

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

February 13, 1987

The North Dakota State Water Commission held a meeting on February 13, 1987, in the lower level conference room of the Old State Office Building, Bismarck, North Dakota. Governor-Chairman, George A. Sinner, called the meeting to order at 10:00 a.m., and requested State Engineer-Secretary, Vernon Fahy, to call the roll and present the agenda.

MEMBERS PRESENT:

- Governor George A. Sinner, Chairman
- Richard Backes, Member from Glenburn
- Jacob Gust, Member from West Fargo
- Ray Hutton, Member from Oslo, MN
- William Lardy, Member from Dickinson
- Jerome Spaeth, Member from Bismarck
- Kent Jones, Commissioner, Department of Agriculture, Bismarck
- Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBERS ABSENT:

- Joyce Byerly, Member from Watford City
- William Guy, Member from Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 35 persons interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official copy of minutes).

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

CONSIDERATION OF MINUTES
OF NOVEMBER 19, 1986 MEETING -
APPROVED

The minutes of the November 19, 1986 meeting were approved by the following motion:

It was moved by Commissioner Backes, seconded by Commissioner Hutton, and unanimously carried, that the minutes of November 19, 1986 be approved as circulated.

CONSIDERATION OF MINUTES
OF DECEMBER 3, 1986 MEETING -
APPROVED

The minutes of the December 3, 1986 meeting were approved by the following motion:

It was moved by Commissioner Backes, seconded by Commissioner Hutton, and unanimously carried, that the minutes of December 3, 1986 be approved as circulated.

UPDATE ON SOUTHWEST
PIPELINE PROJECT
(SWC Project No. 1736)

Dale Frink, Project Manager for the Southwest Pipeline Project, informed the Commission members that on February 12, 1987 bids were opened on three segments of pipeline totalling 22.4 miles of lines. Mr. Frink indicated this phase of the project involves three separate contracts and the bids total \$7,035,613, which is approximately \$400,000 less than the engineer's estimate of \$7,434,000. Mr. Frink explained the bidding process and bid tabulation summary, and stated the following successful bidder for each contract was:

- 1) Contract 2-2C - Johnson Construction, Fargo - bid of \$3,265,900
- 2) Contract 2-2D - Johnson Construction, Fargo - bid of \$1,813,618
- 3) Contract 2-2E - Wescon, Pleasant Grove, Utah - bid of \$1,956,095

Mr. Frink explained the calculations and legality of each bid will be reviewed by staff prior to the awarding of the bids.

It was moved by Commissioner Lardy and seconded by Commissioner Gust that the State Water Commission approve awarding of the bids for Contracts 2-2C, 2-2D and 2-2E for the Southwest Pipeline Project, contingent upon calculation review and legality of bids.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

UPDATE ON RED
RIVER DIKING
(SWC Project No. 1638)

The Commission members were informed at their December 3, 1986 meeting, that a draft had been presented to the Attorney General for review requesting that a contempt order be brought against Minnesota defendants for failing to comply with the Federal District Court order to lower their dikes along the Red River on the Minnesota side. At that meeting, Rosellen Sand, Assistant Attorney General for the State Water Commission, indicated the filing date for the brief would be contingent upon the Attorney General's review.

Ms. Sand stated the contempt order brief was filed and the hearing was held on December 18, 1986. After the

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presentation of facts, the Judge ordered work to proceed immediately on the Minnesota side to bring the dikes into compliance with the Federal District Court order, and scheduled a hearing on January 2, 1987 to determine the progress of the work. At the January 2, 1987 hearing, the Minnesota representatives indicated at that time all of the work they could physically do would be completed by January 16, 1987.

David Sprynczynatyk, Director, Engineering Division for the State Water Commission, stated approximately 94 percent of the work has been accomplished on the North Dakota side to bring the dikes into compliance, and by January 10, 1987 Minnesota had accomplished a like amount of work on the dikes they had constructed. Mr. Sprynczynatyk noted there are areas on the North Dakota side where existing dikes need to be lowered, as well as areas in Minnesota where the dike will have to be relocated. The two states are currently working on a stipulation to do the work in these areas after the spring flood season.

Mr. Sprynczynatyk made reference to a recent article which appeared in the Grand Forks Herald relative to a proposal Marshall County in Minnesota is considering that would provide a higher level of protection to Minnesota without any impacts to North Dakota.

In contacts with Minnesota representatives regarding the proposal, Mr. Sprynczynatyk said it appears the Minnesota people are going to propose to the people on the North Dakota side that a joint project be developed addressing the problems on both sides. Any solutions would have to be fair and equitable solutions to all parties.

Mr. Sprynczynatyk presented for the Commission's consideration requests from the Grand Forks and Walsh Counties Water Resource Districts requesting financial assistance from the State Water Commission to the landowners that have incurred expenses in the dike modification process. The approximate cost of expenses incurred to the landowners is \$55,397.73.

The Commission had been informed at its December 3, 1986 meeting that an Attorney General's opinion was requested on whether the State Water Commission may reimburse landowners for their cost of modifying illegal dikes on their property. Rosellen Sand indicated an Attorney General's opinion relative to this question was received on February 12, 1987, which states: "It is my opinion that the State Water Commission may, under appropriate circumstances, reimburse landowners for their cost of modifying illegal dikes on their property." Ms. Sand discussed the State Engineer's and staff's interpretation of the Attorney General's opinion, explained legal ramifications and complexities of the matter, and cited past legal cases of similarity.

Ms. Sand suggested that if the Commission determines financial assistance should be provided to landowners in Grand Forks and Walsh Counties who have had their dikes modified, the assistance should be conditioned so the State receives benefits for the funds granted and to assure that the final implementation of the Corrective

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Plan will be achieved at the least cost to the State. Ms. Sand presented the following draft conditions for consideration, if financial assistance is provided:

- 1) The pending appeal of the State Engineer's orders must be dismissed with prejudice by the landowners in connection therewith, the administrative subpoena costs for the Governor, State Engineer, David Sprynczynatyk, and the State Water Commission records should be paid by the landowners who requested the subpoenas.
- 2) All remaining work must be completed to the State Engineer's satisfaction before a landowner may receive any compensation.
- 3) The landowners must agree to release, hold harmless, and indemnify the State, its agencies, officials and employees for any activity connected with the modifications of the dikes.
- 4) The landowners must grant a permanent easement for access to inspect the dikes to the State and the local water resource district.
- 5) The landowners must agree to properly maintain the dikes so they do not fall into disrepair and fail. The landowners must agree to hold the State, the water resource district, agencies of the State, and officials and employees of any of these entities, harmless from and indemnify them for any damages, caused by or for any settlements entered or judgments satisfied because of a failure in the dike system.
- 6) With regard to existing dikes which have not been discovered or that have been discovered but have not been modified, the landowners must agree to allow the State to modify the dikes, or they must modify the dikes themselves by July 1, 1987. Existing dike owners whose dikes have not been modified must forego any right to an appeal and must also agree to conditions 2, 3, 4 and 5 above.

Senator Harvey Tallackson from Walsh County discussed drainage and flood problems in the Red River area and made reference to the 1975 flood when farmers lost most of their crop. In defense, he said the farmers constructed levees they felt were legal at that time. Senator Tallackson alluded to the activities involving the recent Federal District Court order for modification of the illegal dikes that were constructed in 1975.

Senator Tallackson urged the State Water Commission to consider reimbursement to the landowners for the expenses they incurred for their dike modifications. He noted Minnesota appropriated \$1 million for financial assistance to the Minnesota landowners for their dike modification efforts.

Charles Zahradka, Chairman of the Walsh County Water Resource Board, requested the State Water Commission to act favorably on its request to reimburse the landowners for the expenses

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incurred for dike modification. He said if financial assistance is provided to the landowners, he would have no problem with the conditions proposed by the legal staff.

C. W. Ekness, Grand Forks County Water Resource Board, requested that the State Water Commission reimburse the landowners for expenses incurred in their dike modifications. He noted Minnesota has appropriated funds for reimbursement to its landowners and felt North Dakota should do likewise. He concurred that he would have no problems conditioning financial assistance as proposed by the legal staff.

Rosellen Sand responded to a question raised by Daniel Narlock, Walsh County, relative to the assurance of protection for North Dakota against future diking by Minnesota. Mr. Narlock expressed concern that the farmers on the North Dakota side should be reimbursed for their expenses incurred for dike modifications and urged the Commission to take favorable action on their request.

Maurice Bushaw, Grand Forks, expressed his comments relative to diking and requested the State Water Commission to consider financial assistance for the landowners in Grand Forks and Walsh Counties for dike modification expenses.

Because of the legal ramifications and complexities involved in responding to the request from the Grand Forks and Walsh Counties Water Resource Districts, Governor Sinner appointed Commissioners William Lardy and Jerome Spaeth to work with staff to develop a recommendation for the Commission's consideration at its next meeting.

UPDATE ON GARRISON
DIVERSION PROJECT
(SWC Project Nos. 237 & 237-3)

C. Emerson Murry, Manager of the Garrison Diversion Conservancy District, updated the Commission members on negotiations and efforts by state officials to try and restore some of the federal appropriations that had been reduced for the Garrison Municipal, Rural and Industrial program. Mr. Murry said the hearings in the Senate and House Appropriations Committee have been scheduled for March 31-April 2, 1987.

Robert Dorothy, Study Team Leader for the Garrison MR&I needs survey, distributed and discussed in detail a draft report for the implementation of the Garrison MR&I Water Supply Program. The report was a joint project between the State Water Commission and the Garrison Diversion Conservancy District.

Secretary Fahy commented that this draft report includes general guidelines as to how the Garrison MR&I program will be handled. The guidelines are flexible and subject to change once experience is gained from working with the communities that are served.

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It was moved by Commissioner Jones and seconded by Commissioner Backes that the State Water Commission approve the draft report for the Garrison Municipal, Rural and Industrial Water Supply Program.

In discussion of the motion, Commissioner Lardy said he feels this report proposes a water supply system for communities but the report does not address assistance to rural systems anticipating FMHA dollars that are going to be replaced by the MR&I funds. He said, "I think that we should be more aware of the need, or of the word 'rural' in our title. True, we have identified some real needs in communities, but communities collectively have a greater opportunity to provide internal resources by special assessment districts, etc., not generally available to farmers and ranchers."

Commissioners Backes, Gust, Hutton, Spaeth, Jones, and Governor Sinner voted aye. Commissioner Lardy voted nay. Recorded vote was 6 ayes; 1 nay. The Chairman declared the motion carried.

Mr. Sprynczynatyk indicated one of the federal requirements outlined in Section 3.C of the Cooperative Agreement between the United States and the Garrison Diversion Conservancy District is a five-year plan for the Municipal, Rural and Industrial Water Supply Systems Program be prepared and submitted to the U.S. Bureau of Reclamation. Mr. Sprynczynatyk distributed, and discussed a draft Five-Year Plan for the Garrison Diversion Unit Municipal, Rural and Industrial Water Supply Program.

It was moved by Commissioner Lardy and seconded by Commissioner Hutton that the State Water Commission approve the draft Five-Year Plan for the Municipal, Rural and Industrial Water Supply Program, Garrison Diversion Unit, North Dakota, dated January 31, 1987.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

At the October 17, 1986 meeting, the State Water Commission considered a draft Memorandum of Understanding between the State Engineer and the Manager of the Garrison Diversion Conservancy District for the implementation of the Garrison MR&I Program. At that time, the State Water Commission members expressed an interest in including the State Water Commission as a part of the final Memorandum of Understanding.

Secretary Fahy distributed copies of the Memorandum of Understanding between the State Water Commission and the Garrison Diversion Conservancy District for the Commission's consideration which incorporated the recommended suggestions by the State Water Commission at its October 17, 1986 meeting.

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It was moved by Commissioner Spaeth and seconded by Commissioner Lardy that the State Water Commission approve the Memorandum of Understanding Between the State Water Commission and the Garrison Diversion Conservancy District for implementing the Garrison Municipal, Rural and Industrial Program. SEE APPENDIX "A".

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

STATUS REPORT ON INTER-BASIN BIOTA TRANSFER STUDY (SWC Project No. 1828)

Gene Krenz, Program Coordinator for the Inter-Basin Biota Transfer Study, updated the Commission members on the progress of the study.

On February 9, 1987, Governor Sinner sent letters to individuals requesting them to serve on an Oversight Committee to provide policy guidance on the study and to make the policy decisions which the Project Coordinator was not authorized to make. Commissioner Guy was designated as Chairman of the Committee.

Mr. Krenz discussed study funding problems, and stated that as a result of discussions with Dr. Jay Leitch, Associate Director for the Water Resources Research Institute, a proposal has been developed for identification and analysis of Canadian concerns regarding the Garrison Diversion Unit in North Dakota. Mr. Krenz presented and explained Dr. Leitch's proposal and indicated that this proposal would carry out one of the responsibilities of the Program Coordinator as mandated by Governor Sinner; that of defining with a good deal more precision the nature of the research that will be required to overcome the Canadian objections.

Mr. Krenz stated the total cost of Dr. Leitch's proposal is \$10,000, and requested the Commission's consideration to cost share in one-half of the costs, not to exceed \$5,000. The Garrison Diversion Conservancy District is being requested to cost share in the remaining one-half of the costs. Mr. Krenz said he is anticipating that by October, 1987 the results of this proposal will indicate if there is merit in moving forward with the Inter-Basin Biota Transfer Study.

It was the recommendation of the State Engineer that the State Water Commission enter into a contract with the North Dakota Water Resources Research Institute and approve cost sharing in the amount of \$5,000, contingent upon the availability of funds.

It was moved by Commissioner Backes and seconded by Commissioner Spaeth that the State Water Commission enter into a contract with the North Dakota Water Resources Research Institute on the Inter-Basin Biota Transfer Study relative to the Identification and Analysis of Canadian Concerns Regarding the Garrison Diversion Unit

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in North Dakota, and approve cost sharing not to exceed \$5,000, contingent upon the availability of funds.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

DISCUSSION OF BALANCED
WETLAND ACRES POLICY
(SWC Project No. 1810)

C. Emerson Murry stated that on April 14, 1986, the Governor of North Dakota, Chairman of the Garrison Diversion Conservancy District, President of the North Dakota Water Users Association, President of the National Audubon Society, President of the North Dakota Chapter of the Wildlife Society, Executive Vice President of the National Wildlife Federation, and the President of the North Dakota Wildlife Federation executed a statement of Principals to support the agreement for reformulation of the Garrison Diversion Unit.

The Statement of Principals provided the parties would support the jointly developed Garrison Reformulation legislation and appropriations necessary for implementing all of the purposes of the project, as reformulated; that wetland acquisition and management issues which have been in conflict would be resolved so as not to disrupt future wetland acquisition and management programs; that the parties would work towards the development of wetland policies and guidelines for the state which assures protection of the existing number of wetland acres in conjunction with the development and management of North Dakota's water resources and in recognition of the needs and concerns of farmers; that existing state wetland and drainage laws would be enforced and improved; and in general to establish a new partnership among the parties to improve the management of water and wetland resources within North Dakota. Mr. Murry stated all parties to the April, 1986 Statement of Principals have in good faith worked, and will continue to work, to fulfill the provisions of the Statements of Principals.

On February 5, 1987, the parties who executed the Statement of Principals entered into a Memorandum of Understanding reaffirming their commitment to the Statement of Principals setting forth considerations for guidance in future water and wetland cooperative efforts. Mr. Murry said the parties to the agreement will actively pursue the North Dakota legislature enactment of S.B. 2507, as introduced or as amended upon agreement of the parties, which assures protection of the existing number of wetland acres in North Dakota.

Mr. Murry briefed the Commission members on the contents of S.B. 2507, which is a bill for an Act to create and enact a new chapter to Title 61 of the North Dakota Century Code relating to wetlands; and to repeal Section 61-16.1-52 of the North Dakota Century Code and Section 61-16.1-41 of the North Dakota Century Code, as amended by Section 5 of Chapter 665 of the 1985 Session Laws, relating to drainage permits and closing drains. Mr. Murry commented this will be known as the North Dakota Wetlands Act of 1987.

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A provision of S.B. 2507 would provide for establishment of a Wetlands Bank, jointly established by the State Engineer and the Game and Fish Commissioner. The records of acreage of replacement wetlands debited from and credited to the bank would be maintained by the State Engineer. The acreages of all replacement wetlands constructed after January 1, 1987 will be carried as a credit in the bank, however, unauthorized drainage constructed after July 1, 1975, closed or restored as a result of final enforcement action pursuant to Section 7 of the Act, which relates to closing a noncomplying drain, would not be credited to the wetlands bank. The acreages of all wetlands drained after January 1, 1987 except those projects for which permits were applied for prior to January 1, 1987 would be charged as a debit against acreage credit balances. No more than 2,500 acres may be carried as a debit balance to the wetlands bank.

Mr. Murry commented on a section of the bill relating to the appeal of a board decision to the State Engineer by an aggrieved party.

In discussion, Governor Sinner said S.B. 2507 represents the efforts of many interests involved in water and wetland cooperation and he stressed the importance of continuing these cooperative efforts in the future. Governor Sinner suggested it would be appropriate for the State Water Commission to state its position at this time relative to the cooperative efforts expressed in S.B. 2507.

It was moved by Commissioner Gust and seconded by Commissioner Lardy that the State Water Commission support the concept of the efforts expressed in S.B. 2507.

Commissioners Backes, Gust, Hutton, Lardy, and Jones voted aye. Commissioner Spaeth passed on the vote. The Chairman declared the motion carried.

CONSIDERATION OF ANNUAL
COST SHARING CONTRACT
BETWEEN STATE WATER
COMMISSION AND U.S.
GEOLOGICAL SURVEY FOR
HYDROLOGIC DATA
COLLECTION AND
INVESTIGATIVE PROJECTS
(SWC Project No. 1395)

the Geological Survey. The State Water Commission share is \$120,450 in the form of direct services, and \$203,400 repay (cash payment) to the U.S. Geological Survey.

Milton Lindvig, Director, Hydrology Division for the State Water Commission, discussed the State Water Commission - U.S. Geological Survey Cooperative Program, which is an ongoing program supporting the collection of hydrologic data and investigative projects. The total program costs are \$647,700 shared equally by the Water Commission and

Mr. Lindvig explained the hydrologic data collection program which includes streamflow records, groundwater levels and chemical quality of water. The data network consists of 48 streamflow stations, 762 observation wells, and the monitoring of water

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quality at 80 streamflow stations and 26 wells. The data collected through this part of the program provides to a large extent the data necessary for the informed appropriation and management of the resources.

Mr. Lindvig discussed two investigative projects under the cooperative program: 1) "Heat and Moisture Transport Model for Seasonally Frozen Soils" is in its last year of a three-year schedule. The purpose of this study is to develop a better understanding of the movement of water through an unsaturated frozen soil system, and the results will be used in developing better flood-prediction models and to improve the ground-water recharge models. 2) Evaporation and Ground-Water Interaction of Devils Lake, is a three-year effort scheduled for completion in October, 1988. Each agency has a co-project leader with the U.S. Geological Survey responsible for the evaporation part and the State Water Commission responsible for the ground-water component. The results of this study will provide a much better understanding of the hydrologic processes that control water level changes in Devils Lake.

Secretary Fahy commented that this cooperative program represents a major portion of the responsibilities of the State Water Commission and said we are dealing with those elements of the Commission's purview which allow the administration of the water permit program throughout the State of North Dakota both for surface water and ground water.

It was moved by Commissioner Spaeth and seconded by Commissioner Gust that the State Water Commission approve the annual cost sharing contract with the U.S. Geological Survey for hydrologic data collection and investigative projects.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM WELLS COUNTY WATER
RESOURCE DISTRICT FOR COST
PARTICIPATION IN CRYSTAL
LAKE DRAIN NO. 6
(SWC Project No. 1805)

A request was received from the Wells County Water Resource District and presented to the Commission for its consideration of cost participation in Crystal Lake Drain No. 6. The purpose of the project is to provide an orderly removal of water from the watershed, provide temporary storage of water, reduce peak flows, reduce erosion along waterways, and decrease flooding on downstream lands. The estimated cost of the project is \$90,340, with eligible costs being \$75,800. A drain permit was applied for by the District and final approval granted on October 6, 1986 with conditions attached to the permit.

Mr. Sprynczynatyk said the project is located in west central Wells County between Fessenden and Hurdsfield. The total drainage area is 4,201 acres of which 618 acres are considered as non-contributing. The project features include grassed waterways, gates,

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ponding areas, and a small dam. The project will be operated and maintained by the Wells County Water Resource District. Mr. Sprynczynatyk said the project features will have a positive impact on the downstream water quality and quantity by reducing erosion and peak flows. The project will also improve agriculture production and wildlife habitat within the watershed.

In 1983, the District began to work with upstream and downstream landowners on a water management plan. Crystal Lake Drain No. 6 was established on September 18, 1984. The District, U.S. Fish and Wildlife Service, State Game and Fish Department, and the North Dakota Chapter of the Wildlife Society entered into a cooperative agreement to mitigate the wildlife habitat losses within the project area. The final memorandum of agreement was signed January 21, 1986.

Steve Hoetzer, Engineer for the Wells County Water Resource District, indicated the District has worked very hard with the U.S. Fish and Wildlife Service and various other wildlife groups to try and make this a model project as far as cooperation between the District and the wildlife interests. He said this has been an ongoing problem area for many years and the project will alleviate the surface water problems, including severe erosion problems that have been caused basically by climatic factors and drainage.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing for this project in 40 percent of the eligible costs not to exceed \$30,320, contingent upon the availability of funds.

It was moved by Commissioner Spaeth and seconded by Commissioner Lardy that the State Water Commission grant 40 percent of the eligible costs, not to exceed \$30,320, for the Crystal Lake Drain No. 6 project in Wells County. This motion shall be contingent upon the availability of funds.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM MAPLE RIVER WATER
RESOURCE DISTRICT FOR COST
PARTICIPATION IN CASS COUNTY
DRAIN NO. 14 OUTLET IMPROVEMENTS
(SWC Project No. 1070)

improvements is \$115,000, with \$91,930 eligible for cost sharing.

A request was received from the Maple River Water Resource District and presented to the Commission for its consideration to cost participate in the proposed improvements to the outlet of Cass County Drain No. 14. The total cost of the im-

Mr. Sprynczynatyk stated the proposed improvement consists of excavation of 1800 feet of channel,

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installation of pipes and placement of rock riprap. The drain was established in December, 1903 and is located three miles northwest of West Fargo. The drain was reconstructed in 1949 using an SCS design. Mr. Sprynczynatyk said the Water Resource District has applied for a drain permit which was declared not of statewide significance because the new channel will only shorten the existing drain and will not drain additional land.

Harry Warner, Chairman of the Maple River Water Resource Board, and Jeff Volk, Moore Engineering, further explained the project.

It was the recommendation of the State Engineer that the State Water Commission approve cost participation in 40 percent of the eligible costs, not to exceed \$36,772 for the Cass County Drain No. 14 project. Secretary Fahy said if cost participation is approved it would be contingent upon the availability of funds and approval of the drainage permit by the Water Resource District.

It was moved by Commissioner Backes and seconded by Commissioner Gust that the State Water Commission approve cost participation of 40 percent of the eligible items, not to exceed \$36,772, for the Cass County Drain No. 14 outlet improvement project. This motion shall be contingent upon the availability of funds, and approval of the drain permit by the Maple River Water Resource District.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM RUSH RIVER WATER
RESOURCE DISTRICT FOR COST
PARTICIPATION IN RUSH RIVER
RC&D CRITICAL AREA TREATMENT
PROJECT NO. 4A
(SWC Project No. 716)

A request was received from the Rush River Water Resources District and presented to the Commission for its consideration to cost participate in RC&D Critical Area Treatment Project No. 4A. The total cost of the project is \$53,980.50, of which the Soil Conservation Service's RC&D program funds 65 percent.

Cary Backstrand, Drainage Engineer for the State Water Commission, noted the project is located approximately seven miles southwest of Arthur, ND, and the project will relieve severe erosion along the north side of Cass County Road #4. The project consists of channel improvements along the north side of the road with two drop structures built within the channel. Mr. Backstrand explained this is an erosion control project which does not drain or divert any additional water, but merely dissipates the energy of the flowing water by reducing

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the slope of the ditch channel and installing drop structures creating a more orderly controlled flow of the water. Therefore, there are no permits required for this project.

Mr. Backstrand indicated staff has reviewed the plans and estimated construction costs for this project and have found them to be satisfactory. The request for cost participation is made on the remaining 35 percent of the local costs, or \$18,893.18. Mr. Backstrand said all of the costs are eligible for cost participation under Commission guidelines. Forty percent of the eligible costs is \$7,557.

In viewing photos of the project, Commissioner Lardy said it appears farmers are practicing seeding of ditches and expressed concern this may be a contributory factor to the erosion problems being experienced. The Commission members agreed this concern should be brought to the attention of the County Commissioners and the Water Resource District.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing in 40 percent of the eligible costs, not to exceed \$7,557, for the construction of the Rush River RC&D Critical Area Treatment Project 4A, contingent upon the availability of funds.

It was moved by Commissioner Backes and seconded by Commissioner Hutton that the State Water Commission approve cost sharing in 40 percent of the eligible costs, not to exceed \$7,557, for the construction of the Rush River RC&D Critical Area Treatment Project 4A. This motion shall be contingent upon the availability of funds.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM SOUTHEAST CASS WATER
RESOURCE DISTRICT FOR RC&D
CRITICAL AREA TREATMENT
PROJECT NO. 31A AND B
(SWC Project No. 720)

A request was received from the Southeast Cass Water Resource District and presented to the Commission for its consideration in cost participation for the RC&D Critical Area Treatment Project No. 31A and B. The total estimated construction

costs of the project are \$40,522.80, of which the Soil Conservation Service's RC&D program funds 65 percent.

Cary Backstrand explained the project stating the location is approximately two miles north and two miles east of Harwood. The project is to relieve severe erosion which is occurring on the east side of Cass County Road No. 31 between the Red River and the county road. Mr. Backstrand said this is an erosion control project which does not drain or divert any additional water, but merely facilitates a more orderly flow of the water. Therefore, there are no

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permits required for this project. The staff has reviewed the plans and estimated costs and have found them to be satisfactory. The request to the Commission is made on the remaining 35 percent of the local project cost, or \$14,182.98. Of these costs, \$8,544.48 are eligible for cost sharing under the present State Water Commission guidelines. Forty percent of the eligible costs would be \$3,418.

It was the recommendation of the State Engineer that the State Water Commission approve cost participation in 40 percent of the eligible construction costs, not to exceed \$3,418, subject to the availability of funds.

It was moved by Commissioner Lardy and seconded by Commissioner Hutton that the State Water Commission approve cost participation in 40 percent of the eligible construction items, not to exceed \$3,418, for the construction of the Southeast Cass RC&D Critical Area Treatment Project No. 31A and B. This motion shall be contingent upon the availability of funds.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM NORTH CASS WATER
RESOURCE DISTRICT FOR
COST PARTICIPATION FOR
RC&D CRITICAL AREA
TREATMENT PROJECT NO. 31C
(SWC Project No. 1649)

A request was received from the North Cass Water Resource District and presented to the Commission for its consideration in cost participation for the RC&D Critical Area Treatment No. 31C. The total costs of this project are \$72,230.70, of which the Soil Conservation Service's RC&D Program funds 65 percent.

Cary Backstrand discussed the project which is located approximately six miles east and two miles south of Gardner. The project will reduce severe erosion that is occurring between the Red River and the east side of Cass County Road No. 31. Mr. Backstrand explained this is an erosion control project which does not drain or divert any additional water, but merely facilitates a more orderly flow of the water. Therefore, there are no permits required for this project. The Commission staff has reviewed the plans and estimated costs and have found them to be satisfactory. The request before the State Water Commission for cost participation is made on the remaining 35 percent of the local project cost, or \$25,280.73. Of these costs, \$17,860.75 are eligible for cost participation under the present State Water Commission guidelines. Forty percent of the eligible costs is \$7,144.

It was the recommendation of the State Engineer that the State Water Commission participate in 40 percent of

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the eligible construction costs, not to exceed \$7,144, contingent upon the availability of funds.

It was moved by Commissioner Lardy and seconded by Commissioner Hutton that the State Water Commission approve cost participation of 40 percent of the eligible costs, not to exceed \$7,144, for the construction of the North Cass RC&D Critical Area Treatment Project No. 31C. This motion shall be contingent upon the availability of funds.

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONTINUED DISCUSSION OF
SHEYENNE RIVER FLOOD
CONTROL PROJECT
(SWC Project No. 1344)

Secretary Fahy updated the Commission members on the status of the Sheyenne River Flood Control Project. Meetings have been held with the Corps of Engineers and repre-

sentatives from Valley City relative to components of the project. The Corps of Engineers has indicated the general design memorandum for the Sheyenne River, North Dakota, flood control project is near completion and has requested a letter of assurance from the State Water Commission indicating its intentions to serve as the local sponsor for the project.

It was moved by Commissioner Gust and seconded by Commissioner Hutton that the State Water Commission support the sponsorship of the following components of the Sheyenne River Flood Control Project:

- 1) Levees and diversion at West Fargo/Riverside
- 2) Levees and diversion between Horace and West Fargo

Commissioners Backes, Gust, Hutton, Lardy, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONTINUED DISCUSSION OF
RULES FOR FUNDING FROM THE
RESOURCES TRUST FUND

Rosellen Sand briefed the Commission members on the results of the hearing held on November 24, 1986 relative to the Rules for Funding

from the Resources Trust Fund. Ms. Sand said no oral or written testimony was received, no suggestions for changes were made, and no complaints were filed. It was recommended that the rules be adopted by the State Water Commission and promulgated as drafted. Ms. Sand explained that once the State Water Commission formally adopts the rules they will be submitted to the Attorney General for approval and then promulgated.

February 13, 1987

It was moved by Commissioner Spaeth and seconded by Commissioner Gust that the State Water Commission adopt the Rules for Funding from the Resources Trust Fund.

In discussion of the motion, Commissioner Lardy stated he would vote against the motion, not because he doesn't think the rules are good, but because he feels the funds from the Resources Trust Fund are not being used for the concept for which the Resources Trust Fund was established. Commissioner Lardy said "I think we are a long way from what the people approved in 1980 and may be a long way from what I feel we ought to be using the Resources Trust Fund money for."

Commissioner Backes stated he will support the motion, but with objection for the same reasons stated by Commissioner Lardy.

Commissioners Backes (with objection), Gust, Hutton, Spaeth, and Governor Sinner voted aye. Commissioner Lardy voted nay. The recorded vote was 5 ayes; 1 nay. The Chairman declared the motion carried. SEE APPENDIX "B"

LEGISLATIVE BRIEFING

Rosellen Sand briefed the Commission members on legislation filed that may directly or indirectly affect the State Water Commission's duties or those of local water resource districts.

CONSIDERATION OF AGENCY'S FINANCIAL STATEMENT

Matt Emerson, Director of Administration for the State Water Commission, distributed copies of the Projects Authorized Report and the Biennium Budget Expenditures Report, dated January 31, 1987.

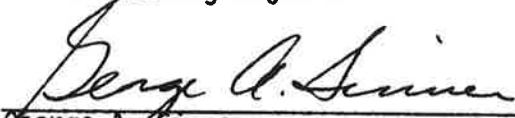
BAUKOL-NOONAN DAM DEDICATION (SWC Project No. 1696)

Secretary Fahy said the Commission has received an invitation from the Divide County Water Resource District to participate in the dedication of the Baukol-Noonan Dam. No date has been scheduled at this time for the dedication.

It was moved by Commissioner Backes, seconded by Commissioner Gust, and unanimously carried, that the State Water Commission meeting adjourn at 3:00 p.m.

ATTEST:


Vernon Fahy
State Engineer and Secretary


George A. Sinner
Governor-Chairman

February 13, 1987

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE February 13, 1987 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Bob Dorothy	Bismarck, N.D.	GDCD
Bruce F. McLollom	"	BW/BEG Engineer
Fred Lueking	Harwood ND	SE Cass R.D.
Harvey Warner	Mapleton, N.D.	MR WRB.
HANK TRANGSRUD	Box 5054-FARGO, N.D.	HOUSTON ENG.
Jeffrey Volk	West Fargo	Moore Eng. Inc
Carl R. Osowski	West Oslo	Farm Dikes R.R. N.D.
Maurice E. Busher	Grand Forks	Farm Dikes R.R. N.D.
Vern Carlson	Park River, ND	Walsh Co. WRD
Coy Backstrand	Bismarck N.D.	# Stb. Eng. - SWC
Don D. Harlow	Oslo Min	Walsh Co. Commission
Hilary Feltman	Minto, N.D.	WR WRB
Charles J. Landrum	Park River	Walsh Co. Water Bd
Allen Frisk	Bismarck	TRE
Deland Kreis	Bis	SWC

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Rich Baker	Bismarck	SWC
Terrence P. McLann	Bismarck	NDSWC
Meraldine Bishop	Walsh Co. Oslo, Minn.	R.R. 2 Farm Dike N.D.
Gene Krenz	Bismarck	SWC
Melara Miller	Bismarck	SWC
Mark Bohrer	McKenzie	SWC
Cybil Holtman	Walsh Co. Oslo, Minn	Red River Dike
Peter Holtman	Walsh Minto, N.D.	Red River Dikes
Chive Jones	Walsh Co. Oslo, Minn.	Red River Dikes
Bob Walski	Walsh Co Oslo Minn	Red River Dikes
Harold Zola	Walsh Co Oslo Minn	Red River Dike.
Engene Dankowicz	Walsh Co Oslo Minn.	Red River Dikes
John Bishop	Oslo Minn	FARM DIKE N.D.
Harvey Sturgis	Wells Co Fessenden N.D.	Co-Comm
Richard Anderson	Fessenden N.D.	Wells Co W B D

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Norman Remboldt	Bowdon N.D	Wells Co Water board
Don Marchus	Cochon N.D	Wells Co water board
Russ Deschambe	Devels Lake	Hanson Wisconsin Conservation District
EMERSON MURRY	BISMARCK	" "
Nina Butcher	Bismarck	N.D. Hq Dept.
James L. Robb	Harro N.D.	D. D. C. D
Ronald Faul	Hurdfield N.D	me
Laval Bershert	Bismarck	Private Public Radio

APPENDIX "A"

MEMORANDUM
OF
UNDERSTANDING

Between the State Water Commission
and the Garrison Diversion Conservancy District

1. Definitions.

1.1. "Commission" means the North Dakota State Water Commission or its duly authorized agent.

1.2. "Contract Fund" means the Commission fund authorized by section 61-02-64 and 64.1.

1.3. "Design and Construction" means preparation of the final design plans and the ultimate construction of the project.

1.4. "District" means the Garrison Diversion Conservancy District and its duly authorized agent.

1.5. "District Manager" means manager of the Garrison Diversion Conservancy District.

1.6. "Feasibility Report" means a report of sufficient detail to provide a sound estimate of capital, operation, maintenance and repair, and water costs to users.

1.7. "Preliminary Report" means a reconnaissance level report containing sufficient information to determine whether or not additional detailed studies are merited.

1.8. "Program Funds" means monies available under the municipal, rural and industrial program authorized by P.L. 99-294.

1.9. "Resources Trust Fund" means the state fund created by section 57-51.1-07 of the North Dakota Century Code.

1.10. "State Engineer" means the individual appointed by the Commission under 61-03-01 and includes the staff of the State Engineer.

2. Purpose of Agreement.

2.1. This agreement sets forth the procedure for combined administration of program funds. Although the Commission has a statewide responsibility by law and under the July 18, 1986, Commission/District agreement for joint exercise of governmental powers, the District will have primary responsibility for assisting applicants for program funds inside the District. Both

entities shall determine whether program funds should be allocated for feasibility reports, and design and construction of projects.

3. Applications for Program Funding - General Provisions.

3.1. Only projects sponsored by a governmental agency or political subdivision are eligible for consideration for assistance under the program and may make applications.

3.2. Each applicant for program funds shall prepare a preliminary report. Program funds will not be available for preliminary reports.

4. Feasibility Studies - Applications - Funding.

4.1. An applicant for program funding for a feasibility study shall first submit an application for program funds, along with a preliminary report, to the State Engineer who shall provide copies to the Commission and District for their information.

4.1.1. The State Engineer shall review the application and consider whether the project is consistent with statewide plans and programs adopted by the District or the Commission, including the MR&I needs assessment study. The State Engineer shall either recommend or refuse to recommend a project for

receipt of program funds. He shall make his recommendation known to the District.

4.1.2. If the State Engineer does not recommend a project for program funds, the applicant shall be provided with the reasons for the failure to recommend program funding and the application shall be denied. If an application is denied the applicant may modify and resubmit the preliminary report and application.

4.1.3. If the State Engineer recommends a project for program funding, the application, the preliminary report, and a copy of the State Engineer's recommendations and report shall be provided to the District.

4.2. Initial consideration for feasibility study funds shall be made by the District.

4.2.1. If the District approves the use of program funds for the project feasibility report, that approval shall be noted on the application. After a decision by the District the application shall be forwarded to the Commission for its review for funding purposes. If the District has determined that any amount of the 25% nonfederal share will be funded by District funds, a statement to that effect shall also be submitted with the application.

4.2.2. Upon receipt of an application for a feasibility report which has received program funding approval from the District, the Commission shall consider whether program funds may be granted. If the Commission approves the use of program funds for the feasibility report, the approval shall be noted on the application, which shall be transmitted to the District for disbursement of the funds. If the Commission has determined that any amount of the 25% nonfederal share will be funded by state funds, a statement to that effect shall also be submitted with the application.

4.2.3. Upon receipt of an application for a feasibility report which has not received program funding approval from the District, the Commission shall consider whether program funds should be granted. If the Commission approves the use of program funds for the feasibility report, the approval shall be noted on the application which shall be transmitted to the District for its reconsideration of the application in light of the Commission's approval.

4.3. Applications which are not approved by either the District or the Commission may reapply for funding if the application and accompanying reports are modified to reflect the concerns of the District and Commission.

5. Project Design and Construction - Applications - Funding.

5.1. Upon completion of a feasibility study an applicant may request program funding for project design and construction.

5.1.1. An applicant for program funding for design and construction shall include a copy of the feasibility study which shall be submitted to the State Engineer.

5.1.2. The State Engineer shall review the feasibility study and prepare a report setting forth recommendations concerning the proposed project. In making a recommendation the State Engineer shall consider whether the project is consistent with statewide plans and programs adopted by the District or the Commission, including the MR&I needs assessment study. The State Engineer shall provide copies to the District and the Commission.

5.2. Initial consideration for program funds for project design and construction shall be made by the District.

5.2.1. If the District approves the use of program funds for project design and construction, that approval shall be noted on the application. After a decision by the District the application shall be forwarded to the Commission for its review for funding purposes. If the District has determined that any amount of the 25% nonfederal share will be funded by District funds, a statement to that effect shall also be submitted with the application.

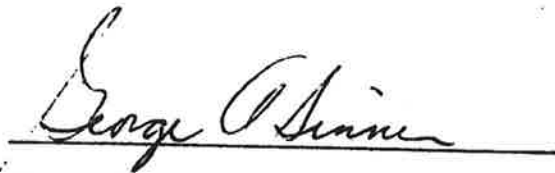
5.2.2. Upon receipt of an application for project design and construction which has received program funding approval by the District, the Commission shall consider whether program funds may be used for design and construction of the project. If the Commission approves the use of program funds for the design and construction of the project, the approval shall be noted on the application which shall be transmitted to the District for disbursement of the funds. If the Commission has determined that any amount of the 25% nonfederal share will be funded by state funds, a statement to that effect shall also be submitted with the application.

5.2.3. Upon receipt of an application for design and construction which has not received program funding approval from the District, the Commission shall consider whether program funds should be granted. If the Commission approves the use of program funds for the design and construction, the approval shall be noted on the application which shall be transmitted to the District for its reconsideration of the application in light of the Commission's approval.

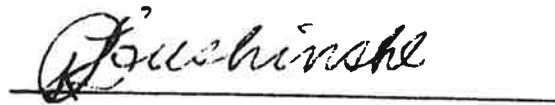
5.3. Applicants which are not approved by either the District or the Commission may reapply for funding if the project, the application and accompanying reports are modified to reflect the concerns of the District and Commission.

6. Modification of this Memorandum of Understanding.

6.1. This memorandum of understanding shall be effective until modified in a writing attached thereto by the Commission and the District.



Honorable George A. Sinner
Chairman
North Dakota State Water
Commission



Russ Dushinsk
Chairman
Garrison Diversion Conservancy
District

APPENDIX "B"

ARTICLE 89-07

FUNDING FROM THE RESOURCES TRUST FUND

Chapter

89-07-01 Rules Governing the State Water Commission's
Analysis of a Proposed Water Project or Study
Seeking Financial Assistance from the Resources
Trust Fund

CHAPTER 89-07-01

RULES GOVERNING THE STATE WATER COMMISSION'S ANALYSIS
OF A PROPOSED WATER PROJECT OR STUDY SEEKING
FINANCIAL ASSISTANCE FROM THE RESOURCES TRUST FUND.

Section

89-07-01-01 Definitions
89-07-01-02 Initial Review
89-07-01-03 Study of the Proposal

89-07-01-01. DEFINITIONS. The following definitions
apply to this Article:

1. Commission: North Dakota State Water Commission.
2. Resources Trust Fund: that fund established by
North Dakota Century Code section 57-51-07.1.
3. Proposal: an application submitted to the Commission
for financial assistance from the Resources Trust
Fund either for a water related study or a water
related project.
4. Applicant: party submitting a proposal.

General Authority: NDCC 61-02-14, 28-32-02

Law Implemented: NDCC 57-51.1-07.1

89-07-01-02. INITIAL REVIEW. The Commission will
make an initial review of a proposal to decide whether the
proposal is eligible for funding from the Resources Trust
Fund and to decide whether it merits a study.

1. Information Required for the Initial Review: An
applicant must submit the following information:

- a. Information explaining the need for the proposal, including its objectives and benefits.
 - b. Either the area in which the proposed water related project is to be physically located or, if the proposal concerns a water related study, the area in which the study is to be undertaken.
 - c. The area to be served by the proposal.
 - d. Maps, diagrams, and other illustrated documentation should be submitted if these will make the proposal more understandable.
 - e. The approximate cost of carrying out the proposal.
 - f. The amount of funding sought from the Resources Trust Fund and the amount the applicant intends to contribute to carrying out the proposal.
 - g. Efforts made, and the results, to secure funds from sources other than the Resources Trust Fund.
 - h. An explanation why assistance from the Resources Trust Fund is necessary.
 - i. An explanation how the proposal relates to the Commission's comprehensive state water plan.
 - j. An explanation how the project relates to the Master Plans of Water Resource Districts effected by the proposal, if such Districts have Master Plans.
 - k. A preliminary report on the engineering feasibility of the proposal if it is for a water related project.
 - l. A general discussion of any objections to the proposal made by any person.
 - m. Any other information the applicant believes pertinent or that the Commission may request.
2. Alternatives: The applicant must consider whether an alternative project or study can satisfy the objectives of the proposal. In its application to the Commission for review the applicant must set forth a general explanation of all alternatives considered.

3. Time: To ensure review of an application at a regularly scheduled meeting of the Commission, an applicant must submit the information required by these rules thirty days prior to such meeting.
4. The Commission's Decision upon Initial Review:
After initial review the Commission may decide:
 - a. The information provided is inadequate to review the proposal and may order the applicant to provide more information, or may obtain more information itself.
 - b. The proposal is not eligible for support from the Resources Trust Fund, and upon such a decision the Commission shall prepare a report setting forth its reasons.
 - c. A study of the proposal should be undertaken and may order the applicant to conduct the study or may conduct the study itself.

General Authority: NDCC 61-02-14, 28-32-02
Law Implemented: NDCC 57-51.1-07.1

89-07-01-02. STUDY OF THE PROPOSAL. A study of a proposal is to provide the Commission with the information necessary for it to make an informed decision whether to recommend that the Legislature support the proposal with money from the Resources Trust Fund.

1. Study Contents: A study of a proposal shall include all the following information:
 - a. All the information required by subsections 1(a), (f), (g), (h), (i), (j) of section 89-07-01-02 and subsection 2 of section 89-07-01-02. This information, however, must be updated and submitted in more detail and clarity. The reason for these latter requirements is that the study provides the basis of the Commission's final decision -- rather than its initial review -- and it must, therefore, be comprehensive.
 - b. If the proposal is for a water related project, an explicit explanation of the area where the project is to be physically located and the area and interests to be served by it.

- c. If the proposal is for a water related study, an explicit explanation of the area in which the study is to be conducted.
 - d. Compliance with subsections (b) and (c) requires submission of maps.
 - e. An itemization of the proposal's cost.
 - f. A complete examination of the engineering feasibility of the proposal if it is for a water related project.
 - g. A general statement of all objections to the proposal or to funding it from the Resources Trust Fund. The identity of persons and entities making the objections. This subsection only applies to written objections made to the applicant and to oral objections made at any meeting of the applicant.
 - h. Any other information the applicant believes pertinent or that the Commission may request.
2. Study Undertaken by the Commission: If the Commission decides to conduct the study of a proposal itself, it may require the applicant to assist in the study.
 3. Time: To ensure that a study of a proposal is reviewed at a regularly scheduled meeting, an applicant -- if he has been ordered to carry out the study -- must submit the results of the study thirty days prior to such meeting.
 4. The Commission's Decision upon the Study: After its consideration of a study of the proposal the Commission may decide:
 - a. The information provided is inadequate to make a final decision on the proposal and may order the applicant to provide more information, or may obtain more information itself; a means by which the Commission may obtain more information is by exercising its discretion to hold a public hearing.
 - b. The proposal is not eligible for support from the Resources Trust Fund, and upon such a decision shall prepare a report setting forth its reasons.

c. . The proposal is eligible for support from the Resources Trust Fund and whether it merits such support, and upon such a decision shall prepare a report setting forth its reasons and recommendation to the Legislature.

General Authority: NDCC 61-02-14, 28-32-02
Law Implemented: NDCC 57-51.1-07.1