

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