

## MINUTES

### North Dakota State Water Commission Bismarck, North Dakota September 11, 2000

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on September 11, 2000. Governor-Chairman, Edward T. Schafer, called the meeting to order at 9:30 AM, 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  
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  
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **MEMBERS ABSENT:**

Harley Swenson, Member from Bismarck  
Robert Thompson, Member from Page

#### **OTHERS PRESENT:**

State Water Commission Staff  
Approximately 50 people interested in agenda items

The attendance register is on file with the official minutes.

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

#### **CONSIDERATION OF AGENDA**

The following items were added to the agenda: cost share for the city of Grafton Flood Control project; and a request from the North Dakota Department of Health for the allocation of funds from Section 319 of the federal Clean Water Act for watershed projects. The Chairman declared the agenda approved, and requested Secretary Sprynczynatyk to present the agenda.

**CONSIDERATION OF MINUTES  
OF JULY 14, 2000 STATE WATER  
COMMISSION MEETING - APPROVED**

The minutes of the July 14, 2000 State Water Commission meeting were approved by the following motion:

*It was moved by Commissioner Olin, seconded by Commissioner Hillesland, and unanimously carried, that the minutes of the July 14, 2000 State Water Commission meeting be approved, as prepared.*

**FINANCIAL STATEMENT -  
AGENCY PROGRAM BUDGET  
EXPENDITURES**

Dale Frink, Assistant State Engineer, presented and discussed the Program Budget Expenditures for the period ending July 31, 2000, reflecting 54 per-

cent of the 1999-2001 biennium. **SEE APPENDIX "A"**

**FINANCIAL STATEMENT -  
RESOURCES TRUST FUND**

Dale Frink reported the Office of Management and Budget provided an updated estimate of projected oil extrac-

tion revenues for the 1999-2001 biennium in July, 2000. He said the new estimate of \$8,599,277 exceeds the agency's current authorization from the Resources Trust Fund. If this trend continues, the Resources Trust Fund could receive approximately \$3.1 million in excess of the agency's current spending authority for the 1999-2001 biennium. This amount was included in the agency's 2001-2003 budget request as unobligated revenue at the end of the current biennium.

The Projects-Contract Fund spread-sheet, attached hereto as **APPENDIX "B"**, is based on the agency's current authorized funding appropriation from the Resources Trust Fund. The unobligated funds available for project allocation this biennium is \$818,539.

**FINANCIAL STATEMENT -  
2001-2003 BIENNIUM BUDGET**

The State Water Commission submitted its 2001-2003 budget to the Office of Management and Budget. The base

budget is based on 100 percent of the current general fund appropriation. Requests for funds above the base budget are requested as optional adjustments. An agency budget meeting is scheduled for October 2, 2000 with the Office of Management and Budget.

Dale Frink presented and discussed the agency's optional adjustment requests, and explained specific aspects of the budget relating to the Resources Trust Fund, the Water Development Trust Fund, and the agency's maintenance shop replacement.

**STATE WATER MANAGEMENT  
PLAN UPDATE -  
APPROVALS RELATING TO  
COST SHARE POLICY;  
STATEWIDE WATER  
DEVELOPMENT PROGRAM; AND  
PRIORITIZED FUNDING NEEDS  
(SWC Project No. 322)**

In order to maintain the 1999 State Water Management Plan and to meet the requirements of Senate Bill 2188, the draft State Water Management Plan: 2001 Water Development Biennial Report has been completed. Section 10, Statewide Water Development Program-Legislative Intent, of Chapter 535 of the 1999 Legislative Session Laws (Senate Bill 2188) states:

“The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this act are completed.”

The draft report is a culmination of several efforts for water development in the state, and is an update to the 1999 State Water Management Plan that focuses on project needs for the 2001-2003 biennium. Specific areas addressed in the draft report include the State Water Commission’s general concepts for funding, a statewide water development program with project priorities, and priority funding for the 2001-2003 biennial budget. The following summary of each area was extracted from a staff memorandum to the State Water Commission, dated August 29, 2000. The memorandum and the draft report are attached to these minutes as **APPENDIX “C”**:

**General Concept Funding Policy**

Through development of the State Water Management Plan: 2001 Water Development Biennial report, the North Dakota Water Coalition and the State Water Commission staff have identified a potential change for the State Water Commission’s cost share policy for domestic water supply. Federally mandated standards for the level of constituents in drinking water have caused a substantial number of communities to need upgraded water supply systems. This mandate is largely underfunded. The lack of action by the federal government to adequately fund the state’s Municipal, Rural and Industrial Water Supply Program (MR&I) has forced project managers to come to the state for financial assistance in funding these projects.

As a stop-gap measure, the State Water Commission could begin cost sharing up to 65 percent of the cost for domestic water supply projects. The Commission could seek reimbursement of their cost share should federal MR&I dollars be made available. To be eligible for the state cost share, these

projects should be built according to federal MR&I guidelines. This will help ensure that if the MR&I program receives additional funding, the state's investment can be reimbursed. Federal reimbursement of state dollars spent on MR&I type projects has already taken place in North Dakota with money spent on the Southwest Pipeline Project.

For planning purposes, \$15 million has been included in the 2001-2003 biennial budget to cost share on domestic water supply projects. Future funding requirements to meet this cost share policy can be adjusted to appropriate levels by the prioritization process that was developed for the new comprehensive statewide water development program described within the draft report.

### **Statewide Water Development Program**

The State Water Management Plan was evolved into an active program to meet the legislative directive to develop "a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects." A statewide water development program has three main components: identified needs; reliable funding; and a process to match needs to available funding:

#### **Needs Identification:**

The State Water Management Plan contains a database of potential water development needs and projects in the state. The focus of the statewide water development program will be those projects expected to come to the State Water Commission for cost share in the next biennium. An update of the database was initiated earlier this year to ensure the best information possible to begin budgeting for the 2001-2003 biennium and for developing the 2001 Water Development Biennial Report. County water resource districts, county commissions, cities, water managers, the North Dakota Water Coalition members, and project sponsors from the 1999 State Water Management Plan were asked for updated information on projects. The projects these groups identified for the 2001-2003 biennium construction are the starting point for the water development program.

Senate Bill 2188, which directed the creation of a statewide water development program, also listed projects, or phases of projects, to be completed in the next several bienniums. The draft report contains a discussion of the status of these projects. For the 1999-2001 biennium, Senate Bill 2188 specified state funding provisions for the Southwest Pipeline Project, Northwest Area Water Supply Project, Grand Forks flood control, and Devils Lake flood control. Of these projects, the Southwest Pipeline Project and the Grand Forks flood control are on schedule and have used the provided funding. The Northwest Area

Water Supply Project and the Devils Lake flood control project are working for final project approval. A request has been included in the budget to the Legislature to allow their funding provisions to be continued into the 2001-2003 biennium, in addition to the projects already listed for 2001-2003 biennial funding in Senate Bill 2188.

**Funding Sources:**

The second component of a water development program is having reliable, adequate funding. In developing funding scenarios, all expected funds available to the State Water Commission for water development were considered. These include the Resources Trust Fund and the General Fund, as well as the Water Development Trust Fund. The draft report highlights the funding need and shows projected project costs and funding abilities through the year 2050.

**Project/Program Prioritization:**

The last primary component is having a process to match project needs to available funding. Filtering criteria and a prioritization process have been developed to help match limited state dollars to the best projects. Once implemented, projects will be prioritized by using a point system to aid in fair comparison of multi-faceted projects. This process has been developed and will be managed within the framework of the State Water Management Plan.

**Priority Funding For the Next Biennium**

Another effort encompassed by the State Water Management Plan: 2001 Water Development Biennial Report is the biennial water development budget. With the assistance of the North Dakota Water Coalition, the Commission staff identified \$40.84 million of new projects that should receive priority for funding in the next biennium. When combined with the \$31.5 million of projects authorized in Senate Bill 2188, the total equals \$72.34 million. The priority water development needs and expected funding are as follows:

	<b>Federal Costs</b>	<b>State Costs</b>
	<b>(in millions of dollars)</b>	
<b>Prioritized Projects:</b>		
1) Municipal and Rural Water Supply		\$15.00
2) Irrigation (statewide)		3.29
3) General Water Management		5.00
4) Flood Control		5.75
5) Eastern Dakota Water Supply		0.15
6) Devils Lake		4.00
7) Missouri River Management	\$6.7	0
8) Northwest Area Water Supply		0
9) Southwest Pipeline Project		7.30
10) Weather Modification		0.35
<b>Subtotal</b>		<b>\$40.84</b>
Senate Bill 2188 Authorized Projects		\$31.50
<b>Total</b>		<b>\$72.34</b>

**Available Revenues:**

1) Resources Trust Fund	\$12.50
2) Water Development Trust Fund	43.80
3) Bonding (as needed to cover difference)	16.04
<b>Total</b>	<b>\$72.34</b>

Combining all sources of funding available to the State Water Commission for new projects, gives an expected funding capability of \$56.3 million. This assumes the 45 percent of the tobacco settlement revenues will continue to go into the Water Development Trust Fund, and the Water Development Trust Fund will be available for new projects. This leaves a balance of \$16.04 million, which may have to be bonded. Some projects fall behind in their schedule, which results in delayed funding need. If more than \$16 million worth of projects are delayed beyond the 2001-2003 biennium, no bonding will be needed in the biennium. Since the future project status is unknown, legislation will be submitted to the Legislature to allow the State Water Commission to bond for this balance.

Secretary Sprynczynatyk presented the following recommendations for the Commission's consideration:

- 1) the State Water Commission begin cost sharing up to 65 percent of the cost for domestic water supply projects and seek reimbursement of their cost share should federal MR&I dollars be made available. To be eligible for the state cost share, these projects must be built according to federal MR&I guidelines;
- 2) the State Water Commission adopt the prioritization process described in the State Water Management Plan: 2001 Water Development Biennial Report to be managed within the framework of the State Water Management Plan. Full development of the prioritization process and project information gathered will occur simultaneously throughout the next biennium to allow full implementation of the prioritization process before the 2003-2005 biennial budgeting process begins; and
- 3) the State Water Commission approve the \$72.34 million of prioritized funding needs as described in table 9 of the draft report (presented on page 6 of these minutes), which includes \$31.5 million for Senate Bill 2188 projects, \$15 million for MR&I projects, and \$25.84 million for other typically-funded water management projects.

***It was moved by Commissioner Hanson and seconded by Commissioner Olin that the State Water Commission approve the recommendations as presented by the State Engineer relating to the State Water Commission's general concepts for funding, a statewide water development program with project priorities, and priority funding for the 2001-2003 biennial budget as contained in the State Water Management Plan: 2001 Water Development Biennial draft report.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.***

**RURAL FLOOD CONTROL  
DOWNSTREAM IMPACTS  
(SWC Project No. 1053)**

impacts in the recommendation memorandum for all cost share requests for rural flood control projects.

At the July 14, 2000 State Water Commission meeting, the State Engineer and staff were directed to provide an analysis of downstream im-

Secretary Sprynczynatyk stated that in order to provide the information as requested, a letter is being provided to the county water resource districts along the Red River explaining that an analysis of downstream impacts will be required for all future cost share requests for rural flood control projects. The letter will ask for a determination of the change in total runoff volume and the incremental change to the hydrograph for a 10, 25 and 50 year event measured at both the project outlet and immediately downstream on the receiving stream.

Secretary Sprynczynatyk said it will likely be necessary to model not only the project watershed, but also the watershed contributing to the receiving stream. When the receiving stream is the Red River, this will require an extensive modeling effort. He said it is anticipated that the letters will generate a dialogue regarding the most appropriate means of providing the information requested by the Commission.

Recognizing the magnitude of the effort that may be required and the cost to provide such an analysis, Secretary Sprynczynatyk said it is his intent to require this analysis only for those requests received after the July 14, 2000 State Water Commission meeting. At the present time, there are five funding requests pre-dating July 14, 2000.

**APPROVAL OF FUNDING  
THROUGH FLOOD MITIGATION  
ASSISTANCE PROGRAM FOR  
CASS COUNTY ACQUISITION  
PROGRAM; CITY OF DRAYTON  
MITIGATION PLAN; AND  
FARGO MITIGATION PLAN  
(SWC Project Nos. 1896-03 & 1896-02)**

State Water Commission has been designated by the Governor to administer the program. On a federal fiscal year basis, program cost share funding will be available to the State Water Commission based on a formula of flood insurance policies in effect with the state. With the FMA money, the State Water Commission then cost shares in the funding of non-structural flood mitigation plan development and subsequent project implementation.

The National Flood Insurance Program initiated the Flood Mitigation Assistance Program (FMA) as a result of the National Flood Insurance Act of 1994. The purpose of the program is for acquisition of structures meeting the repetitive loss or the substantial loss definitions by the National Flood Insurance Program. The

Secretary Sprynczynatyk explained the following features of the Flood Mitigation Assistance Program:

Technical Assistance Grant - funding to be used by the State Water Commission to help administer the planning grant and the project grant implementation efforts

Planning Grant - funding to a community to develop or update a flood mitigation plan

Project Grant - funding to a community to implement a project based on the recommendations of the flood mitigation plan

Requests were presented for the Commission's consideration for cost share in the eligible costs and the disbursement of federal funds under the Flood Mitigation Assistance Program for the Cass County Acquisition Project, the city of Drayton Mitigation Plan, and the city of Fargo Mitigation Plan:

#### Cass County Acquisition Project:

Fiscal Year 1998 program funds were approved for a non-structural element to Cass County's flood mitigation plan. The next phase of the plan is the project implementation, which is the acquisition of flood damaged structures. Three subdivisions along the Red River south of Fargo have been identified as the highest priority for acquisition.

The estimated project cost is \$292,800, of which cost share arrangements will be 12.5 percent local, or in-kind services (\$36,600), 12.5 percent state (\$36,600), and 75 percent federal funds (\$219,600). Of the \$292,800, the amount of \$256,200 will be paid through the State Water Commission.

#### City of Drayton Mitigation Plan:

The city of Drayton was selected for funding from Fiscal Year 1998 to update an existing non-structural flood hazard mitigation plan dating from 1984. The plan will identify and prioritize structures for acquisition, relocation or demolition; develop maps to identify these property locations; and formalize an incomplete emergency operations plan for the city. The city applied for Fiscal Year 1999 and 2000 program year funding but was not selected as the recipient. Therefore, the city will undertake this plan update based on an abbreviated timeframe using Fiscal Year 1998 unspent money.

The estimated plan update budget is \$8,267, of which cost share arrangements will be 12.5 percent local, or in-kind services (\$1,034), 12.5 percent state (\$1,033), and 75 percent federal funds (\$6,200). Of the \$8,267, the amount of \$7,233 will be paid through the State Water Commission.

City of Fargo Mitigation Plan:

The city of Fargo was selected for funding from Fiscal Year 1999 (\$15,600) and Fiscal Year 2000 (\$14,800) to develop a non-structural flood hazard mitigation plan element emphasizing acquisition. The plan will identify and prioritize structures for acquisition, relocation or demolition; and to develop maps to identify these property locations by street address, subdivision, block and lot.

The non-structural plan update cost share arrangement on the \$30,400 will be 12.5 percent local, or in-kind services (\$3,800), 12.5 percent state (\$3,800), and 75 percent federal funds (\$22,800). Of the \$30,400, the amount of \$26,600 will be paid through the State Water Commission.

It was the recommendation of State Engineer that the State Water Commission approve the following expenditures under the Flood Mitigation Assistance Program:

1) Cass County Acquisition Project:

cost share of 12.5 percent of the eligible costs, not to exceed \$36,600, and the disbursement of federal funds for 75 percent of the eligible costs, not to exceed \$219,600, for a total of \$256,200 obtainable through the Contract Fund, contingent upon the availability of funds.

2) City of Drayton Mitigation Plan:

cost share of 12.5 percent of the eligible costs, not to exceed \$1,033, and the disbursement of federal funds for 75 percent of the eligible costs, not to exceed \$6,200, for a total of \$7,233 obtainable through the Contract Fund, contingent upon the availability of funds.

3) City of Fargo Mitigation Plan:

cost share of 12.5 percent of the eligible costs, not to exceed \$3,800, and the disbursement of federal funds for 75 percent of the eligible costs, not to exceed \$22,800, for a total of \$26,600 obtainable through the Contract Fund, contingent upon the availability of funds.

***It was moved by Commissioner Johnson and seconded by Commissioner Bjornson that the State Water Commission approve the State Engineer's recommendations as presented for the expenditure of federal funds through the Flood Mitigation Assistance Program for the Cass County Acquisition Program, the city of Drayton Mitigation Plan, and the city of Fargo Mitigation Plan. This motion is contingent upon the availability of funds.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.***

**APPROVAL OF REQUEST FROM CITY OF MINOT FOR COST SHARE IN STORMWATER MANAGEMENT PLAN (SWC Project No. 1751-10)**

A request from the city of Minot was presented for the Commission's consideration for cost share in the preparation of the city's stormwater management plan. The plan will enable the city to improve water quality, control non-point pollution, and anticipate regulations. The plan will also improve watershed knowledge, thereby helping eliminate or minimize the risk of stormwater problems and reducing maintenance costs. Hydrologic assessments, flood insurance studies, and floodplain mapping will be completed for five major streams impacting the city that include Puppy Dog Coulee, First Larson Coulee, Second Larson Coulee, Livingston Coulee and Gassman Coulee. Significant development of land adjacent to these streams is occurring and the city feels that completion of the flood insurance studies and the floodplain mapping are needed to assist the city in regulating development of the floodplain of these streams to help minimize future flood damages.

Craig Odenbach, Regulatory Section of the State Water Commission's Water Development Division, presented the request. The hydrologic watershed analysis obtained through this project will be used to update the existing State Water Commission studies for Puppy Dog Coulee and First and Second Larson Coulees, and independent studies will be performed for Livingston and Gassman Coulees. Detailed elevation studies for all five coulees will be undertaken, with the results submitted to FEMA for revisions to existing flood insurance rate maps and incorporation into the city's GIS system.

The total estimated cost of these tasks is \$166,100. The city has requested that the State Water Commission cost share in one-third of the costs of this project, with the remaining costs to be split between the city of Minot and Ward county. The request before the State Water Commission is to cost share in the amount of \$55,400.

It was the recommendation of the State Engineer that the State Water Commission approve cost share in one-third of the eligible costs, not to exceed \$55,400 from the Contract Fund in the 1999-2001 biennium, in the preparation of the city of Minot's stormwater management plan, contingent upon the availability of funds.

***It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission approve cost share of one-third of the eligible costs, not to exceed \$55,400 from the Contract Fund in the 1999-2001 biennium, in the preparation of the city of Minot's stormwater management plan. This motion is contingent upon the availability of funds.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, 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 UPPER TURTLE RIVER WATERSHED DAMS 5, 6, 7 AND 9 (SWC Project Nos. 465, 688 & 985)**

A request from the Grand Forks County Water Resource District was presented for the Commission's consideration for cost share in the emergency repair of dams and channels located in the Upper Turtle River watershed. Damage occurred to these

structures during an extreme rainfall event on June 12, 2000.

Craig Odenbach presented the request. Included in the project are the Upper Turtle River Dams 5, 6, 7 and 9. The proposed repairs to Dam 5 include repairing the eroded areas on the downstream embankment face and in the emergency spillway; and erosion to the emergency spillway outlet downstream of Dam 6 will be repaired. The emergency outlet for Dam 7 will be modified to create a flatter slope and reseeded, and downstream sediment deposition will be removed. The emergency outlet for Dam 9 will be modified to a flatter slope and reseeded, and a new pipe drop structure will be installed.

The total estimated project cost of the repairs is \$415,000, of which \$86,250 is considered eligible for a 50 percent cost share. Under the State Water Commission's cost share policy, maintenance required as a result of an unusual climatological event can be considered as eligible for state cost participation. The request before the State Water Commission is to cost share in the amount of \$43,125.

It was the recommendation of the State Engineer that the State Water Commission approve cost share of 50 percent of the eligible items, not to exceed \$43,125 from the Contract Fund in the 1999-2001 biennium, for the emergency repairs to Upper Turtle River Dams 5, 6, 7 and 9, contingent upon the availability of funds.

***It was moved by Commissioner Hillesland and seconded by Commissioner Johnson that the State Water Commission approve cost share of 50 percent of the eligible items, not to exceed \$43,125 from the Contract Fund in the 1999-2001 biennium, for emergency repairs to the Upper Turtle River Watershed Dams 5, 6, 7 and 9 in Grand Forks county. This motion is contingent upon the availability of funds.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.***

**APPROVAL OF REQUEST FROM  
SHEYENNE RIVER JOINT WATER  
RESOURCE DISTRICT FOR  
ADDITIONAL COST SHARE FOR**

**THE BALDHILL DAM FLOOD  
POOL RAISE  
(SWC Project No. 300)**

On December 10, 1999, the State Water Commission passed a motion approving the expenditure of \$250,000 from the Contract Fund in the 1999-

2001 biennium for the Baldhill Dam flood pool raise. The Commission also passed a resolution indicating its intent to provide a 50 percent cost share of the eligible non-federal items.

Dale Frink explained the project, and presented a request from the Sheyenne River Joint Water Resource Board for additional cost share in the 1999-2001 biennium. The non-federal funding required this biennium is \$699,000, with the State Water Commission's 50 percent share being \$349,500. The \$250,000 Commission approval was based on the funds considered available in December, 1999. Mr. Frink said higher oil prices have since raised the revenues into the Resources Trust Fund to a point where the entire \$349,500 can be supported this biennium.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$99,500 from the Contract Fund in the 1999-2001 biennium for the Baldhill Dam flood pool raise. Affirmative action by the Commission would increase the non-federal cost share to \$349,500.

***It was moved by Commissioner Johnson and seconded by Commissioner DeWitz that the State Water Commission approve an additional \$99,500 from the Contract Fund in the 1999-2001 biennium for the Baldhill Dam flood pool raise. This motion is contingent upon the availability of funds.***

***This action increases the State Water Commission's cost share to \$349,500 from the Contract Fund in the 1999-2001 biennium for the project.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.***

**APPROVAL OF REQUEST FROM  
SOUTHEAST CASS WATER  
RESOURCE DISTRICT FOR COST  
SHARE ON CASS COUNTY DRAIN  
NO. 27 IMPROVEMENT PROJECT  
(SWC Project No. 1080)**

A request from the Southeast Cass Water Resource District was presented for the Commission's consideration for cost share on the Cass County Drain No. 27 improvement project.

Craig Odenbach presented the project which entails deepening the existing channel approximately 3 feet, widening the bottom width to 16 feet, increasing the grade slope to .049 percent, and flattening the side slopes to 5 to 1. The spoil banks will be designed as containment levees. The project location is from 45th Street SW east to Interstate Highway No. 29 in southwest Fargo. The drain's outlet is into the Rose Coulee. The stated purpose of the drain is "to support municipal development west of Interstate Highway No. 29."

The engineer's cost estimate is \$936,974, of which \$750,260 is considered eligible for a 35 percent cost share. Under the State Water Commission's policy and guidelines for rural flood control/drainage projects, 35 percent of the eligible costs qualify for cost share.

The Natural Resources Conservation Service designed rural agricultural drains to an M-curve criteria. M-curve criteria is estimated to be approximately a 10-year event. This is the design the NRCS used for reconstructing the drain in 1967. For this drain, that design resulted in a 12-foot bottom width, .02 percent bottom slope, side slopes 3 to 1, and a maximum capacity of 293 cubic feet per second. Mr. Odenbach explained that any work done to bring the drain back to its original design could be considered maintenance. Any design exceeding the M-curve criteria is above and beyond the capacity normally provided for rural agricultural drains and he said, in this case, is clearly for urban development. The apparent design is in excess of the 100-year event.

Both the district and the city of Fargo stated this project is to support municipal development west of Interstate Highway No. 29. The drain permit application submitted by the city also indicates this is a municipal assessment drain. Secretary Sprynczynatyk said that traditionally the State Water Commission cost shares only in rural agricultural drains and has not normally participated in urban drainage. He said the primary purpose of this project appears to be urban drainage and recommended the State Water Commission not cost share in urban drainage.

Secretary Sprynczynatyk explained that although the primary purpose of this phase of the project is for urban development, the majority of the watershed for the project is the agricultural lands to the west of this phase of the project. Without doing an extensive effort of cost comparisons of pro-rate costs based on capacity, it would be appropriate for the Commission to consider cost share in 10 percent of the eligible costs, since the normal agricultural design is a 10-year event compared to the design for this project being more than a 100-year event. Thus, the request before the State Water Commission is to cost share in 10 percent of the eligible costs in an amount of \$26,260.

Mark Bittner, Fargo city engineer, provided technical information to support the cost share request. He explained the benefits to the upstream area and to the city that could result from the project, and requested the Commission's favorable consideration of the request.

It was the recommendation of the State Engineer that the State Water Commission approve cost share in the Cass County Drain No. 27 improvement project based upon a 10 percent share of the normal 35 percent share of the eligible costs, not to exceed \$26,260 from the Contract Fund in the 1999-2001 biennium, and contingent upon the availability of funds.

***It was moved by Commissioner Olin and seconded by Commissioner Bjornson that the State Water Commission approve cost share in the Cass County Drain No. 27 improvement project based upon a 10 percent share of the normal 35 percent share of the eligible costs, not to exceed \$26,260 from the Contract Fund in the 1999-2001 biennium. This motion is contingent upon the availability of funds.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.***

**APPROVAL OF NON-FEDERAL FUNDS FOR CITY OF GRAFTON FLOOD CONTROL PROJECT UNDER AUTHORITY OF 1999 SENATE BILL 2188 (SWC Project No. 1771)**

The city of Grafton is located in Walsh county along the Park River. The city is very flood prone with nearly 90 percent of the city within the 100-year floodplain. The Corps of Engineers completed a feasibility study in 1983 of a levee project to pro-

tect the city, which was not implemented mainly due to the high non-federal cost requirement. As a result, the Grafton Flood Control project was included in the 1999 Senate bill 2188, which provides up to 50 percent state funds for the non-federal share. The most recent cost estimate is approximately \$28 million, with a 35 percent non-federal share. 1999 Senate Bill 2188 provides up to \$4.8 million of state funds.

Secretary Sprynczynatyk explained that because the feasibility study is nearly 17 years old, the Corps of Engineers must complete a General Re-evaluation Report before proceeding into the design and construction. This one-year effort will require \$333,000 of non-federal funds. The city of Grafton has requested a 50 percent cost share as a part of 1999 Senate Bill 2188, in the amount of \$167,000. Construction on the project is scheduled to begin in late 2002, with completion in 2005.

North Dakota Century Code 61-02.1-01(5) authorizes the State Water Commission to issue bonds for flood control projects "authorized and funded in part by the federal government." Secretary Sprynczynatyk explained that each flood control project, under the authority of 1999 Senate Bill 2188, has additional requirements that must be met before bonds may be issued. For the Grafton Flood Control project to qualify, 70 percent of the land within the boundaries of the city must be located within the 100-year floodplain, the Corps of Engineers must have issued its approval of the flood control reduction project, and the project must receive the appropriation of federal funds.

It was the recommendation of the State Engineer that the State Water Commission approve \$167,000 of the non-federal funds for the Grafton Flood Control project under the authority of 1999 Senate Bill 2188, contingent upon the city of Grafton satisfying all of the legislative requirements of 1999 Senate Bill 2188.

***It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission approve \$167,000 of the non-federal funds for the Grafton Flood Control project under the authority of 1999 Senate Bill 2188. This motion is contingent upon the city of Grafton satisfying all of the legislative requirements of 1999 Senate Bill 2188.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, 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 recent moderate rains in the basin have kept Devils Lake from decreasing in elevation. This is primarily due to the fact that precipitation and inflows are approximately equaling evaporation. The current elevation of Devils Lake is 1446.0 feet msl. At this elevation, the lake covers 118,000 acres and is storing 2.3 million acre-feet of water. The elevation is approximately one foot lower than it was a year ago when it peaked at an elevation of 1447.1. This reduction over the past year is primarily due to the dry weather Devils Lake experienced between September of last year and June of this year. More recently, rains have refilled storage in the basin, which could be a problem next spring if things do not dry up before winter.

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

Devils Lake downstream awareness meetings were held on August 22 and 23 in four cities in eastern North Dakota. The meetings were held to inform citizens that reside downstream from Devils Lake along the Sheyenne and Red Rivers of the flooding situation at Devils Lake, and what the state's intentions are to provide flood relief. The meetings also included discussion of the recent studies being done by the U.S. Geological Survey, the State Water Commission, and the Regional Weather Information Center on the climatology and potential effects of an emergency outlet for Devils Lake. The fact sheets explaining this study and its findings were distributed at the meetings. The meetings were well attended and overall received considerable media coverage.

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

**Corps of Engineers Permanent Emergency Outlet:**

The Corps of Engineers recently received \$2 million as a supplemental appropriation for preconstruction engineering and design for a permanent outlet for Devils Lake. These funds will be used for data collection and evaluation of the environmental impact statement. Examples of the work include: evaluation of alternatives, further evaluation of upper basin storage, detailed mapping of the entire Sheyenne River, ground water monitoring, vegetation inventories, cultural feature inventory, and supplementary hydraulic modeling. The Peterson Coulee outlet, for which the Corps has completed a design, will be held in abeyance until the alternative evaluation is completed.

Funds for the next fiscal year are still uncertain, but if the preconstruction engineering and design funding is provided, it may be used to develop detailed design of the selected alternative that has a high level of certainty of being implemented. Construction of that feature will proceed only if flood conditions continue to exist, all legal requirements have been met, and the Record of Decision supports construction and operation.

**Stump Lake Channel:**

The Corps of Engineers regulatory office has not made a decision on the 404 permit for the state's proposed project. The Commission staff has met on numerous occasions with the Corps regarding this permit, and the Corps has indicated they are developing a compromise operating plan that would enable them to issue a permit. The Corps would not describe this operating plan, but any substantial reduction in flood control benefits from the existing compromise operating plan would likely render the project infeasible.

**Twin Lakes Temporary Emergency Outlet:**

The draft wetland delineation report was received on August 25, 2000, and is currently being reviewed by the Commission staff. As was reported at the July 14, 2000 Commission meeting, the wetland delineation report resulted in some shifts to the alignment, and it is not expected that the report will cause any additional changes.

The proposed route will require excavation in a wetland. While this does not require a Section 404 permit, as no fill material will be placed in a wetland, it may result in a challenge to the Tulloch decision, which was the U.S. Circuit Court of Appeals ruling for the District of Columbia that incidental fallback during excavation did not require a permit.

The cultural resource field survey is scheduled for mid-September depending on other work being done by the University of North Dakota, the consultant for the survey. The Department of Transportation has been assisting with coordination of the survey with the Spirit Lake Nation. This work may result in further changes to the alignment. If the alignment is changed due to the cultural resource survey, additional wetland delineation work will be required. In addition, other engineering and technical service may need to be contracted.

An application to drain is being prepared, which is a legal requirement to drain a meandered lake. Both Devils Lake and Twin Lakes are meandered and will need to be addressed in this permit.

To date, no action has been taken to secure easements for the project. In discussions to obtain right-of-entry for the field work, landowners have voiced objections to the project. Although the landowners have been cooperative, some have indicated they will not willing sell the land for an easement for this project. If condemnation is necessary, it will take between 6 and 18 months. The land could be acquired more quickly if the Legislature granted the State Water Commission "quick take" authority for this project. To begin the process of acquiring land rights, options for the easements should be negotiated with the landowners.

It was recommended by the State Engineer that the State Water Commission approve the expenditure of \$75,000 from the Contract Fund in the 1999-2001 biennium for engineering design, other technical services, and to secure options for the land rights necessary to construct the Twin Lakes emergency outlet from Devils Lake to the Sheyenne River, contingent upon the availability of funds.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the expenditure of \$75,000 from the Contract Fund in the 1999-2001 biennium for engineering design, other technical services, and to secure options for the land rights necessary to construct the Twin Lakes emergency outlet from Devils Lake to the Sheyenne River. This motion is contingent upon the availability of funds.***

***Commissioners Bjornson, DeWitz, Hanson, Hillesland, Johnson, Olin, and Chairman Schafer voted aye. There were no nay votes. The Chairman announced the motion unanimously carried.***

Gordon Berg, Devils Lake, North Dakota, appeared before the State Water Commission to address the Devils Lake issues. Mr. Berg also provided comments relative to the history of rural flood control/drainage in eastern North Dakota and the efforts presently being pursued; and alluded to the Garrison Diversion Project/Dakota Water Resources Act. Mr. Berg emphasized the state needs to do everything possible to get the federal agencies to work together on statewide projects.

Commissioner Roger Johnson left the meeting, and was then represented by Jeff Olson, Department of Agriculture.

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

The Available Storage Acreage Program (ASAP) was started in 1996 to provide compensation for landowners who would store water on their land rather than allow it to runoff into Devils

Lake. The program was initiated as a temporary emergency program to provide flood relief for Devils Lake and remained funded through 1999. In 1999, the State Water Commission and the North Dakota Wetlands Trust offered contracts to four landowners to store water under a 10-year joint program. On April 10, 2000, the State Water Commission passed a motion for the reallocation of the 1999 carry-over Available Storage Acreage Program funds of approximately \$120,000 to implement a long-term ASAP program in cooperation with the Devils Lake Basin Joint Water Resource Board. The name of the cooperative program was changed to the Extended Storage Acreage Program (ESAP).

Under ESAP, the State Water Commission and the Joint Board will enter into agreements with the landowners for 10-year water storage contracts. The contracts will have a maximum payment rate of \$40 per water storage acre. No compensation for upland acreage is provided. Once the contracts are in place, the carry-over 1999 ASAP funds will be turned over to the Joint Board, who will annually inspect the sites and make yearly payments to the landowners.

The ESAP program is currently in the process of finalizing the 2000 contracts. An estimated 800 acre-feet of annual storage, costing just over \$13,000 per year, will be provided by the program. Any remaining funds after the program is completed will be used by the Devils Lake Joint Water Resource Board to help carry out the Basin Water Management Plan.

Secretary Sprynczynatyk reported that seven out of the eight contracts have been signed. The eighth participant is reluctant to sign because only three out of the four federal agencies have signed a wetland statement, which is part of the contract. The wetland statement clarifies federal law governing the created temporary water storage sites. The Environmental Protection Agency, the Natural Resources Conservation Service and the U.S. Fish and Wildlife Service have signed the statement, but the Corps of Engineers Regulatory office has been reluctant to sign the statement. Secretary Sprynczynatyk stated that if the Corps continues to delay the process, the contract could be amended to state that the Corps' signature is no longer necessary. This would allow the program to proceed and administer the funds to the Joint Water Resource Board. He stated the amendment also indicates that state assistance will be offered in the event any difficulty is encountered in an attempt to restore these areas to pre-storage condition.

**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) was heard before the U.S. House of Representatives Committee on Resources, Subcommittee on Water and Power, on September 30, 1999.

The concerns that were expressed by the environmental groups, the Canadian government, and the states of Minnesota and Missouri relating to the Dakota Water Resources Act were discussed. The efforts being pursued to resolve the differences included a workshop held on May 15, 2000 in Washington, DC with the appropriate parties from the State of Missouri. Although no final decisions were reached, the group agreed to a concept, subject to the development of acceptable language and all parties being able to get concurrence from constituencies in their respective state.

Secretary Sprynczynatyk reported discussions at the staff level indicate that the State of Missouri is now ready to proceed with the amendment to the Dakota Water Resources Act which, hopefully, will clear the way for its passage on the Senate side. He also reported that negotiations continue with the House Resources Subcommittee staff on the Dakota Water Resources Act and, hopefully, those efforts will be successful for full committee mark-up on September 27, 2000.

**GARRISON DIVERSION PROJECT -  
MR&I WATER SUPPLY PROGRAM;  
MR&I COMMITTEE REPORT; AND  
APPROVAL OF REVISED MR&I  
FISCAL YEARS 2000-2001 BUDGETS  
(SWC Project No. 237-03)**

Jeffrey Mattern, Coordinator for the MR&I Water Supply program, provided the following program status and report from the MR&I committee meeting held on August 24, 2000:

**All Seasons Rural Water System 5 (Pierce County):** The new rural water system would serve 263 rural users and Willow City. The estimated project cost is \$6.1 million. The rural monthly minimum would be \$48.50, with \$4.50 per 1,000 gallons. The Bureau of Reclamation is working on the environmental assessment. The project was scheduled to begin in the fall of 2000, based on receiving a bulk water supply from the city of Rugby. The city of Rugby was planning on supplying System 5 with a bulk water supply based on receiving an additional water appropriation from the Pleasant Lake aquifer. Rugby did not receive additional water and is in the process of reviewing a new location for additional water allocation. System 5 would be funded with Fiscal Year 2001 funds instead of Fiscal Year 2000 MR&I funding.

**Glenfield Water Supply/Storage:** A report was provided on the city of Glenfield's water supply problems. The ground shifted and sand started to enter the existing well, and a new liner was not an option. FEMA funding was obtained to install a new eight-inch well at a depth of 205 feet. The well is not connected and needs to be tested. The water is from the New Rockford aquifer and is considered hard. The city does not have a pressure system, but has several small pressure tanks which have bladders that do not last long due to the poor water quality. The city relies on the well pump to cycle on and off to supply pressure for the distribution system. This cycling reduces the overall life of the well pump and requires a well pump of 25 horsepower instead of 5 horsepower. The cost for the city to install a reservoir and high service pumps to fix the pressure problem is \$46,500. An engineer is doing the design for \$5,000 to \$7,000. The city has 65 users including households, businesses, and the junior/senior high school.

It was recommended by the State Engineer and the Conservancy District Manager that \$30,225, in the form of a 65 percent MR&I grant, be given toward Glenfield's water storage problem. The overall plan is to bring a new water supply from Ramsey Rural Water to Glenfield at some future date. The new storage system would be required by Ramsey to provide bulk water supply to Glenfield.

**McKenzie Rural Water:** In 1995, the McKenzie County Water Resource District identified the water needs in McKenzie County. The county covers 70 by 60 miles. The initial project was for 125 users, but had a cost of \$12 million. Since that time, the area has been studied three times and paid with local funding. The proposed service area is around Watford City and covers seven miles south, two miles north, two miles east, and fifteen miles west to Alexander. The project would serve 215 rural users, with a cost of \$1.7 million, and an additional \$600,000 to serve the city of Alexander.

The project has been submitted to the Drinking Water State Revolving Fund and is in the State Water Plan. The project needs MR&I funding assistance for completing the feasibility study. It is felt that 75 percent of the users would sign-up for water if it is funded. The initial sign-up mailing received 55 users, and people were willing to pay \$45.00 per month minimum. During the oil boom years, Watford City expanded their water treatment plant and has capacity to serve the proposed rural system, plus 25 percent extra capacities. Watford City is willing to sell water at \$1.00 per 1,000 gallons and do the rural water billing.

**Northwest Area Water Supply, Phase I (Rugby Component):** The upgrade of the Rugby water treatment plant has been completed. The next component for the Rugby water project is the installation of a new water transmission pipeline which matches the capacity of the water treatment plant. The request for additional water allocation from the Pleasant Lake

aquifer may come from a different location than the current well field. A new location would require an additional pipeline. The pipeline design will be finalized and the proposed MR&I grant of \$805,000 will be reviewed after the water permit process is completed.

**Ramsey County Rural Water:** The proposed expansion covers portions of Eddy, Foster and Ramsey counties. An engineering review was made of the service area involving the Stutsman Rural Water District in Foster county and the potential for Carrington to provide bulk water service to the rural users surrounding Carrington. The review showed 12 users could be served from the existing Stutsman system, and 101 users could be served from Carrington. The remaining 247 users in Eddy and Foster counties would be served by Ramsey's existing water treatment plant. Service includes Glenfield, Grace City, and McHenry. Sheyenne has the potential to be served from New Rockford. There are 40 rural users located in the existing rural system in Ramsey county. The estimated cost is \$8.1 to \$8.6 million.

**Ransom-Sargent Rural Water:** The total estimated project cost is \$20 million and would serve 800 rural users and the communities of Cogswell, Elliott, Fingal and Marion. The 2000 project phase includes adding rural users in the core service area around Lisbon, with an estimated cost of \$10 million. The final phase involves a water treatment plant expansion in Lisbon, a new well field, and a raw water transmission pipeline with an estimated cost of \$7 million. The total proposed MR&I funding allocation is \$14.3 million. The allocation included, if needed, \$1.3 million adjustment to the MR&I funding to help keep the monthly minimum cost to \$45.00. The proposed allocation of \$7,832,250 brings the total MR&I funding to \$13,985,975.

Secretary Sprynczynatyk presented the following breakdown for the revised proposed funding budget for Fiscal Year 2000 and the proposed budget for Fiscal Year 2001 MR&I Water Supply program for the Commission's consideration:

Project	Activity	FY 2000	FY 2001	
		Approved	Proposed	Proposed
All Seasons System IV	D&C	\$ 2,600,000	\$ 2,600,000	\$ 0
All Seasons System V (Pierce) and Ransom-Sargent Rural	D&C	3,522,750	7,855,000	0
NAWS - Rugby	D&C	0	0	805,000
All Seasons System V (Pierce)	D&C	0	0	3,500,000
Ransom-Sargent Rural	D&C	3,000,000	0	0
Glenfield Water Storage	D&C	0	0	30,225
Stutsman Water District (Ramsey)	F	50,000	50,000	0
McKenzie Rural Water	F	0	0	32,500
Other		807,250	0	1,832,275
Administration		300,000	94,153	300,000
<b>Total</b>		<b>\$10,280,000</b>	<b>\$10,599,153</b>	<b>\$6,500,000</b>

F Feasibility Study  
D Design  
C Construction

It was the recommendation of the State Engineer that the State Water Commission approve the revised proposed \$10.599 million Fiscal Year 2000 and the proposed \$6.5 million Fiscal Year 2001 MR&I Water Supply program budgets as presented, contingent upon the availability of federal funds and subject to future revisions. The Fiscal Year 2000 revised budget includes the requests from All Seasons and Ransom-Sargent, and was approved by the MR&I committee with the State Engineer and the Conservancy District Manager authorized to make the funds available as the project needs develop. The MR&I committee also approved the proposed Fiscal Year 2001 MR&I budget as presented.

***It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission approve the recommendation of the State Engineer of the revised proposed \$10.599 million Fiscal Year 2000, and the proposed \$6.5 million 2001 MR&I Water Supply program budgets as presented. This motion is contingent upon the availability of federal funds and subject to future revisions.***

*Commissioners Bjornson, DeWitz, Hanson, Hillesland, Olin, Jeff Olson representing Commissioner Johnson, 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:

**Contract 2-6B - Burt Service Area, Main Transmission Pipeline:** The contractor, Northern Improvement Company, has installed approximately 43 miles out of a total of about 45.9 miles on the contract. The pipeline has been installed from Mott to New Leipzig and Elgin. The contractor has installed about 7 1/2 miles of pipeline east of Elgin with about 2 miles left to install to Carson. The contract has the following intermediate completion dates: service to New Leipzig by September 15, 2000; service to Elgin by October 15, 2000; and service to Carson by November 30, 2000. The final completion date for the contract is January 14, 2001.

Water service contracts with the cities require a letter from the State Water Commission notifying the cities of the availability of water through the project within 90 days. Letters were sent to New Leipzig and Elgin on August 8 and to Carson on August 29. The cities are being given the opportunity to begin receiving service before the 90-day period expires, subject to the availability of water. New Leipzig has decided to take water from the project on November 1, and Elgin on October 2. Carson decided to take the water as soon as it is available, which could be provided by October 1, 2000.

**Contract 5-6 - Burt Tank:** The prefinal inspection of this contract was held on August 18, 2000. This contract is essentially complete with the exception of some administrative items and minor site work. The completion date of this contract was September 2, 2000.

**Contract 5-14 - Hebron Reservoir:** The prefinal inspection of this contract was held on August 18, 2000. The contract is essentially complete with the exception of some administrative items. The completion date for this contract was August 26, 2000.

**Contract 7-3B/7-5B - Rural Water Distribution System, Southeast Jung Lake and South Hebron Pocket Areas:** This contract totals about 112 miles of pipeline serving about 60 rural service connections in two pockets of users.

The South Hebron pocket has been completed with the exception of the underground booster pump station. Twenty-four (24) users were turned over to the Southwest Water Authority for service on August 21, 2000.

In the Southeast Jung Lake pocket, all of the pipeline has been installed and tested for leaks. The contractor is flushing the lines and testing them for bacterial contamination. On August 29, 2000, 37 of the 40 users were turned over to the Southwest Water Authority for service.

This contract has an intermediate completion date of August 1, 2000 for the 24 hookups in the South Hebron pocket, and a substantial completion date of September 1, 2000 for the 40 hookups in the Southeast Jung Lake pocket. Final completion is required by October 16, 2000.

**Contract 7-6A - Rural Distribution System, Burt Service Area:** This contract was awarded on June 9, 2000 to Northern Improvement Company, which includes approximately 235 miles of pipeline serving about 167 service connections. The contract had an intermediate completion date of August 20, 2000 for 40 users in the vicinity of Elgin, and a substantial completion date of July 1, 2001 for the remaining users. The interim completion date passed without service to any users, but it is anticipated that a number of users will be turned over to the Southwest Water Authority when the main transmission pipeline comes into service and the water is available to Elgin and New Leipzig.

It was necessary to use "quick take" condemnation for seven parcels of land on this contract. In all cases, these landowners were not signed up to receive water and objected to giving rural water easements without compensation. To date, none of the affected landowners have appealed the condemnations.

**Contract 7-6B - Coffin Buttes Service Area, Rural Distribution System:** Contract 7-6B was originally named the Plum Butte service area. The name was changed to the Coffin Buttes service area because of the location of the tank on the coffin buttes.

This contract is scheduled for construction in 2001 as the third and final portion constructed under the Mott-Elgin phase of the Southwest Pipeline Project. The proposed funding for this contract totals \$3 million and consists of \$500,000 from the previously approved \$1.5 million loan through the State Revolving Loan Program, a \$500,000 loan from USDA, Rural Development, and a \$2 million grant from USDA, Rural Development.

At the July 14, 2000 State Water Commission meeting, it was reported that there were 103 users signed up in this service area. Some of these users signed up for water several years ago and have not been heard from recently. All of the users were contacted by the Southwest Water Authority and asked if they were still interested in receiving water from the project. A substantial number of these users contacted decided that they no longer wanted the water. This development affected the feasibility of serving several of the high cost pockets previously identified.

At this point in the final design process, service is being planned to a total of 73 users in a "core" area of 54 users, and two higher cost pockets of 13 and 5 users each. It is intended to have the two pockets on an alternate bid schedule, which is anticipated in mid-November depending on USDA, Rural Development funding. It is possible that neither of the pockets nor the "core" area will meet the project's feasibility criteria.

**NORTH DAKOTA RURAL WATER  
FINANCE CORPORATION  
(SWC File No. AOC/RUR)  
(SWC Project No. 1736)**

The North Dakota Rural Water Finance Corporation (NDRWFC) was created in December, 1998 by the North Dakota Rural Water Systems Association. The purpose of the corpo-

ration is to assist communities in obtaining competitive interim financing for construction projects.

Dave Koland, Executive Program Director for the North Dakota Rural Water Systems Association, appeared before the State Water Commission to explain the program. In an effort to assist borrowers across the state with the overwhelming burden of financing capital construction projects, the corporation, in conjunction with Kirkpatrick Pettis, created an interim construction loan program to provide funding for communities which have received a permanent loan commitment from the USDA, Rural Development. The program is structured to provide a mechanism for obtaining competitive fixed rate loans for construction projects at a low cost of borrowing. The program is designed as tax-exempt pooled financing and will have up to a 15-month loan term. The corporation will be the program administrator.

The stated, or nominal, loan rate is fixed at the market level. Loan funds are disbursed on an invoice requisition basis. The effective rate of borrowing is based on the nominal loan rate less an interest earnings credit on undisbursed construction proceeds. The effective rate of interest on the funds is estimated at approximately 3 percent depending on the actual timing of disbursements.

Mr. Koland explained that the final loan rate will be based on the residual earnings of the program. Depending on the success of the program, the potential for a final rebate does exist, but is not guaranteed. Should excess funds exist after the closing of the program, a final rebate will be made to program participants. Any potential rebate will lower the effective cost of funds to the borrower.

Secretary Sprynczynatyk stated there could be a potential opportunity through this program to save money on the Southwest Pipeline Project where USDA, Rural Development funds are being used. He said it is his intent, unless there is objection from the Commission, to pursue a review of the program by the Commission's Assistant Attorney General to determine the Commission's legal authority.

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

The United States Section of the Garrison Consultative Group met in Denver, Colorado on August 11, 1999.

Representatives of the Department of the Interior, the Environmental Protection Agency, and the Department of State agreed to conduct a biota transfer risk analysis for the Northwest Area Water Supply Project. The Bureau of Reclamation agreed to provide funding for the analysis.

James Lennington reported the Comparative Risk Analysis report for NAWS was received in July, 2000. This report provides supporting documentation to the Department of the Interior, the Environmental Protection Agency, and the Department of State in their determination of whether the project will meet the requirements of the Boundary Waters Treaty of 1909. The report confirms the state's position that the risk of biota transfer due to the NAWS project is minimal when compared to the "background" risk. This determination is required by the 1986 Garrison Diversion Reformulation Act and is the final step, along with the concurrent signing of the Finding of No Significant Impact (FONSI) by the Department of the Interior in the NEPA process for NAWS.

The Department of the Interior held several meetings in Washington, DC in the past month to discuss the project and the approval process. The Department is currently developing a concurrence document to be sign by the Department, the Environmental Protection Agency and the Department of State for the project. This letter is due to be completed and transmitted by the end of September. If the NEPA process is successfully completed, the project can formally be submitted to the Government of Canada through a diplomatic note. If this process is successful, advertisement for the construction bids on the first phase of the pipeline to Minot could take place late this fall.

## **2001 LEGISLATION**

Secretary Sprynczynatyk provided the following summary of proposed legislation being discussed at the staff level for introduction during the 2001 legislative session. Bill drafts are attached to these minutes as **APPENDIX "D"**.

### **Technical Amendments to 1999 Senate Bill 2188:**

- 1999 Senate Bill 2188 established the statewide water development goals and authorized the issuance of bonds for a Devils Lake outlet and various flood control projects. The technical amendments will address issues such as ensuring that interest on the money in the Water Development Trust Fund remains in the fund and that any repayment from South Dakota for the Perkins county water system will be deposited in the Water Development Trust Fund.
- The bill will remove some of the requirements for federal participation in the Devils Lake outlet so that bonds can be issued for a state constructed outlet.
- The bill proposes that the bill give the State Water Commission "quick take" authority to acquire the interests needed to construct a Devils Lake outlet. The Commission currently has "quick take" authority to acquire the interests needed for the Southwest Pipeline Project and the Northwest Area Water Supply Project.

### **Southwest Pipeline Project:**

- A bill increasing the amount of bonds that can be issued for the Southwest Pipeline Project. Currently, the Commission is limited to issuing \$15 million in bonds. Upon completion of the Mott-Elgin phase, bonds issued for the project will be approximately \$13.73 million. The bill proposes to raise the amount that could be bonded to \$25 million, if the revenues from the system can support that amount.

### **Delivery of Water to Eastern North Dakota:**

- A bill authorizing the development of a plan and estimate of costs for the delivery of water to eastern North Dakota. The bill would appropriate \$150,000 for the plan, which has been recommended by the North Dakota Water Coalition.
- The money has been included in the State Engineer's recommendation for the 2001-2003 Water Development Program. The study would be similar to what was done prior to the authorization of the Southwest Pipeline Project and the Northwest Area Water Supply Project.

Secretary Sprynczynatyk explained that the authority of the Commission to issue bonds for Devils Lake and the various flood control projects specified in 1999 Senate Bill 2188 will sunset on June 30, 2001. The bill authorizes the Commission to issue \$84.8 million in bonds. The Commission has issued \$27 million in bonds for the Grand Forks Flood Control project. A request to extend the sunset clause was included in the agency's appropriation bill.

Secretary Sprynczynatyk said it is also intended to request the Office of Management and Budget to include in the Commission's appropriation bill language authorizing the Commission to sell the current shop building and the land it is located on, and use the funds from that sale to purchase land and construct a new shop building.

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

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

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.

Efforts of the Missouri River Basin Association and other interest groups indicated 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.

In August, 1999, the Missouri River Basin Association unanimously consented to draft compromise recommendations for a new management plan for the Missouri River. The draft recommendations were submitted to the Corps of Engineers, which included 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.

At the State Water Commission meeting on September 13, 1999, Secretary Sprynczynatyk commented that this is a significant achievement for the basin. 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. 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. The Association continues its consultations with the tribes on these issues.

The final compromise recommendations were forwarded to the Corps of Engineers on November 19, 1999. The State of Missouri did not support all of the recommendations, but indicated its support for the process and continued participation in the Missouri River Basin Association.

Secretary Sprynczynatyk stated one of the Missouri River Basin Association's recommendations focused on habitat restoration, which is essential for the recovery of threatened and endangered species and to prevent future listings of threatened and endangered species. Formal consultation between the U.S. Fish and Wildlife Service and the Corps of Engineers under the Endangered Species Act, Section 7, commenced on April 1, 2000. Under Section 7(a)(2), the Corps is required to consult with the Fish and Wildlife Service to insure that any action it carries out "is not likely to jeopardize the continued existence of any listed species or results in the destruction or adverse modification of critical habitat." Upon the conclusion of this consultation, the Fish and Wildlife Service intends to issue its final biological opinion on October 1, 2000. This delay from the previous expected release date of July, 2000 will result in the Master Manual environmental impact statement being delayed yet again. The current proposed completion date of the environmental impact statement is next spring.

On January 13, 2000, the Corps of Engineers released a fact sheet that summarized key points of the Northwestern Division's preferred alternative for the Missouri River Master Water Control Manual. The full text of the Revised Draft Environmental Impact Statement (RDEIS) was published in April, 2000. A public comment period on the RDEIS will extend through the spring and summer of this year and will include a series of workshops hosted by the Corps and formal hearings to allow people to submit oral or written testimony. The Corps continues to compile and analyze data, including computer simulations, to determine how any changes to the Master Manual would affect the people and the environment of the Missouri River basin. The Northwestern Division's preferred alternative is one result of those studies. The Corps' schedule for the Master Manual revision is as follows:

Formal Consultation Begins	April, 2000
Draft Biological Opinion from USFWS Issued	May 31, 2000
Final Biological Opinion from USFWS Issued	July 1, 2000
RDEIS Published	September, 2000
Public and Tribal Comment Period Ends	March, 2001
Final EIS Published	December, 2001
Washington, DC Level Review of Final EIS	June, 2002
Record of Decision Issued	August, 2002
Master Manual Revised	August, 2002
Final Annual Operating Plan Issued	January, 2003
Final Annual Operating Plan Implemented	March, 2003

Todd Sando, Director of the State Water Commission's Water Development Division, reported the Corps of Engineers is forecasting runoff for the year at 18.9 million acre-feet - this falls between the lower quartile, a 1 in 4 chance of less runoff of 19.2 million acre-feet, and the lower decile, a 1 in 10 chance of having less runoff of 15.4 million acre-feet. The median, most likely runoff, is 24.6 million acre-feet. The Corps' forecast calls for Lake Sakakawea to drop from its current level of 1835.5 to 1833 by the end of the year. Lake Oahe is forecast to drop from 1602.9 to 1598.8 by the end of the year.

Based on the criteria in the Corps' Preferred Alternative for the Master Manual, the Missouri River is in a severe drought. Mr. Sando explained that the Preferred Alternative calls for releases to be reduced by 6,000 cubic feet per second and for the navigation season to end three weeks early. Unfortunately, the Corps of Engineers is still operating under the old Master Manual, which does not have provisions for conserving water early in a drought. The Corps has made some efforts to conserve water by reducing releases by 1,500 cubic feet per second. Mr. Sando said that if the criteria in the Preferred Alternative were implemented in early July, an additional 1.7 million acre-feet would be conserved by the end of the year. If these conservation measures were implemented on September 1, 1.1 million acre-feet of water could still be conserved resulting in Lake Sakakawea levels 0.6 feet higher than will occur with the conservation in place. On August 24, 2000, Governor Schafer sent a letter, attached hereto as **APPENDIX "E"**, to the Northwestern Division of the Corps of Engineers urging them to conserve water.

The State of Missouri has filed a lawsuit against the Department of the Interior and the U.S. Fish and Wildlife Service. The complaint alleges that the Service's failure to designate critical habitat for the endangered species on the Missouri River is a violation of the Endangered Species Act and, therefore, the Service should be ordered to cease the consultation with the Corps.

**CLEAN WATER ACT -  
SECTION 319 FUNDS  
(SWC File AS/HEA)**

North Dakota currently receives approximately \$4.5 million per year from the U.S. Environmental Protection Agency to implement water quality improvement projects in watershed areas. These projects normally include the installation of best management practices (good soil conservation practices) to reduce the amount of sediment and nutrients reaching the streams and lakes. The federal funds cover 60 percent of the cost of projects and the local units of government and the landowners are responsible to provide the remaining 40 percent.

Section 319 of the federal Clean Water Act provides funds for the control of nonpoint sources of pollution.

In the past three years, there have been 36 active projects in the state. Because of additional funding, that number is expected to increase. It is becoming difficult for the local sponsors to meet the match requirements and secure participation by the local landowners when the improvement project is very expensive, which is especially true for animal waste systems. The North Dakota Department of Health's approach to solving the nonpoint quality problems has been through education, technical assistance and cost sharing of best management practices.

A request from the North Dakota Department of Health was presented for the Commission's consideration to allocate \$1,500,000 per year from the North Dakota Water Development Trust Fund to be used as a match for Section 319 watershed projects. This level of funding would provide one-half of the local match. The funding arrangement would be:

20 percent	Local Match	\$ 1,500,000
20 percent	State Match	\$ 1,500,000
60 percent	Federal Share	\$ 4,500,000

Secretary Sprynczynatyk stated the Section 319 program does provide benefits in terms of watershed management and water quality enhancement. The North Dakota Water Coalition will consider the request at its next meeting, and a recommendation will then be presented for the Commission's consideration. No action on the request was taken by the State Water Commission at this meeting.

There being no further business to come before the State Water Commission, Governor Schafer adjourned the meeting at 11:40 AM.

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

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