

MINUTES

North Dakota State Water Commission
Meeting Held in State Office Building
Bismarck, North Dakota

October 29, 1973

The North Dakota State Water Commission held a meeting in the Fred J. Fredrickson Memorial Library, State Office Building, Bismarck, North Dakota, on Monday, October 29, 1973. Governor-Chairman, Arthur A. Link, called the session to order at 10:35 a.m.

PRESENT:

Governor Arthur A. Link, Chairman
Richard Gallagher, Vice Chairman, Mandan
Alvin Kramer, Member from Minot
Gordon Gray, Member from Valley City
Donald Noteboom, Member from McKenzie County
Arne Dahl, Commissioner, Department of Agriculture, Bismarck
Vernon Fahy, Secretary and State Engineer, North Dakota State
Water Commission, Bismarck

OTHERS PRESENT:

Matt Emerson, Assistant Secretary, North Dakota State Water
Commission, Bismarck
Cliff Jochim, Director of Legal Division, North Dakota State
Water Commission, Bismarck
Delton Schulz, Director of Engineering, North Dakota State
Water Commission, Bismarck
Eugene Krenz, Director of Planning, North Dakota State Water
Commission, Bismarck
Russell Dushinske, Executive Vice President, North Dakota Water
Users Association, Minot
Murray Sagsveen, Legislative Assistant, Governor's Office, Bismarck
Floyd Fischer, Upper Mississippi River Basin Commission, Fargo
Joseph R. Maichel, Attorney, Montana-Dakota Utilities Company, Bismarck
Mark Scarff, Vice President, Montana-Dakota Utilities Company, Bismarck
Lloyd Hillier, Minnkota Power Cooperative, Grand Forks
Gus Bougie, Minnkota Power Cooperative, Center
Ken Ziegler, Basin Electric, Bismarck
Dave Bartel, Associated Press, Bismarck
Dewey Heggen, KFJR Radio-TV Station, Bismarck

Approximately 30 additional persons attended the water permit hearing on
United Power Association-Cooperative Power Association.

MINUTES OF SEPTEMBER 27, 1973

It was moved by Commissioner Gray,
seconded by Commissioner Noteboom
and carried, that reading of the
minutes of the September 27, 1973 meeting be dispensed with and be approved
as circulated.

FINANCIAL STATEMENT FOR
MONTH OF SEPTEMBER, 1973

Matt Emerson, Assistant Secretary for
the State Water Commission, presented
the financial statement for the month

of September, 1973. He briefly reviewed the status of the Water Commission accounts, noting that the Commission payroll as shown is for the month of August. He also stated that there are several projects to which Commission funds have been previously committed and the project has not become a reality to date, some dating back to 1965. It is the feeling of the State Engineer and other staff members that these projects should be reviewed by the Commission members and that some of these commitments may be withdrawn to allow for future commitments.

It was moved by Commissioner Kramer, seconded
by Commissioner Gallagher and carried, that
the Commission accept the financial statement
for the month of September, 1973, as presented.

REQUEST BY CASS COUNTY
DRAIN BOARD FOR FINANCIAL
ASSISTANCE IN CONSTRUCTION
OF CASS COUNTY DRAIN NO. 53
(#1594)

Secretary Fahy indicated that a request
has been received from the Cass County
Drain Board for cost participation in
the construction of a 3.14-mile drainage
project in a problem area between I-29
and US 81 and between the Wild Rice

channel south of the area and Rose Coulee to the north of the area in Sections 35 and 36, Township 139 North, Range 49 West, and Sections 2 and 11, Township 138 North, Range 49 West. The total qualified construction items cost is estimated to be \$16,237, and the state share is estimated to be \$6,495. It was Secretary Fahy's recommendation that the Water Commission participate with the Cass County Drain Board in the construction of Cass County Drain No. 53 to the extent of 40 percent of the estimated qualified construction items cost, in an amount not to exceed \$6,495.

It was moved by Commissioner Gray, seconded
by Commissioner Kramer and carried, that the
State Water Commission participate with the
Cass County Drain Board in the construction
of Cass County Drain No. 53 to the extent
of 40 percent of the estimated qualified
construction items cost, in an amount not
to exceed \$6,495.

MINNKOTA POWER COOPERATIVE,
INC. WATER PERMIT REQUEST

Secretary Fahy stated that at the
hearing held on September 27, 1973,
on water permit Nos. 1963 and 1964

for Minnkota Power Cooperative, the Commission had granted approval to increase the height of the dam at Nelson Lake approximately ten feet. This approval did not constitute authority for increasing the existing maximum pool level. Their request is for 5,000 acre-feet additional storage behind the dam and to appropriate 2,480 acre-feet annually from Square Butte Creek; and for the appropriation of 26,000 acre-feet from

the Missouri River to supplement the water supply to Nelson Lake and the Milton R. Young Power Plant.

After a brief discussion, it was moved by Commissioner Gallagher, seconded by Commissioner Gray and carried, that the Commission defer action on the request of Minnkota Power Cooperative until the hearing has been completed on the United Power Association-Cooperative Power Association water permit request to be held this date.

DISCUSSION OF FUNDING OF
SOURIS-RED-RAINY PROJECT
(#305)

Secretary Fahy noted that the Commission members had been forwarded copies of an opinion of the Attorney General pertaining to funding of the Souris-Red-Rainy

project. He briefly discussed the background history of the Souris-Red-Rainy River Basins Commission, which had been terminated on June 30, 1973, and on September 7, 1973, was incorporated with the existing Upper Mississippi River Basin Commission, with a regional office now in Fargo.

The 1973 Legislature allowed an appropriation of \$60,000 for state participation in the Souris-Red-Rainy project if federal funds continue for the program, but that the funds shall not be expended if federal funds are not available. Governor Link, in his request for an Attorney General's Opinion, noted the fact that although the Souris-Red-Rainy River Basins Commission has been terminated, the Souris-Red-Rainy project has not been terminated; therefore, is continued funding of the Souris-Red-Rainy project under the Upper Mississippi River Basin Commission a sufficient condition precedent to authorize the expending of any or all of the \$60,000 appropriation for Souris-Red-Rainy project purposes?

Governor-Chairman Link indicated that he did receive the Attorney General's Opinion and he was very pleased that his Opinion stated that the Souris-Red-Rainy project still exists within the framework of the Upper Mississippi River Basin Commission and that continued federal funding of the Souris-Red-Rainy project under such Commission is a sufficient condition precedent to authorize the expending of any or all of the \$60,000 appropriation for such purpose as contained in Chapter 15 of the 1973 Session Laws of North Dakota.

It was requested by Governor-Chairman Link that the Water Commission adopt a Resolution whereby an expenditure be approved for the balance of the biennium, November 1, 1973 through July 1, 1975, to continue the Souris-Red-Rainy project.

Floyd Fischer, Staff Manager of the Upper Mississippi River Basin Commission in Fargo, informed Commission members that the next phase of the Souris-Red-Rainy project for the biennium is the

public information phase, getting the public to receive this information on water resources planning. He also gave a breakdown of operational costs for the balance of the biennium.

Eugene Krenz, Planning Director for the State Water Commission, was requested by the Commission members to discuss his views and recommendations on the continued progress of the Souris-Red-Rainy project, and he also briefly discussed the work of the Souris-Red-Rainy River Basins Commission before termination.

It was moved by Commissioner Gray, seconded by Commissioner Noteboom and carried, that the Commission adopt Resolution No. 73-10-355, Funding of the Upper Mississippi River Basin Commission Regional Office, and that an expenditure of not to exceed \$15,000 for the period November 1, 1973 through July 1, 1975 be approved, providing that these funds shall be expended only for the state's agreed upon share of operating costs including the payment of the travel expenses of the chairman of the Advisory Committee and the alternate to the official representative of the state on the Upper Mississippi River Basin Commission. (See Appendix "A")

REQUEST FOR WATER PERMIT
FROM MONTANA-DAKOTA
UTILITIES COMPANY

Secretary Fahy indicated that a request from the Montana-Dakota Utilities Company, Bismarck, North Dakota, for a water permit to divert 47,628 acre-feet of water for storage and 22,500 acre-feet of water for annual use from Brush Creek, the Knife River, and South Coyote Creek has been received in the office of the State Water Commission.

Messrs Joseph R. Maichel, Attorney representing Montana-Dakota Utilities Company, and Mark Scarff, Vice President of Montana-Dakota Utilities Company, presented preliminary statements to the Commission members on the application request, noting that the request for a water permit was for three proposed 400-megawatt electric plants in Mercer County.

Secretary Fahy stated that a public hearing on the application would have to be held and he also requested Montana-Dakota Utilities Company to present a formal, written statement of their testimony to the Commission for review prior to the date set for the hearing.

After discussion by the Commission members and the Montana-Dakota Utilities Company's representatives, it was the consensus of the Commission to delay setting a date for the public hearing until after the hearing on the United Power Association-Cooperative Power Association water permit request.

REQUEST FOR APPROVAL OF
CONVEYANCE OF BURLEIGH
AND MCLEAN COUNTIES BANK
STABILIZATION EASEMENTS
(#576)

Secretary Fahy presented a Resolution to the Commission members for their consideration relative to bank stabilization works in Burleigh and McLean Counties. He indicated that the Water Commission has acquired easements from the Burleigh and McLean County Water Management Districts. Adoption of this Resolution will give the U. S. Army Corps of Engineers the right and permission to enter onto these lands for the construction of the river-bank protection work in these two counties.

It was moved by Commissioner Kramer, seconded by Commissioner Gray and carried, that the State Water Commission adopt Resolution No. 73-11-354, Conveyance of Burleigh and McLean Counties Bank Stabilization Easements, giving the U. S. Army Corps of Engineers the right and permission to enter onto these lands for the purpose of construction of the river-bank protection work in Burleigh and McLean Counties. (See Appendix "B")

WATER PERMITS

Secretary Fahy presented 14 water permit requests to the Commission members for their consideration. He recommended that water permit No. 1953, McLean County Land Company, Minot; and No. 1961, D. C. Willoughby, Ruso, be deferred at this time pending further investigations. The hearing on permit No. 1977, United Power Association-Cooperative Power Association, Elk River, Minnesota, will be heard on this date, and will be considered by the Commission after completion of the hearing. It was his recommendation that the other water permit applications be approved subject to conditions stated on the conditional permit.

It was moved by Commissioner Gallagher, seconded by Commissioner Gray and carried, that the Water Commission approve the following water permit application requests subject to conditions stated on the conditional permit: No. 1965, Kenneth L. Renz, Moffit; No. 1909, Donald Egeland, Rhame; No. 1948, Gerald German, Guelph; No. 1957, Harry Gustafson, Halliday; No. 1702, Harry Meiklejohn, Dickey; No. 1949, Homer Nesson, Douglas; No. 1976, North Dakota Farm Systems, Valley City; No. 1954, Traill County Rural Water Users, Inc., Hillsboro; and Nos. 1970, 1978 and 1979, William Stegner, Rhame. Water permit No. 1953, McLean County Land Company, Minot; and No. 1961, D. C. Willoughby, Ruso, are

to be deferred at this time pending further investigations. Consideration will be given the United Power Association-Cooperative Power Association, No. 1977, water permit request following the hearing to be held this date. (See Appendix "C")

The Commission recessed at 12:05 p.m., and at 2:20 p.m. reconvened in the Vocational Education Conference Room to attend the public hearing of United Power Association-Cooperative Power Association's request for a water permit, No. 1977. A complete transcription of the hearing will be available at a later date.

MINNKOTA POWER COOPERATIVE, INC.
WATER PERMIT APPLICATION
DISCUSSION

Following completion of the United Power Association-Cooperative Power Association's public hearing, Governor-Chairman Link called for discussion relative to water permit application Nos. 1963 and 1964 requested by the Minnkota Power Cooperative. Mr. Lloyd Hillier, representing Minnkota Power, made a presentation regarding the appropriator's needs and plans for future power production and he answered questions of Commission members. The discussion that followed centered around the request by the Commission to reserve some portion of electric power for the State of North Dakota.

Secretary Fahy read the alternatives previously discussed by the Commission members, relative to taking final action on the two permits. The two main alternatives were the approval of the permits as requested or the approval of the Square Butte Creek Permit No. 1963 as requested and the approval of the Missouri River No. 1964 for 7,500 acre-feet only, both alternatives having a list of conditions. Governor-Chairman Link recommended the approval of 7,480 acre-feet from Square Butte Creek in Permit No. 1963 and 7,500 acre-feet from the Missouri River in Permit No. 1964, with certain conditions attached as had been formulated by Commission members. It was noted that the recommended approval was for the year 1977, target date for Minnkota plant Phase No. 3 and that this conditional permit would not preclude, under a new request or application, the future consideration of water from the Missouri River for Minnkota Power plant Phases No. 3 and 4, which would carry target dates of years 1978 and beyond.

At this point in the meeting, Governor-Chairman Link asked Secretary Fahy to read the recommended approval and Secretary Fahy responded as follows:

Minnkota Power Cooperative, Inc.
Grand Forks, North Dakota

SWC Water Permit No. 1963

That a conditional permit to store 5,000 acre-feet and to appropriate 2,480 acre-feet annually from Square Butte Creek under application No. 1963 be approved subject to prior water permits and the conditions applicable to

application No. 1964, and provided further that a stream gaging station or other satisfactory measuring device be installed upstream to provide information essential to the development of agreements with the water management district for the satisfactory operation of the dam to minimize downstream flooding.

* * * * *

Minnkota Power Cooperative, Inc.
Grand Forks, North Dakota

SWC Water Permit No. 1964

That a conditional permit to appropriate 7,500 acre-feet of water annually from the Missouri River under application No. 1964 be approved for use in Minnkota Power Cooperative's power generation Plant Expansion No. 2 subject to prior water permits and the following conditions:

- 1) The conditional permit will be effective for a five-year period;
- 2) A perfected permit will be issued when the unit is completed and only for the amount of water actually applied to beneficial use within the time period herein specified;
- 3) If, at any time, the North Dakota State Water Commission or any authorized agency should provide for the payment of a water users fee, or any other fee, the applicant shall be subject to the payment of such fee when it becomes effective. Fees so charged shall exceed costs;
- 4) That the most advanced engineering and technological methods shall be employed in the design of any proposed plant, and in any improvement or addition thereto, to minimize evaporation and to eliminate other wasteful uses of water. Such methods shall be subject to State Water Commission approval;
- 5) No assignment, transfer, or sale of any part of the water to which the applicant is entitled shall, at any time, be made without prior State Water Commission written approval of all points of diversion, utilization and discharge;
- 6) Failure to comply with any order of the State Engineer or the State Water Commission may result in forfeiture of water permit;
- 7) Applicant shall furnish and install metering devices to record actual amounts of water used if so directed by the State Engineer;
- 8) The applicant shall install, maintain and operate continuous emission and fuel monitoring instruments;

- 9) The applicant shall require his coal suppliers to accomplish total reclamation of the lands mined or disturbed while furnishing coal for plant operation and shall make water available at a reasonable cost to the coal supplier in the event that the reclamation agency requires the application of supplemental water to aid new plant growth on lands to be reclaimed in the total reclamation process; and
- 10) Applicant shall be subject to existing rules and regulations and also to those which may be promulgated by the North Dakota State Water Commission or other appropriate agency.

* * * * *

Mr. Hillier, when requested to respond to the conditions recommended for the permits, indicated Minnkota Power Cooperative could readily comply with the conditions.

Commissioner Gray discussed the possible addition to the recommendations of some language to recognize the appropriator's need and intent to develop Phase No. 3 and 4 of their electric power plant complex.

It was moved by Commissioner Kramer, seconded by Commissioner Noteboom and carried, that Minnkota Power Cooperative, Inc., No. 1963, be approved with the conditions as recommended.

It was recommended by Commissioner Gray, seconded by Commissioner Kramer and carried, that Minnkota Power Cooperative, Inc., No. 1964, be approved with the conditions as recommended.

Further discussion followed regarding the applicant's request to appropriate water for plant Phases No. 3 and 4. Governor-Chairman Link stated that recognition is shown for Minnkota's future needs by the fact that the present permit approval, although limited does not preclude the filing of an additional application.

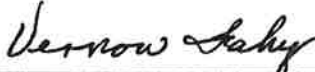
Commissioner Gallagher requested that discussions be initiated between Commission staff members and officials of the Minnkota, United and Cooperative Power Association relative to some preferential treatment to North Dakota in the allocation of electric power production. The Cooperative's representatives responded favorably. It was decided that an initial contact would be made at the time of the next Commission meeting in Jamestown, on or about December 5, 1973, when Mr. Andrew Freeman of Minnkota Power would be available.

At this time, Commissioner Gallagher enlarged upon several points which resulted in the motion that adopted condition No. 10 under permit No. 1964, the need for supplemental water in the total reclamation process.

Governor-Chairman Link and other Commissioners expressed agreement that future Commission meetings be held over a two-day period and that Commission members should submit agenda items for discussion. The next meeting was scheduled, as noted earlier in the minutes, on or about December 5, 1973, in Jamestown. The meeting date would coincide with the annual meeting of the North Dakota Water Users Association and the North Dakota Water Management Districts Association.

The scheduling of a public hearing for a water permit application by Montana-Dakota Utilities Company was delayed until the December meeting. The hearing date would then probably be set for sometime in January, 1974.

It was moved by Commissioner Kramer, seconded by Commissioner Gallagher that the meeting be adjourned. The motion carried and the meeting adjourned at 6:30 p.m.



Vernon Fahy, Secretary

ATTEST:



Arthur A. Link, Governor-Chairman

RESOLUTION 73-10-355

Funding of Upper Mississippi River Basin
Commission Regional Office
for Continuation of Souris-Red-Rainy Project

BE IT RESOLVED that the North Dakota State Water Commission at its meeting held this 29th day of October, 1973, in Bismarck, North Dakota, approve the expenditure of not to exceed \$15,000 for the period November 1, 1973 through July 1, 1975 for the State's participation in the operation of the Upper Mississippi River Basin Commission for continuation of the Souris-Red-Rainy Project. It is provided further that these funds shall be expended only for the State's agreed upon share of operating costs including the payment of the travel expenses of the Chairman of the Advisory Committee and the Alternate to the official representative of the State on the Upper Mississippi River Basin Commission.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:



Arthur A. Link
Arthur A. Link
Governor-Chairman

ATTEST:

for Matt Emerson, Assistant Secretary
Vernon Fahy
Secretary

RESOLUTION 73-11-354

APPENDIX "B"

Conveyance of Burleigh and McLean
Counties Bank Stabilization Easements

WHEREAS, the United States Army Corps of Engineers has submitted to the North Dakota State Water Commission plans and specifications for bank stabilization on the banks of the Missouri River in Burleigh County and McLean County, North Dakota, and made formal request for rights-of-way as contained in drawings numbered MGO C1-2E2 October, 1972, MGO C8-2E2, MGO C4-2E2 November, 1972, and MGO C2-2E3 December, 1972; and

WHEREAS, the North Dakota State Water Commission has approved and adopted said plans and specifications and has acquired from Burleigh County Water Management District and the McLean County Water Management District, the easements for the construction of the river-bank protection project as set forth in drawings numbered MGO C1-2E2 October, 1972, MGO C8-2E2, MGO C4-2E2 November, 1972, and MGO C2-2E3 December, 1972.

NOW, THEREFORE, BE IT RESOLVED by the North Dakota State Water Commission that it does hereby grant, give and convey to the United States Government, its contractors and agents, the right and permission to enter in and upon said lands for the purpose of construction of the river-bank protection project, as indicated on the rights-of-way maps designated as drawings numbered MGO C1-2E2 October, 1972, MGO C8-2E2, MGO C4-2E2 November, 1972, and MGO C2-2E3 December, 1972, prepared by the U. S. Army Corps of Engineers and approved by said North Dakota State Water Commission.

Dated this 29th day of October, 1973.

NORTH DAKOTA STATE WATER COMMISSION
By:

Vernon Fisher
Secretary and Chief Engineer

SEAL
ATTEST:
G. L. Johnson
Director of Legal Services

CERTIFICATE OF ATTORNEY

The North Dakota State Water Commission is a legally constituted State Agency organized and existing under the laws of the State of North Dakota and has authority to acquire, own and control the lands for rights-of-way and easements involved in this matter.

I, the undersigned Director of Legal Services for the North Dakota State Water Commission, certify that the lands required for rights-of-way and for easements for the construction of the river-bank protection project MGOC1-2E2, October, 1972, MGOC8-2E2, MGOC4-2E2, November 1972, and MGOC2-2E3, December, 1972, Missouri River, as indicated on the plans and specifications and rights-of-way prepared and submitted by the Corps of Engineers, United States Army, Omaha District, have been acquired by grants and conveyances to the Burleigh County Water Management District and the McLean County Water Management District. I further certify that the Burleigh County Water Management District and the McLean County Water Management District have, by resolution, granted to the North Dakota State Water Commission, its assigns, contractors and agents the right to enter in and upon such land for the purpose of construction and maintaining the river-bank protection project referred to above. It is my opinion, after examining such easements and resolution, that the North Dakota State Water Commission has lawful authority to grant to the United States the right and permission to enter upon said lands for the purpose of river-bank protection project as contained in the plans and specifications of the U. S. Army Corps of Engineers and that nothing has been done to affect the status of said lands since the dates of acquisition of said lands.

IN WITNESS WHEREOF, I have made and executed this Certificate this 29th day of October, 1973.


Cliff Jochim, Director of Legal Services

ATTEST:



WATER PERMITS FOR OCTOBER 29, 1973 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
1965	Renz, Kenneth L. - Moffit (Burleigh County)	Ground Water	Irrigation	411.0 acre-feet 274.0 acres	411.0 acre-feet 274.0 acres
1909	Egeland, Donald - Rhame (Bowman County)	Spring Creek, trib. to Little Missouri River	Irrigation - Waterspreading	96.0 acre-feet 96.4 acres	96.0 acre-feet 96.4 acres
1948	German, Gerald - Guelph (Dickey County)	James River	Irrigation	400.0 acre-feet 223.0 acres	334.0 acre-feet 223.0 acres
1957	Gustafson, Harry - Halliday (Dunn County)	Spring Creek, trib. to Knife River	Irrigation - Waterspreading	168.0 acre-feet 84.0 acres	84.0 acre-feet 84.0 acres
1702	Meiklejohn, Harry - Dickey (LaMoure County)	James River	Irrigation	250.0 acre-feet 224.0 acres	224.0 acre-feet 224.0 acres
1949	Nesson, Homer - Douglas (Ward County)	Unnamed Lake, a non- contributing area of the Missouri River	Irrigation	560.0 acre-feet 318.0 acres	477.0 acre-feet 318.0 acres
1953	McLean County Land Company - Minot (McLean County)	Ground Water	Irrigation	316.0 acre-feet 158.0 acres	Defer pending further investigations.

APPENDIX "C"

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
1961	Willoughby, D. C. - Ruso (McLean County)	Ground Water	Irrigation	1324.0 acre-feet 662.0 acres	Defer pending further investigations.
1976	North Dakota Farm Systems - Valley City (Barnes County)	Sheyenne River, trib. to Red River	Irrigation	512.0 acre-feet 341.0 acres	427.0 acre-feet 341.0 acres
1954	Traill County Rural Water Users, Inc. - Hillsboro (Traill County)	Ground Water	Industrial (Rural Domestic)	644.0 acre-feet	644.0 acre-feet
1977	United Power Assoc- iation-Cooperative Power Association - Elk River, Minn. (McLean County)	Missouri River	Industrial	15,000.0 acre-feet	Hearing to be held Oct. 29 1973, after which applica- tion will be considered by State Water Commission
1970	Stegner, William - Rhame (Slope County)	Unnamed Tributary to Deep Creek, trib. to Little Missouri River	Irrigation	180.0 acre-feet storage 196.0 acre-feet annual use 196.3 acres	180.0 acre-feet storage 196.0 acre-feet annual use 196.3 acres A 6-inch Drawdown Pipe
1978	Stegner, William - Rhame (Bowman County)	Unnamed Tributary to Deep Creek, trib. to Little Missouri River	Irrigation	182.0 acre-feet storage 115.0 acre-feet annual use 58.0 acres	182.0 acre-feet storage 58.0 acre-feet annual use 58.0 acres A 12-inch Drawdown Pipe
1979	Stegner, William - Rhame (Bowman County)	Unnamed Tributary to Deep Creek, trib. to Little Missouri River	Irrigation	144.0 acre-feet storage 153.0 acre-feet annual use 76.6 acres	144.0 acre-feet storage 76.6 acre-feet annual use 76.6 acres A 12-inch Drawdown Pipe