

North Dakota State Water Commission

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**Meeting To Be Held At
Best Western Ramkota Hotel - Lamborn Room
Bismarck, North Dakota**

**December 10, 2010
9:00 A.M., CST**

AGENDA

- A. Roll Call
- B. Consideration of Agenda *Information pertaining to the agenda items is available on the State Water Commission's website at <http://www.swc.nd.gov> (select 'News and Information')*
- C. **Consideration of Draft Minutes of October 26, 2010 SWC Meeting** **
- D. State Water Commission Financial Updates:
 - 1) Agency Program Budget Expenditures
 - 2) 2009-2011 Biennium Resources Trust Fund and Water Development Trust Fund Revenues
- E. **Draft 2011-2013 North Dakota Water Development Report, Supplement to 2009 State Water Management Plan** **
- F. Consideration of Following Requests for Cost Share:
 - 1) **North Dakota Water Resources Research Institute** **
 - 2) **McClusky Canal 7.5 Mile Marker Irrigation Project** **
 - 3) **Pembina County Drain No. 64 Outlet Reconstruction** **
 - 4) **Square Butte Dam No. 5 Emergency Action Plan** **
 - 5) **Upper Maple River Dam** **
 - 6) **Wild Rice River Snag and Clear - Richland County** **
 - 7) **Wild Rice River Snag and Clear - Cass County** **
 - 8) **Sheyenne River Snag and Clear - Cass County** **
- G. Fargo Moorhead Metropolitan Feasibility Study Update
- H. **State Grants for Water Supply Projects:**
 - 1) **City of Valley City Waste Water Lagoon Addition, and Additional Cost Share for Water Treatment Plant** **
 - 2) **West Area Water Supply Project** **
 - 3) **Trail Rural Water District, Phase III** **

AGENDA - Page 2

- I. Devils Lake:
 - 1) Hydrologic Report
 - 2) Devils Lake Outlet:
 - 1) Project Report
 - 2) **Engineering Services for East End Outlet** **
 - 3) **Sheyenne River Crossings - Eddy County** **

- J. Southwest Pipeline Project:
 - 1) Project Update
 - 2) **Capital Repayment and REM Rates for 2011** **
 - 3) **REM Expenditure - Phase I, Replacement of Card Rack for Telemetry Units** **

- K. Northwest Area Water Supply Project:
 - 1) Project Update
 - 2) **Contract 2-3A - Minot Air Force Base** **
 - 3) **Contract 2-3B - Glenburn/Upper Souris** **

- L. Garrison Diversion Conservancy District

- M. Missouri River Report

- N. State Water Commission/State Engineer Strategic Plan for 2011-2013 Biennium

- O. **Proposed Legislation for 2011 Session:** **
 - 1) **Bill Draft Relating to Definitions and Informational and Adjudicative Hearings on a Water Permit Application**
 - 2) **Bill Draft Relating to State Engineer's Authority to Execute Contracts on Behalf of the State Water Commission**

- P. Other Business:

- Q. Adjournment

**** BOLD, ITALICIZED ITEMS REQUIRE SWC ACTION**

To provide telephone accessibility to the State Water Commission meeting for those people who are deaf, hard of hearing, deaf and/or blind, and speech disabled, please contact Relay North Dakota, and reference ... TTY-Relay ND ... 1-800-366-6888, or 711.

MINUTES

North Dakota State Water Commission Bismarck, North Dakota

December 10, 2010

Governor John Hoeven was elected to the United States Senate In November, 2010; on December 7, 2010, he resigned as Governor of North Dakota. Jack Dalrymple, serving as Lieutenant Governor during the Hoeven administration, was sworn in as the 32nd Governor of North Dakota on December 7, 2010.

*On December 8, 2010, the State Water Commission presented Resolution No. 2010-12-524 to Governor John Hoeven expressing gratitude and appreciation for his admirable service to the people of the Great State of North Dakota as Governor and Chairman of the State Water Commission. **SEE APPENDIX "A"***

The North Dakota State Water Commission held a meeting at the Best Western Ramkota Hotel, Bismarck, North Dakota, on December 10, 2010. Governor Jack Dalrymple, Chairman, called the meeting to order at 9:00 A.M., and requested Todd Sando, State Engineer, and Chief Engineer-Secretary to the State Water Commission, to call the roll. Governor Dalrymple announced a quorum was present.

STATE WATER COMMISSION MEMBERS PRESENT:

Governor Jack Dalrymple, Chairman
Doug Goehring, Commissioner, North Dakota Department of Agriculture, Bismarck
Arne Berg, Member from Devils Lake
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
Douglas Vosper, Member from Neche

OTHERS PRESENT:

Todd Sando, 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.

CONSIDERATION OF AGENDA

There being no additional items for the agenda, Governor Dalrymple announced the agenda approved as presented.

CONSIDERATION OF DRAFT MINUTES OF OCTOBER 26, 2010 STATE WATER COMMISSION MEETING - APPROVED

The draft minutes of the October 26, 2010 State Water Commission meeting were approved, as amended, with the following changes noted: page 25, paragraph 1, "The increase in elevation from October 6, ~~2010~~ 2009 for Devils Lake was 1.34 feet and for Stump Lake 1.22 feet." Page 12, paragraph 4, "Due to inclement weather and the inability of representatives from Ramsey Eddy County to attend this meeting"

It was moved by Commissioner Foley, seconded by Commissioner Hanson, and unanimously carried, that the draft minutes of the October 26, 2010 State Water Commission meeting be approved, as amended.

STATE WATER COMMISSION BUDGET EXPENDITURES, 2009-2011 BIENNIUM

In the 2009-2011 biennium, the State Water Commission has two line items - administrative and support services, and water and atmospheric resources expenditures. The allocated program expenditures for the period ending October 31, 2010, reflecting 67 percent of the 2009-2011 biennium, were presented and discussed by David Laschkewitsch, State Water Commission accounting manager. The expenditures, in total, are within the authorized budget amounts. **SEE APPENDIX "B"**

The Contract Fund spreadsheet, attached hereto as **APPENDIX "C"**, provides information on the committed and uncommitted funds from the Resources Trust Fund, the Water Development Trust Fund, and the general fund project dollars. The total amount allocated for projects is \$195,839,943, leaving a balance of \$1,987,456 available to commit to projects.

**RESOURCES TRUST FUND
AND WATER DEVELOPMENT
TRUST FUND REVENUES,
2009-2011 BIENNIUM**

Oil extraction tax deposits into the Resources Trust Fund total \$79,544,847 and are currently \$15,950,340, or 25.1 percent above budgeted revenues.

Deposits into the Water Development Trust Fund (tobacco settlement) total \$9,367,589 in the 2009-2011 biennium and are currently \$505,679, or 5.1 percent below the budgeted revenues. The next scheduled payment into the Water Development Trust Fund is in April, 2011.

**APPROVAL OF DRAFT 2011-2013
NORTH DAKOTA WATER DEVELOPMENT
REPORT, AN UPDATE TO THE 2009
STATE WATER MANAGEMENT PLAN
(SWC Project No. 322)**

In order to update the 2009 State Water Management Plan and to meet the requirements of 1999 Senate Bill 2188, the draft 2011-2013 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 Sando explained that the draft 2011-2013 North Dakota Water Development Report will serve as an update to the 2009 State Water Management Plan, and satisfy the requirements for funding from the Resources Trust Fund for the 2011-2013 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 Sando that the State Water Commission approve the draft 2011-2013 North Dakota Water Development Report as an update to the 2009 State Water Management Plan, the formal request for funding from the Resources Trust Fund in the 2011-2013 biennium, and the record of water development needs and funding abilities to meet those needs in the 2011-2013 biennium.

It was moved by Commissioner Berg and seconded by Commissioner Swenson that the State Water Commission approve the draft 2011-2013 North Dakota Water Development Report:

- 1) to serve as the State Water Commission's update to the 2009 State Water Management Plan;***
- 2) to serve as the State Water Commission's formal request for funding from the Resources Trust Fund in the 2011-2013 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 2011-2013 biennium.***

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

***NORTH DAKOTA WATER RESOURCES
RESEARCH INSTITUTE 2011-2012
FELLOWSHIP PROGRAM THROUGH
NDSU - APPROVAL OF STATE COST
PARTICIPATION (\$13,850)
(SWC Project No. 1403)***

A request from the North Dakota Water Resources Research Institute (WRRI) was presented for the State Water Commission's consideration for state cost participation of their 2011-2012 academic year fellowship program administered through the North Dakota

State University (NDSU). The WRRI program requires a match of \$2 non-federal for each \$1 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 2010-2011 federal funding at \$92,335. The total program costs for the 2011-2012 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 changes in North Dakota, winter effects of algae on lake oxygen levels, 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 2011-2012 academic year, the WRRRI 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 Sando 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 WRRRI 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 Sando 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 2009-2011 biennium (H.B. 1020), to the North Dakota Water Resources Research Institute for their 2011-2012 academic year fellowship program administered through the North Dakota State University.

It was moved by Commissioner Thompson and seconded by Commissioner Berg 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 2009-2011 biennium (H.B. 1020), to the North Dakota Water Resources Research Institute for their 2011-2012 academic year fellowship program administered through the North Dakota State University. This action is contingent upon the availability of funds.

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

**McCLUSKY CANAL MILE MARKER
7.5 2010 IRRIGATION PROJECT -
APPROVAL OF REVISED PROJECT
(SWC Project No. 1968)**

ota Water Resources Act of 2000 authorizes approximately 24,000 acres of irrigation along the canal.

The McClusky Canal is a 74-mile long canal designed to transport 1,950 cubic feet of water per second for the irrigation of 250,000 acres and provide water for municipal and rural systems. The Dak-

The Garrison Diversion Conservancy District determined interest in an irrigation project and selected a 7,020-acre project located north of the McClusky canal near mile marker 7.5 as the preferred project, at an

estimated total project cost of \$16,857,560. The project was originally developed assuming three phases based on proximity to the canal and the need to construct new power facilities. The original Phase 1 project was one block of land located close to the canal irrigating approximately 2,210 acres.

The total cost of Phase 1 of the project to serve approximately 2,210 acres was estimated at \$4,666,289, of which \$2,621,862 (off-farm costs) was determined eligible for state cost participation. On June 1, 2010, the State Water Commission approved a 50 percent state cost participation not to exceed an allocation of \$1,310,931 from the funds appropriated to the State Water Commission in the 2009-2010 biennium (H.B. 1020) to complete Phase 1.

On September 15, 2010, the Garrison Diversion Conservancy District submitted correspondence that included revisions to the project that have occurred as a result of landowner negotiations, power supply availability, and the final design. Because the landowner interest is different than expected, and the existing available power is larger than expected, Phase 1 of the project has been revised, and now combines portions of Phases 1 and 2. Phase 1 has been configured up to 2,925 acres and has been sized to deliver water to 75 percent of the available acres at one time, or 2,193 acres.

These revisions have resulted in a new eligible cost estimate of \$2,621,708 (off farm costs) to irrigate 2,925 acres of the planned 7,020 acres, and is determined eligible for 50 percent cost share assistance in the amount of \$1,310,854. The approved cost share amount of June 1, 2010 was \$1,310,931, an amount of \$77 over the updated estimated cost share need. A request from the Garrison Diversion Conservancy District was presented for the State Water Commission's consideration for approval for the revised project as presented.

It was the recommendation of Secretary Sando that the State Water Commission approve the cost share approval of June 1, 2010 for the McClusky Canal Mile Marker 7.5 Irrigation project in the amount of \$1,310,931 for the project described at that time to the project in its revised format as presented.

It was moved by Commissioner Foley and seconded by Commissioner Olin that the State Water Commission approve the cost share approval of June 1, 2010 for the McClusky Canal Mile Marker 7.5 Irrigation project in the amount of \$1,310,931 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the project described at that time to the project in its revised format presented on December 10, 2010. This action is contingent upon the availability of funds.

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

**PEMBINA COUNTY DRAIN NO. 64
OUTLET 2010 IMPROVEMENT
RECONSTRUCTION - APPROVAL OF
STATE COST PARTICIPATION (\$41,480)
(SWC Project No. 1164)**

A request from the Pembina County Water Resource District was presented for the State Water Commission's consideration for state cost participation for their project to reconstruct approximately 375 feet of Drain No. 64 to

include the outlet. The Pembina County Drain No. 64 outlet is located in Section 1, Township 161 North, Range 51 West (Belford Township) outletting the drain's collection of runoff into the Red River. This portion of the drain is in need of an improvement reconstruction to adequately convey and outlet Drain 64. State Drain Permit No. 3634 and the United States Army Corps of Engineers permit for construction have been granted.

The outlet structure currently includes a series of concrete slabs approximately 320 feet long, and the current bottom width is 8 feet with 3:1 side slopes. The concrete drop structure will be removed, and a rock chute will be installed. The improvements consist of widening the bottom by 2 feet to 10 feet for a length of approximately 375 feet and deepening the channel from less than 2 feet to a depth of 2 feet. Rock riprap will be installed to a depth of 2 feet across the 10-foot bottom, rock will also extend a vertical distance of 3.6 feet up the side of the slopes.

The project engineer's cost estimate is \$92,178, of which all is determined eligible for state cost participation as a rural flood control project at 45 percent of the eligible costs (\$41,480). The local share will be financed through special assessment funds. The request before the State Water Commission is for a 45 percent state cost participation in the amount of \$41,480.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation as a rural flood control project at 45 percent of the eligible costs, not to exceed an allocation of \$41,480 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the Pembina County Drain No. 64 outlet 2010 improvement reconstruction project.

It was moved by Commissioner Olin and seconded by Commissioner Swenson that the State Water Commission approve state cost participation as a rural flood control project at 45 percent of the eligible costs not to exceed an allocation of \$41,480 from the funds

appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the Pembina County Drain No. 64 outlet 2010 improvement reconstruction project. This action is contingent upon the availability of funds.

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

**2010 SQUARE BUTTE DAM NO. 5
EMERGENCY ACTION PLAN (EAP) -
APPROVAL OF STATE COST
PARTICIPATION (\$24,000)
(SWC Project No. 846)**

A request from the Morton County and Oliver County Water Resource Districts was presented for the State Water Commission's consideration for state cost participation for the development of an emergency action plan (EAP) for

Square Butte Dam No. 5. The dam is located in Morton County in Section 11, Township 141 North, Range 83 West. The drainage basin is the Missouri River with a total drainage area of 30.4 square miles. The dam has a length of 1,770 feet, a top width of 20 feet, a maximum height of 65 feet, and a maximum pool capacity of 5,800 acre-feet. It is a rolled earthen dam owned by the Districts for flood control purposes.

North Dakota Century Code section 61-03-21 and North Dakota Administrative Code section 89-08-04-01 requires the operator of a reservoir, with a storage capacity greater than 1,000 acre-feet of water, to submit an annual operations plan to the Office of the State Engineer which includes the emergency procedures and warning plans. The EAP identifies potential emergency situations that could occur at a dam and specifies the course of action to be taken when an emergency situation arises.

Square Butte Dam is classified as a High Hazard Class V Dam and the EAP will be developed in accordance with the basic guidelines described for a Class V Dam in Chapter 10 of the North Dakota Dam Design Handbook (North Dakota State Engineer, June, 1985).

The project engineer's cost estimate to develop the EAP is \$30,000, of which all costs are determined as eligible for state cost participation as an emergency action plan at 80 percent of the eligible costs (\$24,000). The request before the State Water Commission is for an 80 percent state cost participation in the amount of \$24,000.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation as an emergency action plan at 80 percent of the eligible costs, not to exceed an allocation of \$24,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Morton County Water Resource District for the Square Butte Dam No. 5 emergency action plan.

It was moved by Commissioner Hanson and seconded by Commissioner Berg that the State Water Commission approve state cost participation as an emergency action plan at 80 percent of the eligible costs not to exceed an allocation of \$24,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Morton County Water Resource District for the Square Butte Dam No. 5 emergency action plan. This action is contingent upon the availability of funds.

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

**UPPER MAPLE RIVER DAM
PROJECT DEVELOPMENT AND
PRELIMINARY ENGINEERING -
APPROVAL OF ADDITIONAL STATE
COST PARTICIPATION (\$75,210)
(SWC Project No. 1878-02)**

On September 30, 2008, the State Water Commission approved a request from the Maple-Steele Joint Water Resource District for state cost participation to support the project development and preliminary engineering phase for the proposed Upper Maple River

Dam project as a flood retention project (flood control) at 50 percent of the eligible costs not to exceed an allocation of \$112,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020). The proposed project is located in Section 35 of Carpenter Township, Steele County.

The upper Maple River watershed has experienced frequent and significant flooding and has been studied for retention for several years. Two studies were completed in 2002 and 2005 to identify site locations on the Minnie Lake tributary and adjacent streams in Barnes county. The Upper Maple River Dam site, located below the Sussex Dam, was identified as the preferred site based upon the results of the third study. There is strong local support for the construction of the dam, which is anticipated to begin in 2011, at an estimated cost of \$5,000,000. Because final approval of the dam project will come from the United States Army Corps of Engineers, it constitutes federal action that can include funding, and is subject to the National Environmental Policy Act of 1969. The proposed retention structure may require an environmental impact statement based upon the level of impacts identified through the environmental assessment.

The project development and preliminary engineering costs for the proposed Upper Maple River Dam have increased to a total cost of \$382,170, of which \$375,419 is determined eligible for state cost participation as a flood retention project (flood control) at 50 percent of the eligible costs (\$187,710). The cost overage is a result of the revised scope of the work relating to aerial photogrammetry, soils investigation, and environmental assessment. A request from the Maple River Water Resource District was presented for the State Water Commission's consideration for an additional state cost participation in the amount of \$75,210 (eligible costs of \$187,710 less \$112,500 approved on September 30, 2008). The request before the State Water Commission is for 50 percent state cost participation in the amount of \$75,210.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation as a flood retention project at 50 percent of the eligible costs, not to exceed an additional allocation of \$75,210 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Maple-Steele Joint Water Resource District for the Upper Maple River Dam project development and preliminary engineering. The Commission's affirmative action would increase the total state cost participation to \$187,710.

It was moved by Commissioner Thompson and seconded by Commissioner Vosper that the State Water Commission approve state cost participation for a flood retention structure at 50 percent of the eligible costs, not to exceed an additional allocation of \$75,210 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Maple-Steele Joint Water Resource District for the Upper Maple River Dam project development and preliminary engineering. This action is contingent upon the availability of funds.

This action increases the total state cost participation to \$187,710 for the Upper Maple River project development and preliminary engineering.

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

**WILD RICE RIVER 2010-2011
SNAG AND CLEAR PROJECT
(RICHLAND COUNTY) - APPROVAL OF
STATE COST PARTICIPATION (\$33,500)
(SWC Project No. 1842)**

A request from the Richland County Water Resource District was presented for the State Water Commission's consideration for state cost participation in their 2010- 2011 snag and clear project on the Wild Rice River

The proposed snagging and clearing project will consist of the removal of large log jams and other woody debris. The proposed work will include the removal of fallen trees in the channel or in danger of falling into the channel, driftwood, snags, and loose stumps/trunks located in Sections 27, 11, and 23, Belford Township. All snagged material will be properly disposed.

The project engineer's cost estimate is \$67,000, all of which is determined as eligible for state cost participation as a snag and clear project at 50 percent of the eligible costs (\$33,500). Maintenance funds will be used to finance the project. The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$33,500.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation as a snag and clear project at 50 percent of the eligible costs, not to exceed an allocation of \$33,500 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the Wild Rice River (Richland County) 2010-2011 snag and clear project.

It was moved by Commissioner Olin and seconded by Commissioner Foley that the State Water Commission approve state cost participation as a snag and clear project at 50 percent of the eligible costs, not to exceed an allocation of \$33,500 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Richland County Water Resource District to support the Wild Rice River 2010-2011 snag and clear project. This action is contingent upon the availability of funds.

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

**WILD RICE RIVER 2010-2011
SNAG AND CLEAR PROJECT
(CASS COUNTY) - APPROVAL OF
STATE COST PARTICIPATION (\$100,625)
(SWC Project No. 1842)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in their 2010-2011 snag and clear project on the Wild Rice River. The proposed

project will begin at State Highway 46 and proceed downstream to the Red River of the North approximately 10 statute miles. The project will help in reducing flood damages by assisting with the flow.

The proposed snagging and clearing work includes the removal of fallen trees, standing trees in eminent danger of falling into the channel, driftwood, snags, loose stumps and trunks, standing stumps which are encountered within the Wild Rice River channel and which are lodged/leaning on the immediate bank slopes between upstream and downstream limits. All snagged material will be properly disposed. The District intends to hire a competent and experienced contractor to complete the project during the 2010-2011 winter.

The project engineer's cost estimate is \$218,750, of which \$201,250 is determined as eligible for state cost participation as a snag and clear project at 50 percent of the eligible costs (\$100,625). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$100,625.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation as a snag and clear project at 50 percent of the eligible costs, not to exceed an allocation of \$100,625 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the Wild Rice River (Cass County) 2010-2011 snag and clear project.

It was moved by Commissioner Olin and seconded by Commissioner Thompson that the State Water Commission approve state cost participation as a snag and clear project at 50 percent of the eligible costs, not to exceed an allocation of \$100,625 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Southeast Cass Water Resource District to support the Wild Rice River 2010-2011 snag and clear project. This action is contingent upon the availability of funds.

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

**SHEYENNE RIVER 2010-2011
SNAG AND CLEAR PROJECT
(CASS COUNTY) - APPROVAL OF
STATE COST PARTICIPATION (\$362,250)
(SWC Project No. 568)**

A request from the Southeast Cass Water Resource District was presented for the State Water Commission's consideration for state cost participation in their 2010- 2011 snag and clear project of three reaches on the Sheyenne River

totaling approximately 31 statute miles. The removal of trees and woody debris will assist with the flow of the river and prevent damages to structures.

Reach 1 consists of snagging and clearing approximately 10 statute miles from Highway 46 along the Cass county-Richland County line proceeding downstream to the Horace diversion inlet structure in Section 19 of Stanley Township. Reach 2 consists of approximately 9 statute miles from the Horace inlet structure in Section 19 of the Stanley Township to the Sheyenne River closure structure near Cass County Highway 10. Reach 3 consists of approximately 12 statute miles from the Sheyenne River closure structure near Cass County Highway 10 downstream to the Red River.

The proposed snagging and clearing work includes the removal of fallen trees, standing trees in eminent danger of falling into the channel, driftwood, snags, loose stumps and trunks, standing stumps which are encountered within the Sheyenne River channel and which are lodged/leaning on the immediate bank slopes between upstream and downstream limits. All snagged material will be properly disposed. The District intends to hire a competent and experienced contractor to complete the project during the 2010-2011 winter.

The project engineer's cost estimate is \$787,500, of which \$724,500 is determined as eligible for state cost participation as a snag and clear project at 50 percent of the eligible costs (\$362,250). The request before the State Water Commission is for a 50 percent state cost participation in the amount of \$362,250.

It was the recommendation of Secretary Sando that the State Water Commission approve state cost participation as a snag and clear project at 50 percent of the eligible costs, not to exceed an allocation of \$362,250 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), for the Sheyenne River (Cass County) 2010-2011 snag and clear project.

It was moved by Commissioner Foley and seconded by Commissioner Vosper that the State Water Commission approve state cost participation as a snag and clear project at 50 percent of the eligible costs, not to exceed an allocation of \$362,250 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Southeast Cass Water Resource District to support the Sheyenne River 2010-2011 snag and clear project

(Cass County). This action is contingent upon the availability of funds.

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

The State Water Commission members requested the agenda of the next cost share policy committee meeting include a discussion of the Natural Resources Conservation Service farmstead EQIP ring dike program and the Commission's cost share policy for its ring dike program.

***FARGO-MOORHEAD METROPOLITAN
FEASIBILITY STUDY REPORT
(SWC Project No. 1928)***

Project representatives provided a report on the Fargo-Moorhead Metropolitan Feasibility Study, which is outlined in ***APPENDIX "D"*** and attached hereto.

***CITY OF VALLEY CITY WATER
TREATMENT FACILITY - APPROVAL
OF ADDITIONAL STATE COST
PARTICIPATION (\$6,186,800)
(SWC Project No. 237-03VAL)***

On August 18, 2009, the State Water Commission approved a request from the City of Valley City for state cost participation for the construction of a new water treatment facility. The State Water Commission approved an allocation

not to exceed \$9,200,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020). The city currently withdraws water from the Sheyenne River and is treated in a conventional lime softening treatment plant. The upgraded facility will use a nanofiltration and reverse osmosis filtering system that will remove sulfates and other particulars resulting in significantly higher water quality than the city's existing water treatment plant provides. The city's current water use is 2.5 million gallons per day, and the new facility would match their current capacity of 4.0 million gallons per day, with 1.5 million gallons of capacity reserved for community expansion.

As the design for the water treatment facility moved forward, it was determined that the disposal of the brine concentrate from the nanofiltration and reverse osmosis membrane process would not be able to be discharged into the Sheyenne River without exceeding the water quality discharge standards during different times of the year. The revised project engineer's costs for the design of the membrane treatment plant, that would include a pump station, pipeline, and storage pond to handle the storage brine concentrate until the river flows allow dis-

charges, are estimated at \$5,000,000. After the project was bid, the cost of the water treatment plant modifications increased by \$1,186,800. A request from the City of Valley City was presented for the State Water Commission's consideration for an additional state cost participation in the amount of \$6,186,800.

Commissioner Swenson expressed resentment to the proposed cost share arrangement to address the City of Valley City's water treatment plant modifications needed to mitigate the impacts of the expected increased sulfate levels in the Sheyenne River as a result of the increased discharge of water from Devils Lake (90 percent grant - state, 10 percent - local). He explained that "it appears the state is being penalized for its Devils Lake flood efforts while also trying to prevent a catastrophic event from happening in Valley City - neither of which are the state's fault." He referenced the State Health Department's water quality discharge standards into the Sheyenne River during different times of the year and questioned the possibility of a cost participation from that Department. Because of these concerns, Commissioner Swenson offered reluctant support of the additional grant funding request.

It was the recommendation of Secretary Sando that the State Water Commission approve an additional grant allocation not to exceed \$6,186,800 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020) to the City of Valley City for the construction of a water treatment facility. The Commission's affirmative action would increase the total state cost participation to \$15,386,800.

It was moved by Commissioner Thompson and seconded by Commissioner Goehring that the State Water Commission approve an additional grant allocation not to exceed \$6,186,800 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020) to the City of Valley City for construction of a water treatment facility. This action is contingent upon the availability of funds.

This action increases the total state cost participation to \$15,386,800 to the City of Valley City for construction of a water treatment facility.

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

**WEST RIVER WATER SUPPLY
PROJECT - AMENDMENT OF STATE
GRANT APPROVAL (\$1,500,000)
(SWC Project No. 237-03)**

On October 26, 2010, the State Water Commission approved a state grant not to exceed \$1,500,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium

(H.B. 1020) to the West Area Water Supply stakeholders, through the McKenzie County Water Resource District, to support the development of a regional water supply plan in northwestern North Dakota. The regional water stakeholders include the City of Williston, Williams Rural Water District, McKenzie County Water Resource District, and R&T Water Supply Association.

The collaborative efforts have resulted in the development of a regional water supply plan centered on the Missouri River and the Williston regional water treatment facility as the source for the regional water demands. Water transmission lines throughout McKenzie, Williams, Divide and Mountrail counties will deliver large volumes of water into current and future oil exploration areas to meet the industrial water needs while at the same time delivering a high quality and dependable water supply to the communities of Williston, Watford City, Alexander, Trenton, Ray, Tioga, Stanley, Wildrose, Crosby, Fortuna, Noonan, Columbus, and Grenora, and rural water systems in Williams, McKenzie, and portions of Mountrail, Burke, and Divide counties.

In order to effectively utilize the sources of available funds, Secretary Sando explained that it would be appropriate to fund the development of the proposed regional water supply plan from the Garrison Diversion Conservancy District Water Development and Research Fund in lieu of the state grant allocation of \$1,500,000 approved by the State Water Commission on October 26, 2010. Therefore, it was the recommendation of Secretary Sando that the State Water Commission modify its previous action of October 26, 2010 (approval of a state grant not to exceed an allocation of \$1,500,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020)), to a grant allocation not to exceed \$1,500,000 from the Garrison Diversion Conservancy District Water Development and Research Fund to the West Area Water Supply stakeholders, through the McKenzie County Water Resource District, to support the development of a regional water supply plan in northwestern North Dakota. This modification will reduce the State Water Commission's funding commitment by \$1,500,000.

It was moved by Commissioner Berg and seconded by Commissioner Vosper that the State Water Commission modify its action of October 26, 2010 (state grant allocation not to exceed \$1,500,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020)), to a grant allocation not to exceed \$1,500,000 from the Garrison Diversion Conservancy District Water Development and Research Fund to the

West Area Water Supply stakeholders, through the McKenzie County Water Resource District, to support the development of a regional water supply plan in northwestern North Dakota. This action is contingent upon the availability of funds, subject to future revisions, funding shall be a grant toward eligible costs, and the funds shall be considered as an advance of any future grant.

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

***TRAILL RURAL WATER DISTRICT
REGIONAL WATER SUPPLY,
PHASE III - APPROVAL OF
ADDITIONAL 2009-2011 BIENNIUM
STATE FUNDS (\$1,450,000)
(SWC Project No. 237-03)***

The Traill Rural Water District conducted a water study for a regional system to meet the water needs of the cities of Hillsboro, Mayville, Galesburg, and Grandin to address the future Environmental Protection Agency's (EPA) water quality and quantity regulations. The

studies indicated that the Galesburg aquifer could meet the projected water needs. On December 9, 2005, the State Water Commission approved a 65 percent grant, not to exceed an allocation of \$134,000, from the Garrison Diversion Conservancy District Water Development and Research Fund for the water study (\$59,250) and the feasibility study (\$74,750).

The Traill Rural Water District is working with the cities of Hillsboro and Mayville to develop a regional project at an estimated cost of \$29,170,500. Phase I included the development of a new Galesburg aquifer well field for the total regional water supply and transmission pipeline to the Mayville water treatment plant, and a raw water pipeline from a new transfer station to the Hillsboro water treatment plant. On February 4, 2008, the State Water Commission approved a 70 percent federal/state grant not to exceed an allocation of \$2,492,000 (federal Fiscal Year 2008 MR&I Water Supply program grant not to exceed \$984,000, and an allocation not to exceed \$1,508,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020)), to the Traill Rural Water District Regional Water Supply, Phase I.

The Traill Rural Water District developed Phase II, which included distribution improvements to the system that would allow full service to the cities of Galesburg and Grandin. On June 23, 2008, the State Water Commission approved a 70 percent grant not to exceed an allocation of \$1,519,000 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the Traill Rural Water District Regional Water Supply, Phase II.

Due to increased costs related to bid items and additional alternatives for Traill Rural Water District, Phases I and II, on April 28, 2009, the State Water Commission approved a 70 percent grant not to exceed an additional allocation of \$2,551,500 from the funds appropriated to the State Water Commission in the 2007-2009 biennium (S.B. 2020), to the Traill Rural Water District regional water supply project, Phase I (\$1,659,000) and Phase II (\$892,500). On September 1, 2010, the State Water Commission approved a 70 percent grant not to exceed an additional allocation of \$200,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 2020), to the Traill Rural Water District regional water supply project, Phase I (\$32,000) and Phase II (\$168,000). A request was also considered by the State Water Commission for a 75 percent grant not to exceed \$1,600,000 for increased costs for Phase III; the Commission did not act on this request at this meeting. The total state grant allocated is \$7,078,500 (Phase I - \$3,199,000; Phase II - \$2,579,500; and Phase III - \$1,300,000).

The Traill Rural Water District is developing Phase III, which includes additional well field development, installation of membranes in the existing Mayville water treatment plant, and construction of a new membrane water treatment plant at Hillsboro. On August 18, 2009, the State approved a grant allocation not to exceed \$1,300,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Traill Rural Water District regional water supply project, Phase III.

Design is currently in progress of the Mayville water treatment plant and the construction of a new membrane water treatment plant at Hillsboro. The project engineer's revised estimate of costs to address the requirements for waste water disposal requirements by building lagoons is \$2,800,000 (\$1,300,000 for the Hillsboro plant and \$1,500,000 for the Mayville plant). The Traill Rural Water District presented a request for the State Water Commission's consideration for a grant allocation for Phase III in the additional amount of \$1,450,000.

It was the recommendation of Secretary Sando that the State Water Commission approve an additional grant allocation of \$1,450,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Traill Rural Water District regional water supply project, Phase III. This would increase the total state funding for Phase III to \$2,750,000.

It was moved by Commissioner Goehring and seconded by Commissioner Hanson that the State Water Commission approve an additional grant allocation of \$1,450,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to the Traill Rural Water District regional water supply project,

Phase III. This action is contingent upon the availability of funds, funding shall be a grant toward eligible costs, satisfaction of the federal MR&I Water Supply program requirements, and subject to future revisions.

This action would provide a total state grant allocation of \$8,528,500 (Phase I - \$3,199,000; Phase II - \$2,579,500; and Phase III - \$2,750,000).

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

**DEVILS LAKE
HYDROLOGIC UPDATE
(SWC Project No. 416-10)**

As of November 22, 2010, the water surface elevation for Devils Lake was 1451.32 feet msl and Stump Lake was 1451.27 feet msl. The update report on

December 9, 2010, showed the water surface elevation for Devils Lake was 1451.36 feet msl. The total volume and area for the lakes on November 22, 2010 was 3,590,000 acre-feet and 175,000 acres. On October 22, 2010, the lake elevation was 1451.27 feet msl. The increase in elevation from November 22, 2009 for Devils Lake was 1.43 feet and for Stump Lake 1.34 feet. The volume and area increase since November 22, 2009 was 243,000 acre-feet and 13,000 acres.

The National Weather Service provided the following long-range probabilistic forecast for Devils Lake and Stump Lake. The estimated values are valid for the time period of October 25, 2010 through January 30, 2011:

**Chances of Devils Lake and Stump Lake
Rising Above the Given Lake Levels**

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake (ft- msl)	1451.2	1451.2	1451.2

**Chances of Devils Lake and Stump Lake
Falling Below the Given Lake Levels**

	<u>90%</u>	<u>50%</u>	<u>10%</u>
Devils Lake (ft- msl)	1451.1	1451.0	1450.9

The National Weather Service Climate Prediction Center for a three-month temperature outlook reflects typical winter La Nina conditions and calls for below average temperatures along the northern tier from Washington to Minnesota, and above median precipitation for the northern Rocky Mountains extending into North Dakota.

***NORTH DAKOTA DEVILS LAKE
OUTLET PROJECT REPORT; AND
AUTHORIZE SECRETARY TO STATE
WATER COMMISSION TO ENTER
INTO CONTRACT FOR ENGINEERING
SERVICES FOR EAST END OUTLET
(SWC Project No. 416-10)***

The State of North Dakota pursued an emergency phased outlet project from West Bay to the Sheyenne River. Construction commenced in the fall of 2002, and 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 and the authorized modifications issued by the North Dakota Department of Health. The NDPDES water quality discharge permit had an expiration date of June 30, 2008, which was extended through June 30, 2013.

On June 24, 2009, the North Dakota Department of Health rescinded the water quality discharge permit and changed the water quality constraint to 450 mg/L at Bremen instead of 15 percent above the baseline. This allowed for 100 cubic feet per second of discharge until July 6, 2009 and then the discharge varied from 35 to 50 cubic feet per second. On July 15, 2009, the Department implemented an emergency rule for a segment of the Sheyenne River changing the sulfate standard from 450 mg/L to 750 mg/L. The outlet discharge was increased to 100 cubic feet per second since that time with some minor interruptions for maintenance.

On August 18, 2009, the State Water Commission approved an allocation not to exceed \$16,500,000 for the expansion of the Devils Lake outlet to 250 cubic feet per second (cfs) using the Round Lake alternative. The upgrading of the state outlet to 250 cubic feet per second was completed in June, 2010.

There were a total of 170 days of releases, at a daily average of 187 cfs, and a total volume of 62,968 acre-feet of water through 2010. Using the average surface area of Devils Lake and Stump Lake from May through November of 177,000 acres (elevation of 1451.5 feet msl), the total volume of water released corresponds to 4.3 inches of water off the lake.

The final North Dakota Department of Health's ruling on the Sheyenne River sulfate standards was approved by EPA on September 16, 2010. The standards to be followed are the same as the "emergency

standards" followed since 2009. The EPA ruling indicating that it has no jurisdiction or authority to enforce water quality standards on a water-to-water transfer such as the Devils Lake outlet, should provide additional flexibility in the operation of the outlet, although the downstream uses will need to be maintained.

In order to increase the removal of water from Devils Lake, on October 26, 2010, the State Water Commission approved 100 percent of the estimated proposed engineering design costs of \$1,500,000 for the west end Devils Lake outlet upgrade, \$2,200,000 for the Devils Lake east end outlet, and \$500,000 for the geotechnical investigation from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020).

The proposed east end outlet channel with gravity flow would take East Devils Lake water to the Sheyenne River. The U.S. Geological Survey's modeling indicates that a 250 cfs outlet from East Devils Lake, combined with the west end outlet, would meet a 750 mg/L standard on the entire Sheyenne River. It is planned for the constructed channel to have a design capacity of 250 cfs. Inlet, outlet, and gravel filter structures would be needed, as well as other structures may also be required. Engineering services are required for this project, and because of the nature of the proposed work, Request for Proposals (RFP) were advertised, and the closing date for the engineering firms to respond was November 30, 2010. The RFPs have been reviewed and four firms have been selected for interviews.

In order to expedite the engineering design process for the Devils Lake east end outlet, it was the recommendation of Secretary Sando that the State Water Commission authorize the secretary to the Commission to finalize and execute the engineering services contract for the Devils Lake east end outlet.

It was moved by Commissioner Berg and seconded by Commissioner Swenson that the State Water Commission authorize the secretary to the State Water Commission to finalize and execute the Devils Lake east end outlet engineering services contract.

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

NORTH DAKOTA DEVILS LAKE OUTLET - SHEYENNE RIVER CROSSING A (EDDY COUNTY) - APPROVAL OF STATE COST PARTICIPTION (\$500,000) (SWC Project No. 416-07)

On October 26, 2010, the State Water Commission was informed of the inability of two river crossings located on the Sheyenne River downstream of the Devils Lake outlet to handle higher flows caused by the Devils Lake outlet.

The crossings are located in Eddy County in Section 19, Township 150 North, Range 64 West, and in Section 35, Township 150 North, Range 62 West. Since the required increased capacity at the crossings is to allow the Devils Lake outlet to operate, the state has a significant responsibility.

Because the State Water Commission's cost share policy does not currently recognize this issue, the Commission directed the cost share policy committee to address the issue. The recommendation from the cost share policy committee was to review concerns/cost share requests as received and to not develop a policy.

The State Water Commission further considered the request to upgrade the crossings in Eddy County at its December 10, 2010 meeting. Because of the complexity and uniqueness of each project, Governor Dalrymple called for a motion to consider each project request separately: 1) Crossing A (upstream) is located in Section 19, Township 150 North, Range 64 West (the original construction cost was \$293,000 and the estimated cost to upgrade Crossing A is \$24,000, for a total estimated cost of \$317,000 plus engineering and contingency costs); and 2) Crossing B (downstream) is located in Section 35, Township 150 North, Range 62 West (the original construction cost was \$380,000 and the estimated cost to upgrade Crossing B is \$15,000, for a total estimated cost of \$395,000 plus engineering and contingency costs.) The estimated total cost for upgrading both crossings is \$875,000.

It was moved by Commissioner Berg and seconded by Commissioner Goehring that the State Water Commission concur with the recommendation to consider separate project requests for upgrades to Crossings A and B in Eddy County.

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

It was moved by Commissioner Swenson and seconded by Commissioner Goehring that the State Water Commission approve 100 percent of the eligible costs not to exceed an allocation of

\$500,000 from the funds appropriated to the State Water Commission in the 2009-2011 biennium (H.B. 1020), to support the upgrade for capacity of up to 800 cubic feet per second (cfs) for Crossing A located in Section 19, Township 150 North, Range 64 West, Eddy County. This action is contingent upon the availability of funds.

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

It was moved by Commissioner Olin and seconded by Commissioner Vosper that state funding not be allocated for the upgrade of Crossing B located in Section 35, Township 150 North, Range 62 West, Eddy County.

Representatives from Eddy County provided technical information involving Crossing B issues relating to legal, liability, ownership, and right-of-way. It was the general consensus of the State Water Commission members that resolve of these issues will require additional information in order to make an informed decision at a later date.

It was moved by Commissioner Thompson and seconded by Commissioner Goehring to lay the question on the table.

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

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

The following Southwest Pipeline Project status report was provided:

Oliver-Mercer-North Dunn Regional Service Area:

Contract 2-8A, main transmission pipeline from Oliver-Mercer-North Dunn water treatment plant to Hazen, consists of 23 miles of pipeline and related appurtenances. The pipeline will provide water service from the Oliver-Mercer-North Dunn water treatment plant to the city of Hazen, city of Zap, Beulah interim service area, and provide transmission flow for most of Oliver and Mercer counties. The estimated total project cost

was \$4,300,000. The contract was awarded to Dave Titus Excavating, Inc., Bismarck, ND, in the amount of \$3,178,510. The pre-final inspection was completed and a punch list and contract closeout documents were provided to the contractor.

Contract 2-8B, main transmission line from Hazen to Stanton and Beulah to Center elevated tank. The total estimated project cost is \$5,100,000. Bids were opened for contract 2-8B on May 12, 2010, the contract was awarded to Kamphuis Pipeline Co., Grand Rapids, MI, in the amount of \$3,888,095. Submittals are being processed on this contract. The substantial completion date is June 15, 2011.

Contract 2-8C/D, main transmission line from Center elevated tank to Center. This contract will consist of 38.1 miles of PVC pipeline and will take water from the Center elevated tank to the City of Center and south to the Missouri West water system north of New Salem. The total estimated project cost is \$5,300,000. Design work is near completion, a submittal plan set is anticipated in December, 2010, and advertising for bids could occur in January or February, 2011.

Contract 3-1C, Oliver-Mercer-North Dunn water treatment plant membrane equipment procurement. The total estimated project cost is \$2,500,000. Bids were opened for contract 3-1C on November 20, 2009, the State Water Commission authorized the award of the contract on December 11, 2009, to Wigen Water Technologies, Inc., Chaska, MN, in the amount of \$2,251,250. The contract includes furnishing the membrane filtration and membrane softening systems along with the design phase and construction phase engineering services.

The design phase of the project has been completed. The membrane equipment will be delivered during construction of the plant and installed by the building contractor with supervision by Wigen and Toray Industries, Inc., the membrane supplier.

Contract 3-1D, Oliver-Mercer-North Dunn water treatment plant building and membrane equipment installation. Bids were opened for contract 3-1D on August 19, 2010. The total estimated project cost is \$11,100,000. The State Water Commission authorized the award of General, Mechanical, and Electrical construction contracts on September 1, 2010 to PKG Contracting, Inc., Fargo, N.D. (\$7,236,900), Cofell's Plumbing and Heating, Inc., Bismarck, N.D. (\$600,000), and Edling Electric, Inc., Bismarck, N.D. (\$1,209,360), respectively. The contract documents were executed on October 1, 2010, and work commenced in October, 2010. The substantial completion date is December 31, 2011.

Contract 3-1E, Oliver-Mercer-North Dunn water treatment plant concentrate disposal facility. The total estimated project cost is \$2,500,000. The purpose of this facility will be to dispose of the reverse osmosis concentrate from the softening process. It will include a pipeline from the treatment plant back to the lake and a discharge facility in the lake. A permit from the Corps of Engineers is in process to allow access for survey and cultural resource work.

Contract 4-3A/4-4A, Jung Lake and Ray Christensen pump station upgrades. This contract will consist of supplying and installing a back up generator and related switch/gear at the Jung Lake pump station and the installation of a high capacity pump for the west zone at the Ray Christensen pump station. The total estimated project cost is \$450,000. It is expected that the contract could be bid in February or March, 2011.

Contract 5-15A, Zap potable reservoir. The total estimated project cost is \$1,400,000. Contract 5-15A was bid on May 19, 2010, the State Water Commission authorized the award of contract 5-15A on June 1, 2010 to Maguire Iron, Inc., Sioux Falls, S.D., in the amount of \$1,175,000. Site work began in October, 2010, and the reservoir erection is scheduled during January through April, 2011.

Contract 5-16, Center Elevated Tank. Contract 5-16 will be for the construction of a 750,000 gallon elevated tank with an overflow height of 185 feet located south of Beulah and west of Center. The total estimated project cost is \$2,200,000. A submittal plan set was available in November, 2010, and it is anticipated that bids will be advertised in January, 2011.

Contract 7-9C, Zap service area rural distribution line, Phase I. Contract 7-9C will consist of approximately 157 miles of PVC rural distribution pipeline and will serve 263 users including rural users, coal plants, and mines. The total estimated project cost is \$5,100,000. Design work is near completion with plan set submittal expected in January, 2011, and the advertisement for bids could occur in February or March, 2011.

Oliver-Mercer-North Dunn regional service area contracts under design:
Contracts under design for the Oliver-Mercer-North Dunn regional service area include:

Contract 2-8E, main transmission line from Oliver-Mercer-North Dunn regional service area water treatment plant to Killdeer Mountains area. This contract will consist of 44.5 miles of PVC pipeline and will be the main transmission line for the Dunn Center service area. As part of the design process for contract 2-8E, incremental costs will be determined to

increase the capacity of the pipeline to serve the oil industry. Industry representatives have expressed a need for a water depot north of the city of Killdeer. Additional costs to deliver water to that point in the quantities needed to benefit oil exploration and production will also need to be taken into account before considering additional funding sources.

Contract 7-9D, Zap service area rural distribution line, Phase II, consists of 140 miles of PVC pipeline serving 232 users. The estimated total project cost is \$5,800,000. The cultural work will be performed in 2011 in anticipation of bidding in the winter of 2011.

Oil Industry Water Use:

Through October 31, 2010, 70,600,000 gallons of water had been sold to the oil industry served by the Southwest Pipeline Project. The City of Dickinson accounted for 67,000,000 gallons, and sales through the Dodge water depot were approximately 10,500,000 gallons.

Little Missouri River Washout:

A specific authorization was executed directing Bartlett & West to develop a solution to the Little Missouri River erosion near the Badlands Ministries Bible Camp and the Harold Hugelin ranch south of Medora. The Corps of Engineers regulatory field office issued notification that the erosion event is a violation of the Clean Water Act and ordered that the river be returned to its natural channel. A restoration and mitigation plan is due on January 18, 2011. A permit is required from the U.S. Forest Service to access the site for soil borings prerequisite for proper geotechnical design.

SOUTHWEST PIPELINE PROJECT - APPROVAL OF CAPITAL REPAYMENT RATES, AND REPLACEMENT AND EXTRAORDINARY MAINTENANCE RATES FOR 2011 (SWC Project No. 1736)

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 State Water Commission's secretary by December 15 of each year. The

budget is deemed approved unless the Commission's secretary notifies the Authority of his disapproval by February 15. The Southwest Water Authority submitted its proposed budget in December, 2010.

On October 19, 1998, the State Water Commission approved an amendment to the Transfer of Operations Agreement, which changed the Consumer Price Index (CPI) 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 streamline the budget process. The agreement specifies that the water rates for capital repayment be adjusted annually based on the Consumer Price Index; the September 1, 2009 CPI was 215.8 versus 219.1 on September 1, 2008. 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 2011 rate for these users of \$25.35 per month.

In preparation of the budget for 2011, the Southwest Water Authority approved a \$10.00 per thousand gallons water rate for oil industry contracts. This is an increase from the \$8.11 per thousand gallons rate approved in 2010, increases the capital repayment rate for oil industry contracts to \$6.05 per thousand gallons, and retains the REM rate at \$0.85 per thousand gallons.

It was the recommendation of Secretary Sando that the State Water Commission concur with the proposed 2011 Southwest Pipeline Project water rates as follows:

Contract users	\$ 1.05 per thousand gallons
Rural users	\$32.01 per month
Morton county users receiving water through Missouri West water system	\$25.35 per month
Replacement and extraordinary maintenance	\$ 0.35 per thousand gallons
Oil industry contracts:	\$10.00 per thousand gallons
Capital Repayment	\$ 6.05 per thousand gallons
Replacement and extraordinary maintenance	\$ 0.85 per thousand gallons

It was moved by Commissioner Olin and seconded by Commissioner Hanson that the State Water Commission approve the proposed 2011 water rates for the Southwest Pipeline Project as recommended.

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

***SOUTHWEST PIPELINE PROJECT -
PHASE I, REPLACEMENT OF CARD
RACK TELEMETRY UNITS - APPROVAL
OF REM FUNDS (\$313,332.59)
(SWC Project No. 1736)***

The Southwest Water Authority collects and maintains a reserve fund for replacement and extraordinary maintenance. This fund exists because over the life of the project there will occur replacement and maintenance items that

will exceed annual budgeted amounts. These items need to be prefunded. Expenditures from this fund are required to be authorized by the State Water Commission.

A request from the Southwest Water Authority was presented for the State Water Commission's determination that Phase I, replacement of the card rack telemetry units, is extraordinary maintenance and that reimbursement in the amount of \$313,332.59 be approved from the reserve fund for replacement and extraordinary maintenance. There will be three phases to the telemetry upgrade. Work has been completed on Phase I on the telemetry units with the modern remote telemetry units and the central telemetry unit at the Davis Buttes reservoir, Dodge pump station, Richardton pump station, and the Dickinson water treatment plant. The Southwest Water Authority took similar action at its November 1, 2010 meeting.

It was the recommendation of Secretary Sando that the State Water Commission concur in the determination that the Phase I, replacement of the card rack telemetry units, be considered as extraordinary maintenance and approve the reimbursement of \$313,332.59 from the reserve fund for replacement and extraordinary maintenance.

It was moved by Commissioner Swenson and seconded by Commissioner Thompson that the State Water Commission concur in the determination that the Phase I, replacement of the card rack telemetry units, be considered as extraordinary maintenance, and approve the reimbursement of \$313,332.59 from the reserve fund for replacement and extraordinary maintenance.

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

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

The following Northwest Area Water Supply (NAWS) project status report was provided:

Supplemental Environmental Impact Statement (EIS): On August 12, 2010, the Bureau of Reclamation published in the Federal Register a notice of intent to prepare a supplemental EIS. The supplemental EIS addresses Judge Rosemary Collyer's order of March, 2010. Public scoping meetings were held September 13-16, 2010 in Bottineau, Minot, New Town, and Bismarck. The first cooperating agency meeting was held November 23, 2010. The Bureau of Reclamation is in the process of hiring a third party consultant to assist in drafting the supplemental EIS.

Manitoba and Missouri Lawsuit:

On March 5, 2010, U.S. District Judge Rosemary Collyer issued a decision to continue the injunction on the NAWS project. Judge Collyer had previously allowed construction of the pipeline, but not the treatment facilities. Judge Collyer asked the Bureau of Reclamation to further address two issues, the cumulative impacts of water withdrawal on the water levels of Lake Sakakawea and the Missouri River, and the consequences of biota transfer into the Hudson Bay basin including Canada.

On October 25, 2010, Judge Rosemary Collyer issued a decision to allow construction on the improvements in the Minot water treatment plant, however, she did not allow design work to continue on the intake structure at Lake Sakakawea.

Design and Construction Contracts:

Contract 4-2A: Contract 4-2A involved the construction of a new 2 million gallon reservoir and an 18 million gallon high service pump station adjacent to the Minot water treatment plant. On April 23, 2008, the State Water Commission authorized the award of contract 4-2A, in the amount of \$12,435,793.58, to John T. Jones Construction, Fargo, N.D. The pump station has been operational since December, 2009. Payments have been made according to the settlement agreement, the final payment was issued in November, 2010.

Contract 2-2C: The contract work covers 52 miles of pipeline for the Kenmare-Upper Souris segment. The State Water Commission authorized the award of contract 2-2C to Northern Improvement Company, Fargo, ND, on September 30, 2008. Water service to Kenmare was started on December 7, 2009, and water service to the Upper Souris Water District at the Donnybrook turnout started on December 22, 2009. The seeding for portions of the contract were completed; the contract was closed.

Contract 2-2D: The contract work covers 62 miles of pipeline for the Mohall/Sherwood/All Seasons segment. Bids were opened for contract 2-2D on July 14, 2009. The State Water Commission authorized the secretary to the Commission to award contract 2-2D to American Infrastructure from Colorado on August 18, 2009. There remains 2,000 feet of pipe to be placed, discussion of liquidating damages with the contractor are being pursued. The substantial completion date was October 15, 2010, with final completion on November 15, 2010.

Contract 2-2E: This contract covers connections of the community of Burlington and the West River Water and Sewer District to the NAWS pipeline. The contract was awarded to Steen Construction & Associates, Inc., Stanley, N.D., on November 13, 2009, in the amount of \$471,782. Water service to the West River Water District started on June 22, 2010, and to Burlington on August 11, 2010.

Contract 5-2C: The contract work includes a 1 million gallon storage reservoir near Kenmare. The substantial completion was July 1, 2010, with final completion in August 1, 2010. The tank is in service. Testing of the cathodic protection will be completed in June, 2011.

Contract 2008-1: The NAWS portion of the All Seasons contract includes 13 miles of pipeline between the All Seasons water treatment plant and the City of Gardena. The contract was awarded to Swanberg Construction, Grand Forks, N.D.; the engineering related work for this project was estimated at \$112,500. The NAWS portion of this line has been in service since September of 2009. Final payment was issued in November, 2010.

Design on Contract 7-1A: On October 25, 2010, the federal court approved construction in the Minot water treatment plant with the piping and filters. The plans and specifications should be ready for advertisement in January, 2011.

Contract 2-3A Design: This project has 16 miles of 24-inch pipe connecting the Air Force Base to Minot. The contract cost estimate is \$5,850,000. The State Water Commission will consider the award of the contract under a separate item on December 10, 2010.

Contract 2-3B Design: This project has 13 miles of pipe north of the Minot Air Force Base connecting to the Upper Souris Water District which serves the city of Glenburn. The contract cost estimate is \$3,700,000. The State Water Commission will consider the award of the contract under a separate item on December 10, 2010.

***NORTHWEST AREA WATER SUPPLY
(NAWS) PROJECT - NORTH HILL TO
MINOT AIR FORCE BASE SEGMENT -
AUTHORIZE AWARD OF CONTRACT 2-3A
(SWC Project No. 237-04)***

Bids were opened for Northwest Area Water Supply (NAWS) Project contract 2-3A, involving 13 miles of primarily 24-inch pipeline between the north side of Minot and the Minot Air Force Base, on November 23, 2010.

There were nine bids received and opened for NAWS contract 2-3A. The following lowest three bids were evaluated for conformance with the bidder requirements listed in the Instructions to Bidders (EJCDC-200) and the Bid Form (EJCDC C-410) and were found to be in compliance: S. J. Louis Construction, Inc., Rockville, MN; Ryan Development, Inc., Elko, MN; and Merryman Excavation, Woodstock, IL. The apparent low total base bid received was \$5,854,600 from S. J. Louis Construction, Inc., Rockville, MN. The project engineer's estimate was \$7,530,495.

The contract documents specify that the State Water Commission has 90 days to award the contract after the bid opening, and allows the Commission to select the most advantageous bid. The project engineer reviewed the bids and recommended the award of NAWS contract 2-3A to S. J. Louis Construction, Inc., Rockville, MN. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are dependent on the satisfactory completion and submission of the contract documents by S. J. Louis Construction, Inc., and the State Water Commission's legal counsel's review.

It was the recommendation of Secretary Sando that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 2-3A, North Hill to Minot Air Force Base Segment, in the amount of \$5,854,600, to S. J. Louis Construction, Inc., Rockville, MN, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

It was moved by Commissioner Foley and seconded by Commissioner Vosper that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 2-3A, North Hill to Minot Air Force Base Segment, in the amount of \$5,854,600, to S. J. Louis Construction, Inc., Rockville, MN. This action is contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

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

***NORTHWEST AREA WATER SUPPLY
(NAWS) PROJECT - GLENBURN AND
UPPER SOURIS WATER DISTRICT
SYSTEM II SEGMENT PIPELINE -
AUTHORIZE AWARD OF CONTRACT 2-3B
(SWC Project No. 237-04)***

Bids were opened for Northwest Area Water Supply (NAWS) Project contract 2-3B involving 18 miles of primarily 16- and 18-inch inch pipeline between the north side of the Minot Air Force Base and the Upper Souris Water District's system north of Glenburn, on November 23, 2010.

There were five bids received and opened for NAWS contract 2-3B. The following lowest three bids were evaluated for conformance with the bidder requirements listed in the Instructions to Bidders (EJCDC-200) and the Bid Form (EJCDC C-410) and were found to be in compliance: Kamphuis Pipeline Co., Grand Rapids, MI (\$3,739,020); S. J. Louis Construction, Inc., Rockville, MN (\$3,747, 982); and Ryan Development, Inc., Elko, MN (\$4,055,680). The two low bids were nearly identical with a difference of 0.239 percent. The project engineer's estimate was \$4,205,191.

The contact documents specify that the State Water Commission has 90 days to award the contract after the bid opening, and allows the Commission to select the most advantageous bid as specified in Article 19. It was determined to be in the best interest of this project to award the contract to S. J. Louis Construction, Inc., Rockville, MN based on cost savings realized with one contractor working concurrently on the 2-3A project, and on the positive and responsive experiences the Commission had with the contractor on previous contracts. The State Water Commission's experience with Kamphuis Pipeline is currently a concern due to lack of responsiveness on a current Southwest Pipeline contract. The contract will require approval by the Bureau of Reclamation, and the award of the contract and notice to proceed are dependent on the satisfactory completion and submission of the contract documents by S. J. Louis Construction, Inc., and the State Water Commission's legal counsel's review.

It was the recommendation of Secretary Sando that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 2-3B, Glenburn and Upper Souris Water Users District System II Segment, in the amount of \$3,747,982, to S. J. Louis Construction, Inc., Rockville, MN, contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

It was moved by Commissioner Foley and seconded by Commissioner Swenson that the State Water Commission authorize the secretary to the State Water Commission to award Northwest Area Water Supply Project contract 2-3B, Glenburn and Upper Souris Water Users District System II Segment, in the amount of \$3,747,982 to S. J. Louis Construction, Inc., Rockville, MN. This action is contingent upon a legal review of the contract documents by the state, and written concurrence by the Bureau of Reclamation that the contract prerequisites have been satisfied.

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

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

The Dakota Water Resources Act of 2000 authorized the Secretary of the Interior to conduct a comprehensive study of the water quantity and quality needs of the Red River valley in North Dakota and possible options for meeting those needs. The Act identified two project-related studies: 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 completed the *Report on Red River Valley Water Needs and Options*. The State of North Dakota and the Bureau jointly prepared the EIS. Governor Hoeven designated the Garrison Diversion Conservancy District to represent the state in this endeavor.

The final EIS was available to the public on December 28, 2007. The Secretary of the Interior executed a memorandum on January 15, 2009 disclosing the following: the project selected to meet the needs of the Red River Valley is the preferred alternative, pipeline from the McClusky Canal to Lake Ashtabula; and, the identified treatment processes are adequate to meet the requirements of the Boundary Waters Treaty. The U.S. State Department requested that the Bureau of Reclamation delay executing the Record of Decision until discussions with Canada have been concluded.

The November, 2010 status report relating to the specific efforts of the Red River Valley Water Supply project, were provided by Dave Koland, Garrison Diversion Conservancy District general manager, which is attached hereto as **APPENDIX "E"**.

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

The Missouri River report was provided, which is detailed in the staff memorandum, dated December 2, 2010, and attached hereto as **APPENDIX "F"**.

The update report on December 10, 2010 indicated the system storage in the six mainstem reservoirs was 57.8 million acre-foot (MAF); the Corps of Engineers predicted runoff above Sioux City for 2010 to be 38.2 MAF, 154 percent of normal; and Lake Sakakawea was at elevation 1842.1 feet.

**2011-2013 NORTH DAKOTA
STATE WATER COMMISSION AND
OFFICE OF THE STATE ENGINEER
STRATEGIC PLAN
(SWC Project No. 322)**

The 2011-2013 North Dakota State Water Commission and Office of the State Engineer Strategic Plan has been finalized for distribution. The Strategic Plan contains descriptions and overviews of the agencies' major projects

and programs and anticipated progress on those efforts through 2013.

**PROPOSED LEGISLATION FOR
CONSIDERATION BY SIXTY-SECOND
LEGISLATIVE ASSEMBLY (2011)**

The following proposed bills were approved by the Governor's office and pre-filed with the Legislative Council as agency bills on December 9, 2011 to be

considered by the Sixty-second Legislative Assembly of North Dakota (2011). It was the recommendation of Secretary Sando that the State Water Commission concur with the proposed legislation, attached hereto as **APPENDIX "G"**:

61-02-05.1 – State Engineer's authority to enter into contracts

The purpose of this bill is to give the State Engineer explicit statutory authority to enter into contracts on behalf of the Water Commission. In recent past, the Commission entered into a contract with the U.S. Army Corps of Engineers. Significant delays resulted in finalizing the contract because the Corps required the signatory on the contract to have statutory authority and would not accept the State Engineer's signature. This resulted in the contract having to be signed by the Governor in his capacity as the Chairman of the Commission. By enacting the proposed statute, this problem can be avoided in the future.

61-04-01.1, 61-04-05, and 61-04-05.1 – Changes to hearing process

The purpose of this bill is to redefine and separate adjudicative hearings from informational hearings in relation to water permit applications. Under current law, when a party of interest requests a hearing, that requires opening a case with the Office of Administrative Hearings (OAH) and proceeding through the legal administrative hearing process. As water permitting has become more contentious, more parties of record have been requesting hearings under the mistaken impression that the “hearing” will be a forum to air grievances and ask questions, rather than a legal proceeding before an administrative law judge (ALJ). This wastes a lot of time and resources of the State Engineer, OAH, ALJ, and Attorney General’s offices. Under the proposed revised statute, both informational and adjudicative hearings will be made available as part of the process, but the new definitions should make it clearer what the process is as a whole, and which type of hearing is being requested.

It was moved by Commissioner Swenson and seconded by Commissioner Vosper that the State Water Commission concur with the proposed legislation as presented to be considered by the Sixty-second Legislative Assembly of North Dakota (2011).

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

Proposed legislation addressing per diem compensation for the members of the State Water Commission was discussed. The members are presently compensated at a per diem rate of \$62.50 per day.

There being no further business to come before the State Water Commission, Governor Dalrymple adjourned the meeting at 12:15 P.M.



Jack Dalrymple, Governor
Chairman, State Water Commission

Todd Sando, P.E.
North Dakota State Engineer,
and Chief Engineer-Secretary
to the State Water Commission

APPENDIX "A"
December 10, 2010

RESOLUTION NO. 2010-12-524

In Appreciation to
John Hoeven
Governor of North Dakota

WHEREAS, John Hoeven was sworn in as the 31st Governor of North Dakota in December, 2000 and, as such, he has also served as the Chairman of the North Dakota State Water Commission; and

WHEREAS, Governor Hoeven has consistently throughout his tenure been a strong and progressive leader in addressing a wide range of challenges facing water management across North Dakota; and

WHEREAS, Governor Hoeven has benefited the State Water Commission with his guidance and commitment to securing the resources critical to fulfilling the role of water in expanding and diversifying the state's economy; and

WHEREAS, Governor Hoeven recently won his bid to become a Senator in the United States Congress and, on December 7, 2010, he will officially resign as Governor of North Dakota thus ending his position as Chairman of the State Water Commission.

NOW, THEREFORE, BE IT RESOLVED that on December 8, 2010, the members of the North Dakota Water Commission; Todd Sando, State Engineer; and the staff of the State Water Commission do hereby wish to convey their gratitude and appreciation to John Hoeven for his admirable service to the people of the Great State of North Dakota as Governor and Chairman of the State Water Commission; and

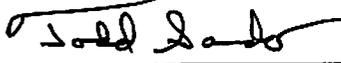
BE IT FURTHER RESOLVED that we wish Senator John Hoeven, his wife, Mikey, and their family, the best of health and happiness in their future endeavors.



FOR THE NORTH DAKOTA
STATE WATER COMMISSION:



Jack Dalrymple
Governor-Chairman



Todd Sando
North Dakota State Engineer and Chief Engineer-Secretary
to the State Water Commission

December 10, 2010

STATE WATER COMMISSION
ALLOCATED PROGRAM EXPENDITURES
FOR THE PERIOD ENDED OCTOBER 31, 2010
BIENNIUM COMPLETE: 67%

PROGRAM	SALARIES/ BENEFITS	OPERATING EXPENSES	GRANTS & CONTRACTS	1-Dec-10 PROGRAM TOTALS
ADMINISTRATION				
Allocated	1,812,056	1,212,732		3,024,788
Expended	1,185,847	612,577		1,798,424
Percent	65%	51%		59%
			Funding Source:	
			General Fund:	1,704,066
			Federal Fund:	94,358
			Special Fund:	0
PLANNING AND EDUCATION				
Allocated	1,192,175	208,511	99,000	1,499,686
Expended	771,513	107,244	62,295	941,052
Percent	65%	51%	63%	63%
			Funding Source:	
			General Fund:	742,898
			Federal Fund:	129,855
			Special Fund:	68,299
WATER APPROPRIATION				
Allocated	3,633,879	483,162	1,078,935	5,195,976
Expended	2,342,942	302,396	401,534	3,046,872
Percent	64%	63%	37%	59%
			Funding Source:	
			General Fund:	2,645,354
			Federal Fund:	0
			Special Fund:	401,517
WATER DEVELOPMENT				
Allocated	5,041,486	4,837,457	225,000	10,103,943
Expended	3,204,080	3,457,176	105,301	6,766,558
Percent	64%	71%	47%	67%
			Funding Source:	
			General Fund:	2,990,464
			Federal Fund:	1,805,066
			Special Fund:	1,971,028
STATEWIDE WATER PROJECTS				
Allocated			203,185,070	203,185,070
Expended			53,150,607	53,150,607
Percent			26%	26%
			Funding Source:	
			General Fund:	0
			Federal Fund:	65,660
			Special Fund:	53,084,947
ATMOSPHERIC RESOURCE				
Allocated	854,950	712,830	4,694,692	6,262,472
Expended	588,478	261,280	1,148,633	1,998,690
Percent	69%	37%	24%	32%
			Funding Source:	
			General Fund:	545,035
			Federal Fund:	0
			Special Fund:	1,453,656
SOUTHWEST PIPELINE				
Allocated	400,498	1,665,314	37,556,958	39,622,770
Expended	273,359	1,689,090	4,494,731	6,457,190
Percent	68%	101%	12%	16%
			Funding Source:	
			General Fund:	0
			Federal Fund:	2,182,974
			Special Fund:	4,274,215
NORTHWEST AREA WATER SUPPLY				
Allocated	530,958	6,229,700	50,289,114	57,049,772
Expended	286,943	2,736,787	15,364,676	18,388,607
Percent	54%	44%	31%	32%
			Funding Source:	
			General Fund:	0
			Federal Fund:	8,771,639
			Special Fund:	9,616,958
PROGRAM TOTALS				
Allocated	13,466,002	15,349,706	297,128,769	325,944,477
Expended	8,653,172	9,166,550	74,728,277	92,547,999
Percent	64%	60%	25%	28%
FUNDING SOURCE:	ALLOCATION	EXPENDITURES	REVENUE	
GENERAL FUND	14,124,223	8,627,817	GENERAL FUND:	154,287
FEDERAL FUND	67,070,358	13,049,552	FEDERAL FUND:	13,099,721
SPECIAL FUND	244,749,896	70,870,630	SPECIAL FUND:	72,591,833
TOTAL	325,944,477	92,547,999	TOTAL:	85,845,842

STATE WATER COMMISSION
PROJECTS/GRANTS/CONTRACT FUND
2009-2011 BIENNIUM

	<i>Oct-10</i>				
	BUDGET	SWC/SE APPROVED	OBLIGATIONS EXPENDITURES	REMAINING UNOBLIGATED	REMAINING UNPAID
CITY FLOOD CONTROL					
FARGO/RIDGEWOOD	2,084,750	2,084,750	2,033,809	0	50,941
FARGO	45,000,000	45,000,000	0	0	45,000,000
FARGO/MOOREHEAD STUDY	300,000	300,000	0	0	300,000
GRAFTON	7,175,000	7,175,000	0	0	7,175,000
WATER SUPPLY	38,296,087	38,296,087	10,841,282	0	27,454,805
PERMANENT OIL TRUST FUND	2,442,000	2,442,000	997,273	0	1,444,727
IRRIGATION DEVELOPMENT	1,605,370	1,605,370	111,546	0	1,493,824
GENERAL WATER MANAGEMENT					
OBLIGATED	20,160,433	20,160,433	5,661,522	0	14,498,911
UNOBLIGATED	1,987,456			1,987,456	0
MISSOURI RIVER MANAGEMENT	372,000	372,000	0	0	372,000
FLOOD CONTROL					
BALDHILL DAM	92,832	92,832	6,138	0	86,694
RENWICK DAM	1,478,190	1,478,190	0	0	1,478,190
UPPER MAPLE RIVER DAM	112,500	112,500	0	0	112,500
RED RIVER WATER SUPPLY	3,200,000	3,200,000	2,740,785	0	459,215
DEVILS LAKE					
BASIN DEVELOPMENT	102,000	102,000	20,763	0	81,237
DIKE	25,350,000	25,350,000	4,848,000	0	20,502,000
OUTLET	15,961,325	15,961,325	12,693,829	0	3,267,496
OUTLET OPERATIONS	4,900,000	4,900,000	1,940,355	0	2,959,645
DL USGS MODEL STUDY	16,000	16,000	0	0	16,000
DL TOLNA COULEE DIVIDE	500,000	500,000	0	0	500,000
CITY OF MINNEWAKAN	15,000	15,000	15,000	0	0
DL EAST END OUTLET	2,200,000	2,200,000	0	0	2,200,000
NELSON COUNTY	636,064	636,064	8,492	0	627,572
WEATHER MODIFICATIONS	225,000	225,000	0	0	225,000
SOUTHWEST PIPELINE PROJECT	12,782,474	12,782,474	4,204,243	0	8,578,231
NORTHWEST AREA WATER SUPPLY	10,832,918	10,832,918	2,294,703	0	8,538,215
TOTALS	197,827,399	195,839,943	48,417,740	1,987,456	147,422,203

STATE WATER COMMISSION
PROJECTS/GRANTS/CONTRACT FUND
2009-2011 Biennium

PROGRAM OBLIGATION

Approve SWC By	No	Dept		Initial Approved Date	Total Approved	Total Payments	Oct-10 Balance
City Flood Control:							
SWC	1927	5000	Fargo/Ridgewood Flood Control Project	6/22/2005	2,084,750	2,033,809	50,941
SWC	1928	5000	Fargo Flood Control Project	6/23/2009	45,000,000	0	45,000,000
SWC	583	5000	Fargo/Moorhead Study	3/29/2010	300,000	0	300,000
SWC	1771	5000	Grafton Flood Control Project	3/11/2010	7,175,000	0	7,175,000
Subtotal City Flood Control					54,559,750	2,033,809	52,525,941
Water Supply Advances:							
SWC	2373-04	5000	Lakota WS (Tri-Co WD)	7/17/2007	212,065	91,918	120,147
	2373-09	5000	South Central RWD (Phase II)	6/23/2008	2,350,000	635,480	1,714,520
	2373-13	5000	All Seasons Rural Water - (Upham)	7/17/2007	128,000	43,976	84,024
	2373-15	5000	North Central Rural Water Consortium (S. Benson Cou)	12/7/2007	916,000	696,899	219,102
	2373-15	5000	North Central Rural Water Consortium (Anamoose/Ber)	6/23/2008	3,295,000	31,900	3,263,100
	2373-27	5000	Trails Regional Rural Water (Phase I)	1/25/2008	3,199,000	3,070,777	128,223
	2373-16	5000	Trails Regional Rural Water (Phase II)	6/23/2008	2,305,748	1,890,044	415,704
	2373-24	5000	Trails Regional Rural Water (Phase III)	8/18/2009	1,300,000	254,078	1,045,922
Water Supply Grants:							
	2373-19	5000	City of Washburn Water Supply	4/28/2009	1,500,000	1,136,350	363,650
	2373-17	5000	City of Parshall	6/23/2008	1,920,274	773,080	1,147,194
	2373-18	5000	Ray & Tioga Water Supply Association	12/17/2008	4,200,000	1,445,166	2,754,834
	2373-25	5000	McKenzie Phase II	6/23/2009	1,500,000	0	1,500,000
	2373-28	5000	McKenzie Phase IV	3/11/2010	3,500,000	0	3,500,000
	2373-30	5000	McKenzie WAWS	10/26/2010	1,500,000	0	1,500,000
	2373-26	5000	Valley City Water Treatment Plant	8/18/2009	9,200,000	0	9,200,000
	2373-29	5000	City of Wilrose - Crosby Water Supply	7/28/2010	1,270,000	771,615	498,385
Subtotal Water Supply					38,296,087	10,841,282	27,454,805
HB No. 1305 Permanent Oil Trust Fund							
	2373-21	5000	Burke, Divide, Williams Water District	6/23/2009	985,000	534,753	450,247
	2373-22	5000	Ray & Tioga Water Supply Association	6/23/2009	864,000	160,138	703,862
	2373-23	5000	City of Wildrose	6/23/2009	593,000	302,382	290,618
Subtotal Permanent Oil Trust Fund					2,442,000	997,273	1,444,727
Irrigation Development:							
SWC	1389	5000	BND AgPace Program	10/23/2001	194,439	61,546	132,893
SWC	AOC/IRA	5000	ND Irrigation Association	7/20/2009	100,000	50,000	50,000
SWC	1968	5000	2009-11 McClusky Canal Mile Marker 7.5 Irrigation Pro	6/1/2010	1,310,931	0	1,310,931
Subtotal Irrigation Development					1,605,370	111,546	1,493,824
General Water Management							
					880,000		
Hydrologic Investigations:							
SWC	1400/7	3000	Houston Engineering Water Permit Application Review	4/2/2009	1,325	800	525
	1400/8	3000	Houston Engineering Water Permit Application Review	6/2/2009	7,500	7,473	27
	1400/9	3000	Houston Engineering Water Permit Application Review	1/1/2010	6,759	6,759	0
	1400/10	3000	Houston Engineering Water Permit Application Review	1/0/1900	5,870	5,870	1
	1400/11	3000	Houston Engineering Water Permit Application Review	10/10/2010	6,500	1,457	5,043
	862	3000	Arletta Herman	4/7/2008	2,416	2,636	(220)
	1690	3000	Mary Lou McDaniel	5/6/2009	3,338	3,659	(321)
	1703	3000	Neil Flaten	4/7/2008	3,877	4,175	(298)
	1707	3000	Neil Flaten	4/7/2008	2,957	3,181	(224)
	1714	3000	David Robbins	5/7/2009	1,143	1,143	0
	1761	3000	Gloria Roth	5/6/2009	983	1,095	(113)
	1761	3000	Fran Dobits	4/7/2008	1,617	1,812	(195)
	1393	3000	US Geological Survey, US Dept. Of Interior StreamStat	7/16/2009	39,008	17,340	21,668
	1395A	3000	US Geological Survey, US Dept. Of Interior Stream Ga	11/12/2009	381,980	286,485	95,495
	1395	3000	US Geological Survey, US Dept. Of Interior Water Qua	10/21/2009	13,205	0	13,205
	1395D	3000	US Geological Survey, US Dept. Of Interior Eaton Irri	10/1/2009	15,300	15,300	0
Hydrologic Investigations Obligations Subtotal					83,293	57,399	25,894
Remaining Hydrologic Investigations Authority					796,708		
Hydrologic Investigations Authority Less Payments							
General Projects Obligated					17,547,479	3,569,385	13,978,095
General Projects Completed					1,732,954	1,732,954	0
Subtotal General Water Management					20,160,433	5,661,522	14,498,911

STATE WATER COMMISSION
PROJECTS/GRANTS/CONTRACT FUND
2009-2011 Biennium

PROGRAM OBLIGATION

Approve SWC		Dept		Initial	Total	Total	Oct-10
By	No			Approved			Approved
				Date			
Missour River Management:							
SWC	1943	5000	Missouri River Siltation Assessment Study	10/12/2006	30,000	0	30,000
SWC	1963	5000	Beaver Bay Embankment Feasibility Study	8/10/2009	342,000	0	342,000
Subtotal					372,000	0	372,000
Flood Control:							
SWC	300	5000	Baldhill Dam Flood Pool Raise	4/30/1998	92,832	6,138	86,694
SWC	849	5000	Renwick Dam Rehabilitation	5/17/2010	1,478,190	0	1,478,190
SWC	1878-02	5000	Upper Maple River Dam Project Dev & Preliminary Eng	9/29/2008	112,500	0	112,500
Subtotal Flood Control					1,683,522	6,138	1,677,384
Red River Water Supply:							
SWC	1912	5000	2007-09 (GDCD'S) Red River Valley Water Supply Pro	3/17/2008	3,000,000	2,740,785	259,215
SWC	1912	5000	2009-11 (GDCD's) RRVWSP Value Engineering Study	6/1/2010	200,000	0	200,000
Subtotal					3,200,000	2,740,785	459,215
Devils Lake Basin Development:							
SWC	416-01	5000	2009-11 Devils Lake Basin Joint Water Resource Man:	6/23/2009	60,000	0	60,000
SWC	416-02	5000	City of Devils Lake Levee System Extension & Raise	12/6/2002	25,350,000	4,848,000	20,502,000
SWC	416-05	2000	2009-11 Devils Lake Outlet Awareness Manager	6/23/2009	42,000	20,763	21,237
SWC	416-07	5000	Devils Lake Outlet	2/20/2002	15,961,325	12,693,829	3,267,496
SWC	416-10	4700	Devils Lake Outlet Operations	8/18/2009	4,900,000	1,940,355	2,959,645
SE	416-11	5000	USGS/US Dept of Interior UnTRIM model on water-qu:	8/13/2010	16,000	0	16,000
SWC	416-13	5000	DL Tolna Coulee Divide	10/26/2010	500,000	0	500,000
SWC	416-14	5000	City of Minnewaukan Flood Risk Reduction Analysis St	6/3/2010	15,000	15,000	0
SWC	416-15	5000	DL East End Outlet	10/26/2010	2,200,000	0	2,200,000
SWC	1932**	5000	Michigan Spillway Rural Flood Assessment Drain	8/30/2005	508,492	8,492	500,000
SWC	1932**	5000	Nelson Co. Emergency Pumping Peterson to Dry Run	5/23/2010	112,219	0	112,219
SWC	1131*	5000	Nelson County Central Hamlin Rural Flood Control	9/17/2009	8,940	0	8,940
SWC	1131	5000	Nelson County Channel Maintenance & Misc	9/17/2009	6,413	0	6,413
Devils Lake Subtotal					49,680,389	19,526,438	30,153,951
SWC		7600	Weather Modification	7/1/2009	225,000	0	225,000
SWC	1736	8000	Southwest Pipeline Project	7/1/2009	12,782,474	4,204,243	8,578,231
SWC	2374	9000	Northwest Area Water Supply	7/1/2009	10,832,918	2,294,703	8,538,215
TOTAL					195,839,943	48,417,740	147,422,203

STATE WATER COMMISSION
PROJECTS/GRANTS/CONTRACT FUND
2009-2011 Biennium
Resources Trust Fund

GENERAL PROJECT OBLIGATIONS

Approved By	SWC No	Dept		Initial Approved Date	Total Approved	Total Payments	Oct-10 Balance
SE	269	5000	2010 Fordville Dam Emergency Action Plan/GF CO.	3/3/2010	9,600	0	9,600
SWC	281	5000	2009-11 Three Affiliated Tribes/Fort Berthold Irrigation Study	10/26/2010	37,500	0	37,500
SWC	322	5000	2009-11 Red River Basin Mapping Initiative/Tri-College LiDAR	6/23/2009	300,000	244,596	55,404
SWC	322	5000	2009-11 Long-Term Red River Flood Control Solutions Study	6/23/2009	500,000	69,112	430,888
SWC	322	5000	ND Water: A Century of Challenge	2/22/2010	34,300	0	34,300
SWC	327	5000	2009-11 White Earth Dam EAP	8/18/2009	25,000	0	25,000
SE	394	5000	2007-09 Odland Dam Spillway Rehabilitation	8/25/2008	16,700	0	16,700
SWC	528	5000	2009 McGregor Dam Emergency Action Plan	6/23/2009	25,000	0	25,000
SE	568	5000	2008 Sheyenne River Snagging & Clearing Project	4/11/2008	5,000	0	5,000
SWC	568	5000	2009-11 Southeast Cass WRD Sheyenne River Snagging & Clearing Project	12/11/2009	165,000	0	165,000
SWC	620	5000	2008 Mandan Flood Control Protective Works (Levee)	9/29/2008	125,396	0	125,396
SE	642	5000	2009-11 Morton Co/Sweetbriar Dam Emergency Action Plan	5/17/2010	15,200	0	15,200
SWC	642-05	5000	2007-09 Sweetbriar Creek Dam Project	3/6/2009	683,400	283,055	400,345
SWC	646	5000	2009-11 Christine Dam Recreation Retrofit Project	10/26/2010	184,950	0	184,950
SWC	646	5000	2009-11 Hickson Dam Recreation Retrofit Project	10/26/2010	44,280	0	44,280
SE	829	5000	2009-11 Rush River Watershed Detention Site Engineering Feasibility Study	8/10/2010	11,990	0	11,990
SWC	847	5000	2007-09 Swan Creek FC Diversion Ditch	6/23/2008	1,640,992	1,481,182	159,810
SE	847	5000	2009-11 Swan-Buffalo Detention Dam No. 12 Emergency Action Plan	10/18/2009	20,000	0	20,000
SWC	847	5000	2009-11 Swan-Buffalo Detention Dam No. 12 Flood Control Dam Safety Project	7/28/2010	114,783	0	114,783
SE	847	5000	2009-11 Absaraka Dam Safety Analysis	8/31/2009	5,719	0	5,719
SWC	847	5000	2009-11 Swan Creek Diversion Channel Improvement Reconstruction	12/11/2009	76,528	0	76,528
SWC	928/988/1508	5000	2008 Southeast Cass WRD Bois, Wild Rice, & Antelope	6/23/2008	60,000	0	60,000
SE	985	5000	2009-11 Kolding Dam Emergency Action Plan	5/29/2009	9,600	0	9,600
SWC	1068	5000	2009-11 Cass County Drain No. 12 Improvement Reconstruction	8/18/2009	500,000	0	500,000
SWC	1069	5000	2009-11 Cass County Drain No. 13 Improvement Reconstruction	8/18/2009	145,472	23,248	122,224
SWC	1070	5000	2009-11 Cass County Drain No. 14 Improvement Recon	8/18/2009	500,000	60,490	439,510
SWC	1080	5000	2007-09 Cass County Drain No. 27 Improvement Recon	10/24/2007	94,197	0	94,197
SWC	1088	5000	2009-11 Cass County Drain No. 37 Improvement Recon	8/18/2009	158,535	68,735	89,800
SWC	1093	5000	2008 Cass Co. Drain No. 45 Extension Project	3/17/2008	150,800	26,043	124,757
SWC	1131	5000	2009-11 Richland Co. Drain No. 14 Improvement Reconstruction	3/11/2010	183,364	0	183,364
SWC	1180	5000	2009-11 Richland Co. Drain No. 7 Improvement Reconstruction	3/11/2010	130,681	0	130,681
SWC	1232	5000	2009-11 Traill Co. Drain No. 13 Channel Extension Project	8/18/2009	23,575	0	23,575
SWC	1244	5000	2009-11 Traill Co. Drain No. 27 (Moen) Reconstruction & Extension	3/11/2010	500,000	0	500,000
SWC	1289	5000	2007-09 Noxious Weed McKenzie County -Sovereign	10/24/2007	7,247	0	7,247
SE	1291	5000	2009-11 Mercer County WRD Knife River Snagging & Clearing	11/1/2010	20,000	0	20,000
SWC	1299	5000	2009-11 City of Lisbon's Mapping & Survey for FEMA Buyouts	3/29/2010	30,000	6,522	23,478
SWC	1299	5000	2009-11 City of Fort Ransom Riverbank Stabilization	9/1/2010	60,803	0	60,803
SWC	1313	5000	2009-11 City of Minot/Ward Co. Aerial Photo & LiDAR	3/11/2010	186,780	0	186,780
SWC	1328	5000	2007 Cass Co. Drain No. 23 Area Improvement	7/17/2007	35,980	0	35,980
SWC	1344	5000	2009-11 Southeast Cass Sheyenne River Diversion Low Flow Channel Improve	3/11/2010	2,037,600	0	2,037,600
SE	1346	5000	2009-11 ML Carmel Dam Emergency Action Plan	5/5/2010	9,600	0	9,600
SWC	1378	5000	2009-11 Clausen Springs Dam Emergency Spillway Repair	10/26/2010	790,975	43,983	746,992
SE	1396	5000	2009-11 Dale Frink Consultant Services Agreement	10/26/2010	20,000	0	20,000
SWC	1401	5000	2009-11 International Boundary Roadway Dike Pembina	9/21/2009	260,238	19,938	240,300
SWC	1401	5000	2009-11 International Boundary Roadway Dike Pembina	9/1/2010	30,000	0	30,000
SWC	1413	5000	2009-11 Traill Co/Buffalo Coulee Snagging & Clearing	9/1/2010	26,000	0	26,000
SWC	1431	5000	2009-11 US Geological Survey, DOI Report Describing Peak Discharge Perio	8/5/2009	20,000	0	20,000
SWC	1431	5000	2009-11 US Geological Survey - Supplemental Flood Info	3/11/2010	11,000	0	11,000
SWC	1431	5000	2007-2009 (S.B. 2020) 2009 Emergency Flood Control	4/28/2009	100,000	40,390	59,610
SWC	1431	5000	2009-11 DES Purchase of Mobile Stream Gages	9/13/2010	11,214	0	11,214
SWC	1438	5000	2008 Mulberry Creek Drain Partial Improv Phase II	3/17/2008	46,816	23,029	23,787
SWC	1444	5000	2009-11 City of Pembina's Flood Control FEMA Levee Certification	3/11/2010	27,156	0	27,156
SWC	1461	5000	2009-11 Pembina River Bank Stabilization Project	3/11/2010	64,383	0	64,383
SWC	1509	5000	2009-11 Sheyenne River Watershed Flood Water Detention Study	7/20/2009	75,000	31,785	43,215
SWC	1515	5000	2009-11 Cottonwood Creek Dam	7/28/2010	373,440	0	373,440
SE	1535	5000	2009-2011 Lake Agassiz Resource Conservation & Development Council - Soil	2/22/2010	1,000	0	1,000
SE	1577	5000	2009-2011 Burleigh Co - Fox Island 2010 Flood Hazard Mitigation Evaluation	8/9/2010	11,175	0	11,175
SWC	1577	5000	2009-11 Hazen Flood Control Levee (1517) & FEMA Accreditation	3/11/2010	567,700	0	567,700
SWC	1591	5000	Revision of Handbook ND Water Managers Proj	4/12/2007	14,750	0	14,750
SE	1625	5000	High Water Mark Delineation Methods & Guidelines	10/24/2007	54,048	0	54,048
SWC	1625	5000	OHWM Delineations MT/ND Border Yellowstone & Missoua	10/29/2008	75,000	0	75,000
SE	1625	5000	2009-11 Sovereign Lands Rules - ND Game & Fish	2/23/2010	10,000	3,213	6,788
SE	1625	5000	2009-11 NDDOT Aerial Photography - Missouri River	11/19/2010	5,200	0	5,200
SWC	1638	5000	2009-11 Red River Basin Non-NRCS Rural/Farmstead Ring Dike Program	6/23/2009	800,000	285,026	514,974
SWC	1657	5000	2009-11 City of Enderlin's Flood Control FEMA Levee Certification	3/11/2010	100,578	0	100,578
SWC	1657	5000	2009-11 Traill Co/Goose River Snagging & Clearing	9/1/2010	48,000	0	48,000
SWC	1705	5000	2009-11 Red River Basin Flood Control Coordinator Position	7/24/2009	36,000	0	36,000
SWC	1785	5000	2009-11 Maple River Dam EAP	8/18/2009	25,000	0	25,000
SE	1785	5000	2009-11 Sweetbriar Dam EAP	2/17/2010	15,200	0	15,200
SWC	1792	5000	2009-11 SE Cass Wild Rice River Dam Study Phase II	12/11/2009	130,000	0	130,000
SE	1808	5000	2009-11 U.S. Dept of Interior/Beaver Creek Gaging Stations	9/7/2010	11,710	0	11,710
SE	1842	5000	2009-11 SCWRD Wild Rice River Snagging & Clearing	5/28/2009	20,000	15,669	4,331
SWC	1842	5000	2009-10 SCWRD Wild Rice River Snagging & Clearing	12/11/2009	115,000	0	115,000
SWC	1859	5000	2009-11 Section NPS 319 ND Health Dept	8/18/2009	200,000	70,895	129,105
SWC	18502	5000	(2008) Drought Disaster Livestock Water Supply	5/14/2008	571,747	157,134	414,613
SWC	1882-07	5000	2009-11 NDSU Development of SEBAL	9/1/2010	61,404	0	61,404
SWC	1921	5000	Square Butte Dam No. 6/Recreational Facility	3/23/2009	882,030	0	882,030
SWC	1934	5000	2007-08 Traill County WRD Elm River Snagging	12/7/2007	24,500	0	24,500

STATE WATER COMMISSION
PROJECTS/GRANTS/CONTRACT FUND
2009-2011 Biennium
Resources Trust Fund

GENERAL PROJECT OBLIGATIONS

Approvec SWC				Initial	Total	Total	Oct-10
By	No	Dept		Approved	Approved	Payments	Balance
				Date			
SWC	1934	5000	2009 Elm River Snagging & Clearing Project Trial	12/5/2008	3,266	0	3,266
SWC	1941	5000	Walsh County Assessment Drain 4A Construction	9/21/2009	81,594	81,594	0
SWC	1942	5000	Walsh County Assessment Drain 10, 10-1, 10-2	9/21/2009	273,056	235,789	37,267
SE	1943	5000	2009-11 Missouri River/Oahe Delta Flood Hazard Mitigation Evaluation Project	8/10/2009	12,000	0	12,000
SWC	1953	5000	2009-11 Walsh County Drain No. 73 Construction Project	8/18/2009	96,990	0	96,990
SWC	1960	5000	2009-11 Puppy Dog Flood Control Drain Construction	8/18/2009	796,976	0	796,976
SE	1961	5000	2009-11 Pembina County Drain No. 69 Extension Construction Project	8/10/2009	7,793	0	7,793
SWC	1964	5000	2009-11 Hydraulic Effects of Rock Wedges Study- UND	11/12/2009	50,000	2,409	47,591
SWC	1965	5000	2009-11 ND Silver Jackets Team Charter & Action Plan	11/12/2009	75,000	17,903	57,097
SWC	1966	5000	2009-11 City of Oxbow Emergency Flood Fighting Barrier System	6/1/2010	188,400	0	188,400
SWC	1131*	5000	Nelson County Central-Hamlin Rural Flood	9/17/2009	47,020	37,541	9,479
SWC	1932**	5000	Michigan Spillway Rural Flood Assessment	8/30/2005	1,012,219	80,069	932,150
SE	PBS	5000	2009-11 PBS Documentary on Soil Salinity/Lake Agassiz RC & D	1/29/2010	1,000	0	1,000
SE	AOC/ARB/ND:	5000	2009-11 NDSU Dept of Soil Science - NDAWN Center	3/8/2010	6,000	3,000	3,000
SE	AOC/RRBC	5000	2009-11 Red River Basin "A River Runs North"	6/30/2010	5,000	0	5,000
SWC	AOC/RRBC	5000	2009-11 Red River Basin Commission Contractor	7/1/2009	200,000	100,000	100,000
SWC	AOC/WEF	5000	2009-11 North Dakota Water Magazine	7/20/2009	36,000	18,000	18,000
SE	AOC/WRD	5000	2010 Water Managers Handbook	3/22/2010	16,500	0	16,500
SWC	CON/WILL-CA	5000	2009-11 Will & Carlson Consulting Contract	8/24/2009	70,000	27,730	42,270
SE	PSAWRD/MRJ	5000	Missouri River Joint Water Board, Start up	12/5/2008	14,829	0	14,829
SE	PSAWRD/MRJ	5000	Missouri River Joint Water Board (MRRIC) T. FLECK	6/30/2009	20,000	10,806	9,194
SE	PSAWRD/USR	5000	2009-11 Upper Sheyenne River WRB Administration	7/10/2009	12,000	500	11,500
TOTAL					17,547,479	3,569,385	13,978,095

STATE WATER COMMISSION
PROJECTS/GRANTS/CONTRACT FUND
2009-2011 Biennium
Resources Trust Fund

COMPLETED GENERAL PROJECTS

Approved By	SWC No	Dept		Initial Approved Date	Total Approved	Total Payments	Oct-10 Balance
SWC	249	5000	2009 Mott Dam Emergency Action Plan	6/23/2009	25,000	12,757	12,243
SWC	281	5000	2007-09 Three Affiliated Tribes/Fort Berthold Irrigation Study	3/23/2009	80,000	80,000	0
SE	353	5000	2009-11 Cedar Lake Dam, Emergency Action Plan	7/15/2009	9,600	9,600	0
SE	420	5000	2009 Mirror Lake Dam Safety Repair	10/14/2009	12,220	11,887	333
SE	420	5000	Mirror Lake One-Foot Pool Raise	9/17/2009	18,281	18,281	0
SE	450	5000	2007-09 Sykeston Dam 2008 Emergency Action Plan	11/25/2008	7,839	7,839	0
SE	560	5000	2009 Blacktail Dam Emergency Action Plan	5/28/2009	9,600	6,733	2,867
SWC	568	5000	2009 Sheyenne River Snagging & Clearing Project	12/5/2008	135,000	75,085	59,915
SWC	568	5000	2009-11 Richland Co. Sheyenne River Snagging & Clearing Project	12/11/2009	47,500	35,449	12,051
SWC	568	5000	2009-11 Richland Co. Sheyenne River Snagging & Clearing Project	3/11/2010	47,500	47,409	91
SWC	568	5000	2009 Richland Co. Sheyenne River & Wild Rice River Snagging & Clearing #184	12/11/2009	39,500	28,488	11,012
SWC	568	5000	2009-11 SE Cass Sheyenne River Snaggin & Clearing	3/11/2010	175,473	173,350	2,123
SWC	571	5000	2009-11 Oak Creek Bank Stabilization Project	8/18/2009	33,250	25,365	7,885
SWC	576	5000	2009-11 City of Mandan - Missouri River Emergency Bank Stabilization	12/11/2009	33,429	33,370	59
SE	576	5000	2009-11 Mandan City Flood Controls Works	6/18/2010	2,000	2,000	0
SE	586	5000	2009 Short Creek Dam Emergency Action Plan	5/28/2009	9,600	9,600	0
SWC	620	5000	2009-11 City of Manan - Lower Heart River Bank Stabilization	12/11/2009	63,808	63,808	0
SE	662	5000	2009 WCWRD'S Park River Snagging & Clearing Project	6/30/2009	1,948	0	1,948
SE	671	5000	2007-09 Harvey Dam 2008 Emergency Action Plan	11/25/2008	7,840	7,837	3
SWC	847	5000	Maple River - Retention Study Rush River Joint WRD	8/15/2002	25,000	24,927	73
SE	847	5000	2009-11 Swan Buffalo Detention Dam No. 5 Emergency Action Plan	7/20/2009	20,000	11,397	8,603
SE	847	5000	2009-11 Swan Buffalo Detention Dam No. 8 Emergency Action Plan	8/7/2009	20,000	10,496	9,504
SE	870	5000	2009-11 Crown Butte Dam Emergency Action Plan	7/10/2009	9,600	9,600	0
SWC	988	5000	Southeast Cass WRD Antelope Creek Eng Feas	10/12/2006	40,000	40,000	0
SWC	1084	5000	2008 Cass Co. Drain No. 32 Partial Improvement Recon	3/17/2008	68,538	13,150	55,388
SWC	1140	5000	Pembina County Drain No 11 Outlet Improvement	9/21/2009	70,846	70,846	0
SWC	1155	5000	2008 Pembina Co. Drain No. 42 Partial Impr.Recon.	3/17/2008	11,386	11,386	0
SWC	1176	5000	2008 Richland Co. Drain No. 2 Partial Improvement Recon.	3/17/2008	5,791	2,964	2,827
SWC	1238	5000	2009-11 Traill County Drain No. 19 Legal/Ext Outlet	8/18/2009	46,187	46,187	0
SWC	1249	5000	2008 Traill Co. Drain No. 34 Partial Improvement Recon	3/17/2008	255,629	192,250	63,379
SWC	1334	5000	Traill County Drain No. 38 Reconstruction	6/30/2009	57,631	0	57,631
SE	1378	5000	2009-11 Clausen Springs Dam Incremental Risk Assessment Report	12/22/2009	9,179	9,179	0
SE	1378	5000	2009-11 Clausen Springs Dam Feasibility Study of Improvement Options	12/10/2009	7,921	7,921	0
SE	1378	5000	2009-11 Clausen Springs Dam Emergency Watershed & Dam Hydraulics Repor	8/31/2009	9,418	9,418	0
SWC	1378	5000	2009-11 Barnes Co. Clausen Springs Dam Construction Repair	12/11/2009	1,300,000	0	1,300,000
SE	1382	5000	2009-11 Camel Butte Dam Emergency Action Plan	7/24/2009	9,600	9,600	0
SWC	1403	5000	2009-11 ND Water Resources Research Institute Fellowship Program	12/11/2009	13,850	13,850	0
SWC	1413	5000	2009 TCWRD Buffalo Coulee Snagging & Clearing Project	6/23/2009	49,000	28,874	20,126
SWC	1461	5000	2008 Pembina River Area Bank Stabilization Project	12/5/2008	24,307	0	24,307
SE	1471	5000	2009-11 Erie Dam Emergency Action Plan	7/24/2009	20,000	7,093	12,907
SE	1515	5000	2009-11 US Geological Survey - monitoring gages Cottonwood Creek Dam	10/18/2009	8,260	8,260	0
SWC	1523	5000	2008 Souris River Golf Course Area Bank Stabilization	9/29/2008	31,612	31,612	0
SE	1527	5000	2009-11 Daub Dam Emergency Action Plan	8/16/2010	9,600	7,680	1,920
SE	1556	5000	2009 Indian Creek Dam Emergency Action Plan	5/28/2009	9,600	9,600	0
SWC	1572	5000	Burnt Creek Floodway Diversion Channel	4/30/2008	121,091	112,637	8,454
SE	1625	5000	2009-11 Missouri River Contract - Environmental Service Bartlett & West	9/21/2009	5,900	5,900	0
SWC	1667	5000	2009-11 Traill County Goose River Snagging & Clearing Project	12/11/2009	46,500	30,873	15,627
SE	1808	5000	2009-11 Beaver Creek Dam Emergency Action Plan	7/14/2009	20,000	20,000	0
SE	1849	5000	2008 Tongue River Diversion Channel Rock Project	11/25/2008	19,087	17,994	1,093
SWC	1869	5000	2008 McDowell Dam Emergency Action Plan	9/29/2008	25,000	25,000	0
SE	1921	5000	2009 Square Butte Dam No. 6/Emergency Action Plan	3/9/2009	16,000	11,040	4,960
SWC	1936	5000	Nash Drain Extension Construction Proj	10/12/2006	19,913	14,399	5,514
SWC	1947	5000	Cass County Drain No. 62, Maple River WRD	4/30/2008	39,787	3,687	36,100
SWC	1948	5000	2008 Cass Co. Drain No. 67 Construction Project	3/25/2008	334,250	199,888	134,362
SWC	1950	5000	2008 Cypress Creek Drain No. 2 Construction	6/23/2008	22,400	22,400	0
SWC	1951	5000	2007-09 Lynchburg-Buffalo Drain Improvement	8/31/2009	1,000,000	11,474	988,526
SWC	1751-06	5000	2009-11 Southeast Cass WRD/Flood Imagery Project	1/18/2010	30,014	30,014	0
SE	AOC/MI	5000	2010 Summer Water Tours Sponsorship	3/1/2010	2,500	2,500	0

TOTAL

4,594,785 1,732,954 2,861,831

Fargo-Moorhead Metropolitan Feasibility Study

Presentation for FMM Work Group
November 18, 2010



US Army Corps of Engineers
BUILDING STRONG®



Brief Project History

- ✓ From the Draft EIS
 - ✓ The screening results produced –
 - ✓ Diversion channels with tie back levees
 - ✓ Minnesota
 - ✓ North Dakota
- ✓ The different alignments were compared at various flow volumes
- ✓ The Locally Preferred Plan (LPP) is ND 35K.
- ✓ The Federally Comparable Plan (FCP) in MN 35K.
- ✓ Project impacts were estimated for the LPP and FCP



Brief Project History

- ✓ Downstream impacts
 - ✓ Computer modeled to Halstad
 - ✓ No zero impact point identified
 - ✓ Computer model extended to Thompson
 - ✓ No zero impact point identified
 - ✓ Computer model extended to Drayton
 - ✓ No zero impact point identified



- ✓ Initial model showed no zero impact point, this was not anticipated.

Current Analysis

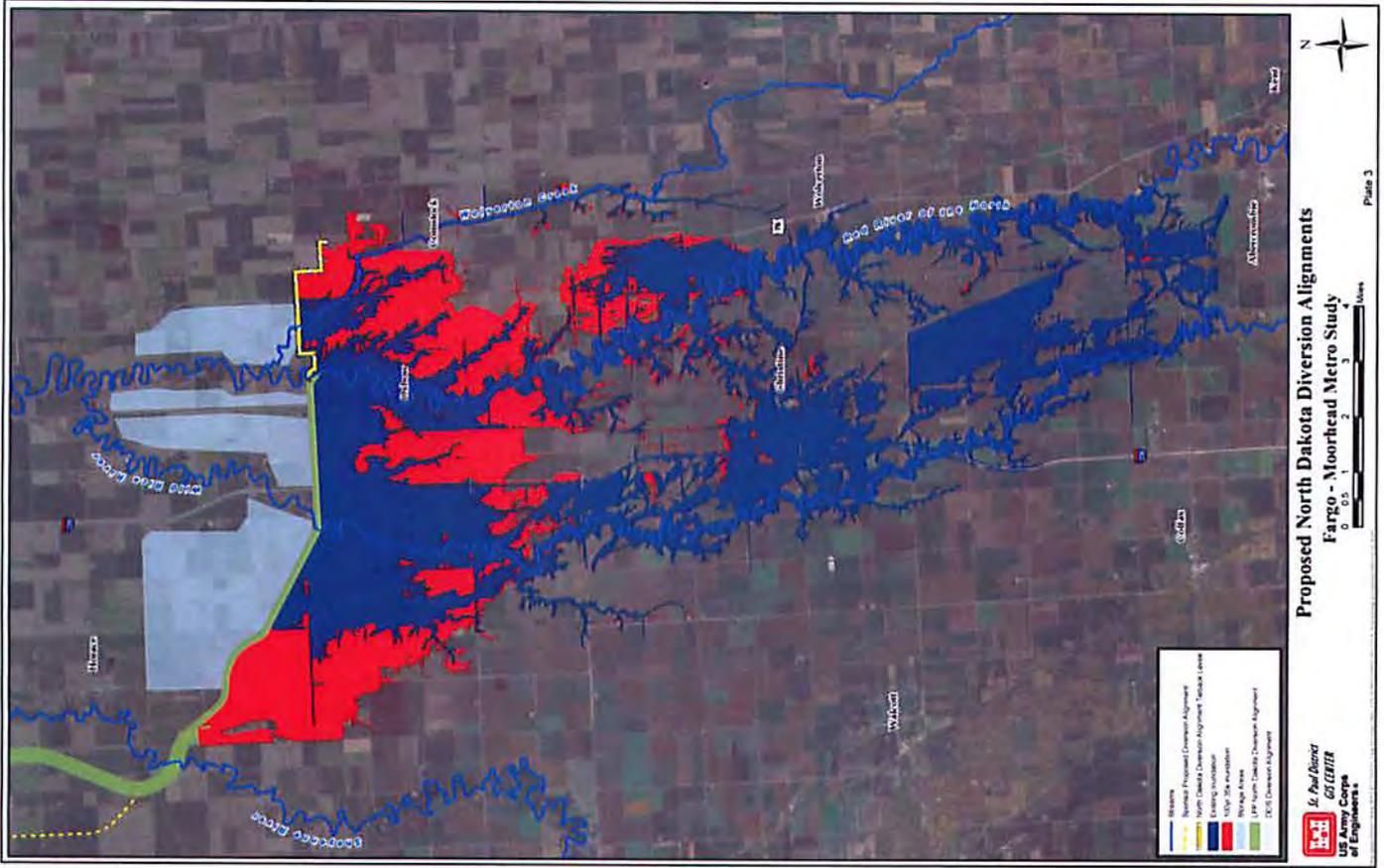
- ✓ Additional hydraulic modeling completed
 - ✓ Model reviewed by others

- ✓ Looking at concepts to reduce downstream impacts
 - ✓ Storage cells along diversion
 - ✓ Upstream staging



Fargo-Moorhead Flood 2009







**ND Diversion 1% event
Possible number of structures Impacted***

Estimated Downstream Structures – 4500

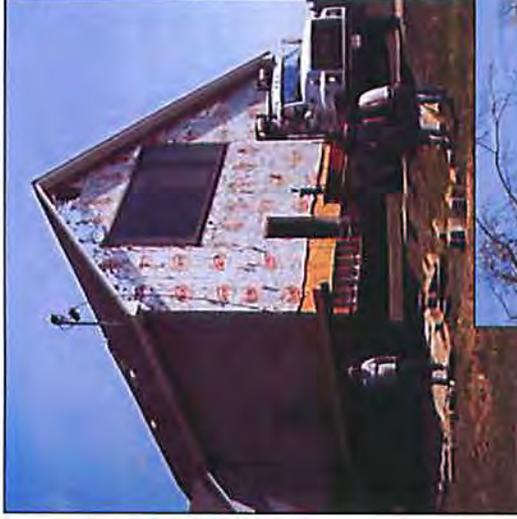
Or

Estimated Upstream Structures - 800

***Estimates based on preliminary information – Actual impacts will be different - depth of impacts has not been determined and will vary by location**

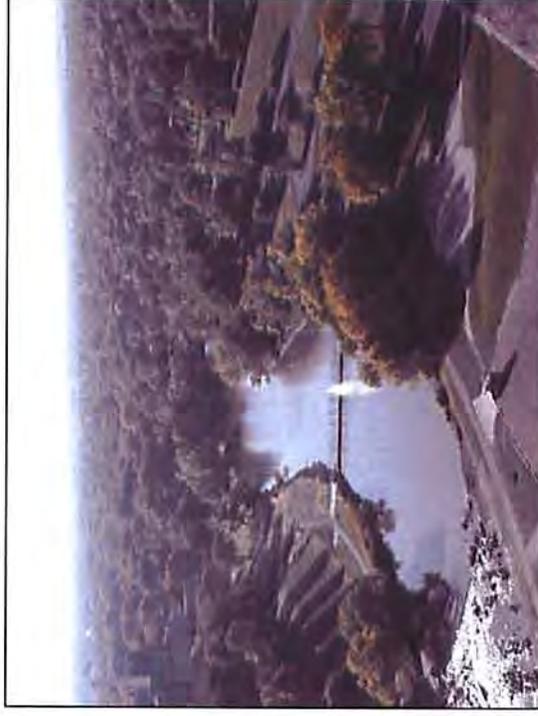
Path Forward:

- ✓ Quantify downstream impacts
- ✓ Quantify upstream impacts
- ✓ Analyze non-structural solutions downstream of ND Diversion.
- ✓ Upstream/Storage Impacts
 - ✓ Analyze non-structural solutions
 - ✓ Buy-outs
 - ✓ Relocations
 - ✓ Ring Levees
 - ✓ Complete Takings Analysis
 - ✓ Continue working with Project Sponsors to address impacts.



Path Forward:

- ✓ Continue survey work
- ✓ Continue geotechnical work
- ✓ Continue working with natural resources agencies
- ✓ Conduct geomorphology study
- ✓ Resolve issues generated by public and agency reviews
- ✓ No additional NED/FCP analysis
- ✓ Working with HQ/ASA(CW) on downstream impact costs



• Red River of the North

F-M Metro Study Timeline:

✓	26 Nov 10	Unsteady model updated
✓	10 Jan 11	Refinement of LPP
✓	Feb/Mar 11	Meetings in impacted areas (up or downstream)
✓	27 Apr 11	Supplemental Draft EIS to EPA for publication
✓	May 11	Public Meeting(s)
✓	20 Jun 11	Complete 45-day NEPA public comment period
✓	1 Aug 11	Division Engineer's Transmittal
✓	7 Sept 11	Submit Draft Chief's Report and Final EIS to EPA for publication
✓	1 Dec 11	Sign Chief's Report



GARRISON DIVERSION CONSERVANCY DISTRICT **STATUS REPORT ON THE** **RED RIVER VALLEY WATER SUPPLY PROJECT**

Garrison Diversion is the co-lead representing the State of North Dakota on the Red River Valley Water Supply Project Environmental Impact Statement (EIS). This update is provided on a regular basis to all state agencies. If you would like additional information, please contact us at gdcd@daktel.com, 800-532-0074 or go to www.garrisondiversion.org.

Environmental Impact Statement

- The Secretary of Interior signed a memorandum on January 15, 2009, disclosing the following:
 - The project selected to meet the needs of the Red River Valley is the Preferred Alternative, a pipeline from the McClusky Canal to Lake Ashtabula; and,
 - The identified treatment processes are adequate to meet the requirements of the Boundary Waters Treaty.
- The Final EIS was available to the public on December 28, 2007.

Lake Agassiz Water Authority

- The LAWA board met on September 14. The preliminary findings of the value engineering process were presented. The board also discussed the potential funding needs in the upcoming North Dakota legislative session. The next meeting of the LAWA board is scheduled for December 8 in Bismarck.

Pre-final Design Effort

- The following is a summary of the ongoing efforts on the task orders:

Right-of-Way: Garrison Diversion has wrapped up the effort to obtain options for right-of-way. The next steps to acquire the right-of-way will occur when the decision is made to exercise the options. Access to all of the right-of-way has been secured to complete the studies. Out of 173 landowners, 132 or 76% have signed option agreements for easements.

Permitting and Environmental Services: Notice on the determination of wetlands under the jurisdiction of the Corps of Engineers has been provided to Garrison Diversion. These wetlands, along with the other isolated wetlands, have been field verified. The wetlands under easement by the US Fish and Wildlife Service have been field verified and surveyed to develop contour maps, and the permit application to cross wetland easements has been submitted.

The class 3 cultural and historic properties field review has been completed for the entire right-of-way, and there were no significant findings. These results have been submitted to Reclamation, and consultation with the North Dakota Historic Properties Office was requested.

The Wetland Delineation Report has been completed, and the field verified jurisdictional wetlands have been submitted to the Corps of Engineers with a request to amend the jurisdictional determination to account for the adjustments in alignment.

The remaining effort in this task order is to complete the other miscellaneous permit applications so that they are ready when the decision is made to move forward.

Operational Plan: The technical memorandums supporting the operational plan have been completed. The operational plan and the supporting technical memorandums were sent to the work group for written comments. This will end the development of the operational plan at this stage of the project. It will remain in draft form until the project moves closer to construction.

Preliminary Design: Work on engineering evaluations regarding the preliminary design is 100% complete. Final deliverables have been delivered.

Utility potholing, soil boring and supplemental surveying has been completed.

Value Engineering Review

- The firm of Robinson, Stafford & Rude, Inc. facilitated the value engineering review. A team of engineers, contractors, environmental specialists, maintenance specialists and federal and state agencies completed a week-long review of the project. The results were delivered to the design team, and a meeting was conducted on September 7 to discuss the design team's response. The recommendations are currently under review.

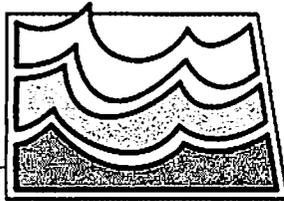
Schedule

- The next steps are to obtain a Record of Decision from the lead federal agency and to get authorization for the use of Missouri River water from Congress. Garrison Diversion, the State Water Commission and the Governor's office are working with the Congressional Delegation to move these efforts forward.



Dave Koland, General Manager

December 10, 2010



North Dakota State Water Commission

900 EAST BOULEVARD AVENUE, DEPT 770 • BISMARCK, NORTH DAKOTA 58505-0850
701-328-2750 • TDD 701-328-2750 • FAX 701-328-3696 • INTERNET: <http://swc.nd.gov>

MEMORANDUM

TO: Governor John Hoeven and Governor-designate Jack Dalrymple
Members of the State Water Commission
FROM: ~~John~~ Todd Sando, PE, Chief Engineer/Secretary
SUBJECT: Missouri River Update
DATE: December 2, 2010

On November 23, system storage in the six mainstem reservoirs was 58.3 million acre-feet (MAF), 5.2 MAF above the average system storage for the end of November, and 3.4 MAF more than last year. The record minimum system storage for the end of November was 34.6 MAF in 2006, and the maximum system storage for the end of November was 61.3 MAF in 1975. The Corps predicts runoff above Sioux City for 2010 to be 38.65 MAF, 156% of normal. This results in a forecast that the system will have 57.1 MAF at the end of the year. The record low end of year system storage was 34.4 MAF in 2005, and the maximum end of year storage was 60.95 MAF in 1975.

On November 23, Lake Sakakawea was at an elevation of 1843.1 feet msl, about 5.6 feet into the Flood Pool; this is 1.7 feet higher than a year ago and 8.3 feet above its average end of month November elevation. The record minimum end of month November elevation was 1808.9 feet msl in 2006, and the maximum end of month November was 1846.7 in 1972. Lake Sakakawea peaked at 1851.4 ft msl on July 30, which was 1.4 feet into the Exclusive Flood Pool. Releases averaged 29,500 cfs during October, compared to the long-term average of 18,700 cfs. November releases are expected to average 31,000 cfs. The forecast shows Sakakawea falling to 1841 by the end of the year, and to the base of the Flood Pool, 1837.5 feet msl, by end of February 2011.

The elevation of Lake Oahe was 1607.5 feet msl on November 23; this is 0.6 feet lower than last year and 9.1 feet higher than its average end of month November elevation. The record minimum end of month November elevation for Lake Oahe was 1573.2 feet msl in 2006, and maximum end of month November elevation was 1612.4 in 1997. Lake Oahe peaked at 1617.6 feet msl on July 1, and was 0.6 feet into the Exclusive Flood Pool. Releases from Oahe averaged 38,100 cfs in October and will average 37,500 cfs in November. The forecast shows Oahe falling to 1606.5 by the end of the year, and then rising to the base of the Flood Pool, 1607.5 feet msl, by the end of February 2011.

The elevation of Fort Peck Lake was 2235.7 feet msl on November 23; this is 15.0 feet higher than a year ago and 6.4 feet above its average end of month November elevation. Releases averaged 6,100 cfs in October compared to the long-term average of 8,000 cfs. Releases will remain near 6,000 cfs through November before being increased to 9,000 cfs the beginning of December. The forecast shows for Fort Peck falling to 2235.2 by the end of the year.

The Corps basic forecast, 38.7 MAF of runoff, shows full service flows for navigation, and an extended navigation season. The navigation season has been extended 10 days and will close in Sioux City, Iowa on December 2.

The Corps released the draft Programmatic Environmental Impact Statement (PEIS) for Emergent Sandbar Habitat creation on November 1st for public comment. The PEIS will focus on mechanically created sandbars in areas identified in the 2003 Biological Opinion. The comment period will run from November 1, 2010 to January 21, 2011. The Corps will be holding a public meeting November 30, 5-8pm at the Best Western Doublewood Inn.

The task force that was implemented by the Missouri River Protection and Improvement Act of 2000 (Title VII) held a vote by email on October 8, 2010 for a plan that will allow suggested sedimentation management projects to be brought to the task force. If a proposed project meets the criteria of the plan the task force will then suggest the project to the Corps for cost share funds. The proposed plan did not pass. A Task Force meeting will be held December 13 at 1pm at the Best Western Doublewood Inn.

TSS:BE:KC:mmb/1392

Sixty-second
Legislative Assembly
of North Dakota

Introduced by

State Engineer

A BILL for an Act to amend and reenact section 61-04-01.1, subsection 5 of section 61-04-05, and section 61-04-05.1 of the North Dakota Century Code, relating to definitions and informational and adjudicative hearings on a water permit application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-01.1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Adjudicative hearing" means an administrative proceeding under chapter 28-32 that provides for an appeal of a recommended decision prepared by the state engineer for a water permit application.
2. "Beneficial use" means a use of water for a purpose consistent with the best interests of the people of the state.
- ~~2.~~ 3. "Commission" means the state water commission.
- ~~3.~~ 4. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including heating, drinking, washing, sanitary, and culinary uses; irrigation of land not exceeding five acres [2.0 hectares] in area for ~~noncommercial~~

gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.

- 4- 5. "Fish, wildlife, and recreation" means the use of water for the purposes of propagating and sustaining fish and wildlife resources and for the development and maintenance of water areas necessary for outdoor recreation activities.
- 5- 6. "Industrial use" means the use of water for the furtherance of a commercial enterprise wherever located, including manufacturing, mining, or processing.
- 6- 7. "Informational hearing" means an administrative proceeding that provides all interested persons an opportunity to present oral or written comment on a water permit application.
8. "Irrigation use" means the use of water for application to more than five acres [2.0 hectares] of land to stimulate the growth of agricultural crops, including gardens, orchards, lawns, trees, or shrubbery, or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.
- 7- 9. "Livestock use" means the use of water for drinking purposes by herds, flocks, or bands of animals kept for commercial purposes.

- ~~8.~~ 10. "Municipal or public use" means the use of water by the state through its political subdivisions, institutions, facilities, and properties, and the inhabitants thereof, or by unincorporated communities, subdivision developments, rural water systems, and other entities, whether supplied by the government or by a privately owned public utility or other agency or entity, for primarily domestic purposes, as defined herein.
- ~~9.~~ 11. "Person" includes political subdivisions, corporations, limited liability companies, partnerships, associations, the United States and its departments or agencies, the state of North Dakota and its departments or agencies, and any other legal entity.
- ~~10.~~ 12. "Rural water system" means a water supply system designed to serve regional needs.
- ~~14.~~ 13. "Water of the state" or "waters of the state" means those waters identified in section 61-01-01.

SECTION 2. AMENDMENT. Subsection 5 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer. The notice must also state that anyone who files written comments with the state

engineer will be mailed a copy of the state engineer's recommended decision on the application.

SECTION 3. AMENDMENT. Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

61-04-05.1. Comments - Hearing.

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer under subsection 5 of section 61-04-05. The comments must state the name and address of the person filing the comments.
2. Any person filing written comments may also request an informational hearing on the application by the date specified by the state engineer under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the informational hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use water facilities request the informational hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.

4. The state engineer shall consider all written comments received and testimony presented at an informational hearing, if held, and shall recommend in writing approval or disapproval of the application or that the application be held in abeyance. A copy of the recommended decision must be mailed to the applicant and any person who filed written comments.
- ~~3-~~ 5. Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments by the date specified under subsection 5 of section 61-04-05 may file additional written comments with the state engineer or request a an adjudicative hearing on the application, or both. A request for a an adjudicative hearing must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the adjudicative hearing. If a request for a an adjudicative hearing is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a an adjudicative hearing is made, ~~or if the state engineer determines a hearing is necessary to obtain additional information to evaluate the application or to receive public input,~~ the state engineer shall designate a time and place for the adjudicative hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for

service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

4. ~~If two or more municipal or public use water facilities request the hearing to be held locally, the state engineer shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.~~

Sixty-second
Legislative Assembly
of North Dakota

Introduced by

State Water Commission

A BILL for an Act to create and enact section 61-02-14.2 of the North Dakota Century Code, relating to the state engineer's authority to execute contracts on behalf of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 61-02-14.2 of the North Dakota Century Code is created and enacted as follows:

61-02-14.2. Commission contracts may be executed by state engineer. As the secretary of the commission, the state engineer has the authority to execute contracts approved by the commission.