

## NORTH DAKOTA STATE WATER COMMISSION

## REGISTER

ATTENDANCE AT State Water Commission MeetingDATE August 19+20, 1980 PLACE Bismarck, N. Dak.

PROJECT NO. \_\_\_\_\_

Your Name	Your Address	Who do you Represent? (Or Occupation)
Jim Fugle	Box 594 Mandan	On Locker
Don Simpson	1500 Capitol Ave Bismarck	U.S. Fish and Wildlife Service
<del>Jim Fugle</del>	<del>Bismarck</del>	<del>On Locker</del>
Buchholz Hoffer	Enrod	Senate
<del>David W. Spruczynski</del>	<del>Bismarck</del>	<del>SWC</del>
<del>Joseph M. Smith</del>	<del>Bismarck</del>	<del>SWC</del>
Mark Johnson	Bismarck	Old West Rural Water Office
Kanfer Becklin	Bismarck	SWC
<del>Joe Nordmann</del>	<del>Bismarck</del>	<del>SWC</del>
<del>Miss H. H. H. H.</del>	<del>Bismarck</del>	<del>SWC</del>
Gene Krenz	Bismarck	SWC
Becky Jones	11	KX MB
Jim Marsden	Targo	N.D. FARM BUREAU
Art Lind	Bismarck	Governor

NORTH DAKOTA STATE WATER COMMISSION

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ATTENDANCE AT State Water Commission

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PROJECT NO. \_\_\_\_\_

Your Name	Your Address	Who do you Represent? (Or Occupation)
Van Hull	Bismarck, N. D.	V.S.F.W.S.
Cal Thelen	Bismarck ND	KBM Inc.
RONALD FRENCH	BRAND FORKS, ND	ALL SEASONS RURAL WATER
Joseph M. Schmidt	Bismarck	SWC
Jim Eastgate	"	Burleigh Co WMD
Laurie McMerty	M. N. D.	N. D. WATER USERS

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission  
 DATE Aug. 20, 1980 PLACE Bismarck, N. Dak.  
 PROJECT NO. \_\_\_\_\_

Your Name	Your Address	Who do you Represent? (Or Occupation)
Clinton Hoffman	1533-N-12 Bismarck	Old West Rural Water
Allyn J. Sage	102 Teton Ave	ND Wildlife Society
John Clement	Bismarck	Great Plains Insulation, ANG
Walter J. ...	1717 Interstate Ave	Basin Electric
Joel D. Melarvia	Box 1977 - Bismarck	ANG coal gasification Co.
Charles M. ...	1717 Interstate Ave	Basin Electric
Chuck Rupe	PO Box 1073 - Bismarck	NGPL
Laurie McMoris	MINOT	N.D. WATER USERS
A. Richard Maurer	1202 1st St N Bismarck	CONS. ENG.
W.S. Zschomler	1500 Capitol Ave	FW S
N. Lockwell	Louis Ave	Natural Res. Council

## MINUTES

North Dakota State Water Commission  
Meeting Held In  
Bismarck, North Dakota

August 19 and 20, 1980

The North Dakota State Water Commission held a two-day meeting in Bismarck, North Dakota, on August 19 and 20, 1980. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:40 a.m. on August 19, 1980 in the State Water Commission Conference Room, and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Arthur A. Link, Governor-Chairman  
Richard Gallagher, Vice Chairman, Mandan  
Gordon Gray, Member from Valley City  
Arthur Lanz, Member from Devils Lake  
Arlene Wilhelm, Member from Dickinson  
Alvin Kramer, Member from Minot  
Vernon Fahy, State Engineer and Secretary, North Dakota  
State Water Commission, Bismarck

MEMBER ABSENT:

Myron Just, Commissioner, Department of Agriculture, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members  
Approximately 25 persons interested in agenda items

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

The proceedings of the meeting were recorded to assist in compilation of the minutes.

CONSIDERATION OF MINUTES  
OF JULY 14 AND 15, 1980 MEETING -  
APPROVED

Secretary Fahy reviewed the minutes of the July 14 and 15, 1980 meeting held in Valley City, North Dakota.

Relative to the Rocky Run Creek and Emrick Drain application discussion at this meeting, Secretary Fahy indicated that he had received a letter from the Fish and Wildlife Service requesting to review the tapes relative to the discussion. Secretary Fahy said that he invited them to review the tapes, or make a suggested revision to the minutes.

It was moved by Commissioner Wilhelm, seconded by Commissioner Lanz, and unanimously carried, that the minutes of the July 14 and 15, 1980 meeting be approved as presented.

**PROGRESS REPORT BY STAFF  
CONCERNING COMPREHENSIVE  
PLANNING PROCESS  
(SWC Project No. 322)**

Gene Krenz, Director of the State Water Commission's Planning Division, discussed the state water and related land resources planning process recently initiated by the Commission staff. He pointed out that

the state had been divided into twenty-three (23) hydrologic units for planning purposes - see APPENDIX "A"; that a plan would be developed for each planning unit; and that a State Water and Related Land Resources Management Plan would be available, at least in a preliminary form, for presentation to the 48th session of the North Dakota Legislative Assembly.

According to Krenz, the first step in the planning process is the development of goals and objectives, see APPENDIX "B". Each planning area is expected to develop its own set of goals and objectives through the public involvement process discussed later in these minutes. And, it is anticipated that there will be wide variance in such goals and objectives because of the diversity of problems, needs, issues and opportunities which exist throughout the state.

Other sequential steps in the planning process include 1) inventory of resources; 2) identification of problems and opportunities; 3) estimation of future requirements (through year 2020); 4) compilation of a "without" plan, which is a statement of expected conditions without major new programs in the water sector; 5) development of two major alternatives -- economic and environmental quality; 6) selection of a plan; and 7) presentation of the plan through the public hearing process.

Jennifer Rechlin of the Planning Division presented five possibilities for the basic structure of the study management board for the State Water Commission. These options include 1) no management group; 2) the Natural Resources Council; 3) a citizens study commission; 4) a state agency/citizen study management group; and 5) the State Water Commission itself. Staff recommendation is that the State Water Commission act as study management group, aided by a technical advisory committee consisting of affected state and federal agencies. See APPENDIX "C".

Sue Woodmansee, Information Specialist, gave a timetable for the Public Involvement Program outlining the sequence of events as they will occur over the next three years. See APPENDIX "D".

Meetings will be scheduled in 23 watershed basins throughout the state. A series of approximately 200 meetings with the Citizen Advisory Boards from each watershed basin and the general public will be held to seek input in formulating a water use plan for North Dakota.

August 19 and 20, 1980

In discussion of the Public Involvement Program, Governor Link suggested that the Natural Resources Council would be a key agency for obtaining state and federal input to the study update and urged the staff to work very closely with the Council during the early stages of the study.

It was suggested, and was the consensus of the Commission members, that copies of the North Dakota Century Code relating to the powers and authorities of the State Water Commission be provided for continued discussion on this item at tomorrow's meeting. (Continued discussion of this item is on page 15 of these minutes).

Governor Link read a memorandum from Myron Just, Commissioner, Department of Agriculture, expressing his comments relative to the updating of the State Water Plan. See APPENDIX "E".

At 12:00 noon, the Commission recessed their meeting; reconvened at 1:30 p.m.

**PRESENTATION OF INTERNATIONAL  
PEACE GARDEN AWARD TO ROY PUTZ**

for recognition of Roy's many community contributions and loyal services to the State of North Dakota.

Governor Link presented Roy Putz, a 32-year employee of the State Water Commission, with the International Peace Garden Award

**CONSIDERATION OF REQUEST FROM  
CITY OF SURREY FOR COST SHARING  
IN AN AQUIFER TEST  
(SWC Project No. 992)**

155 North, Range 81 West. The purpose of the aquifer test will be to determine the ability of the aquifer to transmit and store water. The total cost of the test will be \$17,600. The request is for the City of Surrey and the State Water Commission to share the costs equally with each paying \$8,800.

Secretary Fahy presented a request from the City of Surrey, North Dakota, for constructing a test well and conducting an aquifer test at a site located on and near the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 13, Township

It was recommended by the State Engineer that the Commission honor this request from the City of Surrey.

It was moved by Commissioner Kramer, seconded by Commissioner Gallagher, and unanimously carried, that the State Water Commission approve cost participation in an amount not to exceed \$8,800 for the purpose of constructing a test well and conducting an aquifer test for the city of Surrey, North Dakota, contingent upon the availability of funds.

August 19 and 20, 1980

CONTINUED DISCUSSION ON  
PUBLIC INTEREST HEARING  
ON WATER PERMIT APPLICATIONS  
(SWC Project No. 1703)

A brief review concerning the public interest hearing held on July 15, 1980 in Page, North Dakota, was presented. Since the hearing, several letters have been received expressing sentiments of area citizens, which copies have been made available to the Commission members.

The Commission members then entered into a discussion relative to the water permit applications that had been deferred April 2, 1980, when the Commission decided to hold a public interest hearing prior to approving additional permits requesting to appropriate water from the Page Aquifer.

It was moved by Commissioner Gray and seconded by Commissioner Kramer that those requests to appropriate water from the Page Aquifer be approved, contingent to conditions as specified on each respective application. All members voted aye, with the exception of Commissioner Lanz voting nay. The motion carried.

The following water permit applications requesting to appropriate water from the Page Aquifer were approved: No. 2750 - Douglas Bower, Page; No. 2635 - William Conrad (approving the remainder of the application); No. 2621 - Sidney Holden, Page; No. 2551 - Douglas Bower, Page (approving the remainder of the application); No. 2568 - Charles and Edward Satrom, Page (approving the remainder of the application); No. 2538 - Ralph and William Thompson, Thomas A. Thompson Trust, and William J. Thompson Trust, Page (approving another portion of the request); No. 2600 - Paul Feder, Fargo (approving the remainder of the application); No. 2539 - Robert Thompson, Thomas A. Thompson Trust, and William J. Thompson Trust, Page (approving another portion of the request); No. 2654 - Jerome Johnk, Albert Johnk, and Darlene Erickson, Page; No. 2667 - Donald Olstad, Galesburg (approving remainder of the application); No. 2672 - Paul Feder, Fargo (approving remainder of the request); No. 2729 - Gilmore and Philip Jondahl, Hope; No. 2775 - John E. Mewes, Hope; No. 2805 - Lynn Bring, Galesburg; No. 2989 - Lynn Kyser, Erie; No. 2674 - Heino Vosgerau, Page (approving remainder of the request); No. 2988 - Lynn Kyser, Erie; and No. 2755 - Vera Smart, Fargo.

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CONSIDERATION OF WATER PERMIT  
APPLICATION NO. 3251 - NORTH  
LEMMON TOWNSHIP

At its July 14, 1980 meeting, the Commission deferred action on water permit application No. 3251 - North Lemmon Township, pending additional information from the applicant.

Milton Lindvig informed the Commission members that the applicant had been contacted seeking the additional information requested by the Commission, and that a response had been received. Mr. Lindvig briefly discussed the applicant's response.

The Commission members indicated their concern relative to an adequate quality of water for return surface flows and the need for approval of the plans by the State Health Department and the State Water Commission on the reinjection system.

It was moved by Commissioner Kramer, seconded by Commissioner Wilhelm, and unanimously carried, to approve water permit application No. 3251, North Lemmon Township, to appropriate a total of 726.0 acre-feet of water annually from the Madison Formation for industrial purposes (geothermal heating), contingent that conditions be included on the conditional water permit relative to an adequate quality of water for return surface flows, and for approval of the plans for the reinjection system by the State Health Department and the State Water Commission.

CONSIDERATION OF WATER  
PERMIT REQUESTS  
(SWC Project No. 1400)

Secretary Fahy presented the water permit agenda, APPENDIX "F", for the Commission's consideration.

Milton Lindvig commented on water permit application No. 3262, All Seasons Water Users Association, requesting a permit to appropriate 28.0 acre-feet of water from the Shell Valley Aquifer. Mr. Lindvig explained that in January, 1980, the applicant had been granted a conditional water permit to appropriate 28.0 acre-feet of water from the Shell Valley Aquifer. After further study by the Association, it was determined that they would rather have the site about three miles to the south of the site proposed in the first permit. Mr. Lindvig indicated that rather than going through an amending procedure on the first permit, it was recommended that they apply for a new permit with the intent that they would give up the first permit that was issued to them.

Mr. Lindvig stated that in the meantime, there was a moratorium put on the issuance of water permits from the Shell Valley Aquifer in April, 1980. The staff has reviewed the situation, and Mr. Lindvig indicated that they do not view recommending the issuance of this permit as a fracturing of that moratorium, but is merely an exchange of an existing permit on another point of diversion.

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A letter of objection was received from the Tribe, although the new site is further away from an area that the Tribe may intend to utilize in the future. After discussions with the Tribe's consultants explaining the situation, their concerns have been relaxed and they have indicated they do not have objection to the granting of this permit, providing the first permit is cancelled.

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and unanimously carried, that the actions of the State Engineer be approved as presented. SEE APPENDIX "F".

The following water permit applications were approved, subject to conditions as attached to each respective application:  
 No. 2828 - Peter Feist, Selfridge; No. 3262 - All Seasons Water Users Association, Inc., Bottineau; No. 3057 - Dakota Adventist Academy, Jamestown (this is a request for a change in point of diversion); No. 3268 - Duane Hutchinson, Killdeer; No. 1989 - Norman R. Dahl, McHenry (this is a request for a change in point of diversion); No. 2628 - Donald M. Garnas, Page (this is a request for an increase in pumping rate); No. 3267 - Center Park Board, Center; No. 2116 - Robert and Dennis Sletten, Ryder (this is a request for a change in point of diversion); No. 706 - City of Oakes (this is a request for a change in point of diversion); No. 3057 - Dakota Adventist Academy, Jamestown; No. 3251 - North Lemmon Township, Lemmon, SD; No. 3032 - Kenneth W. Mund, Milnor; and No. 3249 - Gilbert Knopp, Hebron.

The following water permit applications were deferred at this time: No. 1281 - HT Enterprises, Dickinson (this is a request for a change in point of diversion); No. 3265 - Ervin MacDiarmid, Las Vegas, Nevada; No. 2546 - Ronald Wagner, Englevale (this is a request for a change in point of diversion); No. 3273 - Duane Walz; No. 3263 - James R. Britton, Fargo; No. 3272 - Anton J. Merck and Emanuel A. Klein, Karlsruhe; No. 3278 - Gerald M. Kary, Killdeer; and No. 3258 - Basin Electric Power Cooperative, Bismarck.

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CONSIDERATION OF REQUEST  
TO WITHDRAW APPROVED SWC  
FUNDS FOR GRAND FORKS-TRAILL  
DRAIN NO. 47  
(SWC Project No. 1722)

On April 2, 1980, the Commission approved \$121,270 for the construction of Grand Forks-Traill Drain No. 47, contingent upon the successful vote of the assessed area. On June 9, 1980, an election was held and the final tabulation showed

82,370 for the project and 140,969 votes against the project. The Traill County Drain Board has, therefore, denied the petition for the establishment of the drain, and relinquished their claim to the approved funds.

It was recommended by the State Engineer that the Water Commission rescind its previously approved financial assistance for this project.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission rescind its previously approved financial assistance in the amount of \$121,270 for the construction of the Grand Forks-Traill Drain No. 47.

CONSIDERATION OF REQUEST  
TO WITHDRAW APPROVED SWC  
FUNDS FOR TRAILL COUNTY  
DRAIN NO. 48  
(SWC Project No. 1719)

On April 2, 1980, the Commission approved \$52,450 for the construction of Traill County Drain No. 48, contingent upon a positive vote in the assessed area. An election was held in the area and final tabulation of the votes indicated 72,709

against the project and no votes cast for the project. Votes recorded as not cast were 17,600. Therefore, the Traill County Drain Board has denied the petition for the establishment of the drain and have relinquished their claim to the approved funds.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission rescind its previously approved financial assistance in the amount of \$52,450 for the construction of the Traill County Drain No. 48.

STATUS REPORT ON REVISION  
OF FEDERAL RECLAMATION ACT  
OF 1902

Secretary Fahy updated the Commission members on the proposed revision of the Federal Reclamation Act of 1902 indicating that Udall's legislation is still pending

and that there is some resentment to the leasing aspects. He noted that 960-acre limitation appears to be the base, which is what the State Water Commission recommended.

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STATUS REPORT ON OGALLALA  
AQUIFER STUDY  
(SWC Project No. 1706)

Secretary Fahy reported that at the last Liaison Committee meeting, he made a presentation to the Committee on how he would like to see the Ogallala Aquifer study developed, and indicated that the study is proceeding with emphasis on the inter-Ogallala area planning studies and that task forces are being established to meet with representatives in these areas that might be considered for exporting water. Secretary Fahy noted that it is his intent to schedule a personal appearance of study leaders before the Commission sometime this fall for a detailed presentation concerning the study.

DISCUSSION OF  
MANDAN PROJECT

On December 21, 1979, the Nebraska Public Power District filed an application with the Economic Regulatory Administration for a Presidential permit, pursuant to Executive Order No. 10485 as amended. The application requests authority to construct, connect, operate and maintain a 500-kilovolt interconnection at the United States-Canadian border. It is also proposed to construct more than 400 miles of overhead transmission line from Nebraska through South Dakota and North Dakota to interconnect with a similar line owned and operated by the Manitoba Hydro Electric Board.

Notice has been given that the Economic Regulatory Administration of the Department of Energy intends to prepare an Environmental Impact Statement to assess the environmental implications before granting or denying the application.

Governor Link suggested that the staff obtain a composite map of the proposed project and that at some future meeting of the Water Commission a representative of the project be invited to make a presentation.

DISCUSSION OF RESOLUTION  
RELATIVE TO STRUCTURAL  
REORGANIZATION OF THE STATE  
WATER COMMISSION

Discussion was held relative to a resolution received from Mr. Robert Thompson, Chairman of the Red River Joint Water Management Board, concerning structural reorganization of the State Water Commission.

After discussion, it was the consensus of the Commission members, that the minutes indicate receipt and discussion of the resolution and that no further action be taken, since it would require an act of the legislature for structural reorganization of the Commission.

GARRISON DIVERSION  
PROJECT  
(SWC Project No. 237)

Governor Link read a letter to Mr. Robert Herbst, Assistant Secretary of the Department of the Interior, Washington, D. C. regarding a memorandum between the State of North Dakota and the Department of the Interior "Charge To Special Study Group On

August 19 and 20, 1980

Acquisition Of Lands For Wildlife In North Dakota". The letter and agreement are attached hereto as APPENDIX "G".

Governor Link indicated this is the first step of an officially recognized study group with the specific attention focused on the problem of wildlife mitigation and its relationship to the Governor's insistence that North Dakota get credit for the Garrison Diversion project for mitigation acreage.

Laurie McMerty, North Dakota Water Users Association, reported on the North Dakota Farm Water Mitigation Committee meeting which was held in Jamestown on July 30. Mr. McMerty presented a list of 20 proposed recommendations that were to be made to the Conservancy District and the State of North Dakota for mitigation that would be acceptable to the North Dakota farm community. One of the recommendations discussed was to investigate the use of state-owned school lands for mitigation for water projects. The Commission also discussed the possibility of a State Water Bank program.

**PROGRESS REPORT ON SOUTHWEST  
AREA WATER SUPPLY PROJECT  
(SWC Project No. 1674)**

Commissioner Wilhelm reported on the Southwest Area Water Supply project noting that negotiations have taken place between the Rural Water Coop and the Water Management District. A liaison committee concept has been established consisting of two members from the Coop and the Water District Committee. She said the Committee recently met and discussed a proposal to facilitate the development of an approach in developing the delivery entity which will satisfy all interests. The Committee has also discussed the possibility of potential legislative funding for a delivery system of water for Dickinson and the southwest area.

At 4:45 p.m., the Commission recessed their meeting; reconvening in the Blue Room of the State Capitol at 10:10 a.m. on August 20, 1980.

**STATUS REPORT ON LITIGATION  
RELATIVE TO THE EXCLUSION OF  
BARNES COUNTY FROM GARRISON  
DIVERSION CONSERVANCY DISTRICT  
(SWC Project No. 237)**

Legal Counsel, Mike Dwyer, reported on the trial that he had attended on August 19 relative to the request by Barnes County to be excluded from the Garrison Diversion Conservancy District. Mr. Dwyer indicated that North Dakota statutes do provide for the exclusion from a district if it is not receiving benefits or if it is not to receive benefits.

Barnes County filed a petition requesting their exclusion from the District. The Conservancy District held a hearing, considered the testimony, and rejected the petition of Barnes County to be excluded from the District.

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Barnes County then appealed to District Court and the trial began on August 19 to determine whether or not Barnes County benefits or will be benefitted from the Garrison Diversion Unit and other portions of the 1944 Flood Control Act.

Mr. Dwyer indicated that the trial will probably last for two more days and then the Judge will take the matter under advisement and make his decision.

**STATUS REPORT ON LITIGATION  
OAHE CONSERVANCY SUBDISTRICT  
VS. CLIFFORD L. ALEXANDER  
(SWC Project Nos. 690 and 832)**

of Engineers has unlawfully operated the Jamestown and Pipestem Dams. The Judge has decided the case, and issued his Memorandum Opinion stating that the defendants (Corps of Engineers) have not operated the dams in violation of the law, and thus, affirmed North Dakota's position that the dams are for the primary benefit of Jamestown and immediate areas downstream. A memorandum prepared by the Legal Counsel to the Attorney General setting forth the ruling of the Court is attached hereto as APPENDIX "H".

Mike Dwyer reported on the litigation which the State Water Commission has been involved in relative to the Oahe Conservancy Subdistrict vs. Clifford L. Alexander, on whether or not the Corps

**CONTINUED DISCUSSION ON  
PROPOSED LEGISLATION TO  
REORGANIZE WATER MANAGEMENT  
DISTRICTS**

which will include all revisions and recommendations of the Water Management District Advisory Committee.

Mike Dwyer informed the Commission members of the status of the proposed legislation to reorganize water management districts indicating that the third draft of the proposed legislation is now being prepared

Mr. Dwyer recalled that during the July 14, 1980 meeting, the Commission went on record in support of the concept of the water management reorganization, but requested that the Legal Counsel discuss with the Advisory Committee the possibility of a provision for revenue bonding subject to a popular vote. Mr. Dwyer indicated that he did discuss this possibility with the Advisory Committee, but the Advisory Committee did not feel it would be appropriate to require a popular vote for revenue bonding because in a revenue bonding project, those who use it are the ones who pay for it. To try and alleviate the concerns, the Advisory Committee did reduce the maximum revenue bonding limit to \$10 million instead of \$20 million.

Commissioner Wilhelm expressed concern that there does not appear in the draft legislation to be a mechanism to the taxpayers informing them of a project except by newspaper advertising for two weeks. She stressed the need for public input prior to the final decision of a project.

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Mr. Dwyer reported that the Natural Resources Interim Committee will be meeting in September and will take final action on the proposed legislation. If the Committee approves the proposed legislation, it will then be presented to the Legislative Council for their consideration.

CONSIDERATION OF REQUEST  
BY ANG COAL GASIFICATION  
COMPANY FOR EXTENSION OF  
TIME FOR CONDITIONAL WATER  
PERMIT NO. 1901A

Secretary Fahy briefed the Commission members on conditional water permit No. 1901A which was granted to Michigan-Wisconsin Pipeline Company on February 19, 1974, with a priority date of January 18, 1973, to divert and appropriate up

to 17,000 acre-feet of water annually from Lake Sakakawea for use in coal gasification processes. A number of conditions were attached to the conditional water permit. The conditional water permit was granted for an initial period of eight years. On October 1, 1975, the conditional water permit was assigned to ANG Coal Gasification Company.

Because of delays in the regulatory processes and court appeals, the final Federal Energy Regulatory Commission certification for the project has not yet been received. It is, therefore, apparent that the project will not be completed in time to actually put the water to beneficial use intended; thus a Perfected Water Permit could not be granted prior to the expiration of the initial period of eight years, or January 1, 1981.

Secretary Fahy stated that condition No. 12 attached to the conditional water permit provides that if the applicant has not perfected subject permit within the eight-year period, it may apply to the State Water Commission to extend the time of the conditional water permit.

On May 29, 1980, a request was made for a five year extension of the initial period of the said permit by ANG Coal Gasification Company.

Ernest Fleck, Attorney for ANG; Joel Melarvie and John Clement, representing ANG, were introduced. Slides, showing the project's progress were viewed, along with a presentation discussing financing negotiations, and joint utilization of some of the facilities with Basin Electric such as the water intake distribution system, railroad and mine.

Mr. Melarvie stated that on July 18, 1980, President Carter signed a conditional loan commitment which, providing that 37 conditions were met, authorized the federal loan guarantees for a debt in the amount of up to \$250 million. Mr. Melarvie indicated that on July 25, 1980, ANG announced that construction was going to commence in Beulah, with production anticipated in about the third quarter of 1984. He then distributed to the Commission members informational packets.

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In discussion of the water intake system and excess capacity, Governor Link indicated that there is a great deal of interest being generated by the State Water Commission and other representatives dealing with the water resources of our state adjoining in a combined effort to satisfy southwestern North Dakota's water needs and requested that ANG and Basin Electric be cognizant of this fact and give consideration should a request be made for use of excess capacity.

Mr. Fleck replied that committing excess water to any other use is prohibited under the terms of the permit and the conditions that were attached to the permit. He also said that ANG has indicated in the past its willingness to negotiate any plans for any kind of a joint utilization of any of the facilities for municipal and other water uses.

Secretary Fahy recalled that in the original design there was an extra bay in the pump intake structure. In past discussions of the possibilities of utilizing the extra bay in conjunction with the water delivery system in southwestern North Dakota, Secretary Fahy said that ANG appeared to look upon that approach favorably, but questioned that since the assignment of the intake system to Basin Electric - has there been any discussion among joint companies about that prior contact, and what should be the procedure for re-initiating that subject?

Mr. Melarvie replied that it is ANG's intent to put any excess capacity to use by any entity that requires it and would be more than willing to negotiate with the southwest area people for such a proposal.

On August 14, 1980, Governor Link expressed his concern as to whether or not ANG Coal Gasification Company had obtained all permits, contracts and agreements necessary to allow construction of the plant. Governor Link indicated that his basic reason for this request was to strengthen both positions of the Company and the State Water Commission when considering the request for an extension of time.

In reply to the Governor's request, correspondence was received from Mr. Fleck indicating that all permits, approvals, licenses and consents necessary to commence construction have been obtained. Mr. Fleck indicated in his letter that agreements with Basin Electric Power Cooperative call for certain executions by October 1, 1980, but it is expected that ANG will, by that date, either execute the necessary documents or have made satisfactory arrangements with Basin Electric for an extension since certain aspects of the financing arrangements have not been completed although construction has actually commenced.

In summary, Mr. Fleck on behalf of ANG Coal Gasification Company, requested the Commission's favorable consideration for a five-year extension of time for conditional water permit No. 1901A.

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CONSIDERATION OF REQUEST  
FROM BASIN ELECTRIC  
POWER COOPERATIVE FOR  
EXTENSION OF TIME FOR  
CONDITIONAL WATER  
PERMIT NO. 2179

Secretary Fahy briefed the Commission members relative to conditional water permit No. 2179 issued to Basin Electric Power Cooperative on May 24, 1976, to appropriate up to 19,000 acre-feet of water for power generation purposes from Lake Sakakawea, with a number of conditions

attached to the conditional water permit. The expiration date to apply water to beneficial use is 1981 for Unit No. I, and for Unit No. II, 1984.

Michael Hinman, General Counsel for Basin Electric; Dave Viker and Charles Miller from Basin Electric, were introduced. Mr. Hinman indicated that Basin Electric has started the process of revising the construction schedule for Antelope Valley Station Units I and II. The commercial operation date for the first unit has been moved back from April, 1982 to the spring of 1983, a delay of about one year. The second unit will be scheduled for operation in the fall of 1985, about two years later than the original date of September, 1983. At the present time, construction is underway on both units. The delays will not halt on-site construction but will involve some extensions in the construction schedules. Mr. Hinman stated that because of a general decline in the region's economy and increased energy conservation by their member cooperatives and consumers, preliminary results of electrical power requirements surveys conducted by their member cooperatives indicate that the annual rate of growth in their requirements will be less in the 1980's than previously forecasted. Mr. Hinman said this general slowdown in the demand for electricity is the reason for the schedule changes now being made.

Mr. Hinman said as of August 1, 1980, Unit I is approximately 56 percent complete and Unit II is in the preliminary stages. Relative to the water facilities specifically, the pipeline is completed, the water ponds at the plant site are completed, and the intake structure is scheduled for completion this fall.

Governor Link also inquired of Basin Electric its plans for excess capacity, and if Basin Electric would consider requests from other beneficial users to utilize the intake structure?

Mr. Hinman replied that the capacity of the pipeline delivery system is not known at this time, but indicated that Basin Electric Power Cooperative would also be receptive to negotiate with other beneficial users for utilization of the intake structure.

Mr. Hinman requested the Commission to consider favorably Basin Electric's request for an extension of time for conditional water permit No. 2179. The request for extension of time for Unit I is for December 31, 1983, and for Unit II is for December 31, 1986.

The Commission recessed their meeting at 12:00 noon; reconvened at 1:40 p.m.

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CONTINUED DISCUSSION OF  
REQUEST BY ANG COAL GASIFICATION  
COMPANY FOR EXTENSION OF TIME  
FOR CONDITIONAL WATER PERMIT  
NO. 1901A

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the State Water Commission approve an extension of time, without amendment, for conditional water permit No. 1901A, to expire on January 1, 1986.

CONTINUED DISCUSSION OF  
REQUEST BY BASIN ELECTRIC  
POWER COOPERATIVE FOR  
EXTENSION OF TIME  
FOR CONDITIONAL WATER  
PERMIT NO. 2179

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission approve an extension of time, without amendment, for conditional water permit No. 2179, to expire December 31, 1986.

CONTINUED DISCUSSION OF PROPOSED  
LEGISLATION RELATING TO INTERIM  
FINANCING FOR RURAL WATER SYSTEMS

Mike Dwyer reviewed the background of the proposed legislation for interim financing for rural water systems.

Discussion was held regarding two alternatives which have been presented for the Commission's consideration: 1) limit interim financing authority to rural water systems; and 2) would provide interim financing authority for a wide range of projects.

After discussion, comments of the Commission members seemed to indicate that they favored alternative No. 2 which would provide interim financing for all water projects in the authority.

Mr. Dwyer indicated that it is anticipated the Rural Water Association will obtain the necessary sponsors for introducing this legislation if the State Water Commission is willing to become involved in the interim financing.

It was moved by Commissioner Lanz, seconded by Commissioner Wilhelm, and unanimously carried, that the State Water Commission

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approve the concept of interim financing, and include all water projects in the authority.

The Commission directed the Legal Counsel to prepare the draft legislation making specific reference for interim financing authority for various water projects.

CONTINUED DISCUSSION OF  
PROGRESS REPORT BY STAFF  
CONCERNING COMPREHENSIVE  
PLANNING PROCESS  
(SWC Project No. 322)

Secretary Fahy recapped the presentation given by the Planning Division at yesterday's meeting and distributed a memorandum which delineated the State Water Commission's powers and authorities. SEE APPENDIX "I".

It was moved by Commissioner Gallagher, seconded by Commissioner Wilhelm, and unanimously carried, that the State Water Commission assume the responsibility for management of the Comprehensive Water and Related Land Resources planning update which has been initiated by the State Water Commission staff. As Study Management team, the State Water Commission would direct the course, content and timing of the study and would seek the services and advice of other agencies, state and/or federal, working as technical staff in the completion of the study.

Nancy Rockwell, Coordinator for the Natural Resources Council, was in attendance and Governor Link reiterated to her that discussion had pursued during the staff's presentation, whereby the Natural Resources Council would be a key organization in soliciting as much input as possible from state and/or federal agencies in the early stages of the planning study update.

Ms. Rockwell indicated that she had been following the study update very closely and was in accord with the Governor's suggestion that the Natural Resources Council is a very important agency for soliciting information for the study update and agreed to work very closely with the Planning staff.

CONTINUED DISCUSSION OF  
PROPOSED NORTH DAKOTA  
FLOODPLAIN MANAGEMENT ACT

Mike Dwyer reviewed the background of the proposed legislation for the North Dakota Floodplain Management Act and indicated that the Natural Resources

Interim Committee will be meeting in September and at that meeting the Committee will be making their final determination on the draft bill.

It was moved by Commissioner Lanz, seconded by Commissioner Wilhelm, and unanimously carried, that the State Water Commission

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supports the concept of the North Dakota Floodplain Management Act proposal.

CONTINUED DISCUSSION OF  
SECTION 404

Secretary Fahy stated that a seminar has been scheduled by the Federal Government for the last week in October to provide information to state agencies on Section 404. At this time, no state has become involved in taking over the Section 404 program so it has been relegated to the Corps of Engineers. The study resolution presently before the Legislative Council is whether or not the state should assume the responsibility of the Section 404 program.

Secretary Fahy suggested that since the seminar is scheduled to be held after the meeting of the Natural Resources Interim Committee, and the staff will not have full knowledge of the program until after the seminar, that draft legislation be prepared and it would then be left up to the discretion of the State Water Commission whether or not to introduce legislation, pending the information obtained from the seminar. The Commission members were in agreement with this procedure, and Secretary Fahy indicated that the Natural Resources Interim Committee would be fully aware of this procedure.

CONTINUED DISCUSSION ON  
GENERAL DRAINAGE POLICY  
(SWC Project No. 1053)

It was suggested, and was the consensus of the Commission members, that discussion of the general drainage policy be deferred until the next meeting.

CONSIDERATION OF  
FINANCIAL STATEMENT

The financial statement was distributed and Secretary Fahy commented that the accounts are in accord with the amount of the biennium time that has elapsed. He said that at the next meeting of the Commission, it is hoped to have a presentation by each of the division directors relative to their proposed budget.

STATUS REPORT ON  
EPPING DAM  
(SWC Project No. 346)

Dave Sprynczynatyk stated that construction on Epping Dam is now approximately 64 percent complete and is anticipated that the project will be completed by October 1, 1980.

CONSIDERATION OF REQUEST  
FROM HETTINGER PARK BOARD  
FOR SWC COST PARTICIPATION  
FOR DRAINING MIRROR LAKE  
(SWC Project No. 420)

Dave Sprynczynatyk stated that a request has been received from the Hettinger City Park Board for cost participation and technical assistance in the draining of Mirror Lake. This project would be the first physical step towards the restoration of the lake. The State Water

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Commission conducted the preliminary engineering study for the restoration during 1979.

Mr. Sprynczynatyk indicated that the Park Board has decided to proceed with the restoration anticipating that EPA will fund 50 percent of the actual restoration project which will involve excavation of the reservoir bed sediments. Total cost of the project will exceed one million dollars.

Since 1980 has been a dry year, the Park Board feels that now is the time to begin draining the reservoir as the reservoir level is very low. It is estimated that draining the reservoir would cost approximately \$17,000, and it has been requested that the State Water Commission consider participating 50 percent towards the draining of the lake, which would amount to \$8,500. If scheduling permits, it may be possible for the Commission crew to do the work which would result in a less expensive project.

It is recommended by the State Engineer that the State Water Commission honor this request from the Hettinger City Park Board and financially participate in an amount not to exceed \$8,500, and offer its technical assistance towards the project.

It was moved by Commissioner Wilhelm, seconded by Commissioner Gallagher, and unanimously carried, that the State Water Commission approve funds in an amount not to exceed \$8,500 for the draining of Mirror Lake, contingent upon the availability of funds.

STATUS REPORT ON  
BURLINGTON DAM  
(SWC Project No. 1408)

Dave Sprynczynatyk explained that in 1969 when funds were authorized and the plans for the Burlington Dam were approved, representatives from Saskatchewan and Manitoba were concerned about possible impacts of the Burlington Dam in their respective area. They requested the International Joint Commission to undertake a study of the impacts on Canada, which was initiated in 1970.

An International Burlington Dam task force was appointed by the IJC to determine 1) possible flood flow changes in Saskatchewan; 2) possible flood flow changes in Manitoba; 3) economic and environmental impact on Canada; 4) the cost of mitigation measures; 5) the physical impact, if any of the planned alterations to structures in the J. Clark Saylor Wildlife Refuge; and 6) the environmental impacts of proposed mitigation measures. Mr. Sprynczynatyk stated that he was a member of that particular task force.

Mr. Sprynczynatyk said that the report has been completed which contains the findings of the task force. In summary, the report indicates that 1) there are no significant impacts to Saskatchewan; 2) the effect on both flood peak levels and safe channel capacity in Manitoba

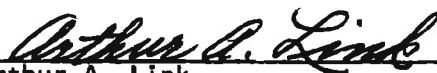
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will be minor and can be either beneficial or adverse, and would be confined to a relatively narrow band of bottom lands; 3) with the exception of the town of Melita, flood damages in urban areas in Manitoba would be reduced; in Melita the net increase in annual average damages would be \$152; 4) possible mitigation measures could be structural or non-structural; and would range in cost from zero to \$245,000; 5) the total increase in net average annual damages in Manitoba, including Melita, would be \$346, when benefits as well as damages are considered. The overall impact in Manitoba is a decrease of annual average flood damages of \$5,356 annually; 6) the environmental impacts on Manitoba at Saskatchewan would be negligible; and 7) the project would not significantly increase the potential for the establishment of a carp population in Lake Darling.

Mr. Sprynczynatyk quoted from the report that "based on the conclusions and recommendations, the Board can see no reason to delay construction of the Burlington Dam project for the purpose of additional technical analysis of impacts on Canada".

There being no further business to come before the Commission at this time -

It was moved by Commissioner Gray, seconded by Commissioner Gallagher, and unanimously carried, that the meeting adjourn at 3:30 p.m.

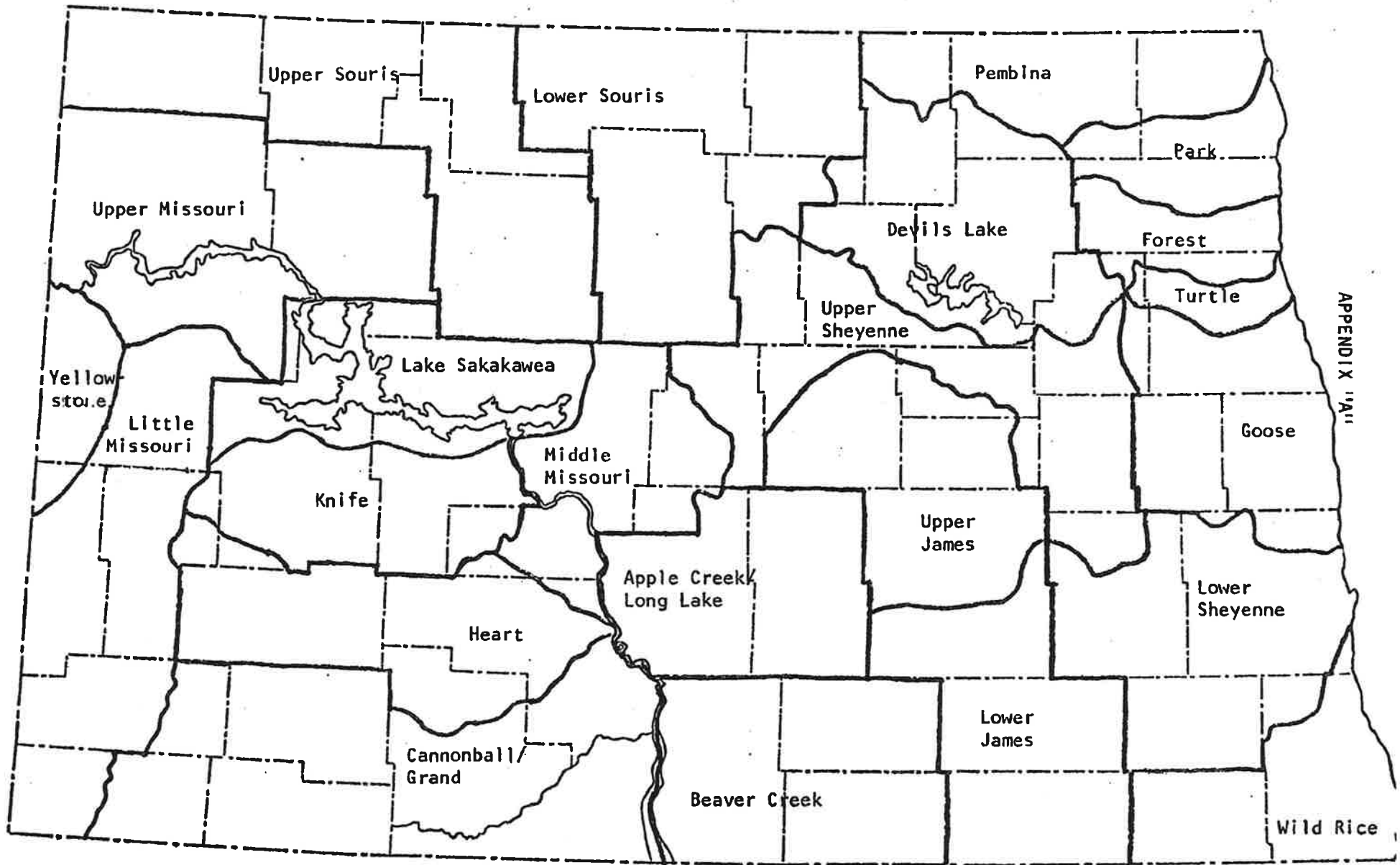
  
 \_\_\_\_\_  
 Arthur A. Link  
 Governor-Chairman

ATTEST:

  
 \_\_\_\_\_  
 Vernon Fahy  
 State Engineer and Secretary

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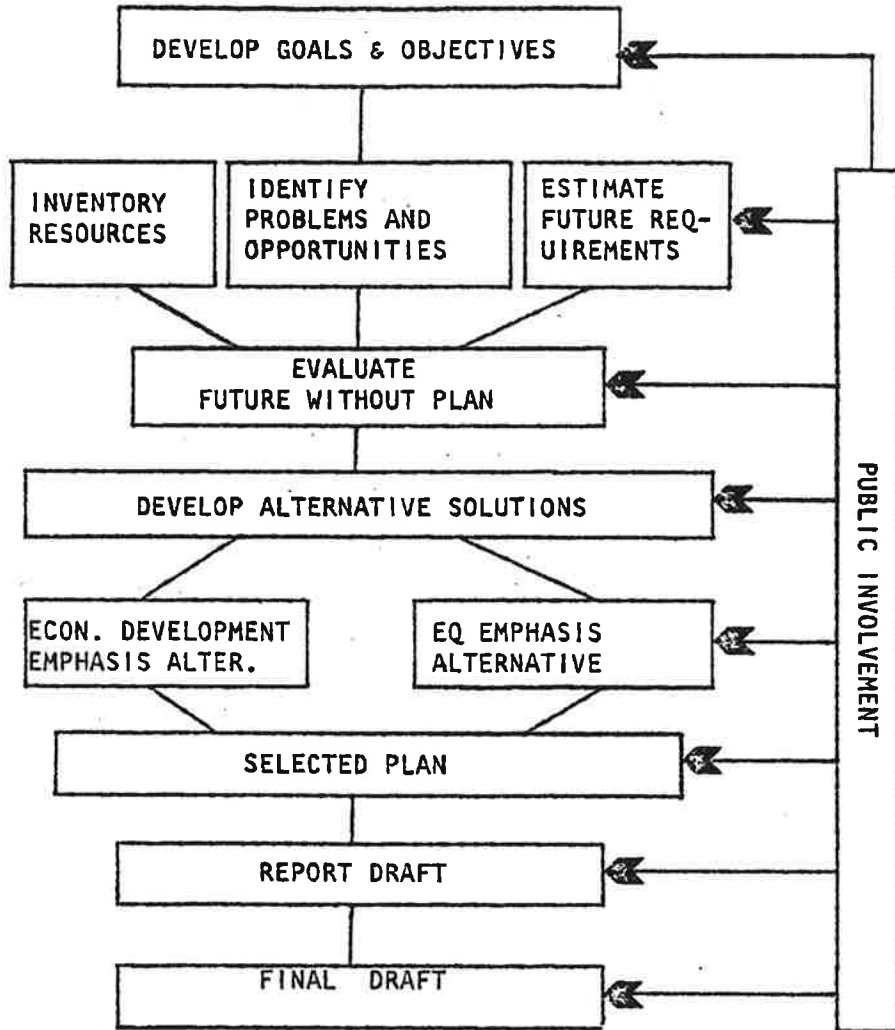
TENTATIVE PUBLIC INVOLVEMENT SUBDIVISIONS



APPENDIX "A"

APPENDIX "B"

PLANNING PROCESS



## APPENDIX "C"

NORTH DAKOTA STATE WATER PLAN  
STUDY MANAGEMENT BOARD

The Planning Division staff envisions the study management group for the State Water Plan as having five major responsibilities:

- 1) Approval of the workplan (inclusive of the public involvement program) and subsequent modifications.
- 2) Clarification of policy, in particular water policy.
- 3) Monitorship of study progress (in some cases with the assistance of a technical advisory committee).
- 4) Reviewal and approval responsibility at selected points in the planning process, i.e. following problem and alternative solution identification.
- 5) Approval of final plan.

Five possibilities for the basic structure of the study management board were considered. These five options were:

- 1) No management group, in which management would in essence be by the planning staff.
- 2) The Natural Resources Council, as currently established, functioning as the management group.
- 3) A Citizen Study Commission (similar to that used in the Devils Lake study) operating with the assistance of a technical advisory committee.
- 4) A State Agency/Citizen Study Management group, composed of representatives from State Health Department, State Forest Service, Public Service Commission, Game and Fish Department, Parks and Recreation Department, State Soil Conservation Committee, Water Commission and possibly State and Local Planning Division, and two citizen members plus a representative for the Indian tribes; and functioning with the guidance of a Federal agency advisory group consisting of members from the Soil Conservation Service, the Corps of Engineers, the Department of Interior and EPA.
- 5) The State Water Commission (plus a small Technical Advisory Committee) functioning also as the study management group.



The staff examined the five options and determined their advantages and disadvantages to be as follows:

No study management group (i.e. management by staff)

Staff could determine no real advantage of this method.

Disadvantages are rampant, including a lack of implementing authority, an inaccessibility to other-agency input, and good possibility of polarization and easy bias.

The Natural Resources Council

Advantages include the following:

- 1) The Council is an already organized, functioning group.
- 2) The members represent the fields of expertise needed by the management group.
- 3) The official members are department heads with the authority to make decisions and speak for their agencies.
- 4) The Council is under the Governor's authority and was, indeed, suggested by him as a possibility for the study management group.

Disadvantages of the option were perceived as:

- 1) There would be no direct citizen involvement.
- 2) The Water Commission very possibly would not be the chairman, thereby losing some control of the planning process.
- 3) These high-echelon people may not have the capability to make this kind of time commitment.
- 4) The membership of the NRC would not be the technical people who are involved in the "day-to-day" operations of the various agencies.

Citizen Study Commission with a technical advisory committee

The staff enumerated the following advantages:

- 1) This format would give a real boost to the public involvement program.

- 2) Control of the study would be closer to the local level, thereby facilitating public acceptance.

Several disadvantages were recognized:

- 1) The dangers of too much regionalism surfacing or domination by special interest groups exist.
- 2) The members would be much less familiar with state policies than those in the other options.
- 3) Logistical problems would surface in trying to assemble members for meetings.
- 4) Per diem and travel expenses are not readily covered.
- 5) The group would likely have poor implementation capabilities.
- 6) This method necessitates a technical advisory committee.

#### State Agency/Citizen Study Management Group

Considerable advantages were discerned, as follows:

- 1) Participants could virtually be handpicked, assuring that members have the necessary expertise, time and decision-making ability.
- 2) The agency representatives could facilitate and coordinate their agencies' input.
- 3) There would be direct citizen involvement in study management, yet the citizens could not dominate the group.
- 4) The members would already possess considerable natural resource background and policy knowledge.
- 5) The group would be reasonably balanced between development and preservation concerns.
- 6) The formal technical committee could be eliminated.

Disadvantages envisioned were:

- 1) An extra level of ultimate approval (by the Water Commission) would be required.

- 2) Water Commission members would not be as intimately familiar with the specifics of the final product as under the SWC-as-management-group option.
- 3) Inherent difficulties exist in paying citizen-member travel expenses.
- 4) In many ways, the group would be composed of competing special interest groups.

#### State Water Commission (SWC) as the Study Management Group

The staff discerned these advantages:

- 1) The SWC has the ability to carry the plan to implementation plus a long-term commitment to do so.
- 2) The SWC is familiar with long-term water problems and with state water policy.
- 3) The SWC has good natural resource background knowledge.
- 4) The SWC is representative of regional interests yet is able to maintain a state-wide perspective.
- 5) This option mandates close involvement of the SWC in the planning process.
- 6) The SWC would not lose the chairmanship.
- 7) The means to provide per diem and travel expense are assured, limited only by budgetary restrictions.
- 8) The SWC is a good mechanism for conflict resolution.

Several possible disadvantages were also listed, as follows:

- 1) Members are not directly responsible to the local constituency and probably will not be perceived by the public as "citizen participants".
- 2) Logistical problems may be encountered in getting the Commission together.
- 3) A technical advisory committee is necessitated, bringing with it additional cost and logistics problems.

Immediate consensus of the staff was that the "no study management group" idea was not a viable option, for obvious reasons. The Citizen Study Commission option was next discarded, as the staff felt that the potential problems far exceed the advantages and that those advantages could be approximated under the remaining options by use of an effective public involvement program. The general agreement was that this method was effective on the local level, but unwieldy and inadequate for a state-wide study.

The next option to be abandoned was that of the Natural Resource Council functioning as the management group. The staff opinion was that the major advantages were generally duplicated in the remaining two options, but that this method had some peculiar disadvantages, making it less desirable.

The two remaining options, the State Agency/Citizen Study Management Group and the State Water Commission as study management group, were both deemed workable choices. However, the State Water Commission option was deemed to have more important advantages and fewer disadvantages and therefore was preferred for recommendation to the State Water Commission as the staff choice for the study management group.

As mentioned earlier, selection of the State Water Commission as study management board necessitates the selection of and assistance by a technical advisory group. The staff envisions the major responsibility of these people to be two-fold: to facilitate input of technical data needed in the planning process and to promote the general participation of affected state and federal agencies in the development of the state water plan. As it is important that the representative of each individual agency has both the necessary expertise and the time to provide it, the staff anticipates that in most cases the agency head will select an experienced staff member instead of assuming the responsibility himself.

With the understanding that the technical advisory group would be the vehicle utilized to involve other agencies in the planning process, the following agencies are suggested for the makeup of the committee:

- North Dakota Health Department
- North Dakota Public Service Commission
- North Dakota Game and Fish Department
- North Dakota Parks and Recreation Department
- North Dakota Soil Conservation Committee
- North Dakota Forest Service
- North Dakota Natural Resources Council
- North Dakota Federal Aid Coordinators Office, Division of State  
and Local Planning
- U.S. Soil Conservation Service
- U.S. Army Corps of Engineers
- U.S. Department of Interior Fish and Wildlife Service
- U.S. Environmental Protection Agency

## APPENDIX "D"

PUBLIC INVOLVEMENT PROGRAM

Public input will be sought from every hydrologic subdivision in the state in formulating a North Dakota Water Plan.

Citizen Advisory Boards (CABs) will be formed to help facilitate the organized gathering of public input.

Each Water Management Board will be asked to nominate a member who resides in the watershed area to represent them on the CAB. Final confirmation of the appointment will come from the Governor.

We will also seek representatives from other interest groups, i.e., agri-business, energy, etc. We realize these special interests will vary from area to area in the state.

We anticipate dividing the state into 22 to 24 Citizen Advisory Board segments. Although, we would prefer to seat from five to seven members on each CAB for the sake of manageability, we realize the CABs will vary in size from subdivision to subdivision.

MAJOR COMPONENTS OF THE PUBLIC INVOLVEMENT PROCESS

1. The Citizen Advisory Boards (CABs)
2. Movie on N. D. Water Resources
3. Water Resource Management Simulator
4. Brochures
5. Newspaper Supplement
6. Surveys
7. Newsletters
8. Public speaking at service clubs, schools, and coverage in the media.

WHAT WE PERCEIVE CAB DUTIES TO BE

1. Serve as a liason with citizens in the area
2. Assist us in developing goals and objectives for water use in their area.
3. Play a major role in organizing meetings and assisting us in contacting local citizens and making up mailing lists.
4. Review various kinds of planning documents we'll be sending them.

PLANNED SEQUENCE OF PUBLIC MEETINGS1st Meeting - Citizen Advisory Board & Planning Team

1. Explain planning process
2. Lay groundwork for public involvement process
3. Get names for mailing lists and prospective attendees
4. Show the film

### 2nd Meeting - CAB and Planning Team

1. Ask CAB for guidelines in establishing goals and objectives for water use in their community.
2. Use the Water Resource Electronic Simulator to impress upon the members the need for well-thought-out objectives.
3. Lay the ground work for the third meeting which will be the first advertised public meeting.

### 3rd Meeting - CAB, General Public & Planning Team

1. Ask for the public perception of their problems
2. Review goals and objectives that the CAB gave us at the second meeting.
3. Show the film.
4. Have the simulator on display, but not as an integral part of the meeting.
5. Use a brochure with a detachable mailer to get the public's opinion on goals and objectives and the problems they see in their area.

### 4th Meeting - CAB & Planning Team

(Held 3-6 weeks after the 3rd meeting)

1. Tie up the needs, problems and opportunities from the 2nd and 3rd meetings.
2. Discuss the alternatives available for water use in their area.

### 5th Meeting - CAB, Planning Team and Public

(2nd advertised public meeting)

1. Take public feedback on alternatives
2. Review alternatives
3. Discuss the economic and environmental emphasis of their proposed plans..

### 6th Meeting - CAB, and Planning Team

1. CAB can give us ideas on what has been compiled from selected options and alternatives that were brought up in the 5th meeting.
2. Breakdown alternatives into what is economic and what is environmental.
3. Finalize w/ CAB what they want in their final recommendation to the Study Management Board.

### 7th Meeting - Begin the Rounds of Public Information Meetings, there will be 12-15

1. Respond to their questions

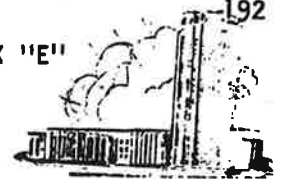
8th Meeting - Formal Public Hearings

1. Go public w/ the final recommended plan
2. Select times to meet in,
  1. Bismarck/Mandan
  2. Dickinson
  3. Williston
  4. Minot
  5. Devils Lake
  6. Jamestown
  7. Fargo
  8. Grand Forks



# State of North Dakota

APPENDIX "E"



## DEPARTMENT OF AGRICULTURE

Myron Just  
Commissioner of Agriculture

State Capitol Bismarck, N. D. 58505

701 224-2232

TO: Governor Arthur A. Link, Chairman, State Water Commission  
and Members of the State Water Commission

FROM: Myron Just, Commissioner of Agriculture

RE: Absence at the Meeting of August 19 and 20, 1980.

I am sorry I can't be here for this very important Water Commission meeting this month. I had blocked out about ten days on my vacation six months ago because my wife is in Germany with the Friendship Force, and I am at the farm harvesting a little bit of wheat, and also looking after our two boys.

I recognize that this is an extremely important meeting. Of particular significance, I think, is the presentation of the comprehensive water resources planning the Water Commission has undertaken. I wish that I could be here for the presentation. I think this is one of the most important undertakings the Water Commission and, indeed, the State of North Dakota have considered. There is no question in my mind that in a semi-arid state like North Dakota, where the water supply is frequently marginal for agricultural, recreational and domestic purposes, that a comprehensive plan for the future use and conservation of these resources is a very high priority.

I almost feel that it is inappropriate for me to comment previous to seeing the plan. However, in a matter of this importance, I will risk commenting at this time.

In a matter involving water, which is of such vital interest to so many diverse interests, I think that it is imperative that we start from the best possible base. So, at this point, I would like to have us consider who would be best suited to oversee the development of a plan.

In order for a plan to be viewed in a positive light, I think it is extremely important that we have all of the diverse interests involved in water resource use in North Dakota represented in the development of the planning process. For this reason, I am concerned as to whether or not we, as a Water Commission Board and the Water Commission staff, can generate sufficient credibility at the outset for this plan, even though it involves possible input every step of the way.

What I am suggesting, is that for a broad water resource plan for North Dakota to have the widest possible acceptance, I think we must develop a vehicle to supervise the plan, develop the planning process, and manage the plan. Included must be the agricultural community, the Fish and Wildlife, and the Game and Fish



State Water Commission  
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Page Two

interests, rural and urban water interests for domestic and recreational purposes, and also environmental concerns such as water quality and conservation.

In terms of the development of the technical information such as hydrology, there is no question that the Water Commission staff would need to be heavily involved in providing this information, and would perhaps provide the bulk of the technical data all the way through.

But, my concern is perhaps a more pragmatic one. I want this plan to have the solid support of the diverse interests of North Dakota, because they have confidence in the way it was developed and carried out, and they can be assured that whatever their special interest may be, that they were adequately represented in the planning process at the outset.

I would suggest that the way that the Devils Lake Basin Study was put together about three years ago, and managed by Ike Ellison, as Chairman of the Natural Resources Council and then made up of a policy board of all of the diverse interests, is a proper way to proceed in the development of a water resources plan for North Dakota.

Again, I apologize for making my comments perhaps a bit prematurely, particularly when I have not even heard the proposed plan. I look forward to reading the minutes and listening to the tapes, and visiting with the other members to get the gist of the proposed plan.

I have dictated this memo by phone from the farm between repair jobs in the shop, and so am sorry if it is not entirely coherent.

MJ/tmr

\* INDICATES PRIOR  
PERMIT STATUS

WATER PERMIT AGENDA FOR AUGUST 19 AND 20, 1980 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2828	Feist, Peter - Selfridge (Sioux County)  Priority: 6-19-80 Hearing: 7-14-80	Unnamed Creek, trib to Porcupine Creek and Missouri River  * #1510 (Priority Date: 12-9-67)	Livestock	78.6 acre-feet storage plus 23.4 acre-feet annual use  Granted 36.0 acre-feet storage plus 15.0 acre-feet annual use	78.6 acre-feet storage plus 23.4 acre-feet annual use
3262	All Seasons Water Users Association, Inc. - Bottineau (Rolette County)  Priority: 5-14-80 Hearing: 7-14-80	Ground Water  *#2491 (Priority Date: 6-10-76) #2492 (Priority Date: 6-10-76) #2493 (Priority Date: 6-10-76) #2890 (Priority Date: 7-7-77) #3187 (Priority Date: 6-15-79)	Municipal (Rural Domestic)	28.0 acre-feet  Granted 27.0 acre-feet Granted 17.0 acre-feet Granted 60.0 acre-feet Granted 65.0 acre-feet Granted 28.0 acre-feet	28.0 acre-feet
3057	Dakota Adventist Academy - Jamestown (Burleigh County)  Priority: 3-29-78 Hearing on Amendment: 7-14-80	Ground Water	Irrigation	This is a request for a change in points of diversion.	It is recommended that this request for a change in point of diver- sion be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1281	HT Enterprises - Dickinson (Slope County)  Priority: 3-30-65 Hearing on Amendment: 7-14-80	Deep Creek, trib. to Little Missouri River	Irrigation	This is a request for a change in points of diversion.	It is recommended that this request be deferred at this time.
3265	MacDiarmid, Ervin - Las Vegas, Nevada (Pierce County)  Priority: 6-11-80 Hearing: 7-14-80	Ground Water  * NO PRIOR PERMITS	Irrigation	130.5 acre-feet 87.0 acres	It is recommended that this request be deferred at this time.
3268	Hutchinson, Duane - Killdeer (Dunn County)  Priority: 5-23-80 Hearing: 7-21-80	Ground Water  * #2788 (Priority Date: 3-18-77) Granted 148.0 acres	Municipal- (Rural Domestic)	11.0 acre-feet	11.0 acre-feet
2546	Wagner, Ronald - Englevale (Ransom County)  Priority: 9-17-76 Hearing on Amendment: 7-21-80	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that this request be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1989	Dahl, Norman R. - McHenry (Griggs County)  Priority: 10-11-73 Hearing on Amendment: 7-21-80	Ground Water	Irrigation	This is a request for a change in points of diversion.	It is recommended that this request for a change in points of diversion be approved.
3273	Walz, Duane - Beulah (Mercer County)  Priority: 6- 2-80 Hearing: 7-28-80	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that this request be deferred at this time.
		* NO PRIOR PERMITS			
3263	Britton, James R. - Fargo (Emmons County)  Priority: 5-19-80 Hearing: 8- 4-80	Missouri River	Irrigation	600.0 acre-feet 400.0 acres	It is recommended that this request be deferred at this time.
		* NO PRIOR PERMITS			
3272	Merck, Anton J. and Klein, Emanuel A. - Karlsruhe (McHenry County)  Priority: 6-10-80 Hearing: 8- 4-80	Ground Water	Irrigation	424.0 acre-feet 312.0 acres	It is recommended that this request be deferred at this time.
		* #2396 (Priority: 3-8-76)	Granted 135.0 acres to Anton J. Merck		

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2628	Garnas, Donald M. - Page (Cass County)  Priority: 11- 8-76 Hearing on Amendment: 8-11-80	Ground Water	Irrigation	This is a request for an increase in pumping rate from 800 gpm to 930 gpm.	It is recommended that this request be approved.
3267	Center Park Board - Center (Oliver County)  Priority: 5-12-80 Hearing: 8- 4-80	Square Butte Creek, trib. to Missouri River  * #3231 (Priority Date: 5-2-80) Granted 199.0 acre-feet to City of Center for Municipal Use	Irrigation	10.1 acre-feet 6.71 acres	10.1 acre-feet 6.71 acres
2116	Sletten, Dennis and Robert - Ryder (Ward County)  Priority: 8-12-74 Hearing on Amendment: 5-19-80 Amendment Deferred: 6- 2-80	Ground Water (Douglas Aquifer)	Irrigation	This is a request for a change in point of diversion.	It is recommended that this request be approved.
706	Oakes, City of - Oakes (Dickey County)  Priority: 2-18-57 Hearing on Amendment: 8- 4-80	Ground Water	Municipal	This is a request for a change in point of diversion.	It is recommended that this request be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3278	Kary, Gerald M. - Killdeer (Dunn County)  Priority: 7-14-80 Hearing: 8- 4-80	Unnamed Tributary and Little Knife River, trib. to Knife River  * NO PRIOR PERMITS	Irrigation	268.0 acre-feet 134.0 acres	It is recommended that this request be deferred at this time.
3258	Basin Electric Power Cooperative - Bismarck (Mercer County)  Priority: 5- 2-80 Hearing: 8-11-80	Ground Water  * The applicant holds a number of permits.	Industrial	500.0 acre-feet	It is recommended that this request be deferred at this time.
3057	Dakota Adventist Academy - Jamestown (Burleigh County)  Priority: 3-29-78 Hearing: 5-15-78 Deferred: 6- 1-78	Ground Water (Wagonport Aquifer)  * #2575 (Priority Date: 8-19-76) Granted 44.8 acre-feet #2848 (Priority Date: 10-20-76) Granted 20.0 acres	Irrigation	664.5 acre-feet 443.0 acres	664.5 acre-feet 443.0 acres
3251	North Lemmon Township - Lemmon, S.D. (Adams County)  Priority: 5- 1-80 Hearing: 6- 2-80 Deferred: 7-14-80	Ground Water (Madison Formation)  * NO PRIOR PERMITS	Industrial (Geothermal Heating)	726.0 acre-feet	726.0 acre-feet

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2750	Bower, Douglas - Page (Cass County)	Ground Water (Page Aquifer)	Irrigation	699.3 acre-feet 466.2 acres	Recommend for approval: 202.5 acre-feet 270.0 acres  (Remainder of request held in abeyance)
	Priority: 1-17-79 Hearing: 2- 5-79 Deferred: 2-20-79 & 4- 2-80	* #2551 (Priority Date: 9-27-76) Requested 306.6 acres; 135.0 acres approved; remainder held in abeyance.			
2635	Conrad, William - Page (Cass County)	Ground Water (Page Aquifer)	Irrigation	2300.0 acre-feet 1544.65 acres	On February 11, 1977, the applicant was granted approval for 405.0 acre- feet of water to irrigate 270.0 acres; remainder held in abeyance.
	Priority: 12- 9-76	* NO PRIOR PERMITS			On December 21, 1978, the applicant was granted approval for an additional 135.0 acre-feet of water to irrigate an additional 405.0 acres; remainder held in abeyance.  It is now recommended that the applicant be granted an additional 67.5 acre-feet of water to irrigate the above approved 675.0 acres; remainder shall continue to be held in abeyance.  Total amounts granted would then be 607.5 acre-feet of water to irrigate 675.0 acres.
2621	Holden, Sidney - Page (Cass County)	Ground Water (Page Aquifer)	Irrigation	470.0 acre-feet 314.0 acres	Recommend for approval: 202.5 acre-feet 270.0 acres  (Remainder of original request shall be held in abeyance)
	Priority: 11-19-76 Hearing: 12-20-76 Deferred: 2-11-77 & 4- 2-80	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2551	Bower, Douglas A. - Page (Cass County)  Priority: 9-27-76	Ground Water (Page Aquifer)	Irrigation	480.0 acre-feet 306.6 acres	On February 11, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of request held in abeyance.  It is now recommended that the applicant be granted an additional 67.5 acre-feet of water to irrigate an additional 135.0 acres; remainder of request to be denied.  Total amounts granted would then be 270.0 acre-feet of water to irrigate a total of 270.0 acres.
		* #2750 (Priority Date: 1-17-79) requested 466.2 acres; on page 6 of this agenda, it is recommended that 270.0 acres be approved; remainder to be held in abeyance.			
2568	Satrom, Charles and Edward - Page (Steele County)  Priority: 10-12-76	Ground Water (Page Aquifer)	Irrigation	960.0 acre-feet 640.0 acres	On December 7, 1976, the applicants were granted 405.0 acre-feet of water to irrigate 270.0 acres of land; remainder of request to be held in abeyance.  It is now recommended that an additional 135.0 acre-feet of water to irrigate an additional 270.0 acres be released; remainder of original request to be denied.  Total amounts granted would then be 540.0 acre-feet to irrigate a total of 540.0 acres.
		* #2679 (Priority Date: 1-7-77) Granted 1004.0 acres			



NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2538	Thompson, Ralph and William; Thompson, Thomas A. Trust; and Thompson, William J. Trust - Page (Cass County)	Ground Water (Page Aquifer)	Irrigation	2640.0 acre-feet 1784.16 acres	<p>On December 7, 1976, the applicants were granted 405.0 acre-feet of water to irrigate 270.0 acres of land; remainder of request held in abeyance.</p> <p>On February 11, 1977, the applicants were granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 135.0 acres; remainder of request held in abeyance.</p> <p>On November 14, 1978, the applicants were granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 270.0 acres of land; remainder of request held in abeyance.</p> <p>It is now recommended that the applicants be granted an additional 405.0 acre-feet of water to irrigate an additional 765.0 acres of land; remainder of original request shall continue to be held in abeyance.</p> <p>Total amounts granted thus far would be 1215.0 acre-feet of water to irrigate 1440.0 acres of land.</p>
	Priority: 9- 1-76	* See No. 2539 on page 9.			
2600	Feder, Paul - Fargo (Cass County)	Ground Water (Page Aquifer)	Irrigation	307.37 acre-feet 307.37 acres	<p>On March 24, 1977, the applicant was granted approval to appropriate 45.13 acre-feet of water to irrigate 157.37 acres; remainder of request held in abeyance.</p> <p>It is now recommended that an additional 67.50 acre-feet to irrigate an additional 112.63 acres be released; remainder of original request shall be denied.</p> <p>Total amounts granted would be 112.63 acre-feet to irrigate 270.0 acres.</p>
	Priority: 10-25-76	* #2552 (Priority Date: 9-27-76) Granted 157.37 acres #2672 (Priority Date: 12-29-76) Requested 319.0 acres; 135.0 acres granted; remainder being held in abeyance.			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2539	Thompson, Robert; Thompson, Thomas Trust; and Thompson, William J. Trust - Page (Cass County)	Ground Water (Page Aquifer)	Irrigation	2500.0 acre-feet 1702.26 acres	<p>On December 7, 1976, the applicants were granted approval to appropriate 607.5 acre-feet of water to irrigate 405.0 acres of land; remainder of request held in abeyance.</p> <p>On November 14, 1978, the applicants were granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 405.0 acres; remainder of original request held in abeyance.</p> <p>It is now recommended that an additional 359.1 acre-feet of water to irrigate an additional 550.0 acres of land be released; remainder of original request shall continue to be held in abeyance.</p> <p>Total amounts granted thus far would be 1169.1 acre-feet of water to irrigate 1360.0 acres of land.</p>
	Priority: 9-1-76	* See No. 2538 on page 8.			
2654	Johnk, Jerome; Johnk, Albert; and Erickson, Darlene - Page (Cass County)	Ground Water (Page Aquifer)	Irrigation	936.0 acre-feet 623.95 acres	<p>Recommend for approval: 202.5 acre-feet 270.0 acres</p> <p>(Remainder of original request shall be held in abeyance)</p>
	Priority: 12-16-76 Hearing: 1-24-77 Deferred: 2-11-77 & 4- 2-80	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2667	Olstad, Donald - Galesburg (Cass County)	Ground Water (Page Aquifer)	Irrigation	1425.0 acre-feet 952.8 acres	<p>On March 24, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of request held in abeyance.</p> <p>On October 20, 1978, the applicant was granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 270.0 acres; remainder of request held in abeyance.</p> <p>It is now recommended that an additional 135.0 acre-feet of water to irrigate an additional 135.0 acres be released; remainder of original request shall be denied.</p> <p>Total amounts granted would then be 540.0 acre-feet of water to irrigate a total of 540.0 acres.</p>
	Priority: 1- 4-77	* #3149 (Priority Date: 1-11-79) Requested 153.0 acres; in deferred status at present time.			
2672	Feder, Paul - Fargo (Cass County)	Ground Water (Page Aquifer)	Irrigation	478.5 acre-feet 319.0 acres	<p>On March 24, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of request held in abeyance.</p> <p>It is now recommended that the applicant be granted an additional 67.5 acre-feet of water to irrigate an additional 135.0 acres of land; remainder of original application shall be denied.</p> <p>Totals granted would then be 270.0 acre-feet to irrigate a total of 270.0 acres.</p>
	Priority: 12-29-76	* #2600 (Priority Date: 10-25-76) Requested 307.37 acres; 157.37 acres granted; remainder held in abeyance. #2552 (Priority Date: 9-27-76) Granted 157.37 acres			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2729	Jondahl, Gilmore and Phillip - Hope (Steele County) Priority: 2-22-77 Hearing: 4-11-77 Deferred: 4-15-77 & 4- 2-80	Ground Water (Page Aquifer)  * NO PRIOR PERMITS	Irrigation	2290.0 acre-feet 1526.7 acres	Recommend for approval: 540.0 acre-feet 540.0 acres  (Remainder of original request shall be held in abeyance)
2775	Mewes, John E. - Hope (Steele County)  Priority: 3-14-77 Hearing: 7-19-77 Deferred: 8-16-77 & 4- 2-80	Ground Water (Page Aquifer)  * NO PRIOR PERMITS	Irrigation	480.0 acre-feet 320.0 acres	Recommend for approval: 270.0 acre-feet 270.0 acres  (Remainder of original request shall be held in abeyance)
2805	Bring, Lynn - Galesburg (Traill County)  Priority: 4- 4-77 Hearing: 7- 5-77 Deferred: 7- 8-77 & 4- 2-80	Ground Water (Page Aquifer)  * NO PRIOR PERMITS	Irrigation	830.0 acre-feet 554.6 acres	410.0 acre-feet 410.0 acres  (Remainder of original request shall be denied)
2989	Kyser, Lynn - Erie (Cass County)  Priority: 5- 2-79 Hearing: 7- 9-79 Deferred: 7-25-79 & 4- 2-80	Ground Water (Page Aquifer)  * #2988 (Priority Date: 5-2-79) Requested 160.0 acres; in deferred status at this time but is recommended for approval of 135.0 acres on page 12.	Irrigation	320.0 acre-feet 160.0 acres	125.0 acre-feet 135.0 acres  (Remainder of original request shall be denied)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2674	Vosgerau, Heino - Page (Cass & Steele Cos.)	Ground Water (Page Aquifer)	Irrigation	1425.0 acre-feet 952.8 acres	On March 24, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of original request held in abeyance.
	Priority: 1- 4-77	* NO PRIOR PERMITS			It is now recommended that the applicant be granted an additional 337.5 acre-feet of water to irrigate an additional 405.0 acres; remainder of original request shall be denied.  Total amounts granted the applicant would be 540.0 acre-feet of water to irrigate a total of 540.0 acres.
2988	Kyser, Lynn - Erie (Cass County)	Ground Water (Page Aquifer)	Irrigation	320.0 acre-feet 160.0 acres	160.0 acre-feet 135.0 acres  (Remainder of original request shall be denied)
	Priority: 5- 2-79 Hearing: 7- 9-79 Deferred: 7-25-79 & 4- 2-80	* #2989 (Priority Date: 5-2-79) Requested 160.0 acres; in deferred status at this time but is recommended for approval of 135.0 acres on page 11.			
2755	Smart, Vera - Fargo (Steele County)	Ground Water (Page Aquifer)	Irrigation	600.0 acre-feet 407.5 acres	Recommend for approval: 271.0 acre-feet 216.0 acres  (Remainder of original request shall be held in abeyance)
	Priority: 3- 7-77 Hearing: 5- 9-77 Deferred: 5-27-77 & 4- 2-80	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3032	Mund, Kenneth W. - Milnor (Sargent County)	Ground Water (Milnor Aquifer)	Irrigation	320.0 acre-feet 160.0 acres	202.5 acre-feet 135.0 acres  (The remainder of original request shall be denied.)
	Priority: 2- 6-78 Hearing: 2-27-78 Deferred: 3-16-78	* NO PRIOR PERMITS			
3249	Knopp, Gilbert - Hebron (Mercer County)	Unnamed Stream, trib. to Little Knife River	Irrigation	75.0 acre-feet 50.0 acres	50.0 acre-feet 50.0 acres
	Priority: 3-28-80 Hearing: 5-12-80 Deferred: 6- 2-80	* NO PRIOR PERMITS			



## STATE OF NORTH DAKOTA

APPENDIX "G"

EXECUTIVE OFFICE

BISMARCK

ARTHUR A. LINK  
Governor

August 14, 1980

Mr. Robert Herbst  
Assistant Secretary  
DEPARTMENT OF THE INTERIOR  
Washington, D.C. 20240

Enclosed for your review and signature is the "Charge to Special Study Group on Acquisition of Lands for Wildlife - North Dakota". I signed the document today.

We are pleased with the cooperation that resulted in the development of this document. Perhaps this is a first step toward resolution of the recent disputes between the State and the Fish and Wildlife Service.

The transmittal of this document offers an opportunity to comment upon several provisions in the "Charge". These comments are made to prevent any misunderstanding which could otherwise subsequently arise.

I agree that the initiation of acquisition for the 146,530 acre Garrison Diversion Unit (GDU) mitigation and enhancement program has been a significant factor in the present level of public concern about federal fish and wildlife acquisitions in North Dakota. However, public concern (and the 1977 state legislation which is under challenge in United States of America v. State of North Dakota) was generated by the FWS in its Small Wetlands Acquisition Program (SWAP). Therefore, it is entirely appropriate that both programs be reviewed.

I further agree that the GDU mitigation and enhancement program is statutorily distinct from the SWAP. However, the two programs have a distinct defacto relationship as a result of my April 16, 1979, letter to the FWS Area Manager in which

Mr. Robert Herbst  
August 14, 1980  
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I said: "I will not approve any further wetlands acquisitions by the Fish and Wildlife Service, pursuant to 16 U.S.C. §715k-5, until all mitigation and enhancement lands are acquired for the Garrison Diversion Unit". That policy is still in effect - - and will be unless United States of America v. State of North Dakota is affirmed in the appellate courts or until we can arrive at a mutually agreeable arrangement as a result of the current discussions.

Finally, we must realize that any proposed mitigation and enhancement plan must be acceptable to the Secretary and the Board of Directors, Garrison Diversion Conservancy District. Our efforts must, therefore, attempt to address all reasonable issues related to the two programs now under study.

Bob, your assistance on this matter has been appreciated.

Sincerely,

Arthur A. Link  
Governor

pkp



CHARGE TO SPECIAL STUDY GROUP  
ON  
ACQUISITION OF LANDS FOR WILDLIFE  
NORTH DAKOTA

I. BACKGROUND

The question of the purchase of lands or interests in lands in North Dakota for the purpose of preserving fish and wildlife habitats has become a controversial one. The controversy stems primarily from the fact that the purchase of private lands for wildlife purposes has assumed a level of public concern of major proportions because of the controversy about the Garrison Project.

The U. S. Fish and Wildlife Service has for many years purchased lands or interests in lands in North Dakota for the purpose of providing habitat necessary for the production of migratory birds, principally waterfowl. With the advent of the Garrison Project, the question of lands needed to mitigate the wildlife habitat losses occasioned by the Garrison Project has arisen, and in the minds of the public the two basic efforts--the purchase of wildlife habitats to insure the continued production of migratory birds in the pothole region of the upper midwestern United States and the purchase of land to mitigate losses associated with the Garrison Project--have joined to create serious misunderstandings and conflicts.

In mid-July 1980 the Assistant Secretary for Fish and Wildlife and Parks and the Director of the U.S. Fish and Wildlife Service agreed with North Dakota Governor Link to establish a jointly led study group charged to review and report upon the two fundamental questions at issue: the mitigation needed to accompany the Garrison Diversion Project and long-term needs for fish and wildlife habitat generally in North Dakota.

This charge to the group is based upon the determination that there are two separate and distinct issues in fact, but not necessarily in public perception. Accordingly, the charge is divided into two parts, one relating to the mitigation question and the other to the longer term issue of general wildlife habitat protection.

The group will be co-led by Mr. R. J. Bruning, Interior Secretary's Field Representative, Denver, Colorado, and Ms. Nancy Rockwell, Natural Resources Coordinator, Governor's Office, Bismarck, North Dakota. This will be a major undertaking and, as such, will require staff support. Staff will be provided by the Fish and Wildlife Service and the State of North Dakota; the co-leaders are encouraged to involve key Fish and Wildlife Service, Water and Power Resources Service, and State personnel in these activities and to turn to the Assistant Secretary for Fish and Wildlife and Parks or the Director, Fish and Wildlife Service, if additional skills or assistance are required.

II. MITIGATION

The fundamental charge here is to explore the possibilities and means of resolving continuing problems of mitigating fish and wildlife habitat losses attributable to the Garrison Diversion Project. In considering any approach, the group should keep in mind that mitigation is intended to offset habitat loss resulting from the project. Lost habitat may be replaced or existing habitat can be intensively managed to increase productivity to a degree that affects the habitat loss. (It should be noted, however, that even with intensive management it is oft times difficult to achieve waterfowl production yields sufficient to fully offset losses.

The group should look at approaches including, but not limited to, the following:

- \* Possible use of appropriate habitat on lands already purchased or acquired for project purposes but which may not be used for those purposes. Mitigation credit could be obtained by making such suitable tracts available to the Fish and Wildlife Service to be managed as part of the National Wildlife Refuge System.
- \* Explore ways in which Water and Power Resources Service/Project Sponsor funds can be coordinated with Fish and Wildlife Service funds to effect the purchase of small wetland units. For example, funds provided by WPRS/Sponsors could be used for associated uplands, FWS funds for the wetland proper. One result would be a marked extension of the effective use of FWS funds.
- \* Outline an effective public relations approach to support and explain the recommended mitigation approaches.

### III. LONG-RANGE PROTECTION AND PRESERVATION PLANNING

The long-range objective of protecting and preserving migratory bird (and other wildlife) production habitat associated with the unique wetlands area of North Dakota is one that is shared by federal and state officials. This objective is also supported by people throughout the Nation since the benefits of the preservation of these areas are realized by people of virtually every State and, indeed, of several foreign countries. The importance given this objective is reflected in the fact that protection of these areas is of highest priority in the use of FWS funds.

The goal is to maintain and enhance wildlife productivity to the greatest degree possible, using the purchase of fee and easements interests in lands as one of the tools to obtain that end. Such an effort can and should be a cooperative and coordinated one, perhaps involving several levels of government. The object is the long-term protection of these valuable habitat areas for future generations. The method or means of protection is less important than is the assurance of protection into the future.

With this in mind, the group is to examine:

- \* Long-range plans of the Fish and Wildlife Service.
- \* Long-range plans of the North Dakota Game and Fish Department.
- \* Trends and probable futures of land uses in North Dakota.
- \* Any other information likely to have a bearing upon the amount and location of habitat to be protected.

With this kind of information as a background, the group should develop a general plan for habitat preservation, based upon an integrated effort by the Federal Government and State agencies. Possible approaches include the following:

- \* Purchase of interests in land. (Emphasis should be given to the use of easements or other binding assurances for the protection of identified habitat.)
- \* Control of drainage of wetlands and the providing of alternatives to drainage.
- \* Variations on the idea of easements (including zoning and other local ordinances) that will assure long-term protection of unaltered habitat.

The group should also provide an assessment of practical goals (acres) that might be established, given the background information developed in the review.

The group should also identify constraints (real or perceived) that will affect the success of any effort (i.e., weed control, loss of tax revenue, hay management in drought periods, etc.).

Finally, the group should present a general plan for coordinated Federal and State public information programs associated with the long-range plan.

IV. SCHEDULING

This two-part effort will be undertaken with two deadlines in mind:

- \* Mitigation Review: report and recommendations due to Assistant Secretary for Fish and Wildlife and Parks and the Governor: October 1, 1980.
- \* Long-Range Review: a progress report will be due October 31, 1980; a final report and recommendations will be submitted by December 31, 1980.

This report was prepared by the North Dakota State University

\_\_\_\_\_  
Governor of North Dakota

\_\_\_\_\_  
Assistant Secretary for Fish and Wildlife and Parks

# SWC NORTH DAKOTA STATE WATER COMMISSION

APPENDIX "H"

900 east boulevard  
701-224-2753

Bismarck 58505  
north dakota

MEMO TO: Allen I. Olson, Attorney General  
THROUGH: Vern Fahy, State Engineer  
Gary Helgeson, Deputy Attorney General  
FROM: Michael Dwyer, Special Assistant Attorney General  
RE: Oahe Conservancy Subdistrict vs. Clifford L. Alexander  
F Supp. \_\_\_\_\_, (D.S.D. 1980)  
SWC Project File #'s 832 & 690  
DATE: August 11, 1980

This is to advise concerning the result of the above-captioned case. By status report dated July 9, 1980, I indicated that I expected Judge Porter to issue his Memorandum Opinion in the case in August or September. The opinion was issued on July 25, 1980, a copy of which is attached. The case summary of the Memorandum Opinion succinctly sets forth the ruling of the Court:

Plaintiffs brought this action for injunctive and declaratory relief relating to defendants' operation of the Jamestown and Pipestem dams in North Dakota. Plaintiffs' motion for preliminary injunction was denied by the Court in Oahe Conservancy Sub-District v. Alexander, 452 F. Supp. 714 (D.S.D. 1978). The action was tried on the merits June 9, 10 and 11, 1980. The Court now concludes that it must reject plaintiffs' claim that defendants have in any way operated the dams in violation of law. The Court also overrules plaintiffs' contention that the current regulations for the dams were adopted contrary to the requirements of the Administrative Procedure Act, or that defendants have violated their own regulations. The Court determines, however, that defendants have violated 33 U.S.C. §709 in failing to publish general regulations for the Pipestem Dam, and in that respect only, judgment will be entered for plaintiffs. [Emphasis Added]

The underlined sentence of the case summary represents the most important and significant aspect of this case to North Dakota. Throughout the litigation, North Dakota's position has been that the foremost consideration and intent of Congress for both the Jamestown and Pipestem Dams was flood protection for the city of Jamestown and the immediate area downstream. The Corps has clearly operated the two projects for flood control

GOVERNOR ARTHUR A. LINK  
Chairman

ALVIN A. KRAMER  
Minot

ARTHUR J. LANZ  
Devils Lake

MYRON JUST, EX-OFFICIO MEMBER  
Comm. of Agriculture

RICHARD P. GALLAGHER  
Vice Chairman-Mandan

GORDON K. GRAY  
Valley City

ARLENE WILHELM  
Dickinson

VERNON FAHY  
Secretary & State Engineer

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August 11, 1980  
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purposes in that manner,<sup>1</sup> and thus the Court's ruling that "it must reject Plaintiffs' claims that Defendants [Corps] have in any way operated the dams [Jamestown and Pipestem] in violation of law" represents an affirmation of North Dakota's position.

While I am pleased with the conclusion of the Court, I am not completely satisfied with the Opinion since it appears to disregard one of the primary arguments supporting the Court's conclusion. The Court properly addresses the factual circumstances surrounding the case and relies on this factual assessment as one of the basic reasons for its conclusion that the two projects have been lawfully operated. The Court states:

...Even after the spring and summer season, evacuation of the dams must continue at a relatively high rate, if necessary, before the onset of winter, when ice could severely restrict channel capacity. Otherwise, the Manuals indicate, the flood control pools in the dams would not be ready to receive runoff from the "wet" season the following year. The natural effect of this, in some years, is to continue relatively high flows in the James River beyond the time that the river would normally be high, while the Corps seeks to evacuate enough space in the dams to avoid the risks of overtopping. Defendants concede that some years such operating procedure is a contributing factor to the high flows which appear to cause the damage of which plaintiffs complain. But it is also clear that some years the flows in the James River in South Dakota have very little relation to discharges from the dams.

In 1978, for example, defendants' evidence showed that discharges from the dams never exceeded 150 cfs. Yet, at Columbia, Brown County, South Dakota, near the state boundary, the flow at one point became 1200 cfs, and later was 600 cfs. In Ashton, Spink County, South Dakota, further south, there was also a much greater volume of water than there was at any time directly beneath the dams.

This data is indicative of the difficulties defendants have in planning for South Dakota's benefit. It is approximately one hundred twenty river miles from the dams to the state line, and about two hundred river miles more to Ashton, South

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<sup>1</sup>Memorandum Opinion, Page 8:

"The method of operation of the dams is set forth in two Reservoir Regulation Manuals, one for each dam, with the precise releases recorded in terse Reservoir Regulation Orders, which normally contain a brief one or two line explanation of the action taken. All parties also offered the testimony of certain of defendants' [Corps of Engineers] employees to supplement this record.

From this evidence it is obvious that defendants do indeed operate the dams first and foremost for the area immediately below the dam, the city of Jamestown.

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Dakota. As the James River nears South Dakota, the slope of the river becomes very shallow, and travel time becomes slow. Normally, it appears that it may take from two to three weeks for water to reach Columbia from Jamestown, and from four to seven weeks for water to travel from Jamestown to Ashton, though the time is apparently somewhat speeded when the river is in flood stage. In addition, there are wildlife refuges in the river between Jamestown and northern South Dakota which tend to retard the flow, particularly during times of high flows. There are also natural and man-made obstructions in the river which have the effect of slowing the river's speed. The two dams together control only about 33-40% of the drainage basin above Columbia, and just 26% of the basin above Ashton; thus, as the discussion of the 1978 flows above indicates, there are many sources of water which affect the flow in South Dakota over which the dams have no control.

All this taken together tends to support defendants' assertion that their ability to operate the dams for plaintiffs' benefit is rather limited. Certainly, nothing in the record convincingly refutes the statement of Richard Behrens, the overseer of the two dams, made at the hearing on plaintiffs' application for a preliminary injunction in this matter:

The closer you are below a dam, the more you can expect from it, flood control-wise. The farther away you get from a dam, the less you can expect from it. If you're two or three or four days away from a dam, or one day or a few hours, you can expect something from it, but when you're three weeks or a month away, you can't expect much from it, and this is the case here.

The Court goes on to conclude that:

This Court cannot accept an argument that the dams were built solely for the city of Jamestown and the land along the river just to the North Dakota state line. It is clear, however, that the city of Jamestown has to be considered the primary beneficiary of the dams, if for no other reason than that Congress authorized construction of the dams immediately upstream from the city. Thus, it can hardly be arbitrary, capricious, or an abuse of discretion for defendants to design their plans primarily for the areas they have the best ability to benefit, rather than areas at a distance, where the benefits would be uncertain. [Emphasis Added]

Unfortunately, the factual evidence of the case appears to be the only basis on which the Court concludes that the Corps has not operated the

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dams in violation of law. An equally important reason, if not more important, which the Court should have included as a reason supporting its opinion is the legislative history and Congressional authorization of the Jamestown and Pipestem Dams. A review of documents, hearing records, and statements before Congress when the two projects were authorized clearly indicates that the foremost consideration and intent of Congress for both projects was flood protection for the city of Jamestown and the immediate area downstream. For example, on page 10756, in the July 19, 1950 Congressional Record, the following discussion took place regarding the intent of the Senate for construction of the Jamestown Dam:

Mr. HAYDEN. Mr. President, I had promised to yield for a moment to the Senator's colleague, the junior Senator from North Dakota [Mr. Young], to permit him to discuss a matter relating to this portion of the bill.

Therefore, I now yield to the junior Senator from North Dakota.

Mr. YOUNG. Mr. President, in the report of the Committee on Appropriations on the general appropriation bill, 1951, the following appears on page 150:

JAMESTOWN UNIT, MISSOURI-SOURIS DIVISION,  
MONTANA-SOUTH DAKOTA

The 1951 budget estimate for this project under phase B (planning) is \$105,000. In view of the recent devastating floods in this area, the committee recommends that construction work on the Jamestown project be started at the earliest possible date. The committee, therefore, has approved the transfer of this project from phase B to phase A (construction) and recommends that the appropriation be increased from the House allowance of \$105,000 to a total of \$750,000.

Mr. President, I should like to make a statement to the chairman of the subcommittee dealing with Interior Department appropriations and I wish to ask whether he agrees with it:

In order that the record may be clear as to the intent of the Senate, it is my understanding that the Bureau of Reclamation is to proceed at the earliest possible date to construct the Jamestown Dam for flood protection and, because of the urgency of providing this protection for life and property in the city of Jamestown,... [Emphasis Added]

MR. HAYDEN. Mr. President, my answer to the question is yes, because the committee held very careful and extensive hearings on this question. The situation is desperate, and requires prompt action; and the only manner in which it can be properly handled is by means of the action proposed by the Senate committee.

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Mr. YOUNG. I thank the distinguished Senator.

The legislative authorization for the Pipestem Dam is more convincingly clear in establishing flood control for Jamestown and the immediate area downstream as the primary purpose.

In any event, regardless of the Court's failure to include Congressional intent and authorization as part of the basis for its opinion, the result of the litigation is very significant and important to North Dakota and its citizens along the James River, especially Jamestown.

Those portions of the lawsuit dealing with the APA and promulgation of regulations are procedural and should result in no substantive change in operation of the Jamestown and Pipestem Dams.

If you have any further questions on this matter, please let me know.



Michael Dwyer  
Special Assistant Attorney General

MD:pw  
Incl.: as  
cc: Murray Sagsveen  
Darrell Krull  
Georgia Pope  
Steve Hoetzer





# NORTH DAKOTA

APPENDIX "I"

## STATE WATER COMMISSION

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north dakota

MEMO TO: State Water Commission  
FROM: Vern Fahy, State Engineer  
RE: Water & Related Land Resource Planning  
SWC Project File #322  
DATE: August 20, 1980

This is to discuss the authority and responsibility of the State Water Commission regarding statewide planning activities for water and related land resources. In 1965, the North Dakota Legislative Assembly expressed its state water resources policy. It is contained in §61-01-26, and provides in part:

61-01-26. DECLARATION OF STATE WATER RESOURCES POLICY.—In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management and wise utilization of all of the water and related land resources of the state;
- \* \* \*
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution and periodic updating of comprehensive, coordinated, and well-balanced short- and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor;

The Legislature clearly expressed the need for "comprehensive, coordinated and well-balanced short- and long-term plans and programs" for water resources, by "the departments and agencies of the state having responsibilities therefor".

Through the creation of the office of State Engineer in 1905, and the creation of the State Water Commission in 1937, and numerous amendments subsequent to the creation of these two agencies, the Legislature has designated responsibility for the "optimum protection, management, and

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Secretary & State Engineer

wise utilization of all the water and related land resources of the state" with the State Water Commission and the State Engineer. For example, §61-02-01 of the North Dakota Century Code provides:

61-02-01. WATER CONSERVATION, FLOOD CONTROL, AND ABATEMENT OF STREAM POLLUTION DECLARED A PUBLIC PURPOSE.—It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation and control of waters in this state, public or private, navigable or unnavigable, surface or subsurface, the control of floods, and the regulation and prevention of water pollution, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water conservation commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

Under the powers and duties of the State Water Commission, the Legislature has included the following provisions:

61-02-14. POWERS AND DUTIES OF THE COMMISSION.—The commission shall have full and complete power, authority, and general jurisdiction:

1. To investigate, plan, regulate, undertake, construct, establish, maintain, control, operate, and supervise all works, dams, and projects, public and private, which in its judgment may be necessary or advisable:  
\* \* \*
2. To define, declare, and establish rules and regulations:  
\* \* \*
  - b. For the full and complete supervision, regulation, and control of the water supplies within the state;

To insure that no question could be raised regarding the authority of the State Water Commission to undertake statewide water and related land resource planning, the Legislature also enacted §61-02-28, which provides in part:

61-02-28. PLANS, INVESTIGATIONS, AND SURVEYS CONCERNING USE OF WATERS - SPECIAL POWERS OF COMMISSION.—The commission may make plans, investigations and surveys concerning the use of any and all waters, either within or without this state, for purposes of establishing, maintaining, operating, controlling, and regulating systems or irrigation, municipal, industrial,

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recreational, and fish and wildlife works and projects in connection therewith within the state...

Finally, the Legislature specifically required the State Engineer to undertake certain activities which are a necessary part of any planning effort. Section 61-03-15 of the North Dakota Century Code provides, in part:

61-03-15. HYDROGRAPHIC SURVEYS AND INVESTIGATIONS MADE BY STATE ENGINEER - CO-OPERATING WITH FEDERAL AGENCIES.—The state engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and shall obtain and record all available data for the determination, development, and adjudication of the water supply of the state...

The North Dakota Supreme Court addressed the question of the responsibilities of the State Water Commission and the State Engineer to prepare comprehensive short- and long-term plans for the conservation and development of the state's water resources. The United Plainsmen brought suit against the State Water Commission and the State Engineer, contending that paragraph 4 of §61-01-26 (which is quoted above) mandates preparation of such comprehensive plans prior to issuance of water permits for energy projects. The Supreme Court disagreed, but not totally. The Court stated:

The foregoing, however, does not relieve the Commission and State Engineer of mandatory planning responsibilities...and we note that counsel for the Commission emphasized in his argument that the State Engineer and the Commission do have plans and do not reject the concept of prior planning. We agree with the United Plainsmen that the discretionary authority of state officials to allocate vital state resources is not without limit but is circumscribed by what has been called the Public Trust Doctrine.

\* \* \*

[6] The Commission, the State Engineer, and the lower court, while acknowledging the existence of this doctrine in North Dakota, interpret it in a narrow sense, limiting its applicability to conveyances of real property. We do not understand the doctrine to be so restricted. The State holds the navigable waters, as well as the lands beneath them, in trust for the public. North Dakota's Constitution, Article XVII, §210, states:

"All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes."

Section 61-01-01, NDCC, further defines the public waters of this State:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; and
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground waters; and
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is hereby defined to be any area which does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency oftener than once in three years over the latest thirty year period;

belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use, shall be acquired pursuant to the provisions of chapter 61-04."

The Court went on to discuss the requirements for water permits, and then concluded:

These statutes provide a means by which those who seek use of public waters can petition the State Engineer for water permits. In the performance of this duty of resource allocation consistent with the public interest, the Public Trust Doctrine requires, at a minimum, a determination of the potential effect of the allocation of water on the present water supply and future water needs of this State. This necessarily involves planning responsibility. The development and implementation of some short- and long-term planning capability is essential to effective allocation of resources "without detriment to the public interest in the lands and waters remaining." [Emphasis Added]

We believe that §61-01-01, NDCC, expresses the Public Trust Doctrine.

The public trust concept has been acknowledged throughout the country in varying forms. Without using those specific terms, this court said, in Baeth v. Hoisveen, 157 N.W.2d 728, 733 (N.D.1968):

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"North Dakota is, in part, a semi-arid State. Therefore, concern for the general welfare could well require that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable method of use of water be prevented, and that the conservation of such water be exercised with a view to the reasonable and beneficial use thereof in the interests of the people and the public welfare. We feel that the foregoing factors formed the basis for the legislative enactment of Section 61-01-01, N.D.C.C."

In light of the foregoing discussion, including both statutory provisions and judicial determination of those statutes, it is without question the responsibility of the State Water Commission and the State Engineer to conduct, prepare, and implement "comprehensive, coordinated and well-balanced short- and long-term plans and programs for the conservation and development of [water] resources".

Vern Fahy  
State Engineer

VF:MD:pw