

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

September 13, 1999

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on September 13, 1999. Governor-Chairman, Edward T. Schafer, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Jeff Olson, representing Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Larry Hanson, Member from Williston
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Robert Thompson, Member from Page
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Harley Swenson, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

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

INTRODUCTION OF LARRY HANSON, WILLISTON, ND, MEMBER OF STATE WATER COMMISSION

effective July 1, 1999 and expires on July 1, 2005.

Larry Hanson, Williston, ND, was introduced. Mr. Hanson was appointed by Governor Schafer to serve as a member of the State Water Commission, replacing Mike Ames. His term is

CONSIDERATION OF AGENDA

the agenda approved, and requested Secretary Sprynczynatyk to present the agenda.

There being no additional items for the agenda, the Chairman declared

CONSIDERATION OF MINUTES OF JUNE 9, 1999 STATE WATER COMMISSION MEETING - APPROVED

The minutes of the June 9, 1999 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Bjornson, seconded by Commissioner DeWitz, and unanimously carried, that the minutes of the June 9, 1999 State Water Commission meeting be approved as prepared.

CONSIDERATION OF MINUTES OF JULY 1, 1999 STATE WATER COMMISSION TELEPHONE CONFERENCE CALL MEETING - APPROVED

The minutes of the July 1, 1999 State Water Commission telephone conference call meeting were approved by the following motion:

It was moved by Commissioner Bjornson, seconded by Commissioner DeWitz, and unanimously carried, that the minutes of the July 1, 1999 State Water Commission telephone conference call meeting be approved as prepared.

FINANCIAL STATEMENT - AGENCY PROGRAM BUDGET EXPENDITURES

1999, and for the period ending July 31, 1999, reflecting 4 percent of the 1999-2001 biennium. **SEE APPENDIX "A"**

Dale Frink, Assistant State Engineer, presented and discussed the Program Budget Expenditures for the 1997-1999 biennium ending June 30,

FINANCIAL STATEMENT - RESOURCES TRUST FUND 1997-1999 BIENNIUM

Dale Frink presented the following Resources Trust Fund recap for the 1997-1999 biennium:

Beginning Balance - July 1, 1997	\$ 1,449,272
Total Revenue Received During 1997-1999 Biennium	8,141,011
Expenditures	(2,857,000)
Balance in Resources Trust Fund - June 30, 1999	\$ 6,733,283

The reason for the fairly significant carryover is the fact that several projects are being implemented and funding has been approved, but construction has not begun. Most notable are the Devils Lake outlet and the Maple River Dam as well as numerous other small projects.

**FINANCIAL STATEMENT -
APPROVAL OF CARRYOVER
PROJECTS INTO 1999-2001 BIENNIUM**

Project contracts that were previously obligated for cost share from the Contract Fund, but not completed by June 30, 1999, were presented for consideration of continuation in the 1999-2001 biennium. The total cost share obligation for incomplete projects is \$6,652,800. The complete listing of these projects is contained in ***APPENDIX "B"***.

Dale Frink stated that traditionally water projects require several years to implement due to delays in obtaining permits and/or to obtain full funding.

It was the recommendation of the State Engineer that the State Water Commission continue its cost share obligation from the Contract Fund for the incomplete projects, in the amount of \$6,652,800, to June 30, 2001.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission continue its cost share obligation from the Contract Fund for the incomplete projects, in the amount of \$6,652,800, to June 30, 2001.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**FINANCIAL STATEMENT -
RESOURCES TRUST FUND
1999-2001 BIENNIUM**

Dale Frink presented the following summarization of projected revenues for the Resources Trust Fund for the 1999-2001 biennium:

Beginning Balance - July 1, 1999	\$ 6,733,283
Oil Extraction Tax Estimate	4,123,136
MR&I Loan Revenue	1,100,000
Southwest Pipeline Project Revenue	705,000
Interest Revenue	249,339
Current Total Revenue Estimate	\$12,910,758
Resources Trust Fund Authority in Budget	\$11,547,104
Continuation of Authority	2,300,000
Total Resources Trust Fund Authority for 1999-2001 Biennium	\$13,847,104

**APPROVAL OF COST SHARE
FOR NORTH DAKOTA CLOUD
MODIFICATION PROJECT
(SWC Files ACT/RES & AS/SWC/ARB)**

In considering the funding needs for North Dakota water projects, the 1999 Legislature identified \$125,000 within the Resources Trust Fund in the 1999-2001 biennium to meet, in part, the

state's cost share of the North Dakota Cloud Modification project (NDCMP). The NDCMP is an operational summertime cloud seeding program designed to increase rainfall and decrease hail damage. Counties presently participating in the program are Bowman, McKenzie, Mountrail, Ward and Williams.

Local funds for the program are generated through county tax levies. Matching state funds have, in the past, been appropriated from the general fund. In the 1999-2001 biennium, like amounts were appropriated from the general fund and the Resources Trust Fund to generate the cost share dollars required for the five counties then participating. Williams County was new to the program in 1997. The local share of the multi-county program is 80 percent.

Independent evaluations of the cloud seeding program indicate an increase in rainfall on the order of 15 percent (about one inch over a typical growing season), and decreases in crop-hail damage of 45 percent. Studies by the North Dakota State University have estimated the benefit-to-cost ratio of the program at greater than 27:1.

It was the recommendation of the State Engineer that the State Water Commission approve funding from the Resources Trust Fund, not to exceed \$125,000, for the North Dakota Cloud Modification project.

It was moved by Commissioner DeWitz and seconded by Commissioner Hanson that the State Water Commission approve funding from the Resources Trust Fund, not to exceed \$125,000, for the North Dakota Cloud Modification project. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SENATE BILL 2188 -
NORTH DAKOTA WATER
DEVELOPMENT BONDS
(SWC Project No. 1907)**

Secretary Sprynczynatyk stated that passage of Senate Bill 2188 by the North Dakota 56th Legislative Assembly represents a landmark in water management and water development. He said the new law not only recognizes the state's critical water needs, but creates a framework and the means for addressing those needs well into the 21st century.

Based upon the 1999 State Water Management Plan, SB 2188 addressed implementation of specific projects in the 1999-2001 biennium and clearly stated North Dakota's intent to meet identified water needs in future bienniums.

The Legislature's commitment is further depicted in the passage of House Bill 1475, which established a special Water Development Trust Fund. This fund will finance water projects with money from the state's tobacco settlement. The total amount of bonds authorized for construction during the 1999-2001 biennium is \$84.8 million for five projects: Southwest Pipeline Project - \$4.5 million; Grand Forks - \$52 million; Wahpeton - \$3.5 million; Grafton - \$4.8 million; and Devils Lake flood control - \$20 million.

Dale Frink provided a status report for each project, and the legislated requirements that must be met as a condition to issuing the bonds, attached hereto as **APPENDIX "C"**:

Southwest Pipeline Project:

The \$4.5 million will be used, along with USDA, Rural Development money, to fund the Mott-Elgin phase of the Southwest Pipeline Project. The main pipeline and the Hebron reservoir have been bid and Commission action is requested (to be considered at this meeting). If the Commission approves, this will be the first need for funds as part of Senate Bill 2188. It is envisioned the Commission will borrow funds from the Bank of North

Dakota (line of credit) or use other short-term bond financing for the initial phase of this project until a large bond sale occurs - possibly in February, 2000, which will also include funds for Grand Forks. The entire \$4.5 million is expected to be spent by August, 2000.

Grand Forks Flood Control Project:

The Grand Forks flood control project is likely the second project to require funds during calendar year 2000. Senate Bill 2188 requires several actions be completed before money can be given to Grand Forks and it is estimated those items can be accomplished by the end of 1999. Grand Forks has, and is, spending a considerable amount of money on land rights-of-way. When all of the items are determined completed, a large sum of money will likely be requested soon thereafter. Grand Forks is estimating that \$12.7 million will be needed from the state in calendar year 2000, therefore, the first bond sale is likely to occur around February, 2000. The entire \$52 million will likely not be spent until 2004.

Wahpeton, Grafton and Devils Lake:

Wahpeton will likely be the third project needing money, although the non-federal requirement has decreased since the passage of Senate Bill 2188. A \$1.5 million state requirement is anticipated, with up to \$500,000 needed in 2000. The specific requirements for Wahpeton and Grafton are not as detailed and the Project Cooperative Agreement will satisfy most of the requirements.

Grafton will likely not start before 2001. Devils Lake is an uncertainty at this time. Federal funding and involvement are more in the future than hoped.

Mr. Frink stated work has begun in preparation for a bond sale as part of Senate Bill 2188. A draft General Bond Resolution, an Official Statement, and a 2000 Series A Bond Resolution are being reviewed, and will be presented for the State Water Commission's consideration prior to a bond sale. A meeting is anticipated with the bond rating agencies later this year.

**SENATE BILL 2188 -
WATER DEVELOPMENT
TRUST FUND PROGRAM
FINANCIAL ADVISOR,
BOND COUNSEL, BOND
UNDERWRITER, BOND
TRUSTEE, AND ARBITRAGE
REBATE SERVICES
(SWC Project No. 1907-02)**

In 1996 and 1997, the State Water Commission selected a financial advisor, bond counsel, bond underwriter, bond trustee, and arbitrage rebate services consultant for the North Dakota State Water Commission Water Development Bond program. Dale Frink explained that

the Water Development Trust Fund program is not a revenue bond program, however, it derives its funding from tobacco settlement payments and other potential sources.

In discussion of the firms and services for the North Dakota State Water Commission Water Development program, Mr. Frink expressed concerns with the current bond trustee. He referenced instances where performance by the bond trustee could have been improved, but a greater concern is the \$2,200 accounts maintenance fee charged by the trustee. This is an acceptable fee for large bond issues, but it is a very high annual fee for small bond issues. Mr. Frink said it is preferred that the fee be recognized on the bond size. As a result, requests for proposals for a bond trustee for the Water Development Trust Fund program have been solicited. After the proposals for a bond trustee have been reviewed, a recommendation will be presented for the Commission's consideration.

It was the recommendation of the State Engineer that since the Water Development Trust Fund program is not a revenue bond program, the State Water Commission reaffirm its approval of the following firms for the Water Development Trust Fund program. He commented the service performance provided by each of these firms has been satisfactory:

Financial Advisor	Evensen Dodge, Inc., Minneapolis, MN
Bond Counsel	Beauclair & Cook, Bismarck, ND
Bond Underwriter	Dain Rauscher, Inc., Minneapolis, MN
Arbitrage Rebate Services	Berens-Tate Consulting Group, Omaha, NE

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission reaffirm its approval of the following firms for the Water Development Trust Fund program as recommended by the State Engineer:

<i>Financial Advisor</i>	<i>Evensen Dodge, Inc., Minneapolis, MN</i>
<i>Bond Counsel</i>	<i>Beauclair & Cook, Bismarck, ND</i>
<i>Bond Underwriter</i>	<i>Dain Rauscher, Inc., Minneapolis, MN</i>
<i>Arbitrage Rebate Services</i>	<i>Berens-Tate Consulting Group, Omaha, NE</i>

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SENATE BILL 2188 -
APPROVAL OF BANK OF
NORTH DAKOTA LINE
OF CREDIT
(SWC Project No. 1907-01)**

credit will be used until bonds are sold for the various projects. The Bank and the Industrial Commission have approved a \$40 million line of credit for this purpose.

Dale Frink explained Section 4 of Senate Bill 2188, which provides for a line of credit from the Bank of North Dakota for the 1999-2001 biennium. He said it is envisioned that the Bank of North Dakota's line of

Mr. Frink stated that Evensen Dodge was asked to provide an analysis of comparing the estimated costs related to an issuance of bond anticipation notes, short-term bond financing, and borrowing on the line of credit from the Bank of North Dakota. Mr. Frink said the results of the analysis provided by Evensen Dodge indicate the issuance of bond anticipation notes is not a cost effective method of interim financing when compared to the Bank of North Dakota's line of credit.

It was the recommendation of the State Engineer that the State Water Commission approve the use of the \$40 million line of credit from the Bank of North Dakota for interim financing until the bonds are issued as part of Senate Bill 2188.

It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve the use of the \$40 million line of credit from the Bank of North Dakota for interim financing until the bonds are issued as part of Senate Bill 2188.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF REQUEST
FROM NORTH DAKOTA
WATER EDUCATION
FOUNDATION FOR
PARTICIPATION IN
NORTH DAKOTA WATER
MAGAZINE FROM JANUARY
1, 1999 TO JUNE 30, 2000
(SWC File No. AOC/WEF)**

A request from the North Dakota Water Education Foundation was presented for the Commission's consideration to continue its participation in the *North Dakota Water* magazine from January 1, 1999 to June 30, 2000.

Secretary Sprynczynatyk stated that the State Water Commission has contributed to this effort since 1995 to support the magazine and its own pages, the monthly "Oxbow" section and the "Water Primer" section. He said with the Commission's support, the *North Dakota Water* magazine provides continued communication among people interested in North Dakota's water resources.

It was the recommendation of the State Engineer that the State Water Commission approve payment of \$27,000 from the Contract Fund for the period January 1, 1999 to June 30, 2000 to the North Dakota Water Education Foundation to assist in the publication of the *North Dakota Water* magazine.

It was moved by Commissioner DeWitz and seconded by Commissioner Olin that the State Water Commission approve payment of \$27,000 from the Contract Fund for the period January 1, 1999 to June 30, 2000 to the North Dakota Water Education Foundation to assist in publication of the North Dakota Water magazine. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
MERCER COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARE OF FEASIBILITY STUDY
FOR IRRIGATION PROJECT IN
MERCER AND OLIVER COUNTIES
(SWC Project No. 1898)**

A request from the Mercer County Water Resource District was presented for the Commission's consideration for cost share of a feasibility study for an irrigation project in Mercer and Oliver counties. The study will expand upon the areas in Mercer and Oliver counties that were determined suitable for irrigation in the reconnaissance study. The State Water Commission approved cost share for the reconnaissance study in the amount of \$10,000 on April 30, 1998. The study was completed in March, 1999.

The reconnaissance study found a potential irrigable area of 17,690 acres. In addition to these areas, there are other irrigable areas within the counties which could be developed at a much higher cost which may prove feasible as the markets develop for high value crops.

The study will explore using the Missouri River system as a possible water source, a crop analysis, an economic feasibility and impact review, power requirements, and an estimated total cost of the project.

The estimated cost of the feasibility study is \$154,000. Arrangements for cost share include the Agricultural Product Utilization Commission, the State Water Commission, and a local commitment. The request before the State Water Commission is to cost share in 50 percent of the eligible costs not to exceed \$77,000.

Representatives of the project attending the State Water Commission meeting included Gregory Lange, Leo Wiedrich and John Klein, Mercer County Water Resource District; Carlyle Hillstrom, Oliver County Water Resource District; Ken Royse, Bartlett & West Engineers; and Chuck Stroup and Duke Rosendahl, Hazen Community Development, Inc. The remarks of Gregory Lange are attached hereto as **APPENDIX "D"**.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 50 percent of the eligible costs, not to exceed \$77,000 from the Contract Fund, for the feasibility study of an irrigation project in Mercer and Oliver counties.

It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission approve cost share of 50 percent of the eligible costs, not to exceed \$77,000 from the Contract Fund, for the feasibility study of an irrigation project in Mercer and Oliver counties. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
GRAND FORKS COUNTY WATER
RESOURCE DISTRICT FOR COST
SHARE IN RURAL RING DIKES
PROJECT
(SWC Project No. 1280)**

A request from the Grand Forks County Water Resource District was presented for the Commission's consideration for cost share in the rural ring dikes project.

The project involves the construction of six rural ring dikes for landowners in Ferry Township who have requested assistance for engineering and construction of the ring dikes. The six sites are located three to five miles east and southeast of Manvel, ND.

Secretary Sprynczynatyk explained that ring dikes are the most acceptable and efficient way to protect farmsteads during a flood event, with the intent being to protect farmsteads, grain bins, and other developed areas. He said it is not intended to provide protection to cropland. Secretary Sprynczynatyk said the project provides a public benefit of protection for personal safety and health related concerns, which include the prevention of farm chemicals and other debris from reaching the river.

The preliminary cost estimate for the project is \$150,000. The request before the State Water Commission is to cost share in 25 percent of the eligible costs in the amount of \$37,500. The Commission approved a 25 percent cost share for similar rural ring dikes projects in Walsh county and North Cass county on August 13, 1998 and December 21, 1998, respectively. Secretary Sprynczynatyk said the Commission staff has reviewed the project and determined the project serves a public purpose, that is, "one that promotes the public welfare", and provides flood protection to the area.

It was the recommendation of the State Engineer that the State Water Commission cost share in 25 percent of the eligible costs, not to exceed \$37,500 from the Contract Fund, in the Grand Forks County Water Resource District's rural ring dikes project in Ferry Township, contingent upon the availability of funds.

It was moved by Commissioner Bjornson and seconded by Commissioner Hillesland that the State Water Commission approve cost share of 25 percent of the eligible costs, not to exceed \$37,500 from the Contract Fund, in the Grand Forks County Water Resource District's rural ring dikes project in Ferry Township. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**APPROVAL OF REQUEST FROM
CITY OF PARK RIVER TO INCREASE
COST SHARE FOR HOMME DAM
SAFETY MODIFICATIONS
(SWC Project No. 828)**

On November 29, 1995, the State Water Commission approved \$28,000 for dam safety modifications to Homme Dam in Walsh County. Homme Dam is owned and operated by the U.S. Army Corps of Engineers,

and the cities of Park River and Grafton serve as the local sponsors. Originally, both cities used water from the reservoir for their water supplies, but only Park River currently uses water. Grafton uses water from the Red River.

The Corps of Engineers's cost estimate for the project has increased from \$8 million to \$15 million and, as a result, the non-federal cost share has increased from \$56,000 to \$109,000. In 1995, the Commission agreed to cost share in 50 percent of the \$56,000, with the remaining amount divided among the cities of Park River and Grafton, the Walsh County Water Resource District, and the Red River Joint Board. On August 12, 1999, a letter was received from the city of Park River requesting the State Water Commission to increase its cost share from \$28,000 to \$54,500.

Secretary Sprynczynatyk said the Homme Dam safety project meets the current State Water Commission's policy and guidelines for cost share, and is eligible for 50 percent cost share. Therefore, it was the recommendation of the State Engineer that the State Water Commission increase its cost share for Homme Dam to 50 percent of the non-federal share, not to exceed \$54,500 from the Contract Fund.

It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve increasing its cost share for the Homme Dam safety modifications project to 50 percent of the non-federal share, not to exceed \$54,500 from the Contract Fund. This motion is contingent upon the availability of funds.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**WALHALLA TOWNSHIP
DRAINS NOS. 2 AND 3
(SWC Project Nos. 1904 & 1905)**

35 percent of the eligible costs was approved for these projects, not to exceed \$95,311 for Drain No. 2, and not to exceed \$52,490 for Drain No. 3. The approval of both projects was contingent upon the availability of funds, and upon a Memorandum of Understanding between the Cavalier and Pembina Counties Water Resource Districts and the Province of Manitoba being executed by October 1, 1999.

Secretary Sprynczynatyk said the Cavalier and Pembina Counties Water Resource Districts are finalizing their negotiations with the Province of Manitoba. They have each voted to sign the most recent version of the Memorandum of Understanding, and a meeting is scheduled for September 14, 1999, at which time it is expected the Memorandum of Understanding will be finalized and executed by both parties.

**GARRISON DIVERSION PROJECT -
PROJECT UPDATE
(SWC Project No. 237)**

The Dakota Water Resources Act of 1999 (S. 623) was heard before the Subcommittee on Water and Power of the U.S. Senate Committee on Energy and Natural Resources on May 27, 1999 in Washington, DC. The companion bill (H.R. 2918) is scheduled to be heard before the U.S. House of Representatives Committee on Resources, Subcommittee on Water and Power, on September 30, 1999.

Commissioner Thompson expressed concerns on issues relating to the Dakota Water Resources Act, specifically referencing the assurance of water delivery to the eastern part of North Dakota, Canadian concerns, and irrigation in North Dakota that could potentially receive hydropower at the project's pumping rate. He also questioned the taxes contributed by the counties into the Garrison Diversion Conservancy District and the benefits derived from the contribution. Governor Schafer directed the State Engineer to obtain a breakdown of the taxes contributed by the 26 member creation of the Garrison Diversion Conservancy District and the benefits derived from those taxes. Secretary Sprynczynatyk suggested, and it was agreed by the Commission members, that a workshop on the Dakota Water Resources Act be scheduled for the purposes of discussion and providing technical information to the Commission members.

The offices of Will & Carlson are publishing a weekly newsletter "Eye on Washington," which will be provided to the Commission members.

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM
(SWC Project No. 237-03)**

Jeffrey Mattern, Coordinator for the MR&I Water Supply program, provided the following program status report:

All Seasons Rural Water: The project will provide water to 24 rural users and the city of Bisbee, and will involve a reservoir/pump station, pipelines, and in-line booster stations. The construction contracts were awarded to Ronald Peterson Construction for the pipeline and to Wanzek Construction for the reservoir.

Langdon Rural Water Users - Munich Expansion: The Langdon Rural Water Users received MR&I grant funding towards the feasibility study for the Munich service area. The project would expand the existing rural water system from the city of Langdon to service the community of Munich and the surrounding rural areas. The project would be developed to ensure the expansion matched with All Seasons Water Users to the west. The estimated project cost is \$9.6 million and would serve 350 users.

Missouri West Rural Water, Phase II: The construction contract is scheduled to be completed this fall. The city of Flasher is currently receiving water from the project.

Northwest Area Water Supply, Phase I (Rugby Component): The project is anticipated to be completed this fall.

Northwest Area Water Supply, Phase II (Minot Component): The project is being reviewed for compliance with the National Environmental Policy Act.

North Valley Water Association/Walhalla-Neche Branch: The project reclamation is complete.

Ramsey County Rural Water: The feasibility study of the proposed rural water expansion into Eddy and Foster counties is complete. The preferred alternative is to provide water from the existing Ramsey water treatment plant to the rural users, with the city of Sheyenne served from the city of New Rockford. The estimated total cost is \$9.3 million, with a 65 percent grant being \$6 million. The project would serve 560 water users including service to Glenfield, Grace City, McHenry, Sheyenne and 333 rural users.

Ransom-Sargent Rural Water: The Fingal/Cogswell Phase is currently under construction. The next project phase includes a water treatment plant expansion in Lisbon, a new well field, and a raw water transmission pipeline. The well field area potentially impacts 94 acres of western fringed prairie orchid habitat and 24 acres of wetlands habitat.

Southwest Pipeline Project: Potential funding for the Mott-Elgin phase is being discussed with the USDA, Rural Development. The statewide water development legislation is being reviewed for project funding.

Mr. Mattern reported the Stutsman Rural Water Users petitioned the State Engineer to convert from a non-profit corporation to a water district in order to obtain tax-exempt financing to allow for a lower interest rate on loans made by a system. On September 1, 1999, the State Engineer issued an order establishing the Stutsman Rural Water District.

A petition has been received in the Office of the State Engineer from the Agassiz Rural Water Users to convert from a non-profit corporation to a water district.

**GARRISON DIVERSION PROJECT -
APPROVAL OF SUPPLEMENTAL
FINANCING PARITY PLEDGE FOR
MISSOURI WEST WATER SYSTEM,
PHASE II
(SWC Project No. 237-03)**

The State Water Commission approved a 1993 loan to the Morton County Water Resource District for Phase I of the Missouri West Water System project. The State Water Commission loan requires Commission approval of future Missouri West expansion

projects. Jeffrey Mattern stated that the District is completing Phase II of the project, improving the water quality and reliability of water service in southern rural Morton County and the communities of Flasher, Fort Rice and St. Anthony. Missouri West serves approximately 1,050 users and the communities of Almont, Flasher, Fort Rice, New Salem and St. Anthony.

The Phase II estimated project cost is \$8.5 million, consisting of a Garrison MR&I grant of \$5.35 million, a USDA, Rural Development loan of \$2.99 million from Rural Utilities Service, and a local contribution of \$160,000. The Rural Utilities Service loan requires that the pledging of net revenues generated from Phase II of Missouri West be on parity with other lenders. The Morton County Water Resource District requested that the State Water Commission consent to pledging of net revenues of Missouri West on a parity with the 1993 State Water Commission loan.

A draft resolution was presented for the State Water Commission's consideration consenting to supplemental financing allowing pledging of net revenues of Missouri West on a parity with the 1993 State Water Commission loan. The current Missouri West six-month loan repayment of \$83,065 to the State Water Commission would remain unchanged.

It was the recommendation of the State Engineer that the State Water Commission approve the draft resolution indicating its consent to supplemental financing allowing pledging of net revenues of Missouri West on a parity with the 1993 State Water Commission loan.

It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission approve Resolution No. 99-9-485 indicating its consent to supplemental financing allowing pledging of net revenues of Missouri West Rural Water project on a parity with the 1993 State Water Commission loan. SEE APPENDIX "E"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONTRACT AND CONSTRUCTION
STATUS; AND PROJECT UPDATE
(SWC Project No. 1736)**

James Lennington, Project Manager for the Southwest Pipeline Project, provided the following contract, construction and project status report. Mr. Lennington reported the

Southwest Water Authority is conducting a management retreat on this date (September 13, 1999) and, therefore, does not have representation at this Commission meeting. The Authority's Manager requested the Commission table meeting items for which additional information is needed from the Authority.

Contract 7-4/7-3A - Bucyrus and Three Pockets Service Area Rural Distribution: Three areas added by change order to contract 7-4/7-3A, the Bucyrus and Three Pockets Service Areas rural distribution system, have been completed and transferred to the Southwest Water Authority. These areas added a total of 48 rural connections to the project, bringing the total added under this contract to approximately 380. The contractor, Northern Improvement, Inc., is currently working on punch list items found during last fall's prefinal inspection and on reclamation for the added areas. Because of the added areas, the contract completion date for this contract was extended to September 4, 1999.

Contract 7-5A - Hebron Service Area Rural Distribution System: The contractor completed the installation of all rural pipelines and commenced with the final hydro-testing, flushing, and chlorination. The contract will add 95 rural users to the project. To date, 38 users have been transferred to the Southwest Water Authority for service. The contract completion date is September 11, 1999.

The Commission was informed at its June 9, 1999 meeting that the chlorine and anhydrous ammonia injection points at the Dodge chloramination facility would be moved outside the pump station to avoid the possibility of corrosion damage due to chlorine leaks. Mr. Lennington

stated that since the June 9, 1999 Commission meeting, concerns have been addressed relative to accessing the injection points in underground manholes. The Dickinson water treatment plant personnel, who operate the chloramination facility, believe that if the hydrochloric acid injection is eliminated then the risk of corrosion, due to leaks, becomes minimal. Mr. Lennington said the current proposal is to replace the anhydrous ammonia equipment with a 360 gallon tank in which dry ammonium sulfate would be mixed with water, which would then be injected instead of the anhydrous ammonia. He said this will cause some precipitation of hardness constituents, but because of the different way it is injected, plugging of the injector is not expected. The experience of using liquid ammonium sulfate at the Dickinson water treatment plant has been positive and is preferred by the operators over the current system. This option was apparently considered during the pilot study of the Dodge facility, but this option was rejected because of the belief that operating costs would be higher and the injection of anhydrous ammonia would be more reliable. This change will add approximately \$6,000 to the cost of the chloramination facility, but it should result in a safer facility.

Mr. Lennington reported that on August 15, 1999, a severe wind storm in the Dickinson area damaged the New Hradec reservoir. The glass fused bolted steel reservoir is 93 feet tall with a diameter of 25 feet, giving it a capacity of approximately 340,000 gallons. The reservoir was recently replaced under warranty by the manufacturer because of the "frost spalling" problem in which air bubbles in the interior glass coating burst during freeze-thaw cycles and caused pieces of the interior glass coating to fall off or spall. The reservoir had 39 feet of water in it, because of an upcoming inspection of the interior coating, when the August 15 storm occurred. The reservoir was designed to withstand a 100 mph wind load according to the American Water Works Association standards for bolted steel reservoirs. According to the manufacturer, the upper portion of the reservoir was capable of withstanding a uniform wind load of 166 mph. The maximum wind velocities recorded at area airports were 70 mph during the storm. The reservoir is insured with the North Dakota Fire and Tornado Insurance Fund. The manufacturer is investigating the causes of the failure, modifications to avoid its recurrence, and the cost of repairing the reservoir.

In 1998, the Southwest Water Authority conducted a survey to determine why some rural customers, who were making minimum payments, had not completed the connection of their homes to the service line constructed to their property. Responses to the survey indicated the reason for the delay was the expense of hiring a contractor to connect their home to the service line. The cost of completing this connection is approximately \$1,000 to \$1,500. In response to this situation, the Southwest Water Authority applied for a community development block grant through the Roosevelt-Custer Regional Council for assistance to those customers in need. The Authority developed eligibility criteria for the grant program and developed application

materials for customers who had not connected. The grant application was approved in April, 1999. Nine customers applied for grants and three of those customers met the eligibility criteria. In August, 1999, bids were solicited for installing connections for qualifying customers, and the bid opening was held on September 7, 1999 in Dickinson.

Mr. Lennington informed the Commission members the bid opening for contract 5-6, the Burt tank, is scheduled for October 19, 1999.

**SOUTHWEST PIPELINE PROJECT -
AWARD OF CONTRACT 2-6B, MAIN
TRANSMISSION PIPELINE FROM
MOTT-NEW LEIPZIG-ELGIN-CARSON,
TO NORTHERN IMPROVEMENT, INC.
(SWC Project No. 1736)**

On September 2, 1999, bids were opened for Southwest Pipeline Project contract 2-6B, the main transmission pipeline from Mott to New Leipzig, Elgin and Carson. Five bids were received for contract 2-6B. There were no alternative bid schedules for this contract.

James Lennington indicated the apparent low bid was received from Northern Improvement, Inc., Bismarck, ND, at a price of \$2,444,401.75. The contract documents allow the State Water Commission to select the most advantageous bid. The engineer has reviewed the bids, found the bids responsive, and recommended award of the contract to Northern Improvement, Inc. State funds authorized by Senate Bill 2188 in the 1999 Legislative Assembly will be used for this contract, as a portion of the state's share of the USDA, Rural Development Mott-Elgin phase funding. The contract will require approval by USDA, Rural Development. Mr. Lennington stated the award of the contract and the notice to proceed are dependent on the completion of the contract documents and a legal review. The time for completion of this contract is 430 days from the date of the bid opening, but no later than November 30, 2000.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 2-6B, Main Transmission Pipeline from Mott to New Leipzig, Elgin and Carson, to Northern Improvement, Inc.

It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve the award of Southwest Pipeline Project contract 2-6B for the main transmission pipeline from Mott to New Leipzig, Elgin and Carson to Northern Improvement, Inc., Bismarck, ND.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AWARD OF
CONTRACT 5-14, HEBRON RESERVOIR,
TO ENGINEERING AMERICA, WHITE
BEAR LAKE, MINNESOTA
(SWC Project No. 1736)**

On August 25, 1999, bids were opened for Southwest Pipeline Project contract 5-14, the Hebron reservoir. The reservoir will be 45 feet in diameter and 43 feet tall, with a volume of approximately 500,000 gallons. Two alternates were bid; one for a welded and coated steel reservoir, and the other for a glass fused bolted steel reservoir.

Three bids were received. The only bidder on the glass fused bolted steel alternate was Engineering America of White Bear Lake, Minnesota. Advance Tank and Construction of Wellington, Colorado, and Industrial Builders of Fargo, ND, bid on the welded and coated steel alternate.

The apparent low bid was received from Engineering America, White Bear Lake, Minnesota, at a price of \$259,819 for the glass fused bolted steel alternate. The apparent low bid for the welded and coated steel alternate was from Advanced Tank and Construction, at a price of \$297,500. The contract documents allow the State Water Commission to select the most advantageous bid.

The engineer has reviewed the bids, found the bids responsive, and recommended award of the contract based on the alternate for the glass fused bolted steel reservoir to Engineering America, White Bear Lake, Minnesota. State funds authorized by Senate Bill 2188 in the 1999 Legislative Assembly will be used for this contract as a portion of the state's share of the USDA, Rural Development Mott-Elgin phase funding. The contract will require approval by USDA, Rural Development. The award of the contract and notice to proceed are dependent on the completion documents and a legal review. The time for completion of this contract is August 26, 2000.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project contract 5-14 for the Hebron reservoir to Engineering America, White Bear Lake, Minnesota.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission approve the award of Southwest Pipeline Project contract 5-14 for the Hebron reservoir to Engineering America, White Bear Lake, Minnesota.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AGREEMENT FOR
TRANSFER OF OWNERSHIP
OF WADE AND SHAUNA ADAMS
PIPELINE TO SWC
(SWC Project No. 1736)**

Wade and Shauna Adams are subsequent users in the East Davis Buttes service area. As subsequent users, they paid the construction costs of service to their property in 1995. Subsequent users are required to follow project design and construction standards.

The Adams bought their property after service in the area had been constructed and missed the deadline for signing up for service. The service line to their property consists of approximately 4,400 feet of 2-inch diameter pipeline. Since that time, there have been four additional subsequent users which have tapped into the Adams' line.

James Lennington reported that the Adams recently retired and moved to Arizona, but they have expressed their intent for their neighbors to continue to have good service from the Southwest Pipeline Project. Therefore, the Adams requested a transfer of ownership to the State Water Commission of the service line they installed. The maintenance responsibilities for the pipeline and associated facilities would be assumed by the Southwest Water Authority. The transfer agreement includes the assignment of all easements obtained by the Adams for their pipeline. This transfer of ownership has been approved by the Southwest Water Authority.

It was the recommendation of the State Engineer that the State Water Commission approve the transfer of ownership of the Wade and Shauna Adams pipeline to the State Water Commission.

It was moved by Commissioner DeWitz and seconded by Commissioner Hanson that the State Water Commission approve the transfer of ownership of the Wade and Shauna Adams pipeline to the State Water Commission. SEE APPENDIX "F"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
CONTRACT WITH PRAIRIE
LEARNING CENTER WITH
AMENDMENTS FOR "TERMINATION
BY NOT CONSTRUCTING" AND
FOR SOLE SOURCE SERVICE
(SWC Project No. 1736)**

The Prairie Learning Center, which is located south of Raleigh, ND, signed up as a standard rural water user in 1992. The Center is a group home and education center for "at risk" boys, located in the former St. Gertrude school facility.

James Lennington stated that during the development of the preliminary design for the rural water distribution system in the Mott-Elgin phase, it was noted that a standard connection would not provide adequate water for the Center, which has 46-50 residents throughout the year and a staff of 52. An investigation of water use indicated that the Center should use between 1.5 and 1.8 million gallons per year. This amount exceeds the 1.2 million gallon maximum for a user without a water service contract. The Center subsequently requested a water service contract, as a small business, from the Southwest Pipeline Project. Small business contracts are similar to those held by communities with the exception that their term is 5 years rather than 40 years. Capacity to serve the Center will be available in contract 7-6B, which is scheduled for construction in 2001-2002, if feasible. The Southwest Water Authority board of directors approved the Prairie Learning Center contract at its meeting on July 6, 1999.

Mr. Lennington explained that because there is uncertainty over the feasibility of service in the area around the Center, the contract approved by the Authority and the Center required amending to include a provision addressing "Termination By Not Constructing" specifying that "if any segment of the project is not constructed for whatever reason ... thereby preventing delivery of water to the user, the Commission, the Authority, and the user shall be relieved of all obligations under this contract."

The contract approved by the Center and the Authority also did not contain provisions for sole source service. The Center currently uses wells but is intending to use the project as its sole source of water. Under sole source service, a user agrees to use pipeline water for all of its needs. In exchange, the provisions in the water service agreement requiring purchase of a minimum amount each month are waived. The user is billed for the actual amount of water used each month. The Southwest Water Authority approved amendments for "Termination By Not Constructing" and for sole source service at its meeting on September 13, 1999.

It was the recommendation of the State Engineer that the State Water Commission approve a water service contract with the Prairie Learning Center, with amendments addressing the "Termination By Not Constructing" and for sole source service.

It was moved by Commissioner Thompson and seconded by Commissioner Bjornson that the State Water Commission approve a Southwest Pipeline Project water service contract with the Prairie Learning Center with amendments addressing the "Termination By Not Constructing" and for sole source service. SEE APPENDIX "G"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AWARD OF
CONTRACTS FOR DICKINSON
WATER TREATMENT PLANT
LIME SLUDGE REMOVAL
(SWC Project No. 1736)**

On September 2, 1999, the city of Dickinson opened bids for the lime sludge removal project at the Dickinson water treatment plant. The project was separated into two sections: Section I is the construction of the inert landfill at the disposal site;

and Section II is the excavation and transport of the sludge to the disposal site. Plans and specifications were prepared by the city's Director of Public Works, and the city will also perform the necessary contract administration work. The engineer's estimate was \$50,000 for Section I and \$300,000 for Section II.

The apparent low bid for Section I was from Martin Construction of Gladstone, ND, at a bid price of \$23,031.50. The apparent low bid for Section II was from Northern Improvement, Inc., Bismarck, ND, at a price of \$126,440.75.

At its January 27, 1999 meeting, the State Water Commission approved the use of up to \$300,000 from the Southwest Pipeline Project reserve fund for replacement and extraordinary maintenance (REM) for cleaning of the east sludge pond at the Dickinson water treatment plant. At that meeting, the Commission also approved a commitment of an additional \$100,000 from either construction funds or the REM reserve to be determined at a later date. Based upon a subsequent review of construction funds, other project needs, and a technical review of the sludge pond issue, it was

determined that it would be most appropriate that REM funds were used for all of the costs of cleaning out the sludge ponds. This recommendation was approved at the Commission's June 9, 1999 meeting.

James Lennington explained that the award of contracts for the sludge removal project require the approval of the Commission, the Southwest Water Authority, and the city of Dickinson. The city approved the award of the contracts to Martin Construction and Northern Improvement, Inc. at its meeting on September 7, 1999.

It was the recommendation of the State Engineer that the State Water Commission approve the award of construction contracts to Martin Construction, Gladstone, ND, and Northern Improvement, Inc., Bismarck, ND, for the inert landfill construction and lime sludge disposal project at the city of Dickinson water treatment plant.

It was moved by Commissioner Olin and seconded by Jeff Olson, representing Commissioner Roger Johnson, that the State Water Commission approve the award of construction contracts to Martin Construction, Gladstone, ND, and to Northern Improvement, Inc., Bismarck, ND, for the inert landfill construction and lime sludge disposal project at the city of Dickinson water treatment plant.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF MASTER METER
EMERGENCY BYPASS ADDENDUM
TO WATER SERVICE CONTRACT
FOR CITY OF RICHARDTON
(SWC Project No. 1736)**

A proposal was received from the city of Richardton to construct a pipeline bypassing the point of delivery specified in the city's Southwest Pipeline Project water service contract. Water is currently delivered to the city's clearwell and pumped into their distribution system and elevated storage reservoir. During power outages, the city's water supply is limited to the amount of water in its elevated reservoir. James Lennington explained that construction of the bypass will allow water delivery directly into the city's distribution system during power outages and maintenance of the city's storage facilities. Pressure in the project pipeline at the bypass point is not sufficient to fill the elevated storage, but is sufficient to provide limited service on a temporary basis.

Mr. Lennington stated the request was approved, but an addendum is required to the city's water service contract specifying that the bypass would only be operated on a temporary, emergency, or maintenance basis, and that the Southwest Water Authority be notified of its use. The addendum was approved by the Richardton City Commission and the Southwest Water Authority.

It was the recommendation of the State Engineer that the State Water Commission approve the master meter emergency bypass addendum to the city of Richardton's Southwest Pipeline Project water service contract.

It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission approve the master meter emergency bypass addendum to the city of Richardton's Southwest Pipeline Project water service contract. SEE APPENDIX "H"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF REIMBURSEMENT
FROM RESERVE FUND FOR REPLACEMENT
AND EXTRAORDINARY
MAINTENANCE FOR REPLACEMENT
OF O & M CENTER ROOF
(SWC Project No. 1736)**

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

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

At its meeting on June 19, 1996, the State Water Commission considered a request to authorize the use of the fund for the replacement of air vacuum/air release valves. The 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, nor is staff time considered eligible, although an exception was made in 1998 for overtime.

James Lennington presented a request from the Southwest Water Authority for the Commission's consideration of reimbursement from the reserve fund for replacement and extraordinary maintenance for the costs of replacing the O & M center roof. The roof has been repaired twice without success and its replacement was included in the budget for 1999. The roof was replaced in July, 1999. The budgeted amount was \$20,000, and the actual cost for replacement was \$16,025.

It was the recommendation of the State Engineer that the State Water Commission approve the reimbursement of \$16,025 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the O & M center roof.

It was moved by Commissioner DeWitz and seconded by Commissioner Hillesland that the State Water Commission approve the reimbursement of \$16,025 from the reserve fund for replacement and extraordinary maintenance to the Southwest Water Authority for replacement of the O & M center roof.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

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

James Lennington reported that the revised *Biota Transfer Control Facilities and Criteria* report, a draft Finding of No Significant Impact, and a proposed final Environmental Assessment were distributed to the Garrison Joint Technical Committee (GJTC) on September 18, 1998. The GJTC held a meeting on November 20, 1998 to discuss these documents.

The Canadian section of the committee presented a list of issues and concerns they have with the project as it is proposed. The committee agreed to draft a joint letter of finding to the Garrison United States-Canada Consultative Group. The Bureau of Reclamation, as the responsible federal agency, provided a statement of its intentions concerning the National Environmental Policy Act (NEPA) decision document, as well as a draft copy of the document. According to the 1986 Garrison Diversion Reformulation Act, construction may begin after the project has received clearance from the United States section of the Consultative Group assuring that the Administrator of EPA and the Secretaries of State and Interior have determined that the project will meet the requirements of the Boundary Waters Treaty of 1909.

The letter was executed by the United States and the Canada Garrison Joint Technical Committee co-chairs on February 1, 1999 and was forwarded to the United States-Canada Consultative Group requesting that a meeting be scheduled at the earliest possible time. The letter included a status of the NAWS project and the findings of the Garrison Joint Technical Committee. Also included with the letter was a statement of intention and a draft Record of Decision from the Bureau of Reclamation. These steps are consistent with the approved process developed by the Garrison Joint Technical Committee and provided to the Consultative Group in April, 1997.

Several differences remain between the United States and the Canadian sections of the Joint Technical Committee concerning biota transfer issues associated with NAWS. Mr. Lennington indicated that a summary of the outstanding issues, requiring further direction from the Consultative Group, was also included with the letter.

A meeting of the Garrison Joint Consultative Group was held on July 9, 1999 in Washington, DC. At this meeting, the Canadian section of the Consultative Group expressed continuing concerns over what they see as inadequacy of the environmental assessment. He said the Canadian section was careful to point out that its views were not those of Canada, which would come after the project had been formally submitted by the United States.

Mr. Lennington said the Canadian section expressed its views that any project, which has the potential to transfer biota from one basin to another and which has the potential to cause irreversible damage to an ecosystem, should be very carefully evaluated. If justified, the project should be built to the highest available standards. In addition, the treatment technology should be updated and modified as knowledge improves and as subsequent standards evolve in a similar manner to potable water treatment systems in both countries. The Canadian section went on to say that the most acceptable method of overcoming the potential for biota transfer would be to treat the water to drinking water standards within the Missouri River basin and that other details of the project may then become less important to them such as contingency plans, monitoring, and filter backwash water handling.

Mr. Lennington said the Canadian section indicated it is possible Canada will be proposing amendments to the Boundary Waters Treaty opposing bulk interbasin transfers, and that Canada was also trying to convince all of its provinces to adopt a policy banning all bulk interbasin transfers of water.

The NAWS portion of the July 9, 1999 meeting concluded with the United States section reaffirming that the decision in the 1986 Garrison Reformulation Act on whether a project has the potential to violate the Boundary Waters Treaty of 1909 was unilateral and that they would consider the Canadian concerns.

On August 11, 1999, the United States section met in Denver, Colorado. At that meeting, representatives of the Department of Interior, the Environmental Protection Agency, and the State Department expressed the need for a comparative risk analysis before they could recommend certification that NAWS would not violate the Boundary Waters Treaty. A comparative risk analysis would compare the risks of a biota transfer caused by the project with the background risk due to natural and man-made processes. This type of risk analysis had previously been considered during the development of the environmental assessment, but was not initiated because of its subjective nature and the fear the Canadian involvement would cause excessive delays. The risk analysis now being requested by the federal agencies would not involve Canada, but would help to reassure the federal agencies of the project's comparative safety. A scope of work calling for completion of the risk analysis within 12 weeks has been prepared by Montgomery Watson, as a subcontractor to Houston Engineering, the project engineer.

The draft plans and specifications were forwarded to the Garrison Joint Technical Committee on May 27, 1999 as discussed in the NAWS project approval process developed by the Garrison Joint Technical Committee in 1997. The final plans and specifications are expected from the project engineer by the end of September, 1999 and will be submitted to the North Dakota Department of Health and the Bureau of Reclamation for review and comment. Preparation of the final plans and specifications will allow for bidding as soon as the project is approved as specified in the 1986 Garrison Reformulation Act.

The first phase of construction will involve approximately 7.4 miles of pipeline from the Minot water treatment plant to a pressure reducing valve located along U.S. Highway 83. The estimated cost of this first segment is approximately \$5.5 million.

Mr. Lennington stated construction is progressing on the expansion and upgrade of the NAWS, Phase I, Rugby water treatment plant. The contractor, Swanberg Construction, Valley City, ND, is constructing the addition to the water treatment plant, and the rehabilitation of existing portions of the plant. The contract is anticipated for completion by the end of September, 1999.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF CONTRACT
FUND ALLOCATION
(SWC Project No. 237-04)**

Pursuant to section 61-24.6-05 of the North Dakota Century Code, the State Engineer may employ full-time personnel and may allocate funds from the Contract Fund for salaries and expenses of persons employed for the de-

velopment of the Northwest Area Water Supply Project. In the 1997-1999 biennium, at its October 29, 1997 meeting, the State Water Commission approved a \$69,219 allocation from the Contract Fund, of which \$19,219 was carryover from the previous biennium, for NAWS operating costs including salaries, operations, and equipment. All of those funds were expended in the 1997-1999 biennium.

James Lennington explained that in the 1999-2001 biennium budget, \$100,000 from the Contract Fund was earmarked for NAWS salaries and operating expenses. He said most of the NAWS expenses are paid with federal funds through the Garrison MR&I program, however, a 35 percent non-federal match is required. Paying staff salaries and operating expenses with non-federal funds helps to extend the federal funds further and helps the project qualify for more federal matching funds.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$100,000 from the Contract Fund for NAWS operating costs including salaries, operations and equipment.

It was moved by Commissioner DeWitz and seconded by Commissioner Hanson that the State Water Commission approve the allocation of \$100,000 from the Contract Fund for the Northwest Area Water Supply Project's operating costs including salaries, operations and equipment.

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

**DEVILS LAKE
HYDROLOGIC UPDATE
(SWC Project No. 416-02)**

Secretary Sprynczynatyk reported the current level of Devils Lake is 1446.87. In June, 1999, Devils Lake reached its all time recorded daily high of 1447.1

feet msl. Heavy rains during mid-August pushed Devils Lake slightly above 1447.1 and caused water to spill over the divide to Stump Lake for a brief time. At elevation 1447.0, Devils Lake has a surface area of 124,000 acres and a volume of

approximately 2.4 million acre-feet of water. Inflow, as estimated by the volume change of the lake, is approximately 368,000 acre-feet thus far for 1999. He said this is the second largest inflow on record, and seven of the eight largest inflows recorded for the lake have occurred since 1993.

On September 3, 1999, the National Weather Service issued the forecast for Devils Lake, which is attached hereto as ***APPENDIX "I"***.

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

Secretary Sprynczynatyk reported on the following federal, state and local efforts to develop an emergency outlet from Devils Lake to the Sheyenne River:

U.S. Army Corps of Engineers:

The Corps of Engineers continues to pursue an emergency outlet from the west end of Devils Lake through Peterson Coulee. The Corps has elevated its decision-making to their Washington headquarters. A constant issue with the Corps' outlet has been establishing a representative benefit-cost analysis for the project. Most, if not all, previous Corps flood control projects dealt with riverine situations so they are not familiar with analyzing the benefits for flood control around a lake and their standard rules for hydrology and determining benefits are difficult to apply. To assist the Corps in this effort, the state contracted for an independent economic analysis.

State Water Commission:

The State Water Commission staff has been working on the excavation of a channel between Devils Lake and Stump Lake to provide temporary flood relief to areas adjacent to Devils Lake. Stump Lake's current elevation is approximately 1408 feet msl, which is almost 40 feet lower than Devils Lake. Water will flow from Devils Lake to Stump Lake naturally when Devils Lake exceeds 1447 feet msl. A small trickle did occur for a short time in mid-August, 1999, but until the level of Devils Lake increases by several feet, the flows will be relatively small.

There are approximately 400,000 acre-feet of storage in Stump Lake between 1408 and 1447. Excavating the channel will allow this storage to be utilized more quickly, reducing the elevation of Devils Lake and decreasing the risk of roads and dikes around the lake from being overtopped. Keeping Devils Lake at a lower level for the next several years will provide time for a west end outlet to be built.

The Omaha District Corps of Engineers held a 404 permit hearing on the project on August 30, 1999. Generally, people from around Devils Lake strongly supported the project. Nelson County (Stump Lake) people wanted an outlet from Stump Lake to the Sheyenne River before the channel between the lakes was excavated. People from along the Sheyenne River were opposed claiming that this was part of a plan to discharge water from the east end of Devils Lake into the Sheyenne River. The Corps of Engineers indicated at the close of the hearing that a decision on the permit could take several months.

The Commission staff are investigating the possibility of building a temporary emergency west end outlet. This outlet would consist of a series of dams and pumping sites allowing the water to be raised in stair-step fashion over the divide between Devils Lake and the Sheyenne River. The project would be capable of pumping 300 cubic feet per second from Devils Lake and operate from May through November removing approximately 125,000 acre-feet of water from the lake. Construction costs would be on the order of \$7 million, with annual operating costs of approximately \$1 million. Downstream impacts would be similar to the impacts caused by the Corps of Engineers' proposed outlet.

City of Devils Lake:

The city of Devils Lake is concerned about the slow progress of the emergency outlet, therefore, they have begun planning some flood control measures on their own.

The principal feature is an emergency spillway from Stump Lake to Tolna Coulee. This spillway is proposed to be located in Sections 27 and 34, Township 151 North, Range 61 West; 7,350 feet long; have a maximum cut of 60 feet; and require approximately 1.4 million yards of excavation. The bottom would be at elevation 1440.

The city requested the State Water Commission staff to perform a limited investigation of a channel connecting East Devils Lake to the proposed emergency spillway. This channel would begin at the Jerusalem outlet and extend 12.4 miles around the western side of Stump Lake. The channel would have a 50-foot bottom at elevation 1440 and it has no gradient for its entire length. A dike on the left bank, with a top elevation of 1458, would keep the channel isolated even if Stump Lake was at a high level.

This channel would require about 1.5 million yards of excavation, and a total of 10 road crossings would be impacted. A control structure at the inlet of the city's emergency spillway channel and another bay on the Jerusalem outlet control structure would be required.

**DEVILS LAKE AVAILABLE
STORAGE ACREAGE PROGRAM
(SWC Project No. 1882-01)**

Secretary Sprynczynatyk reported the Available Storage Acreage Program (ASAP) has been completed for 1999.

Under the traditional program, there are 173 contracts with the residents of the Devils Lake basin to inundate approximately 8,650 acres, which stores about 14,700 acre-feet of water at a cost of \$767,000. The average costs for the program are \$89.00 per acre, or \$52.00 per acre-foot.

ASAP is storing slightly less water than in previous years largely because Devils Lake has flooded many of the past sites. Thirty-two (32) contracts, covering 2,200 acres of land (approximately 3,740 acre-feet of storage) were not able to participate in the program in 1999 because they were flooded by Devils Lake. Although the funding budgeted for these sites was offered for other storage sites, only a few new sites were added in 1999. Most farmers solicited for water storage wanted to grow crops instead.

A cooperative agreement with the North Dakota Wetlands Trust funds longer-term small tract water storage sites. The agreement combines the State Water Commission's ASAP program and the Wetland Trust's Efficiency Incentive Program. To date, six tracts are being developed that have the potential of storing approximately 250 acre-feet of water. The cost to the State Water Commission for these sites will be approximately \$15,000.

**DEVILS LAKE -
SWEETWATER/MORRISON
LAKES WATER STORAGE PROJECT
(SWC Project No. 1746)**

In an effort to reduce the amount of runoff entering Devils Lake, the Ramsey County Water Resource District, the Devils Lake Joint Water Resource Board, and the State Water

Commission pursued the reconstruction of a water control structure on Sweetwater/Morrison Lakes. The reconstruction will allow Sweetwater/Morrison Lakes to be held 0.5 feet higher than its normal overflow elevation of 1459 during the summer months. The 0.5 foot rise will store an additional 3,500 acre-feet of water, thus reducing the yearly peak of Devils Lake that normally occurs in June or July. The project will increase the surface area of the lakes, increasing the amount of water lost to evaporation. The new structure will also provide for better water management capabilities, reducing flooding in the Sweetwater/Morrison Lakes area. The total cost of the structure was approximately \$50,000.

Secretary Sprynczynatyk said that in exchange for a five-year water storage agreement, the impacted landowners around the lake were paid a total of \$27,750 from the ASAP program.

**DEVILS LAKE
LANDOWNERS LAWSUIT
(SWC Project No. 416)**

Secretary Sprynczynatyk stated that on May 27, 1999, the State of North Dakota, the State Water Commission, the State Engineer, and the water re-

source districts in the Devils Lake Basin were served with the Complaint of Devils Lake landowners regarding the rise of Devils Lake. The state responded on July 9, 1999 to the Complaint. The landowners are alleging the following causes of action, and are bring 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.

Julie Krenz, Assistant Attorney General, summarized the State of North Dakota's response to the lawsuit filed by the Devils Lake landowners seeking compensation for property damages asking the district court to grant either of two requests:

- 1) Dismiss the case outright because it does not specify or describe the real property the plaintiffs allege that the state and water resource districts damaged.
- 2) If the court does not dismiss the case, then the court should require the plaintiffs to specify which property was damaged, when it was damaged, and if the plaintiffs own or rent the property.

Ms. Krenz reported that after the state's motion was filed, the landowners filed a supplemental notice with the state that included property descriptions of most, but not all of the property owners. They also filed a reply to the state's motion. In their reply, the plaintiffs are alleging that all land between the ordinary high watermark, which they allege is 1426 msl, and the current lake elevation have been damaged. They allege that the description of the property allegedly taken as "property lying above the ordinary high watermark level of Devils Lake" is sufficient to maintain their claim and does not require a more definite statement. The landowners also argue that by requesting that information, the state is trying to shift the burden to the landowners.

Ms. Krenz said the state's position is that it is the landowners who initiated the suit and, therefore, have the burden to identify what property has been "injured" or "taken" and what injury has been

caused by the state's actions, as opposed to mother nature, and the extent and amount of damages. The court set a hearing date on the state's motion for October 13, 1999 in Devils Lake.

**APPROVAL OF REQUEST FOR
EASEMENTS AND DEDICATION
RELEASE FOR MURPHY DAM
IN FOSTER COUNTY
(SWC Project No. 1278)**

A request from John and Tina Murphy, Carrington, ND, was presented for the Commission's consideration to release the easements and dedication concerning a dam located in Foster County. The dam is located in

the SW1/4 of Section 17, Township 145 North, Range 67 West. The second easement is on the NW1/4 of Section 20, Township 145 North, Range 67 West for the property flooded by the dam. The Works Projects Administration (WPA) constructed the dam in or about 1936. The dam failed some time later and has not functioned properly in 50 years, and is no longer of public use. This action would be pursuant to North Dakota Century Code section 61-02-14.1, which states:

"Release of easements - procedure. The commission may, when it deems such action to be in the best interest of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful and will not be reconstructed. Any release executed under the authority of this section shall be in the name of the state of north dakota by the governor and attested by the secretary of state."

Secretary Sprynczynatyk stated that comments have been solicited from the State Historical Society, the North Dakota Department of Health, the North Dakota Game and Fish Department, the North Dakota Parks and Recreation, the North Dakota Land Department, the Longview Township Board, the Foster County Commission, and the Foster County Water Resource District. Responses were received from the State Historical Society, the Land Department, the Longview Township Board, the Foster County Water Resource District, and the Foster County Commission. Secretary Sprynczynatyk said because of these comments and the Commission staff's independent evaluation, it does not appear that the dam has been or will provide public benefits.

Because the Murphy Dam is no longer useful and will not be reconstructed, it was the recommendation of the State Engineer that the State Water Commission approve the release of easements and dedication for the dam.

It was moved by Commissioner Thompson and seconded by Commissioner Hillesland that the State Water Commission approve the release of easements and dedication for the Murphy Dam in Foster County. SEE APPENDIX "J"

Commissioners Bjornson, DeWitz, Hanson, Hillesland, Jeff Olson representing Commissioner Roger Johnson, Olin, Thompson, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.

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

which identified a preferred alternative for the future operation of the Missouri River mainstem reservoir system. As required by the National Environmental Policy Act, the draft EIS was subject to a full public review. In response to the public comments, the Corps agreed to conduct additional technical studies, re-initiate the alternative analysis, and prepare a revised draft EIS. The Corps agreed that the revised draft EIS would present a preferred alternative for public review and comment.

In 1994, the U. S. Army Corps of Engineers circulated a draft Environmental Impact Statement (EIS),

Current efforts of the Missouri River Basin Association and other interest groups have shown considerable progress in regard for the potential for consensus building in the basin. To maximize the potential for consensus building regarding the operation of the reservoir system, the Corps of Engineers elected to prepare and circulate a preliminary revised draft EIS, which did not present a preferred alternative, but presented data on eight alternatives that represent the range of interests in the basin. At its August 13, 1998 meeting, the Commission members were provided the "Summary of the Preliminary Revised Draft Environmental Impact Statement Master Water Control Manual Missouri River", dated August, 1998.

A six-month public coordination period followed the release of the preliminary revised draft EIS, with a series of public workshops held throughout the Missouri River basin. The public workshops were held in North Dakota in September, 1998 at New Town, Williston, Garrison and Bismarck. Informational material, prepared by the Commission staff relative to North Dakota's perspective, was made available at the workshops. The preliminary revised draft EIS is part of the Corps' effort to build consensus to facilitate the identification of a preferred alternative. State agencies developed the official state's position to ensure that North Dakota's interests are considered in the new Master Manual. When a preferred alternative has been identified and the revised draft EIS completed, the Corps of Engineers will hold public hearings throughout the basin.

The Missouri River Basin Association held a conference in Kansas City, Missouri, on December 14 and 15, 1998. Approximately 150 Missouri River constituents participated in the conference to address the Corps of Engineers Master Manual review for the operations of the Missouri River system. The goal of the Missouri River Basin Association was to make a final recommendation to the Corps of Engineers by May 31, 1999. Because of unresolved issues with the downstream states, the Association was unable to provide a final recommendation to the Corps of Engineers by May 31, 1999.

The Missouri River Basin Association met on August 30-31, 1999 in Denver, Colorado. At that meeting, the Association unanimously consented to compromise recommendations for a new management plan for the Missouri River. The recommendations were submitted to the Corps of Engineers on August 31, 1999, which is in the final stages of revising its operating manual for the Missouri River. The recommendations include acquiring and developing additional fish and wildlife habitat along the river system, adjusting flows between the upstream reservoirs to benefit the endangered pallid sturgeon, and retaining more water in the reservoir system during droughts.

Secretary Sprynczynatyk commented that this is a significant achievement for the basin. He said the Association has overcome some longstanding differences and acted in the interests of the basin as a whole. Getting the states to agree on a management plan is in itself a historic event considering the basin's history of conflict and litigation. He commented that although the Missouri River Basin Indian tribes are a part of the Association, they did not vote on the plan that was forwarded to the Corps of Engineers because of their concerns relating to tribal cultural and economic resources. He said the Association will continue its consultations with the tribes on these issues. A memorandum prepared by the Commission staff and the recommendations forwarded to the Corps of Engineers are attached hereto as **APPENDIX "K"**.

Governor Schafer and the State Water Commission expressed their appreciation to the State Engineer and to the staff for their aggressive efforts in this complex issue which resulted in a significant achievement.

**APPROVAL OF RESOLUTION
OF APPRECIATION TO STATE
WATER COMMISSION MEMBER,
MIKE AMES, WILLISTON, ND
(SWC Resolution No. 99-9-484)**

A draft resolution of appreciation to Mike Ames, State Water Commission member, was presented for the Commission's consideration. Mr. Ames served as a member of the State Water Commission from July 1, 1993 to June 30, 1999.

It was moved by Commissioner Olin, seconded by Commissioner Hillesland, and unanimously carried, that Resolution No. 99-9-484, In Appreciation to Mike Ames, State Water Commission Member, be approved. ***SEE APPENDIX "L"***

There being no further business to come before the State Water Commission, the Chairman adjourned the meeting at 4:30 PM.

/S/ Edward T. Schafer
Edward T. Schafer
Governor-Chairman

SEAL

/S/ David A. Sprynczynatyk
David A. Sprynczynatyk
State Engineer, and
Chief Engineer-Secretary