

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 8, 2006

The North Dakota State Water Commission held a meeting at the Best Western Ramkota Hotel, Bismarck, North Dakota, on December 8, 2006. Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman, called the meeting to order at 9:00 AM, and requested State Engineer, and Chief Engineer-Secretary to the State Water Commission, Dale L. Frink, to call the roll. Lt. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Lt. Governor Jack Dalrymple, representing Governor John Hoeven, Chairman
Roger Johnson, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Starkweather
Maurice Foley, Member from Minot
Larry Hanson, Member from Williston
Jack Olin, Member from Dickinson
Harley Swenson, Member from Bismarck
Robert Thompson, Member from Page

STATE WATER COMMISSION MEMBER ABSENT:

Elmer Hillesland, Member from Grand Forks

OTHERS PRESENT:

Dale L. Frink, State Engineer, and Chief Engineer-Secretary,
North Dakota State Water Commission, Bismarck
State Water Commission Staff
Approximately 75 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.

INTRODUCTION OF STATE WATER COMMISSION MEMBER - ARNE BERG, STARKWEATHER, ND

Arne Berg, Starkweather, ND, was introduced. Mr. Berg was appointed by Governor John Hoeven to serve as a member of the State Water Commission, replacing Curtis Hofstad, Devils Lake, ND. His term was effective on December 7, 2006 and expires on June 30, 2011.

**INTRODUCTION OF STATE
WATER COMMISSION MEMBER -
MAURICE V. FOLEY, MINOT, ND**

Commission, replacing Charles "Mac" Halcrow, Drayton, ND. His term was effective on December 8, 2006 and expires on June 30, 2011.

CONSIDERATION OF AGENDA

nounced the agenda approved as presented.

Maurice V. Foley, Minot, ND, was introduced. Mr. Foley was appointed by Governor John Hoeven to serve as a member of the State Water

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

**CONSIDERATION OF DRAFT MINUTES
OF OCTOBER 12, 2006 STATE WATER
COMMISSION MEETING - APPROVED**

The draft minutes of the October 12, 2006 State Water Commission meeting were approved by the following motion:

It was moved by Commissioner Swenson, seconded by Commissioner Thompson, and unanimously carried, that the draft minutes of the October 12, 2006 State Water Commission meeting be approved as prepared.

**CONSIDERATION OF DRAFT MINUTES
OF NOVEMBER 14, 2006 STATE WATER
COMMISSION AUDIO CONFERENCE
CALL MEETING - APPROVED**

The draft minutes of the November 14, 2006 State Water Commission audio conference call meeting were approved by the following motion:

It was moved by Commissioner Olin, seconded by Commissioner Swenson, and unanimously carried, that the draft minutes of the November 14, 2006 State Water Commission audio conference call meeting be approved as prepared.

**RESOLUTION OF APPRECIATION
TO CURTIS L. HOFSTAD, STATE
WATER COMMISSION MEMBER
(SWC Resolution No. 2006-12-517)**

the State Water Commission during Governor John Hoeven's administration from July 1, 2001 through December 1, 2006. Mr. Hofstad was elected to the Sixtieth (2007) North Dakota House of Representatives from District 15.

The State Water Commission considered a resolution of appreciation to Curtis L. Hofstad, who provided the benefit of his expertise and experience to the State of North Dakota as a member of

*It was moved by Commissioner Olin, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission approve Resolution No. 2006-12-517, Resolution of Appreciation to Curtis L. Hofstad, State Water Commission member.
SEE APPENDIX "A"*

**RESOLUTION OF APPRECIATION TO
CHARLES "MAC" HALCROW, STATE
WATER COMMISSION MEMBER
(SWC Resolution No. 2006-12-518)**

North Dakota as a member of the State Water Commission during Governor John Hoeven's administration from May 1, 2001 through December 1, 2006. Mr. Halcrow does not reside in North Dakota, therefore, he resigned his membership on the State Water Commission.

It was moved by Commissioner Swenson, seconded by Commissioner Thompson, and unanimously carried, that the State Water Commission approve Resolution No. 2006-12-518, Resolution of Appreciation to Charles "Mac" Halcrow, State Water Commission member. SEE APPENDIX "B"

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

resources expenditures. The allocated program expenditures for the period ending October 31, 2006, reflecting 67 percent of the 2005-2007 biennium, were presented and discussed by David Laschkewitsch, State Water Commission accounting manager. The expenditures, in total, are within the authorized budget. **SEE APPENDIX "C"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "D"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the potential bond proceeds. The total approved for projects is \$60,449,270, leaving a balance of \$12,635,919 available to commit to projects.

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

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

The State Water Commission directed that a resolution of appreciation be prepared for Charles "Mac" Halcrow. Mr. Halcrow provided the benefit of his expertise and experience to the State of

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

The oil extraction tax deposits into the Resources Trust Fund total \$17,065,721 and are currently \$4,216,372, or 32.8 percent ahead of the budgeted revenues.

**STATE WATER COMMISSION
BUDGET - 2007-2009 BIENNIUM**

Budget (OMB) on September 27, 2006. On December 6, 2006, Governor Hoeven released the executive budget recommendations for the 2007-2009 biennium. The executive recommendation for the State Water Commission totals \$174,610,555:

Administrative and Support Services	\$ 2,456,295
Water and Atmospheric Resources	<u>\$172,154,260</u>
Total	\$174,610,555
General Funds	\$ 13,687,506
Federal Funds	\$ 27,504,199
Other Funds	<u>\$133,418,850</u>
Total	\$174,610,555

In the 2005-2007 biennium, \$1 million of the agency's operations are funded with general fund dollars, with the balance coming from the Water Development Trust Fund. For the 2007-2009 biennium, general funds totaling \$13.6 million have been included in the executive recommendation. This is a significant increase of \$12.6 million in general funds and restores the majority of the agency's operational costs to general fund dollars, as well as providing an additional \$3 million for the Red River Valley Water Supply project. The executive recommendation does not extend the Commission's additional bonding authority of \$7 million authorized in the 2005-2007 biennium, and contains no new bonding authority from the Water Development Trust Fund in the 2007-2009 biennium.

The Resources Trust Fund is projected to bring in \$43 million in new revenue in the 2007-2009 biennium, which is based on projections provided by the Office of Management and Budget. This is an increase of \$23.6 million from the 2005-2007 biennium. The Water Development Trust Fund is projected to bring in \$31.6 milion in new revenue in the 2007-2009 biennium. This is an increase of \$10.9 million from the 2005-2007 biennium budgeted revenues. The Office of Management and Budget reduced the 2007-2009 biennium estimated revenues from the scheduled payments by five percent because the tobacco companies reduced their 2005-2007 payments.

**APPROVAL OF DRAFT
2007-2009 NORTH DAKOTA
WATER DEVELOPMENT REPORT
(SWC Project No. 322)**

In order to maintain the 1999 State Water Management Plan and to meet the requirements of 1999 Senate Bill 2188, the draft 2007-2009 North Dakota Water Development Report was presented for the State Water Commission's consideration. Section 10, Statewide Water Development Program-Legislative Intent, of ch. 535 of the 1999 Legislative Session Laws (Senate Bill 2188) states:

"The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this act are completed."

Section 57-51.1-07.1(2) of the North Dakota Century Code (N.D.C.C.) requires that "every legislative bill appropriating moneys from the Resources Trust Fund, pursuant to subsection one, must be accompanied by a State Water Commission report." Secretary Frink explained that the 2007-2009 North Dakota Water Development Report will satisfy the requirements for funding from the Resources Trust Fund for the 2007-2009 biennium, and 1999 Senate Bill 2188 and 1999 House Bill 1475, codified in N.D.C.C. §§ 61-02-14 and 61-02-26.

It was the recommendation of Secretary Frink that the State Water Commission approve the draft 2007-2009 North Dakota Water Development Report as the official update to the 1999 State Water Management Plan, the formal request for funding from the Resources Trust Fund in the 2007-2009 biennium, and the record of water development needs and funding abilities to meet those needs in the 2007-2009 biennium.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the draft 2007-2009 North Dakota Water Development Report, attached hereto as APPENDIX "E":

- 1) to serve as the State Water Commission's supplement to the 1999 State Water Management Plan;***
- 2) to serve as the State Water Commission's formal request for funding from the Resources Trust Fund in the 2007-2009 biennium; and***
- 3) to serve as the State Water Commission's record of water development needs and funding abilities to meet those needs in the 2007-2009 biennium.***

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

**APPROVAL OF NORTH DAKOTA
NATURAL RESOURCES TRUST
ALLOCATION (\$18,856.33) FOR
FISCAL YEAR 2006
(SWC Project No. 1826)**

spread programs benefiting much of the state. The Dakota Water Resources Act of 2000 changed the name to the North Dakota Natural Resources Trust.

The North Dakota Natural Resources Trust is a program that provides for the preservation, enhancement, restoration, and management of wetlands and associated wildlife habitat in the state. The Natural Resources Trust operates off of the interest from a trust fund that will eventually reach \$13.2 million. Of the \$13.2 million, \$12.0 million is to come from the federal government and \$1.2 million from the State of North Dakota.

In 1993, the Garrison Diversion Conservancy District, the State Water Commission, and the North Dakota Game and Fish Department entered into a memorandum of agreement in which the three entities agreed to share equally the state's commitment in accordance with the terms set out in a February 14, 1991 agreement between the State of North Dakota, the Bureau of Reclamation, and the North Dakota Wetlands Trust. That agreement provides that the state's share shall be based on 0.15 percent of the federal Garrison Diversion Unit (GDU) appropriation. The Fiscal Year 2006 state's commitment is \$56,569.00. The State Water Commission's one-third share is \$18,856.33.

Commissioner Olin disclosed that he currently serves on the North Dakota Natural Resources Trust board of directors, and questioned if a conflict of interest exists relative to this project. Lt. Governor Dalrymple ruled that this disclosure would not be considered as a conflict of interest.

It was the recommendation of Secretary Frink that the State Water Commission approve an allocation of \$18,856.33 for one-third of the state's Fiscal Year 2006 North Dakota Natural Resources Trust contribution, contingent upon an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve an allocation of \$18,856.33 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for one-third of the state's Fiscal Year 2006 contribution to the North Dakota Natural Resources Trust. This action is contingent upon the availability of funds, and an equal contribution by the Garrison Diversion Conservancy District and the North Dakota Game and Fish Department.

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

**PEMBINA COUNTY DRAIN NO. 11
OUTLET IMPROVEMENT RECON-
STRUCTION - APPROVAL OF STATE
COST PARTICIPATION (\$53,599)
(SWC Project No. 1140)**

a rural flood control project to provide for the efficient removal of runoff.

The District will reconstruct approximately one-half mile of the drain upstream of the outlet and in Sections 15 and 10, Tier 163 North, Range 52 West (Pembina Township), which outlets into the Pembina River. The site will be deepened 3 to 19 feet and the bottom widened 21 to 60 feet. The side slopes will be constructed 3:1. Project work includes the installation of culverts, excavation, headwalls, riprap, fabric, gravel, seeding, and utility relocations. The preliminary engineering plans are on file and the District is in the process of submitting an application to drain and a sediment analysis. Drain maintenance funds will be used to fund the project.

The project engineer's cost estimate is \$158,608, of which \$153,141 is determined eligible for state cost participation as a rural flood control project at 35 percent of the eligible costs (\$53,599). Pursuant to the State Water Commission's cost share policy, conditional approval of rural flood control drainage projects is allowed subject to satisfaction of the required drain permit. The request before the State Water Commission is for a 35 percent state cost participation in the amount of \$53,599.

It was the recommendation of Secretary Frink that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$53,599 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Pembina County Drain No. 11 outlet improvement reconstruction project.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve conditional state cost participation as a rural flood control project at 35 percent of the eligible costs, not to exceed an allocation of \$53,599 from the funds

appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for the Pembina County Drain No. 11 outlet improvement reconstruction project. This action is contingent upon the availability of funds, and satisfaction of the required drain permit.

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

**SQUARE BUTTE DAM NO. 6 -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$241,001)
(SWC Project No. 1921)**

The initial purpose of the dam was floodwater retention, but it has been expanded to a multi-purpose dam for flood prevention and recreation. The dam is being constructed in two phases, beginning in 2003 and completed in 2007. The Harmon Lake recreation area is being constructed in five phases, beginning in 2004 and completed by 2008.

The site is located in Morton county along N.D. Highway 1806 approximately 9 miles north of Mandan, ND, and south of County Road 140. The impoundment is located in Sections 13, 14, and 24, Tier 140 North, Range 82 West, and in parts of Sections 18 and 19, Tier 140 North, Range 81 West. The dam and recreation area are located at the lower end of Otter Creek, a major tributary to Square Butte Creek. State Water Commission construction permit No. 1092 and water permit No. 4651 are on file.

The project engineer's revised estimated project cost to include both Square Butte Dam No. 6 and Harmon Lake Recreation Area is \$11,961,976, of which \$7,200,000 is attributable to the cost of the dam and \$4,761,975 is the cost to develop the recreation area. The increased costs are a result of rock excavation and incidental costs. Of the \$7,200,000 required to construct the dam, the local costs are \$2,051,122, of which \$1,482,002 is determined eligible for state cost participation as a flood control dam at 50 percent of the eligible costs (\$741,001). Less the previously approved amount (\$500,000), there is an unfunded balance of \$241,001. A request from the Morton County Water Resource District was presented for the State Water Commission's consideration for additional state cost participation of \$241,001 for construction of the Square Butte Dam No. 6 project.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation as a flood control project at 50 percent of the eligible costs, not to exceed an additional allocation of \$241,001 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for construction of the Square Butte Dam No. 6 project.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve state cost participation as a flood control project at 50 percent of the eligible costs, not to exceed an additional allocation of \$241,001 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), for construction of the Square Butte Dam No. 6 project. This action is contingent upon the availability of funds.

This action increases the total state cost participation to \$741,001 for the Square Butte Dam No. 6 project.

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

**RED RIVER BASIN FLOOD CONTROL
COORDINATOR - APPROVAL OF STATE
COST PARTICIPATION (\$36,000) FROM
JULY 1, 2005 THROUGH JUNE 30, 2007
(SWC Project No. 1705)**

by the Red River Joint Water Resource Board and the expenses are being shared by the Board, the State Water Commission, and the Garrison Diversion Conservancy District.

A request was presented for the State Water Commission's consideration for state cost participation for the Red River Basin Flood Control Coordinator. The position was filled in January, 2003 through the hiring of a private contractor

The Red River basin is subject to severe and repeated flooding, which has a dramatic impact on the lives, health, property, and well-being of its citizens. Success in developing and implementing a comprehensive work plan to reduce these impacts requires that the various political subdivisions in the Red River basin and other interested groups understand the various options and its impacts, and are able to work together on common strategies to reduce flooding. The coordinator is implementing an informational program associated with these efforts.

As in 2003, the annual salary of the Red River Basin Flood Control Coordinator is \$50,000 plus expenses of up to \$10,000. The Red River Basin Joint Water Resource Board has requested the State Water Commission and the Garrison Diversion Conservancy District to each provide 30 percent of the cost of up to \$18,000 (\$15,000 of salary and \$3,000 of expenses) annually. Previous State Water Commission approvals include: \$9,000 approved on December 6, 2002 (\$7,500 of salary and \$1,500 of expenses) from January 1, 2003 through June 30, 2003; \$9,000 approved on June 12, 2003 (\$7,500 of salary and \$1,500 of expenses) from July 1, 2003 through December 31, 2003; and \$18,000 approved on December 5, 2003 (\$15,000 of salary and \$3,000 of expenses) from

January 1, 2004 through December 31, 2004. The Red River Joint Water Resource District request before the State Water Commission is for state cost participation of \$36,000 (\$30,000 of salary and \$6,000 of expenses) from January 1, 2005 through December 31, 2006 for the Red River Basin Flood Control Coordinator.

It was the recommendation of Secretary Frink that the State Water Commission approve a 30 percent state cost participation not to exceed an allocation of \$36,000 (\$30,000 of salary and \$6,000 of expenses) for a two-year period January 1, 2005 through December 31, 2006, from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the Red River Basin Flood Control Coordinator.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve a 30 percent state cost participation not to exceed an allocation of \$36,000 (\$30,000 of salary and \$6,000 of expenses) for a two-year period January 1, 2005 through December 31, 2006, from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the Red River Basin Flood Control Coordinator. This action is contingent upon the availability of funds.

The State Water Commission members questioned allocating funds from January 1, 2005 through June 30, 2005 of the previous biennium (2003-2005) and directed Secretary Frink to consult with the assistant attorney general for clarification prior to the next meeting of the Commission. There was also discussion relating to the State Water Commission's inconsistency of cost share percentages and the calendar year/biennial contractual time periods for similar positions.

It was moved by Commissioner Swenson and seconded by Commissioner Olin to lay the question on the table.

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

Lt. Governor Dalrymple presented this item for the State Water Commission's continued discussion later during this meeting.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission take the question from the table.

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

As a result of the Commission's discussion, Secretary Frink modified the recommendation that the State Water Commission approve a 30 percent state cost participation not to exceed an allocation of \$36,000 (\$30,000 of salary and \$6,000 of expenses) for the period July 1, 2005 through June 30, 2007, from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the Red River Basin Flood Control Coordinator.

A substitute amendment to the original motion was offered by Commissioner Swenson and seconded by Commissioner Hanson that the State Water Commission approve a 30 percent state cost participation not to exceed an allocation of \$36,000 (\$30,000 of salary and \$6,000 of expenses) for the period July 1, 2005 through June 30, 2007, from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021) for the Red River Basin Flood Control Coordinator. This action is contingent upon the availability of funds.

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

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. Commissioner Thompson voted nay. Recorded vote was 7 ayes; 1 nay. Lt. Governor Dalrymple announced the substitute amendment to the original motion carried.

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

Commissioners Berg, Foley, Hanson, Johnson, Olin, Swenson, and Lt. Governor Dalrymple representing Governor Hoeven voted aye. Commissioner Thompson voted nay. Recorded vote was 7 ayes; 1 nay. Lt. Governor Dalrymple announced the original motion, as amended, carried.

**NORTH DAKOTA WATER RESOURCES
RESEARCH INSTITUTE 2007-2008
FELLOWSHIP PROGRAM THROUGH
NDSU - APPROVAL OF STATE COST
PARTICIPATION (\$13,850)
(SWC Project No. 1403)**

State University (NDSU). The WRRI program requires a match of \$2.00 non-federal for each \$1.00 federal. NDSU's match is in monetary and in-kind services.

The WRRI is a program funded annually by a United States Geological Survey (USGS) 104B grant. Annual grants have varied from \$20,000 to \$200,000 with 2007-2008 federal funding at \$92,335. The total program costs for the 2007-2008 academic year are estimated at \$160,000. The \$92,335 federal grant is apportioned for administrative/personnel costs and for individual fellowships.

The fellowships support graduate students working on water resource related topics and are granted on the basis of the relevance of programs to the management of North Dakota water resources and the overall quality of the projects. Research topics have varied broadly including methods for improving municipal water treatment, methods for measuring organic contaminants in water in the field, research on climate change in North Dakota, effects of algae on lake oxygen levels in winter, and many other topics. Two priorities of the WRRI are providing information useful for solving state regulatory and policy problems, and state support and participation.

Anticipating the receipt of a USGS 104B grant in the amount of approximately \$92,335 for the 2007-2008 academic year, the WRRI requested a 15 percent state cost participation of the annual federal allocation (\$13,850). The intent of this request is to replace a portion of NDSU's in-kind services with the proposed cost share amount in order to provide more cash for fellowships.

Although the eligible state cost participation amount is less than \$20,000, Secretary Frink explained that because of the uncertainty of future federal allocations for the program, it is anticipated this will be an annual request for state cost participation. Therefore, the WRRI will be required to submit an annual cost participation request for the State Water Commission's future consideration of support for the program.

It was the recommendation of Secretary Frink that the State Water Commission approve state cost participation, not to exceed an allocation of \$13,850 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the North Dakota Water Resources Research Institute for their 2007-2008 academic year fellowship program administered through the North Dakota State University.

It was moved by Commissioner Hanson and seconded by Commissioner Thompson that the State Water Commission approve state cost participation, not to exceed an allocation of \$13,850 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021), to the North Dakota Water Resources Research Institute for their 2007-2008 academic year fellowship program administered through the North Dakota State University. This action is contingent upon the availability of funds.

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

**GRAND FORKS/EAST GRAND FORKS
FLOOD DAMAGE REDUCTION AND
RECREATION PROJECT REPORT
(SWC Project No. 830)**

Grand Forks Flood Damage Reduction and Recreation project.

In January, 2000, the cities of Grand Forks and East Grand Forks entered into a project cooperation agreement with the U.S. Department of the Army for construction of the Grand Forks/East

In March of 2000, the State Water Commission and the city of Grand Forks entered into an agreement to cost share part of the Grand Forks portion of the total project flood damage reduction costs as defined in the Project Cooperative Agreement, and that no state funds would be used for the recreation costs. Per the agreement, the funds provided by the State Water Commission to Grand Forks are to be used to implement the Grand Forks portion of the flood damage reduction portion of the project.

The agreement, amended through June 30, 2007, formalizes the intent of the state to cost share in 45 percent of the non-federal Grand Forks portion of the project flood damage reduction costs, not to exceed \$52,000,000 authorized in 1999 Senate Bill 2188.

Allen Grasser, Grand Forks city engineer, provided a Grand Forks/East Grand Forks Flood Damage Reduction and Recreation Project progress report. The project features included overland flow diversions, pump stations, earthen levees, and floodwalls. The design flood event for the project was based on the 1997 flows. As the project progressed, Mr. Grasser explained that the city recognized that events larger than the design event are possible in the Red River valley. Because of this risk, the city looked at the consequences of overtopping the levees as designed. The results were dire and included significant, if not total loss of private, city, state, county and federal assets.

The city of Grand Forks analyzed the options and determined it had the potential to fight a flood three feet higher than the base project provided by the Corps of Engineers. The city also identified that the most critical vulnerability to such a fight rests in the floodwalls. Floodwalls cannot be effectively raised during emergency operations. Floodwall design features such as footings, structural integrity and finished height needed to be addressed during construction. Mr. Grasser explained that the end result was the city of Grand Forks directed the floodwalls be extended three additional feet over and above the base project. The Corps did construct the floodwalls three feet higher than the minimum elevation of the earthen embankment as part of the project, although the Corps also determined that the three-foot extension was a project betterment that was not eligible for a federal cost share. The project cost for the three-foot extension was \$3,500,000.

In addition to the floodwalls, the city will spend approximately \$560,000 for stockpiling fill material that could be used to temporarily add three feet to the earthen embankment. Dry fill material is very difficult to find in the valley during a flood, and could be of significant value in the future. It is anticipated that the project will be completed by September, 2007.

In a letter addressed to the State Engineer, dated September 7, 2006, the city of Grand Forks requested clarification of whether the costs for raising the floodwalls three additional feet would be eligible for state cost share. The floodwalls are more vulnerable than earthen embankment during a flood and are very difficult to extend in an emergency. In reviewing the project costs, Secretary Frink stated he is of the opinion that the \$3,500,00 floodwall raise and the stockpile fill are eligible costs for a 45 percent state cost share, and that he has informed the city of Grand Forks of his determination. Secretary Frink stated it is currently estimated that the state's total project cost share will not exceed \$52,000,000 authorized under 1999 Senate Bill 2188.

**SAFE DRINKING WATER ACT -
APPROVAL OF PROJECT
PRIORITY LIST IN FY 2007
INTENDED USE PLAN,
DATED NOVEMBER 16, 2006
(SWC File AS/HEA)**

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

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

Section 1452(b) of the Safe Drinking Water Act requires each state to annually prepare an Intended Use Plan. The plan is to describe how the state intends to use the funds to meet the program objectives and further the goal of protecting public health. A public review period is required prior to submitting the annual plan to the Environmental Protection Agency as part of the capitalization grant application process. The North Dakota Department of Health held public hearings on the draft Intended Use Plan on December 1, 2006; no comments were received.

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

Jeff Hauge, North Dakota Department of Health, presented the Fiscal Year 2007 Intended Use Plan for the North Dakota Drinking Water Revolving Loan Fund, dated November 16, 2006, for the State Water Commission's consideration. The 2007 Intended Use Plan is attached hereto as **APPENDIX "F"**. The comprehensive project priority list includes 90 projects, with a cumulative total project cost of \$258,700,000 for Fiscal Years 1997 through 2007. The fundable list for Fiscal Year 2007 includes 26 projects at a cost of \$52,000,000.

It was the recommendation of Secretary Frink that the State Water Commission approve the project priority list for Fiscal Year 2007 as listed in the Intended Use Plan, dated November 16, 2006, and authorize the Department to administer and disburse Fiscal Years 1997 through 2007 program funds pursuant to the Fiscal Year 2007 Intended Use Plan.

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the project priority list for Fiscal Year 2007 as listed in the Intended Use Plan, dated November 16, 2006; and authorize the North Dakota Department of Health to administer and disburse Fiscal Years 1997 through 2007 program funds pursuant to the Fiscal Year 2007 Intended Use Plan.

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

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

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

Red Trail Energy: The contractor, Northern Improvement Company, completed installation of 12,370 feet of 12-inch PVC pipeline which connects their facilities to the Southwest Pipeline Project's raw water main transmission line. The contractor also installed a 2-3-inch PVC pipeline to connect Red Trail Energy to an existing pipeline to provide potable water service to their office and processing building. Red Trail Energy is using potable water, and operations are anticipated to begin in early December, 2006.

Medora-Beach Regional Service Area, Phase II:

Contract 7-8B - Beach, Golva, and Fryburg Services Areas. The contractor, Abbot, Arne, Schwindt, Inc., completed installation of all pipeline and services on contract 7-8B. Two hundred fifty-nine (259) users have been turned over to the Southwest Water Authority as ready for service. The city of Golva began taking water on November 20, 2006. The substantial completion date for contract 7-8B is July 15, 2007.

Contract 7-8C - Junction Inn Service Area and the Tower Hill and Crown Butte VFD Pocket Areas (Morton County Areas). The contractor, Northern Improvement Company, completed installation of 172 miles of pipeline on contract 7-8C. One hundred fifty-three (153) users have been turned over to the Southwest Water Authority as ready for service. The substantial completion date for contract 7-8C is September 7, 2007.

Contract 7-9A - Beulah Interim Service Area: The contractor, Abbot, Arne, Schwindt, Inc., Moorhead, MN, completed installation of all pipeline and services on contract 7-9A. All users were turned over to the Southwest Water Authority as ready for service the week of November 13, 2006. The city of Zap began taking water on November 15, 2006. All construction, except for miscellaneous cleanup and seedbed work, was completed by the substantial completion date, which was extended to November 22, 2006 due to the late delivery of the pre-fabricated steel vaults for the meters.

Oliver-Mercer-North Dunn Regional Service Area: Public meetings are being planned for this winter in the Oliver-Mercer-North Dunn regional service area to increase awareness of and interest for the Southwest Pipeline Project.

**SOUTHWEST PIPELINE PROJECT -
APPROVAL OF CAPITAL REPAYMENT
RATES, AND REPLACEMENT AND
EXTRAORDINARY MAINTENANCE
RATE FOR 2007
(SWC Project No. 1736)**

year. The budget is deemed approved unless the Secretary of the Commission notifies the Authority of his disapproval by February 15. The Southwest Water Authority submitted its budget on November 26, 2006.

Under the Agreement for the Transfer of Management, Operations, and Maintenance Responsibilities for the Southwest Pipeline Project, the Southwest Water Authority is required to submit a budget to the Secretary of the State Water Commission by December 15 of each

On October 19, 1998, the State Water Commission approved an amendment to the Transfer of Operations Agreement, which changed the Consumer Price Index date used for calculating the project's capital repayment rates from January 1 to September 1. This amendment was necessary to bring the Transfer of Operations into line with the water service contracts and to streamline the budget process.

The contract specifies that the water rates for capital repayment be adjusted annually based on the Consumer Price Index. The State Water Commission has the responsibility of adjusting the capital repayment rates annually.

The rate for replacement and extraordinary maintenance was approved by the State Water Commission at its February 9, 1999 meeting at \$0.35 per thousand gallons. The original rate of \$0.30 per thousand gallons was approved in 1991. The rate of \$0.35 per thousand gallons is satisfactory and, therefore, no change was recommended at this time.

At the June 22, 2005 meeting, the State Water Commission approved the 2005 capital repayment rate for rural users in Morton county receiving water through the Missouri West water system transmission pipelines at \$22.00 per month. Applying the Consumer Price Index adjustment to this figure results in a 2007 rate for these users of \$23.67 per month.

The following projected capital repayment rates, and the replacement and extraordinary maintenance rate for 2007 for the Southwest Pipeline Project were presented for the State Water Commission's consideration:

Contract users	\$ 0.98 per thousand gallons
Rural users	\$29.90 per month
Morton county users receiving water through Missouri West water system	\$23.67 per month
Replacement and Extraordinary Maintenance	\$ 0.35 per thousand gallons

It was the recommendation of Secretary Frink that the State Water Commission approve the projected capital repayment rates for 2007 for the Southwest Pipeline Project of \$0.98 per thousand gallons for contract users; \$29.90 per month for rural users; \$23.67 per month for Morton County users receiving water through the Missouri West water system; and a rate for replacement and extraordinary maintenance of \$0.35 per thousand gallons.

It was moved by Commissioner Johnson and seconded by Commissioner Swenson that the State Water Commission approve the following capital repayment rates, and the replacement and extraordinary maintenance rate for 2007 for the Southwest Pipeline Project:

- 1) ***Contract users*** ***\$ 0.98 per thousand gallons***
- 2) ***Rural users*** ***\$29.90 per month***
- 3) ***Morton county users
receiving water through
Missouri West water system*** ***\$23.67 per month***
- 4) ***Replacement and
extraordinary maintenance*** ***\$ 0.35 per thousand gallons***

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

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

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

NAWS Lawsuit: On February 3, 2005, Judge Rosemary M. Collyer issued her ruling on the NAWS lawsuit requiring additional environmental evaluations. A detailed review by attorneys in the Department of Justice and the State of North Dakota indicated that Judge Collyer wanted detailed environmental evaluations that are typically included in an environmental impact statement (EIS).

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

Treatment Construction Cost Estimates: Estimated costs for three levels of treatment options at Max, ND, combined with the earlier estimates for improvements at the Minot treatment plant, were presented. These costs include engineering, construction, and construction services and administration. The estimates did not review operation and maintenance costs. The Bureau of Reclamation will develop their cost estimates to include in the EIS, which will also examine the risks for transferring biota after various levels of treatment, and make a federal determination of the level of treatment required.

The lowest level of treatment is chlorine addition and chloramines. This was the option chosen in the environmental assessment and in the FONSI in 2001. All options considered in the Red River Valley Water Supply project are at higher levels of treatment. The treatment construction cost is approximately \$30 million. This option includes chlorine and chloramines treatment at Max; softening and filtration improvements; UV treatment at Minot; and construction of the high service pump station at Minot.

The next level of treatment is flocculation, sedimentation, UV, chlorine and chloramines. This option is currently being pilot plant tested at the Snake Creek pumping plant. The treatment construction cost is \$43 million. This includes flocculation and sedimentation chambers, UV, and chloramines treatment at Max; softening and filtration improvements at Minot; and construction of the high service pump station.

The next level of treatment includes filtration. The Manitoba proposal of dissolved air floatation filtration has comparable costs to the conventional treatment. The treatment construction cost is approximately \$75 million. This includes dissolved

air floatation filtration; UV; chlorine, and chloramines treatment at Max; softening and filtration improvements at Minot; and construction of the high service pump station.

Environmental Impact Statement: The Bureau of Reclamation published a notice of intent in the Federal Register on March 6, 2006 to initiate scoping for an EIS on the NAWS project. The initial public scoping on the NAWS project was completed in May, 2006. The Bureau held the first meeting of the cooperating agencies team on August 22, 2006 to review comments received in the public scoping meetings. The Commission staff is providing technical information for the EIS as requested by the Bureau. The draft EIS is anticipated in the spring of 2007.

Interim Financing Agreement Amendment: The city of Minot and the Commission staff are negotiating an amendment to the Interim Financing Agreement, which would include a cost split for the construction of the high service pump station, which will serve both the city and the NAWS project. The proposal being reviewed with Minot proposes to fully fund 16 percent of the project and cost share 35 percent of the remaining portion; the Commission staff had earlier proposed Minot fully funding 18 percent of the project and cost share 35 percent of the remaining portion.

North Prairie Rural Water District and North Central Rural Water Consortium: The North Prairie Rural Water District and the North Central Rural Water Consortium have provided letters of support for the NAWS project between Minot and the community of Berthold. Both water entities have initiated applications with the Rural Development and the State Revolving Fund to fund the rural water connections to the NAWS main transmission line. Sharing of design information and discussions relating to how the systems will connect and contract for water service are underway.

New Contracts: The NAWS project plans to bid the following contracts in 2007:

Contract 2-2A: This contract will include approximately 4 miles of 36" - 24" pipe and associated facilities within the city of Minot, which includes pipeline from the high service pump station west to the U.S. Highway 83 bypass, south to U.S. Highway 52, and to North Hill. The design for this project is covered under Specific Authorization 14A.

Contract 4-2A: This contract includes the Minot high service pump station, which will be bid in the fall of 2007. The design work is being covered by Specific Authorization 17.

Contract 2-2B: This contract will include approximately 21 miles of 14" - 8" pipe between Minot at U.S. Highway 52 and the city of Berthold. The design work is being covered by Specific Authorization 41.

Contract 4-2B and 5-2B: This contract is one contract for two 500,000 gallon reservoirs and two pump stations along contract 2-2B between Minot and Berthold. The design work is being covered by Specific Authorization 41.

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

Devils Lake is currently at an elevation of 1446.95 feet msl. At its current elevation, Devils Lake has a surface area of 123,800 acres and storage of 2.42 million acre-feet of water. This is the lowest elevation of Devils Lake since April 1, 2004.

The current elevation of Stump Lake is 1444.27 feet msl. At this elevation, Stump Lake has a surface area of 13,960 acres and is storing 456,000 acre-feet of water. The gage on the Jerusalem channel was read at 34 cubic feet per second (cfs).

The combined volume of Devils Lake and Stump Lake is 2.88 million acre-feet, which is a decrease of 11,700 acre-feet since last year. The combined volume of the lakes has decreased approximately 245,000 acre-feet since May 9, 2006 when Devils Lake was at its record elevation of 1449.2 feet msl. During this time period (through November 16, 2006), 79,519 acre-feet have flowed into Stump Lake and 16,242 acre-feet of gaged flow have entered Devils Lake, resulting in 233,582 acre-feet of volume lost to evaporation, or about 70 percent of total volume loss. This does not take into account direct precipitation or ungaged inflows into the lake.

According to the Jerusalem channel gage, approximately 138,000 acre-feet of water have flowed from Devils Lake into Stump Lake since 2005. There is approximately 39,000 acre-feet of storage available in Stump Lake between the current elevation and 1447.0 feet msl. Given the current flow rate in the Jerusalem channel (34 cfs) and typical flows that occur in the winter months, the lakes will likely equalize next year. The timing and elevation of equalization will largely depend on fall precipitation, soil moisture conditions at the time of freeze-up, snowfall accumulation, and timing of snowmelt next spring.

The National Weather Service issued hydrologic projections for Devils Lake and Stump Lake on October 24, 2006. The following table provides the exceedance probabilities for each lake (figures are in feet msl) and are valid through February 5, 2007:

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake	1447.0	1447.1	1447.1
Stump Lake	1444.6	1444.7	1444.9

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

construction time line with construction commencing in the fall of 2002. Operation of the outlet began on August 15, 2005, within the guidelines of the North Dakota Pollutant Discharge Elimination System (NDPDES) water quality discharge permit issued by the North Dakota Department of Health.

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

The North Dakota Department of Health authorized modifications to the North Dakota Pollutant Discharge Elimination System water quality discharge permit that would allow a more effective operation of the outlet. The modifications would: 1) allow pumping beyond the original May 1 to November 1 constraint as long as ice-free conditions exist on the Sheyenne River; 2) remove the total suspended solids limit; and 3) adjust the current 300 mg/L instream sulfate level that would allow the outlet to be operated if the instream sulfate level is greater than 260 mg/L as long as the sulfate levels in the Sheyenne River were not increased more than 15 percent up to a maximum level of 450 mg/L.

On September 14, 2006, the People to Save the Sheyenne River, Inc., the Peterson Coulee Outlet Association, the Government of the Province of Manitoba, and the National Wildlife Federation filed an appeal to challenge the North Dakota Department of Health's modifications to the water quality discharge permit. The Appellants arguments include: 1) that the North Dakota Department of Health failed to demonstrate adequate causes for the permit modifications, or there was new information available now that was not available at the time the permit was issued on August 22, 2003; and 2) that the North Dakota Department of Health failed to conduct an anti-degradation review.

State Water Commission staff activities included the removal of the intake and winterization of the outlet in November, 2006.

**APPROVAL OF EXTENSION OF
DEVILS LAKE OUTLET AWARENESS
PROJECT MANAGER CONTRACT
FROM JANUARY 1, 2007 THROUGH
JUNE 30, 2007
(SWC Project No. 416-05)**

awareness project manager, which is occupied by Joe Belford. The state has completed construction and operates a permanent emergency outlet on the west end of Devils Lake. Secretary Frink expressed the importance to continue to provide factual information to all downstream interests in North Dakota, Minnesota and Manitoba. The downstream education efforts provide a critical mechanism to dispense information and for people downstream to communicate their concerns.

A request from the Devils Lake Joint Water Resource Board was presented for the State Water Commission's consideration to continue funding for the Devils Lake outlet awareness project manager from January 1, 2007 through June 30, 2007, with a 33 percent state cost participation (\$7,500). All other parties to the previous agreement have indicated their intentions to continue this effort.

It was the recommendation of Secretary Frink that the State Water Commission approve a contract extension from January 1, 2007 through June 30, 2007 for the Devils Lake outlet awareness project manager, with a 33 percent state cost participation, not to exceed an allocation of \$7,500 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was moved by Commissioner Johnson and seconded by Commissioner Foley that the State Water Commission approve a contract extension from January 1, 2007 through June 30, 2007 for the Devils Lake outlet awareness project manager, with a 33 percent state cost participation, not to exceed an allocation of \$7,500 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). This action is contingent upon the availability of funds.

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

**APPROVAL OF EXTENSION OF
DEVILS LAKE BASIN MANAGER
CONTRACT FROM JANUARY 1, 2007
THROUGH JUNE 30, 2007
(SWC Project No. 416-01)**

position and an office has been maintained in the Ramsey county courthouse. The Joint Board formally requested continued state cost participation.

The state cost participation arrangement would remain at 40 percent provided by the State Water Commission for six months, not to exceed \$13,000. The Commission would pay the Joint Board for the actual expenses based on quarterly expense reports approved by the Commission. The remaining funds would be provided by the Devils Lake Basin Joint Board.

It was the recommendation of Secretary Frink that the State Water Commission approve a contract extension from January 1, 2007 through June 30, 2007 for the Devils Lake basin manager, with a 40 percent state cost participation, not to exceed an allocation of \$13,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021).

It was moved by Commissioner Berg and seconded by Commissioner Olin that the State Water Commission approve a contract extension from January 1, 2007 through June 30, 2007 for the Devils Lake basin manager, with a 40 percent state cost participation, not to exceed an allocation of \$13,000 from the funds appropriated to the State Water Commission in the 2005-2007 biennium (H.B. 1021). This action is contingent upon the availability of funds.

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

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

Dakota and possible options for meeting those needs. The Act identified two project-related studies which need to be completed: the *Report on Red River Valley Water Needs and Options*, and the *Red River Valley Water Supply Project Environmental Impact Statement (EIS)*. The Bureau of Reclamation has completed the *Report on Red*

Since 1998, the State Water Commission has participated with the Devils Lake Joint Water Resource Board in cost sharing for a full-time Devils Lake basin manager and an office for the board. Michael J. Connor occupies that

The state cost participation arrangement

It was the recommendation of Secretary

Frink that the State Water Commission approve a contract extension from January 1,

2007 through June 30, 2007 for the Devils Lake basin manager, with a 40 percent state

cost participation, not to exceed an allocation of \$13,000 from the funds appropriated to

the State Water Commission in the 2005-2007 biennium (H.B. 1021).

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

River Valley Water Needs and Options. The State of North Dakota and the Bureau are jointly preparing the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The draft EIS was released in December, 2005, and public hearings were held in February and March, 2006. The comment period will remain open while further analysis is done on issues that have been raised in the comments received to date. The scheduled completion for the final EIS is May, 2007. A supplemental draft EIS is being developed and is scheduled for release on January 29, 2007, with an ensuing 45-day comment period. Additional study efforts currently being completed are: biota plant failure analysis by the United States Geological Survey (USGS); water quality monitoring by the USGS; impact analysis of Missouri River depletions under drought conditions by the Corps of Engineers; and, a cumulative impact analysis of ground-water depletions in Minnesota by the USGS.

The status report provided by the Garrison Diversion Conservancy District relating to the specific efforts of the Red River Valley Water Supply project and studies is attached hereto as **APPENDIX "G"**.

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

Drought conditions persist in the Missouri River basin. On November 17, 2006, system storage in the six mainstem reservoirs was 34.7 million acre-feet (MAF), 19.4 MAF below the average system storage for the end of November and 1.7 MAF less than in 2005. This is a record low system storage for the end of November. The previous minimum system storage at the end of November was 34.8 MAF in January, 2005. Lake Sakakawea was at an elevation of 1809.4 feet msl, 4.4 feet lower than in 2005 and 27.3 feet msl below its average November elevation. The previous minimum average November elevation was 1812.7 feet msl in 2004. The mountain snow pack water content on November 15, 2006 was nearly normal, although it is still very early in the snow season.

The Corps of Engineers is predicting runoff above Sioux City for 2006 to be 18.2 MAF, 72 percent of normal. This resulted in a forecast that the system will have 34.4 MAF at the end of 2006, the previous minimum end of year system storage was 35.2 MAF in 2004. Lake Sakakawea is forecasted to fall to 1809.3 feet msl by the end of 2006 and 1807.0 feet msl by the end of February, 2007. The previous minimum end of February elevation for Lake Sakakawea was 1808.2 in 2004.

Navigation ended at St. Louis on October 17, 2006, a 44-day shortening of the navigation season. Releases from Gavins Point Dam were reduced in early October because of the navigation season shortening. Releases from Gavins Point Dam averaged 14,600 cfs in October, 2006 and 11,700 cfs in November, 2006.

The elevation of Lake Oahe was at an elevation of 1573.0 feet msl on November 17, 2006, which is 1.8 feet lower than a year ago and 26.6 feet lower than its average November elevation. The Corps of Engineers is estimating that Lake Oahe will rise to 1574.3 feet msl by the end of 2006.

Fort Peck Lake was at an elevation of 2202.0 feet msl by November 17, 2006, which is 0.7 feet lower than a year ago but 29.3 feet below its average November elevation. The forecast calls for Lake Peck Lake to fall to 2199.5 feet msl by the end of 2006.

The Corps of Engineers lowered Lake Audubon by two feet to elevation 1843 feet msl because of the concerns of the head differential across the Snake Creek embankment. The embankment is currently stable with no signs of distress or movement, but adverse seepage conditions can develop with high head differentials. Instrumentation installed in 2006 along the Lake Sakakawea water line indicates that high under seepage uplift pressures exist in the foundation of the embankment. Relief wells on the Lake Sakakawea side of the embankment are intended to relieve the under seepage uplift pressure. The relief wells are 50 years old and are currently 25 feet under water so their functionality is questionable. The performance history of the embankment has been adequate with differentials up to 36.5 feet, therefore, the Corps of Engineers would like to keep the head differential at or below 36.5 feet. The Corps intends to monitor the embankment throughout the winter, install additional instrumentation near the critical relief wells on the Lake Sakakawea side of the embankment, and determine the feasibility of long-term measures to address the adverse condition.

Ken Royse, Missouri River Joint Water Board, presented the 2006 annual report, and discussed the action plan to address issues. The annual report summary is attached hereto as **APPENDIX "H"**.

**DRAFT NORTH DAKOTA SOVEREIGN
LAND MANAGEMENT PLAN
(SWC Project No. 1625)**

On January 3, 2005, the North Dakota Office of Attorney General responded to a request from Burleigh county regarding the ability of land developers to construct wildlife habitat on sovereign lands for mitigation requirements. Attorney General's Opinion 2005-L-01 states, in part, "The state may allow land developers to construct wildlife habitat on the Missouri River sandbars to satisfy federal mitigation requirements provided the state permit is issued under a comprehensive river management plan."

In response to the request and in discussions with the North Dakota Office of Attorney General staff, it was determined to be in the best interest of the state to pursue the development of a comprehensive state-

wide sovereign land management plan as no such plan currently exists. North Dakota's sovereign land, under the authority of the North Dakota State Engineer and subject to regulation, are those lands including the beds and islands lying within the ordinary high watermark of navigable lakes and streams.

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

Through a cooperative effort between the Office of the State Engineer and nine state agencies, a draft North Dakota Sovereign Land Management Plan was developed and released for public review and comment in September, 2006. To provide information about the draft plan to the general public and any other interested parties, and to encourage their involvement in the planning process, a series of public meetings were held in September and October, 2006 across the state. Written comments submitted to the Office of the State Engineer and comments provided at the public meetings were collected, organized, and considered in the development of the most recent final draft of the plan.

The draft plan includes recommendations and action strategies, some of which will require legislative action during the 2007 legislative assembly. As a result of staff's review of the comments, and the State Water Commission's work session held on December 6, 2006, additional changes were made to the draft plan. It is anticipated that the plan will be finalized in late December, 2006.

On November 14, 2006, the State Water Commission passed a motion to support the Office of the State Engineer's legislation related to sovereign land management. The legislation that will be considered during the 2007 legislative assembly relates to an amendment and reenactment of section 61-03-21.3 of the North Dakota Century Code, which deals with removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable lakes. The statute will be amended so that it is applicable to all navigable waters and not just lakes. The bill will also create a new section to chapter 61-33 to establish penalties for violations of sovereign land-related rules and regulations.

**DROUGHT DISASTER LIVESTOCK
WATER SUPPLY PROJECT
ASSISTANCE PROGRAM REPORT
(SWC Project No. 1851)**

the State Water Commission that provides financial assistance to existing livestock producers with water supply problems caused by drought. North Dakota Administrative Code Article 89-11 was adopted by the Commission on June 24, 1991 for management of this program.

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

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

On June 28, 2006, Governor Hoeven issued North Dakota Drought Emergency Proclamation, Executive Order 2006-05, which indicated a drought emergency existed in south central and southwestern North Dakota. Governor Hoeven subsequently issued Executive Order 2006-05.1 on July 12, 2006 to include all counties within North Dakota.

Pursuant to Executive Orders 2006-05 and 2006-05.1, the State Water Commission reinstated the Drought Disaster Livestock Water Supply Project Assistance program on June 28, 2006. The Commission allocated \$200,000 for the program on June 28, 2006, \$200,000 on July 20, 2006, and \$250,000

on October 12, 2006, for a total state contribution of \$650,000 since program reinstatement on June 28, 2006. The Commission also approved proposed amendments to the North Dakota Administrative Code Article 89-11, Drought Disaster Livestock Water Supply Project Assistance program, chapter 89-11, on July 20, 2006.

On July 20, 2006, the State Water Commission directed the State Engineer to consult with the Office of Attorney General for a legal interpretation of North Dakota Century Code, chapter 61-34, whether an applicant can apply for multiple projects and be considered for cost participation up to \$3,500 for each water supply project. Contingent upon legal satisfaction from the Office of Attorney General staff, the State Water Commission passed a motion on July 20, 2006 that the Commission shall allow an applicant to apply for a maximum of three water supply projects, and the applicant shall be considered for a 50 percent state cost participation, not to exceed \$3,500, for each water supply project. Following a review of the applicable laws and administrative rules, it was the legal opinion that the State Water Commission has the flexibility to approve multiple projects for individual applicants.

The drought conditions continue to persist over a large portion of the state, and a demonstrated need for assistance in developing livestock water supplies still exists. As of late November, 2006, approximately 500 applications were approved, with about \$311,000 reimbursed for completed projects, at an average reimbursement of \$2,750 per producer. Of the \$650,000 allocated for the program, approximately \$340,000 remains available for reimbursement to producers. Applicants who were unable to complete their projects in 2006 will be contacted to determine if they still require assistance, and a project assessment will then be determined.

There being no further business to come before the State Water Commission, Lt. Governor Dalrymple adjourned the meeting at 11:30 AM.



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

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