

## **MINUTES**

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

**June 28, 2006**

The North Dakota State Water Commission held a working session on June 28, 2006 at the State Office Building, Bismarck, North Dakota, for the purpose of discussing the current cost share policy and procedures for flood control projects. Vice Chairman, Jack Olin, convened the working session at 9:00 AM. The attendance list and the working session minutes are attached hereto as **APPENDIX "A"**. The State Water Commission further considered recommendations relating to this item during its regular meeting on June 28, 2006.

The State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on June 28, 2006. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 1:30 PM, and requested Dale L. Frink, State Engineer, and Chief Engineer-Secretary, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

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

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman  
Roger Johnson, Commissioner, North Dakota Department of Agriculture, Bismarck  
Larry Hanson, Member from Williston  
Elmer Hillesland, Member from Grand Forks  
Curtis Hofstad, Member from Devils Lake  
Jack Olin, Member from Dickinson  
Harley Swenson, Member from Bismarck  
Robert Thompson, Member from Page  
Dale L. Frink, State Engineer, and Chief Engineer-Secretary,  
North Dakota State Water Commission, Bismarck

#### **STATE WATER COMMISSION MEMBER ABSENT:**

Charles Halcrow, Member from Drayton

#### **OTHERS PRESENT:**

State Water Commission Staff  
Approximately 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**

announced the agenda approved as presented.

There being no additional items for the agenda, Lt. Governor Dalrymple an-

**CONSIDERATION OF DRAFT MINUTES  
OF MARCH 22, 2006 STATE WATER  
COMMISSION MEETING -  
APPROVED, AS CORRECTED**

"rural" should be deleted. Line 3 should read "... that land costs for ~~rural~~ flood control projects be considered an ...".

The draft minutes of the March 22, 2006 State Water Commission meeting were considered. Secretary Frink made reference to an administrative error on page 17, line 3, and stated the word

*It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the draft minutes of the March 22, 2006 State Water Commission meeting be approved, as corrected.*

**CONSIDERATION OF DRAFT MINUTES  
OF MAY 23, 2006 STATE WATER  
COMMISSION AUDIO CONFERENCE  
CALL MEETING - APPROVED**

*It was moved by Commissioner Hofstad, seconded by Commissioner Olin, and unanimously carried, that the draft minutes of the May 23, 2006 State Water Commission audio conference call meeting be approved as prepared.*

The draft minutes of the May 23, 2006 State Water Commission audio conference call meeting were approved by the following motion:

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

resources expenditures. The allocated program expenditures for the period ending May 31, 2006, reflecting 46 percent of the 2005-2007 biennium, were presented and discussed by David Laschkewitsch, State Water Commission's Director of Administrative Services. The expenditures, in total, are within the authorized budget.  
**SEE APPENDIX "B"**

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

The Contract Fund spreadsheet, attached hereto as **APPENDIX "C"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$57,812,446, leaving a balance of \$15,272,743 available to commit to projects.

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

The oil extraction tax deposits into the Resources Trust Fund total \$9,943,550 and are currently \$816,880, or 8.95 percent ahead of the budgeted revenues.

Deposits into the Water Development Trust Fund total \$9,636,331 and are currently \$701,099, or 6.8 percent behind budgeted revenues.

**DROUGHT DISASTER LIVESTOCK  
WATER SUPPLY PROJECT  
ASSISTANCE PROGRAM -  
REINSTATE PROGRAM; AND  
APPROVAL OF STATE COST  
PARTICIPATION (\$200,000)  
(SWC Project No. 1851)**

The Drought Disaster Livestock Water Supply Project Assistance program, established by the North Dakota Legislature in 1991, is a state cost share participation program administered by the State Water Commission that provides financial assistance to existing livestock producers with water supply

problems caused by drought. North Dakota Administrative Code Article 89-11 was adopted by the Commission on June 24, 1991 for management of this program.

Only water supply projects located in counties included in a drought disaster declaration and counties adjacent to those counties included in a drought disaster declaration are considered eligible for state cost participation. Types of projects that may be funded by the program include the construction of new wells, construction of dugouts or stock dams that are spring-fed or have a high water table, and the development of springs, pipelines, and extensions from rural water system connections. North Dakota Century Code chapter 61-34 limits assistance to individual producers of 50 percent of project costs, not to exceed \$3,500, and authorizes the State Water Commission to provide funds for the program.

The State Water Commission allocated \$250,000 for the program on June 24, 1991, and an additional \$50,000 was allocated on July 1, 1992, for a total state contribution of \$300,000. The program was reactivated on July 1, 2002 following Governor Hoeven's issuance of North Dakota Drought Emergency Proclamation, Executive Order 2002-04. The Commission allocated \$200,000 on August 15, 2002 for the program for those counties identified in the executive order, and an additional allocation of \$150,000 on November 3, 2003, for a total state contribution of \$350,000 since program reinstatement. On March 10, 2005, the State Water Commission passed a motion that the remaining funds allocated to the program be expended, followed by program termination; and, that the program be reinstated, if necessary, through a revised North Dakota Drought Emergency Proclamation issued by the Governor.

On June 28, 2006, Governor Hoeven issued North Dakota Drought Emergency Proclamation, Executive Order 2006-05, which indicates a drought emergency exists in south central and southwestern North Dakota. (Note: Governor Hoeven subsequently issued Executive Order 2006-05.1 on July 12, 2006 to include all counties within North Dakota.) Executive Orders 2006-05 and 2006-05.1 are attached hereto as **APPENDIX "D"**.

Secretary Frink stated that although the program has been widely accepted by the state's livestock producers, there continues to be a need for assistance with the cost of creating permanent water supplies for cattle. He said the recent high temperatures and lack of precipitation are taking a toll on the farmers and ranchers as well as businesses that depend on the agricultural community.

***It was moved by Commissioner Johnson and seconded by Commissioner Hanson that the State Water Commission reinstate the Drought Disaster Livestock Water Supply Project Assistance program, pursuant to North Dakota Drought Emergency Proclamations, Executive Orders 2006-05 and 2006-05.1; and, that an allocation not to exceed \$200,000 be approved from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). This action is contingent upon the availability of funds.***

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

**WAHPETON FLOOD CONTROL  
PROJECT - APPROVAL OF ADDITIONAL  
STATE FUNDS (\$1,340,559.50), UNDER  
AUTHORITY OF 1999 SENATE BILL 2188  
(SWC Project No. 1907-01)**

The city of Wahpeton, North Dakota, is located in Richland county on the west bank of the Red River of the North and Bois de Sioux River at the confluence of the Otter Tail River. This community has a long history of significant flooding from the Red River of the North and the Otter Tail River. The most significant damage occurred in April, 1997 when the temporary levee systems at Breckenridge failed and caused catastrophic flood damages. The damages resulting from the 1997 flood adversely affected Wahpeton dramatically. After the 1997 flood, city officials requested the Corps of Engineers to conduct flood control studies, with the hope that such studies would lead to a federal flood protection project. In response to the request, the Corps completed a federal interest study in 1998, which led to a more detailed feasibility study, documented in a report by the Corps, dated September, 2000.

Secretary Frink explained that as a result of the 1997 flood, the Wahpeton flood control project was included in Senate Bill 2188, passed in the 1999 legislative session, which provided up to 50 percent of state funds for the non-federal share of the costs to construct a flood control or reduction project. Senate Bill 2188 provided up to \$3,500,000 of state funds for the Wahpeton flood control project. According to the Corps's feasibility study and environmental assessment, the plan identified for Wahpeton is a multi-featured project that would provide reliable permanent flood control protection for all areas of flowage easements to maintain a flood flow breakout channel between the Bois de Sioux and the Wild Rice Rivers.

Previously approved cost share actions by the State Water Commission for costs incurred and reimbursed for the Wahpeton flood control project include: December 8, 2000 (\$601,940.50); October 23, 2001 (\$1,307,500); and August 16, 2004 (\$250,000), for a total of \$2,159,440.50. To date, the city of Wahpeton has been reimbursed \$2,007,797.50.

The city of Wahpeton estimates costs of \$2,681,119 in the 2005-2007 biennium, of which 50 percent would be eligible for funding from the State Water Commission, under the authority of 1999 Senate Bill 2188. The request before the State Water Commission is to consider 50 percent of the non-federal costs in the amount of \$1,340,559.50.

It was the recommendation of Secretary Frink that the State Water Commission approve 50 percent of the non-federal costs, not to exceed an additional allocation of \$1,340,559.50 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Wahpeton flood control project, contingent upon the availability of funds. Affirmative action by the State Water Commission will increase the total state allocation for the Wahpeton flood control project to \$3,500,000, originally included in 1999 Senate Bill 2188.

***It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission approve 50 percent of the non-federal costs, not to exceed an additional allocation of \$1,340,559.50 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Wahpeton flood control project, under the authority of 1999 Senate Bill 2188. This action is contingent upon the availability of funds.***

***This action increases the total state allocation for the Wahpeton flood control project to \$3,500,000.***

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

***HAY TOWNSHIP DRAIN NO. 1  
(CAVALIER COUNTY) - APPROVAL OF  
STATE COST PARTICIPATION (\$34,756)  
(SWC Project No. 1940)***

A request from the Cavalier County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to construct Hay Township

Drain No. 1. This is a rural flood control project designed to control floodwaters by providing for the efficient removal of runoff.

The proposed drain will be located in Tier 161 North, Range 58 West, Sections 12, 1, 2, 11, 10, 9, 16, and 17, and will be approximately 5.5 miles in length. The terminus of the drain will be at the intersection of the existing natural watercourse with the centerline culvert under North Dakota Highway No. 5 in Section 17. A small lateral "A" will be constructed at the confluence with the main drain in Section 10 and proceeding westerly to the intersection of the natural watercourse with the east boundary of Section 9.

The preliminary engineering is complete, and a drainage permit application has been submitted. The drain will be constructed with a maximum cut of 3 feet, 3:1 side slopes, and a 10-foot bottom width. The drainage area is 3,000 acres. The project work consists of 30,716 cubic yards of excavation, installation of culverts at crossings, and engineering, administrative and legal services. It is anticipated that construction will be completed by the fall of 2008.

The project engineer's cost estimate is \$101,304, of which \$99,304 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$34,756). Pursuant to the State Water Commission's cost share policy, conditional approval of rural flood control drainage projects is allowed subject to a six-month time period for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive assessment vote and satisfaction of the required drain permit. The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$34,756.

It was the recommendation of Secretary Frink that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$34,756 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Hay Township Drain No. 1 construction project.

*It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$34,756 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Hay Township Drain No. 1 construction project. This action is contingent upon the availability of funds, a positive local assessment vote, and satisfaction of the required drain permit.*

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

**TRAILL COUNTY DRAINS 23 AND 40  
LATERAL 1 CONSTRUCTION PROJECT -  
APPROVAL OF STATE COST PARTICI-  
PATION (\$59,386)  
(SWC Project No. 1241)**

A request from the Traill County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to construct a lateral to Traill County Drains 23 and 40 to efficiently remove sheetwater runoff from cropland.

The proposed lateral will be constructed in Sections 20, 17, and 18, Tier 145 North, Range 52 West. An application to drain has been submitted indicating that the lateral will be constructed with a maximum cut of 5 feet, 4:1 side slopes, and an 8-foot bottom width. The drainage area is 3,200 acres. The project work consists of 91,000 cubic yards of excavation, installation of culverts at crossings, seeding, land acquisition, and engineering and legal services. It is anticipated the project construction will be completed by December, 2006.

The project engineer's cost estimate is \$203,125, of which \$169,675 is determined to be eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$59,386). Pursuant to the State Water Commission's cost share policy, conditional approval of rural flood control drainage projects is allowed subject to a six-month time period for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive assessment vote and satisfaction of the required drain permit. The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$59,386.

It was the recommendation of Secretary Frink that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$59,386 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Traill County Drains 23 and 40 Lateral 1 construction project.

***It was moved by Commissioner Johnson and seconded by Commissioner Hofstad that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$59,386 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Traill County Drains 23 and 40 Lateral 1 construction project. This action is contingent upon the availability of funds, a positive local assessment vote, and satisfaction of the required drain permit.***

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

**WALSH COUNTY ASSESSMENT  
DRAIN 4A CONSTRUCTION PROJECT -  
APPROVAL OF STATE COST PARTICI-  
PATION (\$81,594)  
(SWC Project No. 1941)**

A request from the Walsh County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to construct Walsh County Assessment Drain 4A to address sheetwater flooding from cropland and to reduce flood damage to agricultural properties.

The proposed drain will be located in Tier 158 North, Range 51 West (St. Andrews Township, Walsh County) beginning in the southeast quarter of Section 8 and proceeding southeasterly to a point where the drain will outlet into an oxbow of the Red River. The constructed drain will be approximately 4 miles in length.

Application to Drain No. 3120 specifies the drain will be constructed with a maximum cut of 3 feet, 3:1 side slopes, and an 8-foot bottom width. The drainage area is 2,015 acres. The project work consists of 30,730 cubic yards of excavation, installation of culverts at 14 crossings, seeding, utility relocations, land acquisition, and engineering and legal services. It is anticipated that construction will be completed by the fall of 2007.

The project engineer's cost estimate is \$372,126, of which \$233,126 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$81,594). Pursuant to the State Water Commission's cost share policy, conditional approval of rural flood control drainage projects is allowed subject to a six-month time period for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive assessment vote and satisfaction of the required drain permit. The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$81,594.

It was the recommendation of Secretary Frink that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$81,594 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Walsh County Assessment Drain 4A construction project.

***It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$81,594 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Walsh County Assessment Drain 4A construction project. This action is contingent upon the availability of funds, a positive local assessment vote, and satisfaction of the required drain permit.***

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

**WALSH COUNTY ASSESSMENT  
DRAIN 10, 10-1, AND 10-2  
CONSTRUCTION PROJECT -  
APPROVAL OF STATE COST  
PARTICIPATION (\$230,000)  
(SWC Project No. 1942)**

A request from the Walsh County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their project to construct Walsh County Assessment Drain 10, 10-1, and 10-2 to address sheetwater runoff from cropland and reduce flood damage to agricultural properties.

The proposed drain will be constructed in Action, Oakwood, Harriston, and Pulaski Townships of Walsh County. The constructed drain will consist of a main channel (10), two laterals (10-1 and 10-2), and two spurs (A and B), and will be approximately 32,300 feet in length outletting in Section 36, Tier 157 North, Range 51 West.

Application to Drain No. 3126 specifies the drain will be constructed with a maximum cut of 7 feet, 3:1 side slopes, and a 6-8 foot bottom width. The drainage area is 4,927 acres. The project work consists of 205,250 cubic yards of excavation, installation of culverts at crossings, seeding, utility relocations, land acquisition, and engineering and legal services. It is anticipated that construction will be completed by the fall of 2007.

The project engineer's cost estimate is \$955,159, of which \$780,150 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$273,056). Pursuant to the State Water Commission's cost participation policy for rural flood control projects, the funding limitation for individual rural flood control projects is \$230,000 per project for the 2005-2007 biennium. The Commission's policy allows conditional approval of rural flood control drainage projects subject to a six-month time period for receiving a positive local assessment vote. Final approval will be granted upon notification of a positive local assessment vote and satisfaction of the required drain permit. The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$230,000.

It was the recommendation of Secretary Frink that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$230,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Walsh County Assessment Drain 10, 10-1, and 10-2 construction project. The remaining eligible \$43,056 will require the State Water Commission's consideration in a future biennium.

***It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$230,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Walsh County Assessment Drain 10, 10-1, and 10-2 construction project. This action is contingent upon the availability of funds, a positive local assessment vote, and satisfaction of the required drain permit.***

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

***UPPER MAPLE RIVER WATERSHED  
FLOODWATER RETENTION SITES  
STUDY NO. 3, PHASE III PROJECT -  
APPROVAL OF STATE COST  
PARTICIPATION (\$35,000)  
(SWC Project No. 841)***

A request from the Maple River Water Resource District was presented for the State Water Commission's consideration in the District's Upper Maple River Watershed Floodwater Retention Sites Study No. 3, Phase III project. Six possible retention sites and the preliminary

design for the first site were identified in the first study. The second study investigated a potential retention site of which a soils investigation, preliminary design and cost estimates were developed. Based upon those analyses, the District is looking at alternative sites in other sub-watersheds of the Upper Maple River Watershed in Study No. 3, Phase III. Steele and Barnes County Water Resource Districts continue to support the studies of potential sites.

According to the District, the flooding conditions along the upper basin tributaries of the Maple River are causing damage to farmland and roads in Lake and Cornell Townships in Cass County. The topography of this area is a steep gradient in eastern Barnes County which flattens in western Cass County. In the Cass County region, the Maple River channel is not deep, but wide, and has a shallow gradient. This reach of the Maple River is also the location of the Cass County Drain No. 46. Water rushes out of the hills and slows as it comes into the flatter area overflowing the banks of the shallow river channel thus flooding the area.

The total estimated cost of the Upper Maple River Watershed Floodwater Retention Sites Study No. 3, Phase III is \$70,000, all of which is determined eligible for state cost participation as a engineering feasibility study project at 50 percent (\$35,000). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$35,000.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as an engineering study feasibility project at 50 percent of the eligible costs, not to exceed an allocation of \$35,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Upper Maple River Watershed Floodwater Retention Sites Study No. 3, Phase III.

***It was moved by Commissioner Hofstad and seconded by Commissioner Hillesland that the State Water Commission approve state cost participation as an engineering study feasibility project at 50 percent of the eligible costs, not to exceed an allocation of \$35,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Upper Maple River Watershed Floodwater Retention Sites Study No. 3, Phase III. This action is contingent upon the availability of funds.***

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

***COST SHARE POLICY, PROCEDURE,  
AND GENERAL REQUIREMENTS -  
AMENDMENT TO SECTION RELATING  
TO PROJECTS ELIGIBLE FOR COST  
SHARE, SUBSECTION III, FLOOD  
CONTROL PROJECTS  
(SWC Project No. 1753)***

During the August 16, 2004 State Water Commission meeting, concerns were expressed relative to counties and communities in North Dakota and their ability to afford the construction/project development of water retention structures without further and/or additional financial assistance from the State

Water Commission. The rural flood control policy committee (Commissioners Halcrow, Hillesland, Swenson, and Thompson) and others were directed to revisit the State Water Commission's policy and guidelines as it relates to cost share arrangements for water retention structures. The rural flood control policy committee and others met on March 21, 2006 to discuss the cost share policies and procedures for funding water retention structures.

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

The committee also recommended to allow land costs for flood control projects eligible for state cost participation not to exceed 50 percent. Reimbursement would be based on actual cost paid to the landowner.

At its meeting on March 22, 2006, the State Water Commission tabled a motion regarding the rural flood control policy recommendations. During discussion of the motion, it was the general consensus of the State Water Commission members that additional information was required to determine the impact of changing present policies to include previously exempt project costs and, therefore, directed Secretary Frink and the Commission staff to provide budgetary estimates of this potential change in policy for the Commission's further consideration, and that the rural flood control policy committee revisit the State Water Commission's policy and guidelines as it relates to cost share arrangements for water retention structures.

***It was moved by Commissioner Olin and seconded by Commissioner Johnson that the State Water Commission take the question from the table (March 22, 2006 meeting) to consider state cost participation for the study/preliminary engineering of flood control projects not to exceed 50 percent for dams, dikes, levees, diversion channels, water retention structures/methods, dam repairs, drop structures, and programs (Cost Share Policy, Procedure, and General Requirements, Projects Eligible for Cost Share, Subsection III - Flood Control Projects); and, that land costs for flood control projects be considered an eligible item for state cost participation not to exceed 50 percent.***

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

As a result of the State Water Commission's working session held on June 28, 2006 to discuss the current cost share policy and procedures for flood control projects, it was recommended that preliminary engineering and feasibility studies for flood control projects be considered eligible for state cost participation not to exceed 50 percent. This does not include rural flood control projects.

***A substitute amendment to the original motion was offered by Commissioner Olin and seconded by Commissioner Hofstad that the State Water Commission's Cost Share Policy, Procedure, and General Requirements, Projects Eligible for Cost Share, Subsection III - Flood Control Projects, be amended as follows: "... Preliminary engineering and feasibility studies for flood control projects are eligible for state cost participation not to exceed 50 percent. This does not include rural flood control projects. ..."***

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

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

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

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

For clarification purposes, it was recommended that the Cost Share Policy, Procedure, and General Requirements - Non-Eligible Items, include the following language: "... The eligibility of certain items for cost share may be addressed on an individual basis and presented to the State Water Commission for consideration if deemed warranted by Commission personnel. ..."

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

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

**Red Trail Energy:** The contractor, Northern Improvement Company, has completed the installation of 12,370 feet of 12-inch PVC pipeline which connects their facilities to the raw water main transmission line. The contractor also installed a 2-3-inch PVC pipeline to connect Red Trail Energy to an existing pipeline to provide potable water service to their office and processing building. Operations are anticipated to begin in the fall of 2006.

**Medora-Beach Regional Service Area, Phase II:**

Contract 7-8B - Beach, Golva, and Fryburg Service Areas. The contractor, Abbot, Arne, Schwindt, Inc., continues work on 277 miles of pipeline, of which approximately 144 miles of pipeline have been installed and 100 miles of pipeline have been tested. Of the 173 services, 110 have been installed with 71 being turned over to the Southwest Water Authority for service. The plow crew finished work in the Beach service area and is now in the Golva service area. The trenching crew has completed its work near Golva and has moved to Belfield.

The Golva booster was delivered to the site on June 20, 2006. The pressure testing crew will fill, flush, and pressure test the pipelines as soon as the service crews finish the installation work.

Contract 7-8C - Junction Inn Service Area and the Tower Hill and North Crown Butte VFD Pocket Areas (Morton County Areas). The contractor, Northern Improvement Company, has installed approximately 139 miles of the contracted 154 miles. It is anticipated all of the 2-4 inch lines on this contract should be plowed in by the end of July, 2006. Of the 110 services, 63 have been installed. The Tower Hill VFD booster, North Crown Butte VFD booster, and the Junction Inn special meter have been installed. The Junction Inn and North Crown Butte service area lines were filled the week of June 19, 2006.

**Medora-Beach Regional Service Area, Phase III:** An application was submitted to USDA, Rural Development for Rural Economic Area Partnership (REAP) funding for a 75 percent grant and a 25 percent loan for the South Fryburg pocket area of the Medora-Beach regional service area, Phase III, which is located south of Belfield. The project did not meet the REAP funding criteria that 50 percent of the well water samples exceed the drinking water standards. Of the 27 water wells that were sampled in the project area, only 9 wells exceeded the standards.

An application was submitted to USDA, Rural Development for a total funding package of \$2,032,000, which includes a 45 percent grant (\$911,000) and a 55 percent loan (\$1,121,000 in the form of bonds) for Medora-Beach, Phase III, for 55 users. The cost per equivalent service user is \$35,720 (excluding the booster costs) and \$37,730 (including the booster costs). These costs meet the feasibility criteria of \$35,830 based on the May 1 Consumer Price Index.

**Contract 7-9A - Beulah Interim Service Area:** Contract 7-9A was awarded to Abbot, Arne, Schwindt, Inc., Moorhead, MN, and has been executed by all parties. A pre-construction meeting is scheduled for July 12, 2006, with construction anticipated to begin in mid-July, 2006, or as soon as the 6-inch pipeline is completed in the Belfield area. An application has been submitted to USDA, Rural Development for an additional \$58,500 due to increased unit costs resulting from recent natural disasters.

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

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

**NAWS Lawsuit:** On February 3, 2005, Judge Rosemary M. Collyer issued her ruling on the NAWS lawsuit requiring additional environmental evaluations. However, a detailed review by attorneys in the Department of Justice and the

State of North Dakota indicated that Judge Collyer wanted detailed environmental evaluations that are typically included in an environmental impact statement (EIS).

On June 13, 2005, the Department of Justice filed an intent to appeal this ruling. The Department of Justice later announced they would not proceed with the appeal.

For these reasons, the Bureau of Reclamation informed Judge Collyer that the agency intends to do an EIS for the NAWS project, and asked Judge Collyer to allow continued construction of the project in the Minot area on components not affected by a decision related to the location of a water treatment plant or the type of treatment.

On March 24, 2006, Judge Collyer approved the state and federal request to proceed with design and construction activities for three NAWS projects that would not affect treatment decisions: Minot high service pump station, Berthold pipeline, and the pipeline which would provide service north of the Minot water treatment plant.

On May 16, 2006, the State Water Commission staff held an informal meeting with the Bureau of Reclamation and representatives from Manitoba to discuss biota treatment for the NAWS project. The result was mainly information sharing of Manitoba's proposal for what they consider as an acceptable level of treatment, which is a level above the Safe Drinking Water Act standards.

**Environmental Impact Statement:** The Bureau of Reclamation published a notice of intent in the Federal Register on March 6, 2006 to initiate scoping for an EIS on the NAWS project. The initial public scoping on the NAWS project was completed in May, 2006, and the Bureau of Reclamation is responding to the comment letters that were received.

Preliminary results from the 12-month water treatment study involving a pilot plant in the Snake Creek pumping plant, which began in April, 2006, are showing a ground-water influence and higher than expected levels of alkalinity. The ground-water influence appears to reduce when the Snake Creek pumping plant is moving water into Lake Audubon. Additional water quality testing is being pursued to evaluate some options. The results of this pilot plant study will be used in the EIS.

**NAWS Advisory Committee:** The NAWS advisory committee met on May 18, 2006 in Minot. The discussions included an update on the additional construction projects approved by the court, preliminary comments from the public scoping meetings, and a status report on the two ongoing construction contracts. Discussions are being held on the operation of the Berthold line as this will be the first NAWS line providing water service from Minot.

**Contract 2-1C:** Contract 2-1C was awarded by the State Water Commission to Winter Brothers Underground, Inc., Sioux Falls, SD, on March 11, 2004, for \$6,088,848. This contract covers 11.6 miles of 36-inch pipe and 31 vaults between N.D. Highway 23 and U.S. Highway 83 at Max, ND.

The final pressure testing passed on June 1, 2006. The construction was reviewed on June 13-14, 2006, and a punch list was created. The remaining work includes minor coating touchups on the piping in the vaults, and capping in several areas of the cathodic protection. Erosion protection and seeding were completed the week of June 12, 2006. The final completion date in the contract is June 30, 2006.

**Contract 2-1D:** Contract 2-1D was awarded by the State Water Commission to Molstad Excavating, Inc., Grand Forks, ND, on March 10, 2005 for \$9,578,241. This contract covers 14.9 miles of 36-inch pipe and 54 vaults between Max, ND and the Totten Trail Restaurant. To date, approximately 7.5 miles of pipeline have been installed.

Alan Walter, Public Works Superintendent, City of Minot, responded to the water treatment process options that are being considered for the NAWS project, and expressed concerns relative to an option that could preclude the Minot water treatment plant.

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

Devils Lake is currently at an elevation of 1448.70 feet msl. At its current elevation, Devils Lake has a surface area of 137,000 acres and storage of 2.66 million acre-feet of water. On May 9, 2006, Devils Lake was at 1449.20 feet msl, which is the highest level on record.

Devils Lake is currently at an elevation of 1448.70 feet msl. At its current elevation, Devils Lake has a surface area of 137,000 acres and storage of 2.66 million acre-feet of water.

The current elevation of Stump Lake is 1442.75 feet msl. At this elevation, Stump Lake has a surface area of 13,300 acres and is storing 430,000 acre-feet of water. The gage on the Jerusalem channel, which was moved upstream due to rising waters, was read at 365 cubic feet per second (cfs).

The combined volume of Devils Lake and Stump Lake is 3.09 million acre-feet, which is an increase of 217,000 acre-feet since last year. According to the Stump Lake gage, approximately 178,000 acre-feet of water has flowed from Devils Lake into Stump Lake since 2005. There is 81,000 acre-feet of storage available in Stump Lake between the current elevation and 1448.0 feet msl. During the time period from June through October of 2005, flows from Devils Lake into Stump Lake averaged just below 300 cfs. If flows average 300 cfs into Stump Lake during the same time period in 2006, the lakes will equalize at 1448 feet msl on October 30, 2006. If the flows average 400 cfs, the lakes will equalize at 1448 feet msl on September 26, 2006.

The National Weather Service issued hydrologic projections for Devils Lake and Stump Lake on May 30, 2006. The following table provides the exceedance probabilities for each lake (figures are in feet msl) and are valid through September, 2006:

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake	1449.4	1449.6	1449.8
Stump Lake	1445.7	1446.5	1447.3

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

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. The project was based on a three-year construction time line with construction commencing in the fall of 2002. Operation of the outlet began on August 15, 2005, within the guidelines of the North Dakota Pollutant Discharge Elimination System (NDPDES) water quality discharge permit issued by the North Dakota Department of Health.

The NDPDES water quality discharge permit specifies that the water may not have an average weekly sulfate concentration of more than 300 milligrams per liter. The sulfate levels in west Devils Lake and the Sheyenne River were both high enough to restrict discharges into the river, therefore, the outlet was not able to operate after September 1, 2005.

The NDPDES water quality discharge permit also limited the outlet's flow in 2005 to 50 cubic feet per second (cfs) and pumping operations are to cease from December through April. If the outlet is allowed to pump to its capacity, which is increased to 100 cfs in 2006, it could remove up to four inches of water from the lake annually.

The project did not begin operations on May 1, 2006 to divert Devils Lake water into the Sheyenne River because of the sulfate restrictions in the NDPDES water quality discharge permit.

Secretary Frink informed the State Water Commission members that modifications to the North Dakota Pollutant Discharge Elimination System water quality discharge permit have been requested from the North Dakota Department of Health that would allow a more effective operation of the outlet. The proposed modifications will: 1) allow pumping as long as ice-free conditions exist; 2) remove the total suspended solids limit; and 3) adjust the current 300 mg/L instream sulfate level that would allow the outlet to be operated as long as the sulfate levels in the Sheyenne River were not increased more than 15 percent up to a maximum level of 450 mg/L. The State Health Department held a public hearing on the proposed modifications on June 27, 2006 in Devils Lake.

Fencing around the outlet canal and structures is completed. The telemetry installation is completed, although some work remains to allow the system to communicate between the two pump stations, the terminal structure gate, and the State Water Commission office in Bismarck. The electrical damage that occurred at the Josephine pump station in December, 2005 has been repaired, and the buildings that house the electrical components for both pump stations have been properly sealed.

The State Water Commission has contracted for the services of the Garrison Diversion Conservancy District for maintenance of the outlet which includes sampling, mowing the easement, weed spraying, and repairs to the canal, if required.

**GARRISON DIVERSION  
CONSERVANCY DISTRICT  
REPORT  
(SWC Project No. 237)**

The Dakota Water Resources Act of 2000 authorized the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in North

Dakota and possible options for meeting those needs. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation has completed the *Report on Red River Valley Water Needs and Options*. The State of North Dakota and the Bureau are jointly preparing the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The draft EIS was released in December, 2005, and public hearings were held in February and March, 2006. The comment period will remain open while further analysis is done on issues that have been raised in the comments received to date. A supplemental draft EIS is being developed and will be distributed for a 45-day comment period. Additional study efforts currently being completed are: biota plant failure analysis by the United States Geological Survey (USGS); water quality monitoring by the USGS; impact analysis of Missouri River depletions under drought conditions by the Corps of Engineers; and, a cumulative impact analysis of ground-water depletions in Minnesota by the USGS.

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

June 28, 2006 - 19

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

Drought conditions persist in the Missouri River basin. On June 16, 2006, system storage in the six mainstem reservoirs was 38.7 million acre-feet (MAF), 19.9 MAF below the average system storage for June and 1.4 MAF more than in 2005. Lake Sakakawea was at an elevation of 1816.4 feet msl, 5.0 feet higher than in 2005 and 21.2 feet below its average June elevation.

The Corps of Engineers is predicting runoff above Sioux City for 2006 to be 19.4 MAF, 77 percent of normal. With this amount of runoff, the Corps is estimating that the navigation season will be shortened by 45 days and the system will have 36 MAF at the end of 2006. Lake Sakakawea is forecasted to fall to 1811.1 by the end of 2006. The Corps is releasing approximately 21,000 cubic feet per second (cfs) from Lake Sakakawea and plans to maintain releases at this level through August, 2006. This is 3,000-6,000 cfs higher than in the previous two years.

The elevation of Lake Oahe was 1576.7 feet msl on June 16, 2006, which is 0.2 feet lower than a year ago and 29.2 feet lower than its average June elevation. The Corps is estimating that Lake Oahe will drop to 1573.5 feet msl by the end of August, and then rise to 1577.2 feet msl by the end of 2006.

Fort Peck Lake was at an elevation of 2205.6 feet msl on June 16, 2006, which is 4.2 feet higher than a year ago but 28.0 feet below its average June elevation. The forecast calls for Fort Peck to fall to 2201.7 feet msl by the end of 2006.

The North Dakota Missouri River Task Force, established by the Missouri River Protection and Improvement Act of 2000, met on June 13, 2006. The agenda items included a legislative overview and the charter, which are attached hereto as **APPENDIX "F"**, and a discussion on the process for development of the program management plan, cost share agreement, scope and costs for the assessment, and a time-line schedule. The assessment will address the impacts of erosion along the Missouri River, status of historical and cultural sites, and siltation. The plan will identify critical restoration projects for conservation practices, general control and removal of sediment, protection of historical and cultural sites, and erosion control. The cost share requirements include: assessment (75 percent federal/25 percent non-federal); plan (75 percent federal/25 percent non-federal); and, projects (65 percent federal/35 percent non-federal). A local sponsor and state/local funding will be required to develop the assessment, plan, and future projects.

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

On January 3, 2005, the North Dakota Office of the Attorney General responded to a request from Burleigh county regarding the ability of land developers

to construct wildlife habitat on sovereign lands for mitigation requirements. Attorney General's Opinion 2005-L-01 states, in part, "The state may allow land developers to construct wildlife habitat on the Missouri River sandbars to satisfy federal mitigation requirements provided the state permit is issued under a comprehensive river management plan."

In response to the request and in discussions with the North Dakota Office of the Attorney General staff, it has been determined to be in the best interest of the state to pursue the development of a comprehensive statewide sovereign land management plan as no such plan currently exists. North Dakota's sovereign land, under the authority of the North Dakota State Engineer and subject to regulation, are those lands including the beds and islands lying within the ordinary high watermark of navigable lakes and streams.

The overall purpose of the plan will be to continue to fulfill the State Engineer's duty to manage sovereign land pursuant to the Public Trust Doctrine; satisfy requirements outlined in Attorney General's Opinion 2005-L-01; provide greater consistency in the management of sovereign land and administration of regulations; serve as a complement to the state's administrative rules concerning sovereign land management; and, improve management of the state's sovereign land for present and future generations.

A draft of the sovereign land management plan was distributed to the North Dakota sovereign land advisory board (also referred to as the sovereign land plan development work group) on June 14, 2006 for review and comment. The next meeting of the advisory board is scheduled for July 12, 2006. It is anticipated that public hearings will be held to get comments from the general public.

The Office of the State Engineer has determined it to be in the best interest of the public to make ordinary high water mark delineations in areas that are either experiencing rapid development or in areas where there is a question about the ownership boundary between the state and private landowners. By making ordinary high water mark delineations in these areas, public lands will be more clearly defined. Secretary Frink stated that because of Commission staffing constraints, and in an effort to complete a series of delineations in the summer of 2006, the Office of the State Engineer will be requesting proposals to have ordinary high water mark delineations conducted along the Bismarck-Mandan area segment of the Missouri River.

Secretary Frink explained that the State of North Dakota does not have a specific set of standards or guidelines established for ordinary high water mark delineations other than the general guidance provided by the courts. To ensure accuracy and consistency in the state's efforts to make ordinary high water mark delineations, the Office of the State Engineer is requesting proposals to have methods, protocols, and guidelines developed for ordinary high water mark delineations on rivers, streams, and lakes in North Dakota.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the meeting at 3:50 PM.

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

SEAL

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



