

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

September 28, 1983

The North Dakota State Water Commission held a special meeting in the Lower Level Conference Room of the State Office Building, Bismarck, North Dakota, on September 28, 1983, for the purpose of continuing the discussion of the location of the Southwest Pipeline Project intake and pipeline facilities. Governor-Chairman, Allen I. Olson, called the meeting to order at 11:00 a.m., and requested Secretary, Vernon Fahy, to present the agenda.

MEMBERS PRESENT:

Allen I. Olson, Governor-Chairman
Kent Jones, Commissioner, Department of Agriculture, Bismarck
Florenz Bjornson, Member from West Fargo
Ray Hutton, Member from Oslo, Minnesota
Alvin Kramer, Member from Minot
Guy Larson, Member from Bismarck
Henry Schank, Member from Dickinson
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBERS ABSENT:

Garvin Jacobson, Member from Alexander
Bernard Vculek, Member from Crete

OTHERS PRESENT:

State Water Commission Staff
Approximately 25 persons interested in agenda items

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

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

CONTINUED DISCUSSION OF
LOCATION OF INTAKE AND
PIPELINE FACILITIES FOR
SOUTHWEST PIPELINE PROJECT
(SWC Project No. 1736)

and pipeline facilities for the Southwest Pipeline Project.

Governor Olson explained that the purpose of this special meeting of the State Water Commission has been called to continue the discussions, and make a decision, on the location of the intake structure

Secretary Fahy stated that at the Commission's September 20, 1983 meeting, the State Engineer was delegated the authority and the directive to make a decision on the proposal to locate the intake structure and pipeline on the Fort Berthold Indian Reservation. The State Engineer's decision would be determined following a meeting on September 23, 1983 in Washington, DC between the U.S. Department of the Interior and the Three Affiliated Tribes, and State Water Commission representatives participating in the meeting in a facilitating capacity. The following three conditions were to be discussed at this meeting and had to be met in order for the State Water Commission to even consider locating the intake structure for the project within the exterior boundaries of the Reservation: 1) an agreement executed among the Three Affiliated Tribes, the State of North Dakota, and the United States Department of the Interior, that would include an agreement by the Three Affiliated Tribes not to exercise any authority or power over the Southwest Pipeline Project, relating to water rights, fees and taxes, and other issues, to ensure that the total control of the Southwest Pipeline Project would be under the State Water Commission and would be designed to protect the stability and dependability of the project; 2) an Opinion from the Solicitor of the Department of the Interior, Solicitor William Coldiron, stating that the agreement is valid and does not violate the trust responsibilities of the Secretary of the Interior; and 3) a Solicitor's Opinion on the legality of the right-of-way conveyance process and authority for those conveyances for the Southwest Pipeline Project.

The State Engineer was further directed by the Commission that if the three conditions as specifically stated were in any way amended as a result of the September 23, 1983 meeting in Washington, DC, that he may request, through its Chairman, calling a special State Water Commission meeting.

Secretary Fahy indicated that the meeting was held in Washington, DC on September 23, 1983, and Michael Dwyer and Ronald Hodge, Attorneys, represented the State Water Commission at the meeting. Based on discussions with Mr. Dwyer and Mr. Hodge following the meeting, Secretary Fahy said a number of amendments to the conditions have surfaced, and as a matter of fact, are out of the realm of engineering considerations at this time and the matter becomes a legal and financial problem. For this reason, Secretary Fahy felt that the State Water Commission should be a part of the final decision, and thus warranted the necessity for a special meeting.

Mr. Joe Cichy, Assistant Attorney General for the State Water Commission, presented the attached memorandum to provide information to the Commission members to assist in making their decision. Memo is attached hereto as APPENDIX "A".

In conclusion, Mr. Cichy indicated that the State Water Commission had established certain conditions that were to be met prior to the consummation of an agreement between the Three Affiliated Tribes, the United States Department of the Interior, and the State of North Dakota. He said the agreement had to be legally enforceable against the United States as well as the Tribes - it is not enforceable against the United States. The Tribes also had to relinquish its regulatory authority, and it appears that it cannot do that for a period of

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time sufficient to protect the State's interests. Mr. Cichy said that "if the State's interests in the project are not protected, the project cannot engender any investor confidence. Therefore, based on the fact that the State Water Commission does not have the assurances it needed to protect the State's interest and that the marketability of bonds, under these conditions, may be impossible, it is my recommendation that no portion of the Southwest Pipeline Project be constructed within the exterior boundaries of the Fort Berthold Indian Reservation."

Commissioner Larson questioned if the State Water Commission could provide the legal enforcement of the contract if the Tribes wanted to be a part of the pipeline and the service of the pipeline even though the State does not enter into the proposed agreement to locate the intake structure and pipeline on the reservation.

Secretary Fahy responded that in discussions some time ago with the Tribe's attorney and hydrologic engineer, they indicated they were not interested in utilizing the pipeline for water service, but they were only interested in the improvement of the finances on the Reservation. Secretary Fahy said, however, it has always been the plan and it has been clearly stated to the Tribes that we will include, and have included in the capacity of the pipeline, sufficient water to provide for the needs on the southern segment of the Reservation within reasonable growth demands.

Relative to Commissioner Larson's concern of contractual enforcement, Mike Dwyer responded that if the Tribes decided they wanted to receive water service from the pipeline, the State would enter into a water service contract with the Tribes similar to the contracts that were entered into by the cities for this type of service.

Ms. Alyce Spotted Bear, Tribal Chairman for the Three Affiliated Tribes, stated that the necessary assurances have been received relative to the three conditions. She pointed out to the Commission members the fact there are already two existing oil and gas pipelines on the Reservation and that the pipelines have been in existence for more than 25 years with no problems.

Mr. Ray Cross, Attorney for the Three Affiliated Tribes, reiterated that at the September 20, 1983 Commission meeting, the Commission asked the Tribes to work with the United States Government to meet the following three conditions: 1) an agreement executed by the Three Affiliated Tribes, the U.S. Department of the Interior, and the State of North Dakota; 2) a Solicitor's Opinion from the Department of the Interior stating that the agreement was valid and does not violate the trust responsibilities of the Secretary of the Interior; and 3) a Solicitor's Opinion on the legality of the right-of-way conveyance process and authority for those conveyances for the Southwest Pipeline Project.

Mr. Cross said that a meeting was held on September 23, 1983 with representatives from the policy side of the U.S. Department of the Interior, the Assistant Secretary for Indian Affairs, and also with an assistant Solicitor. Mr. Cross referred to a letter to Governor Olson, dated September 23, 1983, signed by Mr. William

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H. Coldiron, Solicitor, addressing the three conditions. The letter is attached hereto as APPENDIX "B". Mr. Cross referred specifically to the section of the letter which states: "The Assistant Secretary's authority has been further delegated to the various Bureau of Indian Affairs field offices. I am advised, however, that because of the size and importance of the Southwest Pipeline Project to both the State of North Dakota and the Three Affiliated Tribes, both parties have requested that the contract be approved in Washington by the Office of the Assistant Secretary. The Assistant Secretary and Deputy Assistant Secretary -- Indian Affairs clearly have the authority to approve the contract in question, and such approval will render the contract binding on the two parties. Further, the contract specifically waives the Tribes' sovereign immunity from suit for the purpose of enforcing the agreement. We believe such waiver is effective under existing law, Merrion v. Jicarilla Tribe, 617 F.2d 537 (10th Cir. 1980) affirmed, 455 U.S. 130 (1982) and will make the tribe amenable to suit in order for the State to seek specific enforcement or damages under the contract."

Mr. Ronald Hodge stated that the Solicitor's Opinion does in fact direct itself to an approval of this agreement between the Three Affiliated Tribes and the State of North Dakota to be entered into. The problem the attorneys see legally is that the trustee in its official statutory capacity as trustee is not binding himself in any way to this agreement. Mr. Hodge also said that the trustee would have the right in the future to come back and challenge the authenticity, or the legality of this agreement as trustee. With that, Mr. Hodge said it is very difficult to tell the Bond Counsel or to tell the people involved in the financing of this project, that this is a clear unequivocal legally binding agreement because as long as the trustee has that capability, it is the legal opinion that we do not have a total agreement.

Mr. Duane Breitling, representing the Bond Counsel, indicated that there is absolutely no question that Bond Counsel, and even more so the underwriters, are required to approach projects of this nature, or of any significant nature, very conservatively. He noted that the testimony heard today are opinions from two different points of view expressed rather eloquently and are the types of opinions and the types of situations that generate lawsuits. He said we cannot live with and maintain integrity with the bond issue with those types of differences of opinion and are the very things that have to be avoided.

Mr. Breitling stressed that it is absolutely essential that the three basic criteria be met so that Bond Counsel has an appropriate foundation on which to build this project. The fact that the United States Government, through the Department of the Interior, has indicated either they have no authority to, or that they have an unwillingness to bind themselves as the trustee rather than simply lend their stamp of approval through a proposed contract between the Tribes and the State is a serious issue which cannot be avoided.

In addition to this, Mr. Breitling said there are other items within the contract which cause some concerns. There is an indication that two of the areas in which ordinances can be adopted would be precluded from being adopted; however, as far as other

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ordinances are concerned it could cause problems in the future for projects of this nature. He noted that the Solicitor's Opinion did not address them. The contract says simply that the Department of the Interior won't allow that to happen without their approval. It doesn't say they won't approve something inconsistent with the terms of the contract.

Mr. Breitling said the Solicitor's Opinion in this case is very similar to an Attorney General's Opinion, and history in North Dakota has proven itself that several court decisions are inconsistent with prior written Attorney General's Opinions. He said that very same problem exists here - we are in jeopardy to a subsequent judicial determination inconsistent with that opinion and the opinion does not provide the necessary assurances that Bond Counsel feels are absolutely essential for the foundation for this project.

Secretary Fahy indicated that the necessary field work is already several weeks behind schedule, and that a decision must be made at this meeting relative to the location of the intake structure and pipeline so that a Notice to Proceed can be issued to the engineers to begin their field work no later than September 29, 1983.

Mr. Ray Cross indicated several times throughout the discussion that the Tribes feel the necessary assurances have been met as required by the State Water Commission to consider locating the intake structure and pipeline on the Indian Reservation. Mr. Cross went on record stating they have the participation of the United States as trustee which is evidenced by the signature of the Acting Assistant Secretary for Indian Affairs. Also, they have the legal opinion saying that the contract is binding. Mr. Cross indicated that basically what he is hearing from the State Water Commission lawyers and Bond Counsel is that they have fears that if this would end up in court that some sections would not be enforceable. He requested to be informed what other assurances the State wants from the Tribes.

Governor Olson specifically indicated that the State is not suggesting that the Tribes have not done everything in their power to make this agreement work, but what is lacking is the trustee's participation. He said the State is very appreciative of everything the Tribes have done, but it is essential that a decision, based on the Bond Counsel and the attorneys advice must be made today in order to keep the project on schedule and to allow the engineers to get their essential field work completed before freeze up. He said if an alternate location for the intake structure and pipeline is selected, it will be with great reluctance because of the construction costs savings that could be involved by locating the intake and pipeline over the tribal land.

In discussion of financing for the project, Governor Olson asked the Tribes that if they are so confident can they guarantee this agreement is sufficient to meet the conditions established by the State and would the Tribes be willing to stand ready to indemnify the State of North Dakota from any loss that would occur if the bonds cannot be marketed for the project because this agreement is

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insufficient? He said if the Tribes could provide these assurances in some binding form that the Tribes would share with the State of North Dakota any financial risk as we move forward, he felt the Commission would be willing to consider this.

Mr. Cross indicated that he would have to confer with the Tribal Chairman, but noted he felt this condition would not be realistic, and furthermore, it had not been a condition of previous negotiations.

Secretary Fahy noted that he has received calls from Tribal Council members and from the Office of the Fort Berthold Landowners Association expressing objections to locating the intake structure and pipeline facilities on the Indian Reservation.

It was moved by Commission Schank and seconded by Commissioner Bjornson that the State Water Commission approve engineering of the final design with the Renner Bay area as the location for the intake structure for the Southwest Pipeline Project.

In discussion of the motion, Commissioner Kramer suggested, and was concurred to by the Commission members, that the Commission will act accordingly if a response is received from the Tribes relative to sharing a financial risk with the State.

All members voted aye on the motion; motion declared unanimously passed.

RED RIVER VALLEY
INTERNATIONAL WATER
SUMMIT CONFERENCE

At the Commission's May 19, 1983 meeting, a presentation was made by Mr. David Harrison relative to a Red River Valley International Conference which is scheduled for December 8 and 9, 1983 in Grand Forks. Commissioner Hutton briefly discussed specifics of the Conference, and noted that Mr. Harrison has been working with Mayors in the Red River Valley to set up the Conference which he hopes will ultimately lead to a change in the way River Basin Commissions are managed.

The State Water Commission directed the State Engineer and staff to participate in the Conference to provide information and technical involvement only on the agency's current activities.

It was moved by Commissioner Kramer, seconded by Commissioner Hutton, and unanimously carried, that the meeting adjourn at 12:00 noon.

ATTEST:


Vernon Fahy
State Engineer and Secretary


Allen I. Olson
Governor-Chairman

September 28, 1983

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE September 28, 1983 PLACE Bismarck, N.Dak.

PROJECT NO. _____

| Your Name | Your Address | Who do you Represent? (Or Occupation) |
|--------------------|--------------|--|
| Jim Eastgate | Bismarck | Burleigh County WRD |
| LeRoy Klapprodt | Bismarck | SWC |
| Larry Knudtson | Bismarck | SWC |
| JEFF KLEIN | " | " |
| Titus Marks | Newtown | B.I.D. Ft. Berthold Agency |
| LEO BROCKIE JR. | Newtown | BIA SUPT. FT BERTHOLD AGENCY |
| Rich Schilf | Newtown | Three Affiliated Tribes |
| Dean Havens | Bismarck | U.A. Local 795 |
| Harold J. Flom | Bismarck | I.U.O.E. Local 49 |
| Raymond Helseth | MINOT | I.U.O.E. Local 49 |
| Fletcher H. Poling | Bismarck | Basin Electric Power Cooperative |
| Lorisa Flom | Bismarck | Indian Affairs Commission |
| John Jackson - Jun | Newtown | TAT Legal Dept. |
| Jim Marsden | Bismarck | N.D. Farm Bureau |
| Donny Johnson | Bis | Don Office |

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT SWC Meeting

DATE Sept. 28, 1983 PLACE _____

PROJECT NO. _____

| Your Name | Your Address | Who do you Represent? (Or Occupation) |
|-------------------------------|------------------------|--|
| <u>David A. Sprynitzynsky</u> | <u>Bismarck</u> | <u>STATE WATER COMMISSION</u> |
| <u>Robert E. Dorothy</u> | <u>Bismarck</u> | <u>" " "</u> |
| <u>JAMES RAGAN</u> | <u>Bismarck</u> | <u>ND GAME & FISH DEPT.</u> |
| <u>Arland Grunseth</u> | <u>Bismarck</u> | <u>State Water Commission</u> |
| <u>Bruce F. McCollom</u> | <u>"</u> | <u>Bartlett West / Boyle Engineering</u> |
| <u>Lucret. Breithing</u> | <u>West Fargo N.D.</u> | <u>Ohnstad LAW FIRM</u> |
| <u>Mike Porubsky</u> | <u>Bismarck</u> | <u>Associated Press</u> |
| <u>FJ Walker</u> | <u>Harwood N.D.</u> | <u>N.D. Rural Water Systems Assn</u> |
| <u>Tom Hammer</u> | <u>Bismarck</u> | <u>Consol Land Dev.</u> |
| <u>D. Anne Olson</u> | <u>Bis.</u> | <u>KBMA Radio</u> |
| <u>Joe Cud</u> | <u>Bis</u> | <u>SWC</u> |
| <u>Ron Hodge</u> | <u>Bis</u> | <u>SP A. G.</u> |
| <u>Mike Dwyer</u> | <u>Bis</u> | <u>SP A G</u> |
| <u>Mike Dwyer</u> | <u>Bismarck</u> | <u>U P I</u> |
| | | |



North Dakota State Water Commission

APPENDIX "A"

GOVERNOR ALLEN I. OLSON
CHAIRMAN

VERNON FAHY
SECRETARY & STATE ENGINEER

MEMO TO: Vern Fahy, State Engineer
FROM: Joseph J. Cichy, Assistant Attorney General
RE: Indian Intake Agreement - SWC Project #1736
DATE: September 27, 1983

This memo outlines the legal flaws that have surfaced in an attempt to negotiate an agreement to locate the SWPP intake within the exterior boundaries of the Fort Berthold Indian reservation. The final draft agreement, which was developed last Friday in Washington, D.C., is attached for your information. This final draft, put together by Tribal representatives, representatives of the Solicitor and Indian Affairs offices of the Department of Interior, and state representatives is as far as the Department of Interior will go concerning this agreement. Regardless of what North Dakota and the Three Tribes desire to do, the extent to which the Department is willing or capable of becoming involved in this matter is encompassed in the final draft.

Several revisions were made to the agreement that was presented to you on September 20th. These changes affect the long-term stability and enforceability of the contract. The following sections set out the modifications and their ramifications:

Parties

Since the United States Department of the Interior, by delegated authority of Congress, is the trustee over Indians and Indian Reservations, one of the conditions as established by the North Dakota State Water Commission was that the Department of Interior had to be a party to this agreement. In order to insure a binding commitment, it is our legal opinion that this agreement must include the trustee, Department of Interior, as a party. However, based upon our discussions with the Solicitor's office, the Department of Interior will not or cannot be a party to this agreement. Since the Department of Interior will not be a party, it is not legally bound by this agreement. Further, the State of North Dakota will have no contractual assurances that the United States will not institute legal proceedings against the State in its trust capacity, on behalf of the Indians, to effect the terms and conditions of the agreement.

Regulatory Authority

A basic condition established by the SWC for considering the reservation intake location was that the Three Tribes would agree not to exercise all power and authority it may have over the SWPP. The Tribe has inherent regulatory authority over transactions on its reservation. There are two ways a Tribe may relinquish this regulatory authority. First, by contractual agreement, a Tribal entity can convey or waive this authority. However, representatives of the Solicitor's office of the Department of the Interior have indicated that most of these provisions in this agreement providing for the waiver of Tribal power and authority would not be legally enforceable. Specifically, it appears that only the taxing and revenue generating authority could be waived. The waiver of other regulatory authority, including regulatory authority over water, may not be legally enforceable even though included in the agreement.

The second approach would be for the Three Tribes to adopt an ordinance exempting the SWPP from all tribal regulation in any form. As provided in the agreement, this ordinance could be repealed or amended by the Three Tribes only with the approval of the Secretary of the Interior.

This approach does not provide any long-term binding contractual commitment. If the Three Tribes decides to exercise regulatory authority over the SWPP, it could simply repeal or modify its ordinance, subject to the approval of the Secretary, and North Dakota's only recourse would be to attempt to convince the Secretary not to approve the change.

In summary, the Tribes have inherent regulatory authority on their reservation. This may be conveyed by contract or by ordinance. In each case, North Dakota is not given sufficient legal protection to justify placing a key component of a multi-million dollar project within the reservation boundaries.

Bonding

Based upon the recommendations of bond counsel that as a minimum the State of North Dakota must have all three conditions set forth on September 20 met, it is our legal opinion that these conditions cannot be met. Therefore, it would be extremely difficult if not impossible to obtain adequate bond ratings and to have assurances from the bond underwriters that the bonds could be marketed.

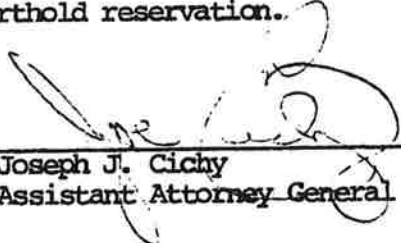
Conclusion

In conclusion, the SWC established certain conditions that had to be met prior to the consummation of this agreement. First, the

Memo to Vern Fahy
September 27, 1983
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agreement had to be legally enforceable against the United States as well as the Tribes. It is not enforceable against the United States. Second, the Tribes had to relinquish its regulatory authority. It appears that it cannot do that for a period of time sufficient to protect the State's interests. If the State's interests in the project are not protected, the project cannot engender any investor confidence.

Therefore, based on the fact that the SWC does not have the assurances it needed to protect the State's interest and that the marketability of bonds, under these conditions, may be impossible, it is my recommendation that no portion of the Southwest Pipeline be constructed within the exterior boundaries of the Forth Berthold reservation.



Joseph J. Cichy
Assistant Attorney General

JJC:sh



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

SEP 23 1983

Honorable Allen I. Olsen
Governor, State of North Dakota
State Capitol
Bismarck, North Dakota 58505

Dear Governor Olsen:

The Three Affiliated Tribes of the Fort Berthold Reservation have submitted for our review a copy of the proposed contract between the State of North Dakota and the Three Tribes for the location on the Fort Berthold Reservation of a portion of the Southwest Water Pipeline. Section X, paragraph 4 of the contract states that as a condition precedent to the execution of the contract, this office must issue an opinion on the validity of the contract. A material element of the contract is that the Tribes will take any steps necessary in order to have a right-of-way granted to the State for the pipeline. The State has also verbally requested that we address the legality of the procedures being used to convey the right-of-way to the State.

With respect to the first issue, the validity of the contract, 25 U.S.C. §81 requires that the Secretary must approve most contracts between third parties and Indian tribes in order for those contracts to be enforceable. In essence, Section 81 is a federal statute of frauds provision designed to protect tribes from overreaching by non-Indians. The Act was originally passed in 1871 and contains several provisions that have been amended or rendered nugatory by subsequent acts of Congress, e.g., the title of the Section and the first paragraph of it refer to the approval of contracts made by individual Indians "not citizens of the United States." While leases and other transactions involving trust lands entered into by individual Indians under statutes such as 25 U.S.C. §415 still require approval of the Secretary, general contract approval under Section 81 was eliminated by the Act of June 2, 1924, 43 Stat. 244, the act that made Indians citizens. Similarly, the Act requires that the Secretary and the Commissioner of Indian Affairs both approve the contract. All functions of the Commissioner were, however, vested in the Secretary pursuant to Reorganization Plan No. 3 of 1950, 64 Stat. 1262, copy enclosed. The heads of the various bureaus and agencies of the Department now exercise their authority through delegations of authority issued by the Secretary. The present delegation of authority from the Secretary to the Assistant

Secretary--Indian Affairs was issued on November 17, 1981, and is found at 209 DM 8.1, a copy of which is also enclosed. This delegation confers all of the authority of the Secretary on the Assistant Secretary except for the authority to correspond directly with the President and for the authority to perform legal work. The latter authority is vested in the Office of the Solicitor.

The Assistant Secretary's authority has been further delegated to the various Bureau of Indian Affairs field offices. I am advised, however, that because of the size and importance of the Southwest Pipeline Project to both the State of North Dakota and the Three Affiliated Tribes, both parties have requested that the contract be approved in Washington by the Office of the Assistant Secretary. The Assistant Secretary and Deputy Assistant Secretary--Indian Affairs clearly have the authority to approve the contract in question, and such approval will render the contract binding on the two parties. Further, the contract specifically waives the Tribes' sovereign immunity from suit for the purpose of enforcing the agreement. We believe such waiver is effective under existing law, Merrion v. Jicarilla Tribe, 617 F.2d 537 (10th Cir. 1980) affirmed, 455 U.S. 130 (1982) and will make the tribe amenable to suit in order for the State to seek specific enforcement or damages under the contract.

The second issue of concern to the State is the validity of the right-of-way it will acquire from the Tribes. Under the provisions of the proposed contract, the Tribes are responsible for securing a right-of-way from the individual Indian owners of land along the route of the pipeline. This right-of-way is then to be assigned to the State by the Tribes. Although neither the right-of-way statute, 25 U.S.C. §323 et seq., nor the regulations at 25 CFR Part 169 specifically mention the authority to assign a right-of-way, the Secretary's authority over the right-of-way process is quite broad and he has wide discretion in how to exercise his authority. Southern Pacific Transportation Company v. Watt, 700 F.2d 550 (9th Cir. 1983). A similar statute, 25 U.S.C. §415 which allows the leasing of Indian lands, also does not specifically authorize the assignment of a lease. Yet, the Secretary's regulations make provisions for such assignments. These regulations and the Secretary's authority to amend his regulations to authorize alternative procedures, have consistently been recognized and followed by the courts. Yavapai-Prescott Tribe v. Watt, 707 F.2d 1072 (9th Cir. 1983). In this instance, the regulations at 25 CFR 169.15 specifically authorize the

inclusion in the conveyancing instrument of any terms agreed to by the Indian landowners. Inasmuch as a material part of the right-of-way agreement between the Tribes and the individual landowners is a consent to the assignment of the right-of-way to the State, we have no doubt that such a provision is properly includable in the right-of-way conveyancing instrument and that the Tribes may reassign the right-of-way to the State of North Dakota.

The actual work on right-of-way applications and the granting of rights-of-way have been delegated to the BIA's field offices. The Fort Berthold Agency Superintendent has, pursuant to 10 BLAM 3, the authority to approve the right-of-way in question and is processing the right-of-way application from the individual allottees to the Tribes. Similarly, the Superintendent has the authority to issue a conveyance for that portion of the right-of-way that traverses tribal lands directly to the State.

In summary, the Secretary and those acting on his behalf pursuant to delegated authority, have the discretionary authority to approve the proposed contract and to grant the necessary right-of-way. Should the Assistant Secretary--Indian Affairs or his subordinates decide, after reviewing the various agreements, NEPA considerations, payment provisions, and other elements of the contract, to approve the contract and right-of-way, it is our opinion that the contract will be binding on the parties, the right-of-way will provide the necessary proprietary interest for the State to construct the pipeline, and the obligations and duties of the United States to the Tribes under applicable statutes and regulations will have been met.

Sincerely,


SOLICITOR

Enclosures

DEPARTMENT OF THE INTERIOR
DEPARTMENTAL MANUAL

Delegation

Part 209 Secretarial Officers

Chapter 8 Assistant Secretary - Indian Affairs

209 DM 8.1

8.1 Delegation. Subject to the limitations in 200 DM 1, the Assistant Secretary - Indian Affairs is authorized to exercise all of the authority of the Secretary including:

A. The authority to issue amendments of and additions to the material in the Code of Federal Regulations.

B. The authority delegated to the Secretary by Section 204(a) of Public Law 94-579 relating to the withdrawal or reservation of certain lands by the issuance of public land orders.

C. The administration of the oath of office or any oath required by law in connection with employment.

8.2 Authority to Redelegate.

A. Except where redelegation is prohibited by statute, Executive Order, or limitations established by other competent authority, the Assistant Secretary - Indian Affairs may redelegate general administrative authority and program authorities specifically related to the functions and responsibilities assigned to the Assistant Secretary - Indian Affairs in 109 DM 8. All redelegations of authority made by the Assistant Secretary - Indian Affairs will be in the form of a Departmental Manual release issued in strict compliance with the provisions of 200 DM 3. No other form of redelegation is authorized.

8.3 Authority of Deputy Assistant Secretaries.

A. In the absence of, or under conditions specified by, the Assistant Secretary - Indian Affairs, a Deputy Assistant Secretary - Indian Affairs may exercise the authority delegated in 209 DM 8.1, excluding 209 DM 8.1B.

B. Except as provided in 209 DM 8.3C, a Deputy Assistant Secretary - Indian Affairs may not redelegate authority conferred in 209 DM 8.3.

C. Except where redelegation is prohibited by statute, Executive Order, or limitations established by other competent authority and only when designated as the operational head of the Bureau of Indian Affairs, a Deputy Assistant Secretary - Indian Affairs may redelegate authority conferred in 209 DM 8.3A to officials within the Bureau of Indian Affairs. Redelegation made by such Deputy Assistant Secretary - Indian Affairs shall be issued in 10 BIAM and subsequently published in the Federal Register if necessary; no other form of redelegation is authorized. Provisions of 200 DM '3 which are inconsistent with this subparagraph shall not apply to redelegations made pursuant to this authority.

SEC. 6. *Incidental transfers.*—The Attorney General may from time to time effect such transfers within the Department of Justice of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

REORGANIZATION PLAN NO. 3 OF 1950

Transmitted March
13, 1950.
Effective May 24,
1950.
5 Stat. 202.
5 U. S. C., Sup. III,
§ 1335 note.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

DEPARTMENT OF THE INTERIOR

SECTION 1. *Transfer of functions to the Secretary.*—(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of the Interior all functions of all other officers of the Department of the Interior and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) in hearing examiners employed by the Department of the Interior, nor to the functions of the Virgin Islands Corporation or of its board of directors or officers.

SEC. 2. *Performance of functions of Secretary.*—The Secretary of the Interior may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Interior of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

SEC. 3. *Assistant Secretary of the Interior.*—There shall be in the Department of the Interior one additional Assistant Secretary of the Interior, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall perform such duties as the Secretary of the Interior shall prescribe, and who shall receive compensation at the rate prescribed by law for Assistant Secretaries of Executive departments.

SEC. 4. *Administrative Assistant Secretary.*—There shall be in the Department of the Interior an Administrative Assistant Secretary of the Interior, who shall be appointed, with the approval of the President, by the Secretary of the Interior under the classified civil service, who shall perform such duties as the Secretary of the Interior shall prescribe, and who shall receive compensation at the rate of \$14,000 per annum.

SEC. 5. *Incidental transfers.*—The Secretary of the Interior may from time to time effect such transfers within the Department of the Interior of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

5 U. S. C. § 1001
note: Sup. III, § 1001
et seq.

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission

DATE December 7, 1983 PLACE Dickinson, N.Dak.

PROJECT NO. _____

| Your Name | Your Address | Who do you Represent? (Or Occupation) |
|---------------------|----------------|--|
| Joe Cady | Bismarck | State Water Com. |
| Jay Ulken | Dickinson | Dickinson Press |
| Bruce F. McCollum | Bismarck | BW/BEC Engineers |
| Bob Dorothy | Bismarck | SWC |
| Mary Thompson | Page | |
| Robert S. Thompson | Page | Red River Joint W.R.D. |
| NORM CROSS | MILNOR, N DAK | RANSOM COUNTY W.R.D. |
| Clifford Issendorf | Kramer, N.DAK | Butterman County W.R.D. |
| Michael A. Linsch | BISMARCK | N.D. STATE WATER COMMISSION |
| Cary Backstrand | Bismarck | SWC |
| Alvan R. Beutling | West Fargo | TRI COUNTY JOINT BO. |
| Jeffrey Walk | West Fargo | Tri-County WRB |
| Jorgen Haugen | McLeod N. Dak. | Richland County W.R.D. |
| Aaron Heglin | Walcott, ND | Red River Joint B. |
| Beverly Stone | Barnes, N.D. | Richland County W.R.D. |

NORTH DAKOTA STATE WATER COMMISSION

R E G I S T E R

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

| Your Name | Your Address | Who do you Represent? (Or Occupation) |
|---------------------|---|--|
| B. Buck Tishler | Bowman N.D. | N.D. WX Mod Board |
| Joseph Harbick | Page N.D. | Maple RWRB |
| Henry Warner | Mapleton, N.D. | Maple RWRB |
| Clarem Duick | Davenport 3, Dak. | Maple RWRB |
| Joseph Sether | Fargo N.D. | North Cass W.R.B. |
| Ken Lohsteter | Mandan | Self |
| George Hardmeyer | Mott N. Dak. | Hettinger co. WRD |
| Frank H. Meyer | Mott, N Dak. | Hettinger Co WRD |
| PAT O'MEARA | 955 L'Enfant Plaza SW SUITE # 1202 WASHINGTON, DC 20024 | NATL WATER RESOURCES ASSN |
| DAN BERGE | NORTHWOOD N.D. | N.D. WX MOD. BOARD |
| Charles Rickett | New Rockford N.D. | Senior Developer |
| John Full | Dickinson N.D. | Southwest Dist Health Unit. |
| Gene Jackson | DICKINSON | Veigel Eng. |
| CARY Helgeson | RISMARK | N.D. Harshires |
| Raymond O. Skerhain | Milot | N.D. WX Mod. Board. |

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

| Your Name | Your Address | Who do you Represent? (Or Occupation) |
|-------------------|-----------------|--|
| Walter Judy | Minot, N. D. | N. D. Weather Board |
| Ruth Judy | Minot, No. Dak. | N. D. Weather Mod. |
| Juni B. Anderson | Minot, No. Dak. | N. D. Weather Mod. Board |
| Albert Mawggi | RADAR Base Rd. | KQCD-TV |
| Bruce Pir | Dickinson | City Engineer |
| - A. E. Bungarten | Dickinson | Mayor |
| Herbert Hinder | Taylor | Stark W. R. P. |
| Francis Schwindt | Bismarck | ND Health Dept |
| Richard Moun | " | Morton Co. W R D |
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