

MINUTES

North Dakota State Water Commission
Meeting Held At
Highway Department Auditorium
Bismarck, North Dakota

April 21 and 22, 1976

The North Dakota State Water Commission held a two-day meeting in the State Highway Department Auditorium, Bismarck, North Dakota, on April 21 and 22, 1976. Governor Link called the meeting to order at 9:30 a.m. on April 21 and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

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

OTHERS PRESENT:

State Water Commission Staff Members
Members of Committee to Save North Dakota
Members of West River Citizens Committee
Citizens from West River Area
Representatives of Natural Gas Pipeline Company of America
Representatives of Montana-Dakota Utilities Company
Representatives of Basin Electric Power Cooperative
Citizens from Dunn County
Representatives of Bureau of Reclamation
Alan Grindberg, Attorney, Bismarck
Richard Moun, Soil Conservation Service, Bismarck

Attendance Register is on file in the offices of the State Water Commission for the two-day meeting (filed in SWC Water Permit No. 2083)

Proceedings of meeting were tape recorded to assist in compilation of minutes.

**CONSIDERATION OF MINUTES
OF FEBRUARY 17, 1976 MEETING -
APPROVED**

Kramer, seconded by Commissioner Just, and carried, that the minutes be accepted and approved as prepared and distributed.

Secretary Fahy reviewed the minutes of the meeting held on February 17, 1976, in Fargo, North Dakota. Following discussion, it was moved by Commissioner

**APPEARANCE OF REPRESENTATIVES
OF COMMITTEE TO SAVE NORTH
DAKOTA TO DISCUSS GARRISON
DIVERSION PROJECT
(SWC Project No. 237)**

and formally expressed his concerns relative to the controversial problems of the project.

Before introducing representatives of the Committee to Save North Dakota who have requested an audience before the State Water Commission to discuss the Garrison Diversion Project, Governor Link personally welcomed the group

Governor Link invited Mr. L. Roger Johnson, Executive Director of the Committee to Save North Dakota, to present testimony to the Commission, and also invited any other citizens or interested persons to present statements or ask questions concerning the matter.

Mr. Johnson thanked the Commission for allowing the Committee to Save North Dakota to appear before the Commission. He presented a statement on behalf of the Committee to Save North Dakota, which is attached hereto and labeled as APPENDIX "A".

Upon completion of his testimony, Mr. Johnson requested the State Water Commission to consider a position before the U.S. Congressional Appropriations Committee of supporting continued appropriations for the Garrison Project in areas other than continued construction and land acquisition. He indicated the appropriations should be used to resolve problems presently plaguing the Garrison Project in the eight areas he discussed, with special emphasis on the following areas: 1) return flows and their effect on waters entering Canada, Minnesota and South Dakota; 2) the completion of the Environmental Impact Statements for the entire project, in keeping with the intent and the letter of the National Environmental Policy Act; and 3) the Bureau of Reclamation treatment of impacted landowners with special regard for the Federal Relocation Act.

Betty Nathan from Coleharbor, North Dakota, spoke on behalf of Mrs. Myrtle Hawley, Coleharbor. Mrs. Hawley's problem is discussed in APPENDIX "A" - page 2, area 1), attached.

Mike Axt, son of LaVern Axt, McClusky, North Dakota, presented testimony outlined in APPENDIX "A" - page 3, area 2).

George Baakoon from Coleharbor, North Dakota, stated that the Bureau of Reclamation did not notify him that they were going to flood his durum. In APPENDIX "A" - page 4, area 3) is a description of the flooding which occurred from Lake Audubon.

Ed Seidler from Coleharbor, also testified on area 3) stating that he lives on the east side of Lake Audubon. About six or seven years ago, test wells were drilled along the road and Mr. Seidler stated that this past winter one of the holes must have opened up flooding his hay slough, which normally produces 2000-2500 bales of hay. This slough has about six feet of water in it, so he had an engineer from

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Riverdale come and survey the area and found the road to be six feet lower than the water table. There is now 50-60 acres of land flooded.

Albert Klein from Turtle Lake also lives in the Lake Audubon area. He generally commented on the discussion presented in APPENDIX 'A', particularly stressing the flooding in the Lake Audubon area.

Gordon Stumvold from Coleharbor, stated that he owns a quarter of land across the road from Ed Seidler. In regard to the water that is coming up from the open test wells, the water is now running in the ditch on Mr. Stumvold's side of the road, through the culvert into his slough. He stated that if it keeps running and raises up to the level of the lake, it will back onto his land causing a loss of 40-50 acres, and Mr. Seidler will lose some more land.

Donald Evenson from Coleharbor, discussed the flooding of private lands and the raising of Lake Audubon water level.

Don Sondahl of Turtle Lake, indicated that he is a farmer who will be both benefitted and adversely affected by Garrison Diversion. He expressed his concern, and read some figures, relative to the effect Lake Audubon is having on aquifers in the area, namely the Lake Nettie aquifer. He recommended to the State Water Commission that the level of Lake Audubon be maintained at 1848' and possibly lower.

Monroe Rougust, Chairman of the Committee to Save North Dakota, generally commented on previous testimony, and emphasized the problems that will be encountered by the acquisition of approximately 33,000 acres of land for the development of the Lonetree Reservoir. These problems are described in APPENDIX 'A' - page 6, area 6). He introduced several landowners from the Lonetree Area, each presenting their testimony, as follows:

Ervin Seibel, Jr., from Harvey, stated that he lives one-fourth mile behind the proposed dam and farms a 560-acre unit. He expressed concern of their wells being drained dry and the flooding of private land by the Bureau of Reclamation.

Clifford Reimche from Martin, stated he farms 180 acres and also leases some of his land. He expressed concern that a greater part of his productive land will be taken for wildlife purposes.

Herman Schafer from Harvey stated that his farm will all be taken by Garrison Diversion and the people have heard rumors that their land will be purchased by 1977, but have not been contacted individually regarding the purchasing of their land.

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LaVern Liebelt from Harvey lives about 2½ miles from the dam. He expressed his concern regarding the wells going dry and the flooding of private land. He will lose approximately 550 acres of land to the Project and by lowering the reservoir several feet, he feels that it would save a lot of his land.

Herman Schaffer from Harvey said that six or eight families who belonged to his Church had to relocate, and this in turn, caused the Church to close because there wasn't enough families to keep the Church in operation.

Mike Hovey from Fessenden expressed concern over the lack of planning and cooperation from agencies involved in the project. Mr. Hovey stated that he will be losing about 75 acres of land.

Norman Moen of Granville and living in the Souris Loop area, presented remarks on a survey he made regarding the feeling of people in respect to irrigation by Garrison Diversion. Of 36 people who were contacted, 70 percent were not in favor of the Project.

Mr. Johnson, in concluding the testimonys, requested that a written response to questions asked in APPENDIX 'A' under the eight basic items be received from the State Water Commission.

After discussion, Governor Link thanked the Committee to Save North Dakota for appearing before the State Water Commission. He indicated that their complaints will be referred to the appropriate state or federal agency for response directly to the Governor.

At 12:25 p.m., the Commission recessed. The meeting was reconvened at 2:00 p.m.

**APPEARANCE OF WEST RIVER
CITIZENS COMMITTEE MEMBERS
TO DISCUSS THEIR VIEWS
CONCERNING SEVEN PUBLIC
MEETINGS HELD IN WINTER
OF 1975
(SWC Project No. 1543)**

Secretary Fahy indicated that to date the testimony compiled at the seven meetings held last winter in the West River area, is verbatim and has not yet been edited. Duplication has been made only to the State Water Commission members and to the members of the Citizens Committee. With the consent of the Committee's Chairman, Representative Clarence Martin, an order is now being printed for the duplication of an additional 200 copies for distribution to the general public, news media, etc.

Secretary Fahy said that the Commission members also have a copy of a minority report, which had been filed with the Governor on January 5, 1976, from three members of the Citizens Committee.

Secretary Fahy recalled that at the last meeting of the Commission, it was suggested that each of the seven-member West River Citizens Committee be requested to present their overview of the seven meetings.

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At this time, Governor Link called on the Chairman of the Committee, Representative Clarence Martin, for a presentation.

Representative Clarence Martin, Chairman; Senator John Maher, Representative Kenneth Knudson, Robert Stranik, Raymond Schnell, Robert Sadowsky, and Arlene Wilhelm served on a West River Citizens Committee, whose purpose was to hold hearings in the West River Area in order to give the people an opportunity to express their views on West River Diversion.

Representative Martin thanked the State Water Commission staff for their input into these meetings. He stated that approximately 836 people had attended the seven hearings and he briefly explained how the hearings were conducted.

In summarizing the meetings, he indicated that an overwhelming majority of the people rejected coal development and West River Diversion. He listed the following as some of the reasons for opposition: reclamation is not a proven factor; poor surface water protection; concern regarding our environment; insufficient impact funds; and inadequate severance tax. There was little interest expressed or shown in irrigation. Some of the reasons being: increasing problems of saline seeps; it was felt that the maps developed for the West River Study showing irrigable acres were incorrect; if irrigation is needed for reclamation of strip mined land, concern arose as to who would pay the costs particularly on land where the minerals have been severed; people are unwilling to pay the price for massive coal development for irrigation; and the initial investment for irrigation equipment is too expensive in relation to current crop and livestock prices. He stated that there is a need for water in southwestern North Dakota for municipal and agricultural purposes and it needs local control and planning to make it feasible. The water should not be dependent on industrial development.

Senator John Maher also expressed appreciation to the State Water Commission for giving him and many other citizens an opportunity to express their thoughts and feelings in regard to the future in southwestern North Dakota. In general, he discussed the feelings of the citizens which were expressed at the meetings.

Senator Maher distributed and reviewed copies of "Discussion Forum on Developing a Comprehensive Utilization Plan for Water Resources in Western North Dakota" attached hereto as APPENDIX "B".

In conclusion, Senator Maher urged the State Water Commission to use extreme caution in issuing water permits and establishing a water plan that will be satisfactory to all and protect our State for the future.

Representative Kenneth Knudson indicated that he made three observations during the meetings, being: 1) impressed with large attendance at meetings to express their view on West River Diversion; 2) almost all those in attendance spoke in opposition to a West River

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Conservancy District as proposed in the last Legislative Session; and 3) he complimented Chairman Martin for the fair and impartial way that he conducted the meetings.

Robert Stranik from Dickinson, speaking on behalf of Committee members Bob Sadowsky and Ray Schnell who were unable to be present at today's meeting, made reference to their summary letter sent to Governor Link on January 5, 1976. He reviewed highlights of the letter, which is attached hereto as APPENDIX "C".

Commissioner Arlene Wilhelm, a member of the seven-member Citizens Committee, commented on and questioned several items in the minority report (APPENDIX "C"). She also thanked the State Water Commission for allowing the people of southwestern North Dakota the opportunity to express their feelings.

Mrs. Wilhelm reviewed the background of the Yellowstone Level B Study now being conducted in North Dakota, Montana and South Dakota.

She indicated that no public citizens, other than herself, were named to the Level B Management Group, therefore, there is no public input. She quoted the Plan of Study as saying "a high degree of citizen participation will be obtained throughout the planning process". She indicated that a great deal of the planning process has already occurred without citizen participation because of the limited amount of time allowed to complete the study.

To insure the responsiveness by the State Water Commission to the public - particularly the citizens of the West River Area, Commissioner Wilhelm made the following motion:

It was moved by Commissioner Wilhelm that the Commission request the State Water Commission staff to do the following three things: 1) Have the public meeting testimony of the West River citizens incorporated into the Yellowstone Study as needs that will be defined in issue papers. (This task to be done by the Water Commission staff since staff people are now supplying information from the West River Study as well as projections for industrial water permits. This will guarantee some service to the people who testified - as well as a balance approach for input from the staff); 2) That the Water Commission staff develop issue papers on each of the planning needs expressed by citizens at yesterday's

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(April 20, 1976) Yellowstone meeting in Glen Ullin as recorded by Oscar Lund; and 3) That the staff provide the Commission with monthly reports of its specific contributions to the Yellowstone Study and of all developments related to it. It is also moved that the Commission use its influence to get the study time extended into a realistic span like two years rather than one year. The motion was seconded by Commissioner Kramer.

In discussion of the motion in which Commissioner Wilhelm requested the State Water Commission staff to provide monthly reports to the Commissioners concerning the Yellowstone Study and of all developments related to it, it was suggested by Secretary Fahy that the Commission place on its agenda, for each meeting during the interim of the Yellowstone Study, a permanent item calling for a detailed status report from the Study Director of the Yellowstone Level B Study.

After discussion, and at this time, Commissioner Wilhelm amended her original motion to include only the first two requests, and that the third request presented shall be considered separately. The motion shall now read as follows:

It was moved by Commissioner Wilhelm that the Commission request the State Water Commission Staff to do the following: 1) Have the public meeting testimony of the West River Citizens incorporated into the Yellowstone Study as needs that will be defined in issue papers; and 2) That the Water Commission staff develop issue papers on each of the planning needs as expressed by citizens at yesterday's (April 20, 1976) Yellowstone meeting in Glen Ullin as recorded by Oscar Lund. Commissioner Kramer likewise amended his second to the motion. On the call of the question by Governor Link, all members voted aye. The motion was declared as passed.

It was moved by Commissioner Wilhelm, seconded by Commissioner Kramer, and carried, that the Commission place on its agenda for each meeting until such study is completed, a detailed status report from the Study Director of the Yellowstone Level B Study.

Also included in Commissioner Wilhelm's original motion was the request that the Commission use its influence to get the Level B Study time extended.

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It was suggested that the Study Director of the Yellowstone Level B Study be consulted for a possible extension of time for completion of the study. Secretary Fahy stated that the Missouri River Basin Commission will be meeting in early May, and if it is the wishes of the Commission, he will discuss this with the entire Commission.

It was moved by Commissioner Wilhelm and seconded by Commissioner Just that the Commission use its influence to try and attempt to get the time frame extended for completion of the Yellowstone Level B Study. All members voted aye on the motion - the motion carried.

Governor Link suggested that a more comprehensive statement, or resolution, be prepared and adopted by the Commission for presentation to the Missouri River Basin Commission.

It was the consensus of the Commission that the State Engineer be directed to draft a resolution in regard to the possible extension of the time frame for completion of the Yellowstone Level B Study for consideration and adoption by the Commission at its second-day session of this meeting.

Governor Link then invited statements from citizens of the West River area.

Mrs. Gilman Peterson from Stark County indicated that she and her husband have lived in Stark County for 30 years. She made comments against the letter sent to Governor Link signed by Bob Stranik, Bob Sadowsky and Ray Schnell. Her concern now is that the Yellowstone Study is being embarked upon because the West River Diversion Study failed to pass. She indicated her proof of this because the Yellowstone Study budget lists the sum allotted to West River Diversion as its largest item on the budget. She also feels that North Dakota should not be involved in the Yellowstone Study because it involves such a small portion of North Dakota.

Richard Lefor from Gladstone, North Dakota, commented on the complicated questionnaires which the public were being asked to complete as part of their participation.

In closing, Mr. Lefor requested Governor Link to deny the request for a water permit to Natural Gas Pipeline Company of America.

Rick Maxiner, President of the United Plainsmen Association, also commented on the minority letter, and generally commented on the meetings held. He suggested that the minority letter be deleted from all copies duplicated for public distribution and especially from

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the copy that is to be forwarded to the Yellowstone Level B Study which represents the citizens input.

He stated that the time and money being spent on the Yellowstone Study is being wasted and is being used for something that it was not appropriated for. He feels that the money should be used to solve problems in other areas of the State. It was his understanding that the Water Commission would not become involved in other studies for the West River area until the testimony had been evaluated. Within this time frame, a decision was made to involve the State in the Yellowstone Study and he stated that this decision did not come before the Commission.

He does not think that the Yellowstone Study really wants any public input since there are no citizens, but one, on the Committees. Citizen input will not have a direct line into the final report, he said; the final report will be decided by the Management Group and Ad Hoc Committees.

He said that North Dakota should start looking at some of the alternatives that are being proposed to supply water to the people of southwestern North Dakota, as this is what the people want.

Governor Link asked Mr. Maxiner if it is his feeling that the people in the West River area generally subscribe to the concept of alternatives as proposed for consideration by Senator Maher. Mr. Maxiner replied that at a recent meeting the people essentially endorsed the concept of the idea presented by the Senator.

Art Sickler from Gladstone indicated that he is very concerned about comments which were made in the minority group letter.

Reuben Hummel appeared on behalf of the County Farmers Union and the United Church of Christ. He presented several remarks regarding the minority report saying that some of the things said in the letter are not factual.

Mr. Hummel thanked Governor Link for the stand he is taking by requesting that the water permit for Natural Gas Pipeline Company of America be denied.

Mr. Hummel commented on the Yellowstone Study stating that he thinks it is already planned and that the citizens won't be able to participate. He commented on a letter that he had received from a representative of the Yellowstone Study turning down Mr. Hummel's request to be a representative on one of the Committees. He indicated that if this is the case, he will request the Governor and state officials to withdraw North Dakota from the Yellowstone Level B Study.

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Marion Lefor from Dunn County commented on the portion of the minority report in which it is stated that citizens had to attend the meetings and they had to give testimony. She said the citizens went to the meetings because of their interest and because they wanted to go - they were not forced to go. She also noted the interest that the young citizens of the area are showing toward the project.

Mrs. Rose Sickler from Gladstone suggested that the West River testimony be submitted as issue papers to the Yellowstone Study representing the citizens input of western North Dakota.

Mrs. Sickler requested Governor Link to deny the water permit to Natural Gas Pipeline Company as there is much more study which needs to be done on the long-range planning of gasification plants.

Commissioner Gallagher said that he, too, feels that the minority report should not be made a part of the West River testimony. The minority testimony along with all of the other testimony appearances has already been made a part of the report.

It was moved by Commissioner Gallagher that the minority report filed by several members of the West River Citizens Committee not be made a part of the testimony of the people compiled at the seven West River meetings, which is to be forwarded for incorporation into the Yellowstone Level B Study. Commissioner Just seconded the motion and all members voted aye.

Mrs. Gilman Peterson stated the citizens were not given a chance for input into the Plan of Study on the Yellowstone Study, but if the responsible agencies can assure the citizens of western North Dakota that the Yellowstone Study will be of benefit and value to the State of North Dakota, the citizens are willing to cooperate. She feels it is very necessary that the West River testimony be regarded as issue papers and should be forwarded for use in the Yellowstone Study.

Governor Link stated that he has worked very hard to get some kind of consideration for citizen input into the Yellowstone Study and it is his understanding that the Study Director has agreed to continue to consider the appointment of citizens to various committees of the Study.

Discussion then centered around reimbursement to those citizens appointed to committees.

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Secretary Fahy stated that there is another alternative for the Commission to consider in its deliberations and that is abandoning the Yellowstone Level B Study. He said that it has been a tradition in Level B Studies for many years that, in a matter affecting more than one state, all of the affected states join in order to bring out all aspects of the river basin. He presented some background on the Yellowstone River Basin indicating that, although it does not impact greatly on North Dakota, it does provide a great deal of the flows of the Missouri River. He indicated that when the suggestion of a Level B Study came up at the Missouri River Basin Commission meeting, he felt it important enough to make the decision to involve North Dakota - if for nothing more than to stay advised as to what was developing since the flows of the Yellowstone River are very important to the total water supply of North Dakota.

Secretary Fahy suggested that there would possibly be a mechanism for withdrawal if there is no overriding sentiment in favor of the study. If this is the wish of those concerned, Secretary Fahy stated that he would investigate such a mechanism for withdrawal and make a motion to the Missouri River Basin Commission at its meeting in May for North Dakota's withdrawal.

Commissioner Gallagher indicated his concern that we do have a substantial interest in the waters that flow into the Missouri River and is against withdrawal from the Level B Study.

Senator Maher also stated that he is against withdrawal from the Study, but that the state should make its position known. He suggested that the State Engineer and the Commission make a position on behalf of the State by stating that the State of North Dakota is a signator and a participant to the Yellowstone Level B Study, but that we don't want the water diverted from Lake Sakakawea into Wyoming to be used for strip mining and the destruction of natural resources that could be kept for North Dakota's future generations.

Senator Maher stated that the citizens are not developing an issue paper on the Yellowstone Study, because they do not have the opportunity, expertise, organization or talents to prepare such an issue paper. In discussion with others, they find it impossible to do what is required to prepare such a paper, so he suggested that perhaps the State Water Commission could provide the citizens some sort of expertise needed in developing such a paper and have it the viewpoint of the State of North Dakota.

Secretary Fahy then offered the expertise and assistance of his staff members to work with Senator Maher and/or representatives in developing a joint state/citizen position paper.

Governor Link suggested that the citizens should take full advantage of Secretary Fahy's offer to provide the services

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of his staff and himself in assisting with the preparation of a paper that is in presentable form expressing the thoughts and recommendations of the citizens of North Dakota.

Commissioner Lanz stated that it is very necessary and essential to follow this avenue and we need to make progress.

Commissioner Kramer stated that it is very important to participate in the Yellowstone Study and it would be a mistake to withdraw. The people of North Dakota will be affected by whatever decision is made and he strongly supported citizen input.

Secretary Fahy said he wants the development of the position paper to be done on a joint state/citizen basis and suggested that perhaps Commissioner Wilhelm could be assigned to represent the citizens in developing this paper.

Commissioner Wilhelm responded to this request by saying that she will do everything that she can to best represent the views of the citizens and hopes that the citizens will likewise cooperate with her.

DISCUSSION OF DRAINAGE
PROBLEM IN CAVALIER
COUNTY - WILLARD CROCKETT
(SWC Project No. 1098)

Murray Sagsveen, Director of Legal Services, and Steve Hoetzer, Drainage Engineer for the State Water Commission, presented, through a series of slides, a drainage problem in Cavalier County.

Mr. Sagsveen stated that the Commission has been briefed at the last two meetings of the problem and it was the consensus of the members that a formal hearing would be held and that the testimony compiled be evaluated and presented to the Commission for their consideration.

In December of 1975, Willard Crockett of Langdon, North Dakota, presented a petition to the State Water Commission asking for an investigation of unauthorized drainage in the area south of Rush Lake. After the formal hearing, complaints were received from people in the area that flooding was taking place.

Mr. Sagsveen related the background of the problem and the case in question. He has evaluated the testimony from the hearing and presented a briefing and recommendations for the Commission's consideration.

Section 61-01-22 of the North Dakota Century Code provides that no person may drain water from a lake which impounds waters gathered therein and drained from an area comprising forty acres or more without a permit to do so.

Mr. Crockett has constructed ditches and taken other actions to drain Rush Lake, a lake which impounds waters

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drained from an area exceeding 300 square miles, without a permit to drain. The Cavalier County Water Management District, fully aware of the drainage, has not secured Mr. Crockett's compliance with Section 61-01-22, nor has it taken appropriate action to close subject ditches as requested by Section 61-16-50.

Section 61-02-20 of the North Dakota Century Code provides that no dam capable of impounding more than twelve and one-half acre-feet of water may be constructed without the prior written approval of the State Water Commission. Mr. Crockett has constructed several connecting dike/dam structures, each capable of retaining more than twelve and one-half acre-feet of water, on the bed of Rush Lake without prior written approval of the State Water Commission.

Section 61-16-15 of the North Dakota Century Code provides that no dam or other device for water conservation, flood control regulation, watershed improvement or storage of waters which is capable of retaining more than twelve and one-half acre-feet of water may be constructed without concurrent approval of the board of commissioners of the appropriate water management district and the State Water Commission. Mr. Crockett has constructed several connecting dike/dam structures, each capable of retaining more than twelve and one-half acre-feet of water, on the bed of Rush Lake without approval of the Cavalier County Board of Commissioners or the State Water Commission. Subject structures are improper and they interfere with the orderly control of the water resources of the State of North Dakota. The Cavalier County Board of Commissioners, fully aware of the structures, has not secured Mr. Crockett's compliance with Section 61-16-15, nor has it taken appropriate action to remove subject structures as required by Section 61-16-28.1.

Section 61-15-08 of the North Dakota Century Code provides that no person, without prior written consent of the State Engineer, may drain or cause to be drained, or attempt to drain, any lake which has been meandered by the United States in the survey of public lands. Rush Lake is a lake which has been meandered by the United States in the survey of public lands. Mr. Crockett has, by the construction of ditches and other activities, caused to drain or attempted to drain Rush Lake. The Cavalier County Board of Commissioners, fully aware of the drainage, has not secured Mr. Crockett's compliance with Section 61-15-08, nor has it taken appropriate action to close subject ditches as required by Section 61-16-50.

Resolution No. 71-4-294, adopted by the State Water Commission on April 16, 1971, provides that "the North Dakota State Water Commission...by virtue of the authority vested in it by Section 61-02-14, North Dakota Century Code, does hereby prohibit and order the cessation of construction of drainage structures within the Pembina River Basin west of Highway No. 32 in North Dakota...unless approved by the State Water Commission." Mr. Crockett has violated such resolution by his drainage activities on Rush Lake, and the Cavalier County Board of Commissioners has had full knowledge of the resolution and Mr. Crockett's violation.

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Unless directed otherwise by the Commission, Mr. Sagsveen will seek from the Court: 1) equitable relief by restraining Mr. Crockett from maintaining his several dike/dam structures; 2) an order that the Cavalier County Board of Commissioners take appropriate action to remove the remainder of Mr. Crockett's dike/dam structures from the bed of Rush Lake; 3) equitable relief by restraining Mr. Crockett from further unauthorized drainage of Rush Lake; 4) an order that the Cavalier County Board of Commissioners be ordered to take appropriate action pursuant to Section 61-16-50 to close Mr. Crockett's ditches which are draining Rush Lake; and 5) an order that a permanent level be established for Rush Lake based upon recommendations by the State Water Commission and the State Engineer after they have had an opportunity to conduct a hearing thereon.

The Commission then had an opportunity to listen to a rebuttal as presented by Alan Grindberg, Attorney for Willard Crockett.

After discussion, it was moved by Commissioner Kramer that the State Water Commission proceed with the five recommendations for action as described above by Mr. Sagsveen. The motion received a second from Commissioner Gray. All members voted aye on the motion - the motion carried.

**CONSIDERATION OF REQUEST
BY BUFORD-TRENTON IRRIGATION
DISTRICT FOR FINANCIAL
PARTICIPATION FOR RAISING
OF INTAKE FACILITIES
(SWC Project No. 222)**

Secretary Fahy stated that a request has been received from the Buford-Trenton Irrigation District to help in raising their pumps so that they can have a viable operation. The Commission did approve participation years ago in helping them raise their

pumps and now the water levels have risen to the point where their present intakes are under water.

Secretary Fahy indicated that this project is within the policies adopted by the Commission and he recommended that the Commission participate up to 50 percent of the costs of raising the pumps. The total cost of the project is estimated at \$20,000. The State Water Commission will do the engineering for the project.

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and carried, that the Commission participate in the request by the Buford-Trenton Irrigation District up to 50 percent of the total costs, in an amount not to exceed \$10,000, for raising of the pumps.

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REQUEST FOR STATE WATER
COMMISSION PARTICIPATION
IN HAZEN FLOOD CONTROL
PROJECT
(SWC Project No. 1517)

which is now Hazen's main street, across the north side of the city as a combination highway/levee system. This alternative would solve two very serious problems and is estimated to cost approximately \$653,200.

Secretary Fahy stated that an alternative has been developed for the Hazen flood control project which is acceptable to the RC&D, the State Highway Department and others concerned. The alternative consists of rerouting the highway,

The City of Hazen has requested financial assistance from the State Water Commission in the area of the channel change costing approximately \$63,400. It was Secretary Fahy's recommendation that the Commission participate up to 50 percent of the costs for the channel change, or an amount not to exceed \$31,700.

It was moved by Commissioner Gallagher, seconded by Commissioner Gray, and carried, that the Commission approve the request from the City of Hazen and authorize participation up to 50 percent of the costs, an amount not to exceed \$31,700.

FURTHER DISCUSSION REGARDING
APPEARANCE BY COMMITTEE TO
SAVE NORTH DAKOTA ON GARRISON
DIVERSION PROJECT
(SWC Project No. 236)

relative to the matter.

Governor Link called for further discussion on the previous testimony presented earlier today relative to the Garrison Diversion Project. He then called on Murray Sagsveen for legal comments he may wish to make

Murray Sagsveen read the North Dakota Century Code relative to the Garrison Diversion Conservancy District, its powers and duties. He noted that the State Water Commission has no supervisory powers over the Garrison Diversion Conservancy District.

He reviewed each of the questions raised in APPENDIX "A", and indicated which agency, or agencies, has jurisdiction in that specific area.

Commissioner Kramer suggested that each of the questions asked in APPENDIX "A" be analyzed and studied to determine which agency, or agencies, should respond, and then that agency, or agencies, should be notified by the State Water Commission that they are responsible in that specific area. It will then be the responsibility of that particular agency, or agencies, to respond to the Committee directly.

Governor Link invited Mr. Warren Jamison, Project Manager for the Bureau of Reclamation, to respond to issues raised during the testimony by the Committee to Save North Dakota.

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Mr. Jamison made comments in general on the Committee's testimony and also clarified statements made against the Bureau of Reclamation.

After lengthy discussion relative to the approach to take in responding to the questions raised in APPENDIX "A" -

It was moved by Commissioner Gray that the Commission direct the State Water Commission staff to pursue each of the questions raised by the Committee to Save North Dakota under the eight areas presented in the testimony of April 21, 1976, and that the staff refer to the responsible agency that a specific item is under their jurisdiction. It was further moved that the responsible agency prepare a response to those items referred to them, and that such response shall then be forwarded to the Governor as Chief Executive of the State of North Dakota for his review and approval. The response shall then be forwarded onto the Committee to Save North Dakota. The motion was seconded by Commissioner Kramer. On the call of the question by the Chairman, all members voted aye - the motion was declared passed.

The Commission recessed their session at 7:45 p.m. On April 22, 1976, the Commission reconvened their meeting with Governor Link calling the session to order at 9:45 a.m. The Chairman requested Secretary Fahy to continue to present the agenda.

DISCUSSION OF CONDITIONS
FOR ALL PENDING WATER PERMIT
APPLICATIONS FOR ENERGY
CONVERSION AND ELECTRICAL
FACILITIES
(SWC Water Permit Nos. 2179, 2083
and 2292)

Murray Sagsveen read and reviewed the fifth draft of Contract and 13 Conditions which have been prepared for attachment to a conditional water permit for energy conversion and electrical facility purposes.

During discussion relative to the amount of gas to be reserved for the State of North Dakota, Mr. Joe Michels, representing Montana-Dakota Utilities Company, indicated that his Company has had an opportunity to review all of the five drafts of the proposed Contract and Conditions and they feel the Contract is adequately subsequent in relation to the amount of gas that is being proposed as a reservation to North Dakota residents.

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Secretary Fahy clarified that although the name of Natural Gas Pipeline Company of America appears as the Appropriator on the Contract and Conditions now being discussed, his staff has prepared such Contract and Conditions draft as a comprehensive set of conditions which the Commission could consider as a model for guidelines in light of subsequent applications for energy conversion and electrical facility purposes.

Governor Link invited remarks from representatives of the respective three Companies who have their requests for a conditional water permit pending before the Commission.

Correspondence has been received from Natural Gas Pipeline Company indicating they have reviewed the fifth draft of the proposed Contract and Conditions and have indicated Natural's concurrence and acceptance of all of the provisions and statements contained therein. (SEE APPENDIX "D")

Mr. James Grahl representing Basin Electric Power Cooperative, who has an application pending before the State Water Commission, stated that neither he nor his Company have had an opportunity to review or consider the draft. He did not feel that he could offer comments other than in general at this time.

Mr. Grahl briefly discussed the reservation of gas as drafted in the proposed Conditions, the proposal of Basin Electric and ANG to construct a joint generating and gasification plant, and by-products as they relate to Basin Electric.

Mr. William Pearce representing Montana-Dakota Utilities Company, indicated that his Company has studied the Contract and Conditions at considerable length and have no quarrel - "we feel that we can live with these conditions".

Mr. Sagsveen said that in December, 1973, the Committee on Resources Development of the Legislative Council agreed that such conditions were appropriate for attachment to conditional water permits, and it was through recommendations by the Legislative Council and the State Water Commission, that such proposed Contract and Conditions were drafted.

It was moved by Commissioner Gallagher that the document (being the drafted Contract and Conditions) presented before the Commission, with the deletion of any reference to a specific applicant and certain factors applying to a specific applicant, be adopted; and that the basic provisions presented be used as a comprehensive guideline model for all future energy conversion and electrical facility water permit

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applications. It was also moved that when the Commission is considering a specific application, those revisions and changes shall be made in the basic provisions to apply to that specific application. The motion was seconded by Commission Just. All members voted aye on the motion - the motion was declared as passed.
(SEE APPENDIX "E")

FURTHER CONSIDERATION
OF NATURAL GAS PIPELINE
COMPANY OF AMERICA'S
APPLICATION FOR A
WATER PERMIT FOR
GASIFICATION PROJECT IN
DUNN COUNTY
(SWC Water Permit No. 2083)

At this time, Governor Link requested, unless there was any objection on behalf of the Commission members, that his chair be relinquished to the Vice Chairman.

It was moved by Governor Link that the application of Natural Gas Pipeline Company of America be denied. The motion was seconded by Commissioner Wilhelm.

Governor Link offered his reasoning for recommending this action. The following is a portion of the Governor's letter to the members of the Commission, dated March 4, 1976:

"The NGPCA application requests authority to appropriate 70,000 acre-feet of water annually for four 250,000,000 cubic feet per day coal gasification plants. NGPCA has indicated that their first gasification plant would be located near Dunn Center, within 50 miles of the American Natural Gas Coal Gasification Company (ANG)/Basin Electric complex near Beulah. Because of the proximity of the projected complexes, and because both projects are similar in many respects, their relationship should be closely examined.

Michigan-Wisconsin Pipeline Company applied for their water permit on January 18, 1973, and in February, 1974, a conditional water permit was granted (later assigned to ANG). By granting the water permit, the state authorized the expansion of industrial energy-conversion development of our state. Two years later, after having responded to the apparent urgency of an energy crisis, the state is no further ahead in knowing whether gasification is a viable industry for our state. Today, we are faced with the same arguments for urgency concerning the NGPCA application. However, there is no indication from either ANG or NGPCA of a major forward thrust in achieving a full-scale gasification plant in North Dakota.

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A basic question, therefore arises: Should this state now obligate itself to an industry that is not capable of achieving its stated goals?

Also, should this state now obligate itself to the Lurgi gasification process (which both ANG and NGPCA intend to use) when other superior gasification processes are being developed. An example is the demonstration plant planned by Texaco, Inc., NGPCA, MDU and Pacific Gas and Electric Company; the demonstration plant would use a process that appears to be cleaner and more efficient than the nearly half-century old Lurgi process.

An acceptable alternative for both ANG and NGPCA would be a joint venture to build only one gasification plant. Both companies serve the Great Lakes area and Michigan-Wisconsin assists NGPCA with gas storage. With the close proximity of their consumers, it seems reasonable to assume that some type of cooperative effort would be justifiable. Both companies are members of the Northern Border Pipeline consortium and they have already established a working relationship to assure the needs of their individual companies.

This proposal is not an obstacle to energy conversion development in this state. Rather, I believe it is a common sense approach that will permit both the state and the affected industries to use such a plant as a model upon which to base future decisions.

Much more information would be helpful, particularly on the cumulative effects of energy conversion plants. More will soon be available through a joint federal-state action which has recently been developed. For the express purpose of setting into motion the necessary studies which would give us more adequate information by July, 1977, I initiated communication with the Bureau of Reclamation and the Bureau of Land Management to enter into a joint agreement with the State of North Dakota to develop a Regional Environmental Impact Statement which would cover a broad enough area to adequately assess cumulative impacts. On January 28 of this year, I approved and sent to the Bureau of Land Management, for the ultimate approval of the Secretary of Interior, an 18-month cooperative program directed at establishing a better understanding of actions which have been taken by North Dakota and actions which have been requested by industries intending to develop in North Dakota.

In addition to all of this, North Dakota must scrutinize the future of its own energy needs. At the present time, North Dakota, as well as other northern tier states, is being faced with a scheduled cutback of Canadian crude oil and gas. This cutback, along with our own regional increasing energy needs, raises the question of what level of development is needed in this region in order to address our own needs as well as others. Large commitments for out-of-state use which are established at this early stage may leave little flexibility to meet the future needs of our state and our region.

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Present energy production from lignite coal is about 8 million tons. Permitted energy conversion plants, when on line, will increase this to about 30 million tons. North Dakota is, therefore, clearly contributing to national energy needs. But, without satisfactory resolution of the foregoing problems, the state cannot be expected to authorize construction of a second gasification plant."

Commissioner Just offered his personal observations in support of the Governor's motion. He, too, feels that making a decision at this time would be premature in light of the national scene as well as the local scene. On the national level, with the defeat of the Syn-Fuel Bill by Congress, gasification plants should not be built until such support is forthcoming from Congress. He said that he does support a joint venture by ANG and Natural Gas.

Commissioner Wilhelm indicated her support of the motion by relating the feelings of the citizens of the area in respect to the construction of gasification plants. She also feels that the State has made a commitment to their economy by granting the construction of one gasification plant to ANG.

Commissioner Gray stated that he generally agrees with the statements made today, but what disturbs him is the fact that we are supporting nearly \$80 million a day in exports. He feels that there are ways that we can diminish our excessive energy concerns.

North Dakota does have a natural resource that can supplement our natural needs. In the past, the manner in which this resource has been used has not been done in a commendable fashion. However, because of the safeguards that the State Water Commission and other state agencies have developed in respect to development, the likelihood of proper resource development has been improved.

Commissioner Gray also stated that he cannot believe that Natural Gas would spend a tremendous amount of money in perfecting and promoting a plant that is going to be obsolete before it is put on the line. He said that the Commission has been considering and reviewing Natural's application for about two years. There are indications that perhaps gasification plants will not be established in the State of North Dakota. Many things have already been done to assure safety and the well-being of the people of North Dakota. We are aware of the compounding needs of energy as projected in the United States of America, and Commissioner Gray said that by denying this application for a conditional water permit, we are actually setting ourselves back and exposing ourselves to the influence of federal dictates.

Commissioner Kramer expressed mixed emotions on the issue. He stated that Natural's original application applied for four gasification plants, which he did not support. After two years of serious deliberations, reviews and studies, he feels that he can now support

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one plant. He said that with the elaborate and complete set of conditions which have been developed and adopted by the Commission as an attachment for a conditional water permit, he feels very confident that the State can handle the problems that may arise in regard to a gasification plant.

Commissioner Lanz said that we can't sacrifice the resources of our State. He indicated that he does support a joint venture with Natural Gas and ANG, but he has mixed feelings for both sides of the matter. Being a new member of the Commission, Commissioner Lanz said that he is not sure which way the State should move in regard to gasification plants. He suggested to delay action at this time.

Mr. Robert Sherman from Dickinson introduced Mr. Robert Lindgren, Vice President of Natural Gas Pipeline Company of America.

Mr. Lindgren said that he does agree with many of the remarks of Governor Link. He commented on several of the items that Natural disagreed with relative to the energy shortage; alternatives to supplement this energy shortage, namely, natural gas; the lurgi process; he discussed many of the studies undertaken by Natural, many at the request of the Water Commission; the time factor, the lack of a forward thrust; he discussed the concept of a model plant and the possibility of a joint venture with ANG; the Governor's request for more sound and better information; and the Governor's remarks regarding authorization for the construction of a second gasification plant. Mr. Lindgren said that granting a conditional water permit is not giving approval for construction of a gasification plant, it is only one of the steps necessary for the complete and orderly planning in a project of this kind. He, again, stated that it is Natural's position that a gasification plant will not be built unless Natural, all state agencies, and the citizens of North Dakota are satisfied that the plant will be built in a way that is acceptable to meet the requirements of the State of North Dakota.

Randolph Nodland from Dunn Center and representing the Dunn County citizens, stated that again the people of Dunn County are appearing to request that the application for Natural Gas be denied. He said the majority of the people don't want a gasification plant built in the county and can't live with a gasification plant. The people are tired of having different self-interest groups telling them what they have to have to make a good economy in the area; they are tired of going to meetings, but feel so strongly about what will happen to their farms and future that they feel it essential to be present to speak in opposition of the request at every opportunity possible; and they are tired of hearing power companies ads over the radio telling what a good job is being done on reclaiming the land. He briefly commented on West River Diversion and the Yellowstone Level B Study.

Raymond Hammel from Dunn Center supported Governor Link's motion to deny a conditional water permit to Natural Gas.

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(Mr. Hammel's statement was very undistinguishable, therefore, no further comments were obtained.)

Stanley Pollestad from Halliday strongly supported the Governor's recommendation and urged the Commission to deny the water permit to Natural Gas. He listed the following as objections to granting the permit: air pollution and no land reclamation. He stated that since the original filing of Natural's application, the people have not been in favor of it.

Upon no further discussion on the pending motion to deny the application for a conditional water permit to Natural Gas Pipeline Company of America, Chairman Gallagher called the roll for a vote on the motion:

Commissioner Gray	-	nay
Commissioner Just	-	aye
Commissioner Kramer	-	nay
Commissioner Lanz	-	nay
Commissioner Wilhelm	-	aye
Governor Link	-	aye

On completion of the roll call, Chairman Gallagher declared the recorded vote as tied -

3	-	ayes
3	-	nays

The Chair vote was recorded - nay

The final vote recorded was:

3	-	ayes
4	-	nays

The Chairman declared the motion as failed.

for lunch.

The Commission recessed at 12:50 p.m.

Governor Link was not in attendance at the afternoon session; Vice Chairman Gallagher reconvened the meeting at 2:20 p.m.

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FURTHER DISCUSSION OF
REQUEST BY NATURAL GAS
PIPELINE COMPANY OF
AMERICA FOR WATER PERMIT
FOR GASIFICATION PURPOSES
(SWC Water Permit No. 2083)

It was moved by Commissioner Kramer that action be deferred on the water permit request by Natural Gas Pipeline Company of America until an Attorney General's Opinion, which has been requested, has been received regarding two basic items: 1) request to resolve the relationship between the Plant Siting Act and the water appropriations statute; and 2) to resolve what is the relationship between the State Water Commission and the Mercer County Zoning Board as far as a water permit being issued first. The motion received a second from Commissioner Lanz. All members voted aye; the motion carried.

TOUR OF ANG PLANT
SITE IN BEULAH AREA
(SWC Water Permit No. 1901A)

Secretary Fahy recalled that, at the Hazen meeting of the Commission, an invitation was extended to the Commission to tour Antelope Valley. The Commission

did respond to the invitation that they would do so when weather permits. It was suggested by Secretary Fahy that the Commission consider such a tour at their next meeting.

It was the consensus of the Commission that a date be scheduled in late May for the tour, thereby giving the people in the area who expressed an interest, a chance to finish their field work and could accompany the Commission on the tour.

CONSIDERATION OF MEMORANDUM
OF COOPERATION AND AGREEMENT
AMONG PUBLIC SERVICE
COMMISSION, STATE HEALTH
DEPARTMENT AND STATE WATER
COMMISSION

It was suggested by Mr. Sagsveen that since the requested Attorney General's Opinion regarding siting has an impact on the drafted Memorandum of Cooperation and Agreement between the Public Service Commission, the State Health Department and the State Water Commission, and the

Opinion has not been received, that the Commission be given a copy of the letter requesting the Attorney General's Opinion and a copy of the proposed Memorandum of Cooperation and Agreement to be reviewed and discussed at the next meeting.

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Briefly, Mr. Sagsveen stated that the Memorandum of Cooperation is a draft document that was prepared by the Attorneys for the Public Service Commission, the State Health Department and the State Water Commission in an attempt to have a guideline for the processing of new applications for energy conversion facilities.

**EXPLANATION OF STATUS
OF PROPOSED DRAINAGE
RULES AND REGULATIONS**

Secretary Fahy stated that a draft has been developed of rules and regulations governing drainage within the State outlining those areas in which the State Engineer and the State Water Commission should be involved. This has been mailed out to all water management district officials for their review and comments.

Murray Sagsveen generally explained to the Commission members that in drafting these rules and regulations, an attempt has been made to promulgate by regulation state-wide standards that would have to be met by the water management districts in the granting or considering an application to drain. Mr. Sagsveen said that another draft is being prepared, and upon completion, copies will be forwarded to each Commissioner for review and comments.

**DISCUSSION OF STATUS
OF WATER MANAGEMENT
DISTRICT ORGANIZATIONS
IN CASS COUNTY
(SWC Project No. 1649)**

Murray Sagsveen said that Section 61-16-05 of the North Dakota Century Code states, in part: "All land in North Dakota shall be within water management districts by July 1, 1974." It further states that "The state water conservation commission is hereby authorized to, and shall, by or before July 1, 1974, create water management districts at least county-wide in size in each county of the state which has two or more water management districts....except that any district which is smaller than county-wide in size established prior to January 1, 1973, may in lieu of merging with the new county-wide district, continue to exist, within its established boundaries, independently of such county-wide district if its board of commissioners files with the state water commission written notice of its intention on or before January 1, 1974.

Mr. Sagsveen stated that the three districts within Cass County - Southeast Cass, Rush River, and the Maple River Water Management Districts - properly requested before January 1, 1974, that they be authorized to continue in existence independent of any county-wide district.

A recent review of the boundaries of the three water management districts in Cass County revealed that several townships were not included within any existing water management district. Notice of the error was provided to the chairman, Cass County Commission, chairmen of the Maple River, Rush River, Southeast Cass, Steele County, and Traill County Water Management Districts; and the Cass County State's Attorney. The Board of County Commissioners for the County of Cass and

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the Board of Commissioners for each water management district therein were given 60 days to determine their respective positions on the matter.

Within 60 days, a letter was received from the Cass County Auditor stating that the Board of Cass County Commissioners recommended to the State Water Commission that the area in the northern part of Cass County, not now included in a water management district, be designated as the North Cass County Water Management District, thus creating the fourth district in the county.

It was moved by Commissioner Just, seconded by Commissioner Gray, and carried, that an Order be adopted by the Commission creating the North Cass County Water Management District.
(SEE APPENDIX "F")

**DISCUSSION OF STATUS ON
WATER MANAGEMENT DISTRICTS
IN BOTTINEAU COUNTY**

(SWC Project Nos. 702, 713 & 1427)

district (Bottineau County Water Management District) was later created which caused an overlapping of boundaries within the county.

Murray Sagsveen indicated that in Bottineau County two water management districts (Boundary Creek and Oak Creek Water Management Districts) were created sometime ago. A third county-wide water management

Mr. Sagsveen said that he has mailed a letter to the Boards of all three water management districts indicating his doubt of the legality of the situation and requested that a meeting be held to discuss the consolidation of Oak Creek and Boundary Creek Water Management Districts.

**DISCUSSION AND SLIDE
PRESENTATION OF VARIOUS
TYPES OF WETLANDS IN
NORTH DAKOTA**

(SWC Project No. 1489)

types of wetlands and stated that their classification system is the same system as used by the Department of the Interior.

Murray Sagsveen showed slides of the different types of wetlands in the State of North Dakota.

Mr. Dick Moum from the Soil Conservation Service described and explained the various

The State of North Dakota has authority to regulate the drainage of all ponds, sloughs and lakes and all require a permit to drain. The point of concern at this time is - shall Type I and Type II wetlands be classified as sloughs thereby requiring a permit to be drained? Type I wetlands are considered as sheetwater or intermittent water on land normally farmed later in the spring. Type II wetlands are considered as high-water table.

Mr. Moum stated that there are approximately 1200-1500 pending applications to drain Type I wetlands that have to be processed. He commented on the procedure that is required for draining of the Type I wetlands.

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Secretary Fahy stated that it is virtually impossible for members of his staff to process the pending 1200-1500 applications and suggested to the Commission that Type I and Type II wetlands not be considered as sloughs, therefore, a permit would not be needed in order to drain that particular wetland.

After discussion, it was moved by Commissioner Kramer, seconded by Commissioner Wilhelm, and carried, that the Commission consider as current policy and include in the proposed drainage rules and regulations that Type I and Type II wetlands not be considered a slough and need not have a permit to be drained. Types III, IV and V wetlands shall require a permit to be drained.

REQUEST FROM RAMSEY COUNTY
WATER MANAGEMENT DISTRICT
FOR SWC PARTICIPATION IN
CONSTRUCTION OF A DRAINAGE
DITCH FOR CITY OF DEVILS
LAKE
(SWC Project No. 1653)

Secretary Fahy stated that the City of Devils Lake has requested participation from the State Water Commission in the construction of a drainage ditch approximately 3.7 miles long from the northeast boundary of the city following a natural drainage area south along the east side of the city towards Devils Lake.

The total cost of the project, including the right-of-way, is estimated to be \$405,000.

It was recommended by Secretary Fahy that the Commission participate in this request in an amount not to exceed 40 percent of the total qualified construction costs, or a total amount not to exceed \$112,000 which shall be budgeted over two biennial periods. The state's share shall include only costs for construction. Not to be included in the state's share is the construction of a railroad crossing or the acquisition of right-of-way. Secretary Fahy also requested that the Commission, if they approve to participate, indicate that these costs do not include the purchase of fill material.

After discussion, it was moved by Commissioner Lanz that the Commission honor the request from the City of Devils Lake for participation up to 40 percent of the qualified construction costs in an amount not to exceed \$112,000, which shall be budgeted over two biennial periods subject to legislative appropriations. It was further moved that detailed plans and specifications be provided the State Water Commission for their review and approval. It was further moved that the Commission shall not participate in the purchase of fill material, and that the approved

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participation does not include the construction of a railroad crossing or the acquisition of right-of-way. The motion was seconded by Commissioner Gray. All members voted aye and the motion carried.

**CONSIDERATION OF
SWC PARTICIPATION
FOR INCREASED COSTS
FOR CASS DRAIN NO. 55
(SWC Project No. 1613)**

Secretary Fahy recalled that at the May 12, 1975 meeting, the Commission approved participation in an amount of \$19,390 for the construction of a new Drain No. 55 in Cass County. Due to increased costs per yard in excavation and a much

greater expenditure for field inlets than was first anticipated, there are overage costs of \$2,770.

These increased costs have been reviewed by the State Water Commission staff and it is recommended by Secretary Fahy that the Commission approve participation in the overage costs not to exceed \$2,770, therefore, increasing the total state share to \$22,160.

It was moved by Commissioner Gray, seconded by Commissioner Kramer, and carried, that the Commission approve the additional increased costs and participate in an amount not to exceed \$2,770 in the construction of Cass County Drain No. 55.

**STATUS REPORT ON
HURRICANE LAKE
(SWC Project No. 559)**

Murray Sagsveen stated that an application to drain Hurricane Lake completely has been received. He distributed copies to the Commission members of a tentative

determination of the State Engineer to generally disallow the application. The request is to lower the lake completely and the determination of the State Engineer allows the lowering of the lake four-tenths of one foot only.

The tentative determination has been distributed to all interested people in the Hurricane Lake area and these people were given an opportunity to appeal the decision. Five landowners and two water management districts have secured an attorney and have asked for an appeal. The Fish and Wildlife Service has asked for an appeal. The affected parties are now in the process of determining an appropriate date for an appeal. The State Engineer will then, based on the original hearing and on the appeal, make a final decision.

Secretary Fahy stated his rationale for selecting this particular elevation for Hurricane Lake and his reasoning for making his determination.

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After discussion, it was moved by Commissioner Gray, seconded by Commissioner Wilhelm, and carried, that the Commission approve the determination of the State Engineer on the application to completely drain Hurricane Lake.

**DISCUSSION OF STATUS
OF REQUEST TO PARTIALLY
DRAIN SPIRITWOOD LAKE
(SWC Project No. 461)**

Murray Sagsveen stated that a request has been filed to partially drain Spiritwood Lake. A hearing was held in Jamestown with the applicant and after the hearing, the State Engineer

made his decision. The applicant was given an opportunity to appeal the decision. Some landowners submitted written statements in view of the appeal, which were considered at this time.

Mr. Sagsveen distributed copies of the final determination of the State Engineer. The determination of the State Engineer has been to authorize an outlet structure on the southwest side of Spiritwood Lake (at the section line between Section 1, Township 141 North, Range 63 West, and Section 36, Township 142 North, Range 63 West) which would permit drainage into Seven-Mile Coulee. The structure would permit drainage if the water surface of Spiritwood Lake exceeded 1,442 feet MSL. This compares with the July 3, 1975 elevation of 1,444.5 and the October 6, 1975 elevation of 1,443.5.

It was requested by Mr. Sagsveen that in light of the guidelines that were established at the time of the hearing, that the Commission approve the final determination of the State Engineer as presented.

It was moved by Commissioner Gray, seconded by Commissioner Wilhelm, and carried, that the Commission approve the final determination of the State Engineer on the application to partially drain Spiritwood Lake.

**STATUS DISCUSSION ON
UNITED PLAINSMEN ASSOCIATION
VS STATE WATER COMMISSION
LAWSUIT**

Mr. Sagsveen distributed copies of the final Order on the lawsuit case involving the United Plainsmen Association and the State Water Commission. He said that the Association has 60 days from the date

of March 18, 1976 in which to appeal the decision.

**STATUS REPORT ON
PROPOSED LEGISLATION**

Mr. Sagsveen stated that he has prepared and forwarded copies of a water-related appropriation bill draft to the Legislative

Council Committee which is the only bill draft that is currently active before the Committee. The Commission members did receive a copy of this draft at an earlier meeting, so Mr. Sagsveen briefly updated the members on the bill as it is being considered by the Committee.

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Discussion then centered around the prioritizing system for water permits in the State of North Dakota.

**DISCUSSION OF PROPOSED
RULES AND REGULATIONS
FOR THE STATE WATER
COMMISSION AND THE
STATE ENGINEER**

Under the State law, the State Engineer is a legal entity and the State Water Commission is a legal entity. During the past several months, State Water Commission staff members have prepared Rules and Regulations of Practice and

Procedure of Hearings Before the State Engineer. These Rules and Regulations have been adopted and are now being printed for distribution. If such Rules and Regulations prove satisfactory, Rules and Regulations for the State Water Commission will be developed.

**REQUEST FOR SWC PARTICIPATION
IN MARKETING OF IRRIGATION
PRODUCTION - GARRISON
DIVERSION CONSERVANCY DISTRICT
(SWC Project No. 237)**

Secretary Fahy recalled that sometime ago, the Commission received a request from the Garrison Diversion Conservancy District to finance, along with the Conservancy District, an approach to marketing of irrigation production.

At the time of the request, Secretary Fahy indicated that he didn't feel the Commission had established a policy whereby it would get involved with another taxing entity in an area that is for their particular use.

He indicated that he has done some research on this and is requesting that the Commission direct the State Engineer to notify the Garrison Diversion Conservancy District that this particular request is outside of the purview of the State Water Commission and that the financing should possibly be done through the Universities.

It was moved by Commissioner Wilhelm, seconded by Commissioner Lanz, and carried, that the Commission direct the State Engineer to notify the Garrison Diversion Conservancy District that their request to the State Water Commission for participation in a study on marketing of irrigation production is not within the purview of the State Water Commission and that financing should be considered through the Universities.

**RESOLUTION FOR CONSIDERATION
ON EXTENSION OF TIME FOR
COMPLETION OF YELLOWSTONE
LEVEL B STUDY
(SWC Project No. 1507)
(SWC Resolution No. 76-4-390)**

Secretary Fahy indicated that a draft resolution had been prepared at the request of the Commission at yesterday's session in regard to requesting that the time frame for completion of the Yellowstone Level B Study be extended.

This resolution will be presented to the Missouri River Basin Commission for their consideration of an extension of time.

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It was moved by Commissioner Wilhelm, seconded by Commissioner Just, and carried, that Resolution No. 76-4-390, Relative To Requesting An Extension Of Time For Completion Of Yellowstone Level B Study, be adopted by the Commission and that such Resolution shall be presented to the Missouri River Basin Commission for their consideration. (SEE APPENDIX "G")

**CONSIDERATION OF
WATER PERMIT REQUESTS**

Secretary Fahy presented APPENDIX "H", attached hereto, which represents water permit requests. He indicated that his staff has reviewed each application and has made recommendations noted on the attachment. After reviewing the requests, Secretary Fahy recommended that the Commission approve those requests as indicated, and defer those requests recommended for further study and information.

After discussion, it was moved by Commissioner Gray, seconded by Commissioner Kramer, and carried, that the Commission approve the following water permit requests, subject to the conditions indicated on each of the respective requests: No. 2352 - Marlow Flanders, Pettibone; No. 2354 - Allen Kamoni, Pettibone; No. 2339 - City of Karlsruhe, Karlsruhe; No. 2336 - Lower "K" Water Users Association, Fairview, Mont.; No. 2359 - Gerald Sandberg, Pettibone (this request was approved by State Engineer on March 23, 1976, now being reaffirmed by Commission); No. 2360 - Larry Tebelius, Pettibone (this request was approved by State Engineer on March 23, 1976, now being reaffirmed by Commission); No. 2363 - Paul Whitman, Robinson; No. 2364 - Ward Whitman, Robinson (this request was approved by State Engineer on April 14, 1976, now being reaffirmed by Commission); No. 2365 - Robert J. Gaebe, New Salem (this request was approved by State Engineer on March 2, 1976, now being reaffirmed by Commission); No. 2367 - James H. Olson, Streeter; No. 2370 - Ervin J. Dahn, Steele; No. 2356 - Robert Fenno, Oakes; No. 2355 - Wilbert Gasal, Jamestown; No. 2345 - Roger Anhorn, Deering; No. 2362 - Thomas A. Heimbuch, Oakes; No. 2338 - Dennis Wendel, LaMoure; No. 2366 - Grover E. Baldwin, Oakes; No. 2344 - True Oil Company, Casper, Wyoming; No. 2361 - Eugene A.

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Denowh, Fairview, Montana; No. 2371 - Willard Burk, Williston; No. 2347 - Raymond Dick, Englevale; No. 2169 - Vaughn Zacharias, Kathryn; No. 2358 - Earl W. Scholz, Fargo; No. 2373 - Everett and Leslie Hanson, Ambrose; No. 2380 - Royce Dahl, Verona; No. 2257 - Gerald Baker, Lidgerwood; No. 2384 - Roy W. Hagenstad, Crosslake, Minnesota; No. 2386 - Steve McCullough, Oakes; No. 2376 - Melvin Kitzan, Richardton; No. 2393 - Eugene G. Herman, Westby, Montana; No. 2394 - Wayne Herman, Westby, Montana; No. 2395 - Jerome L. Larson, Bergan; No. 2396 - Anton J. Merck, Karlsruhe; No. 2397 - Eugene Meyer, Westby, Montana; No. 2297 - Ralph Molbert, Steele; No. 2399 - William Scoville, Eugene Rott and Maynard Helgaas, Steele (this request was approved by State Engineer on April 13, 1976, now being reaffirmed by Commission); No. 2390 - Bruce Lindsay, Fargo; No. 2398 - Dr. Michael F. Beck, Bismarck; No. 2381 Patrick H. and Dianne L. Kraft, Minot; No. 2401 - Power Concrete, Inc., Hazen; No. 2403 - Grand Forks County Water Management District (Detention Dam No. 1), Grand Forks; No. 2404 - CF Industries, Inc., Donaldsonville, La., No. 2405 - Dennis P. Roney, Oakes; No. 2406 - Art Trautmann, Robinson; No. 2407 - Floyd Sullivan, Fairview, Montana; No. 2409 - Donald Dusek, Pisek; No. 2412 - Garrison Redi-Mix, Inc., Garrison (this request was approved by State Engineer on April 19, 1976, now being reaffirmed by Commission); No. 2414 - Claire E. and Lois C. Bjorgen, Westby, Montana; No. 2419 - Gordon E. Etter, Wimbledon; No. 2402 - Keith B. Zacharias; No. 2323 - Edward F. Walton, Wyndmere; No. 2348 - Lucien Peterson, Verona; No. 2332 - Raymond Wiese, Oakes; No. 2203 - Larry R. Hansen, Oakes; No. 2211 - Ray Mittelstadt, Dunn Center; No. 2230 - Ronald G. Rotenberger, Milnor; and No. 2269 - Wilbert Gasal, Jamestown.

It was moved by Commissioner Gray, seconded by Commissioner Kramer, and carried, that the Commission defer action at this time on the following water permit requests pending additional information and study: No. 2342 - David

April 21 and 22, 1976

Soreide, Bowman; No. 2368 - Joseph J.
Boehm, Karlsruhe; No. 2300 - Gravel
Products, Inc., Minot; and No. 2374 -
Ricky Bowerman, Ambrose. (SEE APPENDIX "H")

CONSIDERATION OF REQUEST
FOR WATER PERMIT FROM
M.A. SCHLAK, BISMARCK
(SWC Water Permit No. 2286)

Secretary Fahy presented a request from Mr. Otis Schlak of the Tolley Flats Area whereby he has requested that he be given a right to the water that has been drained onto his land so that he is assured of having the water as he plans to raise wild rice. Mr. Schlak does not plan to install any structures for irrigation and his request is to irrigate 260.3 acres, 520.0 acre-feet of water.

It was suggested by Secretary Fahy that the Commission defer action on this request until such time when the Legal Counsel for the Commission has had an opportunity to review and make recommendations.

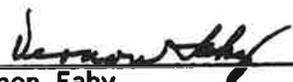
It was moved by Commissioner Gray, seconded by Commissioner Kramer, and carried, that the request designated as water permit No. 2286 assigned to M. A. Schlak, Bismarck, be deferred at this time until the Legal Counsel for the Commission has had an opportunity to review the application and project.

Discussion then centered around a briefing session for the new Commission members on project activities being undertaken by the Water Commission.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and carried, that the Commission adjourn at 5:10 p.m.


Arthur A. Link
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer, Secretary

April 21 and 22, 1976

committee to save north dakota, inc

APPENDIX "A"
83

L. ROGER JOHNSON
EXECUTIVE DIRECTOR
BOX 5126
UNIVERSITY STATION
FARGO, NORTH DAKOTA 58102
(701) 293-0028

MONROE RAUGUST
CHAIRMAN
RURAL ROUTE
HARVEY, NORTH DAKOTA 58341
(701) 693-5248

STATEMENT OF L. ROGER JOHNSON, EXECUTIVE DIRECTOR, COMMITTEE TO SAVE NORTH DAKOTA, BEFORE THE NORTH DAKOTA STATE WATER COMMISSION MEETING IN THE HIGHWAY DEPARTMENT AUDITORIUM, BISMARCK, NORTH DAKOTA, 9:00AM WEDNESDAY APRIL 21, 1976

Governor Arthur Link, members of the Commission, I would like to take this opportunity on behalf of the Committee to Save North Dakota, to thank you for this opportunity to present testimony regarding the Garrison Diversion Unit before the State Water Commission, which has authority over the management and development of North Dakota's water resources. It was with a deep and sincere concern over the development of the Garrison Diversion project and the serious problems plaguing this project that the Committee to Save North Dakota requested the opportunity to appear before you today.

We are here today as a result of developments within the U. S. Bureau of Reclamation and of more recent developments within the Garrison Diversion Conservancy District.

In the past four years of controversy surrounding the Garrison project, the Bureau of Reclamation has demonstrated time and again, its unwillingness to treat impacted landowners with fairness and compassion; to provide the people soon to be impacted with construction activities, as well as the supposed beneficiaries of the project, with needed project design data, including development plans -- so essential for proper planning by those slated either to lose land to the project, or to gain the privilege of reaping benefits from the Garrison project. At the same time, the Bureau of Reclamation continues to forge madly ahead with the construction of a project which, as presently planned, appears at the best, outmoded -- and at the worst, impossible to complete. Our requests and pleas of the Bureau of Reclamation have continually fallen on deaf or callously impersonal ears.

On the other hand, visible evidence of the Garrison Diversion Conservancy District to make valid attempts to resolve land acquisition problems associated with Garrison Diversion, to press for complete compliance on the part of the Bureau of Reclamation with the provisions of the Federal Relocation Act, to press for the release of critically necessary development plans of the

*"All that is necessary for the forces of evil to win
the world is for enough good men to do nothing."*

Edmund Burke

State Water Commission testimony, 21 April 1976

(2)

project -- in short, to do anything but blindly promote the Garrison Diversion project -- is lacking. To make matters approach the intolerable, the Conservancy District has now adopted a policy of refusing to send out information regarding this tax-supported entity to those who would question the Garrison project. For details refer to the attached correspondence from the Conservancy District regarding their policy.

There you have it, commissioners -- two governmental agencies, on the federal and state levels, have established policies of not responding to concerns of the North Dakota citizenry. The Committee to Save North Dakota believes this situation to be intolerable. It was in light of these things that our organization requested the opportunity to appear before the State Water Commission to express our concerns and to make requests of this body. The concerns we would like to discuss with you today lie in eight basic areas. An overview of each of these as well as our requests for information regarding and/or requests for investigations by the State Water Commission into each of these areas is presented herein:

1) Bureau of Reclamation ground water surveying/testing techniques.

Mrs. Myrtle Hawley, Coleharbor, North Dakota, was faced with a major problem following construction of the McClusky Canal, a mile and a half from her home. Her well water became polluted beyond the level acceptable for human consumption. There is a strong probability that her well water contamination resulted directly from a Bureau of Reclamation procedure of digging test holes without properly sealing the holes to avoid foreign materials, polluted water, etc., from entering previously non-contaminated aquifers.

The test hole in question regarding Mrs. Hawley's water problem was left unsealed for more than a year and a half. As a result, Mrs. Hawley was forced to bear in excess of \$1,000.00 worth of expenses for medical services (she became ill from drinking the polluted water), for replacing her water system, for travelling to Bismarck, Mandan, Underwood, etc., for water testing, medical services, potable drinking water supplies, etc. The Bureau of Reclamation's response to problems of this type is one of complacency.

CSME request of State Water Commission

- investigate the Bureau of Reclamation procedures employed regarding ground water surveying/testing techniques.
- Does the Bureau of Reclamation comply with North Dakota law regarding the sealing of test holes?

State Water Commission testimony, 21 April 1976

(3)

- investigate the specifics of Mrs. Hawley's situation.
- who (Bureau of Reclamation, Garrison Diversion Conservancy District, State of North Dakota), is going to compensate Mrs. Hawley for costs arbitrarily and unfairly imposed upon her?

2) McClusky Canal pollution via surface runoff

LaVern Axt, McClusky, North Dakota, lost a substantial portion of his farm to the McClusky Canal. Mr. Axt's farmstead lies between 2 hills on the north and south. The land upon which his buildings are located slopes to the east and used to drain into a slough less than a quarter of a mile east of his farm yard.

The McClusky Canal is now under construction east of Mr. Axt's farm yard, directly in the path of drainage water. Mr. Axt is concerned that the spoil banks of the McClusky Canal will act as a dike backing the water up into his yard. Thus, it will become necessary for the Bureau to provide a drain to let the water out from the east end of Mr. Axt's yard, probably into the Canal.

Here is where a very basic problem arises. Since much of the water from Mr. Axt's farm yard will run through his feedlot prior to entering the canal, pollution will likely result. In speaking with representatives of the Environmental Protection Agency, Mr. Axt learned that he would be responsible for any pollution accruing to the McClusky Canal as a result of his feedlot.

Conceivably, Mr. Axt could be forced to relocate his entire farmstead. When Mr. Axt explained his situation to the Bureau he was told that it wasn't their problem. After several months of negotiating, the Bureau finally offered Mr. Axt \$600 to solve his pollution problem - possibly requiring him to relocate his farm.

CSRD request of State Water Commission

- investigate the situation faced by LaVern Axt.
- Will Mr. Axt be forced to relocate his farmstead?
- If so, at whose expense?
- If not, will the runoff water be allowed to drain into the McClusky Canal?
- If not, how will the runoff water be disposed of?
- Who will bear the costs associated with the resolution of Mr. Axt's problem?
- Will Mr. Axt be forced to lose more of his land to solve this problem?

State Water Commission testimony, 21 April 1976

(4)

3) Lake Audubon flooding

Lake Audubon will have to be raised to a level of 1850 feet above mean sea level when Garrison Diversion becomes operational. Last fall, contrary to the insistence of the U.S. Army Corps of Engineers, flooding of privately owned land around Lake Audubon occurred when the lake level was yet two feet below the level needed for operation of Garrison Diversion. To the farmers in the area this poses some serious problems.

CSND request of State Water Commission

- Who is responsible for the faulty surveying around Lake Audubon?
- When were these surveys made?
- Why weren't more recent and accurate surveys made prior to the inundation of private land?
- How much additional land will have to be taken to raise Lake Audubon to 1850?
- Where is that additional land located? Who owns it?
- What will be the extent of waterlogging and seepage problems on land adjacent to Lake Audubon?
- What will be the actual financial loss to area farmers associated with the raising of the level of Lake Audubon?
- Who will compensate these farmers for this loss? (Bureau of Reclamation, The Corps, or the State of North Dakota?)

4) Ground Water studies

According to information provided me from Vern Fahy, Secretary, NDSWC, on December 18, 1975, there are yet 7 counties listed within the 25-county Conservancy District area, in which ground water studies are yet incomplete.

The Painted Woods Aquifer, through the construction of the McClusky Canal, was drained about 6 years ago. This aquifer was drained because the Bureau of Reclamation did not know of the existence of the aquifer since ground water studies at that time were not completed in McLean county.

The Committee to Save North Dakota believes the lack of completed ground water studies to be significant for two reasons:

State Water Commission testimony, 21 April 1976

(5)

First, as of yet uncharted aquifers may be of sufficient size to sustain irrigation agriculture without the massive system of canals and laterals to be constructed by the Bureau of Reclamation.

Second, it would seem logical to expect that the Bureau of Reclamation would plan the routes for canals taking into consideration the location of existing aquifers, so as to avoid the unnecessary severance and drainage of aquifers. Obviously, this consideration is impossible if the Bureau of Reclamation does not know of the existence and location of these aquifers.

CSND request of State Water Commission

- Why are the ground water studies not completed in counties within the boundaries of the Garrison Diversion Conservancy District?
- Especially, why are ground water studies not completed in counties where construction activities are presently underway?
- When will these studies be completed?
- How does the State Water Commission justify continued construction activities in counties where these studies are not completed?

5) Municipal and Industrial Water Uses

Benefits were attributed to the provision of municipal and industrial water supplies for North Dakota towns/cities when Garrison Diversion was authorized in 1965. According to the Bureau of Reclamation's Final Environmental Statement, Jan. 1975, p. I-44, four communities, (Minot, Harvey, Fessenden and Lansford), have been identified to receive municipal water supplies. No users of industrial water supplies have been identified. The initial phase of municipal water supply delivery to Minot entails construction of a pipeline from the Sindre aquifer six miles from Minot.

CSKE request of State Water Commission

- Is the full yield of the Sindre aquifer known?
- What is the known yield of Sindre?
- Is this known yield sufficient to supply Minot's anticipated municipal needs for the next ten years? Twenty years? Thirty years?
- When is the pipeline from the Velva Canal to Minot scheduled to be completed?
- Where will it be located?
- Where will the holding reservoir be located?
- What will be the capacity of Minot's holding reservoir?

State Water Commission testimony, 21 April 1976

(6)

- .. What economic studies have been done to determine the ability of Minot, Harvey, Fessenden and Lansford to utilize Garrison Diversion municipal water supplies?
- What studies have been done on alternative municipal water supplies for these communities?
- How many dollars of benefits were claimed for Garrison Diversion from municipal and industrial water supplies?
- How were these figures arrived at when only one city and three towns have been identified for municipal water delivery and when no industrial water areas have been identified?
- If Canadian and other objections preclude the development of the Souris Loop, what are the estimated costs of developing an alternative municipal water supply for Minot? Cost of an aqueduct from Lonetree or from Lake Audubon to Minot?

6) Lonetree Reservoir:

The acquisition of 33,000 acres of land for the development of the Lonetree Reservoir will pose a major problem for many of the farmers who will be forced off their land. The Bureau of Reclamation has been claiming publicly that they are 1) providing a two year lead time between all land acquisition and construction activities, 2) updating appraisals every three months, 3) making realistic, market-price offers for land taken, and 4) relocating displaced landowners under the provision of the Federal Relocation Act. These claims are false.

CSND request of State Water Commission

- Investigate the activities of the Bureau of Reclamation in the aforementioned areas and demand that the Bureau of Reclamation fulfill these claims.
- If the Souris Loop area of Garrison Diversion is dropped from the project will Lonetree have to be built?
- If so, could it be reduced in size? Why or why not?
- Is Lonetree Reservoir as presently planned being built just large enough to serve only the initial stage of Garrison Diversion, or is it being built large enough to serve the ultimate stage of the Garrison project as well?

State Water Commission testimony, 21 April 1976

(7)

7) Devils Lake Restoration

Recently, the newspapers have been telling about flooding around Devils Lake. At the same time, the present plans for Garrison Diversion, regarding Devils Lake restoration, are predicated on providing increased quantities of water to the Devils Lake chain.

CSND request of State Water Commission

- How far has the lake level of Devils Lake risen since 1965?
- If Devils Lake had been "restored" by Garrison Diversion waters three years ago, what impacts would be incurred by the city of Devils Lake today?
- Have the Garrison Diversion development plans for Devils Lake restoration changed since authorization? If so, how?
- Are the original plans for Devils Lake restoration still feasible?

8) Impact statements

The Final Environmental Impact Statements for three-fourths of the Garrison Diversion area have not yet been made public. The development plans contained in these statements are a must not only for those scheduled to lose land to the Garrison project, but also for those who stand to benefit from the delivery of irrigation water to their lands. It is appalling that these statements, eleven years after authorization and seven years after major construction, are not yet available. The draft of the Oakes-LaMoure Impact Statement was scheduled for release in January 1975, re-scheduled for the fall of 1975, and then rescheduled for March of 1976. This statement has not yet been released.

CSND request of State Water Commission

- The State Water Commission should place the highest priority on obtaining the Oakes-LaMoure statement and on speeding up the process for the release of the other two supplemental statements (Central North Dakota and Souris Sections) scheduled now for release at one year intervals.

State Water Commission testimony, 21 April 1976

(8)

The efforts of the Committee to Save North Dakota in obtaining the information requested in this testimony are ongoing. It is our belief that the orderly development of the Garrison Diversion project is hinged upon the resolution of these problems.

It is with this in mind that the Committee to Save North Dakota makes a final request of the State Water Commission -- a request which we feel is a compromise position in the Garrison Diversion controversy. We are asking the State Water Commission to consider a position before the United States Congressional Appropriations Committees of supporting continued appropriations for the Garrison project in areas other than continued construction and land acquisition. The appropriations should be used to resolve problems presently plaguing the Garrison project in the areas discussed in this testimony, with special emphasis on the following areas:

- 1) Return flows and their effect on waters entering Canada, Minnesota and South Dakota.
- 2) The completion of the Environmental Impact Statements for the entire project, in keeping with the intent and the letter of the National Environmental Policy Act.
- 3) Bureau of Reclamation treatment of impacted landowners with special regard for the Federal Relocation Act.

The Committee to Save North Dakota believes that, with the adoption and urgency of such a compromise position by the State Water Commission, the development of the Garrison Diversion project can proceed along lines consistent with placing the cart not before the horse, but behind the horse -- where it rightly belongs.

Box 5126 University Station Fargo, ND 58102

8 December 1975

Mr. Homer Engelhorn, manager
Garrison Diversion Conservancy District
P. O. Box 140
Carrington, North Dakota 58421

Dear Mr. Engelhorn:

I would like to request the following information regarding the Garrison Diversion Conservancy District:

- 1) detailed financial statements for the past four years. These statements should be broken down sufficiently to determine salaries of and expenses allocated to all employees, trips funded, bank deposits (and respective rates of interest earned on all deposits), etc., and
- 2) a list of all personnel employed by the Conservancy District along with the job description of each employee.

Looking forward to hearing from you,

Sincerely,

L. Roger Johnson
executive director

GARRISON DIVERSION CONSERVANCY DISTRICT

BOX 140 CARRINGTON, NORTH DAKOTA 58421 701-652-3154

December 19, 1975

L. Roger Johnson
 Committee to Save North Dakota
 Box 5126, University Station
 Fargo, North Dakota 58102

Dear Mr. Johnson:

In response to your letter of December 8, 1975 requesting four years of records from the Garrison Diversion Conservancy District, I advise you that the Conservancy District's Executive Committee has set a policy of adhering strictly to the Section 44-04-18 of the North Dakota Century Code.

We are advised by the Attorney General's office that this section of the North Dakota Century Code provides the following:

"44-04-18. ACCESS TO PUBLIC RECORDS.--Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours."

The Conservancy District office will at all times adhere to the law by making the District's records open and accessible for inspection during reasonable office hours to anyone making such a request. Inspection of records will be done under the supervision of District office personnel to insure that the integrity of the District's record-keeping system is maintained.

OFFICERS AND DIRECTORS

James B. Collinson, Chm., Devils Lake
 William Bosse, V. Chm., Cogswell
 Bill Long, 2nd V. Chm., Upnam
 Homer M. Engelnorn, Manager, Carrington

Lester M. Ancerson, Maxbass
 Ear. Burns, Tolna

John S. Dean, Halton
 J. C. Eaton, Jr., Minot
 Argil R. Froemke, Lisbon
 Donald D. Frost, Harvey
 E. M. Gregory, Fargo
 Ralph L. Harmon, Carrington
 Roy A. Holand, LaMoure

Selmer Jordheim, Walcott
 Carl Kuehn, Washburn
 R. E. Meidinger, Jamestown
 William J. Miller, Valley City
 Kendall Mork, Halton
 Earl C. Paimer, Gienburn
 Louis Rehovsky, Oakes

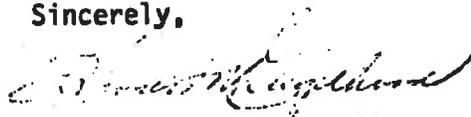
Tilmer J. Reiswig, McClusky
 Charles A. Richter, New Rockford
 Leon A. Sayer, Jr., Cooperstown
 Frank V. Schaan, Balta
 Vernon Sturlaugson, Minnewaukan
 H. J. Vosseleig, Finley

L. Roger Johnson
December 19, 1975
Page Two

Also, as advised by the Attorney General, Section 44-04-18 does not require that public records be reproduced and made available to persons for permanent keeping.

I hope this clarifies the policy and position of the Garrison Diversion Conservancy District concerning its records.

Sincerely,



Homer M. Engelhorn
Manager

HMEbn

8 March 1976

Mr. Homer M. Engelhorn
Manager
Garrison Diversion Conservancy District
Box 140
Carrington, North Dakota 58421

Dear Mr. Engelhorn:

This letter is in response to our phone conversation of 17 February 1976 during which we visited about the Garrison Diversion Conservancy District's Land Acquisition Review Committee and my letter to you of 8 December 1975.

During that phone conversation you agreed to send me at your earliest convenience the following information:

- 1) Garrison Diversion Conservancy District financial statements (in as much detail as readily available to you) for the past four years,
- 2) a list of personnel employed by the Conservancy District and job descriptions (where such job descriptions exist) for those personnel, and
- 3) a summary of all actions taken by the Garrison Diversion Conservancy District's Land Acquisition Review Committee since its inception two years ago as well as a copy of the minutes of all meetings held by said committee.

As of this date I have received none of the above described material from your office. Please send it at your earliest convenience.

Thank you.

Sincerely,

I. Roger Johnson
executive director



GARRISON DIVERSION CONSERVANCY DISTRICT

BOX 140 CARRINGTON, NORTH DAKOTA 58421 701-652-3194

March 9, 1976

L. Roger Johnson
Executive Director
Committee to Save North Dakota
Box 5126
University Station
Fargo, North Dakota 58102

Dear Mr. Johnson:

I apologize for the delay in responding to your phone call of February 17, 1976.

In checking the minutes of the December 16, 1975 meeting of the Executive Committee I quote the following action:

"Following a complete discussion by the Committee, Director Gregory made a motion the Conservancy District adhere strictly to the law concerning requests for information and that the Conservancy District adopt a policy of not sending out materials, which motion was seconded by Director Richter. Upon voice vote all Directors voted aye; motion carried."

As Manager of the Conservancy District, I am directed to carry out the policies as set forth by the Executive Committee and Board of Directors so am directed not to send the materials out of this office.

As previously stated in my letter of December 19, 1975 to you, the records of the Conservancy District will be open and accessible for inspection during reasonable office hours.

Sincerely,

Homer M. Engelhorn
Manager

HMEbn

OFFICERS AND DIRECTORS

James B. Collinson, Chm., Devils Lake
William Bosse, V. Chm., Cogswell
Bill Long, 2nd V. Chm., Upham
Homer M. Engelhorn, Manager, Carrington

Lester M. Anderson, Maxbass
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Donald D. Frost, Harvey
E. M. Gregory, Fargo
Ralph L. Harmon, Carrington
Roy A. Holand, LaMoure

Selmer Jordheim, Walcott
Carl Kuehn, Washburn
R. E. Meidinger, Jamestown
William J. Miller, Valley City
Kendall Mork, Halton
Earl C. Palmer, Glenburn
Louis Rehovsky, Oakes

Tilmer J. Reiswig, McClusky
Charles A. Richter, New Rockford
Leon A. Sayer, Jr., Cooperstown
Frank V. Schaan, Balta
Vernon Sturlaugson, Minnewaukan
H. J. Vosseteig, Finley

**DISCUSSION FORUM ON DEVELOPING A
COMPREHENSIVE UTILIZATION PLAN FOR WATER
RESOURCES IN WESTERN NORTH DAKOTA**

SUMMARY OF AGENDA CONSIDERED:

- I. Identifying Primary Preferential Water Use Categories Consistent with Priorities
 - A. Domestic (including family farms, rural housing, and small communities)
 - B. Municipal (including developing a water supply for the city of Dickinson)
 - C. Agricultural (including agri-business and light industrial)
 1. Determination of requirements vs. limitations and cost benefit ratios for other uses

- II. Legislating a Clear and Unequivocal Declaration on Preferential Water Use
 - A. Reserving waters in the state for a projected 50 to 100 year potential plan
 - B. Clearly define water law priority-in-time vs. preferential use
 - C. Provide flexibility relating to permit use (conditional vs. perfected)
 - D. Guarantee domestic, municipal, and agricultural water rights based on time indeterminate priority

- III. Pipeline Systems Concept
 - A. Developing a water distribution plan based on a comprehensive study of need
 - B. Provide for joint state - local control of water resources and water development programs for all beneficial uses
 - C. Reaffirm authority of the state to control the water resources (where conflict exists with federal authority)
 - D. Consider application by the State of North Dakota for water rights (where federal ownership is overriding)

- IV. Developing a Program for Financial Participation of the State Utilizing Resources of the Bank of North Dakota
 - A. State bonding authority for tax exempt bonds
 - B. Enabling legislation to support financial requirements

- V. State Concept to Provide Major Water Transmission Pipelines
 - A. Establishing local water distribution associations for defined purposes
 - B. Providing for municipal water supplies
 - C. Establishing rural water districts
 - D. Providing for total agricultural and agri-business needs

Dickinson, North Dakota
January 5, 1976

Governor Arthur A. Link
Chairman, State Water Commission
Capitol Building
Bismarck, ND 58501

Dear Governor Link:

This letter is being sent to you as Chairman of the State Water Commission to provide you and the Water Commission with our thoughts and impressions after having attended and participated in the seven meetings held in the West River Area in regard to West River Diversion and Industrial Water Permits. We feel that there are some peculiarities in regard to the meetings in addition to the testimony that are of importance to the Commission in their evaluation of the testimony.

We do sincerely feel that the majority of the people in this West River Area are in favor of a West River Diversion Program. We feel that if as much promotion and organization were put behind an effort to support this program as was used to oppose it that a very strong showing would be effected. Whereas 2,600 signatures were secured and were very effective in convincing West River Legislators to oppose West River Diversion, the same amount of effort applied for a West River Diversion could very possibly secure as many or more signatures on petitions.

It was very apparent at each meeting that attendance was generated by a concerted effort on the part of certain organizations to have as large a number of people there in opposition to West River Diversion as possible. This was openly admitted to in testimony at the Mott meeting. The fact that a lot of calls were made to get the opposition to each meeting was evidenced by the testimony at the Dickinson meeting. We do not point to these facts to indicate that this is wrong or that any organization was acting in any manner that was not proper. The meetings were open and public and anyone could attend and participate. We do feel, though, that the Commission should be aware that the opposition to West River Diversion was organized and made a large and successful effort to get vocal attendance at each meeting while those in favor of West River Diversion were not organized and did not have an organization to engineer the presentation of testimony.

It was rather disheartening for the three of us appearing at the meetings in favor of West River Diversion to participate in the meeting and have no one or only very few appear supporting our position and then after the meeting have two, three, or four people approach each of us and indicate that they support our point of view, but did not care to testify at a meeting such as these that were so "loaded". This was the case at every one of the meetings. A review of the testimony of each meeting will further indicate the organized effort in that at each meeting certain phrases and points kept reappearing almost word for word, but by different people.

Governor Arthur A. Link
January 5, 1976
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We feel that much of the testimony was irrelevant to the question of West River Diversion and Water Permits. A lot of emotion was expressed against Coal Development of every kind. It is also our position that some of the testimony was not factual. We did not think it would be proper nor the duty of the committee to question those who participated regarding the accuracy of their statements, but we do feel that the Water Commission should be aware of our feelings in this regard and evaluate the accuracy of the evidence that was presented as they analyze this testimony.

The extent to which the folks opposed to Coal Development have gone, can be seen reviewing the testimony from the meetings in regard to irrigation. It is hardly believable that mature farm people who are old enough to have experienced the drouth conditions of the thirties would be opposed to irrigation. Never-the-less, the testimony indicated this more than a few times, even to the extent of statements by these same people that irrigation would ruin Western North Dakota.

We are very disappointed in the fact that there were very few real recommendations in the testimony. This was the object of the meetings. Instead of plans or programs to overcome the effects of Coal Development, most of the testimony only condemned Coal Development. We feel very strongly that probably the most important next step is the formulation of rules, regulations, and laws to take care of Land Reclamation and the social impacts of Coal Development. We have made recommendations along these lines in our opening discussions at each meeting and we do encourage the Water Commission to be aware of these points:

1. We encourage the State Water Commission to take all actions possible to retain control of our Water Resources for the State of North Dakota.
2. Limit Water Permits for Coal Development within reason. We recommend that there should be not more than eight gasification plants by the year 2000. Actually, four or five gasification plants in total by the year 2000 would be more realistic.
3. Where practical, require that any allocation of water for coal development be dedicated to the land rather than as the sole water right of the coal developer. Thus it would then be possible to continue the same flow of water through the same transmission facilities without a lot of additional red-tape and the water could be used to aid in land reclamation and to provide increased productivity of the reclaimed land.
4. Unitize water transmission lines where feasible to lessen the disturbance of land surface and to allow for multiple use of transmission facilities and water for all beneficial uses. Beneficial uses would include irrigation, municipal use, rural water supply, and other industrial use besides coal development.

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We would also recommend that a pipeline be given preference to an open ditch or canal. This would disturb less land and would be better for the area from an environmental standpoint.

5. Encourage organization of local entities to participate in the governing and control of the water use and as far as possible to have a hand in determining the extent and patterns of industrial and agricultural development.
6. Although the following points are probably not directly under the control or the Water Commission, we recommend that the Commission exert its influence to help in finding solutions in these areas that concern themselves with coal development.
 - A. Encourage all sensible research and data gathering on the social problems and how to protect ourselves and our communities from the social changes and tax impacts which could accompany extensive Coal Development.
 - B. Request increased research on Land Reclamation, including the use of irrigation.
 - C. We would recommend that coming Legislators enact laws that are more specific and have more definitive enforcement procedures as we learn more about the best practices on Reclamation of strip mined land to reach the ultimate in agricultural productivity. We feel that reclamation should be the responsibility of the coal developer. Land to be mined should have a complete soil survey prior to any disturbance. Replacement of the soil could best be done under the supervision of a soils specialist to assure that the most beneficial use be made of the available top soil and other surface material. We also recommend that the land be leveled to the best grade for agricultural production which in many cases will be different from its original contour.
 - D. Compile information to be used to enforce the rights of surface owners and encourage the enactment of State Laws to protect the surface owner who does not own any of the mineral rights, so that he would be properly compensated for damages and loss of production.
 - E. Enact and enforce strict, but realistic air and water pollution standards on all industry.

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We submit these thoughts to the State Water Commission for their use in evaluating the testimony of the meetings held in the West River Area and as definite recommendations to use in preparing for the problems of future water use and coal development.

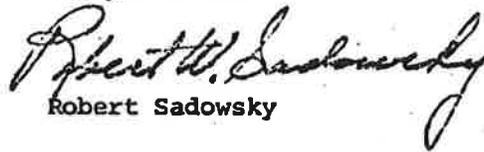
Sincerely yours,



Robert Stranik



Raymond Schnell



Robert Sadowsky

NATURAL GAS PIPELINE COMPANY OF AMERICA

122 South Michigan Avenue • Chicago, Illinois 60603

N. D. STATE WATER COMMISSION
ROUTE TO

	v	
Ass't Sec		
Ass't Ch. F.		
Leg. C.		
Pl. & C.		
Off. E.		
Cons. E.		
G. W. E.		Area 312/431-7690
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Chief Steu.		
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R.W. LINDGREN
Vice President - Energy Resources

January 30, 1976

North Dakota State Water Commission
Bismarck, North Dakota 58501

Attention: Mr. Murray G. Sagsveen
Director, Legal Services

Re: 5th Draft of Contract and Conditions
for Water Permit for Natural Gas
Pipeline Company of America

Gentlemen:

We have reviewed the above referred to draft of conditions in connection with our pending application and hereby indicate Natural's concurrence and acceptance of all provisions and statements contained therein.

Very truly yours,



DRAFT CONDITIONS FOR CONSIDERATION BY SWC ON APPLICATION BY _____

PRELIMINARY STATEMENT

This water permit is granted pursuant to a contractual agreement previously executed between the Commission and Appropriator. The contract, incorporated herein by reference, is recited below:

Contract between the State of North Dakota and _____ for the Sale of Water Rights

THIS CONTRACT, made this ____ day of _____, 197__, pursuant to Section 61-02-14 of the North Dakota Century Code is between the STATE OF NORTH DAKOTA, hereinafter called the State, acting for this purpose through the State Water Commission and the officer executing this Contract, hereinafter called the STATE ENGINEER, and _____, with its principal place of business at _____, hereinafter called the APPROPRIATOR.

RECITALS:

The following preliminary statements are made by way of explanation:

- a. Appropriator is planning the construction and operation of a coal gasification plant near _____, North Dakota.
- b. The State Engineer is prepared to grant Appropriator a conditional water permit, for _____ acre-feet subject to 13 conditions, pursuant to Chapter 61-04 of the North Dakota Century Code.

- c. The State Water Commission is prepared to approve the granting of the permit as conditioned by the State Engineer.
- d. The State Water Commission has authority to assess a fee for the sale of water to the holder of a valid water permit. Specifically, Section 61-02-14 of the North Dakota Century Code states:

"The Commission shall have full and complete power, authority, and general jurisdiction:

- 2. To define, declare, and establish rules and regulations:

- a. For the sale of waters and water rights to individuals, associations, corporations, municipalities, and other political subdivisions of the state, and for the delivery of water to users;
- b. For the full and complete supervision, regulation, and control of the water supplies within the state;

- 5. To exercise all express and implied, rights, power and authority, that may be necessary, and to do, perform, and carry out all of the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith;"

NOW, THEREFORE, considering the above factors, the parties agree to the following:

1. The State Engineer shall grant a conditional water permit to Appropriator subject to any and all conditions which may be attached thereto.
2. Appropriator offers the following consideration for the water permit:
 - a. Appropriator agrees to pay any state fees which may be required by rules or regulations, either currently existing or later promulgated, and any amendments thereto.
 - b. Appropriator shall reserve an annual maximum of 10% of the gas produced by any coal gasification plant using water pursuant to the water permit. The gas so reserved shall be for consumption within the State of North Dakota, subject to the following:
 - (1)(a) The first 5% (of the 10% annual maximum) of the gas or any portion thereof, so reserved shall be made available to utilities duly certified to distribute gas within this State upon not less than three years' written notice given to Appropriator by such utility, setting forth the time such gas shall be made available. The gas so reserved shall be delivered at a daily flow rate not to exceed 10% of the average daily production based upon the preceeding two years' production, or upon the

plant's projected daily production if no average has been established.

- (b) The second 5% (of the 10% annual maximum) of the gas, or any portion thereof, of the gas so reserved shall be made available to utilities duly certified to distribute gas within this State upon not less than six years' written notice given to Appropriator by such utility, setting forth the time such gas shall be made available. The gas so reserved will be delivered at a daily flow rate not to exceed 15% of the average daily production based upon the preceeding two years' production, or upon the plant's projected daily production if no average has been established.
- (c) The above percentages for annual maximum reservations shall be based upon the yearly average for the preceeding two years' production, or upon the plant's projected capabilities if no average has been established.
2. The gas shall be made available for delivery at the plant unless some other point of delivery in the State is agreed upon by the parties or designated by the appropriate state agency having jurisdiction of such matters. If no other agency is deemed to have jurisdiction, the State Water Commission reserves the right to so designate.

3. The price of the gas delivered at the plant shall be at wholesale to such distributor and shall not reflect transportation costs. If Appropriator is required to deliver the gas at any point other than the plant, transportation cost to such delivery point shall be added to the wholesale price. The price and transportation charges, if any, shall be determined by acceptable rate making procedures in effect in this State as of the date of the acceptance of this contract unless another rate making procedure is in effect in this State at the time of the transaction or by another method that is mutually agreed upon between the Appropriator and such distributor and approved by the appropriate state agency having jurisdiction in such matters. If no agency is deemed to have jurisdiction, the State Water Commission reserves the right to approve a price acceptable to both parties or to set a price if no agreement is reached.
4. Appropriator shall not be obligated to pay any of the costs of making a connection with its gas system, nor to construct distribution or transmission systems within North Dakota as to the reserved gas.

5. It is the intent of this contract that the relationship created hereby shall be one affecting intrastate commerce only; provided, however, should approval by any federal agency be required with respect to this reservation, Appropriator will request such approval.
- c. At least three years prior to the termination of plant operations, Appropriator shall tender, and agree to convey to the State Water Commission, at no cost to the State, all water supply and water transmission facilities and such facilities' rights-of-way unless such conveyance is rejected by the Governor prior to such termination of operations or unless such tender is contrary to state law or a state agency's rules or regulations.
- d. In the event Appropriator determines to sell products or by-products as hereinafter defined from Appropriator's coal gasification plant for uses other than in the plant and its related facilities, Appropriator shall grant a preference, if within a reasonable bid range of the bid of bona fide purchasers of the products and by-products or combined purchases thereof (subject to the approval of the appropriate Federal or State agencies, if such approval is necessary) to North Dakota distributors or users desiring to purchase such products or by-products for use within this State.

Products or by-products shall mean any derivative except synthetic natural gas resulting from the utilization of water in a chemical process with lignite, including, but not limited to, steam, heat, and ammonia.

- e. If the water permit granted to Appropriator by the State Engineer is assigned or sold with the written authorization of the State Engineer, Appropriator may assign this Contract to that person, corporation or business entity to whom the water permit is assigned or sold, provided Appropriator files with the State Engineer a fully executed copy of such assignment. Such instrument of assignment will indicate full acceptance of all of the terms and conditions of this Contract by the entity to whom the assignment is made. Upon satisfaction of the terms of this clause, the assigning Appropriator will be relieved of all of the terms and conditions of this Contract.
- f. Every provision of this Contract is considered an essential element in the final decision to grant the permit; therefore, if the Contract, or any provision thereof, is held to be invalid because of legal action or challenges caused by Appropriator, determination of such invalidity shall render the permit void. However, if this Contract, or any provision thereof, is held to be invalid because

of legislation or legal action by parties other than the Appropriator or the Commission, the permit shall remain valid and the remaining provisions of the Contract shall remain valid and effective (as modified by such legislation or legal action).

BASIC PROVISION

During the term of this water permit, subject to all conditions below, and subject to all pre-existing rights, Appropriator may divert up to _____ acre-feet of water annually from _____ . Every condition in this permit is considered an essential element in the final decision to grant this permit; therefore, if any condition is held to be invalid because of legal action or challenges caused by Appropriator, determination of such invalidity shall render this permit void. However, if this permit, or any condition thereof, is held to be invalid because of legislation or legal action by parties other than the Appropriator or the Commission, the permit shall remain valid and the remaining conditions effective (as modified by such legislation or legal action).

DEFINITIONS

- a. "Commission" shall mean the North Dakota State Water Commission.
- b. "Appropriator" shall mean _____ .
- c. "Subcontractor" shall mean any party with which Appropriator may, directly or indirectly, contract, including, but not limited to, its coal supplier, a

parent organization, a subsidiary, or an affiliate connected in some manner through the parent organization.

CONDITIONS

PURPOSE FOR WHICH WATER MAY BE USED

1. The water so diverted shall be available for beneficial use by the Appropriator for the purpose of producing synthetic gas in a gasification facility and other incidental uses related thereto, including the generation of electricity, environmental controls and the reclamation and revegetation for associated mining operations. Diversion facilities shall be designed to accommodate the primary and all incidental uses of the water subject to this permit.

ENVIRONMENTAL CONSIDERATIONS

2. Appropriator shall prepare a comprehensive environmental statement and analysis concerning water appropriations for four gasification plants, incorporating therein a specific, detailed section on the impact of the proposed subject plant. The Appropriator's comprehensive environmental statement and analysis shall follow criteria established by the State Engineer in advance of preparation and shall be subject to periodic review and amendment by the State Engineer during actual preparation. Applicant shall file such report with the State Engineer along with any other environmental reports, analyses, amendments, supplement, or comments thereon which has been prepared by

or for Appropriator concerning any or all gasification plants proposed by Appropriator in the State of North Dakota. The preparation of such a statement or analysis shall not prejudice possible requests for future specific statements or analyses pertaining to subsequent water appropriations by Appropriator. An impact statement prepared by or for applicant as required by a federal agency or another state agency may satisfy this requirement upon written approval of the State Engineer.

The State Engineer shall reserve the authority to modify or void this conditional water permit within six months after receipt of the final comprehensive environmental statement and analysis should it appear that the perfection of this permit in its current form would be "contrary to the public interest".

3. Appropriator shall design and operate subject coal gasification plant in the most environmentally acceptable manner to minimize any wasteful use of water. Such design and manner of operation shall be subject to approval of the State Engineer. Plans submitted to the State Engineer concerning design or operation of the plant shall be approved, disapproved, or modified by the State Engineer as soon as practicable, but within six months after submission.

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Appropriator, through its chief executive officer and other officers and consultants, shall appear upon request before the State Engineer to provide information on design, operation or any other related matter.

4. Appropriator shall return all lands at the plant site which are disturbed by the operation of the plant to at least the level of agricultural productivity that existed prior to disturbance or such other use as approved by the State Engineer. This condition shall not apply if this matter is regulated by statute or rules and regulations of any other state agency.
5. Appropriator shall supply water to its coal supplier (or any other party responsible for reclamation of mined land) at a reasonable cost in the event successful reclamation requires the application of supplemental water to aid plant growth on lands being reclaimed. A separate permit shall not be required for irrigation water utilized pursuant to this provision.
6. Appropriator shall, by contract or other appropriate means, cause its coal supplier to direct mining operations in accordance with recommendations of the State Engineer with respect to the protection of (ground and surface) water supplies and restoring or improving the irrigable potential

of the reclaimed land. This condition shall not apply if these matters are regulated by statute or rules and regulations of any other state agency.

TERMS OF WATER PERMIT

7. This conditional water permit shall be granted for an initial period of eight years. If the Appropriator has not perfected subject water permit within the eight-year period, it may apply to the State Engineer to extend the time of the conditional water permit.
8. A perfected water permit shall be issued when the water subject to this permit is applied to a beneficial use as provided in condition number one. The perfected water permit shall retain all appropriate conditions contained in the conditional water permit.
9. No change in the point of diversion or point of discharge (if any) shall be made without prior written authorization of the State Engineer.
10. No permit assignment or sale of water subject to this permit shall be made without prior written authorization of the State Engineer.

METERING

11. Appropriator shall provide metering devices satisfactory to the State Engineer to record the actual amounts of water diverted under this permit. The metering devices

shall be available for inspection by the State Engineer at all reasonable times.

COMPLIANCE WITH STATE STATUTES, REGULATIONS AND ORDERS

12. Appropriator and subcontractors shall be bound by all applicable state or local statutes, regulations, ordinances, or administrative orders now existing or which may be hereafter enacted, adopted, or promulgated. This shall include, but not be limited to, compliance with air pollution, water pollution, reclamation, plant siting, planning and zoning statutes, regulations, ordinances, and orders. Use of water by Appropriator when either Appropriator or any subcontractor is in noncompliance with an applicable statute, regulation, ordinance or order shall be considered nonbeneficial thereby causing Appropriator to be subject to forfeiture of this water permit.

Upon request, Appropriator shall report to the State Engineer and other appropriate agencies with respect to compliance with appropriate statutes, regulations, ordinances or orders.

13. Appropriator shall secure all appropriate permits from, and execute all necessary contracts with, the United States.

In the Matter of the)	Administrative No. 76-2
)	
North Cass County Water)	ORDER
Management District)	

I.

Section 61-16-05 of the North Dakota Century Code states, in part:

All land in North Dakota shall be within water management districts by July 1, 1974.

* * *

The state water conservation commission is hereby authorized to, and shall, by or before July 1, 1974, create water management districts at least countywide in size in each county of the state which has two or more water management districts...except that any district which is smaller than countywide in size established prior to January 1, 1973, may in lieu of merging with the new countywide district, continue to exist, within its established boundaries, independently of such countywide district if its board of commissioners files with the state water commission written notice of its intention on or before January 1, 1974.

II.

Southeast Cass, Rush River, and Maple River Water Management Districts properly requested before January 1, 1974, that they be authorized to continue an existence independent of any countywide district.

III.

Recent review of the boundaries of the three water management districts in Cass County revealed that several townships were not included within any existing water management district. Notice of the error was provided to the chairman, Cass County Commission; chairmen of the Maple River, Rush River, Southeast Cass, Steele County, and Traill County Water Management Districts; and the Cass County State's Attorney. The Board of County Commissioners for the County of Cass and the Boards of Commissioners for each water management district therein were given 60 days to determine their respective positions on the matter.

IV.

Within the 60 days, a letter was received from the Cass County Auditor stating the following:

At a regular meeting of the Board of Cass County Commissioners on April 12, 1976, it was moved by Commissioner Griffeth and seconded by Commissioner Hendrickson to recommend to the North Dakota State Water Commission that the area in the northern part of Cass County, not now included in a water management district, be designated as the North Cass County Water Management District, thus creating the fourth district in the County.

The three existing districts do not wish to include this area within their present boundaries because the watershed area in the proposed district does not come within any of the present districts.

At a meeting of the property owners of the unorganized area, they voted unanimously to have a fourth district created. We hope that the State Water Commission will concur in the wishes of the property owners and the Cass County Commission in creating the new district and designating it as the North Cass County Water Management District.

If this should be approved by the State Water Commission, the Board of County Commissioners will then appoint the governing body for the district.

V.

Therefore, the State Water Commission, at its regular meeting held in the City of Bismarck, North Dakota, on the 22nd day of April, 1976, approved of the creation of the North Cass County Water Management District in order to implement the directive of the Legislative Assembly that "All land in North Dakota shall be within water management districts...."

VI.

The North Cass County Water Management District shall consist of the following portions of Cass County:

All of the following townships: Noble (T143N, R49W), Kinyon (T143N, R50W), Bell (T143N, R51W), Wisner (T142N, R49W), Gardner (T142N, R50W), Gunkel (T142N, R51W) and Page (T143N, R54W); Sections 1, 2, 3, 4, 5, E½ 6, E½ 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, E½ 18, E½ 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, E½ 30, E½ 31, 32, 33, 34, 35, and 36 of Hunter Township (T143N, R52W); Sections 1, 2, 3, 4, 5, E½ 6, E½ 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, E½ 18, E½ 19, 20, 21, 22, 23, 24, 25, N½ 26, N½ 27, N½ 28, N½ 29, NE½ 30, and 36 of Arthur Township (T142N, R52W); Sections W½ 2, 3, 4, 5, 6, 7, 8, 9, 10, W½ 15, 16, 17, 18, 19, 20, 21, W½ 22, W½ 27, 28, 29, 30, 31, 32, 33, and W½ 34 of Dows Township (T143N, R53W); Sections N½ 4, N½ 5 and 6 of Erie Township

(T142N, R53W); Sections 1, 2, 3, 4, 5, 6, N½ 7, 8, 9, 10, 11, and 12 of Rich Township (T142N, R54W); Sections E½ 1, and NE½ 12 of Lake Township (T142N, R55W); and Sections 1, 2, 3, 11, 12, 13, 14, E½ 15, 24, 25, 36, and those parts of Sections 4, 10 and 23 lying northeast of the Burlington Northern Railway of Rochester Township (T143N, R55W).

DATED at Bismarck, North Dakota, this 22nd day of April, 1976.

NORTH DAKOTA STATE WATER COMMISSION

Arthur A. Link
GOVERNOR ARTHUR A. LINK
CHAIRMAN

ATTEST:

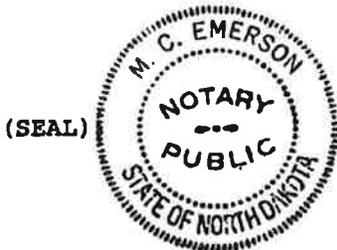
Vernon Fahy
Vernon Fahy
SECRETARY

STATE OF NORTH DAKOTA)
COUNTY OF BURLEIGH)

On this 22nd day of April, 1976, before me a notary public in and for Burleigh County and the State of North Dakota personally appeared Honorable Arthur A. Link, known to me to be the Governor of North Dakota and Chairman of the North Dakota State Water Commission and Vernon Fahy, known to me to be the North Dakota State Engineer and Secretary of the Commission who acknowledged to me that the Commission has executed the foregoing Order creating the North Cass County Water Management District.

M. C. Emerson
Notary Public

M. C. EMERSON
Notary Public, BURLEIGH, CO., N. DAK.
My Commission Expires MARCH 1, 1981



RESOLUTION NO. 76-4-390

APPENDIX "G"

Relative To Requesting An Extension
Of Time For Completion Of
Yellowstone Level B Study

WHEREAS, the Yellowstone Level B Study was authorized by the Missouri River Basin Commission to study the Impacts of change in the Yellowstone Basin; and

WHEREAS, the Yellowstone River contributes a substantial amount of the flows of the Missouri River, one of this State's most valuable water resources; and

WHEREAS, in view of the importance of the study to the citizens of this State and the need to consider all elements of water use as it affects planning for the future of the State; and

WHEREAS, the present time schedule for completion of this study is entirely unrealistic in the light of the need for the detailed planning necessary to consider the concerns of North Dakota citizens.

NOW, THEREFORE, BE IT RESOLVED by the North Dakota State Water Commission at its meeting held in Bismarck, North Dakota, on this 21st day of April, 1976, that it requests that the schedule for the development of the Yellowstone Level B Study be extended to provide sufficient time to assure adequate consideration and evaluation of all pertinent items of information; and

BE IT FURTHER RESOLVED that the time for completion of the study be not less than 30 months and that copies of this resolution be presented to all members of the Missouri River Basin Commission.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:


Arthur A. Link
Governor-Chairman

SEAL

ATTEST:


Vernon Fahy
Secretary

WATER PERMIT AGENDA FOR APRIL 21 and 22, 1976 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2352	Flanders, Marlow - Pettibone (Kidder County)	Ground Water	Irrigation	234.0 acre-feet 156.0 acres	202.0 acre-feet 135.0 acres
2354	Kamoni, Allen - Pettibone (Kidder County)	Ground Water	Irrigation	928.2 acre-feet 464.1 acres	606.0 acre-feet 405.0 acres
2339	Karlsruhe, City of - Karlsruhe (McHenry County)	Ground Water	Municipal	25.0 acre-feet	25.0 acre-feet
2342	Soreide, David - Bowman (Bowman County)	East Fork of Deep Creek, trib. to Little Missouri River	Irrigation	125.0 acre-feet 62.5 acres	Defer action at this time pending further information and study.
2336	Lower "K" Water Users Association - Fairview, Montana (McKenzie County)	Yellowstone River, trib. to Missouri River	Irrigation	1754.0 acre-feet 877.0 acres	1754.0 acre-feet 877.0 acres
2359	Sandberg, Gerald - Pettibone (Stutsman County)	Ground Water	Irrigation	468.0 acre-feet 312.0 acres	Recommend approval of: SW $\frac{1}{4}$ Sec 31, Twp 143, Rge 69 202.5 acre-feet 135.0 acres (Balance to be held in abey- ance pending additional data.) This permit was approved by State Engineer on 3-23-76.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2360	Tebelius, Larry - Pettibone (Stutsman County)	Ground Water	Irrigation	468.0 acre-feet 312.0 acres	(Recommend approval of:) 210.0 acre-feet 140.0 acres (Balance to be held in abeyance pending additional data Request was approved by State Engineer on 3-23-76)
2363	Whitman, Paul - Robinson (Kidder County)	Ground Water	Irrigation	431.1 acre-feet 287.4 acres	404.0 acre-feet 270.0 acres
2364	Whitman, Ward - Robinson (Kidder County)	Ground Water	Irrigation	457.8 acre-feet 305.2 acres	202.0 acre-feet 135.0 acres (This request was approved by State Engineer on April 14, 1976)
2365	Gaebe, Robert J. - New Salem (Morton County)	Intermittent Stream, trib. to Big Muddy Creek and Heart River	Irrigation-Waterspreading	42.0 acre-feet 40.5 acres	40.5 acre-feet 40.5 acres (This request was approved by State Engineer on March 2, 1976)
2367	Olson, James H. - Streeter (Logan County)	Unnamed Draw, non-contributing area to Missouri River	Irrigation-Waterspreading	5.6 acre-feet 2.8 acres	2.8 acre-feet 2.8 acres
2368	Boehm, Joseph J. - Karlsruhe (McHenry County)	Ground Water	Irrigation	234.0 acre-feet 156.0 acres	Defer action at this time pending further study and investigations.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2370	Dahn, Ervin J. - Steele (Kidder County)	Ground Water	Irrigation	912.0 acre-feet 621.9 acres	Recommend for approval: 606.0 acre-feet 405.0 acres (202.0 acre-feet, 135.0 acres in NW $\frac{1}{4}$ Section 17 held in abeyance)
2356	Fenno, Robert - Oakes (Dickey County)	Ground Water	Irrigation	1220.0 acre-feet 529.8 acres	744.0 acre-feet 496.0 acres
2355	Gasal, Wilbert - Jamestown (Stutsman County)	Unnamed Draw, trib. to Seven- Mile Coulee and James River	Irrigation	25.0 acre-feet storage 12.0 acre-feet annual use 28.0 acres	25.0 acre-feet storage 12.0 acre-feet annual use 28.0 acres
2345	Anhorn, Roger - Deering (McHenry County)	Ground Water	Irrigation	135.0 acre-feet 74.0 acres	111.0 acre-feet 74.0 acres
2362	Heimbuch, Thomas A. - Oakes (Sargent County)	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	202.0 acre-feet 135.0 acres
2338	Wendel, Dennis - LaMoure (LaMoure County)	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	202.0 acre-feet 135.0 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2366	Baldwin, Grover E. - Oakes (Dickey County)	James River	Irrigation	234.6 acre-feet 156.4 acres	135.0 acre-feet 135.0 acres
2344	True Oil Company - Casper, Wyoming (McKenzie County)	Ground Water	Industrial	24.1952 acre-feet	24.1952 acre-feet
2361	Denowh, Eugene A. - Fairview, Mont. (McKenzie County)	Yellowstone River	Irrigation	500.0 acre-feet 251.0 acres	251.0 acre-feet 251.0 acres
2371	Burk, Willard - Williston (Williams County)	Stony Creek, trib. to Little Muddy and Missouri Rivers	Irrigation	486.0 acre-feet 243.2 acres	150.0 acre-feet 243.2 acres
2347	Dick, Raymond - Englevale (Ransom County)	Ground Water	Irrigation	1280.0 acre-feet 640.0 acres	Recommend for approval: 404.0 acre-feet 270.0 acres (Remaining 405.0 acre-feet to be held in abeyance pending further data)
2169	Zacharias, Vaughn - Kathryn (Barnes County)	Ground Water	Irrigation	320.0 acre-feet 260.0 acres	320.0 acre-feet 260.0 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2358	Scholz, Earl W. - Fargo (Cass County)	Sheyenne River, trib. to Red River of the North	Irrigation	3.43 acre-feet 6.86 acres	3.43 acre-feet 6.86 acres
2373	Hanson, Everett and Leslie - Ambrose (Divide County)	Ground Water	Irrigation	457.8 acre-feet 305.2 acres	405.0 acre-feet 270.0 acres
2380	Dahl, Royce - Verona (Ransom County)	Ground Water	Irrigation	240.0 acre-feet 160.0 acres	202.0 acre-feet 135.0 acres
2257	Baker, Gerald - Lidgerwood (Sargent County)	Ground Water	Irrigation	160.0 acre-feet 160.0 acres	160.0 acre-feet 140.0 acres
2384	Hagenstad, Roy W. - Crosslake, Minn. (McHenry County)	Ground Water	Irrigation	318.0 acre-feet 158.0 acres	237.0 acre-feet 158.0 acres
2300	Gravel Products, Inc.- Minot (Ward County)	Ground Water	Industrial (Gravel washing)	150.0 acre-feet	Deferred pending completion of application.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2386	McCullough, Steve - Oakes (Dickey County)	James River	Irrigation	438.0 acre-feet 248.0 acres	248.0 acre-feet 248.0 acres
2376	Kitzan, Melvin - Richardton (Dunn County)	Unnamed Dry Channel, trib. to Knife River	Irrigation- Waterspreading	242.0 acre-feet 121.0 acres	121.0 acre-feet 121.0 acres
2393	Herman, Eugene G. - Westby, Montana (Divide County)	Ground Water	Irrigation	624.0 acre-feet 312.0 acres	405.0 acre-feet 316.0 acres
2394	Herman, Wayne - Westby, Montana (Divide County)	Ground Water	Irrigation	312.0 acre-feet 156.0 acres	234.0 acre-feet 156.0 acres
2395	Larson, Jerome L. - Bergen (McHenry County)	Ground Water	Irrigation	312.0 acre-feet 156.0 acres	202.0 acre-feet 135.0 acres
2396	Merck, Anton J. - Karlsruhe (McHenry County)	Ground Water	Irrigation	294.0 acre-feet 147.53 acres	202.0 acre-feet 135.0 acres
2397	Meyer, Eugene - Westby, Montana (Divide County)	Ground Water	Irrigation	212.0 acre-feet 156.0 acres	212.0 acre-feet 135.0 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2297	Molbert, Ralph - Steele (Kidder County)	Ground Water	Irrigation	180.0 acre-feet 115.7 acres	172.0 acre-feet 115.0 acres
2399	Scoville, William; Rott, Eugene; and Helgaas, Maynard - Steele (Kidder County)	Ground Water	Irrigation	1407.0 acre-feet 938.0 acres	Recommend for approval: 808.0 acre-feet 540.0 acres (404.0 acre- feet held in abeyance pending further data) Request was approved by State Engineer on April 13, 1976
2390	Lindsay, Bruce - Fargo (Williams County)	Ground Water	Irrigation	586.0 acre-feet 391.0 acres	250.0 acre-feet 165.0 acres
2398	Beck, Dr. Michael F. - Bismarck (Burleigh County)	Ground Water	Irrigation	80.0 acre-feet 40.0 acres	80.0 acre-feet 40.0 acres
2381	Kraft, Patrick H. and Dianne L. - Minot (McHenry County)	Ground Water	Irrigation	300.0 acre-feet 113.94 acres	110.0 acre-feet 113.94 acres
2401	Power Concrete, Inc. - Hazen (McLean County)	Ground Water	Industrial (Ready-Mix Concrete Plant)	3.0 acre-feet	3.0 acre-feet

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2403	Grand Forks County Water Management District (Detention Dam No. 1) Grand Forks (Grand Forks County)	Unnamed Tributary, tributary to North Branch of Turtle River	Flood Control	2959.0 acre-feet storage (flood pool) 132.0 acre-feet annual use	2959.0 acre-feet storage (flood pool) 132.0 acre-feet annual use
2404	CF Industries, Inc. - Donaldsonville, La. (Grand Forks County)	Ground Water	Industrial (Preparing UAN solution for ag. use)	1976: 60.1 acre-feet 1977: 43.2 acre-feet Annually thereafter: 6.4 acre-feet	1976: 60.1 acre-feet 1977: 43.2 acre-feet Annually thereafter: 6.4 acre-feet
2405	Roney, Dennis P. - Oakes (Dickey County)	Ground Water	Irrigation	310.0 acre-feet 155.0 acres	230.0 acre-feet 155.0 acres
2406	Trautmann, Art - Robinson (Kidder County)	Ground Water	Irrigation	640.0 acre-feet 312.0 acres	405.0 acre-feet 270.0 acres
2407	Sullivan, Floyd - Fairview, Mont. (McKenzie County)	Yellowstone River	Irrigation	222.4 acre-feet 111.2 acres	222.4 acre-feet 111.2 acres
2409	Dusek, Donald - Pisek (Grand Forks County)	Ground Water	Industrial (Gravel Washing Plant)	25.77 acre-feet	25.77 acre-feet

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2412	Garrison Redi-Mix, Inc. - Garrison (McLean County)	Ground Water	Industrial (Ready-Mix Concrete Plant)	5.0 acre-feet	5.0 acre-feet (This request was approved by the State Engineer on April 19, 1976)
2414	Bjorgen, Claire E. and Lois C. - Westby, Mont. (Divide County)	Ground Water	Irrigation	1020.0 acre-feet 604.7 acres	876.0 acre-feet 584.0 acres
2419	Etter, Gordon E. - Wimbleton (Barnes County)	Ground Water	Irrigation	260.0 acre-feet 130.0 acres	202.0 acre-feet 130.0 acres
2402	Zacharias, Keith B. - Bismarck (Emmons County)	Ground Water	Irrigation	960.0 acre-feet 624.0 acres	810.0 acre-feet 540.0 acres
2374	Bowerman, Ricky - Ambrose (Kidder County)	Ground Water	Irrigation	234.0 acre-feet 156.0 acres	Defer action at this time pending further information and investigations.
2323	Walton, Edward F. - Wyndmere (Ransom County)	Ground Water	Irrigation	900.0 acre-feet 560.0 acres	764.0 acre-feet 510.0 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2348	Peterson, Lucien - Verona (Ransom County)	Ground Water	Irrigation	640.0 acre-feet 320.0 acres	404.0 acre-feet 270.0 acres
2332	Wiese, Raymond - Oakes (Dickey County)	Ground Water	Irrigation	220.0 acre-feet 110.0 acres	110.0 acre-feet 110.0 acres
2203	Hansen, Larry R. - Oakes (Dickey County)	Ground Water	Irrigation	1323.0 acre-feet 882.0 acres	1130.0 acre-feet 755.0 acres
2211	Mittelstadt, Ray - Dunn Center (Dunn County)	Ground Water	Irrigation	960.0 acre-feet 480.0 acres	607.5 acre-feet 405.0 acres
2230	Rotenberger, Ronald G.- Milnor (Ransom County)	Ground Water	Irrigation	640.0 acre-feet 320.0 acres	405.0 acre-feet 270.0 acres
2269	Gasal, Wilbert - Jamestown (Stutsman County)	Seven Mile Coulee, trib. to James River; and Ground Water	Irrigation	712.0 acre-feet (total) (500.0 Groundwater) (212.0 Coulee) 357.0 acres	430.0 acre-feet Groundwater 105.0 acre-feet Coulee 287.0 acres Groundwater 70.0 acres Coulee
2286	Schlak, M. A. - Bismarck (Renville County)	Unnamed Tributary, tributary to Mouse River	Irrigation - Waterspreading	520.0 acre-feet 260.3 acres	520.0 acre-feet 260.3 acres (This request was deferred by Commission on April 22, 1976)