

June 1999

GARRISON DIVERSION ISSUES - BACKGROUND MEMORANDUM

The Garrison Diversion Overview Committee originally was a special committee created in 1977 by House Concurrent Resolution No. 3032 and recreated in 1979 by Senate Concurrent Resolution No. 4005. In 1981 the 47th Legislative Assembly enacted North Dakota Century Code Section 54-35-02.7, which statutorily created the Garrison Diversion Overview Committee. The committee is responsible for legislative overview of the Garrison Diversion Project and related matters and for any necessary discussions with adjacent states on water-related topics.

Section 54-35-02.7 directs that the committee consist of the majority and minority leaders and their assistants from the House and Senate, the Speaker of the House, the President Pro Tempore of the Senate selected at the end of the immediately preceding legislative session, the chairmen of the House and Senate standing Committees on Natural Resources, and the chairmen of the House and Senate standing Committees on Agriculture.

HISTORY OF THE PROJECT

Pick-Sloan Plan

The Garrison Diversion Unit is one of the principal developments of the Pick-Sloan Missouri River Basin program, a multipurpose program authorized by the federal Flood Control Act of 1944 (Pub. L. 78-534; 57 Stat. 887). The Pick-Sloan plan provided for construction of a series of dams on the Missouri River to control flooding, provide power generation, and maintain a dependable water supply for irrigation, municipalities, industry, recreation, wildlife habitat, and navigation. Approximately 550,000 acres of land in the state were inundated by reservoirs on the Missouri River under the Pick-Sloan plan.

One feature of the Pick-Sloan plan was the Missouri-Souris Unit, which was the forerunner of the Garrison Diversion Unit. Under the plan for the Missouri-Souris Unit, water was to be diverted below the Fort Peck Dam in Montana and transported by canal for irrigating 1,275,000 acres; supplying municipalities in North Dakota, South Dakota, and Minnesota; restoring Devils Lake; conserving wildlife; and augmenting the Red River. The building of Garrison Dam changed the diversion point of the Missouri-Souris Unit from Fort Peck Dam to Garrison Reservoir (Lake Sakakawea). After considerable study and review of the Missouri-Souris Unit, Congress reauthorized the project as the initial stage, Garrison Diversion Unit, in August 1965 (Pub. L. 89-108; 83 Stat. 852).

Garrison Diversion Unit

The first detailed investigations of the Garrison Diversion Unit were completed in 1957 and involved a proposed development of 1,007,000 acres. The initial stage of the Garrison Diversion Unit provided for irrigation service to 250,000 acres in the state. This plan involved the construction of major supply works to transfer water from the Missouri River to the Souris, James, and Sheyenne Rivers and the Devils Lake Basin. The plan also anticipated water service to 14 cities, provided for several recreation areas, and provided for a 146,530-acre wildlife plan to mitigate wildlife habitat losses resulting from project construction and to enhance other wetland and waterfowl production areas.

Under the 1965 authorization, the Snake Creek Pumping Plant would lift Missouri River water from Lake Sakakawea into Lake Audubon, an impoundment adjacent to Lake Sakakawea. From Lake Audubon the water would flow by gravity through the 73.6-mile McClusky Canal into Lonetree Reservoir, situated on the headwaters of the Sheyenne River. The Lonetree Reservoir would be created by construction of Lonetree Dam on the upper Sheyenne River, Wintering Dam on the headwaters of the Wintering River, and the James River dikes on the headwaters of the James River. Lonetree Reservoir would be situated so that water could be diverted by gravity into the Souris, Red, and James River Basins and the Devils Lake Basin.

The Velva Canal would convey project water from the Lonetree Reservoir to irrigate two areas totaling approximately 116,000 acres. The New Rockford Canal would convey project water for irrigation of approximately 21,000 acres near New Rockford and to deliver water into the James River Feeder Canal for use in the Oakes-LaMoure area. The Warwick Canal, an extension of the New Rockford Canal, would provide water for irrigation in the Warwick-McVille area and provide water for the restoration of the Devils Lake chain.

The United States Bureau of Reclamation has overall responsibility for operation and maintenance of the Garrison Diversion Unit and will operate and maintain all project works during the initial period following completion of construction.

A number of concerns have slowed or halted construction on the project in recent years, including:

1. Canadian concerns that the Garrison Diversion Unit would allow transfer of foreign species of fish and other biota to the detriment of Canadian waters in violation of the Boundary Waters Treaty of 1909.

2. Numerous problems concerning wildlife mitigation and enhancement lands.
3. Legal suits brought by groups, such as the National Audubon Society, seeking to halt construction of the Garrison Diversion Unit by claiming that the project violates the National Environmental Policy Act and to enforce a stipulation between the United States and Audubon to suspend construction until Congress reauthorizes the Garrison Diversion Unit.

Canadian Concerns

Canadian interest in the Garrison Diversion Unit has centered on concerns that because the Garrison Diversion Unit involves a transfer of water from the Missouri River to the drainage basins of the Souris and Red Rivers, the return flows entering Canada through the Souris and Red Rivers would cause problems with regard to water quality and quantity.

In 1973 the Canadian government requested a moratorium on all further construction of the Garrison Diversion Unit until a mutually acceptable solution for the protection of Canadian interests under the Boundary Waters Treaty of 1909 was achieved. The United States government responded by stating its recognition of its obligations under the Boundary Waters Treaty and by adopting a policy that no construction affecting Canada would be undertaken until it was clear that these obligations would be met.

During 1974 several binational meetings of officials were held to discuss and clarify Canadian concerns over potential degradation of water quality. An agreement was reached in 1975 between the governments of Canada and the United States to refer to the International Joint Commission the matter of potential pollution of boundary waters by the Garrison Diversion Unit.

The International Joint Commission created the International Garrison Diversion Study Board. The board concluded that the Garrison Diversion Unit would have adverse impacts on water uses in Canada, including adverse effects on flooding and water quality. The board recommended that any direct transfer by the Garrison Diversion Unit of fish, fish eggs, fish larvae, and fish parasites be eliminated by adopting a closed system concept and the installation and use of a fish screen structure.

In August 1984 representatives of Canada and the United States announced a general agreement between the two governments that Phase I of the initial stage of the Garrison Diversion Unit could be constructed. Canada, however, remained firmly opposed to the construction of any features that could affect waters flowing into Canada.

Garrison Diversion Unit Commission

The water and energy appropriations bill signed on July 16, 1984, contained an agreement to establish a commission to review the Garrison Diversion Unit.

The Secretary of the Interior appointed a 12-member Garrison Diversion Unit Commission to review the Garrison Diversion Unit in North Dakota. The commission was directed to examine, review, evaluate, and make recommendations regarding the existing water needs of the state and to propose modifications to the Garrison Diversion Unit before December 31, 1984. Construction on the project was suspended from October 1 through December 31, 1984.

The commission worked under the restriction that any recommendation of the commission must be approved by at least eight of the 12 members and that should the commission fail to make recommendations as required by law, the Secretary of the Interior was authorized to proceed with construction of the Garrison Diversion Unit as designed.

Congress directed the commission to consider 11 specific areas:

1. The costs and benefits to North Dakota as a result of the Pick-Sloan Missouri Basin program.
2. The possibility for North Dakota to use Missouri River water.
3. The need to construct additional facilities to use Missouri River water.
4. Municipal and industrial water needs and the possibility for development, including quality of water and related problems.
5. The possibility of recharging ground water systems for cities and industries, as well as for irrigation.
6. The current North Dakota water plan to see if parts of the plan should be recommended for federal funding.
7. Whether the Garrison Diversion Unit can be redesigned and reformulated.
8. The institutional and tax equity issues as they relate to the authorized project and alternative proposals.
9. The financial and economic impacts of the Garrison Diversion Unit, when compared with alternative proposals for irrigation and municipal and industrial water supply.
10. The environmental impacts of water development alternatives, compared with those of the Garrison Diversion Unit.
11. The international impacts of the water development alternatives, compared with those of the Garrison Diversion Unit.

The commission released its final report and recommendations on December 20, 1984. The commission affirmed the existence of a federal obligation to the state for its contribution to the Pick-Sloan Missouri Basin program but recommended that an alternative plan be implemented in place of the 250,000-acre initial stage of the Garrison Diversion Unit. The commission recommended that the Sykeston Canal be constructed as the functional

replacement for the Lonetree Dam. While the Lone-tree Dam and Reservoir would remain an authorized feature of the plan, construction of that dam would be deferred pending appropriation of funds by Congress and a determination by the Secretary of the Interior that consultations with Canada were satisfactorily concluded. The commission recommended that the Garrison Diversion Unit be configured to provide irrigation service to 130,940 acres in the Missouri and James River Basins instead of the initial stage 250,000-acre project. The commission also recommended that the first phase of the Glover Reservoir be included as a feature of the plan in lieu of Taayer Reservoir for regulation of flows in the James River.

The commission further recommended the establishment of a municipal, rural, and industrial system for treatment and delivery of quality water to approximately 130 communities in North Dakota. A municipal and industrial water treatment plant with a capacity of 130 cubic feet per second was recommended to provide filtration and disinfection of water releases to the Sheyenne River for use in the Fargo and Grand Forks areas.

An alternate state plan for municipal water development was submitted to the Garrison Diversion Unit Commission by then Governor Olson and Governor-elect Sinner, proposing that the state would design and construct the water systems and pay 25 percent of their costs. In return, the federal government would provide up to \$200 million in nonreimbursable funds for municipal water development projects. The federal government would pay 75 percent of the construction costs of the systems with only the operation and maintenance costs borne by the cities benefited.

Garrison Diversion Unit Reformulation

Following the issuance of the commission's final report, Congress enacted the Garrison Diversion Unit Reformulation Act of 1986 (Pub. L. 99-294; 100 Stat. 433). This legislation was supported by representatives of the state, the Garrison Diversion Conservancy District, the National Audubon Society, and the National Wildlife Federation.

The legislation addressed the James River by directing a comprehensive study of effects over the next two years during which time construction of the James River Feeder Canal, the Sykeston Canal, and any James River improvements could not be undertaken. Of the 32,000-acre New Rockford Extension included in the Garrison Diversion Unit Commission final report, 4,000 acres were transferred to the West Oakes area and 28,000 acres were authorized for development within the Missouri River Basin.

The legislation also provided for:

1. 130,940 acres of irrigation.
2. Deauthorization of the 1944 Flood Control Act and the 1965 Garrison authorization.
3. Preservation of the state's water rights claims to the Missouri River.
4. Nonreimbursement of features constructed before enactment which will no longer be employed to full capacity, to the extent of the unused capacity.
5. Acre-for-acre mitigation based on ecological equivalency rather than the 1982 mitigation plan.
6. Deauthorization of the Taayer Reservoir and purchase of the Kraft Slough for waterfowl habitat.
7. Continued authorization, but no construction, of the Lonetree Reservoir. The Sykeston Canal was mandated for construction following required engineering, operational, biological, and economic studies. The Lone-tree Reservoir could be built if:
 - a. The Secretary of the Interior determines a need for the dam and reservoir;
 - b. Consultations with Canada are satisfactorily completed; and
 - c. The Secretaries of State and the Interior certify determinations to Congress and 90 days have elapsed.
8. No construction of irrigation acreage other than on the Indian reservations or the 5,000-acre Oakes Test Area until after September 30, 1990.
9. A \$200 million grant for construction of municipal and industrial water delivery systems. A \$40.5 million nonreimbursable water treatment facility to deliver 100 cubic feet per second of water to Fargo and Grand Forks was authorized. All water entering the Hudson Bay drainage system must be treated and must comply with the Boundary Waters Treaty of 1909.
10. Municipal and industrial water delivery systems for the Fort Berthold, Fort Totten, and Standing Rock Reservations.
11. Irrigation soil surveys that must include investigations for toxic or hazardous elements.
12. Federal participation in a wetlands trust to preserve, enhance, restore, and manage wetland habitat in North Dakota.

Garrison Municipal, Rural, and Industrial Water Supply Program

Included within the Garrison Diversion Unit Reformulation Act of 1986 is an authorization enabling Congress to appropriate \$200 million for the Garrison municipal, rural, and industrial water supply program. These funds are for the planning and

construction of water supply facilities for municipal, rural, and industrial use throughout the state.

On July 18, 1986, the Garrison Diversion Conservancy District and the State Water Commission entered an agreement for the joint exercise of governmental powers. The agreement allows the district to use the expertise of the commission in developing and implementing the water supply program. In addition, the district was to enter an agreement with the Secretary of the Interior which designates the district as the fiscal agent for the state concerning money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered an agreement that designates the district to act on behalf of the state in the planning and construction, as well as the operation and maintenance, of the water systems constructed pursuant to the Garrison Diversion Reformulation Act of 1986. The agreement defines the responsibilities of the United States and the district under the agreement and contains provisions concerning the work to be undertaken by the district, stipulations concerning the transfer of funds, and the procedure for reporting, accounting, and reviewing the planning and construction programs. The agreement also provides that the Southwest Pipeline Project is eligible to receive funding under this program.

APPROPRIATIONS

Since 1966, Congress has allocated \$678,848,485 for the Garrison Diversion Unit Project. Of this total, \$612,173,949 are federal funds and \$66,674,536 are nonfederal funds. The budget request for fiscal year 1999 was \$24,114,000 in federal funds and \$3,650,000 in nonfederal funds for a total of \$27,764,000. Because the total estimated cost of the project is \$1,599,427,406, the balance to complete after fiscal year 1999 is \$892,814,921, of which \$888,211,491 are federal funds.

Congress appropriated \$28.9 million for the Garrison Diversion Unit Project in 1998. Included in this figure were \$3.5 million for operation and maintenance of Indian municipal, rural, and industrial water supply projects located on the state's Indian reservations. Thus, the total appropriation for the Garrison Diversion Unit Project for 1998 was approximately \$25.4 million. Of the \$24,114,000 requested in federal funds for fiscal year 1999, \$20,563,000 were for Garrison Diversion Unit construction, \$463,000 for Jamestown Dam construction, and \$3,088,000 for Indian municipal, rural, and industrial water supply projects and operation and maintenance of these projects.

Of the \$20,563,000 allocated for Garrison Diversion Unit construction for fiscal year 1999, \$2.9 million were allocated for water and energy management development that continued the award of construction

contracts for the development of Indian irrigation facilities; \$8,490,000 were for oversight of preconstruction and construction activities on approved state municipal, rural, and industrial water system projects; \$2.5 million were to continue minimum maintenance to assure reliability of completed facilities still in construction status and minimum maintenance of the supply system required to maintain freshening flows; \$5,625,000 were to continue work on Arrowwood, Audubon, and Kraft Slough National Wildlife Refuges, management funds for wildlife lands, and for the nonfederal contribution to the wetlands trust fund; \$800,000 for deferred construction related to beach belting on the McClusky Canal; \$148,000 for ongoing activities associated with the accessibility program including site evaluations, transition plans, and retrofitting of substandard existing facilities; and \$100,000 for continued construction of recreation facilities.

Of the \$463,000 allocated for work on the Jamestown Dam, \$87,000 were for continuance of the Pick-Sloan cost allocation study at Jamestown and the ongoing collection of streamflow records on the James River; \$371,000 for day-to-day operation of Jamestown Dam for flood control operations and for continued delivery of project water to downstream users; and \$5,000 for examination of existing structures at Jamestown Dam and Reservoir.

Of the \$3,088,000 allocated for Indian municipal, rural, and industrial water supply programs, \$2,923,000 were to continue contracts with Indian tribes to carry out operation, maintenance, and replacement activities for water treatment and distribution facilities, and technical assistance and oversight to the tribes by the Bureau of Reclamation for the operation, maintenance, and replacement of their water supply and distribution systems in accordance with United States trust responsibilities; and \$165,000 were allocated for cleaning and repair of distribution systems through a cooperative agreement with the state's Indian tribes.

Of the \$200 million authorized for the Garrison municipal, rural, and industrial water supply program, approximately \$146 million have been received since 1986. The State Water Commission has developed a five-year fiscal year 1999 through fiscal year 2003 allocation schedule of remaining Garrison municipal, rural, and industrial water supply grant funds. This schedule includes \$10,928,000 for the Benson Rural Water Project; \$1 million for the Northwest Area Water Supply Project - Rugby phase; \$24,851,000 for the Northwest Area Water Supply Project - Minot phase; \$2,920,000 for the Pierce County Rural Water Project; \$13,210,000 for the Ransom-Sargent Rural Water Project; and \$800,000 for municipal, rural, and industrial water supply program administration. The nonfederal cost share of these projects is \$28,756,000.

The Southwest Pipeline Project has supplied water to Dickinson since October 15, 1991. The pipeline is

currently servicing 17 communities and 1,200 rural hookups in North Dakota. Bonding was used for the first time in 1997 to finance construction of project facilities. Bonds were issued in two series and combined with a United States Department of Agriculture grant to finance approximately \$12 million in construction in the project's Bucyrus service area. This included 1997 construction of main transmission facilities to the cities of Reeder and Hettinger as well as the Bucyrus Reservoir. In 1998 construction of the Jung Lake Reservoir, Jung Lake pump station, and rural water connections to 240 hookups completed the service area. To finance this construction, the State Water Commission issued North Dakota State Water Development Series A revenue bonds totaling \$6.83 million in 1997. Series B bonds totaling \$3.4 million were sold in 1998 to the United States Department of Agriculture's Rural Development Agency and used in conjunction with a rural development grant for \$2.6 million to fund the remainder of the Bucyrus service area. The revenue bonds are being financed from water user payments.

DAKOTA WATER RESOURCES ACT OF 1999

The Dakota Water Resources Act of 1999 would amend the Garrison Diversion Unit Reformulation Act of 1986. The Act outlines a program to meet the water needs of North Dakota including irrigation; municipal, rural, and industrial water supply projects; fish and wildlife; recreation; flood control; augmented streamflows; and ground water recharge. The bill, as summarized on the web site of the Garrison Diversion Conservancy District, maintains a multipurpose water project to meet the water needs of North Dakota and to compensate the state for the loss of 550,000 acres to the Garrison and Oahe reservoirs, but changes the focus of water development from large-scale irrigation to the delivery of municipal, rural, and industrial water to communities and the four Indian reservations located in North Dakota. The bill would complete the Garrison Diversion project, while enhancing wildlife habitat and water conservation in North Dakota.

Section 2 of the bill establishes the purposes of the Act to meet the water needs of North Dakota and the four Indian reservations located within the state by development of a multipurpose water project. The project would develop irrigation and municipal, rural, and industrial water systems; enhance fish and wildlife habitat; promote recreation, ground water recharge, and augmented streamflows; and assure appropriate repayment of federal funds and compliance with environmental laws and the Boundary Waters Treaty of 1909.

Section 2 of the bill also makes fish and wildlife enhancement a specific project purpose. It deletes language from the 1986 Reformulation Act directing construction of the 450 cubic feet per second James River Feeder Canal and the Sykeston Canal. It also

requires the state to repay the federal government for the proportionate share of the cost of features constructed prior to the Dakota Water Resources Act that actually get used. This section also specifies that the Secretary of the Interior is responsible for the proportionate share of operation and maintenance costs attributable to unused capacity of project features. It authorizes the Secretary of the Interior to enter into necessary agreements with the state to carry out the Act. Finally, this section specifies that water may be diverted from the Missouri River drainage basin into the Hudson Bay drainage basin only after the Secretary of the Interior, after consulting the Secretary of State and the administrator of the Environmental Protection Agency, determines that the Boundary Waters Treaty of 1909 will not be violated. The assigned costs of water treatment and related facilities attributable to meeting the requirements of the Boundary Waters Treaty of 1909 continue to be nonreimbursable.

Section 3 of the bill recognizes wildlife enhancement as a project purpose and identifies those features considered enhancement features which continue to be a federal responsibility. Further, the bill requires the Secretary of the Interior to consult with the state before approving recreation areas and adds "services in kind" as a form of repayment for recreation areas consistent with current Bureau of Reclamation practice.

Existing language from Section 8 of an earlier version of the bill that deauthorized the Taayer Reservoir and authorized the Kraft and Pickell Slough as a component of the National Wildlife Refuge System is moved to this section. This section also clarifies that the Bureau of Reclamation is authorized to acquire land in the Kraft and Pickell Slough areas through donation or exchange of land. Finally, this section deauthorizes the Lonetree Dam and Reservoir, and designates the lands as a wildlife conservation area to provide additional wildlife habitat. The intent of the term "wildlife conservation area" is that the area would not become part of the National Wildlife Refuge System but that the state would continue to manage the area as a state wildlife management area, the costs of which would be paid by the Secretary of the Interior. If the feature selected under Section 8 includes a buried pipeline between the McClusky Canal and New Rockford Canal, the bill authorizes the use of the wildlife conservation area and Sheyenne Lake National Wildlife Refuge for a route for the pipeline.

Section 4 of the bill provides that interest on repayable capital costs may only be calculated until such time as the feature is substantially complete.

Section 5 of the bill deauthorizes 60,460 acres of irrigation service areas authorized in 1986 (6,515 acres at Lincoln Valley, 2,000 acres at Harvey Pumping, 20,935 acres at New Rockford, 13,350 acres at LaMoure, 4,000 acres at West Oakes Extension, and

19,600 acres at West Oakes.) The bill retains authorization for the existing 5,000-acre Oakes Test Area, 13,700 acres at Turtle Lake, 10,000 acres at McClusky Canal, 1,200 acres of canal-side irrigation along the New Rockford Canal provided the full investment costs are repaid by the users at New Rockford without "aid-to-irrigation," and 28,000 acres in the Missouri River Basin. Prior to development of any projects in the undesignated 28,000 acres, the Secretary of the Interior must report to Congress on the costs and benefits of the proposed irrigation and the financial and engineering feasibility of the proposed unit. Compliance with the National Environmental Policy Act is also required before developing any projects. This section specifically prohibits any irrigation development authorized under the bill in the Hudson Bay-Devils Lake drainage basin. The bill also retains irrigation authorization on the Fort Berthold Indian Reservation (7,700 acres at Lucky Mound and 7,500 acres at Upper Six Mile Creek, but allows for other areas of equal acreage if approved by the tribe and Secretary of the Interior) and on the Standing Rock Sioux Reservation (2,380 acres).

Section 6 of the bill harmonizes the repayment required by power users of power from the Garrison Dam with how other power users repay capital costs for other power-generating facilities. Additionally, this section specifically prohibits any increase in power rates for Pick-Sloan program customers that would result from any provisions in the Dakota Water Resources Act.

Section 7 of the bill maintains the 25 percent nonfederal cost-share for the municipal, rural, and industrial water supply projects developed under this section and allows the state to credit amounts that exceed the 25 percent minimum toward future cost-shares for municipal, rural, and industrial water development projects. This section also permits the state to make loans in addition to grants and requires that proceeds from repaid loans be recycled back only into the municipal, rural, and industrial water supply grant or loan program. The Southwest Pipeline Project, Northwest Area Water Supply Project, Red River Valley Water Supply Project, and other municipal, rural, and industrial water supply systems in the state are eligible.

This section also authorizes the state to develop a water conservation program and calls on the Secretary of the Interior and the state to establish water conservation goals. If the state meets the goals of the program, the 25 percent nonfederal cost-share for municipal, rural, and industrial water supply systems is reduced to 24.5 percent. This section also makes the cost of features previously constructed on the Missouri River by the Army Corps of Engineers nonreimbursable. Finally, this section maintains the authority for the Secretary of the Interior to develop municipal, rural, and industrial water supply systems on the four Indian reservations located in the state

and adds adjacent areas to that authorization to permit water systems to serve tribal members living outside the reservation boundaries.

Section 8 of the bill deletes the existing authority to construct the Sykeston Canal which was to be a connecting link between the existing McClusky and New Rockford Canals, to deliver water from the Missouri River to the Red River Valley. Instead, the Dakota Water Resources Act authorizes a Red River Valley Water Supply Project and establishes a formal process of evaluating the water quantity and quality needs of the Red River Valley and the options for meeting those needs. The Secretary of the Interior and the state are to be partners in developing these studies.

The Secretary of the Interior, with the state as a partner, must complete a draft environmental impact statement within one year of the date of enactment of the Dakota Water Resources Act or report to Congress on the status of the draft environmental impact statement. The Secretary of the Interior and the state are required to submit a final environmental impact statement within one year of filing the draft environmental impact statement or report to Congress on the status of the final environmental impact statement. The Secretary of the Interior is then authorized to select a feature or features to meet the comprehensive water development needs of the Red River Valley, after reviewing the water needs report, the report on options for meeting those needs, and the environmental impact statement, and after consulting with the state, which will coordinate with affected local communities. Within 180 days of the Secretary of the Interior signing the record of decision, the bill requires the Secretary of the Interior to enter an agreement with the state to construct the feature or features selected. If one of the features selected is delivery of Missouri River water to the Red River Valley, the Sheyenne River water supply and release feature remains authorized to deliver 100 cubic feet per second of water, or another amount determined by the reports, to the cities of Fargo and Grand Forks.

Section 9 of the bill relates to the Oakes Test Area and deletes existing language relating to "surplus crop production charges" because changes to the farm program contained in the 1996 farm bill made the existing language obsolete. The new language in the bill authorizes the Secretary of the Interior to transfer the Oakes Test Area to the state not later than two years after signing the record of decision required under Section 8, relating to meeting the needs of the Red River Valley, under terms that the Secretary of the Interior believes would protect the public interest. If the Secretary of the Interior and the state cannot reach an agreement for a transfer by the time limit, the Secretary of the Interior is directed to dispose of the Oakes Test Area under the Federal Property and Administrative Services Act of 1949.

Section 10 of the bill reduces the authorization ceiling for irrigation and related facilities from \$270,395,000 to \$164,000,000. The remaining funds authorized are intended to be used to repair and complete the McClusky and New Rockford Canals and complete mitigation requirements at the Audubon and Arrowwood National Wildlife Refuges. The bill authorizes \$200 million for the Red River Valley Water Supply Project, to be used for the project feature or features selected by the Secretary of the Interior pursuant to Section 8. This project is reimbursable. Section 10 authorizes an additional \$300 million for statewide municipal, rural, and industrial water supply systems authorized under Section 7 and an additional \$200 million for municipal, rural, and industrial water supply systems on the four Indian reservations located within North Dakota. These funds are allocated as follows: \$30 million for Fort Totten Reservation, \$70 million for Fort Berthold, \$80 million for Standing Rock, and \$20 million for Turtle Mountain. Additionally, the existing authorization of \$61 million is broken into its component parts of \$40.5 million for the Sheyenne treatment and release facility and the initial \$20.5 million provided for Indian municipal, rural, and industrial water supply studies and systems.

Section 10 authorizes an additional \$6.5 million for recreation projects, and permits up to \$1.5 million of this amount to be used to develop a Wetlands Interpretive Center in North Dakota. This section also authorizes an additional \$25 million for the Natural Resources Trust. This section also authorizes creation of a separate account, after the features selected under Section 8 are operational, within the trust for operation and maintenance costs of mitigation and enhancement lands, but does not authorize appropriations for that account. This section also authorizes \$40 million for demolition of the existing structure and construction of a new Four Bears Bridge across Lake Sakakawea.

Section 10 also includes a provision to index certain costs for inflation from the date of enactment of the Dakota Water Resources Act to reflect normal fluctuations in construction costs consistent with current Bureau of Reclamation practices. This section also includes a provision that prohibits counting funds spent since 1986 on operation and maintenance against the construction authorization ceilings in this section.

Section 11 of the bill changes the name of the current Wetlands Trust to the Natural Resources Trust and provides that the trust is to be operated to preserve, enhance, restore, and manage wetlands and associated wildlife habitat, grassland conservation, and riparian areas in the state. This section also authorizes the trust, aside from its existing authority, to fund incentives for conservation practices by landowners.

Section 11 of the bill also caps the authorized appropriations to the Natural Resources Trust at \$10 million until the features authorized to meet the comprehensive water needs of the Red River Valley are operational. The annual appropriations for the trust are determined by a formula of five percent of the annual funds appropriated for the statewide municipal, rural, and industrial water supply program and the Red River Valley Water Supply Project. Once the Secretary of the Interior and the state determine that the project is operational and meeting the objectives of Section 8, the remaining \$15 million authorized by Section 10 may be appropriated.

Subsequent to the introduction of the Dakota Water Resources Act of 1999 and before the hearing on the bill before the Senate Subcommittee on Water and Power held on May 27, 1999, agreement was reached which permitted the administration to testify in support of the Act, subject to incorporation of the following agreements:

- Additional funding to address the state's municipal, rural, and industrial water supply needs was reduced by \$100 million. The requested ceiling will now be an additional \$200 million rather than the \$300 million currently in the bill.
- The funding and authorization for the replacement of the Four Bears Bridge across an arm of Lake Sakakawea on the Fort Berthold Indian Reservation will be removed from the Dakota Water Resources Act. The agreement includes assurances that the bridge will be included under a different program yet to be determined.
- The principal supply works, which the Secretary of the Interior is directed to maintain and complete, is defined as including the Snake Creek Pumping Plant, McClusky Canal, and the New Rockford Canal. This is a clarification of wording in the bill.
- Prior to construction of any water system to deliver Missouri River water into the Hudson Bay Basin, the Secretary of the Interior, in consultation with the Secretary of State and the administrator of the Environmental Protection Agency, must determine that adequate treatment can be provided to meet the requirements of the Boundary Waters Treaty of 1909 between Canada and the United States.
- Agreement was reached on additional concerns relating to the determination of the appropriate share of costs for operation and maintenance on the existing facilities, if used. Mutual understanding was also reached on concerns relating to the operation of an optional loan program within the municipal, rural, and industrial water supply projects grant program and the removal of language that made full funding of the Natural Resources

Trust fund conditional upon completion of a Red River Valley Water Supply Project.

RESPONSIBILITIES OF COMMITTEE

To fulfill its responsibility of legislative overview of the Garrison Diversion Unit Project, the committee may wish to continue receiving periodic reports from agencies and officials responsible for various aspects of the project. These agencies and officials include representatives of the Garrison Diversion Conservancy District, the state's Congressional Delegation, the Governor's office, the Attorney General's office, the State Engineer, the State Water Commission, and the Bureau of Reclamation. The committee may also wish to receive input from interested parties such as

the North Dakota Water Users Association and the North Dakota Water Coalition.

The committee will also wish to monitor the Dakota Water Resources Act of 1999.

In addition to its statutory responsibilities, the Legislative Council also assigned two other duties to the committee. The Legislative Council assigned the duty to receive a report from the State Engineer on its study of the feasibility and desirability of constructing dams and other impoundments in the Pembina River watershed for the purpose of reducing flows in the lower reaches of the Pembina River and to receive periodic reports from the State Engineer regarding implementation of the comprehensive statewide water development program and state water management plan and the issuance and sources for repayment of bonds to finance construction of flood control projects, the Southwest Pipeline Project, a Devils Lake outlet, and a statewide water development program during the 1999-2000 interim.