

MINUTES

**North Dakota State Water Commission
Grand Forks, North Dakota**

October 14, 1994

The North Dakota State Water Commission held a meeting at the City Hall Council Chambers, Grand Forks, North Dakota, on October 14, 1994. Governor-Chairman, Edward T. Schafer, called the meeting to order at 9:00 AM, and requested State Engineer and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

Michael Polovitz, Mayor, welcomed the State Water Commission to Grand Forks.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
Judith DeWitz, Member from Tappen
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
David Sprynczynatyk, State Engineer and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Robert Thompson, Member from Page

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 20 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

There being no additional items for the agenda, the Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

**CONSIDERATION OF MINUTES
OF JULY 27, 1994 MEETING -
APPROVED**

The minutes of the July 27, 1994, State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Bjornson, and unanimously carried, that the minutes of the July 27, 1994, State Water Commission meeting be approved as circulated.

**FINANCIAL STATEMENT -
AGENCY OPERATIONS**

Charles Rydell, Assistant State Engineer, presented and discussed the Program Budget Expenditures, dated August 31, 1994, and reflecting 58.3 percent of the 1993-1995 biennium. **SEE APPENDIX "A"**.

**FINANCIAL STATEMENT -
CONTRACT FUND; AND RESOURCES
TRUST FUND REVENUE UPDATE**

Dale Frink, State Water Commission's Water Development Division, reviewed and discussed the Contract Fund expenditures for the 1993-1995 biennium. **SEE APPENDIX "B"**.

The last oil tax revenue forecast by the Office of Management and Budget was made January 24, 1994, and the next forecast is scheduled for December, 1994. Mr. Frink stated that since May, the actual revenues received are approximately 74 percent of the January forecast. If this trend continues, Mr. Frink said the total revenues received from the oil tax will be approximately \$3.1 million for the biennium, representing a \$1.4 million shortfall, and a current unallocated balance of \$400,000 in the Resources Trust Fund.

Mr. Frink indicated there are several high priority projects in various stages of development and traditionally the State Water Commission holds about \$250,000 as unallocated through the spring snowmelt period of the second year of the biennium for emergency repair projects.

It was the recommendation of the State Engineer that the State Water Commission continue to defer approving cost share requests from the Contract Fund, except high priority requests, until such time as revenue forecasts show that adequate funds will be available.

**FINANCIAL STATEMENT -
1995-1997 BUDGET UPDATE**

The preliminary 1995-1997 biennium budget for the State Water Commission was submitted to the Office of Management and Budget on July 15, 1994, and the Optional Adjustment proposals were submitted in August.

Charles Rydell indicated the budget information reflects a general fund budget for the 1995-197 biennium of 95 percent of the agency's general fund budget

appropriation for the current biennium. This reduction was made in accordance with the requirements of the Office of Management and Budget. He said the agency is also anticipating reductions in federal funds and special funds. The federal funds reductions reflects a greater percentage of municipal, rural, and industrial funds being allocated to other projects across the state, in addition to a more realistic estimate of federal funds expected to be available for the Southwest Pipeline Project. The reduction in special funds is due to the projected decrease in revenue to the Oil Tax Resources Trust Fund as a result of both low oil prices and low production.

Mr. Rydell briefed the Commission members on the agency's budget hearing held October 7, 1994, with the Office of Management and Budget.

**FUNDING FOR WATER
DEVELOPMENT PROJECTS -
PROJECT BONDING
(SWC Project Nos. 237-4,
322 and 1736)**

At the July 27, 1994, meeting, Secretary Sprynczynatyk informed the Commission members that two of the most significant water supply projects in the state are the Southwest

Pipeline Project and the Northwest Area Water Supply Project. He indicated that approximately \$64 million is needed to complete the SWPP project and \$163.9 million will be needed to construct the NAWS project. Within the current budget of the State Water Commission, Secretary Sprynczynatyk said the revenue is simply not available to complete these projects and, unfortunately, the future revenue picture does not appear to be promising. The primary source of funds, the Resources Trust Fund, has substantially decreased because of the depressed prices and oil activity in the state. The reality is that revenue is not available presently from authorized sources to either complete the Southwest Pipeline Project or begin the Northwest Area Water Supply Project.

Other sources of funding should be studied to determine if some type of financial program will be feasible. Efforts in 1992 to pass an Initiated Measure to dedicate a one-half percent sales tax for water resource development failed; therefore, the options are limited. As a result, Secretary Sprynczynatyk said the issuance of long-term debt, or bonding, must be evaluated as a potential solution. The issuance of long-term debt in the form of bonds allows for construction as needed, rather than having to sustain delays in construction or stretching out the construction period because revenue was not available to implement the project in a timely manner.

The Municipal Bond Bank was contacted in January, 1994, to assist the State Water Commission staff in developing various financing scenarios that may be feasible to utilize bonding to fund these projects. At the July 27, 1994, meeting the Commission members were provided information regarding the bonding financing scenarios that have been developed for the Southwest Pipeline Project and the Northwest Area Water Supply Project. It was the concurrence of the State Water Commission that the concept of bonding continued to be pursued for these projects.

Linda Weispfenning, State Water Commission's Planning and Education Division, provided the Commission members with additional information regarding bonding financing scenarios. She explained that other revenue options have been explored including a legislative special appropriation, an MR&I water fee, and an increase in the Oil Extraction Tax. She stated these are all revenue options that must seriously be considered if the State Water Commission intends to implement these water supply projects that are required to satisfy basic water needs of North Dakota citizens.

Ms. Weispfenning stated that the State Water Commission staff has been working with the North Dakota Municipal Bond Bank and their consultant Evensen Dodge, Inc., to evaluate bonding options that may be feasible for the SWPP and NAWS projects. She indicated that it appears bonding of the projects is possible, but not without some financial assistance from the state.

Kathy Kardell and John Trefethen, Evensen Dodge, Inc., presented information relative to the bond scenario developed for the Northwest Area Water Supply Project. The scenario determined that \$4.9 million would be needed over a five-year period from 1996 to 2001 to pay the debt service, so that interest would not have to be capitalized, increasing the total cost. After 2001, users would pay for the debt service on the project.

Ms. Kardell provided information relative to three bond scenarios that have been developed for the Southwest Pipeline Project. They are: 1) a 30-year bond issue with capitalized interest; 2) a 30-year bond issue with no capitalization interest and a \$1,925,000 cash contribution; and 3) a 20-year bond issue with no capitalized interest and a \$3,195,000 cash contribution.

Tom Tudor, North Dakota Municipal Bond Bank, stated that a review of existing legislation was conducted to determine if bonding of water resource projects is possible under existing law. He said it was determined that the State Water Commission does have the authority to issue

revenue bonds for water resource development projects. It was also determined that existing legislation must be updated to make sure it is consistent in the way bonds are issued and repaid. Mr. Tudor said that since some of the legislation became law in 1935, several things have changed in bond financing and incorporating these changes into the legislation will assure that the language is in order to do the bonding within constitutional constraints.

Mr. Tudor reviewed amendments to North Dakota Century Code Chapter 61-02, which he proposed be submitted in the form of draft legislation to the 1995 Legislative Assembly to assure that bonding could be used to finance these two water supply projects.

It was the recommendation of the State Engineer that the State Water Commission pursue the opportunity that bonding can provide in meeting the water supply needs of North Dakota. This could include submitting legislation to enable bonding of water resource projects, as well as pursuing a legislative appropriation to complete the Southwest Pipeline Project as envisioned and to begin the Northwest Area Water Supply Project.

The State Engineer also recommended that the State Water Commission actively pursue other revenue options, including the concept of an MR&I water fee and an increase in the percentage of the Oil Extraction Tax that is dedicated to water resources, which are viable avenues that must be considered to raise the money that will be needed to pay for the SWPP and the NAWS projects, if bonding is used to finance these projects.

In discussion, it was the recommendation of the State Engineer, and concurrence of the State Water Commission that a meeting be scheduled with interest groups that look toward the state and federal governments for funding water resource projects to discuss the current status of several water projects and the outlook for future funding for these projects. (The meeting has been scheduled for November 18, 1994, at 1:30 PM in the lower level conference room of the State Water Commission.)

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

Tim Fay, Manager of the Southwest Pipeline Project, provided a status report on the following contracts:

Contract 2-6A - Transmission Line from Highway 21-22 Junction to Mott; and Contract 2-7B - Transmission Line Extending from Dickinson to Richardton: These contracts

are essentially complete, with the exception of the resolution of details involving vaults and valves; otherwise, they are ready for service.

Contract 2-7C - Transmission Line from Taylor to the Cities North of the Knife River: This contract is approximately 70 percent complete.

Contract 4-3 - Dickinson Triple Pump Station: This contract consists of three contracts: general, electrical and mechanical. The contract is approximately 94 percent complete. The remaining work is primarily related to testing, final painting and adjustments.

Contracts 5-3 and 5-13 - New England and Davis Buttes Reservoirs: These reservoir contracts are complete.

Contract 7-1B - Rural Distribution System in New Hradec, Davis Buttes and Taylor Areas: This contract is approximately 55 percent complete. Progress on the contract is much improved and it now appears the contractor will be able to comply with the deadline dates for the contract.

Contract 7-2 - Rural Water Service Area: Bid opening is scheduled for October 11, 1994. The policy regarding plow installation of pipe will be applied for this contract.

Contract 8-1 - New Hradec and Halliday Reservoirs: The reservoirs are under construction. The tank foundations have been poured and the tank materials have been delivered to the site.

Taylor Watershed Project, Soil Conservation Service PL-566: The project is under construction and approximately 31.7 of a total of 127 miles of piping have been installed.

Mr. Fay reported that the communities of Golden Valley, Dodge, Halliday, Dunn Center, Richardton, Taylor, Gladstone, New England, Regent and Mott were notified that their service from the Southwest Pipeline would begin on December 1, 1994. The communities were also notified that service could begin sooner than that if they wished. Richardton and Gladstone requested earlier service and they will be served in October.

In addition to the 10 communities, Mr. Fay indicated a number of rural water users will be ready for service from Contract 7-1B and the SCS PL-566 project. The rural

water users in the Roshau Subdivision, who are currently being served from Dickinson's distribution system will be switched to the Davis Butte reservoir in October.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF AWARD OF CONTRACT
7-2 TO BRB CONTRACTORS, INC.,
TOPEKA, KANSAS
(SWC Project No. 1736)**

Bids were opened for Southwest Pipeline Project Contract 7-2, the New England rural distribution system, on October 11, 1994. The engineer's estimate for the contract was \$3,491,301. Five bids were received, with the low bid from BRB Contractors, Inc., Topeka, Kansas, at \$3,098,944.

Tim Fay reviewed the bid tabulations for Contract 7-2. He indicated that BRB Contractors, Inc., is currently constructing Southwest Pipeline Contract 2-7C, the transmission line from Taylor to the cities north of the Knife River. He said they have performed very well on this contract and they are a reputable firm.

At the July 27, 1994, meeting the Commission passed a motion to develop criteria that would allow as an alternate for plowed installation of pipe on a trial basis for Contract 7-2 if the cost savings are at least five percent as compared to the next lowest bid for conventional construction. Mr. Fay reported that there were no contract proposals to plow for the installation of pipe.

It was the recommendation of the State Engineer that the State Water Commission award Southwest Pipeline Project Contract 7-2 to BRB Contractors, Inc.

It was moved by Commissioner Vogel and seconded by Commissioner Ames that the State Water Commission approve the award of Southwest Pipeline Project Contract 7-2 to BRB Contractors, Inc., Topeka, Kansas.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL FOR
CONSTRUCTION OF PERMANENT
INSTALLATION FOR APPLYING
CHLORAMINES AS A DISINFECTANT
AT THE DODGE PUMP STATION OR
OTHER REMOTE LOCATION
(SWC Project No. 1736)**

The decision to treat all water for the Southwest Pipeline Project at the existing Dickinson treatment plant included provisions to upgrade the plant to increase its capacity. The upgrade was to be carried out in two phases.

Phase I included a group of valve and piping items which caused flow restrictions at the inlet of the plant. The low-service pumps for the Dickinson pump station were also included in this phase. Tim Fay indicated Phase I is nearing completion and plans for Phase II will soon be submitted for the approval of the Commission.

Mr. Fay addressed the issue of disinfection, which will be included in the Phase II upgrade of the Dickinson water treatment plant. He indicated that disinfection technology is currently in a state of flux, with concern about by-products and contact times required to inactivate organisms. Presently, the water at the Dickinson treatment plant is disinfected by chlorine dioxide injected as the water enters the filters. Mr. Fay stated that chlorine dioxide is an effective disinfectant, but it is rather expensive, and there is a concern about by-products although it is not yet addressed by the safe drinking water standards.

Mr. Fay discussed disinfection of the Southwest Pipeline water with chloramines, which are less expensive and are not known to produce by-products of concern. However, Mr. Fay said they are less active so they must be in contact with the water for a much longer time. The Southwest Pipeline is unique in having an 85-mile long raw water line with eight million gallons of storage. Mr. Fay said these facilities would provide the means to gain the proper contact time required by chloramine disinfection. Current studies indicate application of chloramines at the Dodge pump station would provide satisfactory disinfection of the project water by the time it reached the treatment plant. Mr. Fay indicated that the State Health Department has approved this approach to be operated on a pilot basis until the proper application dosage is determined.

Disinfection facilities and costs at the temporary and permanent levels were discussed. Mr. Fay stated the most effective and economical approach to implementing the disinfection method appears to be the permanent installation, at an estimated cost of \$65,000.

It was the recommendation of the State Engineer that the State Water Commission approve constructing a permanent installation for applying chloramines as a disinfectant at the Dodge pump station or other remote location.

It was moved by Commissioner Vogel and seconded by Commissioner Olin that the State Water Commission approve constructing a permanent installation for applying chloramines as a disinfectant for the Southwest Pipeline Project at the Dodge pump station or other remote location.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL TO AMEND RAW WATER
POLICY TO ALLOW \$1,500 HOOKUP
FEE AND REDUCE ANNUAL GUARANTEED
USE TO 100,000 GALLONS
(SWC Project No. 1736)**

The Southwest Pipeline Project currently has a policy for providing raw water service for non-potable uses. Under this policy, the user guarantees to use 500,000 gallons of water each year. This amount will

assure that the cost of the hardware needed to serve each user will be recovered over the five-year term of the contract.

Tim Fay explained that experience in applying this policy and dealing with potential users indicates that the service would be more widely used if the users paid a hookup fee high enough to cover the cost of service and had a lower guaranteed annual use.

It was the recommendation of the State Engineer that the State Water Commission amend its raw water service policy to allow for a \$1,500 hookup fee and reduce the annual guaranteed use to 100,000 gallons.

It was moved by Commissioner Olin and seconded by Commissioner DeWitz that the State Water Commission amend the Southwest Pipeline Project raw water service policy to allow for a \$1,500 hookup fee and to reduce the annual guaranteed use to 100,000 gallons.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF WATER SERVICE
AGREEMENT FOR SOLE SOURCE
AND DEMAND SERVICE FOR
SACRED HEART MONASTERY
(SWC Project No. 1736)**

Tim Fay presented a request for the Commission's consideration from the Sacred Heart Monastery for sole source and demand service from the Southwest Pipeline Project.

The pipeline has capacity to provide this service, and the contract would be the same as what has been used for other demand and sole source service deliveries.

It was the recommendation of the State Engineer that the State Water Commission approve a water service agreement for sole source and demand service for the Sacred Heart Monastery.

It was moved by Commissioner Swenson and seconded by Commissioner Bjornson that the State Water Commission approve a water service agreement for the Sacred Heart Monastery for sole source and demand service from the Southwest Pipeline Project. SEE APPENDIX "C".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL TO AMEND RURAL WATER
POLICY WITH ROSHAU SUBDIVISION
TO COVER SERVICE TO OTHER
RURAL USERS
(SWC Project No. 1736)**

Tim Fay indicated that when the Southwest Pipeline Project began service to the residents of the Roshau Subdivision, a contract was made with the Southwest Water Authority whereby the Authority collects

water fees from the rural residents and forwards the collections to the State Commission for operation and maintenance expenses.

Mr. Fay explained this was necessary because at this point the Commission pays for operation expenses, while it is the Authority that has the contractual relationship with the users to collect their fees. He said this situation will change with the turnover of operations to the Authority, but for now it is necessary and has worked well.

Mr. Fay stated that the rural water policy agreement with the Authority only deals with the Roshau Subdivision and the Commission should consider amending the agreement to cover service to other rural users until the turnover of operations is complete.

It was the recommendation of the State Engineer that the State Water Commission amend the rural water policy with the Southwest Water Authority to cover service to all rural users until operations are formally transferred.

It was moved by Commissioner Swenson and seconded by Commissioner Vogel that the State Water Commission amend the Southwest Pipeline Project rural water policy with the Southwest Water Authority to cover service to all rural users until operations are formally transferred. SEE APPENDIX "D".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF EXECUTION OF
ELECTRIC WHEELING AGREEMENT
WITH MDU TO DELIVER WAPA
POWER TO DICKINSON PUMP STATION
(SWC Project No. 1736)**

The Southwest Pipeline Project pump stations use electrical power from the Western Area Power Administration (WAPA). Tim Fay stated that generally it is necessary to make arrangements with a local

utility to deliver the power from WAPA's transmission facilities to the site, which is referred to as "wheeling".

Mr. Fay stated that at the Dickinson pump station, the local utility is Montana-Dakota Utilities Company (MDU). A wheeling agreement has been negotiated with MDU and Mr. Fay stated the terms and rates proposed are satisfactory.

It was the recommendation of the State Engineer that the State Water Commission approve the execution of the electric wheeling agreement with MDU to deliver WAPA power to the Dickinson pump station.

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission authorize the State Engineer to execute the electric wheeling agreement with Montana-Dakota Utilities Company to deliver Western Area Power Administration power to the Dickinson pump station. SEE APPENDIX "E".

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
TRANSFER OF MANAGEMENT,
OPERATIONS AND MAINTENANCE
RESPONSIBILITIES FROM SWC
TO SOUTHWEST WATER AUTHORITY
(SWC Project No. 1736)**

Tim Fay briefed the Commission members on activities that are ongoing in preparation for the transfer of management, operations and maintenance responsibilities for the Southwest Pipeline Project from the State

Water Commission to the Southwest Water Authority. The activities include preparation of the agreement, the compilation of the schedule of the operation and maintenance activities to be performed by the Authority, and consultations with the staff attorney on required legislation.

**NORTHWEST AREA WATER
SUPPLY PROJECT UPDATE
(SWC Project No. 237-4)**

Secretary Sprynczynatyk provided a status report on the Northwest Area Water Supply Project. Work on the pre-final

design is near completion. Comments have been submitted by the Commission staff on the draft reports for the design criteria, alternative sources, and the executive summary report. Work is continuing on draft reports for the cost estimates, the operation plan, and the construction schedule.

A series of public meetings were held in the project area in August to discuss the project and the water service contract that was approved by the State Water Commission at its July 27, 1994 meeting. Secretary Sprynczynatyk stated that the deadline for signing the water service contracts is December 31, 1994. He explained that state law requires that cities without home rule must have an election before entering into a contract for water supplies. The public meetings were scheduled to give the communities sufficient time to place the issue of a NAWS water service contract on the November ballot.

Secretary Sprynczynatyk briefed the Commission members on the City of Williston's position relative to the water service agreement. The city has indicated its support for the project, but has made the decision not to be a recipient of the project water. They have also indicated a willingness to provide treatment service for the northwest area of the project.

**NORTHWEST AREA WATER
SUPPLY PROJECT -
APPROVAL OF SPECIFIC
AUTHORIZATION FOR
CHLORAMINATION TESTING OF
WATER FROM LAKE AUDUBON
AND LAKE SAKAKAWEA
(SWC Project No. 237-4)**

The Canada-United States Garrison Consultative Group met on September 23, 1994, to discuss the Northwest Area Water Supply Project and the findings of the Garrison Joint Technical Committee which accompanied the findings of the Engineering and Biology Task

Group addressing the location of the East NAWS treatment facilities. The Consultative Group is made up of government agency representatives from Canada and the United States and is the body to which the JTC reports. The draft conclusions of the Consultative Group are attached hereto as **APPENDIX "F"**.

Secretary Sprynczynatyk indicated that the Consultative Group confirmed the findings of the Garrison Joint Technical Committee, and of particular importance are the following statements:

Although other options may decrease an already low risk of biota transfer, the JTC finds that Option 1 (treatment at Minot with chloramination at the source) is technically acceptable to Canada from the standpoint of biota transfer, provided that the project proponents provide the following (item one of four) to the satisfaction of the JTC:

1. An analysis of the effectiveness of the proposed chloramination process and how that will be affected by the characteristics of the water source (i.e. turbidity). Pretreatment of water such that it meets current (1994) drinking water disinfection standards to ensure biota removal will be achieved before water crosses the drainage divide.

Secretary Sprynczynatyk explained that as a result of the Consultative Group's acceptance of chloramination, in order for the state to continue developing the concept of treating Missouri River water for the East NAWS system in Minot, a laboratory analysis must be conducted to show whether contamination of Missouri River water can indeed meet the disinfection requirements of the Environmental Protection Agency. The testing protocol for the laboratory analysis is being developed with the NAWS engineering team and will be developed in consultation with representatives of Canadian agencies to ensure its acceptance to Canada. The protocol contains testing for production of disinfection by-products and inactivation of viruses and giardia (a protozoan) cysts. The testing is anticipated to

require at least three samples of water from both lakes over a period of several months. The cost estimate for the laboratory analysis is \$250,000.

Secretary Sprynczynatyk explained that the Garrison Diversion Conservancy District has approved the State Engineer's recommendation with the intent to seek federal funding for the chloramination testing under the 1986 Garrison Reformulation Act. Language in the Reformulation Act specifically states that the federal government is responsible for added costs for treatment that is required to meet the Boundary Waters Treaty of 1909 for the delivery of water to the Sheyenne and Red Rivers. Secretary Sprynczynatyk informed the Commission members that the Conservancy District's attorney will draft a letter to the federal government requesting federal funding for the chloramination testing for the NAWS project. If federal funding is not available, funding will be provided by the Garrison Diversion Conservancy District's MR&I interest account.

It was the recommendation of the State Engineer that the State Water Commission approve a specific authorization of \$250,000 for chloramination testing of water from Lake Audubon to Lake Sakakawea. Testing will be performed by Montgomery Watson in phases under the current authorization to the NAWS Agreement for Engineering Services. Funding for this specific authorization will be provided by the Garrison Diversion Conservancy District from either federal source or the MR&I interest account. The State Engineer will review all payment requests under this specific authorization and forward recommendations to the Conservancy District for payment.

It was moved by Commissioner Vogel and seconded by Commissioner Ames that the State Water Commission approve the addition of a specific authorization, not to exceed \$250,000, to the Northwest Area Water Supply Agreement for Engineering Services for chloramination testing of water from Lake Audubon and Lake Sakakawea. Funding will be provided by federal funds, or the Garrison Diversion Conservancy District's MR&I Water Supply Program interest account, as appropriate.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION AND DEFERRAL OF
REQUEST FROM GRAND FORKS
COUNTY WATER RESOURCE DISTRICT
FOR COST SHARING ON ENGLISH
COULEE LATERAL NO. 1
(SWC Project No. 1351)**

A request from the Grand Forks County Water Resource District was presented for the Commission's consideration for cost sharing on the English Coulee Lateral No. 1 project located in Grand Forks County.

Dale Frink presented the request. The purpose of the project is to reduce flooding of roads and farmsteads in the area by diverting floodwater into English Coulee Dam. The project has been designed by the Soil Conservation Service and consists of cleaning out a section line road ditch and installing a dike and field culverts with gates to maintain wetlands adjacent to the drain. A drain permit has been approved, and a dike permit has been applied for and a recommendation to approve has been made to the State Engineer. The cost estimate for the project is \$39,926.90, all of which is considerable eligible for funding. At 40 percent cost sharing of eligible items, the cost to the State Water Commission would be \$15,970.

It was the recommendation of the State Engineer that due to the revenue situation for the Resources Trust Fund that the State Water Commission defer action on the request for cost sharing on the English Coulee Lateral No. 1 project in Grand Forks County.

It was moved by Commissioner Swenson and seconded by Commission Vogel that the State Water Commission defer action on the request for cost sharing on the English Coulee Lateral No. 1 project in Grand Forks County.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION AND APPROVAL
OF REQUEST FROM THE
INTERNATIONAL COALITION TO
FUND 1994 DUES OF \$10,000
(SWC Project No. 1588-1)**

A request from The International Coalition was presented for the Commission's consideration for payment of 1994 dues in the amount of \$10,000.

Secretary Sprynczynatyk presented the request. The International Coalition (TIC) is a public interest group founded by the citizens of the Red River Basin in North Dakota, Minnesota, and Manitoba to promote the wise use and management of the Basin's water and related land resources.

The Coalition provides important linkages that do not exist between governments. Secretary Sprynczynatyk said it has become clear over the past several years that the Coalition is in a unique position to act as a catalyst for dialogue between local, state, provincial and federal groups. Secretary Sprynczynatyk stated, "it is of vital importance that we participate in that process, and my recommendation for approval recognizes the high priority that must be given to initiatives which engender an enhanced level of understanding about the state's water resources."

Paul Suomala, Director of The International Coalition, provided additional information and requested the Commission's favorable consideration for funding.

It was the recommendation of the State Engineer that the State Water Commission approve payment of the 1994 dues to The International Coalition in the amount of \$10,000 from the Contract Fund. The Coalition will provide specific services including the development of a comprehensive grant proposal leading to the adoption of the Red River Water Resources Council's book, A River Runs North to a video format to be used as a reference resource by educators and students in area schools and in conducting various public information/education meetings.

It was moved by Commissioner Hillesland and seconded by Commissioner Ames that the State Water Commission authorize payment of the 1994 dues to The International Coalition, in the amount of \$10,000 from the Contract Fund, to provide specific services to the Commission as outlined by the State Engineer.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

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

Secretary Sprynczynatyk provided a status report on the Garrison Diversion Project.

The North Dakota water management collaborative process efforts to refocus the direction of the Garrison Diversion Project were discussed. A meeting of the Executive Steering Committee has been scheduled on October 21, 1994, to re-initiate work on a new direction for comprehensive water management in North Dakota.

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In a letter to the Executive Steering Committee, Governor Schafer and the Congressional Delegation recommended the following arrangements for convening of meetings:

* Dennis Hill, Executive Director of North Dakota Rural Electric Cooperatives and Co-Chairman of the North Dakota Water Coalition, and Francis Schwindt, Chief of the Environmental Health Section of the State Health Department and Consolidated Laboratories, will be Co-Convenors of the Executive Steering Committee and will schedule and coordinate meetings of the committee.

* K. L. Cool, Director of the North Dakota Game and Fish Department, will represent the Governor's Office on the Steering Committee, and members of Congress will be represented by their staff. The Bureau of Reclamation has agreed to provide technical assistance and administrative support.

* In earlier meetings of the collaborative process, several areas of study needs were identified. It was proposed that for the October 21 agenda, the Steering Committee consider a list of necessary project studies and a timetable for initiating those studies. Study results would then become a part of the Steering Committee's consensus decision-making process. It was recommended that the technical work have broad-based involvement from interested parties to ensure the most objective and comprehensive results are achieved.

* It was recommended that the Steering Committee discuss developing a communication plan.

* It was suggested that meetings be held in Washington, DC to keep federal officials, congressional committees and other interested parties informed about the process to allow input of key federal decision-makers.

**GARRISON DIVERSION PROJECT -
MR&I FUNDING FOR FY 1994
(SWC Project No. 237-3)**

Secretary Sprynczynatyk stated that the Bureau of Reclamation had previously reduced the federal funding available for the Fiscal Year 1994 MR&I Water Supply Program to \$12.0 million. This resulted in a reduction in Fiscal Year 1994 funding for the Southwest Pipeline Project and the City of Fargo.

The Bureau of Reclamation has indicated that year-end funds of \$1.6 million are now available for the MR&I Program. The following proposed budget was recommended by the State Engineer to account for the increase of \$1.6 million in the Fiscal Year 1994 funding:

	<u>Approved</u>	<u>Proposed</u>	<u>Change</u>
Ramsey County Rural Water	\$ 197,518	\$ 197,518	\$ 0
Langdon Water Treatment	265,533	452,335	186,802
Grand Forks Water Treatment	944,611	944,611	0
Southwest Pipeline Project	5,577,000	6,106,966	529,966
Dickey Rural Water	3,380,000	3,380,000	0
Fargo Water Supply	1,443,838	2,352,070	908,232
Feasibility Studies	25,000	0	(25,000)
Administration	<u>166,500</u>	<u>166,500</u>	<u>0</u>
Total	\$12,000,000	\$13,600,000	\$ 1,600,000

It was moved by Commissioner Olin and seconded by Commissioner Hillesland that the State Water Commission approve the proposed Fiscal Year 1994 MR&I Program budget as recommended by the State Engineer. This motion is contingent upon the availability of funding.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

GARRISON DIVERSION PROJECT - MR&I FUNDING FOR FY 1995 (SWC Project No. 237-3) - The Garrison Diversion Unit federal appropriation for Fiscal Year 1995 is \$32 million which includes \$14,575,000 for the Municipal, Rural and Industrial (MR&I) Water Supply Program.

The State Engineer presented and recommended tentative approval of the following projects that qualify for Fiscal Year 1995 funding, contingent upon approval of a federal Fiscal Year 1995 appropriation for the Garrison Diversion Project and subject to future revisions:

	<u>Project Cost</u>	<u>Proposed MR&I Grant</u>
Dickey Rural Water, Phase II	\$12,000,000	\$ 7,800,000
Northwest Area Water Supply	666,667	500,000
Southwest Pipeline Project	8,000,000	6,100,000
Missouri West Water System, Phase II	230,769	0
Burleigh Water Users	287,692	0
Unallocated Funding	443,077	0
Feasibility Studies	100,000	25,000
Administration	<u>200,000</u>	<u>150,000</u>
Total	\$21,928,205	\$14,575,000

It was moved by Commissioner Olin and seconded by Commissioner Vogel that the State Water Commission approve the State Engineer's recommendation for tentative approval of the Fiscal Year 1995 Garrison MR&I Water Supply Program budget. This motion is contingent upon the approved federal Fiscal Year 1995 appropriation for the Garrison Diversion Unit Project and is subject to future revisions.

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson, Vogel, and Chairman Schafer voted aye. There were no nay voted. The Chairman declared the motion unanimously carried.

**DEVILS LAKE STABILIZATION
PROJECT
(SWC Project No. 1712)**

Dale Frink provided information relative to the lake levels of Devils Lake and the problems that the high level of the lake are causing throughout the Devils Lake Basin.

Mr. Frink stated the fluctuation of Devils Lake the past year shows the need to be able to manage and stabilize the lake. The US Army Corps of Engineers is currently working on Stage 1 of the feasibility study for the stabilization of Devils Lake. Stage 1 was initiated in 1993 and is scheduled for completion in the fall of 1994. This stage of the feasibility study will determine the economic feasibility of an outlet. Mr. Frink said that although the feasibility of an outlet has improved with the rising lake levels, it is still questionable whether the Corps will conclude that the project is feasible from a federal standpoint.

If the Corps determines feasibility, the next step is Stage 2 of the feasibility study, which is considerably more detailed and will include the impacts of both an inlet and an outlet for the lake. Stage 2 of the feasibility study will take approximately two years to complete, with the current cost estimate of Stage 2 of \$2 million, of which 50 percent must be non-federal. Stage 2 will include the development of detailed cost estimates and an environmental impact statement for constructing a method of stabilizing Devils Lake.

Mr. Frink said that if the Corps of Engineers determines the project is feasible, construction of an inlet-outlet for Devils Lake is at least three to four years away. If the Corps determines the project is not feasible, it will be up to the state and the locals to build the project or live with a widely fluctuating lake level.

The Corps of Engineers has scheduled an Issue Resolution Conference in St. Paul on November 17, 1994, to discuss the Devils Lake situation and the feasibility study. (This meeting was subsequently postponed.)

At the July 27, 1994, meeting, Secretary Sprynczynatyk informed the Commission members that he directed the staff to develop an emergency flood contingency plan for Devils Lake, and to coordinate planning with other appropriate state agencies as well as the US Fish and Wildlife Service and the US Environmental Protection Agency. The Commission members were provided with copies of the report, "Assessment of Potential Devils Lake Flood Damages, October 1994".

Mr. Frink summarized the report, which contains the history of Devils Lake, the current situation, future probability of lake level rises, areas affected, and possible emergency solutions and recommendations. The recommendations outlined in the emergency plan report states:

Although the construction of an outlet from Devils Lake to the Sheyenne River is currently being pursued, it may take several years before the outlet can be constructed. Therefore, residents living in flood-prone areas should obtain flood insurance coverage. Future construction in these flood-prone areas should also be limited. As water levels rise, it will be necessary to evaluate whether road and other structures should be raised, relocated, or abandoned. In making this evaluation, the probability of future lake levels should be considered.

The cost to construct a channel to West Stump Lake is estimated to be \$5-10 million. If the levels of East and West Stump Lake are raised approximately 20 feet from current levels, it will only lower Devils Lake approximately two feet from its current level. If an outlet is constructed, it may be necessary to isolate West Stump Lake from East Stump Lake due to the wildlife refuge located on West Stump Lake. In this case, if the level of East Stump Lake is raised approximately 20 feet from current levels, Devils Lake will be lowered approximately one foot from current levels. Isolating West Stump Lake from East Stump Lake will likely double the cost of constructing the outlet. Constructing an outlet to Stump Lake does not appear to be feasible due to the high cost of constructing the outlet channel and the limited benefits it provides.

Secretary Sprynczynatyk said the state needs to continue to strongly and expeditiously pursue the stabilization of Devils Lake and, in doing so, the state will continue to work closely with the people in the Devils Lake area

as well as the federal agencies involved with the lake, and continue to pursue all alternatives and schemes to protect the area.

A meeting has been scheduled for November 22, 1994, in Devils Lake to discuss the potential for continued flooding and emergency measures at Devils Lake in the spring of 1995.

The Commission members were provided copies of the report "Hydrology of the Devils Lake Area, North Dakota", dated 1994. This report was prepared by the State Water Commission and the US Geological Survey.

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

Secretary Sprynczynatyk provided a status report on the Corps of Engineers draft Environmental Impact Statement for the Missouri River Master Water Control Manual review and update.

Secretary Sprynczynatyk provided a status report on the Corps of Engineers draft Environmental

On September 8, 1994, the upper basin Governors released a joint position statement on the Corps of Engineers Preferred Alternative for the Missouri River Management. The joint position statement is attached hereto as **APPENDIX "G"**.

A series of public meetings have been scheduled in September and October, 1994, in each of the Missouri basin states. Secretary Sprynczynatyk briefed the Commission members on the meetings that have been held in Williston, Garrison and New Town on the Preferred Alternative, and stated that the last meeting to be held in North Dakota is scheduled for October 17 in Bismarck. The Corps has extended the public comment period on the Preferred Alternative to March 1, 1995.

Secretary Sprynczynatyk stated that on October 3 and 4, 1994, he and Todd Sando from the State Water Commission, and K.L. Cool and Greg Power from the Game and Fish Department, spoke on behalf of the upper basin states at the public hearings in Kansas City and Jefferson City, Missouri. He said their goal was to tell the residents of the lower basin states the issues of concern to the upper basin states regarding changes to the Corps' Missouri River Master Manual, and also to hear firsthand the concerns of the lower basin states. Secretary Sprynczynatyk said it was pointed out to the groups how the issue has gotten out of hand, and instead of divisiveness, an effort needs to be made to outline the common points of agreement and then to work to resolve the differences.

In discussion of the Preferred Alternative, the Commission members expressed concerns regarding the spring rise being proposed by the Corps at the start of the downstream navigation season, and the impacts those flows could have on areas in North Dakota.

**DICKINSON DAM AND
BASCULE GATES UPDATE
(SWC Project No. 263)**

Charles Rydell briefed the Commission members on a meeting held with officials of the City of Dickinson and the Bureau of Reclamation to discuss the remaining debt the city has for the Dickinson Dam. The city owes the Bureau approximately \$3 million. Mr. Rydell explained that presently the State Water Commission gives the city credit for 75 percent of the debt under the Southwest Pipeline Project's water service contract. The credit amounts to about \$12,000 per month for seven more years. The city and the State Water Commission are interested in taking over the project from the federal government to return control of the water to the state and the city.

In September, the State Engineer, Mr. Rydell and Dickinson city officials met with the congressional delegation in Washington, DC regarding this issue. Mr. Rydell indicated that the outcome of the meeting was that Senator Dorgan will plan on introducing legislation next spring concerning the project. The legislation will reflect the intent of a plan that he directed the city and the state prepare regarding the reduction or elimination of the debt associated with the project and its transfer to the state and/or city. Senator Dorgan requested the state take the lead in developing the plan.

A meeting is to be held in October between the State Water Commission and the City of Dickinson to begin development of the plan.

**CANNONBALL RIVER BASIN
COOPERATIVE STUDY UPDATE
(SWC Project No. 322-1)**

Linda Weispfenning provided a status report on the Cannonball River Basin Study, which is attached hereto as **APPENDIX "H"**.

**NORTH DAKOTA COMPREHENSIVE
WETLANDS CONSERVATION PLAN
PROJECT UPDATE
(SWC Project No. 1489-5)**

Secretary Sprynczynatyk provided the Commission members with a status report on the grants the US Environmental Protection Agency has awarded to the State Water Commission to aid in the development of the North Dakota Comprehensive Wetlands Conservation Plan, attached hereto as **APPENDIX "I"**.

**STATE ASSUMPTION OF
SECTION 404 PROGRAM
(SWC Project No. 1855)**

for a state Section 404 Program. The Commission also approved development of draft legislation to assume the program based upon cost sharing with the federal government of the reauthorized Clean Water Act.

At the July 27, 1994 meeting, the State Water Commission approved continuation of the process of promulgating rules

The public hearing on the draft rules has been scheduled for October 18, 1994, in Bismarck.

Secretary Sprynczynatyk stated that the Clean Water Act, which is up for reauthorization, has been stalled and apparently will not be acted on this year. Because of other issues and the upcoming election year, he said it is doubtful if the next congressional session will complete the reauthorization process. The present bill has a provision to fund administration of state and tribal approved 404 programs and whether this funding will remain in the bill draft and eventually become law is unknown.

Secretary Sprynczynatyk stated that in view of the tight fiscal situation that is occurring in the state, funds will likely not be available to assume the program without federal financial assistance. Therefore, he recommended it would be best to delay pursuing state assumption until a source of funding can be identified. That, he said, may not occur until 1996 when the Clean Water Act will likely be reauthorized.

With recent program changes, Secretary Sprynczynatyk indicated there is an opportunity for the state to work with the Corps to develop a state general permit that would allow the state to partially assume parts of the Section 404 program. He said this will not require any additional costs because of the work already required by state law.

It was the recommendation of the State Engineer that the State Water Commission complete the final draft of the rules following the public hearing scheduled for October 18, 1994, and that formal assumption of the Section 404 program be delayed until a source of funding can be identified. It was also recommended by the State Engineer that the State Water Commission pursue the possibility of a state general permit with the Corps of Engineers to allow the state to work with the Corps in administering portions of the Section 404 program in North Dakota.

The promulgation process of rules and regulations was explained by Julie Krenz, Assistant Attorney General.

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In discussion, concern was expressed regarding pursuing the completion of the draft rules following the public hearing if draft legislation for the formal assumption of the Section 404 program is delayed at this time. The advantages and disadvantages of the state assuming the Section 404 program were discussed.

Governor Schafer stressed the importance of incorporating public input into the draft rules. He expressed reservations regarding finalizing the draft rules until a decision has been made whether or not the state should move forward with the assumption of the Section 404 program.

It was moved by Commissioner Swenson and seconded by Commissioner Vogel that:

- 1) **the State Water Commission complete the final draft of the rules following the public hearing scheduled for October 18, 1994;**
- 2) **the formal assumption of the Section 404 program be delayed until a source of funding can be identified; and**
- 3) **the State Water Commission pursue the possibility of a state general permit with the Corps of Engineers to allow the state to work with the Corps in administering portions of the Section 404 program in North Dakota.**

Commissioners Ames, Bjornson, DeWitz, Hillesland, Olin, Swenson and Vogel voted aye. Chairman Schafer voted nay. The recorded vote was 7 ayes; 1 nay. The Chairman declared the motion carried.

**TELEPHONE/FACSIMILE PREFIX
CHANGE FOR STATE AGENCIES**

Secretary Sprynczynatyk advised the Commission members that the telephone/facsimile prefix number for state agencies will be changed from 224 to 328, effective October 17, 1994. The last four digits of the state's telephone/facsimile numbers will remain the same.

POSSIBLE LEGISLATION

Secretary Sprynczynatyk presented the following items or issues under the authority of the State Water Commission and the State Engineer where legislation may or should be considered for the 1995 legislative session:

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State Water Commission:

- 1) A bill to authorize the Industrial Commission to issue water development bonds.
- 2) A bill to assist in transferring the Southwest Pipeline to the Southwest Water Authority, specifically to transfer the operation and maintenance account and replacement fund to the Southwest Water Authority.
- 3) A bill authorizing the transfer of title to property acquired for the Southwest Pipeline to Virginia Hecker, Norman Kruckenberg and Madella Kruckenberg, and William Kohler, Jr. and Irene Kohler.
- 4) A bill authorizing the State Water Commission to transfer or sell land acquired for the Southwest Pipeline without complying with the procedures in North Dakota Century Code 54-01-05.2.

State Engineer:

- 1) A bill to authorize the State Engineer to refund water permit application fees if the application is withdrawn by the applicant before much administrative time is spent processing the application, or for other good cause as determined by the State Engineer.
- 2) A bill authorizing the Sovereign Lands Advisory Board to meet annually or at the call of the State Engineer rather than the current law which requires the board to meet at least four times a year.
- 3) North Dakota Century Code 61-05-03 provides any elector owning more than 20 acres of land subject to assessment within an irrigation district which will receive all or a portion of its water supply from a federal reclamation or irrigation project has one vote for each 20 acres in the district up to eight votes, which would be 160 acres. This was based on prior reclamation law which allowed people only to irrigate 160 acres under reclamation project. Currently, reclamation law allows irrigators to irrigate up to 960 acres.

A bill to amend NDCC 61-05-03 to allow the maximum votes to be based on the 960 acres (or the number of acres allowed to be irrigated under federal law) or no more than 35 percent of the total vote. The 35 percent limit is the figure that applies to irrigators who are not under federal reclamation or irrigation projects.

4) Section 404. The effective date language of the legislation passed during the 1993 Legislative Assembly provided that the Section 404 program would become effective on the date the State Engineer certifies that the state has received approval from EPA to administer the program. Before EPA will approve the program, the program must be in effect. Therefore, the effective date language would need to be changed if the state wants to receive approval from EPA.

**NEXT MEETING OF STATE
WATER COMMISSION**

The next meeting of the State Water Commission is scheduled for December 7, 1994, at the Doublewood Inn, Bismarck, ND.

There being no further business to come before the State Water Commission, it was moved by Commissioner Hillesland, seconded by Commissioner Swenson, and unanimously carried, that the State Water Commission meeting adjourn at 12:30 PM.

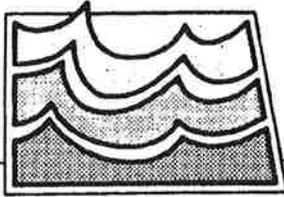
**TOUR OF GRAND FORKS
AREA PROJECTS**

Following the meeting, the State Water Commission members participated in a tour of the Grand Forks Riverside Park Dam, the English Coulee Dam, and the Grand Forks water treatment plant.


Edward T. Schafer
Governor-Chairman

SEAL


David A. Sprynozymatyk
State Engineer and
Chief Engineer-Secretary



North Dakota State Water Commission

900 EAST BOULEVARD • BISMARCK, ND 58505-0850 • 701-224-2750 • FAX 701-224-3696

Meeting To Be Held At
Grand Forks City Hall Council Chambers
255 North 4th Street
Grand Forks, North Dakota

October 14, 1994
8:30 AM, Central Daylight Time

AGENDA

- A. Roll Call
- B. Consideration of Agenda
- C. *Consideration of Minutes of July 27, 1994, Meeting* **
- D. Financial Statement: **
 - 1) Agency Operations **
 - 2) Resources Trust Fund **
 - 3) 1995-1997 Budget Update
- E. Funding for Water Development Projects: **
 - 1) *Project Bonding*
- F. Southwest Pipeline Project: **
 - 1) Status Report **
 - 2) *Dickinson Water Treatment Plant Upgrade, Phase II* **
 - 3) *Water Service Agreements* *** **
 - 4) *Rural Water Policy* **
 - 5) *Wheeling Agreement* **
 - 6) Transfer of Operations **
- G. Northwest Area Water Supply Project: **
 - 1) Project Update *** **
 - 2) *Chloramination Testing* **
- H. Consideration of Following Requests for Cost Sharing: **
 - 1) *English Coulee Drain, Lateral 1 - Grand Forks Co.* **
 - 2) *The International Coalition* **
- I. Garrison Diversion Project: **
 - 1) Project Update: Collaborative Process *** **
 - 2) *Fiscal Year 1994 Funding* **
 - 3) *Fiscal Year 1995 Funding* **
- J. Devils Lake Stabilization Update ***
- K. Missouri River Update *** **

GOVERNOR EDWARD T. SCHAFER
CHAIRMAN

DAVID A. SPRYNCZYNYATYK, P.E.
SECRETARY & STATE ENGINEER

AGENDA - PAGE 2

- L. Dickinson Dam and Bascule Gates Update **
- M. Cannonball River Study Update **
- N. Comprehensive State Wetlands Conservation Plan Update **
- O. *State Assumption of Section 404* **
- P. Other Business:
 - 1) Telephone/Facsimile Prefix Change for State Agencies **
 - 2) Possible Legislation ***
- Q. Adjournment

* * * * *

- ** MATERIAL PROVIDED IN BRIEFING BINDER
- ** *ITALICIZED, BOLD-FACED ITEMS REQUIRE SWC ACTION*
- *** MATERIAL PROVIDED IN TODAY'S FOLDER

If auxiliary aids or services such as readers, signers, or Braille material are required, please contact the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota 58505; or call (701) 328-4940 at least seven (7) working days prior to the meeting. TDD telephone number is (701) 328-2750.

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE October 14, 1994 PLACE Grand Forks, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Frank Ortmeyer	Grand Forks	ND Garrison C Dist
Michael Polowitz	" "	Mayor - G.F.
A. J. Stein	" "	St. 7 County W. R. D
Ken Vein	" "	City of G.F.
Neal Bauer	Bismarck	SRST Water Resources
Mark Lambrecht	Grand Forks	City of Grand Forks
Kathy Karzell / John Tr...	Minneapolis	Evans Dodge
Hazel Sletten	GRAND FORKS	City of Grand Forks
Allen Grasser	Grand Forks	City of Grand Forks
Keith Johnson	Grand Forks	City of Grand Forks
Stan Langford	Fargo	Haccston Engineering
Paul Suomala	Mhd	The International Coalbit
Julie Krenz	Bi's	State Eng / Attorney General's Office
Tom Tudor	Bismarck	ND Municipal Bank
Ann Sander	G7	G7 City Council

STATE WATER COMMISSION
 PROGRAM BUDGET EXPENDITURES AUGUST 31, 1994
 BIENNIUM TIME 58.3%

FINANCIAL STATEMENT
 SWC File ACT/FIN
 09-16-1994

AGENCY PROGRAM	SALARIES & WAGES	INFORMATION SERVICES	OPERATING EXPENSE	EQUIPMENT	CONTRACTS	PROGRAM TOTAL
Administration						
Budget	\$633,590	\$75,792	\$293,465	\$3,000	\$0	\$1,005,847
Expended	\$350,989	\$40,643	\$161,298	\$0	\$0	\$552,930
Percent	55	54	55	0	0	55
Water Education						
Budget	\$624,858	\$0	\$142,264	\$12,750	\$25,000	\$804,872
Expended	\$326,087	\$0	\$70,816	\$11,763	\$24,335	\$433,001
Percent	52	0	50	92	97	54
Water Appropriation						
Budget	\$2,178,891	\$3,955	\$408,500	\$33,000	\$660,000	\$3,284,346
Expended	\$1,266,824	\$300	\$179,248	\$3,048	\$324,841	\$1,774,261
Percent	58	8	44	9	49	54
Water Development						
Budget	\$2,486,884	\$2,500	\$316,700	\$57,100	\$8,612,509	\$11,475,693
Expended	\$1,442,261	\$0	\$142,091	\$20,350	\$2,663,388	\$4,268,091
Percent	58	0	45	36	31	37
Atmospheric Resources						
Budget	\$393,452	\$2,500	\$1,700,701	\$10,500	\$3,050,000	\$5,157,153
Expended	\$226,778	\$1,325	\$648,236	\$7,095	\$606,896	\$1,490,330
Percent	58	53	38	68	20	29
Southwest Pipeline						
Budget	\$727,047	\$9,000	\$4,617,020	\$110,000	\$26,600,000	\$32,063,067
Expended	\$366,456	\$5,151	\$1,945,634	\$10,651	\$8,299,519	\$10,627,411
Percent	50	57	42	10	31	33
Contract Carryover						
Budget	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Expended	\$0	\$0	\$0	\$0	\$500,000	\$500,000
Percent	0	0	0	0	100	100
Agency Totals						
Budget	\$7,044,722	\$93,747	\$7,478,650	\$226,350	\$39,447,509	\$54,290,978
Expended	\$3,979,396	\$47,420	\$3,147,322	\$52,906	\$12,418,978	\$19,646,022
Percent	56	51	42	23	31	36
FUNDING SOURCE:						
General Fund	\$5,532,084	\$2,550,637	\$2,981,447		FEDERAL FUND REVENUE:	\$10,044,315
Federal Fund	\$32,775,404	\$11,175,171	\$21,600,233		SPECIAL FUND REVENUE:	\$6,262,549
Special Fund	\$15,983,490	\$5,920,216	\$10,063,274		GENERAL FUND REVENUE:	\$9,757
					TOTAL:	\$16,316,621
TOTAL	\$54,290,978	\$19,646,023	\$34,644,954			

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STATE WATER COMMISSION
1993 - 1996 Grants/Contract FundPage 1
30-Sep-94

FUNDING SOURCES						
	RTF	General Funds	Federal Funds	Other Funds	Carryover	Totals
Inter Basin Transfer	\$0	\$25,000				\$25,000
Hydrologic Investigation	\$600,000			\$60,000		\$660,000
MR&I Program	\$3,106,110				\$500,000	\$3,606,110
EPA Wetlands Grant	\$0		\$399,299			\$399,299
NAWS	\$50,000					\$50,000
Devils Lake	\$500,000					\$500,000
Maple River Dam	\$326,610					\$326,610
Southwest Pipeline	\$1,525,678					\$1,525,678
General Projects	\$2,582,811	\$0	\$26,000	\$96,000		\$2,704,811
SWC Grants Totals	\$8,691,209	\$25,000	\$425,299	\$156,000	\$500,000	\$9,797,508

PROGRAM COMMITMENTS

APPROVED BY	SWC No.	NAME	Date Approved	Amount Approved	Payments	Balance
		Shortfall		\$1,359,343	\$0	\$1,359,343
SWC	237	Garrison Consultant (91-93)	8-22-91	\$7,842	\$7,842	(\$0)
SWC	1803	Belfield Flood Control (Stark)	12-20-91	\$38,800	\$0	\$38,800
SWC	1346	Mount Carmel (Cavalier)	4-02-92	\$4,395	\$0	\$4,395
SWC	662	Park River Snagging & Clearing (Walsh)	4-02-92	\$10,117	\$0	\$10,117
SWC	662	Park River #2 Snagging & Clearing (Walsh)	5-23-92	\$4,625	\$0	\$4,625
SWC	1496	Lake Elsie (Richland) (F)	8-05-92	\$11,500	\$2,811	\$8,689
SWC	1292	Willow Road Floodway (Morton)	8-26-93	\$32,641	\$32,641	\$0
SWC	300	Baldhill Dam (Barnes)	9-15-92	\$184,000	\$60,000	\$124,000
SE	1311	Bingham CAT (Traill)	9-15-92	\$4,900	\$0	\$4,900
SE	1311	Elm CAT (Traill) (F)	9-15-92	\$5,590	\$5,590	\$0
SWC	237	Garrison Coalition	12-09-92	\$10,000	\$10,000	\$0
SWC	1815-4	Shenandoah River Snagging & Clearing (Ransom)	12-09-92	\$4,836	\$0	\$4,836
SWC	1842-4	Wild Rice Snagging & Clearing (Richland)	12-09-92	\$725	\$0	\$725
SE	1751-H	Lower Forest River FP (Walsh)	1-25-93	\$5,200	\$0	\$5,200
SE	1751-C	Williston Floodplain (Williston)	2-24-93	\$1,000	\$1,000	\$0
SWC	1804	Grand Harbor #1 (Ramsey)	4-06-93	\$20,640	\$0	\$20,640
SWC	237	Garrison Consultant (93-95)	7-02-93	\$40,000	\$19,106	\$20,894
SWC	1832	Hammer - Sullivan (Ramsey)	7-02-93	\$21,231	\$0	\$21,231
SWC	1840	North Loma (Cavalier)	7-09-93	\$7,960	\$0	\$7,960
SE	543	North Lennon Lake Dam (Adams)	7-08-93	\$9,933	\$9,933	(\$0)
SE	263	Patterson Lake Management (Stark)	8-24-93	\$500	\$500	\$0
SE	266	Tolna Dam (Nelson)	9-28-93	\$2,000	\$0	\$2,000
SWC	1588-1	International Coalition	10-26-93	\$10,000	\$7,500	\$2,500
SE	1392	Missouri River Master Manual Review	10-20-93	\$1,413	\$1,413	\$0
SWC	1865	Belfield Dam (Stark)	11-19-93	\$62,000	\$59,122	\$2,878
SE	1577	Langdon Floodplain Management Study (Cavalier)	12-20-93	\$4,100	\$0	\$4,100
SWC	1245	Nelson Drain (Traill)	12-08-93	\$37,627	\$0	\$37,627
SWC	1826	Wetlands Trust	12-08-93	\$3,330	\$3,330	\$0
SWC	1545	Drain #72 (Richland)	12-08-93	\$10,017	\$0	\$10,017
SE	1816-5	Shenandoah River Snagging & Clearing (Barnes)	01-19-94	\$8,500	\$0	\$8,500
SE	1868-4	Wild Rice Snagging & Clearing (Cass)	01-25-94	\$5,875	\$0	\$5,875
SWC	1346	Mt Carmel Dam (Cavalier)	03-09-94	\$250,000	\$0	\$250,000
SWC	222	Buford-Tranton Irrigation (Williams)	04-07-94	\$39,240	\$0	\$39,240
SE	1270	Hay Creek Watershed (Burleigh)	04-22-94	\$9,750	\$0	\$9,750
SE	1875	Castle Rock (Hettinger)	05-03-94	\$6,000	\$0	\$6,000
SE	820	Oak Creek Snagging & Clearing (Bottineau)	05-17-94	\$475	\$0	\$475
SE	1701-2	Red River UNET Study (Walsh)	05-23-94	\$6,250	\$0	\$6,250
SWC	1614	Lower Mauvais Coulee (Benson-Ramsey)	07-27-94	\$41,800	\$0	\$41,800
APPROVED GENERAL PROJECTS SUBTOTAL				\$924,812	\$133,563	\$704,023
Unallocated Balance (Total-Approved-Shortfall)				\$420,656		

SWC GRANTS TOTALS \$9,397,508 \$3,540,218 \$6,257,291

**SOUTHWEST PIPELINE PROJECT
WATER SERVICE CONTRACT**

Contract No: 1736-23

Water User Entity: Sacred Heart Monastery

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IX. MERGER CLAUSE

I. PARTIES

This contract is by and between the North Dakota State Water Commission, a state agency and public corporation created and existing pursuant to North Dakota Century Code chapter 61-02, hereinafter called the Commission, acting through the North Dakota State Engineer; and Sacred Heart Monastery of Richardton, hereinafter referred to as the User.

II. INTRODUCTION

1. Under the authority of the Act of the North Dakota Legislative Assembly of 1981 (1981 N.D. Sess. Laws 613, §3), the Commission was directed to develop preliminary designs for a water supply pipeline facility for supplementation of the water resources of Dickinson and the area of North Dakota south and west of the Missouri River for multiple purpose, including domestic, rural water district, and municipal users. This water pipeline facility is known as the Southwest Pipeline Project.
2. The Southwest Pipeline Project was authorized by the North Dakota Legislative Assembly, substantially in accordance with Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project No. 1736, dated September 1982.
3. The Commission has the authority, pursuant to North Dakota Century Code chapter 61-02, to enter into water service contracts for the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.
4. The User desires to enter into a water service contract, pursuant to the laws of the State of North Dakota, for a water supply from the Southwest Pipeline Project for use by the User, for which the User will make payment to the Commission at the rates and pursuant to the terms and conditions set forth in this contract.

NOW THEREFORE, in consideration of the mutual covenants contained in this contract, it is mutually agreed by and between the parties to this contract as follows:

III. DEFINITIONS

1. "Additional water" means water purchased by the User in addition to its minimum annual water purchase.

2. **"Base consumer price index"** means the consumer price index, as defined herein, as of July 1, 1981, adjusted to account for any changes in base.
3. **"Capital costs"** means all costs incurred by the Commission which are properly chargeable, in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, and essential legal, administrative and financial work in connection therewith.
4. **"Consumer price index"** (CPI) means the consumer price index for all urban consumers, which is a monthly statistical measure of the average change in prices in a fixed market basket of goods and services. The consumer price index is based on the prices of food, clothing, shelter, fuel, drugs, transportation fares, doctors' and dentists' fees, and other goods and services that people buy for day-to-day living.
5. **"Estimated water rate for operation, maintenance, and replacement"** means the estimated rate per each one thousand (1,000) gallons of water for the operation and maintenance of the Project and for the accumulation and maintenance of a reserve fund for replacement purposes. This rate is determined by dividing total costs the Commission estimates it will incur during a year for operation, maintenance, and replacement by the total number of one thousand gallon units of water which the Commission estimates it will sell to water user entities during the same year.
6. **"Manager"** means the person employed by the Commission to be in charge of and supervise the operation and maintenance of the Project.
7. **"Maximum flow rate"** means the maximum number of gallons of water which may be delivered through the Project by the Commission to a water user entity during any one minute time period.
8. **"Minimum annual water purchase"** means the minimum gallons of water which a water user entity agrees to purchase and pay for during a year.
9. **"Operation, maintenance, and replacement costs"** means all operation costs incurred by the Commission, including all energy costs incurred by the Commission for pumping water through the Project, for the treatment of water, for the maintenance and administration of the Project, and for any amounts that the Commission determines are necessary to establish reserve funds to meet anticipated replacement costs

and extraordinary maintenance of Project works. Operation, maintenance, and replacement costs shall be referred to in this contract as OM&R costs.

10. **"Project"** means Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project No. 1736, dated September 1982. Authorization of the Southwest Pipeline Project by the Legislative Assembly, substantially in accordance with Plan B of such Engineering Report, as recommended by the Commission, shall constitute the "Project" as it is defined herein.
11. **"Qualifying water supply facilities"** means water supply facilities determined by the Commission to qualify for a credit against payments for water by the User for capital costs and shall include such things as surface water reservoirs, wells, raw water pumps, water transmission pipelines from the source to the distribution system, water treatment plants, and pipelines and controls necessary to connect the User's system to the delivery point for Project water.
12. **"Total annual water sales"** means the summation of all of the actual annual water deliveries, or the minimum annual water purchases, whichever is greater, for the water user entities which have executed a water service contract.
13. **"Unallocated capacity"** means the capacity of the pipeline which is not allocated and contractually committed to individual water user entities by virtue of water service contracts.
14. **"Water rate for capital costs"** means the rate per each 1,000 gallons of water to be paid by water user entities for capital costs of the Project.
15. **"Water user entities"** means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the Commission for the purchase of water from the Project.
16. **"Year"** means the period from January 1 through December 31, both dates inclusive.

IV. TERM OF CONTRACT

1. Effective Date.

This contract shall remain in effect for forty (40) years after the date of the first water delivery to the User, unless terminated sooner by mutual agreement of the parties.

2. Renewal.

Under terms and conditions mutually agreeable to the parties to this contract, renewals of this contract may be made for successive periods not to exceed forty (40) years each.

V. TERMINATION BY NOT CONSTRUCTING

It is further agreed that if any segment of the Project is not constructed for whatever reason, even though authorized, thereby preventing delivery of water to the User, the Commission and the User shall be relieved of all obligations under this contract.

VI. WATER SERVICE: DELIVERY OF WATER

The Commission and the User agree that water will be delivered to the User in accordance with the following terms and provisions:

1. Quality of Water.

All water delivered to the User pursuant to this contract, or any renewal, extension, or modification thereof, shall be potable treated water which meets applicable water quality standards of the North Dakota Health and Consolidated Laboratories Department.

2. Quantity of Water and Flow Rate.

a. Minimum annual water purchase. The User hereby agrees to purchase and make payment for not less than 1,000,000 gallons per year (minimum annual water purchase) during the entire term of this contract.

b. Maximum flow rate. The maximum flow rate to be provided by the Commission to the User shall not exceed 57,600 gallons per day.

3. Point of Delivery and Pressure.

The Commission will furnish water to the User at a pressure range of 20 psi to 50 psi at a point located in the SW 1/4 of

Section 31, Township 140 North, Range 92 West. If greater pressure than the range specified herein at the point of delivery is required by the User, the cost of providing such greater pressure shall be borne by the User.

4. Additional Water.

The Commission will deliver to the User any additional water which the User desires to purchase, at a flow rate not to exceed the flow rate specified in this contract. If there is unallocated capacity in the Project to the User's point of delivery, the Commission may allow delivery of water at a flow rate greater than the maximum flow rate specified in this contract. The User shall have no contractual right to any unallocated capacity which it purchases as additional water, and delivery of such additional water shall not contractually or in any other way obligate the Commission to deliver water at a greater flow rate than the maximum flow rate specified in this contract. If the User desires to secure a contractual right to a greater maximum flow rate than specified in this contract, this contract must be amended to provide a greater minimum annual water purchase.

5. Water Shortages.

a. No liability for shortages. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from any water shortages or other interruptions in water deliveries resulting from accident to or failure of Project works and facilities, whether or not attributable to negligence of officers, agents, or employees of the Commission, or from any other cause. The contractual obligations of the User under this contract shall not be reduced or altered by reason of such shortages or interruptions.

b. Proportional sharing of water shortage. The Commission shall have the right during times of water shortage from any cause to allocate and distribute the available water supply to water user entities on a proportionate basis with respect to the proportion that the minimum annual water purchase of each water user entity bears to the total minimum annual water purchase of all water service contracts for the Project.

6. Curtailment of Delivery for Maintenance Purposes.

The Commission may temporarily discontinue or reduce the amount of water to be furnished to the User for the purpose of maintaining, repairing, replacing, investigating, or inspecting any of the facilities and works necessary for the furnishing of water to the User. To the extent possible, the

Commission will give to the User reasonable notice in advance of any such temporary discontinuance or reduction. No advance notice will be required to be given in the case of an emergency. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from such temporary discontinuance or reduction for maintenance and repair purposes.

7. Measurement of Water.

The Commission shall furnish, install, operate, and maintain, at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the User. If the User believes the measurement of water delivered to the User to be in error, it shall present a claim of error, in writing, to the manager of the Project, either in person or by mailing by certified mail to the address of the manager. Upon presenting its claim of error in the measurement of water, the Commission will cause the meter to be calibrated, upon payment to the Commission by the User the actual cost of the calibration. However, if the meter is found to over-register by more than two percent (2%) of the correct volume, the User's payment for the cost of calibration will be refunded to the User. A claim of error presented after a claim has become delinquent shall not prevent discontinuance of service as provided in this contract. The User agrees to continue to make payments for water service after a claim of error has been presented, however, it may do so under protest, and such payments will not prejudice the User's claim of error.

If the calibration of any meter establishes that the previous readings of such meter over-registered by more than two percent (2%) the correct volume of water delivered to the User, the meter readings for that meter shall be corrected for the twelve (12) months previous to the calibration by the percentage of inaccuracy found in such tests. The amount of any overpayment by the User because the meter over-registered the amount of water delivered to the User, for the period of time for which the correction is applied, shall be applied first to any delinquent payments for water service, and any remaining amounts shall, at the option of the User, be refunded to the User or credited upon future payments for water service by the User in the ensuing years. If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Commission and the User shall agree upon a different amount. An appropriate official of the User shall have access to the meter at all reasonable times for the purpose of verifying its readings.

8. Responsibility for Distribution and Use of Water.

The User shall be responsible for the control, distribution, and use of all water delivered to the User by the Commission under this contract, beyond the point of delivery, and all services, maintenance, and repair of the User's distribution system. The User shall hold the Commission, its officers, agents, employees and successors, and assigns harmless from every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, distribution, and use of water delivered under this contract, and the operation, maintenance, and replacement of the User's distribution system. The User's distribution system includes all works extending from the point of delivery of water to the User by the Project.

VII. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER

The User agrees to make payments for water and water service in accordance with the following terms and conditions:

1. Notice of First Delivery of Water and Beginning of Water Service Payments.

Ninety (90) days prior to completion of the Project to the point of delivery to the User, the Commission shall notify the User, in writing, by certified mail, the date when water will be first available to the User. The User will make payments for water and water service, in accordance with the terms of this contract, beginning at the expiration of the ninety (90) day notice, or beginning at such time when water is available to the User, whichever is later in time. The minimum payment for water for the first payment shall be pro-rated on a per day basis over a one month period, ending on the last day of the month in which water is first available to the User.

2. Payment for Water Service.

The User's water service payment for each month shall equal the sum of the following:

- a. The User's proportionate share of the operation, maintenance, and replacement costs; plus
- b. The User's payment for capital costs.

3. Minimum Annual Water Purchase: Minimum Payments.

The User will make payment for the minimum annual water purchase specified in this contract in accordance with

the rates and terms for payment of water specified in this contract, regardless of whether or not the User actually uses the minimum annual water purchase.

4. Payment for Operation, Maintenance, and Replacement (OM&R).

The User will make monthly payments to the Commission for its share of the OM&R for the Project. The amount of such payment will be determined as follows:

- a. Prior to December 1 of each year, the Commission shall establish and adopt a budget for OM&R for the Project for the immediate ensuing year. The Commission shall have the authority to include in such budget for each year an amount to be accumulated and maintained in a reserve fund for the purpose of replacement and for extraordinary maintenance of project works. The reserve fund shall be accumulated and maintained in an amount to be determined by the Commission. The reserve fund shall be deposited and maintained in a separate account in accordance with the laws of the State of North Dakota.
- b. The Commission will then estimate the total annual water sales for the immediate ensuing year, and calculate the "estimated water rate for operation, maintenance, and replacement" for the Project by dividing the amount of the estimated budget for OM&R for the immediate ensuing year by the estimated total annual water sales for such ensuing year.
- c. The monthly payment to be made by the User to the Commission for OM&R shall be determined by multiplying the amount of water actually delivered to the User for each month, or the monthly minimum water purchase (minimum annual water purchase divided by 12), whichever is greater, times the estimated water rate for OM&R.
- d. At the end of each year, the Commission shall prepare a statement of the actual cost for OM&R for that same year.
- e. The Commission will then determine the adjustment to be applied to the User's payment for OM&R for the previous year. The adjustment shall be calculated by first dividing the amount of water actually delivered to the User by the Commission during the previous year, or the minimum annual water purchase, whichever is greater, by the previous year's total annual water sales to

determine the User's proportionate share (fraction) of the OM&R costs for the previous year. This fraction shall then be multiplied times the actual total cost for OM&R for the previous year, which shall be the amount of the User's proportionate share of OM&R costs for the previous year. The Commission shall then subtract the total amount of the User's proportionate share of OM&R costs for the previous year from the total amount actually paid by the User for OM&R during the previous year, which shall be the adjustment to be applied to the User's water service payments for the next ensuing year.

If the User's proportionate share of OM&R costs for the previous year is greater than the total amount actually paid by the User during the previous year for OM&R, the difference shall be owed by the User to the Commission. The amount due and owing to the Commission by the User as a result of such adjustment shall be applied to and added to the User's monthly payments for water for the next four (4) months of the immediate ensuing year in equal monthly installments.

If the User's proportionate share of OM&R costs for the previous year is less than the total amount actually paid by the User during the previous year for OM&R costs, the difference shall first be applied to any delinquent payments of the User for water service, and the remaining sum, if any, shall be credited against the User's monthly payments for water service for the next four (4) months of the immediate ensuing year in equal monthly credits.

5. Payment for Capital Costs.

The User will pay to the Commission a water rate for capital costs of the Project. The revenues realized from this water rate shall be deposited by the Commission as directed by the Legislative Assembly.

- a. Base water rate for capital costs. The base water rate for capital costs shall be forty-four cents (\$0.44) per each one thousand (1,000) gallons of water.
- b. Adjustment of water rate for capital costs. The Commission shall have the authority to adjust the water rate for capital costs annually in accordance with the increase or the decrease in the Consumer Price Index (CPI). The formula for determining the adjustment to the water rate for

capital costs for each year is as follows: The CPI for January 1 of each year shall be divided by the base CPI of two hundred seventy-four and four tenths (274.4). The result of this calculation shall be reduced by one (1), and then multiplied by the base water rate for capital costs. The product of this formula is the adjustment to the water rate for capital costs, and shall be used to added to the base water rate for capital costs for the next year. Notwithstanding the foregoing basis for adjusting the water rate for capital costs, the Commission shall have the authority to decrease the adjustment to the water rate for capital costs, as it deems appropriate and necessary, after considering data on changes to the median incomes of project water users, substantial increases in OM&R costs, or other factors.

- c. Monthly water payment for capital costs. The amount of payment each month by the User to the Commission for capital costs shall be calculated by multiplying the water rate for capital costs times the amount of water actually delivered to the User each month, or the monthly minimum water purchase (minimum annual water purchased divided by 12), whichever is greater, minus any credits approved by the Commission pursuant to paragraph d of this section.

At the end of each year, if the amount of water actually delivered to the User is less than the amount of water for which the User has paid for during that year, but greater than the minimum annual water purchase, the User shall receive a refund in the amount equal to the difference between the amount of water actually delivered to the User and the amount of water actually paid for by the User during that year multiplied times the water rate for capital costs. The refund shall first be applied to any delinquent payments of the User for water service, and the remaining sum, if any, shall be credited against the User's monthly payments for water service for the next four (4) months of the immediate ensuing year in equal monthly credits.

- d. Credit for qualifying water supply facility debt service cost. A credit for debt service costs of the User's qualifying water supply facilities shall be applied to the monthly water payment for capital costs, upon approval by the Commission. The amount of such monthly credit shall be determined by divided seventy-five percent (75%)

of the total annual debt service cost for "qualifying water supply facilities" in the immediate ensuing year by twelve (12). However, in no event shall any credit exceed the total monthly water payment for capital costs, nor can any credit be transferred or assigned to any other water user entity. In order to receive a credit as provided herein, the User must submit a request for credit, with supporting documentation, to the Commission, no later than December 1 of the year preceding each year in which a credit is to be applied. The Commission will terminate all credits ten (10) years after first delivery of water to the User.

6. Billing Procedure.

The Commission will furnish to the User, at the address shown on the signature page of this contract, not later than the first day of each month, an itemized statement of the payment due from the User for water service for the preceding month. The metering equipment at the point of delivery to the User shall be read monthly.

7. When Payments Are Due.

All payments for water service under this contract, for operation, maintenance, and replacement, and for capital costs, shall be made no later than the fifteenth (15th) day of each month. Payments not made by such date shall be considered delinquent and in default.

8. Delinquent Payments and Default: Suspension of Water Service.

The User shall use all of the authority and resources available to it to meet its obligations under this contract, and will make in full all payments to be made pursuant to this contract on or before the date such payments become due. In the event of any default by the User in making payments as required under this contract, the Commission, in its discretion, may suspend delivery of water to the User through the Project during the time when the User is in default. During any period when the User is in default, the User shall remain obligated to make all payments required under this contract. Any action of the Commission pursuant to this section shall not limit or waive any remedy provided by the contract or by law for the recovery of money due or which may become due under this contract.

9. Penalty for Late Payment.

Upon every payment of money required to be paid by the User to the Commission under this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one percent (1%) per month of the amount of such delinquent payment from and after the date when the same becomes due and payable, provided that no penalty shall be chargeable against any adjustment made pursuant to Section VI, subsection 7, of this contract.

10. Refusal of Water.

The User's failure or refusal to accept delivery of water to which it is entitled under this contract shall in no way relieve the User's obligation to make payments to the Commission as provided in this contract.

VIII. GENERAL PROVISIONS

1. Rules and Regulations.

The Commission will have the authority to develop and adopt such rules and regulations as the Commission may deem proper and necessary to carry out this contract and to govern the administration of this contract. Such rules and regulations shall not be inconsistent with this contract. The User agrees to comply with such rules and regulations.

2. Access to and Inspection of Books and Records.

Each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

3. Remedies Not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

4. Amendments.

This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing or executed by the parties.

5. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

6. Notices.

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be signed for the Commission and for the User by such officers as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered, if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

7. Assignment.

The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the Commission. The Commission shall not approve any assignment or transfer to any water user entity unless and until the water user entity to which it is proposed that this contract be transferred or assigned has the necessary ability to satisfy the obligations of this contract.

8. Unallocated Capacity.

The Commission agrees that municipal, domestic, and rural water needs shall be given first preference before executing water service contracts for delivery of unallocated capacity to water user entities for other uses.

IX. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing, signed by the parties, and attached herein. Such waiver, consent, modification, or change, if made, shall be effective only in a specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

SOUTHWEST PIPELINE PROJECT
WATER SERVICE AGREEMENT AMENDMENT
SACRED HEART MONASTERY
CONTRACT 1736-28

Notwithstanding the provisions of Sections VII.3, VII.4.c, and VII.5.c, if the User uses water from no other source than the Southwest Pipeline during the course of the year, the User will make payment based on the actual amount of water used, and the monthly payment shall be based on the actual amount used in the respective month. This amendment shall be in effect from the date of its adoption until the termination of the Water Service Agreement.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505

By: David A. Sprynczynatyk

Title: State Engineer

Date: _____

Approved and entered into by resolution of the State Water Commission this 19~~th~~ day of October, 1994.

David A. Sprynczynatyk
Secretary and State Engineer

USER:

Sacred Heart Monastery

Address: P.O. Box 364, Richardson, ND 58652

By:

Sr. Paula Larson

Title:

Proress / President

Date:

10-11-94

AMENDMENT

To The
Roshau Agreement
Between The
Southwest Water Authority
And The
North Dakota State Water Commission

THIS AGREEMENT is amended to include the following:

The ending date of this agreement shall be January 1, 1996. The words "Roshau Subdivision" shall be deleted from this agreement. The words "water users" shall be replaced with the term "rural water users."

NORTH DAKOTA STATE WATER
COMMISSION

By:



DAVID A. SPRYNCZYNATYK
Secretary

SOUTHWEST WATER AUTHORITY

By:


ALFRED UNDERDAHL
Chairman

DATE:

11/21/94

DATE:

11-21-94

AGREEMENT

Parties

This agreement is between the North Dakota State Water Commission ("Commission"), acting through the North Dakota State Engineer, David A. Sprynczynatyk, and the Southwest Water Authority ("Authority"), effective from December 1, 1992, to July 1, 1995.

Purpose

The purpose of this agreement is to set forth the terms, conditions, and procedures for water users of the Southwest Pipeline Project, Roshau Subdivision, to be billed for water service, and for the transfer of payments for such water service from the Authority to the Commission.

Duties

The Authority, in consideration for the benefits received from delivery of water by the Commission through the Southwest Pipeline Project to water users in Roshau Subdivision, agrees to carry out the following tasks and responsibilities:

1. The Authority shall develop a uniform monthly billing system for all water users of the Southwest Pipeline Project, to be implemented by March 1, 1993.
2. The Authority shall provide a manual billing system for water users of the Southwest Pipeline Project until the uniform billing system is installed and implemented.
3. The Authority shall establish a separate account, called the water user repayment account, and shall deposit all money received from water users of the Southwest Pipeline into such fund
4. The Authority shall pay to the Commission, on a monthly basis, the entire amount received from water users of the Southwest Pipeline Project for water service.

Accounting/Reports

The Authority shall keep an accounting of all expenses incurred in meeting the requirements of this agreement. The Authority shall also have an audit made for an accounting of all funds received by the Authority for water service from water users of the Southwest Pipeline Project.

Subcontracts

The Authority shall not subcontract any services to be provided by the Authority under this contract without prior written approval from the Commission.

Records and Publications

All records and products resulting from this contract shall be the joint property of the Commission and the Authority. Either party may utilize the records and products in any manner without approval from the other party.

Termination

This agreement may be terminated only upon written consent of both parties.

Amendment

This agreement may be amended only upon written consent of both parties.

Merger

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements or representations, oral or written, not specified herein regarding this agreement. The Authority, by the signature of its authorized representative, acknowledges that the Authority has read this agreement, understands it, and agrees to be bound by its terms.

Dated this 1st day of December, 1992


David A. Brylczynatyk
North Dakota State Engineer

Dated this 4 day of JAN, 1993


Alfred Underdahl, Chairman
Southwest Water Authority

ELECTRIC WHEELING AGREEMENT**SOUTHWEST PIPELINE PROJECT**

This Agreement, made this 2nd day of Nov., 1994, is between the North Dakota State Water Commission, 900 East Boulevard, Bismarck, North Dakota, 58505, hereafter "Commission" and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., 400 North Fourth Street, Bismarck, North Dakota, 58501 hereafter "Company."

WHEREAS, the Garrison Unit Reformulation Act of 1986, Public Law 99-294, of May 12, 1986 (Act) authorizes the construction of municipal, rural and industrial water systems, including the Southwest Pipeline Project, to serve areas throughout North Dakota; and

WHEREAS, Section 4 of the Act provides that "Municipal, rural and industrial water systems constructed with funds authorized by section 7 of this Act shall utilize power from the Pick-Sloan Missouri Basin Program, as established by section 9 of the Flood Control Act of 1944 (Act of December 22, 1944), for the operation of such systems"; and

WHEREAS, the Commission has an allocation of electric power from the Western Area Power Administration of the United States Department of Energy , hereafter referred to as "Western," to supply its Southwest Water Pipeline Project; and

WHEREAS, Company and Western have entered into an Electric Service Contract, No. 88-BAO-308, which provides for points of delivery into Company's transmission system, payment of losses and metering provisions for customers of Western; and

WHEREAS, the Commission, as a customer of Western, has requested the Company to provide wheeling service and complete a path for delivery of such electric power for the Commission from Western's point of delivery, located at the Dickinson Jct. Substation to the Company's

Dickinson Broadway Substation in accordance with the Electric Service Agreement between Western and the Company. The Commission has further requested the Company to provide wheeling service and completion of a path from Company's Dickinson Broadway Substation to Commission's Dickinson Pump Station located at 143 South State Avenue in Dickinson, North Dakota; and

WHEREAS, only because of the special circumstances set forth in the above Act which require the utilization of power from the Pick-Sloan Missouri Basin Program for the operation of the Southwest Pipeline Project is Company willing to provide wheeling to the Commission; and

WHEREAS, Company by such action does so only because of the above Act requirements and disclaims any intent to provide similar service to any other customers or entities; and

WHEREAS, the Company has agreed to provide the facilities necessary and to wheel such electric power between the points noted above pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein to be kept and performed by the respective parties, the parties hereto agree as follows:

I. CONSTRUCTION OF FACILITIES

1. The Company will construct and retain ownership of the facilities generally described in Exhibit "A," attached hereto and made a part hereof, to wheel electric power to the Dickinson Pump Station. These facilities will be located at 143 South State Avenue.
2. The Commission will reimburse the Company for costs associated with the construction of the facilities necessary to wheel electric power to the Dickinson Pump Station, as described in I.1. The Company will submit an invoice upon completion to the

Commission for such costs, and payment will be made within 30 days after receipt of such invoice. The Company estimates that the reimbursement will be approximately \$30,575. If Company foresees that these costs will exceed the estimate by 25%, the Company shall secure written permission for continued construction from the Commission.

3. During construction of the facilities under this Agreement, the Company, its agents, employees, and independent contractors shall have access to the Commission's Dickinson Pump Station and the Company's equipment located therein, at times deemed necessary or desirable by the Company to fulfil its construction obligations hereunder after first providing notification of and coordination with the party designated by the Commission.
4. After construction of the facilities under this Agreement, the Company shall have access to the Commission's Dickinson Pump Station and the Company's equipment located therein, at times deemed necessary or desirable by the Company to fulfill its maintenance and operations obligations hereunder, after first providing notification of and coordination with the Commission.

II. WHEELING SERVICES

1. The Company will commence to wheel firm service electric power under this agreement on a mutually agreed upon date upon notice by the Commission that the Dickinson Pump Station is in their possession with Western's metering installed and tested.
2. The Company will accept delivery of electric power from Western at the point of delivery and deliver an equivalent amount of electric power, less losses as hereafter specified, to the Commission at its Dickinson Pump Station.
3. All electric power will be metered by Western. The Commission will be responsible for arranging metering and meter reading through Western, without cost to the Company.

4. Western will provide a meter which is programmed to compensate the demand and energy usage for the delivery and transformation losses between the Company's Broadway Substation and the low voltage side of the Dickinson Pump Station transformer. The losses used to establish the compensation are as shown on Exhibit "B". If the meter compensation is found to be not working, or if required for other purposes, these factors shall be used to adjust the Commission's delivery to the Company's Broadway Substation.
5. During the term of this Agreement, the Commission will pay the Company 9 mills per KWH of metered power, adjusted as described in II.4., and delivered to the Commission's Dickinson Pump Station.
6. The Company will bill the Commission on a monthly basis, and the Commission will submit payment to the Company within 30 days of receipt of the bill.
7. If the Commission's Dickinson Pump Station should at any time become ineligible for the delivery of preference power by Western, this delivery shall revert to the applicable Company retail rates then in effect for the service being supplied.
8. This wheeling service is limited only to the facilities described in Exhibit A and to the purpose of supplying Western Power for the Southwest Pipeline Project and in no way entitles Western, the Commission, or any other entity access to any other portion of Company's system for purposes of wheeling power and energy. The Company may terminate this Agreement if the Commission uses the wheeled power and energy for any purpose other than the Southwest Pipeline Project.

III. GENERAL

1. Without adding to or modifying the remedies of the parties specified for other termination rights granted in this Agreement, either party may terminate this Agreement at any time for breach of any portion hereof for which a remedy is not otherwise specified if said breach is not cured within 30 days after specific written notice thereof. Any termination under this paragraph will be without prejudice to any rights of the parties in law or equity.

2. The Commission may terminate this contract effective upon delivery of written notice to the Company, or at such later date as may be established by the Commission, under any of the following conditions:
 - a. If funding from federal, state, or other sources is not obtained by the Commission and continued at levels sufficient to allow for purchase of indicated quantity of services.

 - b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this agreement.

 - c. If any license or certificate required by law or regulation to be held by Company to provide the services required by this agreement is for any reason denied, revoked, or not renewed.

Any termination under this paragraph shall not alter any obligations or liabilities of either party already accrued prior to the effective date of such termination.

3. **Company shall maintain service to the Commission in accordance with accepted good engineering practices in the operation of electric utilities. However, as the Company's electric system is unusually widespread and has many interconnections with sources of power other than its own generating stations, it is subject to exposure by storms and other factors not under its control. Although the Company employs the latest developments in equipment and methods of operation for the purpose of maintaining adequate service, it cannot guarantee service to be free from interruptions, variation in voltage and frequency, single phase energization of three phase lines, reversal of phase rotation or other abnormal conditions, and it cannot assume liability for damage to Customer's equipment resulting therefrom. Therefore, it is the obligation of the Customer to provide such protective devices as may be necessary to safeguard its equipment and installation. This equipment does not include the facilities described in Exhibit "A."**

4. **This Agreement does not establish any partnership or joint venture or relationship of principal/agent or employer/ employee between the parties hereto. The Company is and will at all times be deemed to be an independent contractor. Nothing in this Agreement shall operate to waive any immunity of the State of North Dakota or its agencies.**

5. **The Company will comply with all federal, state, and local laws and ordinances applicable to the work to be done under this Agreement. The Company agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.**

6. **The Company shall save and hold harmless the State of North Dakota and the Commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Company or its subcontractors, agents, or employees under this agreement.**

Company's employees and representatives. Company shall not be liable for any injury, damages and liabilities directly or indirectly caused by or from the installation or operation of Commission's equipment. This equipment does not include the facilities described in Exhibit "A."

8. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns.
9. The parties agree that they jointly prepared this Agreement and that no provisions hereof will be construed more favorable to one party than to another.
10. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all of which shall collectively constitute one and the same instrument.
11. Any notices required or desired hereunder shall be in writing and given by certified mail, receipt returned, mailing the same as follows:

North Dakota State Water Commission
900 East Boulevard
Bismarck, North Dakota 58505

Vice-President Energy Supply
Montana-Dakota Utilities Co.
400 North Fourth Street
Bismarck, ND 58501

Unless another date of delivery is specified by this Agreement, all notices shall be deemed given on the date of certified receipt of mailing. Either party may amend the address to which notices shall be sent by furnishing written notice to the other.

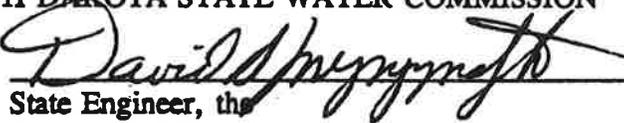
12. Neither party shall assign or transfer its interest in this Agreement without the express written consent of the other party .
13. The Commission, Office of Attorney General of the State of North Dakota, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Company which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts.
14. The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.
15. This Agreement is subject to any necessary approval by State or Federal regulatory agencies which may have jurisdiction over this agreement and to any applicable laws, rules and regulations.
16. The failure of the Commission or the Company to enforce any provisions of this contract shall not constitute a waiver by that party of that or any other provision.
17. This Agreement is effective upon signature of both parties and will remain in full force and effect until December 31, 2006 unless otherwise terminated as provided hereunder. The Agreement will remain in effect from year to year thereafter until one party provides the other one year advance written notice of its intent to terminate the Agreement.
18. This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if

made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

NORTH DAKOTA STATE WATER COMMISSION

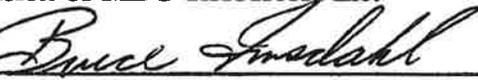
By:



State Engineer, the
Secretary of the
North Dakota State Water Commission

**MONTANA DAKOTA UTILITIES CO.
A Division of MDU Resources, Inc.**

By:



Bruce Imsdahl
Vice President-Energy Supply
Montana-Dakota Utilities Co.

Exhibit "A"

Provide radial underground three phase service between Company's existing distribution system and the Commission's Dickinson Pump Station. The facilities include approximately 3700 feet of 1/0 15KV underground cable, one 750 KVA 12470-480Y/277 volt padmount transformer with 600 volt current and potential transformers for secondary metering purposes. The estimated cost to be reimbursed to the Company by the Commission for the installation of these devices and associated materials is:

Material

750 KVA Padmount Transformer	\$ 14,350.
1/0 15KV Underground Cable	3,500.
Current and Potential metering instrument transformers	600.
Miscellaneous Stores Material	1000.

Contract Expenses 4,200.

Company Labor 3150.

Company Equipment Expenses 790.

Other Expenses 100.

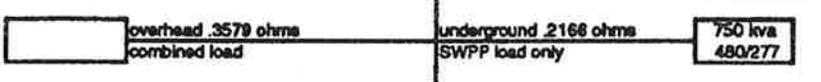
Subtotal	\$ 27,690.
Overhead Expenses	2,885.
Total	\$ 30,575.

**SOUTHWEST WATER PIPELINE PROJECT
DICKINSON PUMP STATION
TRANSFORMER PLUS LINE LOSS CALCULATION
Exhibit "B"**

Information

overhead line = .3579 ohms
underground = .2168 ohms
750 kva
cu = 3537.1 watts
fe = 275.9 watts
cl = 800/5
pl = 300/120

Broadway Sub



Combined load (200 amp line) 200 * 12.47 * 1.732 = 4,320 KW
4,320 KW (at 200 amps) - Pipeline peak load 620 KW
MDU peak = 3,700 KW

SWPP Load

peak load = 620 KW
avg load = 350 KW

MDU Load

peak load = 3,700 KW

Total combined load 200 * 12.47 * 1.732 = 4,320 KW

SWPP load 28.70 * 12.47 * 1.732 = 620 KW

MDU load 171.30 * 12.47 * 1.732 = 3,700 KW

CA2 = $\frac{620}{2 * 3700 + 620} = 7.730 \%$

LINE

Total combined KW loss overhead
 $\frac{200 * 200 * 0.3579 * 3}{1000} = 42.95 \text{ KW}$

Total SWPP KW loss underground
 $\frac{28.7 * 28.7 * 0.2168 * 3}{1000} = 0.6982 \text{ KW}$

		Incremental Overhead Line Loss	+	Underground Line Loss	+	Transformer CU Loss	+	Transformer FE Loss				
100	*	620	*	$\frac{42.95}{(.0773) (4320)^2}$	+	$\frac{0.5352}{(750)^2}$	+	$\frac{3.5371}{(750)^2}$	+	100	*	$\frac{0.2759}{360}$
62,000	*		*	0.000028778	+	0.000000952	+	0.000006288	+	62,000	*	0.07664
62,000	*		*	0.00003702	+	0.07663889				62,000	*	2.29510532
					+	0.07663889						2.4 %

CONCLUSIONS
OF THE GARRISON UNITED STATES- CANADA CONSULTATIVE GROUP
DRAFT
September 23, 1994

1. The Garrison Consultative Group (CG) has received the report of the Garrison Joint Technical Committee (JTC).
2. The CG has considered and accepted the findings of the Engineering-Biology Task Group as documented in their report of May 1994.
3. The CG encourages the continuing activities of the JTC.
4. The CG looks forward to further reports from the JTC as Northwest Area Water Supply (NAWS) project testing and design continues.
5. Canada reaffirms its long-standing position on biota transfer. The CG reiterates its support for continuation of the consultative process as outlined in the Garrison Reformulation Act of 1986.
6. The plan of action described in the June 2, 1994, letter from the JTC to the CG is appropriate, based on the following four points set forth in the letter, as amended by the CG:

"Although other options may decrease an already low risk of biota transfer, the JTC finds that Option 1 is technically acceptable provided that the project proponents provide the following to the satisfaction of the JTC:

1. An analysis of the effectiveness of the proposed chloramination process and how that will be affected by the characteristics of the water source (i.e., turbidity). Pretreatment of water such that it meets current (1994) drinking water disinfection standards to ensure biota removal will be achieved before water crosses the drainage divide.
 2. A long-term monitoring plan that would be conducted by the project owner providing both structural and water quality monitoring.
 3. Due to the consequences of a pipeline failure, operation, maintenance and replacement must ensure the integrity of the pipeline for its entire operational life. North Dakota must make this commitment as part of its long-term operational plan.
 4. Further design details for the Minot water treatment plant and associated facilities, covering fail safe systems, sludge disposal, etc."
7. The JTC is directed to continue monitoring the NAWS project and to report to the CG on final project plans upon completion of the NEPA compliance and before final project plans are presented to Canada for approval.

NORTH DAKOTA GOVERNOR EDWARD T. SCHAFER
SOUTH DAKOTA GOVERNOR WALTER D. MILLER
WYOMING GOVERNOR MICHAEL SULLIVAN
MONTANA GOVERNOR MARC RACICOT

APPENDIX "G"
October 14, 1994-155

*JOINT POSITION STATEMENT:
U.S. ARMY CORPS OF ENGINEERS
PREFERRED ALTERNATIVE FOR
MISSOURI RIVER MANAGEMENT
(MASTER MANUAL)*

September 8, 1994

After reviewing over 400 operational alternatives to the current Missouri River Water Control Plan (i.e. Master Manual), the states of North Dakota, South Dakota, Wyoming and Montana are collectively encouraged that the Corps of Engineers (Corps) recognizes the need for change in management of the Missouri River System as presented in the draft Environmental Impact Study.

The Preferred Alternative chosen by the Corps to replace the current, but antiquated Water Control Plan includes many features that address long-term upper basin water needs for agriculture, water supply, hydropower, recreation, tourism, fish and wildlife and the environment in general. While we welcome some of the proposed changes, we consider them modest, and we are disappointed the Corps has not fully recognized the potential benefits to the people of the upper basin states.

Changes supported by the upper basin Governors include modifications to the Navigation Service Criteria, and a one-month shortening of the normal navigation season assists in the conservation of water, especially during drought conditions. This, in turn, will enhance water-based recreational activities and increase the health and survival of coldwater fish species due to an improvement in the water quality.

Environmental gains are also realized with the spring rise. Although this change is undoubtedly good for the federally threatened and endangered species (least tern, piping plover, and pallid sturgeon), we stress these operational changes must not lead to unacceptable impacts due to flooding.

Intrasystem regulations between the upper three reservoirs also promises additional production for numerous fish species. 'Trading' storage between reservoirs is not only a possibility for future implementation, but already has actually been realized. Adjustments to the Annual Operating Plan by the Corps during the past two years have resulted in healthier fisheries in Lakes Sakakawea, Oahe and Fort Peck. We ask that Intrasystem Regulation, as presented in the Preferred Alternative, continue to include flexibility between the Corps and the upper basin states.

Optimizing reservoir fish production will continue to require close coordination so as not to cause undue downstream flooding problems, especially in light of higher spring releases below Gavins Point Dam during non-drought periods.

The obvious disappointment in the Corps' choice of a Preferred Alternative is that the permanent pool was not increased from the present 18 million acre-feet (maf) minimum storage. Our past requests have focused on increasing the permanent pool. After the Corps' analysis of this request, we find it difficult to fully understand why a higher pool, of at least 31 maf, wasn't chosen. The Corps' studies reveal negligible to positive impacts to nearly all authorized purposes/resource categories and the National Economic Development (NED) value if the 31 maf permanent pool were to be selected.

We continue to request the Corps implement a higher permanent pool in their final selection of an alternative.

In regard to Socioeconomics: For more than five years, we have witnessed an unyielding position of the downstream basin states to even consider operational changes to the Corps's Master Manual. Some downstream interests would lead one to believe that any change, including adoption of the Preferred Alternative would result in the total collapse of the Missouri River navigation industry and ultimately would create severe economic hardships to the surrounding states.

For years, we in the upper basin have collectively believed this to be factually untrue and misleading. Even after implementation of the Preferred Alternative, more than two-thirds of the benefits of the Missouri River system would continue to accrue to the lower basin.

The Corps' Preferred Alternative includes needed operational changes, while at the same time its selection essentially does not impact income or employment in any of the Missouri River basin states. Furthermore, there is no difference between the Preferred Alternative and the current Water Control Plan in terms of total NED value or the worth of hydropower and water supply, the two highest economically valued uses of Missouri River water.

In fact, public and private interests are better served with the Preferred Alternative in terms of the water supply component. Higher reservoir pools equate to a more dependable water source during drought periods while at the same time maintaining water supply in the river stretches.

Obviously, these facts only reiterate that positive change is possible and in its broadest scope the Preferred Alternative is a step toward a win-win scenario for those involved with the operation of the Missouri River.

Specific written comments from each state will be forthcoming after the conclusion of the public meetings. Collectively, however, as the Governors of North Dakota, South Dakota, Wyoming and Montana, we support the Corps' efforts to date to make the long awaited necessary changes, and ask that even more attention be given to greater upper basin benefits.



Office of the State Engineer

M E M O R A N D U M

TO: Governor Edward T. Schafer
North Dakota State Water Commission Members

FROM: David A. Sprynczynatyk, State Engineer

SUBJECT: Cannonball River Basin Study Update

DATE: September 27, 1994

The Bureau of Reclamation (Bureau) and the Standing Rock Sioux Tribe (Tribe) have signed the 638 Cooperative Agreement and the study is now formally and legally initiated. After the 1995 work plan has been agreed to by study participants, the State Water Commission and the Bureau will enter into a Memorandum of Understanding between the State Water Commission and the Bureau to formalize the \$30,000 to \$35,000 per year in-kind services that the State Water Commission will provide over the 2-year study effort.

The Cannonball Study Team participants continue to compile existing data. The economic baseline condition report is near completion. Data is being collected and hydrologic unit maps are being digitize for the development of the basin Geographic Information System (GIS). The Bureau has entered into a contract agreement with the US Geological Survey to provide the hydrologic data (quantity and quality) that will be required for the study and the development of the hydrologic model.

The Hydrologic Model Team has meet several times. The criteria to be used to evaluate and select a hydrologic model has been developed. The model must be capable of simulating the affects of past, present and future water management/development (i.e. demands) on the quantity and quality of natural streamflows in the Cannonball River Basin. Specific model criteria were placed into four categories: Required Model Capabilities, Desired Model Capabilities, Expendable Model Capabilities and Beyond Scope of Study. The goal is to select an existing river basin water accounting/budget model that will be able to satisfy as many of the criteria as possible.

In August, the Bureau provided demonstrations of several models that are under consideration for use. Each model was evaluated based upon the model selection criteria. If several computer hardware and software questions can be satisfactorily answered, it is anticipated the Model Team will probably select the HYDROSS model.

The HYDROSS model is able to meet all of the required and desired criteria that the Model Team feels is necessary to meet the objectives of the planning study. HYDROSS has a graphical user interface and it will be able to simulate diversions, reservoir operation, and other water demands including water permit priorities. In order to assure that the model is compatible with State Water Commission computer hardware and software, staff is currently evaluating all of the hardware and software requirements. After additional review and evaluation, a final decision will be made as to whether HYDROSS will be used in this study effort.

To facilitate the public involvement process, the nine Water Resource Districts and eight Soil Conservation Districts in the basin were contacted requesting them to designate a board member to the Study Review Team. The State Health Department, the Game and Fish Department and the Parks and Recreation Department were also contacted requesting them to provide names of individuals who support and have commitment to their agency's interest (fish and wildlife, recreation, and/or water quality) in the basin.

The Review Team will provide a vehicle for review and input into the study effort from the basin residents. The Review Team will represent local interests concerning water resource development/conservation in the basin. It is anticipated that the study will involve two public meetings with the Study Review Team. The first will be held in early December, 1994 or January, 1995. The meeting purpose is to discuss the study process and identify water resource concerns in the basin. The second meeting is anticipated to be held in the fall of 1995. The second meeting will be devoted to review of technical work group findings and development of water resource development/conservation scenarios that will address desires and attitudes of the people in the basin. The public will be invited and encouraged to participate in each meeting.

A questionnaire survey is being developed that will provide information regarding basin attitudes and perceptions concerning water resource management, development and conservation in the basin. The survey will be sent to a random number of people in the basin. The survey results will be shared with the Review Team to give them additional insight into the concerns in the basin.

DAS:LW:dp/322-1

**Office of the State Engineer****MEMORANDUM**

TO: Governor Edward T. Schafer
State Water Commission Members

FROM:  David A. Sprynczynatyk, State Engineer

SUBJECT: State Wetland Conservation Plan, FY93 EPA Grant

DATE: October 4, 1994

This memo is provided to give you an update on the FY 93 Wetland Conservation Grant EPA has awarded the State Water Commission to aid development of a state wetland conservation plan. This grant, approved in July 1993, totals \$253,334 with a requirement for a 75/25 cost share. Cost share is being provided by the State Water Commission, North Dakota Water Education Foundation, Department of Health and Consolidated Laboratories, and the Game and Fish Department for their respective portions of the grant. Grant administration is handled by Lee Klapprodt in the Planning and Education Division.

Work supported by the FY 93 grant will:

- * expand North Dakota's wetland education program development;
- * enhance geographic information system and further develop capabilities to administer state wetland management programs aimed at conserving these resources;
- * establish and field test North Dakota wetland water quality standards;
- * advance North Dakota's private lands initiative program; and
- * advance prioritization of existing Conservation Reserve Program tracts to identify those most critical to wetland watershed protection and migratory birds.

I will address each of these work objectives individually beginning with the North Dakota wetland education program.

WETLAND EDUCATION***Background:***

A contract negotiated with between the State Water Commission and the North Dakota Water Education Foundation was signed in early November 1993. This agreement will expand on the work previously done by the North Dakota Water Users Association. The Foundation will assist the State Water Commission in outreach and education efforts pertaining to Section 404 assumption. Other

efforts will include: promotion and distribution of activity guides to K-12 teachers; preparation of grant proposals to enhance and expand wetland education programs through the Wetland Institute; and facilitate the coordination of federal, state, local government and private interests through a forum for ongoing public input and consensus building.

Status:

Efforts are continuing in the public outreach program for potential assumption of the Section 404 regulatory authority. In addition, public input in the State Wetland Conservation Planning process will continue during the next few months. The grant is supporting wetland education articles in the WATER magazine. Work under this grant is nearly completion.

The budget provides a total of \$66,667 (\$50,000 EPA/\$16,667 Water Education Foundation).

GEOGRAPHIC INFORMATION SYSTEM

Background:

The FY 93 grant provides for expansion and further development of a Geographic Information System (GIS) to improve wetland management capabilities.

Status:

The grant has supported acquisition of a graphical digitizer, high capacity tape backup, CD-ROM reader, optical disk drive read/write capabilities, and additional server memory have all been received as in-kind from the EPA and are installed on the State Water Commission's system. Training on the Informix database program needed to handle the vast amount of data is completed.

SWC's databases (ex. wetland bank and dam permits) have been normalized for importing into Informix. This establishes a direct link with the GRASS GIS software package. Test applications of the technology are continuing in Stutsman County and the Brush Lake Watershed.

The budget provides a total of \$56,800 (\$42,600 EPA/\$14,200 State Water Commission).

WETLAND WATER QUALITY STANDARDS

Background:

A contract was finalized last November between the State Water Commission and the North Dakota State Department of Health and Consolidated Laboratories (Department). This agreement calls for the Department to conduct several tasks required prior to establishing state wetland water quality standards. Ultimately, this work will provide implementation criteria and procedures for water quality standard compliance in the event North Dakota assumes the Section 404 program.

Status:

The Department has designed a field test water quality project. Completion of this work will be delayed until next spring when wetland basins will have water from spring runoff.

The budget provides a total of \$36,000 (\$27,000 EPA/\$9,000 Health Department).

PRIVATE LANDS INITIATIVE PROGRAM

Background:

A contract was finalized last November between the State Water Commission and the North Dakota Game and Fish Department to advance the Departments private land initiative program.

Under this agreement, the Game and Fish Department has maintained an individual to work with landowners concerning the various landowner-wildlife conservation programs available today.

Status:

The individual hired by the Department for this project has provided strategic planning, program education landowners, and aided in regulatory and watershed protection functions.

The budget provides a total of \$45,333 (\$34,000 EPA/\$11,333 Game and Fish Department).

PRIORITIZED CRP TRACTS

Background:

A contract was finalized in November 1993 between the State Water Commission and the North Dakota Game and Fish Department to begin work prioritizing existing Conservation Reserve Program (CRP) tracts. Under this agreement, the Game and Fish Department will provide information needed by North Dakota in discussions pertaining to continuation of CRP at state and national levels.

Status:

Assessment of CRP value in meeting population objectives outlined in the North American Waterfowl Management Plan is being accomplished under this agreement. On-the-ground data collection has looked at nesting conditions for various species. Work has been coordinated with the United States Fish and Wildlife Service.

The budget provides a total of \$22,667 (\$17,000 EPA/\$5,667 Game and Fish Department).

The State Water Commission is the state administrator of this grant and has received grant funding to support administration efforts. The budget for this totals \$25,867 (\$19,400 EPA/\$6,467 State Water Commission).

Should there be any questions regarding this status report or any of the work called for in our agreements, please contact me at your convenience.

DAS:LK:dp/1489-7



Office of the State Engineer

MEMORANDUM

TO: Governor Edward T. Schafer
State Water Commission Members

FROM: *David* David A. Sprynczynatyk, State Engineer

SUBJECT: State Wetland Conservation Plan, FY94 EPA Grant

DATE: October 4, 1994

We have finalized our agreement with the Environmental Protection Agency concerning our proposal for FY94 funding. The grant budget will total \$292,500, \$234,000 federal to be matched by \$58,500 non-federal cash or in-kind services.

Specifically, the tasks will include:

- expanded Wetland Education and Outreach programs through the North Dakota Water Education Foundation's Wetland Institute;
- continued development and application assessment of the Water Commission's GIS capability by assessing wetland management objectives in the Devils Lake Basin;
- expanded work by the Game and Fish Department to prioritize CRP tracts important to wetland watershed protection and development of the Private Lands Initiative Program; and
- continuation of the Devils Lake Coordinator position.

Status:

The final agreement with EPA has been signed. Work has begun in developing agreements with the other parties involved in the grant proposal. A special effort will be necessary to coordinate cost-share for the Devils Lake Coordinator position.

Please contact me or Lee Klapprodt, the grant administrator, if you have any questions.

DAS:LK:dp/1489-10