

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

January 27, 1997

The North Dakota State Water Commission held a meeting at the State Office Building, Bismarck, North Dakota, on January 27, 1997. Governor-Chairman, Edward T. Schafer, called the meeting to order at 9:30 AM, and requested State Engineer, and Chief Engineer-Secretary, David A. Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Governor Edward T. Schafer, Chairman
Roger Johnson, Commissioner, Department of Agriculture, Bismarck
Mike Ames, Member from Williston
Florenz Bjornson, Member from West Fargo
Elmer Hillesland, Member from Grand Forks
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page
David A. Sprynczynatyk, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck

MEMBER ABSENT:

Judy DeWitz, Member from Tappen

OTHERS PRESENT:

State Water Commission staff
Approximately 40 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 DECEMBER 4, 1996 STATE
WATER COMMISSION MEETING -
APPROVED, AS AMENDED**

The minutes of the December 4, 1996 State Water Commission meeting were considered.

Commissioner Hillesland made reference to the item "**CITY OF GRAND FORKS CHAMBER OF COMMERCE'S WATER POLICY POSITION PAPER**" on page 14. He requested an amendment to the discussion and the motion to include the year ... 1996 water policy position paper

It was moved by Commissioner Olin, seconded by Commissioner Bjornson, and unanimously carried, that the minutes of the December 4, 1996 State Water Commission meeting be approved, as amended.

**CONSIDERATION OF MINUTES
OF JANUARY 16, 1997 STATE
WATER COMMISSION TELEPHONE
CONFERENCE CALL MEETING -
APPROVED**

The minutes of the January 16, 1997 State Water Commission telephone conference call 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 January 16, 1997 State Water Commission telephone conference call meeting be approved as prepared.

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

Tim Fay, Project Manager for the Southwest Pipeline Project, provided the following contract and construction status report. Because of winter conditions, there is currently no active construction in progress on the Southwest Pipeline Project:

Contract 2-4A/7-3 - Transmission Line and Rural Water Distribution in the Jung Lake Service Area: This contract is the only remaining active construction contract at this time. The contract is not complete due to some segments of the 2-4A transmission line which cannot pass the pressure test. These segments will be repaired in the spring when construction conditions become more favorable, at which time the line will then be put into service.

**SOUTHWEST PIPELINE PROJECT -
1997 CONSTRUCTION
(SWC Project No. 1736)**

Tim Fay provided the following tentative construction plan for 1997. The plan is based on funding by both bonding and the USDA Rural

Development grant and loan program. The quantities may change depending on developments between now and next spring, but in order to be ready for construction next year, design and planning for these components need to proceed. No contract commitments are required until funding arrangements have been finalized and the pertinent legislation is in place:

<u>Contract</u>	<u>Description</u>	<u>Projected Bid Date</u>	<u>Projected Completion</u>
2-4B	Transmission Line to Reeder and Hettinger	Early April	November, 1997
5-5	Bucyrus Reservoir	Early April	November, 1997
7-4/7-3A	Bucyrus Distribution and Pockets	Early June	October, 1998
5-4	Jung Lake Pump Station	Early August	November, 1998
4-4	Jung Lake Reservoir	Early August	November, 1998

Mr. Fay explained that due to the size of the Bucyrus service area, it is not practical to require this phase to be completed in one construction season. Parts of this system will, however, be able to serve users by the end of the 1997 construction season. Since the Jung Lake pump station and reservoir will not be required until the entire rural service area is in service, their bidding can be delayed until later in the year.

**SOUTHWEST PIPELINE PROJECT -
STRATEGIC PLAN
(SWC Project No. 1736)**

The Southwest Water Authority's Strategic Plan, adopted November 18, 1996, was presented to the Commission members. The plan is attached to these minutes as *APPENDIX "A"*.

**SOUTHWEST PIPELINE PROJECT -
ALTERNATIVE FUNDING
(SWC Project No. 1736)**

Tim Fay reported that in October, 1996, Jim Schwartz, Assistant Administrator for the U.S. Department of Agriculture, Rural

Development, met with the Southwest Water Authority to discuss the critical water needs in the uncompleted areas of the Southwest Pipeline Project.

Mr. Fay discussed possible future sources of funding for completion of the Southwest Pipeline Project. In order to implement bonding as a source of funding, legislation has been introduced to clarify the State Water Commission's authority to issue bonds in excess of \$2 million, and to dedicate a portion of the project's capital repayment revenues to debt service for the term of the bond. House Bill 1170 was heard on January 22, 1997, before the House Natural Resources Committee.

An application for funding the Southwest Pipeline Project was submitted to the USDA Rural Development. Mr. Fay explained the application process, which included a public hearing. This requirement was satisfied at the State Water Commission meeting held December 4, 1996. No comments were voiced at the hearing.

Mr. Fay said there are legislative changes necessary for the State Water Commission to participate in the USDA Rural Development program, which are being addressed by the legislation currently under consideration to allow commercial bonding.

Dale Van Eckout, Rural Development Director, explained the USDA Rural Development program. A draft letter was presented for the State Water Commission's consideration establishing the conditions upon which the Commission must agree to so that the application processing can proceed. Mr. Van Eckout explained that if the Commission agrees with the conditions, its intention would be expressed by the execution of a "Resolution Authorizing Execution of Letter of Intent to Meet Conditions."

Mr. Van Eckout explained Rural Development's Form FmHA 1940-1, Request for Obligation of Funds. Execution of the "Resolution Authorizing Execution of Request for Obligation of Funds" by the State Water Commission requests the USDA Rural Development to set aside the obligation of funds.

It was the recommendation of the State Engineer that the State Water Commission execute the "Resolution Authorizing Execution of Letter of Intent to Meet Conditions" and the "Resolution Authorizing Execution of Request for Obligation of Funds."

Secretary Sprynczynatyk reiterated that the execution of these USDA Rural Development documents does not obligate the State Water Commission. House Bill 1170 will need to become law in order for the Commission to formally obligate itself in the future.

It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission authorize the execution of the "Resolution Authorizing

Execution of Letter of Intent to Meet Conditions” and the “Resolution Authorizing Execution of Request for Obligation of Funds” to satisfy requirements of the application submitted to the USDA Rural Development for funding. SEE APPENDIX “B”.

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF 1997 WATER
SERVICE RATES
(SWC Project No. 1736)**

The Southwest Pipeline Project contract for water service states that an adjustment is to be made at the end of each year for the actual costs of operations, maintenance, and re-

placement. The contract allows an adjustment to the water rate for capital repayment costs based on the Consumer Price Index.

Pinkie Evans-Curry, Manager of the Southwest Water Authority, reviewed the operating income and expenses for 1996. The following projected service rates for 1997 were presented for the Commission’s consideration:

Contract Users:	\$.76 per thousand gallons
Rural Monthly:	\$23.25 per month

Mrs. Evans-Curry stated that in conjunction with the 1997 capital repayment rate, in 1991 the State Water Commission approved a request from the city of Dickinson for credit for qualifying debt service according to the provisions of their water service contract. At that time, the Commission approved a schedule of declining annual rates. The annual credit for 1997 is \$93,654, for a monthly credit of \$7,805.

It was the recommendation of the State Engineer that the State Water Commission approve the projected service rates for 1997 for the Southwest Pipeline Project of \$.76 per thousand gallons for contract users; \$23.25 per month for rural users; and a monthly debt service credit of \$7,805 for the city of Dickinson.

It was moved by Commissioner Ames and seconded by Commissioner Olin that the State Water Commission approve the following water service rates for 1997 for the Southwest Pipeline Project:

- 1) *Contract Users: \$.76 per thousand gallons*
- 2) *Rural Monthly: \$23.25 per month*
- 3) *Monthly debt credit service of \$7,805 for the city of Dickinson*

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF TRANSFER**

The Southwest Water Authority and the State Water Commission have a

**AGREEMENT AMENDMENT NO. 1
CHANGING EFFECTIVE DATE OF
"INITIAL SERVICE LIST"
TO OCTOBER 1
(SWC Project No. 1736)**

transfer agreement for the management, operation and maintenance of the Southwest Pipeline Project. Under the existing terms of the agreement, Definition, Section F, "Initial Service List", a rural water

user is required to begin making minimum payments if service is available to him by November 1st. If service is provided later, it is recognized that the user will not likely be able to complete the hook-up work due to winter conditions and the requirements are deferred until spring. If the user is able to complete the hook-up and actually begin using water, all of the requirements would pertain.

Tim Fay explained that experience has shown even if service is available by November 1st, the local contractors doing the hook-up work have large backlogs and they cannot address the requests they get in October. Therefore, the Southwest Water Authority has requested the date be amended from November 1st to October 1st for rural water users to begin making minimum payments.

It was the recommendation of the State Engineer that the State Water Commission approve Amendment No. 1 of the transfer agreement changing the effective date of the "Initial Service List" from November 1st to October 1st.

It was moved by Commissioner Swenson and seconded by Commissioner Johnson that the State Water Commission approve Amendment No. 1, under Definition, Section F, "Initial Service List" of the transfer agreement for the management, operation and maintenance of the Southwest Pipeline Project, changing the effective date of the "Initial Service List" from November 1st to October 1st.

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

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF MEDIATION
SETTLEMENT AGREEMENT FOR
CONTRACT 7-1B
(SWC Project No. 1736)**

Secretary Sprynczynatyk indicated that Mainline Construction Company completed the work on Southwest Pipeline Project Contract 7-1B, however, he said there were many issues which needed to be resolved.

Mainline Construction Company submitted several claims totalling more than \$1.5 million, plus interest, to the State Water Commission. The State Water Commission denied all of these claims and was unable to resolve the issues raised in the claims.

On September 4, 1996, the State Water Commission passed a motion to proceed with non-binding mediation with Mainline Construction Company on Southwest Pipeline Contract 7-1B. The mediation meetings were held on December 16 and 17, 1996, in Minneapolis before Philip Bruner.

North Dakota Century Code §44-04-

19.1. Open records and open meetings - exemptions for attorney work product and attorney consultation, states, in part:

That portion of a meeting of a public agency during which an attorney consultation occurs, may be closed by a majority vote of the public agency in an open meeting, for the purpose of having the attorney consultation. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.

“Attorney consultation” means any discussion between a public agency and its attorney in instances in which the public agency seeks or receives the attorney’s advice concerning pending civil or criminal litigation or pending adversarial administrative proceedings.

It was the recommendation of the State Engineer that since this portion of the meeting will include attorney consultation, the State Water Commission close the meeting because of the attorney consultation.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission close the State Water Commission meeting because of the attorney consultation relative to Southwest Pipeline Project Contract 7-1B.

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

Following attorney consultation relative to Southwest Pipeline Project Contract 7-1B, Chairman Schafer re-opened the State Water Commission meeting.

It was the recommendation of the State Engineer that the State Water Commission approve the Mediation Settlement Agreement between the State Water Commission and Mainline Construction Company, dated December 17, 1996.

It was moved by Commissioner Swenson and seconded by Commissioner Olin that the State Water Commission approve the Mediation Settlement Agreement between the North Dakota State Water Commission and Mainline Construction Company, dated December 17, 1996. The Mediation Settlement Agreement is attached hereto as APPENDIX "C".

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

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

elevation 1438 next spring. The probability of continued rise next year still exceeds 90 percent, which means that the elevation of Devils Lake will likely exceed the 1867 record elevation of 1438.4.

Secretary Sprynczynatyk reported the current level of Devils Lake at 1437.8. He said with the fall rain and winter inflow, the elevation will be near

On January 13 and 14, 1997, State Water Commission staff collected snow measurements in the Devils Lake basin. Secretary Sprynczynatyk reported that on the average, there is a 10-inch snowpack in the open fields, with an average water content of 2.6 inches. There is considerably more snow in the ditches, stream channels and tree rows. As a comparison, the average snowpack on January 17, 1996, was 2.1 inches. Frost depths are considerably lower than normal, typically in the 6- to 12-inch range. Secretary Sprynczynatyk said based on the existing snowpack, plus normal conditions into June, Devils Lake will rise to 1439.5 - 1440 msl in 1997.

The National Weather Service will provide its first flood outlook on February 14, 1997.

**CORPS OF ENGINEERS
EMERGENCY OUTLET PLAN/
OPERATING PLAN FOR
DEVILS LAKE
(SWC Project No. 416-1)**

The Corps of Engineers was directed to develop an emergency outlet study for Devils Lake. The plan, requested by the North Dakota Congressional Delegation, describes major features and costs of an outlet

and demonstrates the degree to which an outlet would help moderate the rising lake levels. Reaching consensus of an emergency outlet plan could also expedite authorization for final design and construction of a permanent outlet as part of a comprehensive stabilization approach for Devils Lake.

The Devils Lake Emergency Outlet Plan was released on August 12, 1996, and the Executive Summary was provided to the State Water Commission members. Preparation of the plan included a preliminary analysis of available information on topography, subsurface geology, real estate and engineering criteria. Information gathered from an ongoing feasibility study being conducted by the Corps of Engineers, the State Water Commission, and the Devils Lake Contingency Plan was used in preparing the outlet plan.

Secretary Sprynczynatyk stated that the emergency plan represents a consideration of key factors including cost, water quality, design and construction considerations, and environmental impacts. The plan describes a 12.8-mile channel project across the Spirit Lake Reservation with three holding dams and pump stations. The three-dams system is required to lift Devils Lake water nearly 60 feet until it reaches the natural basin divide and can then flow downhill to the Sheyenne River. The Corps of Engineers estimates the total cost of the emergency outlet project described in the plan to be \$21 million.

The Corps of Engineers, the State Water Commission, and the Devils Lake Emergency Management Committee conducted public meetings within the Devils Lake basin as well as downstream on the Sheyenne and Red Rivers to discuss the emergency outlet plan, to solicit the public's perception and concerns, and to develop a consensus regarding the outlet concept.

Secretary Sprynczynatyk said that the State Water Commission staff has been directed to develop the framework for an operating plan for the emergency outlet.

At the December 4, 1996 meeting, the State Water Commission members were provided the report titled "Devils Lake - Twin Lakes Inlet/Outlet Emergency Plan", dated November, 1996. The report summarizes several alternatives for an inlet/outlet to Devils Lake from the Sheyenne River. He said the information presented can be used to compare these alternatives to the plan presented in the Corps of Engineers Emergency Outlet

Plan, however, he said the engineering conducted on the alternatives was not done to the level of the Corps' plan. Therefore, the cost estimates presented in this summary report have a higher degree of uncertainty than the cost estimates in the Corps' plan. The purpose of these cost estimates is to provide information to the decision-makers to assist them in determining if an alternative should be investigated further.

Secretary Sprynczynatyk made reference to legislation which has been introduced relative to Devils Lake. He said the Commission staff is working with the Corps of Engineers and the Legislature for support to move forward with the emergency outlet plan for Devils Lake.

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

Secretary Sprynczynatyk reported on the Corps of Engineers feasibility study that addresses the long-term stabilization of Devils Lake and basin-wide management. The plan addresses five general areas of interest set forth in Public Law 102-377, which directed the Corps of Engineers to initiate a feasibility study for Devils Lake. Those areas are: basin water management; lake stabilization; water quality; recreation; and enhancement and conservation of fish and wildlife. The feasibility study, as outlined in the scope of work, would be a three-year effort, at a cost of more than \$7 million.

On July 2, 1993, the State Water Commission approved the Phase 1 agreement of the Devils Lake Feasibility Study, and allocated \$500,000 from the Contract Fund. On July 19, 1995, the State Water Commission re-approved the unspent balance of \$423,488 for the Devils Lake long-term studies. Of this total, \$50,000 was previously obligated for Phase 1A of the feasibility study.

On February 23, 1996, the State Water Commission authorized the State Engineer to enter into an agreement for Phase 2A of the Devils Lake Feasibility Study, and approved the allocation of \$300,000 for the study from the funds presently allocated from the Contract Fund for the Devils Lake long-term studies. On April 29, 1996, the State Water Commission approved an additional allocation of \$35,500 for Phase 2A, which increased the total state contribution for Phase 2A of the study to \$335,500. Approximately \$38,000 of the \$423,488 remains unobligated.

Secretary Sprynczynatyk reported the Corps of Engineers is continuing to address the Devils Lake stabilization effort, and they are ready to negotiate the next phase of the feasibility study. The non-federal cost share for this phase of the study is approximately \$600,000. The Corps' current focus is on the flooding problems and the emergency outlet.

**CITY OF DEVILS LAKE
LEVEE PROJECT -
(SWC Project No. 416-2)**

The city of Devils Lake is currently protected by a series of levees constructed by the Corps of Engineers in the 1980s. These levees provide

protection to elevation 1440 msl, with an additional five feet of freeboard. Secretary Sprynczynatyk explained that with the current level of Devils Lake, there is a reasonably good chance the lake could exceed 1440 msl in 1997. As a result, the Corps of Engineers has agreed to raise the levees five feet. The total cost of the project is currently estimated at \$7.5 million, although this cost could change due to various dike alignment alternatives which are being considered.

Secretary Sprynczynatyk stated that the project will be constructed in two stages. Stage 1 consisted of the key features that needed to be started last fall and are generally located in lower elevation areas. Stage 2 will be bid in early 1997.

The total cost of Stage 1 is \$3,640,000. The Corps of Engineers will pay 75 percent of the costs, leaving a non-federal requirement of \$910,000. Secretary Sprynczynatyk explained that because of the lateness of the 1996 construction season, the Corps was unable to complete Stage 1 in 1996 and required \$350,000 for the right-of-way, design, and construction in 1996. The state's share, based on a 50 percent cost share, was \$175,000. The balance of the state's share, assuming a \$7.5 million project, will be approximately \$760,000, which would be required in 1997.

At its August 22, 1996 meeting, the State Water Commission passed a motion requesting approval of \$175,000 for the Devils Lake levee project from the state's contingency fund through the Emergency Commission, and to approve 50 percent cost sharing of the non-federal costs for 1996 for Stage 1 of the project, contingent upon action of the Emergency Commission. This request was approved by the Emergency Commission. The State Water Commission had also declared its intent to contribute the remaining state cost share in 1997 for the project, depending on the availability of funds.

Secretary Sprynczynatyk reported that the Corps of Engineers is progressing with the Devils Lake levee raise. The contractor for Stage 1 is Wanzek Construction, Inc. of Fargo. It is anticipated that bids will be let in February, 1997 for Stage 2. Efforts are being re-considered by the Corps of Engineers and the Ramsey County Water Resource District to include a subdivision south of the city of Devils Lake in the project.

**DEVILS LAKE AVAILABLE
STORAGE ACREAGE PROGRAM
(ASAP) - APPROVAL OF ALLOCATION
OF \$500,000 FOR WATER STORAGE
IN 1997
(SWC Project No. 1882-1)**

Secretary Sprynczynatyk provided a summary of the Devils Lake Available Storage Acreage Program (ASAP) in 1996, and outlined the program projections for 1997.

Approximately 8,000 acre-feet of water was stored when 48 ASAP sites in the Devils Lake basin initially filled with water in 1996. Evaporation and infiltration throughout the year freed storage capacity, which held subsequent precipitation, thereby increasing the total amount of water retained in 1996. The initial storage is equivalent to approximately one inch of water on Devils Lake. The total cost of the storage was \$435,000, with an average cost of \$54 per acre-foot, or \$105 per acre. Of this cost, \$396,000 went toward land payments and the remainder for structure costs.

In addition, 20 sites were completed in the fall of 1996 that will be capable of storing approximately 900 acre-feet of water this spring. The total cost of the storage on these sites is \$52,000, with an average cost of \$58 per acre-foot, or \$85 per acre.

Secretary Sprynczynatyk stated that interest in the ASAP has been increasing in recent weeks and it is anticipated that interest in the program will continue to increase as spring approaches. The Devils Lake Basin Joint Water Resource Board intends to send a letter to landowners in the basin pleading them to sign up for the program, and it should also increase the interest in the program. He said a realistic goal for the ASAP in 1997 is 20,000 acre-feet of total storage. This storage will reduce the level of Devils Lake by approximately three inches. Additional storage options are also being pursued by the U.S. Fish and Wildlife Service on public lands. When constructed, these public lands will provide an additional 12,000 acre-feet of storage.

Second-year options are still available on most of the 48 sites that were used in 1996. These sites will be capable of storing water in 1997 to replace the water that evaporated or soaked in. It is estimated that half of the initial capacity will be available to capture spring runoff. If the leases are not continued, the sites would be drained and the full 8,000 acre-feet of storage would be lost.

Secretary Sprynczynatyk said the cost for the second year land payments on the 1996 sites is estimated to be \$396,000. The 20 new sites in place to store water in 1997 will cost approximately \$52,000. Approximately 11,100 acre-feet of additional new storage in 1997 will be needed to reach the 20,000 acre-foot goal. Using the \$60 per acre-foot criteria, this storage will cost \$666,000. Therefore, approximately \$1,114,000 will be needed to store 20,000 acre-feet of water in the Devils Lake basin in 1997.

Secretary Sprynczynatyk explained that approximately \$65,000 remains from the \$500,000 that was allocated by the State Water Commission for the ASAP in 1996. Therefore, \$1,049,000 will be needed to reach the 20,000 acre-feet storage goal for 1997.

It was the recommendation of the State Engineer that the State Water Commission approve the allocation of \$500,000 to the ASAP for initial payment of water storage in 1997. Of this amount, approximately \$396,000 will be used to renew leases on 1996 ASAP sites, approximately \$52,000 will be used for the 20 sites that have committed water storage for 1997, and the balance of the \$500,000 will be used for future ASAP applications to be constructed prior to spring runoff.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve the allocation of \$500,000 to the Available Storage Acreage Program (ASAP) for initial payment of water storage in 1997. Of this amount, approximately \$396,000 will be used to renew leases on 1996 ASAP sites, approximately \$52,000 will be used for the 20 sites that have committed water storage in 1997, and the balance of the \$500,000 will be used for future ASAP applications to be constructed prior to spring runoff. This motion is contingent upon the availability of funds.

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

The Commission members discussed the State Water Bank program and proposed legislation, and the federal changes that were recently adopted by the U.S. Department of Agriculture for the Conservation Reserve Program (CRP). No action was taken by the Commission at this meeting relative to either program.

The future involvement by the state in the Devils Lake upper basin storage program was discussed. Secretary Sprynczynatyk said there have been discussions with the agricultural and wildlife interests and others to develop a federally-authorized Devils Lake basin storage program as part of the flood control effort to take over in essence what the state has started. He said, "with the state undertaking this effort, it is an indication to the federal government, the conservation community, and the downstream interests that the state is very concerned about trying to prevent the problem from

occurring by holding back water. It is important this message be received by those groups that the state is willing to do what it can, but we need to continue to work towards shifting this program to something more permanent as the state will soon have expended its limited resources available for this sort of a program.”

Governor Schafer leaves the meeting. Commissioner Olin assumes the chair.

**FINANCIAL STATEMENT -
AGENCY OPERATIONS**

1996, reflecting 75 percent of the 1995-1997 biennium. *SEE APPENDIX "D".*

Secretary Sprynczynatyk presented and discussed the Program Budget Expenditures, dated December 31,

**ASSISTANT STATE
ENGINEER, DALE FRINK**

Engineer, effective February 1, 1997. The position was vacated with the resignation of Charles Rydell.

Secretary Sprynczynatyk announced that Dale Frink has been appointed to the position of Assistant State

**FINANCIAL STATEMENT -
RESOURCES TRUST FUND**

Secretary Sprynczynatyk reviewed and discussed the Contract Fund for the 1995-1997 biennium. *SEE APPENDIX "E".*

**FINANCIAL STATEMENT -
1997-1999 BIENNIUM BUDGET**

Appropriations Committee's Education and Environment Division on January 22, 1997. The agency's testimony was presented by the State Engineer, with additional testimony presented by members of the North Dakota Water Coalition.

House Bill 1025, the State Water Commission's appropriation, was heard before the House

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

was recently agreed to by the Governor, the leadership of the North Dakota Legislature.

Secretary Sprynczynatyk provided a briefing of the strategy for securing authorization for the completion of the Garrison Diversion Project that

Congressional Delegation, and the

The Governor and the Congressional Delegation will host a meeting on February 3, 1997, in Washington, DC, to begin a negotiating process among interested parties to develop legislation to provide for the contemporary and future water and related resource needs of North Dakota. Secretary Sprynczynatyk said various proposals and ideas will be discussed as well as current authorizations under the Garrison Reformulation Act of 1986.

Secretary Sprynczynatyk said once a consensus is reached among the interested parties and a proposal is drafted, the Congressional Delegation will introduce legislation in Congress to complete the project. He said, "the elected state leaders agree that completing the Garrison Diversion Project is essential to meeting the future water needs of North Dakota, and they are committed to working together to advance the best interests of the state and to see that the federal government upholds its commitment to the people of North Dakota."

**GARRISON DIVERSION PROJECT -
MR&I WATER SUPPLY PROGRAM
(SWC Project No. 237-3)**

Jeffrey Mattern, MR&I Water Supply Program Coordinator, provided the following report:

All Seasons Water Users: The engineer has evaluated System I for expansions that may tie into the Pierce Rural Water service area and System IV that may tie into the Benson Rural Water service area. The cost estimates are \$1.5 million for System I and \$6 million for System IV. The engineer is working on a preliminary engineering report for requesting MR&I funding for the project.

Benson County Rural Water: The engineer has completed the feasibility study and Benson County has requested a 65 percent MR&I grant on the study costs of \$34,800. The MR&I committee recommended that a grant of \$22,600 be approved for the Benson feasibility study at the August 26, 1996 committee meeting. Ulteig Engineers is reviewing the project with the surrounding rural water systems of All Seasons, Langdon and Pierce on how the Benson system best ties in the water service areas.

Burleigh Water Users: The Phase 2 project design has been completed and construction is planned for 1997. The project had a December 17, 1996 bid opening. The Burleigh Water Users has estimated that Phase 2 will cost \$7,650,000 and they need to find funding to cover an estimated shortage of \$496,000. Burleigh has requested a MR&I grant of \$250,000, which is in addition to the proposed Fiscal Year 1997 MR&I grant of \$3,590,000. The project has some contingency funding in the estimate and is being reviewed. Burleigh wanted to know the funding options before awarding bids, so a request for additional MR&I funding was made.

Dickey Rural Water Project: The water treatment plant is operating with final connection details being made for pumping water to the communities of Berlin, Edgeley, Ellendale, Fullerton, and up to 160 rural users. Work continued on the pipelines for the rural water distribution system until the weather stopped construction. Any remaining construction will be completed in 1997.

Grand Forks Water Treatment: The city of Grand Forks is modifying the water treatment plant's existing clear wells by installing baffling to increase the contact time to meet the requirements of the Surface Water Treatment Rule.

Langdon Rural Water: The engineer has completed the preliminary engineering report for construction of Phase IV, the Munich service area. The estimated cost is \$9.6 million. The engineer is working with Ulteig Engineers on how the Munich area would work with the Benson Rural Water service area. The preliminary engineering report is part of a request for MR&I program funding for the project.

Missouri West Rural Water System: The system design is complete. The project is planning for phased construction, with the portion of the rural water system extending to St. Anthony scheduled for 1997.

North Valley Water Association/Walhalla-Neche Branch: The engineer is working on the feasibility study and the environmental assessment requirements. The project is planned for phased construction with the water treatment plant expansion and the connection to the city of Walhalla scheduled for 1997. North Valley has requested additional MR&I grant funds of \$580,000 to add the city of Neche to the expansion project. North Valley has also requested an additional grant of \$17,550 on \$27,000, which covers \$15,000 for an additional cultural resources survey for the environmental compliance on the total project and \$12,000 for engineering for adding Neche to the feasibility study.

Northwest Area Water Supply Project: See Northwest Area Water Supply Project section in these minutes for complete status report.

Ransom-Sargent Rural Water Project: The engineer is working on the feasibility study and the environmental assessment requirements.

Southwest Pipeline Project: See Southwest Pipeline Project section in these minutes for complete status report.

Mr. Mattern provided information on the summary of applications submitted for MR&I program funding, and a program status map, which are attached to these minutes as *APPENDIX "F"*.

**GARRISON DIVERSION PROJECT -
MR&I FUNDING FOR FY 1997**

(SWC Project No. 237-3)

At its December 4, 1996 meeting, the State Water Commission passed a

motion approving the proposed \$12

million Fiscal Year 1997 MR&I Water

Supply program budget, contingent upon the availability of funds and subject to future revisions. Jeffrey Mattern informed the Commission members that affirmative action was taken by the Garrison Diversion Conservancy District board of directors at its meeting on January 2, 1997.

NORTHWEST AREA WATER

James Lennington, Project Manager

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

for the Northwest Area Water Supply Project, reported that the pre-final design contract for the Northwest

Area Water Supply project has been completed and the final payment has been made. The pre-final design had been extended because the Chloramination/Ozonation study and related tasks were included in that contract. Some of the work by the engineering team on that work item were ongoing because of the continuing discussions with the United States and Canadian representatives of the Garrison Joint Technical Committee.

Current work for the final design contract has been concentrated on the environmental assessment. A specific authorization for the final design contract was entered into on January 6, 1997, which includes an evaluation of the water quality in Lake Audubon, developing a long-term water quality monitoring program, and conducting special tests to characterize specific water quality conditions that may occur seasonally. Mr. Lennington said that much of this work will provide preliminary information necessary to design water treatment processes, and some of the long-term and seasonal information will be provided to the Garrison Joint Technical Committee in accordance with the conclusions of the joint United States-Canada Consultative Group consultations on the Northwest Area Water Supply Project.

An agency draft of the environmental assessment is anticipated by the end of January, after which it will be submitted for public review and comment.

The firm of Advanced Engineering and Environmental Services, Inc., Grand Forks, is preparing the final design for construction of the Rugby phase of the project, which will include an upgrade and an expansion for the city of Rugby's water treatment plant. Mr. Lennington reported construction of the Rugby phase could be delayed until 1998.

Mr. Lennington discussed funding options that are being explored for the local share of the project.

**APPROVAL OF REQUEST FROM
STEELE COUNTY WATER RESOURCE
DISTRICT FOR COST SHARING ON
STEELE COUNTY DRAIN NO. 12
PROJECT
(SWC Project No. 1223)**

A request from the Steele County Water Resource District was presented for the Commission's consideration for cost sharing on the Steele County Drain No. 12 project.

Secretary Sprynczynatyk presented the project, which was deferred by the Commission at its December 4, 1996 meeting due to the pending Corps of Engineers Section 404 permit. The Section 404 permit for the project was approved by the Corps on December 30, 1996.

The project includes cleaning and improving the sectionline road ditch, and installing culverts and a drop structure. There are approximately 2.5 miles of drain, which eventually discharges into a tributary of the Middle Branch of the Goose River.

Drain Permit No. 2786 has been approved by the Steele County Water Resource District. There are no impacts to any wetlands and this project is not of statewide or interdistrict significance.

The engineer's cost estimate for the project is \$102,427, with eligible costs of \$84,065. Under the State Water Commission's policy and guidelines for cost sharing, 40 percent of the eligible project costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$33,626.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing of 40 percent of the eligible costs, not to exceed \$33,626 from the Contract Fund, for the Steele County Drain No. 12 project.

It was moved by Commissioner Hillesland and seconded by Commissioner Thompson that the State Water Commission approve cost sharing in 40 percent of the eligible costs, not to exceed \$33,626 from the Contract Fund, for the Steele County Drain No. 12 project. This motion is contingent upon the availability of funds.

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

APPROVAL OF REQUEST FROM WILLIAMS COUNTY WATER RESOURCE DISTRICT FOR COST SHARING ON TWELVE-MILE AND TRUAX TOWNSHIPS (T&T) PIPELINE PROJECT (SWC Project No. 1315)

A request from the Williams County Water Resource District was presented for the Commission's consideration for cost sharing on the Twelve-Mile and Truax Townships (T&T) Pipeline project.

In order to avoid a conflict of interest, Commissioner Ames requested abstinence from discussion and action the Commission may consider relative to this project. The Chairman acknowledged Commissioner Ames's request.

Secretary Sprynczynatyk explained that the project will provide a safe and reliable water source for agricultural use, especially livestock water. Currently, the lack of an adequate water supply and a distribution system exists in the project area. Poor livestock and water distribution, caused primarily by lack of water sources, results in over-grazing of areas close to water and under utilization of remote areas. The project will allow better management of pasture and rangeland by providing watering sites. This will improve the rangeland and pastureland conditions and increase forage production on these lands ensuring long-term sustainability of the grass resource and on-farm income.

The project area consists of 80 square miles in Williams County. Fifteen livestock producers have signed contracts with the Natural Resources Conservation Service to participate in the project. Additional producers may be interested depending on the cost of the project.

Replacement of dams, dugouts and springs with water from the project would not only improve grassland conditions and increase livestock production, but would improve surface water quality in the project area and downstream.

The total estimated project cost is \$675,003. The Natural Resources Conservation Service has agreed to provide \$447,827. The non-federal cost is estimated at \$227,176, with eligible costs of \$175,586. Under the State Water Commission's policy and guidelines for cost sharing, 50 percent of the eligible project costs qualify for cost sharing. The request before the State Water Commission is to cost share in the amount of \$87,800.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing with the Williams County Water Resource District in 50 percent of the eligible costs, not to exceed \$87,800 from the Contract Fund, for the T&T Pipeline project.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve cost sharing in 50 percent of the eligible costs, not to exceed \$87,800 from the Contract Fund, for the Twelve-Mile and Truax Townships (T&T) Pipeline project in Williams County. This motion is contingent upon the availability of funds.

Commissioners Bjornson, Hillesland, Johnson, Swenson, Thompson, and Chairman Olin voted aye. There were no nay votes. Commissioner Ames abstained from voting. The Chairman declared the motion carried.

APPROVAL OF ADDITIONAL FUNDS IN THE AMOUNT OF \$1,231 FOR GARDENA FLOOD CONTROL PROJECT IN BOTTINEAU COUNTY (SWC Project No. 1056)

On October 16, 1996, the State Water Commission approved cost sharing in the amount of \$11,997 from the Contract Fund for the Gardena Flood Control project in Bottineau County.

Secretary Sprynczynatyk said the project has been completed and the final cost is approximately 10 percent more than estimated. The costs eligible for Commission cost share have increased and, under the Commission's policy and guidelines for cost sharing, the project is eligible to receive an additional \$1,231.

It was the recommendation of the State Engineer that the State Water Commission approve an additional \$1,231 from the Contract Fund for the Gardena Flood Control project, for a total Commission allocation of \$13,228.

It was moved by Commissioner Ames and seconded by Commissioner Bjornson that the State Water Commission approve an additional \$1,231 from the Contract Fund for the Gardena Flood Control project in Bottineau County, for a total State Water Commission allocation of \$13,228. This motion is contingent upon the availability of funds.

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

1997 LEGISLATION

Secretary Sprynczynatyk reported the bill drafts recommended at the December 4, 1996 meeting for consideration to the Legislature, which are under the authority of the State Water Commission and the State Engineer, have passed their house of origination. He briefed the Commission members relative to legislation affecting the State Water Commission. He made reference to SB 2271 relating to the membership and quorum of the State Water Commission. The hearing on SB 2271 is scheduled on January 31, 1997, before the Senate Natural Resources Committee.

Michael Dwyer, Executive Director of the North Dakota Water Users Association, addressed the State Water Commission to present information relating to the water interests' legislative efforts concerning funding for water management and water development projects in the state. The information presented by Mr. Dwyer is attached hereto as *APPENDIX "G"*.

At its December 4, 1996 meeting, Commissioner Ames requested the State Engineer and the legal counsel to review possible legislation relating to an individual loan fund for development of irrigation projects in the state. Julie Krenz, Assistant Attorney General, made reference to the Bank of North Dakota's bonding program, and is researching Section 61-21.1 of the North Dakota Century Code authorizing the Industrial Commission to issue bonds under chapter 436 for water development and gives the powers to the Commissioner of Agriculture to administer the program.

NORTH DAKOTA WATER COALITION

The North Dakota Water Coalition was established in July, 1994 as an initiative of the Flagship Initiative #6 of the North Dakota Vision 2000 Report, which states, in part: "The North Dakota 2000 Committee recommends that North Dakota establish a "Coalition for Infrastructure Projects" to further develop three key elements of our state's infrastructure: water resources, telecommunications, and advanced air transportation." The Coalition is made up of approximately 30 entities, municipalities, and other groups from across North Dakota.

The mission of the North Dakota Water Coalition is to complete North Dakota's infrastructure for economic stability and growth, and quality of life.

The North Dakota Water Coalition goals are:

- 1) To provide an adequate water supply across North Dakota for manufacturing, industrial, energy bi-product utilization, agriculture, agricultural processing, recreation, wildlife, municipalities, and rural water systems which have an inadequate supply or quality of water:

- **Complete a workable and achievable Garrison Diversion Project to provide a multiple-use water supply to central and eastern North Dakota, including the James, Sheyenne, and Red Rivers**
 - **Complete the Southwest Pipeline Project**
 - **Stabilize Devils Lake**
 - **Undertake and complete the Northwest Area Water Supply Project**
 - **Secure adequate funding for the MR&I program**
 - **Develop multi-use statewide water impoundments for recreation, wildlife, and fishing**
- 2) **To complete projects to control and alleviate floodwaters and damages, including such projects as increasing the flood control capacities of the Baldhill Dam and Reservoir, the Maple River Dam, and others.**

In conjunction with the Interim Legislative Water Resources Committee's study, the Coalition undertook the task of establishing water priorities for the numerous water needs of North Dakota. On April 29, 1996, the Commission members were advised of the process of establishing the water priorities:

- 1) **Identify inventory of statewide water needs and solutions**
- 2) **Establish consensus on inventory of water needs and solutions with regional and statewide organizations**
- 3) **Prioritize water needs and solutions**
- 4) **Establish consensus on water priorities with regional and state organizations**
- 5) **Present consensus of water priorities to the Interim Legislative Water Resources Committee, Governor, Legislative Leaders, Congressional Delegation, and 1997 Legislative Assembly**

The final North Dakota Water Priorities Report, dated November, 1996, was distributed to the State Water Commission members at its December 4, 1996 meeting. Under the above outline of steps, funding of the state's share of North Dakota's water infrastructure can be considered by the Governor and the 1997 Legislature, with the united support of many statewide and regional groups.

Dana Bohn, Director of the North Dakota Water Coalition, provided a briefing of the Coalition's meeting held on January 22, 1997. Ms. Bohn expressed appreciation to the State Water Commission for its support in the past, and hoped that the Commission would continue its support in the future.

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

working with a team of consensus-building experts to reach agreement on issues that have divided the basin's states and tribes in the past. Various issues have been discussed in depth, papers have been presented which outlined the problems and possible solutions, and the aid of several agencies and committees have been enlisted.

Secretary Sprynczynatyk reported that since May, 1995, the Missouri River Basin Association has been

In February, 1996, the Missouri River Basin Association directors decided to initiate a basin-wide monitoring program, which would document the current hydrological and biological conditions of the river system and would track the effectiveness of programs designed to improve the basin's fish and wildlife resources. The Association directors reached agreement on these issues and discussed various other issues as part of their continuing efforts to exert a stronger influence over water policy decisions by presenting a united front to the federal government. The Association directors plan to deliver a list of recommendations to the Corps and other federal agencies.

During the past several months, the Missouri River Basin Association has developed a planning process to recommend the best methods for maximizing basin water uses and interests. The planning effort involves representation of the basin's primary water interests with state and tribal representatives in a search for ways to obtain maximum benefits for all water uses. The following goals have been identified to meet the needs of the water users and guide the management and operation of the Missouri River:

- **Recreation Goal.** Promote the stability and growth of recreational use of the river through water management, economic assistance, and recreational planning.
- **Navigation Goal.** Promote the stability and growth of navigation on the Missouri River system through water management, economic assistance, and transportation planning.
- **Water Supply Goal.** Enhance water supply in the basin for municipal, rural, industrial, irrigation, and agricultural use.
- **Habitat Goal.** Identify a comprehensive set of programs, both new and existing, that can enhance habitat within the basin.

- **Bank and Shoreline Integrity Goal.** Maintain the integrity of river banks and lake shoreline where appropriate throughout the system to protect present and future water uses.
- **Flood Control Goal.** Operate the Missouri River system to maintain or enhance flood control benefits.
- **Hydropower Goal.** Maintain or enhance hydropower production with consideration for equitable distribution of the benefits among the tribes and states.
- **Future Depletion Goal.** Develop a mechanism for equitable allocation among the basin states and tribes of the risks of future depletions.
- **Monitoring Goal.** Develop a monitoring system that provides adequate information to characterize and understand the existing system and evaluate the impacts of changes.

As part of the Association's planning process, representatives of the basin's water interests were invited to join task force discussions on recreation, navigation, water supply, habitat, bank/shoreline/flood control, and hydropower on June 13-14, 1996 in Bismarck. The charge to the task forces were to identify ways to reach the stated goals of obtaining maximum benefits for all water users in each of the six interest areas in a manner that reflects a basin-wide perspective.

Secretary Sprynczynatyk said there was general consensus among the conference participants of the need for a Missouri River Basin authority to manage the Missouri River rather than the federal government. The strong spirit of basin-wide cooperation at the conference indicates a basic change in the way water management issues will be addressed along the Missouri River. He said we are trying to overcome the decades of confrontational politics that have dominated the decision-making in the basin, and come up with new ways of decision-making that will work better for all of us who live in the basin and depend on the river system.

The ideas proposed from the conference were reviewed by the Association directors, and draft recommendations were developed. At its January 3, 1997 meeting, the Association continued its review of the draft recommendations, with eventual presentation to the Corps of Engineers and other federal agencies. The Association requested the task forces throughout the basin to continue discussions in their area on specific issues of dispute between the upper and lower basin states. Secretary Sprynczynatyk said the recommendations include a timeframe for completion of issues, and he said he is hopeful "that many of the problems can be addressed and alleviated in the management of the Missouri River."

**NORTH DAKOTA WETLANDS
CONSERVATION PLAN
(SWC Project No. 1500-2)**

At its meeting on June 19, 1996, the State Water Commission passed a motion authorizing the State Engineer to execute the agreements

with the U.S. Environmental Protection Agency and the appropriate agencies to implement the Fiscal Year 1996 Wetlands Conservation proposal. The tasks funded by the Fiscal Year 1996 grant, and the responsible agency, include:

- North Dakota State Water Commission's GIS program and GPS survey demonstration in the Devils Lake basin - State Water Commission
- Wetlands grant administration - State Water Commission
- North Dakota Wetlands Institute's State Wetlands Regulatory program - North Dakota Water Education Foundation
- North Dakota Game and Fish Department's Private Lands Initiative program - North Dakota Game and Fish Department
- Wetlands Water Quality Standards Development Project/Ecoregion Integration - North Dakota Department of Health
- Devils Lake Basin Coordinator - the State Water Commission contracts for services with the required match split between the State Water Commission, State Department of Health, Garrison Diversion Conservancy District, State Game and Fish Department, and the Devils Lake Joint Board
- Grand Harbor Watershed Demonstration project - Ramsey County Water Resource District
- North Dakota Department of Agriculture's Project Safe Send - Agriculture Department
- North Dakota Game and Fish Department's CRP Prioritization - State Game and Fish Department

At the October 16, 1996 Commission meeting, Michael Dwyer, Director of the North Dakota Wetlands Institute, provided information relative to the development of a wetlands conservation regulatory program for North Dakota that would protect critical wetlands; provide for mitigation of wetlands impacted by draining, filling, or other development; establish a wetlands mitigation banking system; encourage enhancement of wetlands related habitat; and establish a regulatory procedure and decision-making process which is efficient, flexible, and user friendly, but at the same time protect wetlands resources and enforce willful and intentional violations.

The Commission members were provided the draft North Dakota Wetlands Conservation Plan, dated December, 1996. The draft plan has been endorsed by the Governor, the State Engineer, and the Director of the Game and Fish Department.

There being no further business to come before the State Water Commission, Chairman Olin adjourned the meeting at 12:00 noon.

**/S/ Edward T. Schafer
Edward T. Schafer
Governor-Chairman**

SEAL

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

