

MINUTES**North Dakota State Water Commission
Bismarck, North Dakota****November 19, 1992**

The North Dakota State Water Commission held a meeting in the lower level conference room of the State Office Building, Bismarck, North Dakota, on November 19, 1992. Chairman, Lieutenant Governor Lloyd Omdahl, called the meeting to order at 8:30 AM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

MEMBERS PRESENT:

Lieutenant Governor Lloyd Omdahl, Chairman
 Sarah Vogel, Commissioner, Department of Agriculture, Bismarck
 Joyce Byerly, Member from Watford City
 Marjorie Farstveet, Member from Beach
 Jacob Gust, Member from Fargo
 Lorry Kramer, Member from Minot
 Daniel Narlock, Member from Grand Forks
 Norman Rudel, Member from Fessenden
 David Sprynczynatyk, State Engineer and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members
 Approximately 15 people in attendance 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.

APPROVAL OF AGENDA

declared the agenda approved and Secretary Sprynczynatyk.

There being no additional items for the agenda, the Chairman requested it be presented by

**RESIGNATION OF JEROME SPAETH,
COMMISSION MEMBER, EFFECTIVE
NOVEMBER 5, 1992**

A letter of resignation was received from Commission member, Jerome Spaeth, effective November 5, 1992. His resignation was acknowledged by Governor Sinner.

**CONSIDERATION OF MINUTES
OF SEPTEMBER 15, 1992 MEETING -
APPROVED**

The minutes of the September 15, 1992 meeting were approved by the following motion:

It was moved by Commissioner Kramer, seconded by Commissioner Gust, and unanimously carried, that the minutes of the September 15, 1992 meeting be approved as circulated.

AGENCY FINANCIAL STATEMENT

Charles Rydell, Assistant State Engineer, presented and discussed the Program Budget Expenditures, dated November 17, 1992, reflecting 66.7 percent of the current biennium. The Contract Fund expenditures for the 1991-1993 biennium were reviewed and discussed.

Mr. Rydell stated the proposed agency budget was submitted to the Office of Management and Budget. On October 13, 1992, a meeting was held with OMB, the State Engineer and Division Directors to discuss the proposed budget, which has been forwarded to the Governor for incorporation into the Executive Budget.

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

Secretary Sprynczynatyk provided a status report on the Garrison Diversion Project. The federal appropriation for Fiscal Year 1993 has been approved for \$30 million for the project, of which approximately \$16 million will be allocated for the MR&I Water Supply Program.

Secretary Sprynczynatyk indicated that language was included in the federal Fiscal Year 1993 appropriation requiring the Bureau of Reclamation to make a full feasibility study of the Sykeston Canal proposal and a full Environmental Impact Study. He said this language was intended to provide for a study to include a review of all reasonable alternatives, including Mid Dakota and the options specified in the report on Canadian consultations, and is to be completed by March 31, 1994. He briefed the Commission members on a meeting held in Washington, DC with representatives of the Bureau of Reclamation to further discuss the language. Unfortunately, the Bureau is taking the position that only alternative routes to Sykeston Canal will be studied, which is not all reasonable alternatives. The State is continuing to argue its' interpretation of the language.

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The Commission members discussed lobbying efforts in the current Administration and in the new Administration for the Garrison Diversion Project. It was suggested that Peter Carlson, who has been retained by the Garrison Diversion Conservancy District, provide the Commission members with a project update at a future meeting.

Chairman Omdahl explained the professional and political aspects of the Garrison Diversion Project. He said "in demonstrating this project is viable from a practical standpoint, we must address and expand our political activity." The Commission members discussed the alternative of "lowering project goals and component phasing."

**GARRISON DIVERSION PROJECT -
SPECIAL STUDY UPDATE
(SWC Project No. 237-99)**

At the September 15, 1992 meeting, the Commission members were informed that the State had decided to propose a study

to evaluate all reasonable options for connecting the McClusky and New Rockford Canals, including the Sykeston Canal alternative, and to evaluate a selected alternative for delivering water to Devils Lake. The study effort by the State Water Commission, the State Game and Fish Department and the Garrison Diversion Conservancy District will be an objective comparison of a multitude of alternatives that will be given to the Bureau of Reclamation during its scoping process of the feasibility study of the Sykeston Canal proposal and Environmental Impact Statement. The study will also assist in making a presentation to the Legislature on the most practical and feasible alternative for completing the principal water supply works for the Garrison Diversion Project.

Linda Weispfenning, State Water Commission Planning and Education Division, provided the Commission members with an update on the activities of the special study. She said that on October 1, 1992, the Garrison Diversion Conservancy District authorized the expenditure of up to \$158,000 to evaluate all reasonable alternatives for connecting the McClusky and New Rockford Canals, including the Sykeston Canal alternatives, and to evaluate a selected option for the delivery of water to Devils Lake. Ms. Weispfenning reviewed the summary work plan for the study, which is attached hereto as APPENDIX "A".

Ms. Weispfenning stated that it was the consensus of the Study Management Team that to be most useful, the study results should be available in draft form prior to adjournment of the next legislative session and that having such results available early in 1993 would strengthen the State's position in helping scope the environmental impact statement process to be initiated by the Bureau of Reclamation for the

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Sykeston Canal alternatives. The Management Team also agreed that the best option available for completing the study in the short timeframe required was to utilize knowledgeable staff members from several state agencies to perform the necessary evaluations and report preparations.

The Special Study Team includes State Water Commission staff persons, Gene Krenz, Team Leader; Jim Lennington, engineering; Linda Weispfenning, environmental and cultural resources; and Preston Schutt, economics; Scott Peterson, Game and Fish Department; and Mike Sauer, State Health Department.

Ms. Weispfenning explained the breakdown of study costs for the work performed in completing the Garrison Special Study Project. She said the \$65,000 provided for State Water Commission staff services will be used to contract for personal services to complete some of the activities that would have been undertaken by the individual staff members of the Special Study Team had they not become involved in the special study.

The timetable for the study is publication of a draft report January 15, 1993, with the final draft report scheduled for March 15, 1993. It was the consensus of the Commission members that the draft report be reviewed by an independent firm for legality and validity of the methodology used in the study.

It was the recommendation of the State Engineer that the State Water Commission approve the agreement with the Garrison Diversion Conservancy District to allow reimbursement to the State Water Commission for up to \$65,000, for expenses incurred in completing the special study and that the funds be used as much as possible to offset costs incurred to allow staff members to work on the study.

It was moved by Commissioner Byerly and seconded by Commissioner Rudel that the State Water Commission approve the agreement with the Garrison Diversion Conservancy District to allow reimbursement to the State Water Commission for up to \$65,000, for expenses incurred in completing the Garrison Diversion Special Study, and that the funds be used as much as possible to offset costs incurred to allow staff members to work on the study.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

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

Jeffrey Mattern, MR&I Water Supply Program Coordinator, provided the following status report of projects approved for funding in 1992:

The City of Kindred is using water from Cass Rural Water. The contractor needs to do final grading on the pipeline route to complete the project.

The final inspection was completed on the McLean-Sheridan Rural Water Project on October 20, 1992. The McLean-Sheridan Board has requested funding assistance for adding 100 users with an estimated cost of \$1.5 million. The request also includes providing bulk water service to the City of Underwood with an estimated cost of \$1.4 million. Underwood is also considering the City of Riverdale for bulk water service.

Construction bids were opened for Missouri West Rural Water on October 20, 1992, with the low bid submitted by Northern Improvement. This bid covers construction of Phase I components, except for some storage reservoirs.

System design and environmental assessment reports are being prepared for the Stanley Water Supply Project and the Garrison Rural Water Project.

Major construction on the water storage reservoirs has been completed on the Tri-County Rural Water Project. Final site cleanup and installation of electrical controls remain to be completed by the contractor.

Federal and state funding for future water projects was discussed. Chairman Omdahl directed the State Engineer and staff to draft a letter to those applicants requesting MR&I funding, advising that future federal and state funds may be limited and, as a result, a greater local cost sharing effort may be required. The Chairman stressed the importance of cities developing a plan to provide for future capital replacement funds.

**CONSIDERATION OF REQUEST FOR
RELEASE OF EASEMENT AND
DEDICATION FOR OSFORD DAM,
CAVALIER COUNTY
(SWC Project No. 1272)**

A request was presented for the Commission's consideration for the release of easement and dedication for Osford Dam in Cavalier County.

Cary Backstrand, State Water Commission Water Development Division, presented the request from

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the Security Bank of Adams, North Dakota. Osford Dam is located in the NW1/4 of Section 21, Township 159 North, Range 88 West, in Cavalier County and was constructed by the Works Progress Administration (WPA) in 1935. Mr. Backstrand said the State of North Dakota holds an easement and dedication to construct and inundate land in conjunction with the construction of the dam.

Mr. Backstrand stated the Cavalier County Water Resource Board has reviewed the request and recommended that the release of easement and dedication of Osford Dam be granted. He said it does not appear that the dam has been or will provide public benefits.

It was the recommendation of the State Engineer that the State Water Commission approve the release of easement and dedication for the Osford Dam in Cavalier County.

It was moved by Commissioner Rudel and seconded by Commissioner Byerly that the State Water Commission approve the release of easement and dedication for the Osford Dam in Cavalier County.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION OF REQUEST FOR
RELEASE OF EASEMENT AND
DEDICATION FOR DODGE DAM,
DUNN COUNTY
(SWC Project No. 1275)**

A request was presented for the Commission's consideration for the release of easement and dedication for Dodge Dam in Dunn County.

Cary Backstrand presented the request and stated Dodge Dam is located in the SW1/4 of Section 10, Township 144 North, Range 91 West, Dunn County. The dam was constructed by the Federal Emergency Relief Administration (FERA) in 1934. The dam washed out three years after it was built and all that remains is a small part of the spillway. The State of North Dakota holds an easement and dedication to construct and inundate land in conjunction with the construction of the Dodge Dam.

The Dunn County Water Resource District has reviewed the request for the release of easement and dedication and recommended approval.

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It was the recommendation of the State Engineer that the State Water Commission approve the release of the easement and dedication for the Dodge Dam in Dunn County.

It was moved by Commission Rudel and seconded by Commissioner Byerly that the State Water Commission approve the release of easement and dedication for the Dodge Dam in Dunn County.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION OF STATE
ASSUMPTION OF SECTION
404 PROGRAM
(SWC Project No. 1489-5)**

Secretary Sprynczynatyk provided the Commission members with background information relative to the dredge and fill permit program, currently administered under Section 404 of the Clean Water Act. The Clean Water Act allows the US Environmental Protection Agency to approve state administration of the Section 404 permit program. He said that to date, only one state, Michigan, has assumed the program, although a number of other states are seriously considering assumption. Part of the program, water quality certification, under Section 401 of the Clean Water Act, has been assumed by the State Department of Health and Consolidated Laboratories.

Secretary Sprynczynatyk stated that widespread support for state assumption has come from state agencies involved in water management, agriculture, and game and fish management. Private farm groups have supported the effort and private wildlife organizations have agreed that it could be a good idea. He said the North Dakota Water Users Association and the North Dakota Water Resource Districts Association passed the following resolution at their annual convention in October, 1991: "We urge the State of North Dakota to proceed to take such actions necessary for state implementation and administration of Section 404. We believe Section 404 should be a state program and we urge the State of North Dakota to establish the necessary authority to take over this program from the Corps of Engineers."

While there is considerable support for the State of North Dakota to assume the administration of the Section 404 program, Secretary Sprynczynatyk explained there are several steps that must be taken before it can become

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a reality. A legal review of the state and federal statutes to determine what legislation changes may be necessary before North Dakota could assume the program is required. He said that as part of the State Water Commission's EPA grant to develop a comprehensive statewide wetland conservation plan, the Attorney General's office has agreed to provide the necessary legal review for state assumption of the 404 program. That review includes draft legislation for the 1993 Legislative Session, and if passed by the Legislature, developing the required agreements with federal agencies and initiating the administrative rule process.

Secretary Sprynczynatyk explained the advantages and disadvantages of the state assumption of the Section 404 program. He said the estimated cost to administer a state program would be approximately \$400,000 per biennium. Potential funding sources would be a general fund appropriation by the North Dakota Legislature, federal funding through EPA grants, or a combination of both.

Julie Krenz, Special Assistant Attorney General, reviewed draft legislation for the assumption of the Section 404 program by the State of North Dakota. The draft legislation is attached hereto as APPENDIX "B".

It was the recommendation of the State Engineer that the State Water Commission approve assumption of the Section 404 program by the State of North Dakota and that the Commission introduce as an agency bill the enabling legislation for state assumption.

It was moved by Commissioner Byerly and seconded by Commissioner Narlock that the State Water Commission approve assumption of the Section 404 program by the State of North Dakota and that the State Water Commission introduce as an agency bill the enabling legislation for state assumption.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**BALDHILL DAM SAFETY
MODIFICATIONS
(SWC Project No. 300)**

At the September 15, 1992 meeting, the Commission agreed to act as the non-federal sponsor for the Baldhill Dam and to accept the Corps of Engineers' \$368,000 cost share proposal for the dam safety modifications.

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Dale Frink, State Water Commission Water Development Division Director, stated that as a result of the Commission's action, the Corps was notified and they have requested Fiscal Year 1993 funding to continue the design of the project. The current proposal is to complete the plans and specifications for the project by 1994 and for construction to begin in 1995.

Mr. Frink stated that a meeting has been scheduled for December 2, 1992 in Valley City with the State Water Commission staff and representatives from the cities of Valley City, Lisbon, West Fargo, Fargo and Grand Forks to discuss the project with the original contributors and to present a proposal for cost sharing on the non-federal cost share requirements.

**NORTH DAKOTA WATER USERS
ASSOCIATION INITIATED TAX
MEASURE UPDATE
(SWC Project No. 1852)**

Michael Dwyer, Executive Vice President of the North Dakota Water Users Association, provided the Commission members with a county-by-county breakdown of the November 3, 1992 vote on Measure No. 4, the initiated tax measure for a one-half cent sales tax for water development.

**STATE WATER MANAGEMENT
PLAN UPDATE
(SWC Project No. 322)**

LeRoy Klapprodt, State Water Commission Planning and Education Division, stated the 1992 State Water Management Plan has been completed and is scheduled for release on December 7, 1992. He said the 70-page document is a water management guide for state legislators, water managers and private citizens. The Plan was written to help people better understand the nuts and bolts of water management in North Dakota as well as offer insights into issues and future developments.

Mr. Klapprodt said the 1992 Plan offers a comprehensive list of over 200 water management proposals recommended by citizens during the extensive public involvement process. Locations, brief descriptions, estimated costs, participating agencies and recommended times for implementation are listed for each proposal. Water management-related topics such as education, finance, economics and special issues are also addressed in the 1992 Plan.

Mr. Klapprodt provided an update on the State Water Management Communications Plan, which is designed to sharpen agency understanding of communication needs in order to use dollars dedicated to information/education activities more effectively.

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Preston Schutt, State Water Commission Planning and Education Division, reported the staff and the Bureau of Reclamation are in the process of analyzing surveys that were sent to the general public and water managers in North Dakota regarding their knowledge of water resources. He said the results of the surveys will be used in developing the communications plan and to determine priority methods that will provide information the public wants in a format or media they commonly use.

Mr. Schutt provided the Commission members with a summary of the preliminary survey results. The Commission members requested copies of the final abstract of the surveys when completed.

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

At the September 15, 1992 meeting, the Commission approved the concept of proceeding with the development of the pre-final design for the Northwest Area Water Supply Project. The Commission also approved the utilization of \$400,000 from Fiscal Year 1993 MR&I funds, plus an additional \$133,000 from the Garrison Diversion Conservancy District interest account as the initial source of funding for the pre-final design.

Secretary Sprynczynatyk indicated the pre-final design concept and proposed funding was considered by the Garrison Diversion Conservancy District at its meeting on October 1, 1992. The Executive Board approved the same total amount of \$533,000, but chose to fund the entire amount from the Conservancy District interest account. Secretary Sprynczynatyk explained this was done to utilize a greater share of the interest account and to save on Fiscal Year 1993 MR&I funds. He said because of underfinancing in the Fiscal Year 1993 appropriation, less money will be available in Fiscal Year 1993 than first thought.

It was recommended by the State Engineer that because of the action taken by the Garrison Diversion Conservancy District the State Water Commission rescind its action of September 15, 1992 relating to the source of funding for the Northwest Area Water Supply Project pre-final design.

It was moved by Commissioner Gust and seconded by Commissioner Vogel that the State Water Commission rescind the following action of September 15, 1992:

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To approve the utilization of \$400,000 from Fiscal Year 1993 MR&I funds, plus an additional \$133,000 from the Garrison Diversion Conservancy District interest account as the initial source of funding for the pre-final design.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Charles Rydell reported the following will serve on the committee for the selection of an engineer to complete the pre-final design of the Northwest Area Water Supply Project:

Charles Rydell, Assistant State Engineer
 Lorry Kramer, State Water Commission Member, Chairman
 Les Anderson, Minot, Garrison Diversion Conservancy District
 Don Morgan, Three Affiliated Tribes
 Monte Meiers, City Engineer, Williston
 Bob Schempp, City Manager, Minot

Mr. Rydell reported on the committee's organizational meeting in Minot on November 10, 1992. He reviewed the timetable for the selection process and said it is anticipated the committee will meet at least two more times, with the selection process completed approximately by December 15, 1992. The actual work on the pre-final design of the project is expected to begin no later than February 1, 1993.

MISSOURI RIVER UPDATE
 (SWC Project No. 1392)

Secretary Sprynczynatyk stated the Missouri Basin Association met in October, 1992 to review approximately 70 new alternatives developed by the Corps of Engineers in its Master Manual review to operate the Missouri River Basin system. These alternatives are being compared with the present method of management to see if major operating changes are warranted. Approximately seven new alternatives will be chosen by the Corps and a consulting firm will provide an in-depth assessment of each alternative's environmental and social impacts. The Corps of Engineers will hold public hearings in March and April on the alternatives throughout the basin. Following completion of all assessments, the Corps will choose the alternative they feel best meets the needs of all water users in the basin.

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Secretary Sprynczynatyk said the Corps uses the Missouri River Master Manual as its guide for developing each year's annual operating plan for the river and its six main stem reservoirs. The Master Manual review may be completed in time for new guidelines to be used in developing the 1994 annual operating plan.

Secretary Sprynczynatyk stated the final decision of the Corps of Engineers on the 1993 annual operating plan is essentially the same as it was for 1992, with some adjustments and refinements, which he explained.

**NORTH DAKOTA COMPREHENSIVE
WETLAND CONSERVATION PLAN UPDATE
(SWC Project No. 1489-5)**

Agency grant designed to support development of a North Dakota Comprehensive Wetland Conservation Plan. The motion also suggested that work called for in the grant be implemented as soon as possible.

At the September 15, 1992 meeting, the Commission passed a motion endorsing the receipt of an Environmental Protection

LeRoy Klapprodt, assigned to administer the grant, provided information concerning the development of the Plan and reviewed the schedule of activities and timetable for development, which is attached hereto as APPENDIX "C".

In discussion of the Plan objectives, Mr. Klapprodt explained the grant provides a total of approximately \$95,800 for development of a computer-based geographic information system (GIS) within the State Water Commission. He said this is considered a demonstration project to evaluate the usefulness of such a system and includes the acquisition of equipment, software, manpower and training.

Commissioner Vogel related concerns and stressed the importance of compatibility of GIS technology and information within agencies. She said "GIS technology compatibility is extremely important statewide so that all interested parties can have access to the information." Secretary Sprynczynatyk addressed the concerns and indicated a meeting will be scheduled with the appropriate agencies to further address the issue.

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

\$300,000 was made to the Corps of Engineers along with directive

Dale Frink provided a status report on the Devils Lake Stabilization Project. This past year, an appropriation for

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language to initiate the feasibility study for the stabilization of Devils Lake, including an inlet to the lake and an outlet from it. Mr. Frink said the language was a mandate to the Corps, but it appears the Corps is stalling and may not do anything, but if forced to do something will only consider flood control. Mr. Frink stressed the importance of the necessity for both an inlet and an outlet to manage and protect Devils Lake, which represents more than a \$30 million-a-year industry to North Dakota. He said the environmental impacts would be tremendous if the lake were allowed to die by letting it recede any further.

Secretary Sprynczynatyk stated Governor Sinner has agreed to visit with Nancy Dorn, Assistant Secretary of the Army for Civil Works, to further discuss the issues relating to the Devils Lake Stabilization Project.

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

Tim Fay, Manager of the Southwest Pipeline Project, provided a status report on the following construction contracts:

Contracts 2-3E and 2-3F: Contract 2-3F has progressed from the junction of Highways 21 and 22 north to New England. From that point, the contractor moved all his forces to Contract 2-3E to finish work in and around the City of Dickinson. Work is behind schedule and discussions with the contractor are in progress to correct the problems.

Contract 2-7A: This contract involves the secondary transmission line from Dickinson pump station to Davis Buttes. The pre-final inspection for this contract was held on November 2, 1992. The contractor was provided a list of items for correction.

Contract 3-1B: Zap reservoir No. 2. Earthwork, buried piping, and foundation construction are complete. The vertical walls of the tank have also been completed. Work now continues on construction of the knuckle and roof. This contract is also behind schedule and discussions are underway with the contractor.

Contract 7-1A: Roshau rural water distribution system. All but approximately 500 feet of piping is installed. Testing and some finish work remain.

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**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND AWARD OF
CONTRACT 5-3, NEW ENGLAND
RESERVOIR, TO ADVANCE TANK
AND CONSTRUCTION,
WELLINGTON, CO
(SWC Project No. 1736)**

On October 29, 1992, bids were opened on Southwest Pipeline Project Contract 5-3, for the New England Reservoir.

Tim Fay reported the low bid for Contract 5-3 was submitted from Advance Tank and Construc-

tion of Wellington, CO, in the amount of \$547,750. He said the bid has been determined to be responsive and is in accordance with our expectations of costs.

Mr. Fay explained that Contract 5-3 included an alternate item for the second tank at the New England site. The price given by the apparent low bidder for this alternate was \$358,522. He said if the contract was awarded on the base bid, the price per gallon stored would be \$.37. If the alternate is awarded, the price would be \$.30 per gallon. Either price would be considered low for storage of this type. Mr. Fay recommended the decision regarding award of the alternate should await the results of bid for the Dickinson Pump Station, which is scheduled for November 18, 1992.

Mr. Fay said Advance Tank constructed the 1.3 million gallon reservoir at the Richardton pump station and the second Zap reservoir. He indicated past and current experience with the firm has been satisfactory.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Contract 5-3 for the New England Reservoir to Advance Tank and Construction of Wellington, CO.

It was moved by Commissioner Vogel and seconded by Commissioner Byerly that the State Water Commission approve the award of Southwest Pipeline Project Contract 5-3, for the New England Reservoir, to Advance Tank and Construction of Wellington, CO.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

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**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
AWARD OF CONTRACT 5-13, DAVIS
BUTTES RESERVOIR, TO ADVANCE
TANK AND CONSTRUCTION,
WELLINGTON, CO
(SWC Project No. 1736)**

On October 29, 1992, bids were opened on Southwest Pipeline Project Contract 5-13, for the Davis Buttes Reservoir.

Tim Fay indicated the low bid for Contract 5-13 was submitted by Advance Tank and Construction of Wellington, CO

in the amount of \$482,300. Mr. Fay said this bid has been determined to be responsive and is in accordance with our expectations of costs.

It was the recommendation of the State Engineer that the State Water Commission approve the award of Contract 5-13 for the Davis Buttes Reservoir to Advance Tank and Construction of Wellington, CO.

It was moved by Commissioner Vogel and seconded by Commissioner Byerly that the State Water Commission approve the award of Southwest Pipeline Project Contract 5-13, for the Davis Buttes Reservoir, to Advance Tank and Construction of Wellington, CO.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
AWARD OF CONTRACT 2-6A, MAIN
TRANSMISSION PIPELINE, TO
GEORGE E. HAGGART, INC.,
FARGO, ND
(SWC Project No. 1736)**

On November 6, 1992, bids were opened for Southwest Pipeline Project Contract 2-6A, for the main transmission pipeline which extends from the Highway 21 and 22 junction to Mott.

Tim Fay indicated interest in the contract was high with 14 bids received. The apparent low bid was from George E. Haggart, Inc. of Fargo, ND, at \$1,396,568. The engineer's estimate was \$1,705,519. Mr. Fay said this firm has done a considerable amount of work on the Southwest Pipeline Project and their work has been satisfactory. The bid has been examined and found to be in accordance with the notice.

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It was the recommendation of the State Engineer that the State Water Commission approve the award of Southwest Pipeline Project Contract 2-6A to George E. Haggart, Inc., Fargo, ND.

It was moved by Commissioner Vogel and seconded by Commissioner Byerly that the State Water Commission approve the award of Southwest Pipeline Contract 2-6A, for the main transmission line which extends from the Highways 21 and 22 junction to Mott, to George E. Haggart, Inc., Fargo, ND.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION OF CONTRACT
4-3, TRIPLE PUMP STATION
(SWC Project No. 1736)**

On November 18, 1992, bids were opened on Southwest Pipeline Project Contract 4-3, for the triple pump station.

Tim Fay provided the Commission members with information relative to the bid summary and stated a recommendation for the award of contract will be presented for the Commission's consideration at the December 9, 1992 meeting.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL
FOR STATE ENGINEER OR PROJECT
MANAGER TO EXECUTE PROJECT
CHANGE ORDERS
(SWC Project No. 1736)**

Tim Fay explained the procedure for contract change orders for the Southwest Pipeline Project.

It was the recommendation of the State Engineer that the State Water Commission authorize the State Engineer or the Southwest Pipeline Project Manager to execute project change orders for 25 percent of the total contract amount, not to exceed \$100,000. Change orders that exceeded \$100,000 would be brought before the Commission for consideration.

It was moved by Commissioner Narlock and seconded by Commissioner Rudel that the State Water Commission authorize the State Engineer or the Southwest Pipeline Project Manager to execute project change orders for 25 percent of the total contract amount, not to exceed \$100,000.

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In discussion of the motion, Commissioner Vogel expressed concerns regarding increasing the costs on change orders. She stated the Commission did not have an opportunity to review this request prior to the meeting and suggested action be deferred until the December meeting. The original motion was then voted on.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, and Chairman Omdahl voted aye. Commissioner Vogel voted nay. The recorded vote was 7 ayes; 1 nay. The Chairman declared the motion carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
FUNDS FOR DICKINSON WATER
TREATMENT PLANT UPGRADE, PHASE II
(SWC Project No. 1736)**

At the April 2, 1992 meeting, the Commission approved funding in the amount of \$146,160 for Phase I for the Dickinson Water treatment plant upgrade. Phase I included corrections to the plant's raw water control valve, finished water meter, and an in-plant telemetry system. The remaining items, including several large-scale filter renovations and hydraulic improvements were to be incorporated in an overall upgrade plan, which was to be evaluated at a future date.

Tim Fay reported that during the intervening months, the City of Dickinson has conducted an engineer selection process, selected Kadrmas, Lee and Jackson as the engineer, negotiated a contract, and began work on the tasks involved in Phase II.

Mr. Fay said the first step in Phase II is the preparation of the overall upgrade plan. This work is estimated to cost \$10,600 and will identify necessary work, expected results, and estimated cost of construction. He said the plan will also address the problem of compliance with the new Surface Water Treatment Rule. This is a complex issue involving disinfectant, contact time, and formation of disinfectant byproducts. Mr. Fay said it has important implications for both the City of Dickinson and other service areas of the project. The cost of this study is estimated at \$3,800.

It was the recommendation of the State Engineer that the State Water Commission approve funding the plan for upgrading the Dickinson Water Treatment Plant and the Surface Water Treatment Rule study as described, for a fee not to exceed \$14,400.

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It was moved by Commissioner Farstveet and seconded by Commissioner Gust that the State Water Commission approve funding the plan for upgrading the Dickinson Water Treatment Plant, Phase II, and the Surface Water Treatment Rule study, for a fee not to exceed \$14,400. This motion is contingent upon the availability of funds.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
PILOT PROJECT WITH SOIL
CONSERVATION SERVICE TO
CONSTRUCT LIVESTOCK WATERING
SYSTEMS WITHIN PROJECT AREA
(SWC Project No. 1736)**

Tim Fay reported that the Soil Conservation Service pilot project to construct livestock watering systems within the Southwest Pipeline Project area is proceeding on schedule.

A series of meetings in September and October between the State Water Commission staff, the Soil Conservation Service personnel, the Southwest Water Authority, and Bartlett-West/Boyle Engineering has made progress in defining the probable nature of a coordinated Southwest Pipeline Project PL-566 pilot project in the Southwest Pipeline Project service area.

The service area identified extends approximately from Highway 10 in Stark County north to the Knife River, and from Highway 8 six miles west. This region includes the City of Taylor and is referred to as the Taylor service area.

Mr. Fay explained development of the service area as a joint pilot project would require sizing the piping larger than under ordinary rural water criteria. He said this is due to the PL-566 emphasis on livestock watering. A coordinated project can best be developed if the line is routed directly north from Taylor rather than along Highway 8. Routing north from Taylor could add approximately \$70,000 to the cost, however, Mr. Fay said a portion of this cost would later be spent on the distribution system.

Mr. Fay said that if these modifications are made, the Southwest Pipeline would build the transmission line and the Soil Conservation Service project, with 50 percent non-PL-566 funding from the MR&I Program and state

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funds, would build the rural distribution system. Mr. Fay said it may be possible to recover some or all of the cost of oversizing the transmission line by assessing an "access fee" to the PL-566 portion of the project, and it may be possible to credit this fee to the non-federal portion of the project.

It was the recommendation of the State Engineer that the State Water Commission approve routing the Southwest Pipeline Project transmission line from Taylor and sizing this line in accordance with the requirements of the Soil Conservation Service PL-566 Program.

It was moved by Commissioner Byerly and seconded by Commissioner Farstveet that the State Water Commission approve routing the Southwest Pipeline Project transmission line north from Taylor and sizing this line in accordance with the requirements of the Soil Conservation Service PL-566 Program.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
TEMPORARY WATER PURCHASE
AGREEMENT FOR ROSCHAU
SUBDIVISION SERVICE
(SWC Project No. 1736)**

Tim Fay presented a draft water purchase agreement between the State Water Commission and the City of Dickinson to provide a temporary source of water for rural water service to the Roschau Subdivision area by

means of the City of Dickinson's water distribution system. The draft agreement is attached hereto as APPENDIX "D". Mr. Fay explained the terms of the draft agreement, which is being reviewed by the legal staff.

Mr. Fay explained that the Southwest Pipeline Project intends to construct a rural water distribution system in the Roschau Subdivision service area. The Southwest Pipeline Project will not be able to provide water to this system through its own facilities until completion of a pump station at Dickinson. Therefore, the City of Dickinson can provide water to this area on a temporary basis through its water distribution system.

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It was moved by Commissioner Rudel and seconded by Commissioner Farstveet that the State Water Commission approve the temporary water purchase agreement between the North Dakota State Water Commission and the City of Dickinson to provide a temporary source of water for the Roschau Subdivision rural water service area by means of the City of Dickinson's water distribution system, subject to legal review and approval.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
CONTRACT FOR SALE OF WATER TO
ROSCHAU SUBDIVISION SERVICE AREA
(SWC Project No. 1736)**

Tim Fay presented a draft contract between the North Dakota State Water Commission and the Southwest Water Authority to set forth the terms, conditions, and procedures for water

users of the Southwest Pipeline Project, Roschau Subdivision, to be billed for water service, and for the transfer of payments for such water service from the Southwest Water Authority to the State Water Commission. Mr. Fay explained the terms of the draft contract, which have been approved by the legal staff. The draft contract is attached hereto as APPENDIX "E".

It was moved by Commissioner Gust and seconded by Commissioner Narlock that the State Water Commission approve the draft contract between the North Dakota State Water Commission and the Southwest Water Authority setting forth the terms, conditions and procedures for water users of the Southwest Pipeline Project, Roschau Subdivision, to be billed for water service, and for the transfer of payments for such water service from the Southwest Water Authority to the State Water Commission.

Commissioners Byerly, Farstveet, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

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**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
WATER SERVICE CONTRACT FOR
CITY OF CARSON
(SWC Project No. 1736)**

the city and the State Water Commission's legal staff. The contract is attached hereto as APPENDIX "F".

Tim Fay presented the water service contract for the City of Carson, which is the 23rd city in the Southwest Pipeline Project. Mr. Fay said the contract has been approved by

It was the recommendation of the State Engineer that the State Water Commission approve the water service contract for the City of Carson.

It was moved by Commissioner Byerly and seconded by Commissioner Farstveet that the State Water Commission approve the water service contract for the City of Carson.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -
CONSIDERATION AND APPROVAL OF
REQUEST FROM CITY OF MOTT FOR
AMENDMENT TO WATER SERVICE
CONTRACT RELATING TO BILLING
PROCEDURE
(SWC Project No. 1736)**

Contracts with cities who blend water sources were not affected.

At the March 11, 1992 meeting, the State Water Commission approved an amendment to water service contracts to allow billing for the actual amount of water used for cities with no other source of water other than the Southwest Pipeline.

Tim Fay presented a request for the Commission's consideration from the City of Mott for an amendment to their water service contract to allow billing for the actual amount of water used from the Southwest Pipeline. He said the city's population has declined since they entered into their contract.

It was moved by Commissioner Vogel and seconded by Commissioner Gust that the State Water Commission approve the amendment to the City of Mott's water service contract, which will allow billing for the actual amount of water used from the Southwest Pipeline. The contract is attached hereto as APPENDIX "G".

November 19, 1992

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**NORTH DAKOTA WATER USERS
ASSOCIATION AND NORTH DAKOTA
WATER RESOURCE DISTRICTS
ANNUAL CONVENTION**

7 and 8, 1992 in Bismarck at the Radisson Inn.

The North Dakota Water Users Association and the North Dakota Water Resource Districts Association annual convention is scheduled December

**NEXT STATE WATER
COMMISSION MEETING**

cheduled December 9, 1992 in Bismarck

Secretary Sprynczynatyk announced the next meeting of the State Water Commission is scheduled at the Radisson Inn.

**STATE OFFICE BUILDING
OPEN HOUSE**

The agency moved back into the building the week of October 5, 1992. The public open house is scheduled for November 19, 1992 from 12:00 noon until 3:00 PM.

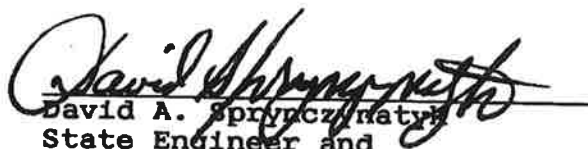
Secretary Sprynczynatyk reported the renovation of the State Office Building is complete.

There being no further business to come before the State Water Commission, it was moved by Commissioner Rudel, seconded by Commissioner Vogel, and unanimously carried, that the State Water Commission meeting adjourn at 12:00 noon.



Lloyd B. Omdahl
Lieutenant Governor-Chairman

SEAL



David A. Sprynczynatyk
State Engineer and
Chief Engineer-Secretary

November 19, 1992

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE November 19, 1992 PLACE Bismarck, ND

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
VERN FAHY	Bism	GAR. CONS. DIST.
Steve Dyke	100 Nth Bismarck Expressway Bismarck	N.D. Game & Fish
CHARLIE VEIN	414 UNIVERSITY AVE, GRAND FORKS	ADVANCED ENGINEERING
Linda Weisfening	Bismarck	STATE WATER COMMISSION
Lee Klapprodt	Bis.	SWC
Willie Mastel	Dickinson	SWC Authority
Cary Backstrand	Bismarck	SWC/SE
Julie Krenz	Bismarck	AG'S office
Preston Schutt	Bismarck	SWC
Loon Nyman	Taylor	SWA
Bruce F McCollan	Bismarck	BW/BRC Engineers
Mike Dwyer	Bismarck	ND SWC W 4

**Summary Work Plan
for
A Study Proposed by the State of North Dakota
to Evaluate all Reasonable Options for
Connecting the McClusky and New Rockford Canals
and to
Evaluate a Selected Alternative for Delivering
Water to Devils Lake**

STUDY OBJECTIVES

The primary objective of this study is to evaluate all reasonable alternatives for connecting the McClusky and New Rockford Canals--including the Sykeston Canal alternatives--and to evaluate a selected option for the delivery of water to Devils Lake in accordance with the following criteria.

- 1) Environmental/Biological Assessment.
- 2) Engineering Assessment.
- 3) Socio-economic Assessment.
- 4) Risk Assessment

STUDY MANAGEMENT

Oversight responsibility for study management rests with the State Engineer; Manager, C-District; State Game & Fish Commissioner; and Director of Environmental Services, State Health Department. Responsibility for day-to-day management would be assigned to the Study Team Leader.

ALTERNATIVES EVALUATION

The alternatives identified at the outset of this special study which are to be subjected to careful scrutiny using the criteria cited above include the following plus any others identified by the study process which meet a test of reasonableness:

- 1) Lonetree Reservoir (LTR) Alternatives.
 - A) LTR at 1840 msl
 - B) LTR at 1820 msl (proposed during Commission study)
- 2) Sykeston Canal Alternatives (limited to the two discussed in Canadian negotiations).
 - A) Northern Route (Sheyenne Valley Route)
 - B) Southern Route (Commission's Alternative)
- 3) Missouri Basin Route (alternative to Sykeston as studied

by the Bureau of Reclamation and presented to Canada)

- 4) **Mid Dakota/Sheyenne Lake**
 - A) Current Proposal (as modified by Canada)
 - B) Current Proposal (with modifications)
 - C) Further downsizing
- 5) **Sheyenne Valley Pools and Pumping Pool**
 - A) Five-Pool Concept.
 - B) Pools plus downstream fresh water reservoir
- 6) **Connecting Pipeline**
 - A) MR&I only
 - B) MR&I plus Devils Lake requirement
 - C) MR&I, Devils Lake plus an irrigation component

RELATED ALTERNATIVES

- 1) **Treatment Plant Location**
 - A) **Location of Treatment Plant**
 - (1) Harvey (upper end of NRC)
 - (2) New Rockford (lower end of NRC)
 - (3) Robinson Coulee (very end of NRC)
 - B) **Diversion to Devils Lake**
 - (1) Low head dam on the Sheyenne
 - (2) Directly from treatment plant at New Rockford on NRC
- (2) **Devils Lake**
 - A) Diversion Point (Sheyenne River or NRC)
 - B) Quantity of Water
 - C) Project costs
 - D) Environmental Assessment

WORK PROGRAM ELEMENTS (TASKS)

1) **Environmental/Biological Assessment.** In order to compare the relative desirability of a given alternative, each of the alternatives cited above will be evaluated in terms of positive and negative impacts. Evaluations will involve the use of existing information available from the U.S. Bureau of Reclamation, the U. S. Army Corps of Engineers, and other sources, including governmental agencies and the private sector.

It is important to understand that what is contemplated is the collection and display of "assessment" level information and data and not the degree of detail required in a full blown environmental impact statement.

Primary Environmental/Biological Assessment Tasks:

A) Determine what information is currently available (one [1] person week).

B) Compile all available pertinent fish, wildlife, cultural and social information (one [1] person week).

C) Identify all wildlife habitat and other environmental impacts associated with each alternative (six [6] person weeks).

D) Determine biota transfer risk associated with each alternative (three [3] person weeks).

E) Identify potential fishery development opportunities associated with each alternative (three [3] person weeks).

F) Evaluate water quality issues associated with each alternative (four [4] person weeks).

G) Determine mitigation requirements, if any, for each alternative (two [2] person weeks).

H) Determine best feasible alternative from environmental standpoint (one [1] person week).

I) Identify and display information and data deficiencies (two [2] person weeks).

2) Engineering Assessment

A) Existing Documentation. Compile a list and collect copies of all known reports and documentation on subject alternatives (two [2] person weeks).

B) Alternative Review Criteria. Develop the final engineering review criteria and establish which items require additional evaluation. The amount of additional review will be controlled by the time available and may be limited (two [2] person weeks).

C) Project Supply Capabilities. Identify acceptable supply capabilities for project features based on the 1986 Reformulation Act. This includes MR&I, Irrigation, In-stream Flows, Wildlife Enhancement and Mitigation (two [2] person weeks).

D) Alternative Alignments. Establish location and alignment for all alternatives to be considered for further review (four [4] person weeks).

E) Potential Impact Area Identification. Document potential environmental impact areas for each alternative based on the location of project features. This information needs to be provided to the Environmental/Biological Assessment team (four [4] person weeks).

F. **Alternative Features Evaluation.** Establishment of location and probably design for all alternative supply features. This includes an evaluation of what features are necessary and a preliminary layout of what each alternative will include. These will be modified and/or adjusted with completion of the remaining tasks and coordination with other teams (six [6] person weeks).

G. **Risk Evaluation of Alternatives.** Evaluate all project alternatives based on but not limited to the following risk factions (two [2] person weeks):

1. Earthquake
2. Hydrologic Design
 - (a) 100-year flood
 - (b) Probable maximum flood
 - (c) Cross drainage
3. Structural Failure
 - (a) Embankment
 - (b) Berm and side slopes (slides)
4. Human Error or Equipment Failure
5. Seepage
6. Bait bucket Transfer
7. Winter operations

H) **Potential Wildlife Development.** Evaluation of alternatives for potential wildlife enhancement area. These sites to be identified with coordination and input from the Environmental/Biological Team. Locations shall be identified on project base map as soon as they are accepted (two [2] person weeks).

I) **Construction and O&M Costs.** Final development of a detailed cost estimate for each alternative and associated costs for wildlife enhancement and/or mitigation. Some of these costs will need to be provided by the other teams. Preliminary costs for each alternative may be available, but they would require refinement.

J) **Alternative Selection.** This task involves the selection of the alternative to be presented for final consideration by the study team.

K) **Draft Engineering/Risk Assessment Section for Final Report.** Self explanatory.

3) **Socioeconomic Assessment.** This activity involves essentially four tasks. They are defined and described as follows:

A) **Impact Identification.** Identify all possible positive and negative socioeconomic impacts for each alternative through review of literature and consultation with other professionals (1 week).

B) **Selection of Socioeconomic Baseline.** Development of the socioeconomic baseline condition by gathering secondary

economic and social data for as many impacts as possible. Sources include ND Census Data Center, NDSU Ag. Econ. Dept., ND Extension Service, ASCS, SCS, and Bureau of Reclamation (two weeks).

C) **Specific Alternative Impact Estimation.** Estimate socioeconomic impacts each alternative will have on the baseline condition and quantify as many as possible in dollar terms. Identify and describe all impacts that cannot be quantified in dollar terms (four weeks).

D) **Data Compilation.** Compile data into a section for the final report (1 week).

STUDY COSTS

Attachment "A" summarizes the costs associated with conduct of this study.

SCHEDULE

Publication of a Draft Study Report is scheduled for January 15, 1993 with a Final Study Report scheduled for March 15, 1993. Attachment "B" reflects the increments of time required for completion of the tasks identified above.

**SUMMARY OF STUDY COSTS
FOR WORK PERFORMED IN COMPLETING THE
GARRISON SPECIAL PROJECT**

State Agency Reimbursement

State Water Commission	\$65,000.
State Game & Fish Department	15,000.
State Health Department	<u>5,000.</u>
	<u>\$85,000.</u>

Consultant

American Engineering	<u>\$36,000.</u>
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Equipment & Supplies

(Lease value of computers and software provided as SWC cost-share)	(\$2,000.)
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Contingency

Professional contractual support services,	\$15,000.
Printing, illustration & other publishing	<u>\$20,000.</u>
TOTAL C-DISTRICT COST	<u>\$157,000.</u>

**SUMMARY OF STUDY COSTS
FOR WORK PERFORMED IN COMPLETING THE
GARRISON SPECIAL PROJECT**

State Agency Reimbursement

State Water Commission	\$65,000.
State Game & Fish Department	15,000.
State Health Department	<u>6,000.</u>
	<u>\$86,000.</u>

Consultant

American Engineering	<u>\$36,000.</u>
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Equipment & Supplies

(Lease value of computers and software provided as SWC cost-share)	(\$2,000.)
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Contingency

Professional contractual support services,	\$16,000.
Printing, illustration & other publishing	<u>\$20,000.</u>
TOTAL C-DISTRICT COST	<u>\$158,000.</u>

Fifty-third
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Water Commission)

1 A BILL for an Act to regulate the disposal of dredged and fill material in
2 certain waters of the state of North Dakota; to provide a penalty; and to
3 provide an effective date.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. DEFINITIONS. In this chapter, unless the context otherwise
6 requires:

- 7 1. "Dredged material" means material that is excavated or dredged from
8 waters of the state.
- 9 2. "Fill material" means any material used for the primary purpose of
10 replacing waters of the state with dry land or which changes the
11 bottom elevation of waters of the state.
- 12 3. "General permit" means a permit authorizing a category of
13 discharges of dredged or fill material.
- 14 4. "Person" means an individual, association, partnership,
15 corporation, municipality, state or federal agency, or any agent or
16 employee thereof.
- 17 5. "Waters of the state" means all waters within the jurisdiction of
18 this state including all streams, lakes, ponds, impounding
19 reservoirs, marshes, wetlands, watercourses, waterways, and all
20 other bodies or accumulations of water on or under the surface of
21 the earth, natural or artificial, public or private, situated
22 wholly or partly within or bordering upon the state, except those

1 private waters which do not combine or effect a junction with
2 natural surface or underground waters just defined.

3 SECTION 2. POWERS AND DUTIES. The state engineer has the following
4 powers and duties:

- 5 1. To exercise general supervision of the administration and
6 enforcement of this chapter and all rules and orders adopted
7 pursuant to this chapter.
- 8 2. To advise, consult, and cooperate with other agencies of the state,
9 the federal government, and other states and interstate agencies,
10 and with affected groups, political subdivisions, and industries in
11 furtherance of the purposes of this chapter.
- 12 3. To accept and administer loans and grants from the federal
13 government and from other sources, public or private, for carrying
14 out any of its functions, which loans and grants may not be
15 expended for other than the purposes for which provided.
- 16 4. To enter upon or through permittee's premises where dredged or fill
17 material is to be discharged, after written notice to the
18 permittee. Such power may be exercised by authorized agents,
19 representatives and employees of the state engineer.
- 20 5. To exercise all incidental powers necessary to carry out the
21 purposes of this chapter.
- 22 6. To make rules governing the application, issuance, denial,
23 modification, or revocation of permits for the discharge of dredged
24 or fill material into waters of the state and for the
25 administration of the chapter.
- 26 7. To hold any hearings necessary for the administration of this
27 chapter.
- 28 8. To initiate actions in court for the enforcement of this chapter.

1 **SECTION 3. SPECIFICATION OF DISPOSAL SITES.** The state engineer shall
2 specify a disposal site for each permit issued. The state engineer may
3 prohibit the specification of any defined area as a disposal site, withdraw
4 any defined area from specification as a disposal site, or deny or restrict
5 the use of any defined area for specification as a disposal site whenever the
6 state engineer determines, after notice and opportunity for public hearing,
7 that the discharge of dredged or fill materials will have an unacceptable
8 adverse effect on municipal water supplies, shellfish beds and fishery areas,
9 wildlife, or recreational areas.

10 **SECTION 4. DISCHARGE OR DREDGED OR FILL MATERIAL -- PERMIT REQUIRED --**
11 **EXCEPTIONS.**

- 12 1. Except as otherwise provided by this Act, no person may discharge
13 dredged or fill material into waters of the state unless that
14 person has a permit from the state engineer. A permit is not
15 required for:
- 16 a. The discharge of dredged or fill material when an activity is
17 authorized by a general permit issued pursuant to section 5 of
18 this Act; or
- 19 b. Normal farming, silviculture, and ranching activities such as
20 plowing, seeding, cultivating, minor drainage, harvesting for
21 the production of food, fiber, and forest products, or upland
22 soil and water conservation practices;
- 23 c. Maintenance, including emergency reconstruction of recently
24 damaged parts, of currently serviceable structures such as
25 dikes, dams, levies, groins, riprap, break waters, causeways,
26 bridge abutments or approaches, and transportation structures,
27 which does not change the character, scope, or size of the
28 original fill design;

- 1 d. Construction or maintenance of farm or stock ponds or
2 irrigation ditches, or the maintenance of drainage ditches;
- 3 e. Construction of temporary sedimentation basins on a
4 construction site which does not include placement of fill
5 material into waters of the state;
- 6 f. Construction or maintenance of farm roads or forest roads, or
7 temporary roads for moving mining equipment, where such roads
8 are constructed and maintained, in accordance with best
9 management practices, to assure that flow and circulation
10 patterns and chemical and biological characteristics of the
11 waters of the state are not impaired, that the reach of the
12 waters of the state are not reduced, and that any adverse
13 effect on the aquatic environment will be otherwise minimized;
- 14 g. Any activity governed by chapter 61-28.
- 15 2. Any discharge of dredged or fill material into waters of the state
16 incidental to any of the activities identified in subdivisions a
17 through g of subsection 1 must have a permit if it is part of an
18 activity whose purpose is to convert an area of waters of the state
19 into a use to which it was not previously subject, where the flow
20 or circulation of waters of the state may be impaired or the reach
21 of such waters reduced, or if the discharge contains a toxic
22 pollutant.

23 **SECTION 5. GENERAL PERMITS.**

- 24 1. In carrying out the functions relating to the discharge or dredged
25 or fill material, the state engineer may, after notice and
26 opportunity for public hearing, issue general permits on a state or
27 regional basis for any category of activities involving discharges
28 of dredged or fill material if the state engineer determines that
29 the activities in the category are similar in nature, will cause

1 only minimal adverse environmental effects when performed
2 separately, and will have only minimal accumulative adverse effects
3 on the environment. Any general permit issued under this section
4 must set forth the requirements and standards which apply to any
5 activity authorized by the general permit.

- 6 2. A general permit may be revoked or modified by the state engineer
7 if, after opportunity for public hearing, the state engineer
8 determines that the activities authorized by the general permit
9 have an adverse impact on the environment or such activities are
10 more appropriately authorized by individual permits.

11 **SECTION 6. EMERGENCY PERMITS.** The state engineer may issue a
12 temporary emergency permit for the discharge of dredged or fill material if
13 unacceptable harm to life or severe loss of physical property is likely to
14 occur before a permit could be issued or modified under procedures normally
15 required.

16 **SECTION 7. PERMIT APPLICATION -- FEE -- NOTICE -- HEARING.** Any person
17 desiring to discharge dredged or fill material for which a permit is required
18 shall file an application with the state engineer. The application must be
19 on a form prescribed by the state engineer and must include information
20 required by the state engineer. The application must be accompanied by an
21 application fee of seventy-five dollars. The state engineer may issue a
22 permit after notice and opportunity for public hearing. Within fifteen days
23 of receipt all the information required to complete an application for a
24 permit, the state engineer shall publish the notice.

25 **SECTION 8. PROCEEDINGS.**

- 26 1. Any proceeding to determine compliance or violation of the
27 provisions of this chapter, or any rule, order, or condition in a
28 permit issued pursuant to this chapter by the state engineer must
29 be conducted in accordance with chapter 28-32.

1 2. Any person claiming to be aggrieved or adversely affected by
2 actions taken or by any rule or order issued pursuant to this
3 chapter may request a hearing by the state engineer if no hearing
4 on the matter resulting in the action has been held. If a hearing
5 has been held, the person claiming to be aggrieved or adversely
6 affected may petition for reconsideration and may appeal in
7 accordance with chapter 28-32.

8 **SECTION 9. PENALTIES.** The state engineer may assess or sue to recover
9 civil penalties and seek criminal remedies as provided in this section.

10 1. The state engineer may assess or recover civil penalties for
11 discharges of dredged or fill material without a required permit or
12 in violation of any permit condition of \$5,000 per day of such
13 violation.

14 2 The state engineer may seek criminal fines against any person who
15 willfully or with criminal negligence discharges dredged or fill
16 material without a required permit or violates any permit condition
17 issued under this chapter of \$10,000 per day of such violation.

18 3. The state engineer may seek criminal fines against any person who
19 knowingly makes a false statement, representation, or certification
20 in any application, record, report, plan, or other document filed
21 or required to be maintained under this chapter or any rules
22 adopted pursuant to this chapter, or falsifies, tampers with, or
23 knowingly renders inaccurate any monitoring device or method
24 required to be maintained under the permit of \$5,000 for each
25 instance of violation.

26 **SECTION 10.** In lieu of or in addition to the penalties authorized
27 under section 9 of this Act, the state engineer may require restoration of
28 areas in which dredged or fill material has been illegally discharged. If
29 the state engineer determines that any person has discharged dredged or fill

Fifty-third
Legislative Assembly

1 material without a permit or in violation of any permit condition, the state
2 engineer shall notify the person by registered or certified mail. The notice
3 must specify the nature and extent of noncompliance and state that the area
4 in which the dredged or fill material is located must be restored to the
5 satisfaction of the state engineer within thirty days of receipt of the
6 notice. If the area is not restored as required, the state engineer shall
7 cause the restoration of the area and assess the cost of the restoration
8 against the person or persons responsible for the illegal discharge.

9 **SECTION 11. EFFECTIVE DATE.** This Act is effective on July 1, 1995,
10 or on an earlier date if adequate funds are made available from the federal
11 government or other sources to fund the program established pursuant to this
12 Act, as determined by the state engineer and approved by the emergency
13 commission.

STATE WETLAND CONSERVATION PLAN

Task Name	1992				1993								
	09	10	11	12	01	02	03	04	05	06	07	08	09
Wetland Institute: Education													
Contract Development	[Bar from 09-10-1992 to 01-01-1993]												
Establish Working Committee	[Bar from 11-01-1992 to 12-31-1992]												
Appoint Wetland Institute Directors	[Bar from 12-01-1992 to 01-31-1993]												
Series of Meetings to Provide Direct	[Bar from 02-01-1993 to 03-31-1993]												
Establish Timetable and implement	[Bar from 04-01-1993 to 08-31-1993]												
Evaluation and Report Preparation	[Bar from 08-01-1993 to 08-31-1993]												
Technical Service													
Contract Development	[Bar from 09-01-1992 to 10-31-1992]												
Ongoing Tech Service w/ 404 & Inst.	[Bar from 11-01-1992 to 08-31-1993]												
Wetland Water Quality													
Contract Development	[Bar from 09-01-1992 to 10-31-1992]												
Review Existing Wetland Literature	[Bar from 11-01-1992 to 12-31-1992]												
Study Suitability of Existing Databases	[Bar from 01-01-1993 to 02-31-1993]												
Dvp Wetland Assess. Methodology	[Bar from 03-01-1993 to 05-31-1993]												
Dvp Wetland Water Qual. Standards	[Bar from 06-01-1993 to 07-31-1993]												
Evaluation and Report Preparation	[Bar from 08-01-1993 to 08-31-1993]												
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TEMPORARY WATER PURCHASE AGREEMENT

I. PARTIES

This agreement is between the North Dakota State Water Commission, hereafter referred to as the Commission, acting by and through its Secretary and State Engineer, David A. Sprynczynatyk, and the City of Dickinson, hereafter known as the City, acting by and through the President of its City Commission, Henry A. Schank.

II. PURPOSE

The purpose of this agreement is to provide a temporary source of water for a rural water service area, known as the Roschau Subdivision, hereafter known as the Service Area, by means of the City's water distribution system.

III. INTENT

- 1) The Southwest Pipeline Project intends to construct a rural water distribution system in the Service Area.
- 2) The Southwest Pipeline Project will not be able to provide water to this system through its own facilities until completion of a pump station in Dickinson.
- 3) The City can provide water to the Service Area on a temporary basis through its water distribution system.

IV. AGREEMENT

The parties agree to the following terms:

- 1) The City will provide, through its existing distribution system, sufficient water for the domestic use of the Roschau Subdivision, as determined by consumer demand. In no event shall any liability accrue against the City of Dickinson or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from interruption of the water supply or failure of the water distribution system, whether or not attributable to negligence of officers, agents or employees of the City of Dickinson or from any other cause.
- 2) The City will allow access to necessary points on its distribution system to provide the water.
- 3) The Commission will meter the water on a monthly basis

to determine the amount of water delivered to the Service Area.

- 4) The Commission will reimburse the City in the amount of \$2.50 per thousand gallons for the water delivered by the City to the Service Area as measured by the meter. The price paid for the water shall be adjusted at the same time and in the same amount as the price the City pays to the Commission for its water from the Southwest Pipeline Project.
- 5) The Commission will provide or construct all works necessary to access the City's distribution system and deliver the water to the Roschau Subdivision.

V. TERM

This agreement shall continue in force until January 1, 1995, or until terminated by mutual agreement of the parties, whichever shall occur first.

VI. INDEMNIFICATION CLAUSE

The City shall indemnify and hold harmless the State of North Dakota and the commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the City or its agents or employees under this agreement. The parties do not intend this paragraph to create a claim or a recovery of damages, directly or indirectly, which would otherwise have been prohibited under the North Dakota Workers Compensation Act.

The Commission shall, to the extent permitted by the constitution and laws of the State of North Dakota, indemnify and hold harmless the City, its officers, agents, employees, and members, from all claims, suits or actions of whatever nature resulting from or arising out of the activities of the Commission or its agents or employees under this agreement.

VII. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change in terms of this agreement shall bind either party unless it is in writing, signed by the parties, and attached hereto. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

Dated this 16th day of November, 1992.

CITY OF DICKINSON

By: *Henry Schank*
Henry Schank, President of Board
of City Commissioners

Attest:

Tobias Miller
Tobias Miller, City Auditor

Dated this _____ day of _____, 1992.

STATE OF NORTH DAKOTA
by and through the State Water
Commission

By: _____

STATE OF NORTH DAKOTA)
 : ss.
COUNTY OF STARK)

On this 16th day of November, 1992, before me, a Notary Public in and for said County and State personally appeared Henry Schank and Tobias Miller, known to me to be the President of the Board of City Commissioners and City Auditor, respectively, and acknowledged to me that they executed the same on behalf of the City of Dickinson.

Janet R. Volesky
Janet R. Volesky, Notary Public
Stark County, North Dakota
My Commission Expires: March 16, 1996

STATE OF NORTH DAKOTA)
 : ss.
COUNTY OF BURLEIGH)

On this _____ day of _____, 1992, before me, a Notary Public in and for said County and State personally appeared _____ known to me to be the _____, of the North Dakota State Water Commission, and acknowledged to me that they executed the same on behalf of the State of North Dakota.

_____, Notary Public
Burleigh County, North Dakota
My Commission Expires: _____

AGREEMENT

Parties

This agreement is between the North Dakota State Water Commission ("Commission"), acting through the North Dakota State Engineer, David A. Sprynczynatyk, and the Southwest Water Authority ("Authority"), effective from December 1, 1992, to July 1, 1995.

Purpose

The purpose of this agreement is to set forth the terms, conditions, and procedures for water users of the Southwest Pipeline Project, Roshau Subdivision, to be billed for water service, and for the transfer of payments for such water service from the Authority to the Commission.

Duties

The Authority, in consideration for the benefits received from delivery of water by the Commission through the Southwest Pipeline Project to water users in Roshau Subdivision, agrees to carry out the following tasks and responsibilities:

1. The Authority shall develop a uniform monthly billing system for all water users of the Southwest Pipeline Project, to be implemented by March 1, 1993.
2. The Authority shall provide a manual billing system for water users of the Southwest Pipeline Project until the uniform billing system is installed and implemented.
3. The Authority shall establish a separate account, called the water user repayment account, and shall deposit all money received from water users of the Southwest Pipeline into such fund
4. The Authority shall pay to the Commission, on a monthly basis, the entire amount received from water users of the Southwest Pipeline Project for water service.

Accounting/Reports

The Authority shall keep an accounting of all expenses incurred in meeting the requirements of this agreement. The Authority shall also have an audit made for an accounting of all funds received by the Authority for water service from water users of the Southwest Pipeline Project.

Subcontracts

The Authority shall not subcontract any services to be provided by the Authority under this contract without prior written approval from the Commission.

Records and Publications

All records and products resulting from this contract shall be the joint property of the Commission and the Authority. Either party may utilize the records and products in any manner without approval from the other party.

Termination

This agreement may be terminated only upon written consent of both parties.

Amendment

This agreement may be amended only upon written consent of both parties.

Merger

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements or representations, oral or written, not specified herein regarding this agreement. The Authority, by the signature of its authorized representative, acknowledges that the Authority has read this agreement, understands it, and agrees to be bound by its terms.

Dated this _____ day of _____, 1992

David A. Sprynczynatyk
North Dakota State Engineer

Dated this _____ day of _____, 1992

Alfred Underdahl, Chairman
Southwest Water Authority

SOUTHWEST PIPELINE PROJECT
WATER SERVICE CONTRACT

Contract No: 1736-22

Water User Entity: City of Carson, North Dakota

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IX. MERGER CLAUSE

I. PARTIES

This contract is by and between the North Dakota State Water Commission, a state agency and public corporation created and existing pursuant to North Dakota Century Code chapter 61-02, hereinafter called the Commission, acting through the North Dakota State Engineer; and the city of Carson, North Dakota, duly incorporated and existing as a municipality pursuant to the laws of the State of North Dakota, hereinafter referred to as the City.

II. INTRODUCTION

1. Under the authority of the Act of the North Dakota Legislative Assembly of 1981 (1981 N.D. Sess. Laws 613, §3), the Commission was directed to develop preliminary designs for a water supply pipeline facility for supplementation of the water resources of Dickinson and the area of North Dakota south and west of the Missouri River for multiple purpose, including domestic, rural water district, and municipal users. This water pipeline facility is known as the Southwest Pipeline Project.
2. The Southwest Pipeline Project was authorized by the North Dakota Legislative Assembly, substantially in accordance with Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project No. 1736, dated September 1982.
3. The Commission has the authority, pursuant to North Dakota Century Code chapter 61-02, to enter into water service contracts for the delivery and distribution of water, and for the collection of rates, charges, and revenues from such delivery of water.
4. The City desires to enter into a water service contract, pursuant to the laws of the State of North Dakota, for a water supply from the Southwest Pipeline Project for distribution by the City to its customers, for which the City will make payment to the Commission at the rates and pursuant to the terms and conditions set forth in this contract.

NOW THEREFORE, in consideration of the mutual covenants contained in this contract, it is mutually agreed by and between the parties to this contract as follows:

III. DEFINITIONS

1. "Additional water" means water purchased by the City in addition to its minimum annual water purchase.

2. "Base consumer price index" means the consumer price index, as defined herein, as of July 1, 1981, adjusted to account for any changes in base.
3. "Capital costs" means all costs incurred by the Commission which are properly chargeable, in accordance with generally accepted accounting practices, to the construction of and the furnishing of equipment for the Project, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisitions, acquisition of lands, easements and rights-of-way, relocation work, and essential legal, administrative and financial work in connection therewith.
4. "Consumer price index" (CPI) means the consumer price index for all urban consumers, which is a monthly statistical measure of the average change in prices in a fixed market basket of goods and services. The consumer price index is based on the prices of food, clothing, shelter, fuel, drugs, transportation fares, doctors' and dentists' fees, and other goods and services that people buy for day-to-day living.
5. "Estimated water rate for operation, maintenance, and replacement" means the estimated rate per each one thousand (1,000) gallons of water for the operation and maintenance of the Project and for the accumulation and maintenance of a reserve fund for replacement purposes. This rate is determined by dividing total costs the Commission estimates it will incur during a year for operation, maintenance, and replacement by the total number of one thousand gallon units of water which the Commission estimates it will sell to water user entities during the same year.
6. "Manager" means the person employed by the Commission to be in charge of and supervise the operation and maintenance of the Project.
7. "Maximum flow rate" means the maximum number of gallons of water which may be delivered through the Project by the Commission to a water user entity during any one minute time period.
8. "Minimum annual water purchase" means the minimum gallons of water which a water user entity agrees to purchase and pay for during a year.
9. "Operation, maintenance, and replacement costs" means all operation costs incurred by the Commission, including all energy costs incurred by the Commission for pumping water through the Project, for the treatment of water, for the maintenance and administration of the Project, and for any amounts that the Commission determines are necessary to establish reserve funds to meet anticipated replacement costs and extraordinary maintenance of Project works. Operation,

maintenance, and replacement costs shall be referred to in this contract as OM&R costs.

10. "Project" means Plan B of the Engineering Preliminary Design Final Report for the Southwest Pipeline Project, State Water Commission Project No. 1736, dated September 1982. Authorization of the Southwest Pipeline Project by the Legislative Assembly, substantially in accordance with Plan B of such Engineering Report, as recommended by the Commission, shall constitute the "Project" as it is defined herein.
11. "Qualifying water supply facilities" means water supply facilities determined by the Commission to qualify for a credit against payments for water by the city for capital costs and shall include such things as surface water reservoirs, wells, raw water pumps, water transmission pipelines from the source to the distribution system, water treatment plants, and pipelines and controls necessary to connect the City's distribution system to the delivery point for Project water.
12. "Total annual water sales" means the summation of all of the actual annual water deliveries, or the minimum annual water purchases, whichever is greater, for the water user entities which have executed a water service contract.
13. "Unallocated capacity" means the capacity of the pipeline which is not allocated and contractually committed to individual water user entities by virtue of water service contracts.
14. "Water rate for capital costs" means the rate per each 1,000 gallons of water to be paid by water user entities for capital costs of the Project.
15. "Water user entities" means those persons, municipalities, rural water cooperatives, corporations, and other entities which have entered into and executed water service contracts with the Commission for the purchase of water from the Project.
16. "Year" means the period from January 1 through December 31, both dates inclusive.

IV. TERM OF CONTRACT

1. Effective Date.

This contract shall remain in effect for forty (40) years after the date of the first water delivery to the City, unless terminated sooner by mutual agreement of the parties.

2. Renewal.

Under terms and conditions mutually agreeable to the parties to this contract, renewals of this contract may be made for successive periods not to exceed forty (40) years each.

V. TERMINATION BY NOT CONSTRUCTING

It is further agreed that if any segment of the Project is not constructed for whatever reason, even though authorized, thereby preventing delivery of water to the City, the Commission and the City shall be relieved of all obligations under this contract.

VI. WATER SERVICE: DELIVERY OF WATER

The Commission and the City agree that water will be delivered to the City in accordance with the following terms and provisions:

1. Quality of Water.

All water delivered to the City pursuant to this contract, or any renewal, extension, or modification thereof, shall be potable treated water which meets applicable water quality standards of the North Dakota Health and Consolidated Laboratories Department.

2. Quantity of Water and Flow Rate.

a. Minimum annual water purchase. The City hereby agrees to purchase and make payment for not less than 12,000,000 gallons per year (minimum annual water purchase) during the entire term of this contract.

b. Maximum flow rate. The maximum flow rate to be provided by the Commission to the City shall not exceed 37 gallons per minute.

3. Point of Delivery and Pressure.

The Commission will furnish water to the City at a pressure range of greater than 20 psi at a point located at the tank (NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 13, Township 134 North, Range 87 West). If greater pressure than the range specified herein at the point of delivery is required by the City, the cost of providing such greater pressure shall be borne by the City.

4. Additional Water.

The Commission will deliver to the City any additional water which the City desires to purchase, at a flow rate not to exceed the flow rate specified in this contract. If there is

unallocated capacity in the Project to the City's point of delivery, the Commission may allow delivery of water at a flow rate greater than the maximum flow rate specified in this contract. The City shall have no contractual right to any unallocated capacity which it purchases as additional water, and delivery of such additional water shall not contractually or in any other way obligate the Commission to deliver water at a greater flow rate than the maximum flow rate specified in this contract. If the City desires to secure a contractual right to a greater maximum flow rate than specified in this contract, this contract must be amended to provide a greater minimum annual water purchase.

5. Water Shortages.

- a. No liability for shortages. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from any water shortages or other interruptions in water deliveries resulting from accident to or failure of Project works and facilities, whether or not attributable to negligence of officers, agents, or employees of the Commission, or from any other cause. The contractual obligations of the City under this contract shall not be reduced or altered by reason of such shortages or interruptions.
- b. Proportional sharing of water shortage. The Commission shall have the right during times of water shortage from any cause to allocate and distribute the available water supply to water user entities on a proportionate basis with respect to the proportion that the minimum annual water purchase of each water user entity bears to the total minimum annual water purchase of all water service contracts for the Project.

6. Curtailment of Delivery for Maintenance Purposes.

The Commission may temporarily discontinue or reduce the amount of water to be furnished to the City for the purpose of maintaining, repairing, replacing, investigating, or inspecting any of the facilities and works necessary for the furnishing of water to the City. To the extent possible, the Commission will give to the City reasonable notice in advance of any such temporary discontinuance or reduction. No advance notice will be required to be given in the case of an emergency. In no event shall any liability accrue against the Commission or any of its officers, agents, or employees for any damage or inconvenience, direct or indirect, arising from such temporary discontinuance or reduction for maintenance and repair purposes.

7. Measurement of Water.

The Commission shall furnish, install, operate, and maintain, at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the City. If the City believes the measurement of water delivered to the City to be in error, it shall present a claim of error, in writing, to the manager of the Project, either in person or by mailing by certified mail to the address of the manager. Upon presenting its claim of error in the measurement of water, the Commission will cause the meter to be calibrated, upon payment to the Commission by the City the actual cost of the calibration. However, if the meter is found to over-register by more than two percent (2%) of the correct volume, the City's payment for the cost of calibration will be refunded to the City. A claim of error presented after a claim has become delinquent shall not prevent discontinuance of service as provided in this contract. The City agrees to continue to make payments for water service after a claim of error has been presented, however, it may do so under protest, and such payments will not prejudice the City's claim of error.

If the calibration of any meter establishes that the previous readings of such meter over-registered by more than two percent (2%) the correct volume of water delivered to the City, the meter readings for that meter shall be corrected for the twelve (12) months previous to the calibration by the percentage of inaccuracy found in such tests. The amount of any overpayment by the City because the meter over-registered the amount of water delivered to the City, for the period of time for which the correction is applied, shall be applied first to any delinquent payments for water service, and any remaining amounts shall, at the option of the city, be refunded to the City or credited upon future payments for water service by the City in the ensuing years. If any meter fails to register for any period, the amount of water delivered during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the Commission and the City shall agree upon a different amount. An appropriate official of the City shall have access to the meter at all reasonable times for the purpose of verifying its readings.

8. Responsibility for Distribution and Use of Water.

The City shall be responsible for the control, distribution, and use of all water delivered to the City by the Commission under this contract, beyond the point of delivery, and all services, maintenance, and repair of the City's distribution system. The City shall hold the Commission, its officers, agents, employees and successors, and assigns harmless from

every claim for damages to persons or property, direct or indirect, and of whatever nature, arising out of or in any manner connected with the control, distribution, and use of water delivered under this contract, and the operation, maintenance, and replacement of the City's distribution system. The City's distribution system includes all works extending from the point of delivery of water to the City by the Project.

VII. WATER SERVICE: WATER RATES AND PAYMENT FOR WATER

The City agrees to make payments for water and water service in accordance with the following terms and conditions:

1. Notice of First Delivery of Water and Beginning of Water Service Payments.

Ninety (90) days prior to completion of the Project to the point of delivery to the City, the Commission shall notify the City, in writing, by certified mail, the date when water will be first available to the City. The City will make payments for water and water service, in accordance with the terms of this contract, beginning at the expiration of the ninety (90) day notice, or beginning at such time when water is available to the City, whichever is later in time. The minimum payment for water for the first payment shall be pro-rated on a per day basis over a one month period, ending on the last day of the month in which water is first available to the City.

2. Payment for Water Service.

The City's water service payment for each month shall equal the sum of the following:

- a. The City's proportionate share of the operation, maintenance, and replacement costs; plus
- b. The City's payment for capital costs.

3. Minimum Annual Water Purchase: Minimum Payments.

The City will make payment for the minimum annual water purchase specified in this contract in accordance with the rates and terms for payment of water specified in this contract, regardless of whether or not the City actually uses the minimum annual water purchase.

4. Payment for Operation, Maintenance, and Replacement (OM&R).

The City will make monthly payments to the Commission for its share of the OM&R for the Project. The amount of such payment will be determined as follows:

- a. Prior to December 1 of each year, the Commission shall establish and adopt a budget for OM&R for the Project for the immediate ensuing year. The Commission shall have the authority to include in such budget for each year an amount to be accumulated and maintained in a reserve fund for the purpose of replacement and for extraordinary maintenance of project works. The reserve fund shall be accumulated and maintained in an amount to be determined by the Commission. The reserve fund shall be deposited and maintained in a separate account in accordance with the laws of the State of North Dakota.
- b. The Commission will then estimate the total annual water sales for the immediate ensuing year, and calculate the "estimated water rate for operation, maintenance, and replacement" for the Project by dividing the amount of the estimated budget for OM&R for the immediate ensuing year by the estimated total annual water sales for such ensuing year.
- c. The monthly payment to be made by the City to the Commission for OM&R shall be determined by multiplying the amount of water actually delivered to the City for each month, or the monthly minimum water purchase (minimum annual water purchase divided by 12), whichever is greater, times the estimated water rate for OM&R.
- d. At the end of each year, the Commission shall prepare a statement of the actual cost for OM&R for that same year.
- e. The Commission will then determine the adjustment to be applied to the City's payment for OM&R for the previous year. The adjustment shall be calculated by first dividing the amount of water actually delivered to the City by the Commission during the previous year, or the minimum annual water purchase, whichever is greater, by the previous year's total annual water sales to determine the City's proportionate share (fraction) of the OM&R costs for the previous year. This fraction shall then be multiplied times the actual total cost for OM&R for the previous year, which shall be the amount of the City's proportionate

share of OM&R costs for the previous year. The Commission shall then subtract the total amount of the City's proportionate share of OM&R costs for the previous year from the total amount actually paid by the City for OM&R during the previous year, which shall be the adjustment to be applied to the City's water service payments for the next ensuing year.

If the City's proportionate share of OM&R costs for the previous year is greater than the total amount actually paid by the City during the previous year for OM&R, the difference shall be owed by the City to the Commission. The amount due and owing to the Commission by the City as a result of such adjustment shall be applied to and added to the City's monthly payments for water for the next four (4) months of the immediate ensuing year in equal monthly installments.

If the City's proportionate share of OM&R costs for the previous year is less than the total amount actually paid by the City during the previous year for OM&R costs, the difference shall first be applied to any delinquent payments of the City for water service, and the remaining sum, if any, shall be credited against the City's monthly payments for water service for the next four (4) months of the immediate ensuing year in equal monthly credits.

5. Payment for Capital Costs.

The City will pay to the Commission a water rate for capital costs of the Project. The revenues realized from this water rate shall be deposited by the Commission as directed by the Legislative Assembly.

- a. Base water rate for capital costs. The base water rate for capital costs shall be sixty-five cents (\$.065) per each one thousand (1,000) gallons of water.
- b. Adjustment of water rate for capital costs. The Commission shall have the authority to adjust the water rate for capital costs annually in accordance with the increase or the decrease in the Consumer Price Index (CPI). The formula for determining the adjustment to the water rate for capital costs for each year is as follows: The CPI for January 1 of each year shall be divided by the base CPI of one hundred thirty-four and six tenths (134.6). The result of this calculation shall be multiplied by the base water rate for capital costs. The product of this formula is the adjusted water rate for capital costs, and shall be used to determine the

water rate for capital costs for the next year. Notwithstanding the foregoing basis for adjusting the water rate for capital costs, the Commission shall have the authority to decrease the adjustment to the water rate for capital costs, as it deems appropriate and necessary, after considering data on changes to the median incomes of project water users, substantial increases in OM&R costs, or other factors.

- c. Monthly water payment for capital costs. The amount of payment each month by the City to the Commission for capital costs shall be calculated by multiplying the water rate for capital costs times the amount of water actually delivered to the City each month, or the monthly minimum water purchase (minimum annual water purchased divided by 12), whichever is greater, minus any credits approved by the Commission pursuant to paragraph d of this section.

At the end of each year, if the amount of water actually delivered to the City is less than the amount of water for which the City has paid for during that year, but greater than the minimum annual water purchase, the City shall receive a refund in the amount equal to the difference between the amount of water actually delivered to the City and the amount of water actually paid for by the City during that year multiplied times the water rate for capital costs. The refund shall first be applied to any delinquent payments of the City for water service, and the remaining sum, if any, shall be credited against the City's monthly payments for water service for the next four (4) months of the immediate ensuing year in equal monthly credits.

- d. Credit for qualifying water supply facility debt service cost. A credit for debt service costs of the City's qualifying water supply facilities shall be applied to the monthly water payment for capital costs, upon approval by the Commission. The amount of such monthly credit shall be determined by divided seventy-five percent (75%) of the total annual debt service cost for "qualifying water supply facilities" in the immediate ensuing year by twelve (12). However, in no event shall any credit exceed the total monthly water payment for capital costs, nor can any credit be transferred or assigned to any other water user entity. In order to receive a credit as provided herein, the City must submit a request for credit, with supporting documentation, to the Commission, no later than December 1 of the year preceding each year in which a credit is to be applied. The Commission will terminate all credits

ten (10) years after first delivery of water to the City.

6. Billing Procedure.

The Commission will furnish to the City, at the address shown on the signature page of this contract, not later than the first day of each month, an itemized statement of the payment due from the City for water service for the preceding month. The metering equipment at the point of delivery to the City shall be read monthly.

7. When Payments Are Due.

All payments for water service under this contract, for operation, maintenance, and replacement, and for capital costs, shall be made no later than the fifteenth (15th) day of each month. Payments not made by such date shall be considered delinquent and in default.

8. Delinquent Payments and Default: Suspension of Water Service.

The City shall cause to be levied and collected all necessary taxes, assessments, and water charges, and will use all of the authority and resources available to it to meet its obligations under this contract, and will make in full all payments to be made pursuant to this contract on or before the date such payments become due. In the event of any default by the City in making payments as required under this contract, the Commission, in its discretion, may suspend delivery of water to the City through the Project during the time when the City is in default. During any period when the City is in default, the City shall remain obligated to make all payments required under this contract. Any action of the Commission pursuant to this section shall not limit or waive any remedy provided by the contract or by law for the recovery of money due or which may become due under this contract.

In the event of any default by the City in the payment of any money required to be paid under this contract, the City shall levy, in accordance with the laws of the State of North Dakota, a special ad valorem tax on all of the property taxable or subject to assessment by the City. The tax shall be levied only at a rate sufficient to raise the amount delinquent, and shall be used only to reduce the liability of the City under this contract.

9. Penalty for Late Payment.

Upon every payment of money required to be paid by the City to the Commission under this contract which shall

remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one percent (1%) per month of the amount of such delinquent payment from and after the date when the same becomes due and payable, provided that no penalty shall be chargeable against any adjustment made pursuant to Section VI, subsection 7, of this contract.

10. Refusal of Water.

The City's failure or refusal to accept delivery of water to which it is entitled under this contract shall in no way relieve the City's obligation to make payments to the Commission as provided in this contract.

VIII. GENERAL PROVISIONS

1. Rules and Regulations.

The Commission will have the authority to develop and adopt such rules and regulations as the Commission may deem proper and necessary to carry out this contract and to govern the administration of this contract. Such rules and regulations shall not be inconsistent with this contract. The City agrees to comply with such rules and regulations.

2. Access to and Inspection of Books and Records.

Each party shall have the right, during normal business hours, to inspect and make copies of the other party's books and official records relating to matters covered by this contract.

3. Remedies Not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

4. Amendments.

This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law, but such amendments will not be binding or effective unless made in writing or executed by the parties.

5. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

6. Notices.

All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be signed for the Commission and for the City by such officers as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered, if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this contract.

7. Assignment.

The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract, or any part hereof or interest herein, shall be valid until and unless approved by the Commission. The Commission shall not approve any assignment or transfer to any water user entity unless and until the water user entity to which it is proposed that this contract be transferred or assigned has the necessary ability to satisfy the obligations of this contract.

8. Unallocated Capacity.

The Commission agrees that municipal, domestic, and rural water needs shall be given first preference before executing water service contracts for delivery of unallocated capacity to water user entities for other uses.

IX. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless in writing, signed by the parties, and attached herein. Such waiver, consent, modification, or change, if made, shall be effective only in a specific instance and for the specific purpose given. There are

no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.

IN WITNESS WHEREOF, the parties execute this contract on the date specified below.

NORTH DAKOTA STATE WATER COMMISSION
900 East Boulevard Avenue
Bismarck, ND 58505

By: _____

Title: _____

Date: _____

Approved and entered into by resolution of the State Water Commission this _____ day of _____, 199__.

Secretary and State Engineer

CITY OF Carson

Address: _____

By: Richard Miller

Title: Mayor

Date: 11-3-1992

Approved and entered into by resolution of the City of Carson this 3rd day of November, 1992.

SOUTHWEST PIPELINE PROJECT
WATER SERVICE CONTRACT AMENDMENT

Contract No. SWC 1736-3

Notwithstanding the provisions of Sections VII C, D.3, and E.3, or any other terms of the Water Service Contract, if the City uses water from no other source than the Southwest Pipeline during the course of the year, the City will make payment based on the actual amount of water used, and the monthly payment shall be based on the actual amount used in the respective month. This amendment shall be in effect from January 1, 1992, until the termination of the Water Service Agreement.

NORTH DAKOTA STATE WATER COMMISSION

Address: _____

By: _____

Title: _____

Date: _____

Approved and entered into by resolution of the State Water Commission this _____ day of _____, 1992.

David A. Sprynczynatyk
Secretary and Chief Engineer

CITY OF Mott

Address: 202 E 3rd St.

By: Mary J. Rabrel

Title: City Auditor

Date: 11-2-92

Approved and entered into by resolution of the City of Mott this 2nd day of November , 1992.

George L. Jones, Mayor