

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

April 8, 1987

The North Dakota State Water Commission held a meeting on April 8, 1987, in the lower level conference room of the Old State Office Building, Bismarck, North Dakota. Governor-Chairman, George A. Sinner, called the meeting to order at 9:30 a.m., and requested State Engineer-Secretary, Vernon Fahy, to call the roll and present the agenda.

MEMBERS PRESENT:

Governor George A. Sinner, Chairman
Kent Jones, Commissioner, Department of Agriculture, Bismarck
Joyce Byerly, Member from Watford City
Jacob Gust, Member from West Fargo
William Guy, Member from Bismarck
Ray Hutton, Member from Oslo, Minnesota
Jerome Spaeth, Member from Bismarck
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBERS ABSENT:

Richard Backes, Member from Glenburn
William Lardy, Member from Dickinson

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 20 persons interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official copy of minutes).

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF MINUTES
OF FEBRUARY 13, 1987 MEETING -
APPROVED

The minutes of the February 13, 1987 meeting were approved by the following motion:

It was moved by Commissioner Jones, seconded by Commissioner Hutton, and unanimously carried, that the minutes of February 13, 1987 be approved as circulated.

UPDATE ON SOUTHWEST
PIPELINE PROJECT
(SWC Project No. 1736)

Dale Frink, Manager of the Southwest Pipeline Project, stated three bids were recently awarded on the Southwest Pipeline Project totaling 22.4 miles of construction work. Mr. Frink said the bids were, on the average, 5.4 percent below the engineer's estimate. Johnson Construction of Fargo was the low bidder on Contracts 2-2C and 2-2D with bids of \$3,265,900 and \$1,813,618, respectively. WESTCON, Inc. of Pleasant Grove, Utah, was the low bidder on Contract 2-2E with a bid of \$1,956,095.60. The majority of the work will be completed in 1987 but some work may extend into 1988.

Mr. Frink indicated \$5.3 million of federal funds have been received. Of these funds, \$4.2 million will be spent on the payment to Basin Electric for the intake structure. Mr. Frink noted it is possible we may receive additional federal money in 1987.

Relative to obtaining federal money in 1988, Mr. Frink said Governor Sinner and a Garrison Diversion Conservancy District delegation were in Washington, D. C. on March 30 to testify for 1988 funding requesting \$34.95 million - \$33 million for the main project and \$1.95 million for Indian water development. Of the \$33 million, up to \$10 million could go to MR&I projects. Mr. Frink commented that Indian water development is becoming a high priority. There is considerable Congressional support to start funding some Indian projects that were included in the reformulated Garrison project. All three of the Indian Tribes have hired consulting engineers and most of the \$1.95 million would be used for feasibility studies and preliminary engineering studies.

Mr. Frink indicated the main Garrison Diversion project remains the highest priority for the Conservancy District. He said it is likely that most of the money will be spent on original project features. A needs assessment study recently completed by the State Water Commission and the Garrison Diversion Conservancy District identified several regional systems plus over 60 individual cities that have a need for MR&I funds. In addition to the Southwest Pipeline Project, there are several other MR&I projects that may be ready for construction in 1988.

Mr. Frink discussed State funding from July 1, 1987 through June 30, 1989. The Governor's budget included \$1.86 million from the Land and Minerals Trust Fund and \$680,000 from the Resources Trust Fund.

Relative to H.B. 1365, which was introduced to provide an option to the State Water Commission for locating the water treatment plant, Mr. Frink indicated the bill passed the House but ran into considerable opposition in the Senate. The Senate eventually amended the bill and passed it 50-1. The House rejected the amendment and is currently in Conference Committee. Mr. Frink noted the amendments may restrict the use of Southwest Pipeline money on renovation of the Dickinson water treatment plant and, therefore, a rewording of the amendments is being considered.

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Mr. Frink stated the engineering for the Southwest Pipeline Project is presently administered under two contracts to the consulting firms of Bartlett and West Engineers, Inc. and the Boyle Engineering Corporation. The first contract, signed in 1983, is for engineering design, and the second contract, signed in 1985, is for engineering construction services. Carryover funds from the 1983-1985 biennium are being used to make payments for design and 1985-1987 biennium funds are used to make all other payments. Federal funds are being used to pay design, construction and administrative expenses. Mr. Frink said keeping track of which funds are used for the different purposes has become confusing. Therefore, in order to simplify bookkeeping Mr. Frink recommended the 1983 engineering design contract be completed and design authorization be added to the engineering construction contract so all engineering services are administered under one contract.

It was moved by Commissioner Jones and seconded by Commissioner Byerly to authorize the State Water Commission to complete the 1983 engineering design contract and to amend the 1985 engineering construction contract to include the design authorization for the Southwest Pipeline Project.

Commissioners Jones, Byerly, Gust, Hutton, Spaeth and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously passed.

UPDATE ON RED RIVER DIKING
(SWC Project No. 1638)

February 13, 1987 to discuss drainage and flooding problems in the Red River area and to urge the State Water Commission to consider reimbursement to the landowners for expenses they had incurred for the modification of illegal dikes.

Senator Harvey Tallackson from Walsh County appeared before the State Water Commission at its meeting on

Senator Tallackson appeared before the Commission members to reiterate the comments he had made on February 13, 1987 relative to drainage and flooding problems in the Red River area, and concluded his comments by re-emphasizing his request to the Commission to consider reimbursement to the landowners for expenses they had incurred for their dike modification.

At the February 13, 1987 Commission meeting, Governor Sinner appointed Commissioners Lardy and Spaeth to work with staff to develop a recommendation for the Commission's consideration at this meeting.

Commissioner Spaeth distributed copies, and discussed the report prepared by Commissioner Lardy and he relative to the inspection and tour to gather information on the lowering and dike leveling project, mandated by Federal Court Order, in Grand Forks

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and Walsh Counties. The purpose was to make recommendations to the Governor and the Commission members regarding the possibility of cost sharing. Commissioners Lardy and Spaeth's report is attached hereto as APPENDIX "A".

Commissioner Hutton noted that the report refers to the Burlington Northern Railway Company and stated this should be changed to the Soo Line Railway Company.

It was moved by Commissioner Spaeth and seconded by Commissioner Byerly that the State Water Commission accept the report presented by Commissioners Lardy and Spaeth and the recommendations made. Specifically, the State Water Commission will:

- 1) Contact Minnesota after the existing cooperative plan is fully implemented and the Federal Court case is dismissed to negotiate a system for coordination of proposals for development of a comprehensive plan for flood relief in both states. The plan should address railroad crossings, highway crossings, retention structures, drainage, the United States Corps of Engineers report on channel capacity, floodplain zoning and other structural and nonstructural methods of addressing floods;
- 2) Assume the construction costs of the dike modification necessary to implement the corrective plan to the extent funds are available and the landowners agree to enter into an Agreement;
- 3) Urge the Red River Joint Board to continue to coordinate its efforts with its Minnesota counterparts to jointly address the water resource management problems and needs of the Red River Valley Basin;
- 4) Seek additional opportunities for coordination of its Red River Valley office with water management efforts in Grand Forks and Walsh Counties; and
- 5) Urge the Attorney General to provide a summary of the Federal Court order to landowners who were issued an Order by the State Engineer. The summary should address applicability of the court order to these individuals and the difficulty Minnesota would have in lifting the court order.

In discussion of the motion, Rosellen Sand, Director of Legal Services for the State Water Commission, reviewed draft Agreements referred to in recommendation No. 2 for various situations. The Commission members concurred with the language contained in draft Agreements, with the exception that paragraph V. be amended as follows:

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V. OWNERSHIP AND MAINTENANCE

Except as otherwise provided by law, paragraph IV of this Agreement, or a prior existing property transfer, all dikes on Landowners's property shall remain the property and responsibility of Landowner.

Commissioners Jones, Byerly, Gust, Hutton, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Carl Osowski expressed concern of language in the Agreement whereby the landowner will be responsible for maintenance of the dikes and that the State will be relieved of all liability, and inquired as to who will provide indemnity in the future. Mr. Osowski questioned why the dikes on the Minnesota side are higher than the dikes on the North Dakota side and said there should be equal protection.

Maurice Bushaw commented in general on the language in the Agreement, but made specific reference to the portion relating to easements. Mr. Bushaw indicated he would object to signing an Agreement that will hurt future generations.

Commissioner Hutton presented to the Commission members claims from a landowner for damages to property which were incurred during the dike modification process. The landowner has requested immediate payment by the State to repair a fence so that he can let his cattle out. Commissioner Hutton stated there will be more claims forthcoming from landowners for property damages.

It was the recommendation of Governor Sinner that staff review the claims for property damages and provide a recommendation for the Commission's consideration at its next meeting, but stated this matter could be handled by a telephone conference call, if necessary.

In a later discussion with the Governor, landowners requested the words "and responsibility" be deleted from paragraph V. Ownership and Maintenance, in the Agreements. The paragraph would then read as follows:

V. OWNERSHIP AND MAINTENANCE

Except as otherwise provided by law, paragraph IV of this Agreement, or a prior existing property transfer, all dikes on Landowner's property shall remain the property of Landowner.

It was moved by Governor Sinner and seconded by Commissioner Jones that paragraph V. of the Agreements be amended as stated above.

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Commissioners Jones, Byerly, Gust, Guy, Hutton, Spaeth, and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Governor Sinner indicated a request has been made by the landowners for reimbursement of the survey costs, and requested staff to review and include a recommendation for survey costs with the recommendation for claims for property damages at the next State Water Commission meeting.

Governor Sinner stated landowners have requested the possibility of leaving the dirt in place but leveling it off. David Sprynczynatyk, Director of Engineering for the State Water Commission, indicated in most instances he felt this could be done. Governor Sinner requested staff to communicate directly with the landowners in this matter.

Secretary Fahy stated one of the items for discussion at the April 22, 1987 meeting between the States of North Dakota and Minnesota will be what kinds of institutional arrangements would be required to arrive at coordinating administrative actions. Secretary Fahy indicated until more planning has been done, he felt it is premature at this time to consider a river basin compact in which the management of the basin would become the responsibility of that group. He said he would support an administrative-type coordinating agency sanctioned in both states that would force coordination compliance on the plans and projects that take place within the basin.

Commissioner Guy indicated he would be "somewhat leary of trying to establish a mechanism of the States of North Dakota and Minnesota to head control of the river. I think there is only one place that control should rest and that is in the Governor of North Dakota through the Chief Engineer of the State Water Commission. I think having a Coordinating Committee is alright but to try to give them administrative powers is to decrease the clout that should be in the hands of the Governor." Commissioner Guy suggested if the Governor were to designate the State Engineer and a legal representative on a Red River committee then he felt that authority would extend directly from the Governor.

In response to a question regarding what could be done so each state is aware of what the other state is doing, Dave Sprynczynatyk indicated the Compact we now have provides each state must notify the other state thirty days before a permit is issued for diking within the floodplain of the Red River of the North. That Compact is authorized by the respective states as well as by Congress and is binding in Court.

Secretary Fahy commented because of the magnitude of the Minnesota Department of Natural Resources, he felt the real problem is communication. He said we are now beginning to work with the mid-management people and hopefully this will result in laying some ground work for improved communications.

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LOWER RED RIVER STUDY
(SWC Project No. 1701)

During the December 3, 1986 meeting of the State Water Commission, the Grand Forks County and Walsh County Water Resource Boards presented a request asking that the Commission begin a study of the Red River to reduce flooding in their area. Subsequently, the Pembina County Water Resource Board submitted a similar request.

Dave Sprynczynatyk stated staff has reviewed the requests and has developed a plan of study that would address road and railroad crossings, channel obstructions and channel capacities on the Marais River. The study would take approximately 15 months to complete.

Mr. Sprynczynatyk indicated that normally a local project sponsor would be required to provide an investigation deposit equal to 50 percent of the estimated field costs. In this case, the investigation deposit would be \$7,000.

Secretary Fahy stated that in view of the extensive flood problems throughout the three-county area in recent years, it is recommended that the State Water Commission waive the investigation deposit requirement and enter into an investigation agreement so that the required rights-of-entry and indemnification can be provided by the Boards.

It was moved by Commissioner Hutton and seconded by Commissioner Jones that the State Water Commission authorize the waiver of the investigation deposit of \$7,000 for the Lower Red River Study.

In discussion of the motion, Commissioner Byerly expressed concern relative to setting precedence in waiving the deposit fee.

Secretary Fahy stated the Water Commission does have the right to make exceptions to the rule for good and sufficient reasons. This is a special project that has had a lot of controversy over time and has some state-wide implications in terms of the interest shown by the Legislature and others. Secretary Fahy said "in our opinion we are bringing to the Commission what we think is a good and sufficient reason for waiving the rule and we think it would be a service on the part of the State Water Commission and the State as a whole to make this study."

Commissioners Jones, Byerly, Gust, Guy, Hutton, Spaeth and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST FROM
WELLS COUNTY WATER RESOURCE
DISTRICT FOR COST SHARING IN
WELLS COUNTY DRAIN NO. 1
(SWC Project No. 1483)

A request was received from the Wells County Water Resource District and presented to the Commission for its consideration of cost participation in the Wells County

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Drain No. 1. The project is to provide for the orderly removal of water, provide temporary storage of water, reduce flooding to adjacent lands of the five major slough areas, and maintain wildlife values within the watershed. The total estimated cost is \$421,500, with eligible costs being \$345,440.

Mr. Sprynczynatyk stated that the Wells County Drain No. 1 is located in west-central Wells County west and south of Fessenden, ND. The total drainage area is 69.3 square miles of which 11.4 square miles are considered non-contributing. In 1923, work was done on the outlet to the area to provide flooding relief to the Fessenden Slough. Over the years, there has been construction and improvements to reduce flooding with no significant effects. The local landowners approved the current project in 1980.

The Water Resource District applied for a drain permit which was declared of statewide significance. Approval was subsequently given by the Wells County Water Resource District and final approval granted by the State Engineer on February 2, 1987. During the permit process, the District entered into an agreement with the North Dakota Game and Fish Department to determine how to reduce impacts to wildlife. This resulted in some land being developed for wildlife and some wetlands protected. The District has also cooperated with the U.S. Fish and Wildlife Service in the wetland easement program.

Mr. Sprynczynatyk reviewed the provisions of the Swampbuster Bill approved in December, 1985, and the impacts it would have on drainage projects in North Dakota. Mr. Sprynczynatyk indicated the Wells County Drain No. 1 project began well before the Swampbuster Bill was approved. The landowners in Wells County approved the project back in the early 1980's when they began working on their permits and other requirements of the wildlife interests. After the Swampbuster Bill was approved it appeared this project may not be able to proceed, although an exception was granted for such projects in North Dakota that had been started prior to approval of Swampbuster. In February, 1986, it was learned the Federal Government changed one of its rules on Swampbuster as it related to projects started prior to December, 1985. The new ruling essentially stated that if an individual's drainage activity was specifically identified in the drainage plan that portion of the project could proceed. If the plans did not show the individual drains then that portion of the project could not be completed. Mr. Sprynczynatyk stated in North Dakota the plans for these types of projects only show the major laterals and the individual drains have not been shown on the plan because that is the responsibility of the individual landowners. Permits that have been approved have been for eventual drainage of the whole area, unless areas were specifically excluded. With the most recent ruling, Mr. Sprynczynatyk said the Wells County Drain No. 1 project could be built but it would essentially curtail all of the drainage by the individual landowners.

Norman Rude1, Chairman of the Wells County Water Resource Board, further explained the Wells County Drain No. 1 project. He noted that Wells County has five projects which have been granted approval by the County Commission, all with exemption status. Mr. Rude1 stated approximately \$600,000 has been committed in contract

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obligations for the Oak Creek Drain project, bonds have been sold and earthmoving has started on this project which is about 50 percent complete. Mr. Rudel identified the problems Wells County is incurring with the most recent ruling on Swampbuster and said the matter has been addressed to the Congressional Delegation. He also requested the Governor to use any influence he may have in order to try and get this ruling changed.

Steve Hoetzer, Engineer for Wells County, commented on the project and Swampbuster. He said one of the problems is that the individual landowners who had expectations of draining their land into this drain will be unable to do so. Mr. Hoetzer said the landowners are trying to remove the water from the farmland so they are able to seed it all at the same time; they are not bringing new farmland into production.

It was the recommendation of the State Engineer that the State Water Commission approve 40 percent of the eligible costs, not to exceed \$138,176 toward the construction of the Wells County Drain No. 1, contingent upon the availability of funds.

It was moved by Commissioner Spaeth and seconded by Commissioner Jones that the State Water Commission approve 40 percent of the eligible costs, not to exceed \$138,176, toward the construction of the Wells County Drain No. 1, contingent upon the availability of funds.

Commissioners Jones, Byerly, Gust, Guy, Hutton, Spaeth and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST
FROM GRANT COUNTY WATER
RESOURCE DISTRICT FOR COST
PARTICIPATION IN CONSTRUCTION
OF NEW RALEIGH DAM
(SWC Project No. 507)

A request was received from the Grant County Water Resource Board and presented for the State Water Commission's consideration for cost participation in the construction of the new Raleigh Dam. The total estimated cost of the new dam site

is \$460,000. All of these costs are eligible for cost sharing under present State Water Commission guidelines.

Mr. Sprynczynatyk stated the project consists of the construction of a dam approximately 700 feet downstream from the existing Raleigh Dam. Included in the project is the construction of a recreation area.

Raleigh Dam was constructed on a tributary to Dog Tooth Creek by the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in 1909 and 1910. The dam was repaired in 1954 at an estimated cost of \$1,500 which was paid by the State Water Commission, the State Game and Fish Department, Grant County and the Railroad Company. In November, 1984, the State Water Commission entered into an agreement with the Grant County Water Resource Board to investigate the feasibility

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of raising the existing Raleigh Dam. A preliminary engineering report was completed in July, 1985 with the recommendation to consider a new dam site due to the poor embankment conditions, minimal increase in average depth, and high cost. In October, 1985, the State Water Commission entered into an agreement with the Grant County Water Resource District to investigate the feasibility of the construction of a new dam near the existing Raleigh Dam on Dog Tooth Creek. The preliminary engineering report for the construction of the new dam was completed in February, 1987.

Mr. Sprynczynatyk stated a meeting was held on March 30, 1987 between the state agencies and the Grant County Water Resource Board to discuss funding for the project. The breakdown of costs for the dam site are as follows: Grant County Water Resource District - \$230,000; State Water Commission - \$115,000; and the North Dakota Game and Fish Department - \$115,000. The costs for the recreation area are to be shared by the Grant County Water Resource District and the North Dakota Parks and Recreation Agency.

Joe Braun, Chairman of the Grant County Water Resource Board, indicated the Water Resource District is favorable toward the project and the people in the area are very enthusiastic as they will not have to travel any great distance for recreation. Mr. Braun requested the Commission to act favorably on their request for cost sharing.

It was the recommendation of the State Engineer that the State Water Commission grant approval in the construction of the new Raleigh Dam for 25 percent of the estimated construction cost, not to exceed \$115,000, contingent upon the availability of funds and satisfactory final inspection of the project.

It was moved by Commissioner Jones and seconded by Commissioner Spaeth that the State Water Commission grant approval to cost participate in the construction of the new Raleigh Dam for 25 percent of the estimated construction cost, not to exceed \$115,000. This motion shall be contingent upon the availability of funds and satisfactory final inspection of the project.

Commissioners Jones, Byerly, Gust, Guy, Hutton, Spaeth and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

CONSIDERATION OF REQUEST FROM
RANSOM COUNTY WATER RESOURCE
DISTRICT FOR COST PARTICIPATION
IN LISBON RELOCATION PROGRAM
(SWC Project No. 1751)

A request was received from the Ransom County Water Resource District and presented to the State Water Commission for its consideration for cost participation in a Floodway Structure Relocation Project. The proposed project will involve the relocation of three houses and the demolition of seven houses located in Lisbon's regulatory floodway. The floodway includes those areas most frequently flooded within the city's

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identified 100-year floodplain. All homeowners and property owners are willing participants in the project. The total estimated project cost is \$279,908.

Mr. Sprynczynatyk stated funding to initiate the project would come from the following combination of sources: Community Development Block Grant Program - \$178,454; City of Lisbon - \$30,000; Ransom County Water Resource District - \$10,000; and the State Water Commission - \$61,454. Mr. Sprynczynatyk said the proposed contribution of the State Water Commission is based on 50 percent of the costs to relocate three houses and to demolish seven houses. The remaining costs for the project are for real estate acquisition which is not eligible for State Water Commission participation.

Charles Nuralt and Morris Saxerud, representing the Lisbon City Council, and Claudia Frederick, Lake Agassiz Regional Council, were in attendance to further explain the project. Mr. Nuralt stated this relocation project is the first phase in the long-range planning for installation of a permanent dike for the City of Lisbon.

Claudia Frederick, Lake Agassiz Regional Council, indicated emergency temporary dikes have been constructed at Lisbon until the Corps of Engineers can complete a 205 study to determine if permanent dikes are feasible. The Corps will begin their study in 1987 and is anticipated to be completed in approximately two years. The Corps has indicated it does not have funding available for the relocation project which will, therefore, be the responsibility of the city.

Ms. Frederick said because the City of Lisbon does not have sufficient funds for 50 percent cost share matching they have applied for a Community Development Block Grant in the amount of \$178,454. She said the application will be acted on in May, 1987 and if the Grant, or a portion of the Grant is approved these funds would indirectly be considered a part of the local share.

Secretary Fahy stated the 1981 Legislature gave authority to the State Water Commission to provide state coordination and assistance to communities in floodplain management activities. He said although this is a different type of project than the Commission usually considers, the project meets the criteria for State Water Commission cost sharing.

It was the recommendation of the State Engineer that the State Water Commission grant 50 percent of the eligible project costs, structure moving and demolition, not to exceed \$61,454, toward this project, contingent upon the availability of funds.

It was moved by Commissioner Jones and seconded by Commissioner Spaeth that the State Water Commission approve cost sharing in 50 percent of the eligible project costs, structure moving and demolition, not to exceed \$61,454, for the Floodway Structure Relocation Project for the City of Lisbon. This motion shall be contingent

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upon the availability of funds and approval of the Community Development Block Grant application.

In discussion of the motion, Governor Sinner expressed concern relative to the validity of the matching relationship, and said he felt the local share should be greater. The Governor re-emphasized the fact that we need to look very carefully at the amount of State funds appropriated to these types of projects. If the State Water Commission approves cost sharing contingent upon the approval of the Community Development Block Grant application, the Governor stated he does not want to be placed in the position of inadvertently having one agency leveraging another by its actions.

Commissioner Gust expressed concern relative to the impacts the proposal to raise Baldhill Dam five feet could have on the City of Lisbon and said he feels the State Water Commission should not expend funds on the City of Lisbon's Relocation Project at this time until the Commission has taken a position on the Baldhill Dam proposal.

It was moved by Governor Sinner and seconded by Commissioner Gust that the motion be tabled.

Commissioners Gust, Guy, Hutton and Governor Sinner voted aye. Commissioners Jones, Byerly, and Spaeth voted nay. Recorded vote was 4 ayes and 3 nays. The Chairman declared the motion lost because of the law requiring 5 votes to bind the State Water Commission.

Roll Call vote on the original motion:

Commissioners Jones, Byerly and Spaeth voted aye. Commissioners Gust, Guy, Hutton and Governor Sinner voted nay. Recorded vote was 3 ayes and 4 nays. The Chairman declared the motion lost.

Governor Sinner directed the staff to further review the request for cost sharing for the Floodway Structure Project for the City of Lisbon to provide additional information and requested the item be placed on the agenda for the next meeting of the State Water Commission for further consideration.

UPDATE ON INTER-BASIN
BIOTA TRANSFER STUDY
(SWC Project No. 1828)

Gene Krenz, Program Coordinator for the Inter-Basin Biota Transfer Study, updated the Commission members on the progress of the study.

Governor Sinner invited 11 people to serve on the Oversight Policy Guidance Committee designating Commissioner Guy to serve as its Chairman. Mr. Krenz said the formation of this Committee was only recently completed and they have not had their first meeting.

Mr. Krenz reported the Technical Committee is being formed through the contract with the Water Resources Research Institute and will be operational by May, 1987.

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Relative to Bureau of Reclamation funding for this study, Mr. Krenz reported he had written a letter to the Bureau requesting clarification of their plans to participate in project funding. In their response, the Bureau indicated that, according to the report of the Garrison Study Commission, their participation must be with an international body having no connection to the United States or the Canadian Government. Financial participation in the Biota Transfer program of the State of North Dakota would be in violation of that report. Mr. Krenz stated this matter will be further pursued with the Bureau of Reclamation.

UPDATE ON GARRISON
DIVERSION PROJECT
(SWC Project No. 237)

Governor Sinner briefed the Commission members relative to the hearings held March 30, 1987 before the House and Senate Environment and

Public Works Committees to testify for 1988 funding requesting \$34.95 million - \$33 million for the main project and \$1.95 million for Indian water development. The Governor stated there is considerable Congressional support to start funding for Indian projects that were included in the reformulated Garrison project.

Governor Sinner commented on a meeting held with recently appointed Assistant Secretary of the Department of the Interior, James Ziglar, and Regional Director for the Bureau, B.E. Martin.

UPDATE ON SOURIS RIVER
FLOOD CONTROL PROJECT
(SWC Project No. 1408)

Secretary Fahy updated the Commission members on the Souris River Flood Control Project. Relative to the federal status, Secretary Fahy

stated \$41.1 million has been requested in federal funds for the construction of the proposed Rafferty and Alameda Dams in Canada. The bill draft language states the \$41.1 million is described as a maximum of \$41.1 million and does not include a stipulation that the funds be indexed so inflation will become a part of the appropriation at whatever time the money is spent. Secretary Fahy said if this language is not changed, the City of Minot will be responsible for an additional \$2 million because of the exchange rate differential and inflation, and federal funds may not be available by July, 1987 as agreed to with the Premier of Saskatchewan.

Secretary Fahy indicated the Technical Committee is near agreement relative to the division of waters and the kinds of construction but is having some problems with the operational plan.

Governor Sinner stated this is an absolutely essential project. It is a major long-term problem and if it can be resolved, it must be resolved.

LEGISLATIVE BRIEFING

Rosellen Sand and Charles Carvell, Assistant Attorneys General for the State Water Commission, briefed the Commission members on legislation

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filed that may directly or indirectly affect the State Water Commission's duties or those of local water resource districts.

CONSIDERATION OF ROLETTE
COUNTY DRAINAGE ACTION
(SWC Project No. 1468)

At the October 17, 1986 State Water Commission meeting, the Commission heard of the situation in Rolette County whereby the Rolette County

Water Resource District's board failed to properly execute the drainage law. The Commission declared the Rolette County Water Resource District ineligible for cost participation from the Contract Fund until the Board had properly executed the drainage law by resolving the Raymond Cote drainage complaint.

Dave Sprynczynatyk reported that on March 25, 1987, a copy of the Rolette County Water Resource Board's decision and findings of fact in the matter of the Raymond Cote drainage complaint was received by the State Water Commission. The Board's decision has been documented and the proper parties involved with the drainage complaint have received written confirmation of the decision. This action puts the Board in procedural compliance with North Dakota Water Law, and provides an opportunity for any person to pursue the appeal procedures for the Board's decision.

It was the recommendation of the State Engineer that based on the fact that the Rolette County Water Resource Board has now complied with the procedures of North Dakota Water Law to resolve the above-mentioned drainage complaint. The State Water Commission should reinstate the Rolette County Water Resource District's eligibility for cost participation from the Contract Fund.

It was moved by Commissioner Byerly and seconded by Commissioner Guy that the State Water Commission's October 17, 1986 declaration of Rolette County as ineligible for cost participation from the Contract Fund be rescinded and the State Water Commission issue a press release to that effect.

Commissioners Jones, Byerly, Gust, Guy, Hutton, Spaeth and Governor Sinner voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Governor Sinner leaves the meeting and the chair is assumed by Commissioner Jones.

CONSIDERATION OF AGENCY
FINANCIAL STATEMENT

ies of the Projects Authorized Report
Report, dated April 3, 1987.

Matt Emerson, Director of the Administration Division for the State Water Commission, distributed copies and the Biennium Budget Expenditures

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DISCUSSION OF GRAND FORKS
RIVERSIDE DAM
(SWC Project No. 520)

Dave Sprynczynatyk stated the Riverside Park Dam was built by the City of Grand Forks in 1925 for the purpose of creating the water supply and pool for the city. The State Water Commission has been involved with the city in repairing the dam on several occasions in recent years and the dam is now to the point where it is simply failing.

In 1983 the city requested the State Water Commission to look at the situation of the dam and the possibility of replacing it. In April, 1984, the Commission presented a report to the city explaining that a new dam should be built and advising the city to begin financially preparing for the replacement of the dam.

Mr. Sprynczynatyk stated in 1986, the City of Grand Forks made a presentation to the Commission requesting cost sharing for the new dam which was estimated to cost \$2 million. Subsequent to that presentation, the Garrison Reformulation Act was passed and the MR&I program was approved. Mr. Sprynczynatyk explained the MR&I program was being considered as a source of funding on a 75/25 percent match but when the Federal Government became involved the costs increased an additional \$200,000.

On April 7, 1987, a meeting was held with representatives of the City of Grand Forks and State Water Commission staff to discuss proceeding with the project and to discuss funding alternatives for the non-federal share of approximately \$600,000. Mr. Sprynczynatyk indicated two alternatives were discussed: 1) the city would provide the money up front; and 2) the city could borrow the money from the State's Resources Trust Fund as outlined in the report on the MR&I program.

In discussing the alternative that would allow the city to borrow the money from the Resources Trust Fund, Mr. Sprynczynatyk stated the 1983 Legislature created the authority for the Resources Trust Fund to allow for loans for project sponsors. It is contemplated that the loans would extend over a 50-year period at approximately six percent interest. Mr. Sprynczynatyk said this procedure is similar to that being followed on the Southwest Pipeline Project.

Mr. Sprynczynatyk indicated representatives of the City of Grand Forks have indicated they wish to proceed with the project and would like to borrow the money from the Resources Trust Fund. Construction is anticipated to begin in August, 1987 during the low flow period and be completed by April, 1988 prior to the spring runoff. The location of the new dam is approximately 1000 feet downstream from the existing dam.

Mr. Sprynczynatyk said the Commission will have to consider whether to grant the loan from the Resources Trust Fund to the City of Grand Forks at a future meeting.

April 8, 1987

DISCUSSION OF DEVILS
LAKE OUTLET PROJECT
(SWC Project Nos. 1616 & 1712)

Dave Sprynczynatyk briefed the Commission members relative to a meeting held on March 23, 1987 with the Devils Lake Joint Board to discuss

local sponsorship of the Devils Lake Outlet Project being developed by the U.S. Army Corps of Engineers. Since that meeting, Mr. Sprynczynatyk indicated a letter has been received from the Corps of Engineers asking that a declaration of intent of local sponsorship be provided to the Corps prior to April 22, 1987 so the Corps can proceed with the project.

Mr. Sprynczynatyk explained the plan considered most feasible for the project consists of an outlet from the West Bay of Devils Lake to the Sheyenne River and a connecting channel from East Devils Lake to Stump Lake. The estimated construction cost of this project would be approximately \$20 million of which 25 percent would be the responsibility of the non-federal sponsor. In addition to sharing the construction costs of the project, the non-federal sponsor would also be required to operate and maintain the project, regulate future development around the lakeshore of Devils Lake, and regulate future drainage in the upstream watershed.

Because of the increased precipitation this past winter and the anticipated runoff this spring, Mr. Sprynczynatyk indicated the record lake level of 1428.1 for Devils Lake set in 1983 could be exceeded this year and could possibly reach elevation 1429. Since 1983, the City of Devils Lake has been fairly well protected by the Corps of Engineers project but there are a number of areas around the lake that could receive damages if the lake level reaches 1429. Mr. Sprynczynatyk said we are at the point in time where we need to begin looking very carefully at what is happening at Devils Lake and the surrounding areas and begin immediate preventative measures. Arrangements have been made for staff to fly the area.

Secretary Fahy indicated he felt it would be in the best interests of the project for the Devils Lake Joint Board to be the sponsor and the State Water Commission provide its full cooperation and assistance to the Board in the development of the project for several reasons: 1) the Joint Board is made up of those counties that contribute runoff to Devils Lake thus making up the jurisdiction of all of the watershed; 2) since the Joint Board is more familiar with Devils Lake than the Commission, it would be best for a local board to be involved in the decision-making on the design for the project and on the eventual operation of the project; and 3) the Joint Board is in a much better position to provide the assurances asked for by the Corps of Engineers, namely the regulation of future development around the lake and also the regulation of future drainage in the upstream watershed.

Secretary Fahy commented that the State Water Commission has been working with the Souris River Joint Board in the development of the Souris River Flood Control Project. He said the Joint Board is the local sponsor for that project and the arrangement has worked out well with the State Water Commission providing the technical assistance to the Board and the Joint Board making the decisions with the Corps of Engineers.

April 8, 1987

At the March 23, 1987 meeting the Devils Lake Joint Board agreed they should be involved in the operation but their greatest concern is obviously the costs of the project. The Board suggested the possibility that a joint project sponsor between the State Water Commission and the Devils Lake Joint Board would be better than just identifying the Board as the project sponsor.

It was moved by Commissioner Spaeth and seconded by Commissioner Byerly that the State Water Commission urge the Devils Lake Joint Board to assume the local sponsorship for the Devils Lake Outlet Project and that the State Water Commission provide cooperation and assistance to the Board in the development of the project.

Commissioners Jones, Byerly, Gust, Guy, Hutton and Spaeth voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

There being no further business to come before the State Water Commission at this time, it was moved by Commissioner Guy, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission meeting adjourn at 3:40 p.m.



 George A. Sinner
 Governor-Chairman

ATTEST:



 Vernon Fahy
 State Engineer and Secretary

April 8, 1987

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE April 8, 1987 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Joe M Brown	Box 139 Carson	Grant County Water Res. Dist
Ed Grunett	Box 160 Eldon	Grant County Water Res. Dist
Wayne Christensen	Box 185 Raleigh	Grant County Water Res. Dist
Bruce F McCollom	500N 3RD Bismarck	BW/BEG Engineers
Maurice E Bushaw	1601 Union Ave	Grand Fork ND
Carl R. Oroszki	Box 15 RR 2 ^{Oak Minn.}	Farmer Walsh Co.
Eugene Paulsen	Box 22 RR 2 ^{Oak Minn.}	Farmer Walsh Co.
Larry Oroszki	Box 21 RR #2 ^{Oak Minn.}	Farmer Walsh Co N.D.
Louis W Zolt	RR 2 ^{Oak Minn.}	Farmer Walsh Co N.D.
Frank Lemmer	West Fargo	self employed bus.
Charles M. Mault	LISBON	CITY OF LISBON
Maria Papas	LISBON	city of Lisbon
Claudia Judick	Fargo	Lake Agassiz Regional Council
Richard Gray	Bismarck	Office of Intergovernmental Affairs
Norman Rindel	Fessenden	Walsh Co Water Res.

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Am Marchus	Cathay ND	Jules Co Water board
Cary Backstrand	Bismarck	SWC
Bill Hanson	"	"
DENNIS REEP	"	"
Stan Zschmidt	Bismarck	Fish & Wildlife Ser
Jeffrey Volk	West Fargo	SE Cass-Moore Eng

MEMORANDUM

TO: Governor George Sinner
State Water Commission Members
FROM: Commissioners William Lardy and Jerome Spaeth
RE: Red River Dikes
DATE: March 9, 1987

On February 24, 1987, at the request of the Governor, an inspection and informational gathering trip was made by Commissioners Lardy and Spaeth, accompanied by Assistant Chief Engineer Dave Sprynczynatyk and Attorney Rosellen Sand of the North Dakota State Water Commission. The purpose of the tour was to gather information on the lowering and dike leveling project, mandated by Federal Court order, in Grand Forks and Walsh Counties, so that recommendations could be made to the Governor and other Commission members regarding the possibility of cost sharing.

There are approximately 33 farmers adjacent to the Red River who had levees removed or lowered. It has been estimated that an additional 67 farmers for a total of about 100 farmers benefited from the levee system. The other 67 are owners with land adjoining at right angles, those with property next to the river. The floodplain is approximately 5 to 6 miles in width in this vicinity.

In addition to cropland protection the dikes provided protection for roads (washing off gravel) and bridges, debris scattered in fields (logs, ice cakes, trash, etc.), losses of chemicals and fertilizers, improvement of travel (usually roads are flooded and boats are needed for transportation for a limited period), and building protection.¹ When the dike construction began in 1975 and enhanced over the years, costs of some construction were shared by adjacent farmers who accrued benefits from the diking.

A brief history of the event which triggered the dike construction is as follows.

On June 27 and 28, 1975, a rainstorm resembling maximum probable (26"), occurred in southern North Dakota. The eye of the storm centered around the Leonard, North Dakota area. The tremendous amount of rainfall over a large area of southern North Dakota generated considerable run-off over the lower portions of the Red River Basin.

As the peak discharge began moving north, farmers in Minnesota adjacent to Grand Forks and Walsh Counties became concerned that their crops would be inundated and destroyed, and began to construct levees (travel time from southern North Dakota to Grand Forks County is approximately 10 days). Farmers in

North Dakota seeing what was occurring in Minnesota countered with defensive measures fearing the flood would be pushed to their side of the river. It appears the levees generally provided adequate protection to save the 1976 crop, and as a result, levees have been raised and beefed up ever since.

The following is a list of the major complaints gathered during the tour:

- A. At previous meetings landowners were told cuts would average approximately 0.5 feet (6₂ inches). Cuts in some places actually were 2 to 3 feet;²
- B. Some under cutting in high areas adjacent to farmsteads and levee bank;³
- C. Large chunks of frozen dirt scattered adjacent to levees;⁴
- D. A short section of fence damaged;
- E. Mistrust of surveys;
- F. Why are the dikes higher on the Minnesota side than the North Dakota side;
- G. The mandated court order does not apply to them because they did not get individual notices;
- H. Some of the people feel the Minnesota side will go to court (District Court) and have the mandated dike order lifted.

CONSIDERATIONS

Consideration should be given by the Governor and the Water Commission (after the Court order has been mandated) to contact the respective representatives of Minnesota to consider

appointment of a full or part-time coordinator (subject to monetary considerations) to gather proposals for presenting options in the development of a comprehensive plan, which seeks equal flood relief.

The people are concerned and demoralized, and without consideration the problem will continue to fester. With the knowledge that a plan providing for some relief could occur, morale will improve and provide optimism for the future.

RECOMMENDATIONS

It is recommended by Commissioners Lardy and Spaeth that the costs for dike lowering and removal be paid for totally from Water Commission contract funds, including the remaining dike removal. (Subject to Statement of Release, payment of reasonable remaining costs, and availability of funds.)

The dikes were constructed as a defensive measure to try and equalize the elevation with those dikes constructed on the Minnesota side. This attempt failed. Since construction the dikes have economically benefited the farmers. The lowering of the dikes (in response to the Federal Court order) will reduce their monetary benefits for lesser number of frequency floods and will result in loss of income. However, there are sufficient

remaining public benefits from the remaining dike system to justify compensation to the landowners.

It is also recommended that money be expended to alleviate the minor complaints which were noted in this report. (Subject to reasonable estimates.)

It is recommended that the impact of the Federal Court order be summarized by the Office of the Attorney General and copies should be mailed to each affected landowner. The summary should be explained simply and straight forward. This should alleviate fears and suspicions noted in complaints G and H.

It is also recommended that the Commission require each landowner before receiving compensation or being relieved of a financial liability, be required to enter an agreement which includes requirements the Commission deems necessary.

The Governor and the State Water Commission should continue to seek closer coordination with their counterparts in Minnesota with a view toward development of uniform policies in matters related to the river.

The State Engineer should consider a policy for the Red River field office that would emphasize a closer working relationship with Grand Forks and Walsh County officials and citizens.

The Red River Joint Board should meet with its counterpart in Minnesota and with citizen's groups in both states to develop a better understanding of the problems and the needs related to Red River Basin Water Management.

The recent report of the Corps of Engineers relative to channel capacities of the Red River should be sent to county water resource district officials in the Red River Valley so they can begin to address some of the problems. Also, state and county officials should meet with the Soo Line Railway Company officials to discuss the impacts of crossings on channel capacity.

COMMENTS

1. Interviews and discussions with those farmers whose dikes were revised leaves the impression that there was considerable mistatements, false information, uninformed and misguided people advising them. Some of the farmers feel that representatives on water management boards, and other supposedly knowledgeable people deceived them. It is apparent that these aforementioned people did not coordinate their advice with

recommendations and policy statements of the Water Commission and staff members.

2. It is the opinion of Commissioners Lardy and Spaeth that after reviewing the complaints as noted and considering the magnitude of the job accomplished within the compressed time frame, our overall conclusions are the staff of the Water Commission did a commendable job. The view of the complaints were minor and can be corrected with very little cost.



William Lardy, Commissioner
State Water Commission



Jerome Spaeth, Commissioner
State Water Commission

LIST OF CONTACTS AND PARTICIPANTS

*Cliff Knudson

Bob Knudson

*Bob Walski

Joe Risky

Victor Stoltman

Harold Zola

Louis Zola

*Eugene Dauksavage

John Bishop

Joe Osowski

*Florian Czapiewski

Harry Czapiewski

Ernest Czapiewski

John Wosick

Clive Jones

Cyril Stoltman

Carl Osowski

Maurice Bushaw

*Indicates homes visited.

FOOTNOTES

1 Levee protection is limited to floods of approximately 20% chance (5 year frequency). Floods of larger magnitude would limit protection, if any.

2 Perhaps the people should have been told the cuts would range from 0.5 feet (6 inches) to 3 feet, rather than an average of 0.5 feet. Minutes of previous meetings indicate the people were told the average cut would be 1.5 feet.

The dike elevations used by the farmers in most cases were determined from historical floods which occurred in the past. After the 1975 flood, high watermarks were used by some farmers to determine the approximate level of the dikes. Discrepancies occur using historical floods and comparing them to computed floods using the same magnitude. The reason for this is computed floods are based on full hydraulic efficiency, whereas historical floods of the same magnitude are affected by ice jams, bulges from side tributaries and drains which do not always coincide peaks simultaneously, and hence, water elevations change from floods of the same magnitude. Changes also occur from both historical and computed floods from the effect of constrictions (bridges, roads, fallen trees, etc.). A computed flood was used in determining the present dike elevations.

3 This resulted from frozen ground conditions and also because the dikes in some places were actually set back from the higher elevation due to trees, river bank, etc.

4 It is impractical and economically impossible to move frozen dirt without frozen chunks.