Water Management Plan, the Commission's Planning and Education division is in the process of developing a water development report for the 2007-2009 biennium. Project information collected for the 2007-2009 report will be used in the State Water Commission's budgeting process and a report will be provided to the 60th legislative assembly in 2007 to document the state's water development/management needs.

Project planning information forms were mailed in January, 2006 to potential water project sponsors including cities, county water resource districts, joint water resource districts, and regional water system managers. This information will be used to identify North Dakota's potential water projects that will be moving forward in the coming years, their time frame of expected implementation, and the estimated funding requirements for the 2007-2009 biennium and beyond.

2003-2005 OFFICE OF THE STATE ENGINEER AND STATE WATER COMMISSION BIENNIAL REPORT (SWC Project No. 322)

The 2003-2005 Office of the State Engineer and the North Dakota State Water Commission biennial report to Governor John Hoeven and Alvin Jaeger, Secretary of State, was

distributed. The purpose of the report is to provide updated information on projects and programs that the agencies pursued and managed during the previous biennium. The report also provides updated information regarding personnel, water-related legislation, agency policies, finances, and data resources.

DEVILS LAKE LANDOWNERS LAWSUIT, AND THREATENING LITIGATION CONCERNING THE NORTH DAKOTA DEVILS LAKE OUTLET PROJECT (SWC Project Nos. 416-06 & 416-07)

On May 27, 1999, the State of North Dakota, the State Water Commission, the State Engineer, and the water resource districts in the Devils Lake basin were served with the Complaint of Devils Lake landowners regarding the rise of Devils Lake. The landowners

alleged the following causes of action, and brought the suit as a class action:

- 1) an unconstitutional takings;
- 2) that the drainage is an unreasonable use of the landowners' property;
- 3) that the drainage is unauthorized because flowage easements were not obtained to adversely affect or flood the landowners' land;
- 4) nuisance;
- 5) trespass; and
- 6) negligence.

The trial is scheduled for July 31-August 18, 2006, before Northeast District Judge Richard Geiger in Devils Lake, North Dakota.

Secretary Frink made reference to correspondence that the Office of the State Engineer and the State Water Commission members have received relating to threatening litigation concerning the North Dakota Devils Lake outlet project.

It was the recommendation of the State Engineer that the discussion relating to the Devils Lake landowners lawsuit issues and

threatening litigation concerning the North Dakota Devils Lake outlet project be held in executive session, under the provisions of North Dakota Century Code § 44-04-19.1, for the purpose of attorney consultation. The State Water Commission invited the following to participate in the executive session: Jack Dalrymple, Lt. Governor-Chairman, State Water Commission; Elmer Hillesland, Curtis Hofstad, Roger Johnson, Jack Olin, Harley Swenson, and Robert Thompson, State Water Commission members; Dale Frink, State Engineer and Chief Engineer-Secretary to the State Water Commission; Matthew Sagsveen, North Dakota Office of the Attorney General; Todd Sando, David Laschkewitsch, and Sharon Locken, State Water Commission staff.

It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that under the provisions of North Dakota Century Code § 44-04-19.1, the State Water Commission proceed into executive session on March 22, 2006 at 5:00 PM, for the purpose of attorney consultation regarding the Devils Lake landowners lawsuit, and threatening litigation concerning the North Dakota Devils Lake outlet project.

Commissioners Hillesland, Hofstad, Johnson, Olin, Swenson, Thompson, and Lt. Governor Dalrymple voted aye. There were no nay votes. Lt. Governor Dalrymple announced the motion unanimously carried.

Following attorney consultation regarding the Devils Lake landowners lawsuit, and the threatening litigation concerning the North Dakota Devils Lake outlet project, Lt. Governor Dalrymple reconvened the open session of the State Water Commission meeting on March 22, 2006 at 5:43 PM.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple called for a motion to adjourn the meeting.

It was moved by Commissioner Hofstad, seconded by Commissioner Johnson, and unanimously carried, that the State Water Commission meeting adjourn at 5:45 PM.

Jack Dalrymple, Lt. Governor
Representing Governor John Hoeven
Chairman, State Water Commission

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

