

## **MINUTES**

### **North Dakota State Water Commission Bismarck, North Dakota**

**February 20, 2002**

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on February 20, 2002. Governor-Chairman, John Hoeven, called the meeting to order at 1:30 PM, and requested State Engineer, and Chief Engineer-Secretary, Dale L. Frink, to call the roll. Governor Hoeven announced a quorum was present.

#### **STATE WATER COMMISSION MEMBERS PRESENT:**

Governor John Hoeven, Chairman  
Roger Johnson, Commissioner, Department of Agriculture, Bismarck  
Charles Halcrow, Member from Drayton  
Curtis Hofstad, Member from Starkweather  
Jack Olin, Member from Dickinson  
Robert Thompson, Member from Page

#### **STATE WATER COMMISSION MEMBERS ABSENT:**

Larry Hanson, Member from Williston  
Elmer Hillesland, Member from Grand Forks  
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 officials minutes.

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

#### **CONSIDERATION OF AGENDA**

Additional items for the agenda included the authorization of the State Engineer to execute agreements relating to the Northwest Area Water Supply project required by the Bureau of Reclamation; and the designation of a vice chair of the State Water Commission.

**CONSIDERATION OF DRAFT  
MINUTES OF DECEMBER 7, 2001  
STATE WATER COMMISSION  
MEETING - APPROVED**

The draft minutes of the December 7, 2001 State Water Commission meeting were approved by the following motion:

*It was moved by Commissioner Thompson, seconded by Commissioner Hofstad, and unanimously carried, that the draft minutes of the December 7, 2001 State Water Commission meeting be approved as prepared.*

**FINANCIAL STATEMENT -  
AGENCY PROGRAM  
BUDGET EXPENDITURES**

David Laschkewitsch, accounting manager, State Water Commission's Administrative Services Division, presented and discussed the Program

Budget Expenditures for the period ending December 31, 2001, reflecting 25 percent of the 2001-2003 biennium. All expenditures are within the authorized budget amounts. **SEE APPENDIX "A"**

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

**FINANCIAL STATEMENT -  
2001-2003 RESOURCES TRUST  
FUND REVENUES**

David Laschkewitsch stated the oil extraction tax deposits into the Resources Trust Fund are currently \$460,400, or 19.7 percent behind the

budgeted revenues. Revised projections prepared by Economy.com show the oil extraction deposits increasing above budgeted figures beginning in November, 2002 and remaining above budget through the end of the biennium. These revised projections could allow the recovery of some of the current shortfall, and completing the biennium \$265,500 below the budgeted oil extraction tax figures. Even with this expected shortfall, the total revenues into the Resources Trust Fund are projected to exceed the agency's spending authority by approximately \$4 million. This is primarily due to a larger biennium beginning balance than was budgeted for.

**FINANCIAL STATEMENT -  
2001-2003 WATER DEVELOPMENT  
TRUST FUND REVENUES**

David Laschkewitsch reported that Economy.com did not revise the projected tobacco payments into the Water Development Trust Fund. Depos-

its into the fund total \$3,283,500, which is \$258,800, or 7.3 percent behind the budgeted revenues. The next scheduled payment is anticipated in April, 2002 and

is projected to be \$8.4 million. The 1999 Legislature placed a restriction on the funds the State Water Commission may obligate from the Water Development Trust Fund. That restriction allows the commitment of 75 percent of the appropriated amount. The remaining 25 percent may be obligated to the extent the uncommitted funds are available in the Water Development Trust Fund.

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

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

**Intake:** The Bureau of Reclamation and the Corps of Engineers have been contacted relative to locating the project intake on Lake Sakakawea adjacent to the approach channel excavated in the lake bottom during construction of the Snake Creek embankment. This proposed location will not require a water purchase agreement with the Bureau, but will involve a special use permit, which has been drafted by the Bureau. The provisions of the draft permit require modifications and discussions with the Bureau are ongoing. A Corps of Engineers permit will also be required. A topographical survey of the proposed intake location has been conducted by the Commission's engineers and will be used to prepare a more detailed site map locating all facilities, roads and pipelines.

**Groundbreaking:** The groundbreaking ceremony for the NAWS project is scheduled for April 5, 2002 at 10:30 AM, at the Minot water treatment plant. The program is being developed which includes the North Dakota congressional delegation, the Governor's office, the city of Minot, the NAWS advisory committee, and the Bureau of Reclamation.

**Public Education Program:** Mr. Lennington indicated a public education program is being explored for the NAWS project in an effort to provide the affected public with information about the project and to maintain continued support for the project.

**NORTHWEST AREA  
WATER SUPPLY PROJECT -  
AUTHORIZE STATE ENGINEER  
TO EXECUTE AGREEMENTS  
REQUIRED BY BUREAU OF  
RECLAMATION PRIOR TO  
GROUND DISTURBING  
ACTIVITIES  
(SWC Project No. 237-04)**

James Lennington referenced two agreements that require execution by the Bureau of Reclamation and the project participants prior to ground disturbing activities on the Northwest Area Water Supply project. These agreements establish respective roles, responsibilities, and procedures to assure full implementation of the project design features and the miti-

gation measures identified within the Final Environmental Assessment (EA), dated April, 2001, and the Finding of No Significant Impact (FONSI), revised and reissued September 10, 2001.

Mr. Lennington explained the agreements will focus on the project design features and construction considerations; and on the implementation of the environmental mitigation measures including the formation of an impact mitigation assessment team.

It was the recommendation of the State Engineer that in order to avoid delays in completing the agreements, the State Water Commission authorize the State Engineer to execute the agreements with the Bureau of Reclamation.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission authorize the State Engineer to execute the agreements required by the Bureau of Reclamation prior to the ground disturbing activities related to the Northwest Area Water Supply project.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**NORTHWEST AREA  
WATER SUPPLY PROJECT -  
AUTHORIZE STATE ENGINEER  
TO AWARD CONTRACT 2-1A TO  
S. J. LOUIS CONSTRUCTION, INC.,  
ST. CLOUD, MINNESOTA  
(SWC Project No. 237-04)**

Bids were opened for Northwest Area Water Supply project contract 2-1A on January 31, 2002. The contract documents specify that the State Water Commission has 90 days to award the contract after the bid opening, which falls on May 1, 2002. The contract is for about 7.5 miles of 36-inch and 30-inch main transmission pipeline.

James Lennington stated there were 10 bids received from contractors. The apparent low bid received was \$4,741,410.35 from S. J. Louis Construction, Inc., St. Cloud, Minnesota.

The contract documents allow the State Water Commission to select the most advantageous bid. The project engineer has reviewed the bids received and has recommended the award of contract 2-1A to S. J. Louis Construction. A combination of MR&I and local funds will be used for this contract. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are contingent on the completion of the contract documents and a legal review. The time for completion is specified as no later than November 1, 2002.

It was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer to award Northwest Area Water Supply project contract 2-1A to S. J. Louis Construction, Inc., St. Cloud, Minnesota, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission authorize the State Engineer to award Northwest Area Water Supply project contract 2-1A to S. J. Louis Construction, Inc., St. Cloud, Minnesota, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**NORTHWEST AREA  
WATER SUPPLY PROJECT -  
APPROVAL OF RESOLUTION  
AUTHORIZING CHIEF ENGINEER  
AND SECRETARY TO COMMISSION  
TO INSTITUTE CONDEMNATION  
PROCEEDINGS TO ACQUIRE  
PROPERTY NEEDED FOR  
CONSTRUCTION OF PROJECT  
(SWC Project No. 237-04)  
(SWC Resolution No. 2002-02-499)**

One of the basic requirements for the construction of the Northwest Area Water Supply project is the acquisition of easements. On NAWS contract 2-1A, discussions with landowners about the pipeline easements have been ongoing for several years, and earnest efforts began in December, 2001, after the project received final approval from the Bureau of Reclamation. The majority of the first mile of the project, starting at the Minot

water treatment plant, is on Minot city property or city streets. Easements for this portion of the project were acquired early on. A general appraisal was conducted in 1999 for the easements across private property. Landowners have been offered 80 percent of the appraised value of their land for the pipeline easements, which are generally composed of a 60-foot wide permanent easement and an additional 40-foot strip for construction. In cropland, the landowners are compensated for the construction easement portion at a prevailing crop rental rate.

James Lennington explained that despite the efforts to fairly compensate the landowners, occasionally difficulties are encountered in obtaining rights-of-way. In these instances, every practical effort is made to negotiate with the landowner. Currently, easements have been obtained for about 3.5 miles of the approximately 7.5 miles of the contract. Mr. Lennington stated that most of the remaining landowners are insisting on higher compensation than the state is willing to pay; therefore, the state may have to exercise eminent domain and condemn the pipeline easements. He said moving the pipeline alignment is not a viable option with the size of pipe in this contract. The pipe is 36- and 30-inch ductile iron laid in a sand bedding with careful controls on the pipe joint deflections. This type of pipeline construction is very expensive with costs of \$100 to \$150 per foot. The current alignment was chosen to minimize the difficulty of construction posed by stream, roadway, and utility crossings and also to minimize distance. The alignment generally follows existing roadways to facilitate monitoring and maintenance. Utilities, such as pipelines, are also placed adjacent to roadways because of construction setbacks and other utility corridors.

The State Water Commission has the authority to acquire the interests needed for construction of the Northwest Area Water Supply project through the purchase or condemnation pursuant to North Dakota Century Code §§ 61-02-22, 61-02-23, and 61-02-23.1, and Article 1, § 16 of the North Dakota Constitution. Mr. Lennington explained that under "quick-take" right-of-way condemnation, the Commission may take possession of a right-of-way after making a written offer to purchase and depositing the amount of the offer with the clerk of the District Court of the county in which the property is located. The power of condemnation rests with the Commission. Although no condemnation action has been initiated on the Northwest Area Water Supply project, it is possible that it could be required. At its October 19, 1998 meeting, the State Water Commission adopted a resolution that ratified all prior acts to obtain construction interests and authorized the Chief Engineer and Secretary to the Commission to initiate condemnation for construction of the Southwest Pipeline Project. Mr. Lennington explained that a similar resolution may be beneficial to the Northwest Area Water Supply project.

It was the recommendation of the State Engineer that the State Water Commission direct and authorize the Chief Engineer and Secretary to the State Water Commission to negotiate with the landowners for the acquisition of property and interests needed for the Northwest Area Water Supply project and, upon failure to agree upon a price satisfactory to the Commission as determined by the Chief Engineer and Secretary to the Commission, to initiate condemnation proceedings and take all other actions necessary for the purpose of acquiring the necessary interests in the property in the manner provided for by law. It was also the recommendation of the State Engineer that the Commission ratify and approve all prior acts and proceedings of the officers, agents, and employees of the Commission to obtain interests needed for the Northwest Area Water Supply project.

***It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve Resolution No. 2002-02-499 to:***

***1) direct and authorize the Chief Engineer and Secretary to the State Water Commission to negotiate with the landowners for the acquisition of property and interests needed for the Northwest Area Water Supply project and, upon failure to agree upon a price satisfactory to the State Water Commission as determined by the Chief Engineer and Secretary to the State Water Commission, to initiate condemnation proceedings and take all other actions necessary for the purpose of acquiring the necessary interests in the property in the manner provided for by law; and***

***2) ratify and approve all prior acts and proceedings of the officers, agents, and employees of the State Water Commission to obtain interests needed for the Northwest Area Water Supply project through the exercise of North Dakota Century Code § 61-02-23.1, and Article 1, § 16 of the North Dakota Constitution.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried. SEE APPENDIX "C"***

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

Todd Sando, Assistant State Engineer, reported that Devils Lake froze in at the current elevation of 1447.1 feet msl in December, 2001. At this el-

elevation, the lake has a surface area of 125,000 acres and is storing 2.4 million acre-feet of water. The Devils Lake basin has received below normal precipitation since December, 2001. A snow survey completed by the Commission's survey crew on January 14, 2002 found an average snow depth of two to three inches with 0.50 - 0.75 inches of water basinwide. Mr. Sando said this is below normal for this time of year. If this drier weather continues, the basin will likely experience below normal runoff volumes which will limit the rise on Devils Lake. However, he explained that conditions are subject to change and there is still time before the spring runoff. This year's runoff is dependent upon the amount of precipitation the basin receives over the next few months.

The National Weather Service released its 180-day long range probabilistic forecast for Devils Lake on January 23, 2002. The current 50 percent exceedance elevation is 1447.2 feet msl, which is

slightly higher than the current elevation. Another snow survey is scheduled for February 13 and 14 which, along with other information, will be used to determine the next forecast from the National Weather Service, scheduled to be released the week of February 18, 2002.

Flows have ceased in the Jerusalem channel connecting Devils Lake and Stump Lake. The flows will likely resume once the spring runoff commences. The current elevation of Stump Lake is 1411.9 feet msl. At this elevation, Stump Lake covers 7,800 acres and is storing 124,000 acre-feet of water.

**CORPS OF ENGINEERS PERMANENT DEVILS LAKE EMERGENCY OUTLET (SWC Project No. 416-01)** The Corps of Engineers is continuing with the environmental impact statement (EIS) for a permanent outlet project for Devils Lake. It is the intent of the Corps to have a draft EIS, which will be made public on February 28, 2002. After the draft EIS is released, the Corps will host a public round of meetings in March in various cities in eastern North Dakota to gather comments. The final EIS is due in July, 2002, and the Record of Decision in September, 2002. The proposed schedule and timeline is based on a Pelican Lake outlet alternative, and it is assumed that contracts will be awarded in October, 2002, if flooding conditions continue to exist. All of the legal requirements have been met and the Record of Decision supports construction and operation.

The Commission staff and Bartlett & West/Boyle Engineering met with the Corps of Engineers and Barr Engineering to discuss the federal and state projects. The discussions included the possibility of combining the federal and state projects at a common point south of Stony Lake.

**DEVILS LAKE STATE TEMPORARY EMERGENCY OUTLET PROJECT (SWC Project No. 416-01)** On August 16, 2001, the State Water Commission approved the selection of Bartlett & West Engineers, Inc./Boyle Engineering Corporation as the engineer for the state's Devils Lake temporary emergency outlet project.

Bartlett & West/Boyle Engineering completed the "Devils Lake Outlet Preliminary Construction Cost Estimates" report for Phase I (100 cfs) for the Devils Lake state temporary emergency outlet project, which is attached hereto as **APPENDIX "D"**. Todd Sando explained the report, which contains three alternatives each with a different approach to crossing U.S. Fish and Wildlife Service easements. The preliminary project costs are approximately \$20 million for construction costs, \$325,000 for land acquisition, and \$1.25 million for final design and construction management, bringing the



total to approximately \$21.6 million. Mr. Sando said there are some unexpected groundwater issues in the lower portion of the outlet alignment and these are the reasons for the high cost estimate, although these costs may be reduced with additional geotechnical work and design. The engineer's estimate for the next phase of the project is \$750,000. This amount will cover the final design and all of the necessary plans and specifications to bid level. The final design will be completed by May 1, 2002, which will initiate the bid process. Bids will be opened and the contracts awarded in May, with construction commencing in June, 2002.

Mr. Sando explained that the land easements for the state's outlet project have been estimated. Pump site locations, a 250-foot wide right-of-way for the open channel, and small parcels that would be severed were estimated at \$200 per acre for pastureland and \$400 per acre for cropland. A 100-foot right-of-way for the pipeline and areas that would be impacted, but still could be accessed and farmed, were assumed to be acquired by easement at 80 percent of the above-mentioned values. The total number of acres impacted is approximately 700 acres. The estimated cost for the land purchase is \$226,000, with an additional \$99,000 for appurtenances, contingencies and legal work, for a total of \$325,000.

The state outlet project would draw about three to four inches of water annually from Devils Lake. Mr. Sando said this impact justifies the cost of the initiative because a one-foot increase in the elevation of Devils Lake generally adds up to \$25 million worth of damages.

It was the recommendation of the State Engineer that the State Water Commission approve the expenditure of an additional \$1,075,000 (land acquisition of \$325,000 and the final engineering of \$750,000), from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the state's Devils Lake outlet project.

The Preliminary Construction Cost Estimate Report for Phase I of the Devils Lake Outlet project was discussed at length. Secretary Frink stated the Corps of Engineers is completing its study of the environmental effects of a separate outlet project that the federal agency is planning. The Corps' draft environmental impact statement will be made public on February 28, 2002. The federal project would use a pipeline to draw water to the Sheyenne River from another area of Devils Lake where the water quality is similar to that of the river, at a cost estimate of \$100 million. Secretary Frink explained that the Corps' study may show that the federal proposed outlet would not provide enough benefit for the cost. He said that puts doubts whether the Corps will build any outlet. Action by Congress may be required to clear the way for a federal project. Secretary Frink indicated that the President's proposed budget does not include funds for the federal project because they want to review the results of the Corps' environmental impact study.

Governor Hoeven stressed the importance of meshing the state's outlet project with the federal outlet project plans where possible but, he said, the delays make that objective very difficult to attain. He said the situation is frustrating - "not only are we trying to anticipate what the lake does, but we're trying to anticipate what the federal government will do and when they will do it. It makes it very difficult for the state to proceed forward in the most cost efficient way possible."

***It was moved by Commissioner Halcrow and seconded by Commissioner Hofstad that the State Water Commission approve the expenditure of an additional \$1,075,000 (land acquisition - \$325,000; final design engineering - \$750,000), from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for the state's Devils Lake outlet project. This motion is contingent upon the availability of funds.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**APPROVAL OF REQUEST FROM DEVILS LAKE BASIN JOINT BOARD FOR COST SHARE IN RECONNAISSANCE STUDY FOR WATER UTILIZATION AND ENHANCEMENT PROJECT IN DEVILS LAKE BASIN (SWC Project No. 1882-01)**

A request from the Devils Lake Basin Joint Board was presented for the Commission's consideration for cost share participation in a reconnaissance study to determine the potential of using irrigation as a means of water utilization and management in the Devils Lake basin. The proposal

for the study has been completed by Bartlett & West Engineers, and the estimated cost of the feasibility study is \$50,000. All items are eligible for a 50 percent cost share. The request before the State Water Commission is to cost share in 50 percent of the eligible costs in the amount of \$25,000. The remaining portion of the costs (\$25,000) would be provided by the Devils Lake Basin Joint Board.

Michael Connor, Devils Lake Basin Joint Board manager, presented the request and explained that the reconnaissance study will determine soils suitable for irrigation, land use and climatic data, and explore the Devils Lake basin surface water as a possible water source for irrigation in order to reduce inflows into Devils Lake. The study will also include a crop analysis, economic feasibility review, and an estimated total cost of the project. The preliminary information gathered indicates this study will assist in determining if this could be a beneficial Devils Lake basin water management project.

It was the recommendation of the State Engineer that the State Water Commission approve a cost share of 50 percent of the eligible items not to exceed \$25,000, from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for a reconnaissance study to determine the potential of using irrigation as a means of water utilization and management in the Devils Lake basin.

***It was moved by Commissioner Hofstad and seconded by Commissioner Johnson that the State Water Commission approve a cost share of 50 percent of the eligible items, not to exceed \$25,000, from the funds appropriated to the State Water Commission in the 2001-2003 biennium, for a reconnaissance study to determine the potential of using irrigation as a means of water utilization and management in the Devils Lake basin. This motion is contingent upon the availability of funds.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**APPROVAL OF BOND COUNSEL  
TO STATE WATER COMMISSION -  
FIRM OF ARNTSON & STEWART, P.C.,  
FARGO, NORTH DAKOTA  
(SWC File CON/ARN)**

The State Water Commission and the Attorney General of North Dakota requested proposals to provide bond counsel and any necessary tax counsel services to the Commission in connection with the ongoing development of the Commission's Water Development Revenue Bond Program and its projected issuance of approximately \$1.9 million of program bonds pursuant to N.D.C.C. ch. 61-02, which is anticipated to be completed by March 31, 2002. This issue constitutes the sixth in a series of USDA, Rural Development loans entered into by the Commission and Rural Development. Because there is a potential for additional bond issues for projects authorized by the Legislature, the Commission is seeking to retain bond counsel for an engagement of up to four years, subject to an annual performance review.

The Commission anticipates that the program will provide funding for state water development projects over the next several years through the issuance of program bonds. Any bonds issued are generally expected to be repaid with revenues of the improved water systems and, with respect to any non-revenue producing projects, biennial appropriations by the Legislature.

Secretary Frink reported that six requests for proposals were received. The proposals were reviewed by a committee of Commission and Attorney General staff and bond consultants.

It was the recommendation of the State Engineer that the firm of Arntson & Stewart, P.C., Fargo, ND, be selected as the bond counsel to the State Water Commission. Arntson & Stewart, P.C. submitted a proposal meeting the requirements of the request for services at the lowest cost. Arntson & Stewart, P.C. served as the bond counsel for both the \$12,000,000 Series 2000 and the \$12,000,000 Series 2001 North Dakota Rural Water Finance Corporation Public Construction Notes. The Attorney General of North Dakota will concur with the selection of Arntson & Stewart, P.C. upon the Commission's affirmative action.

***It was moved by Commissioner Johnson and seconded by Commissioner Olin that the firm of Arntson & Stewart, P.C., Fargo, North Dakota, be selected as the bond counsel to the North Dakota State Water Commission, contingent upon concurrence of the Attorney General of North Dakota.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven announced the motion unanimously carried.***

**CONSIDERATION OF REQUEST  
FROM BUFORD-TRENTON  
IRRIGATION DISTRICT FOR  
COST SHARE ASSOCIATED  
WITH PUMP HOUSE REPAIRS AND  
CONTROL SYSTEM UPGRADE  
(SWC Project No. 222)**

A request from the Buford-Trenton Irrigation District was presented for the Commission's consideration for cost share participation in costs associated with repairing the main pump house and upgrading the control system.

The Garrison Diversion Conservancy District provided a letter of support for State Water Commission cost share on this project. The total estimated cost is \$102,913. The request before the State Water Commission is to cost share in 40 percent of the eligible costs in the amount of \$41,165.

Because the State Water Commission has not adopted the proposed cost share policy criteria recommendations from the Commission's committee, action was deferred on the cost share participation request from the Buford-Trenton Irrigation District.

**SAFE DRINKING WATER ACT -  
APPROVAL OF PROJECT  
PRIORITY LIST IN FY 2002  
INTENDED USE PLAN,  
DATED JANUARY 1, 2002  
(SWC File AS/HEA)**

The Drinking Water State Revolving Loan Fund was authorized by Congress in 1996 under the Safe Drinking Water Act with the intention of assisting public water systems in complying with the Act. Funding in North Dakota for public water sys-

tems is in the form of a loan program administered by the Environmental Protection Agency through the North Dakota Department of Health. North Dakota Century Code ch. 61-28.1, Safe Drinking Water Act, gives the Department the powers and duties to administer and enforce the Safe Drinking Water program, and to administer the program.

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant agreement. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on December 13, 2001; no comments were received.

The State Water Commission's role in the program is defined in subsections 3 and 4 of § 61-28.1-12. Subsection 3 states that the Department shall administer and disburse funds with the approval of the State Water Commission. Subsection 4 states that the Department shall establish assistance priorities and expend grant funds pursuant to the priority list for the Drinking Water State Revolving Loan Fund, after consulting with and obtaining the approval of the State Water Commission.

Wayne Kern, North Dakota Department of Health, presented the Fiscal Year 2002 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated January 1, 2002, for the State Water Commission's consideration. The Intended Use Plan is attached hereto as **APPENDIX "E"**. The comprehensive project priority list includes 68 projects, with a cumulative total project cost of \$169.7 million. The fundable list includes \$67.6 million for fiscal years 1997 through 2002.

It was the recommendation of the State Engineer that the State Water Commission approve the project priority list for Fiscal Year 2002 as listed in the Intended Use Plan, dated January 1, 2002, and authorize the Department to administer and disburse Fiscal Years 1997 through 2002 program funds pursuant to the Fiscal Year 2002 Intended Use Plan.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve the project priority list for Fiscal Year 2002 as listed in the Intended Use Plan for the North Dakota Drinking Water State Revolving Loan Fund, dated January 1, 2002; and authorize the North Dakota Department of Health to administer and disburse Fiscal Years 1997 through 2002 Drinking Water State Revolving Loan Fund program funds pursuant to the Fiscal Year 2002 Intended Use Plan.***

***Commissioners Halcrow, Hofstad, Johnson, Olin, Thompson, and Governor Hoeven voted aye. There were no nay votes. Governor Hoeven 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 2-4C - Twin Buttes Service Area Main Transmission Pipeline:** There has been no activity on contract 2-4C since mid-December, 2001 when operations were shut down for the winter. The contractor will start up again in the spring.

**Southwest Water Authority Budget and Water Rates for 2002:** Under the Transfer of Operations agreement, the Southwest Water Authority must prepare a budget by December 15 of each year and submit it to the Secretary of the State Water Commission. This budget is deemed approved unless the Secretary of the Commission notifies the Authority of its disapproval by February 15. The Southwest Water Authority has complied with this provision. The budget has been approved by the Secretary of the Commission.

The capital repayment and REM rates for 2002 were approved by the Commission at its October 23, 2001 meeting. The September, 2001 CPI was used to calculate the capital repayment rate for 2002. This resulted in a capital repayment rate of \$0.85 per thousand gallons for contract users and \$26.03 for rural users. These compare with 2001 rates of \$0.83 per thousand gallons for contract users and \$25.34 per month for rural users. The water rate for replacement and extraordinary maintenance will remain the same as in 2001 at \$0.35 per thousand gallons.

The water rates charged by the Southwest Water Authority for operations and maintenance will remain the same as in 2001; the only increases are for capital repayment. The following tables show the proposed rates:

**Transmission**

\$ 0.53	Treatment
\$ 1.05	O & M
\$ 0.35	REM
\$ 0.85	Capital Repayment
\$ 0.20	Transmission Reserve
<b>\$ 2.98</b>	<b>Per Thousand Gallons</b>

**Distribution**

\$ 0.53	Treatment
\$ 1.05	Transmission O & M
\$ 0.35	Transmission REM
\$ 0.20	Transmission Reserve
\$ 1.22	Distribution O & M
\$ 0.10	Distribution REM
\$ 0.15	Distribution Reserve
<b>\$ 3.60</b>	<b>Per Thousand Gallons</b>

**Rural Minimum**

\$26.03	Capital Repayment
\$ 7.22	2000 Gallons
\$ 5.00	Meter Fee
<b>\$38.25</b>	<b>Monthly Minimum</b>

**Declining Block Water Rate:** A rate structure study committee was formed by the Southwest Water Authority in 2001 with an established goal of stabilizing water rates. Several strategies have been identified by the committee, one of which is selling more water. Livestock water users have been targeted by the committee because it is felt that they represent a potential for substantial increase in consumption. As an incentive to producers, the committee is proposing a declining block water rate on an experimental basis for those customers using over 10,000 gallons of water per month. There are approximately 165 customers currently exceeding this amount. The proposal is that the rate for water use above 10,000 gallons would decrease from \$3.60 to \$2.60 per thousand gallons. This proposal will be considered by the Authority's board of directors at its March meeting.

**City of Medora:** Several discussions have recently been held with the Medora city council over the city's participation in the Southwest Pipeline Project. The city signed a water service contract in 1982 for 13 million gallons of water per year. Current reported usage by the city is between 25 and 30 million gallons of water per year. The mayor has expressed some concerns over the ability of its residents to pay for water from the project and noted that there is high usage of water in Medora, especially during the tourist season. This public usage would have to be paid by the city. The mayor has also mentioned the possibility of requesting that the Commission release them from their water service contract.

At its January, 2002 meeting, the Medora city council passed a motion to enter into a sole source amendment to its Southwest Pipeline Project water service contract. At its February, 2002 meeting, the mayor explained that the city has received a petition signed by 21 voting residents requesting that the city place an ordinance prohibiting the city from receiving Southwest Pipeline water on its June ballot. The city attorney has pointed out to the council that the city has a contract and the ordinance, if adopted, would require the city to get out of its contract by negotiating with the Commission and the Authority, or through legal action. The petition was accepted by the council and the ordinance question will be on the June ballot.

**Montana Users:** The Southwest Pipeline Project was originally intended to be a wholesale water distribution system. Separate rural water systems, as well as cities, were to receive water from the project and then distribute the water to their individual members and residents. During the early days of the project, there were four proposed rural water systems, one of which was the Golden Valley Rural Water Cooperative. Some of the members of this cooperative reside just across the border of Montana. When the integration of rural water into the project was investigated, six such users were specifically mentioned and were shown on cooperative maps. The Southwest Water Authority has recently inquired whether these users can be served by the project when construction reaches Golden Valley. The Commission's legal counsel has recommended that specific legislation be developed to authorize the Commission to include service to these users in the construction plans. Several possibilities have been mentioned for serving these users: rural water lines could end just before crossing the border; requiring the users to construct all portions in Montana; the users could be required to pay their share of capital costs of the project up front as the Perkins County South Dakota system was; or the Montana users could be served just as other customers are.

**Perkins County Rural Water System:** A letter was received on February 1, 2002 from the Perkins County Rural Water System requesting that they be allowed to pay North Dakota as they hook up their customers. Their contract with the Commission states that they are to pay the state \$4.5



million before water can be delivered to Perkins county. Their development schedule shows water being provided to the cities of Lemmon and Bison in the second year of construction and then to rural water customers in subsequent years of construction. Their proposal is to pay \$1.62 million in 2003 and \$960,000 in the following three years. The Perkins County Rural Water System budget request for 2003 is \$4.3 million. The letter also requests that if their appropriation is less than that amount that the repayment to the state be proportional to the total amount they receive. Any modification to the terms of the contract will require Commission approval. If the Commission were to agree to this request, Perkins County Rural Water System could begin to use water from the project and serve its customers earlier than otherwise. The request will be discussed with the Perkins County Rural Water System and the Southwest Water Authority and presented to the Commission for consideration at a future meeting.

**City of Dickinson Debt Service Credit:** At its March 6, 2001 meeting, the State Water Commission approved a recommendation to cease granting debt service credit to the city of Dickinson for its bascule gate payments to the Bureau of Reclamation. The city was successful in getting its debt forgiven by Congress, and a final payment was made on December 27, 2001.

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

Warren Jamison, Garrison Diversion Conservancy District manager, provided an update on the current efforts relating to the continued appro-

priations under the Garrison Diversion Unit including appropriations for ongoing maintenance of the existing facilities, and for the state MR&I program, the Indian MR&I program, and the management arrangement for the Red River Valley Water Supply studies and environmental analysis required by the passage of the Dakota Water Resources Act of 2000. The Fiscal Years 2002 and 2003 federal budgets for the Garrison Diversion Unit were discussed, and Mr. Jamison reiterated the importance of significantly increasing the project's federal appropriations in the future.

On February 20, 2002, Mr. Jamison testified before the Senate budget committee, chaired by Senator Kent Conrad, at a field hearing in Bismarck, ND. Mr. Jamison's testimony is attached to these minutes as **APPENDIX "F"**.

Mr. Jamison stated "the Garrison Diversion board of directors believes in North Dakota's future, and with the future comes change. Because the board wants to continue contributing benefits to North Dakota and its citizens in the best possible way, the board decided to reassess Garrison Diversion programs in preparation for the future." Mr. Jamison explained that the board was separated into four groups: agriculture and natural

resources; municipal, rural and industrial water supply; recreation and tourism; and Red River valley studies. Each group was given the responsibility to examine options and consider what the future District could do to help North Dakota prepare for the future. The board retreated in January, 2002 to discuss the recommendations of the groups and the staff. A draft report on the initiatives and activities of the District is being prepared.

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

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

**All Seasons Rural Water System 5 (Pierce County):** The new rural water system proposes to serve 373 rural users and the city of Willow City. The estimated project costs are \$8.15 million. The city of Rugby intends to supply System 5 with a bulk water supply based on receiving an additional water appropriation from the Pleasant Lake aquifer. The Bureau of Reclamation will complete the environmental assessment after the water permit process has been completed. System 5 is currently approved for a 70 percent MR&I grant, not to exceed \$5.71 million.

**Langdon Rural Water - Munich Expansion:** The estimated project cost for the Langdon Rural Water - Munich expansion is \$10.0 million, with service to 212 rural users and to the cities of Calvin, Clyde, Egeland, Munich and Wales. The proposed project includes reservoir/pumping facilities, pipelines, and improvements to the city of Langdon's water treatment plant.

**McLean-Sheridan Rural Water Expansion:** The McLean-Sheridan's existing system is conducting a feasibility study for a Phase IV expansion to serve additional rural water users and to provide bulk water service to the cities of Underwood and Wilton. The preliminary project cost ranges from \$4.98 million to \$8.62 million. The feasibility study's estimated cost is \$57,000, with an approved 65 percent MR&I grant of \$37,050.

**McKenzie County Rural Water New System:** The proposed McKenzie County Rural Water System would serve the area around the city of Watford City. The city would provide water service to the proposed rural system. The project would serve 90 rural users with a cost of \$1.7 million for the rural and \$0.9 million to serve the city of Alexander. The feasibility study's estimated cost is \$50,000, with an approved 65 percent MR&I grant of \$32,500.

**Mountrail County Rural Water:** A preliminary engineering report was prepared for a rural water project proposed to serve an area in southeastern Mountrail county. The service area extends from south of the city of Parshall to north of the city of Plaza. Coordination is continuing with the Fort Berthold Indian reservation personnel regarding a potential combined funding, or funding the project with Indian MR&I funds. The initial sign-up has 75 rural users, the NorthWestern Dairy LLLP, two campgrounds along Lake Sakakawea, the city of Plaza, and a United States Air Force missile command site. NorthWestern Dairy LLLP received a State Water Commission grant for 50 percent cost share for the water supply facilities, not to exceed \$91,240.

**Park River Water Supply:** The city of Park River is pursuing groundwater appropriations from the Fordville aquifer as a new primary source of water. The city is working with the State Water Commission to determine the Fordville aquifer's capacity with respect to current users, existing appropriations, and pending applications. The city obtains its current water supply from the Homme reservoir. The city is also reviewing a project to use ground water as a source of water supply, with an estimated cost of \$3.15 million.

**Ramsey Rural Utilities Water Expansion:** The proposed expansion project covers portions of Eddy, Foster, and Ramsey counties. Service includes the cities of Glenfield, Grace City, and McHenry. The service areas involve the potential for the city of Carrington to provide bulk water service to 102 rural users surrounding Carrington. The remaining 170 users in Eddy and Foster counties and 91 users in Ramsey county would be served by Ramsey's existing water treatment plant. The current cost estimate is \$9.4 million.

The MR&I committee previously recommended future MR&I funding of 70 percent, not to exceed \$6,050,000. The funding is subject to the satisfactory completion of any required studies, contingent on available federal funds, and subject to future revisions as necessary. Ramsey is conducting studies for the proposed expansion at a cost of \$115,000, with an approved 70 percent MR&I grant of \$80,500. The studies will cover mapping, system hydraulic review, preliminary design/reports, and negotiations with the city of Carrington regarding potential water service.

**Ransom-Sargent Rural Water:** The total estimated project cost is \$20 million and would serve 830 rural users and the communities of Cogswell, Elliott, Fingal and Marion. Construction currently involves work on the water treatment plant expansion in Lisbon, while the completed construction includes a new well field, a new raw water transmission pipeline, and the majority of the rural water pipelines. The project received approval for a MR&I grant of \$13,985,975, which includes funding to maintain a monthly minimum rate of \$45.00.

**Southeast Area Regional Expansion:** The proposed and future regulations under the Safe Drinking Water Act affect many water systems in southeastern North Dakota. Regional water service may be the long-term alternative to meet those regulations. Some of the water systems in southeast North Dakota are served by the Southeast Water Users District, the Ransom-Sargent Water Users District, and the Dickey Rural Water Association. In order to maintain an assessment, concept development, and opinions of probable costs for various phases of a Southeast Area Regional Expansion project, a study is being conducted by the three existing regional water systems. The estimated cost of the study is \$93,000. The project received approval for a 65 percent water development and research grant of \$60,450 for completing the study.

**Tri-County Rural Water Expansion:** The existing rural water system is planning an expansion to its system. Phase 1 was funded by Rural Development and would add 75 users. Phase 2 will add 68 new water users, correct water pressure problems, and add a water tower. The tower design will save costs for operation and maintenance by eliminating six pump stations. The city of Michigan is also interested in connecting to the project.

**Williams Rural Water:** The Williams Rural Water project will add 147 users to its existing system. The city of Williston provides water to the existing system. The preliminary project cost estimate is \$2.3 million. Williston is currently working on a feasibility study at an estimated cost of \$71,000. A MR&I grant in the amount of \$40,000 was previously approved.

**RURAL FLOOD CONTROL  
COST SHARE POLICY  
(SWC Project No. 1053)**

the Commission members, Governor Hoeven appointed a committee consisting of Commissioners Halcrow, Hillesland, Swenson and Thompson to work with the Commission staff and others to develop a comprehensive plan for rural flood control projects.

At its meeting on August 16, 2001, the State Water Commission discussed the rural flood control cost share policy. Because of concerns expressed by

The committee, Commission staff, and others met on November 19, 2001. The meeting resulted in policy recommendations which were presented for consideration by the Commission at its December 7, 2001 meeting. As a result of the discussion during that meeting, Governor Hoeven recommended the Commission staff meet with representatives of the Water Resource Districts Association to solicit additional input.

The Commission staff and others met with representatives of the Water Resource Districts Association on February 1, 2002. A conference call meeting is scheduled on February 27, 2002, and a meeting with the Commission's committee and others is scheduled for April 3, 2002. It is anticipated these meetings will result in proposed policy recommendations that will be presented to the State Water Commission at a future meeting.

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

The Corps of Engineers held a series of public workshops and hearings to receive testimony on the draft Environmental Impact Statement (EIS) for the Missouri River Master Water Control Manual. The meetings in North Dakota were held on October 23, 2001 in Bismarck and on October 24, 2001 in New Town. Governor Hoeven provided testimony on behalf of the state at the Bismarck hearing, and the Commission staff provided testimony at the meetings in New Town, Kansas City, and St. Louis. The Corps will accept comments on the draft EIS until February 28, 2002. Various state agencies, including the State Water Commission, will jointly provide additional detailed technical comments during this period.

The Corps of Engineers held a series of public workshops and hearings to receive testimony on the draft Environ-

The Missouri River Basin Association (MRBA) provided amendments to the Missouri River Master Water Control Manual recommendations included in MRBA's November 19, 1999 letter to General Strock. The recommendations represent the official position of the Association and are supported by representatives of the states of North Dakota, South Dakota, Wyoming, Kansas, Montana and Nebraska. The recommendations include the implementation of a new alternative for drought conservation measures, a spring rise from Fort Peck Dam an average of one year out of three, and Gavins Point flow modifications. Todd Sando explained the flow modifications consist of increasing the flow from Gavins Point by 15,000 cubic feet per second (cfs) above the navigation target an average of one year out of three between May 1 and June 15, and summer low flows of 28,500 cfs for minimum navigation service from June 21 to September 1 each year. The Gavins Point releases would be conducted as a demonstration for approximately 10 years to determine the effects on the endangered species.

Mr. Sando noted the states of Iowa and Missouri do not support the Gavins Point demonstration project. Iowa supports the restrictions to the use of the Kansas River basin reservoir system as

well as the other elements of MRBA's November 1999 letter to General Strock. The Mni Sose Intertribal Water Rights Coalition abstained from voting until each Tribe has completed a thorough review of the MRBA's recommendations. The MRBA's recommendations, dated November 19, 1999, and the amendments, dated February 12, 2002, for the preferred alternative in the Revised Draft Environmental impact Statement are attached hereto as **APPENDIX "G"**.

Mr. Sando reported the Missouri River basin is in the second year of drought. The Corps of Engineers is predicting the 2002 runoff above Sioux City to be 20.3 million acre-feet, or 80 percent of the normal 25.2 million acre-feet. Runoff above Sioux City in 2001 was 22.5 million acre-feet.

On February 6, 2002, Lake Sakakawea was at an elevation of 1828.0 feet msl, which is 0.7 feet lower than a year ago, and 7.3 feet below its average end of January elevation. Under the most likely runoff simulation, the Corps is estimating that Lake Sakakawea will reach an elevation of 1831.3 feet msl by the end of June and then fall to an elevation of 1828.4 feet msl by the end of the year. Mr. Sando said that under the lower decile runoff, Lake Sakakawea would reach an elevation of 1828.4 feet msl by the end of April, fall below 1825 feet msl in early August, and end the year at 1820.5 feet msl. He commented that the 1825 elevation is critical because when Lake Sakakawea drops below this level during the summer, the volume of cold water at the bottom of the lake is reduced and oxygen concentrations can fall below 5 mg/l, which violates state water quality standards. This situation puts the lake's sport fishery in serious jeopardy.

The elevation at Lake Oahe was 1598.7 feet msl on February 6, 2002, which is 0.8 feet higher than last year and 3.4 feet lower than its average end of January elevation. Under the most likely runoff simulation, the Corps is estimating that Lake Oahe will reach an elevation of 1599.0 feet msl by the end of June and drop to 1593.2 by the end of the year. Mr. Sando explained that under the lower decile runoff, Lake Oahe would reach 1596.9 feet msl at the end of March and then drop to 1583.3 feet msl by the end of the year.

Fort Peck Lake was at an elevation of 2218.7 feet msl on February 6, 2002, which is 4.9 feet lower than a year ago and 13.9 feet below its average end of January elevation. The most likely runoff simulation calls for Fort Peck to rise to 2222.5 feet msl by the end of June and then drop back to 2221.5 feet msl by the end of the year.

**AMALGAMATION OF BOARDS  
IN RED RIVER BASIN  
(SWC File AOC/RBB)**

which include the Red River Basin Board, The International Coalition, the Red River Water Resources Council, and possibly other boards.

Secretary Frink briefed the State Water Commission of the efforts to amalgamate boards and organizations in the Red River basin

**DESIGNATION OF VICE CHAIRMAN  
OF THE STATE WATER COMMISSION**

Chapter 61-02-05 of the North Dakota Century Code, relating to the chairman of the State Water Commission, states:

The governor shall be the chairman of the commission. The governor shall designate a vice chairman who shall be a member of the commission. The state engineer shall be the secretary of the commission.

Governor Hoeven designated State Water Commission member Jack Olin as vice chairman of the Commission.

**APPROVAL OF RESOLUTION  
OF APPRECIATION TO  
RAYMOND OLIGER, STATE  
WATER COMMISSION EMPLOYEE  
(SWC Resolution No. 2002-02-498)**

A resolution of appreciation to Raymond Olinger, State Water Commission employee, was presented for the Commission's consideration. Mr. Olinger retired from his position as an engineering technician with the

Water Development Division of the State Water Commission on January 31, 2002. Mr. Olinger admirably served the State of North Dakota and the State Water Commission since September, 1980.

***It was moved by Commissioner Olin, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission approve Resolution No. 2002-02-498, In Appreciation to Raymond Olinger, State Water Commission employee. SEE APPENDIX "H"***

There being no further business to come before the State Water Commission, Governor Hoeven adjourned the meeting at 3:40 PM.

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John Hoeven, Governor  
Chairman, State Water Commission

SEAL

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