MINUTES

North Dakota State Water Commission Meeting Held In Grand Forks City Auditorium Grand Forks, North Dakota

July 28, 1978

The North Dakota State Water Commission held a special meeting on July 28, 1978, in the Grand Forks City Auditorium, Grand Forks, North Dakota. Governor-Chairman Arthur A. Link called the meeting to order at 10:00 a.m.

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, Bismarck Vernon Fahy, State Engineer and Secretary, North Dakota State Water Commission, Bismarck

OTHERS PRESENT: State Water Commission Staff Members Approximately 65 persons interested in agenda item

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

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

REMARKS BY GOVERNOR-CHAIRMAN LINK CONCERNING THE PURPOSE OF THE MEETING (SWC Project No. 1638) Governor Link explained the purpose of the special meeting. He stated that on July 7, 1978, he had issued a personal invitation, attached hereto as APPENDIX "A", to Commissioners of the Water

Management District boards in the Red River Valley to meet with him and other members of the State Water Commission to formally organize a cooperative arrangement among the Water Management Districts in the Valley for development and implementation of a comprehensive approach to water management problems. Governor Link stated that since County Commissions are actively involved in the levy process of Water Management Districts, the personal invitation was also extended to the Chairman of each County Commission. Governor Link expressed his support and endorsement for the establishment of a cooperative arrangement between Red River Valley Water Management Districts to enable them to research, plan and implement programs and projects designed to better manage the waters of the Red River watershed, as well as represent the entire watershed in dealings with local and State Governments of Minnesota and North Dakota and with the Federal Government.

Governor Link then called upon

Secretary Vernon Fahy.

CONSIDERATION OF MINUTES FOR JULY 19, 1978 MEETING -APPROVED

Secretary Fahy briefly reviewed the minutes of the July 19, 1978 meeting. There was no discussion by the Commission members on the minutes.

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and carried, that the minutes of the July 19, 1978 meeting be approved as prepared and distributed.

CONSIDERATION OF DRAFT JOINT POWERS AGREEMENT RELATIVE TO COOPERATIVE ARRANGEMENT BETWEEN RED RIVER VALLEY WATER MANAGEMENT DISTRICTS (SWC Project No. 1638) Special Assistant Attorney General Michael Dwyer briefly explained to the Water Management District board members that Section 61-16-11.1 of the North Dakota Century Code, which authorizes the joint exercise of powers by water management districts, requires the execution of a joint powers agreement by the member

Water Management Districts. He also explained that the statute requires certain provisions to be included as part of the agreement.

Mr. Dwyer reviewed the first draft joint powers agreement, attached as APPENDIX "B", which had been sent to each water Management District Commissioner, emphasizing that the provisions of the first draft agreement were not exclusive, but merely suggestions received by some of the Water Management board members at the meeting in Carrington on July 19, 1978. Mr. Dwyer also encouraged board members to make alternative suggestions which they felt would be acceptable.

Extensive discussion was carried on between the board members present, the Commission, and Commission staff. A majority of the Water Management District boards strongly supported the concept of joint exercise of powers, and the Grand Forks Water Management District presented a resolution, attached as APPENDIX "C", favoring "full participation and cooperation in the formulation of a formal organization and institutional agreements for the developing of a water management plan for the entire Red River Valley".

July 28, 1978

It was agreed that Mr. Dwyer and Water Management District boards would continue to explore alternative provisions for a joint powers agreement, and that another meeting would be held in Grand Forks on August 30, 1978, at 10:00 a.m. in the City Auditorium between Mr. Dwyer, the Chairman or an authorized representative of each Water Management District board, and the attorney for each board, to reach a consensus on the provisions that will be included in the joint powers agreement.

> There being no further business to come before the Commission at this time, it was moved by Commissioner Gallagher, seconded by Commissioner Gray, and carried, that the meeting adjourn.

> > <u>/S/ Arthúr A. Link</u> Arthur A. Link Governor-Chairman

ATTEST:

/S/ Nernon Fahy Vernon Fahy State Engineer and Secretary

July 28, 1978

STATE WATER Commission Meering Crand Lorks, ND July 28, 1978 <u>NAME</u> <u>Address</u> <u>Representing</u> DAV.O.A. Sprynczynutyk Bismunck STATE WATER Comm. MI \cap Milo Hoisveen " Hoisveen Consulting Engr. MORRIS PETERGON KATHRYN BARNESCO. Pir. AL SENNE VALLEY City BALNES Co. See. Rossell Actay Valley City Barnes a. W. K. Howard Mcmillan Wimfledon """" D. H. Bus Didier Eckelson N.O. Barnes county Lloyd Staven Park This Commine Walkh County (Den Welter Walch Co Com, Stroft N,D Elle Cuniming Trank Focks Co Water Marogant Emmon Christopher Geand York le. Comm. Germond Marlock Walsh Comm. Fletcher H. Poling Bismorch Basin Electric Power Gog Miles Ophang Klotm DDer Melson a. W.M.B. Hapolel Jellelers Grand Forks SCS William Bass Conserved MD Sargates Henre Bugelon Generation (40C) Les Jahardal Pembine Co, 20.70B. GENE GRINDELANIS TRAIL WMS - ATTY Walney all opper fraill WMB Gilman Wastvell Traill Co. W.M.B Traille, Commissioner Egy ashland pling H. Freth Frail Co. Commissioner Stell Commun De Knuken

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STATE OF NORTH DAKOTA

APPENDIX "A"

EXECUTIVE OFFICE

July 7, 1978

ARTHUR A. LINK Governor

This is a personal invitation to you to meet with me and other members of the State Water Commission on July 28, 1978 at 10:00 o'clock a.m. in the City of Grand Forks Armory Auditorium.

The purpose of the meeting is to formally organize the institutional arrangements for developing a water management plan for the entire Red River Valley. It is very important that each water management district in the valley be present to act on this most important matter.

The last Legislative Assembly, in Chapter 61-16-11.1, authorized two or more water management districts to join together to accomplish a specific task of benefit to all counties. This is called a Joint Use Of Powers Agreement and is done by adoption of a Joint Powers Agreement by each of the participating counties. No county water management district board loses any of its authorities by adoption of this Agreement and the joint board would be responsible only for handling a specific assignment.

When counties have properly exercised the Joint Powers Agreement, they are then authorized to levy up to two additional mills of ad valorem taxes, if they wish to do so, to pay their share of the costs of the joint undertaking. This section of the law also provides that portions of the increased income may be used for projects within the individual counties.

The joint board will adopt its own by-laws and establish guidelines for operation of the various activities necessary to complete the assigned task.

On June 7th, eight water management board officials and numerous legislators and local government officials met in Grand Forks and passed a resolution unanimously endorsing this approach. If all water management districts had been present at that time, an Agreement could have been adopted. July 7, 1978 Page 2

May I stress once again the importance of this meeting and the need for attendance by each of the water management districts within the Red River Valley watershed. We cannot solve the complex problems of this area unless we join forces to do so.

A draft Joint Powers Agreement and a copy of Section 61-16-11.1 will be forwarded to you by the State Engineer. The Agreement must be adopted as a first step in our collective approach. It would be most helpful if these resolutions could be acted upon by each board prior to the July 28th meeting so that we can complete all preliminary steps at that time.

Sincerely yours,

athur a. Link Arthur A. Link

Governor of North Dakota

FIRST DRAFT Michael Dwyer Sp. Asst. Atty Gen. 7/21/78

AGREEMENT

JOINT EXERCISE OF POWERS AGREEMENT FOR WATER MANAGEMENT DISTRICTS LOCATED WITHIN THE RED RIVER VALLEY

APPENDIX "B"

I. PARTIES

THIS AGREEMENT is between the boards of commissioners of the following water management districts:

a. Richland County Water Management District, acting through its chairman, Aaron Heglie.

b. Grand Forks County Water Management District, acting through its chairman, Tom Ronan.

c. Maple River Water Management District, acting through its chairman, Harry Warner.

d. North Cass County Water Management District, acting through its chairman, Morris Melander.

e. Pembina County Water Management District, acting through its chairman, George H. Brown.

f. Rush River Water Management District, acting through its chairman, Ken McIntyre.

g. Southeast Cass County Water Management District, acting through its chairman, Howard Emerson.

h. Traill County Water Management District, acting through its chairman, Rodney Cooper.

i. Steele County Water Management District, acting through its chairman, Bennett Rindy.

j. Walsh County Water Management District, acting through its chairman, Charles Zahradka.

 k. Barnes County Water Management District, acting through its chairman, Howard McMillan;

1. Cavalier County Water Management District, acting through its chairman, R. H. Schroeder;

m. Nelson County Water Management District, acting through its chairman, Ben Varnson;

n. Ransom County Water Management District, acting

through its chairman, Norman Cross;

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o. Sargent County Water Management District, acting through its chairman, Maynard Lien.

II. INTENT OF AGREEMENT

The water management districts which are parties to this agreement have extensive jurisdiction over the management of the water resources within their respective boundaries pursuant to Section 61-16-11 of the North Dakota Century Code. This includes the power to construct works and projects as well as the authority to adopt rules and regulations governing water management. In addition, water management districts which are parties to this agreement have jurisdiction to regulate, within their boundaries, the construction of dikes and dams pursuant to Section 61-16-15 of the North Dakota Century Code, and the construction of drainage ditches pursuant to Section 61-01-22 of the North Dakota Century Code.

However, it is recognized by the parties to this agreement that actions of an individual board (construction of works or regulatory actions) which may provide local benefits could have adverse consequences at other locations within the Red River Valley. Further, it is recognized that one entity representing the Red River Valley would better represent the area concerning planning and implementation of a complete water management plan for the Valley. Therefore, the parties agree that a Joint Water Management Board having the powers delegated herein must be established.

III. PURPOSE

The Red River Valley Joint Water Management District is hereby created.

IV. POWERS OF THE JOINT BOARD

The Red River Valley Joint Water Management Board shall have the power:

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- 1. To accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation and flood control projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water;
- To procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings;
- 3. To plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation devices of every nature and water channels and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district;
- 4. To maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within the district, and regulate streams, channels or watercourses and the flow of water therein by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof;
- 5. To regulate and control flood waters for the prevention of floods, by deepening, widening, straightening, or dyking the channels of any stream or watercourse within the district, and construct reservoirs or other means to hold and control such waters.
- 6. To make rules and regulations concerning the use to which such waters may be put and prevent the pollution, contamination or other misuse of the water resources, streams, or bodies of water included within the district;
- 7. To exercise the power of eminent domain in the manner provided by title 32, Judicial Remedies for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams and other water conservation works of any nature and to flood lands, and to secure the right of access to such dams and other devices and the right of the public access to the waters impounded thereby;
- 8. To acquire by lease, purchase, gift, condemnation or other lawful means and to hold in its corporate name for use and control as provided by law both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any power;

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- 9. To convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter;
- 10. To authorize and issue warrants to finance construction of water conservation and flood control projects, to assess benefited property for part or all of the cost of such projects, and to require appropriations and tax levied to maintain sinking funds for construction warrants on a cash basis at all times.
- 11. To borrow money within the limitations imposed by this chapter for projects herein authorized and to pledge security for the repayment of such money.

The above agreed upon powers to be exercised by the joint board are found in Section 61-16-11 of the North Dakota Century Code, which sets out the powers and duties of individual water management districts which are parties to this agreement.

In addition, the Red River Valley Joint Water Management Board shall have the responsibility pursuant to this agreement to exercise the duties and responsibilities of water management districts pursuant to Section 61-16-50 of the North Dakota Century Code.

> 12. Upon receipt of a complaint of unauthorized drainage, the joint board shall promptly investigate and make a determination thereon. If the joint board shall determine that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of title 61 or any rules or regulations promulgated by the joint board, the joint board shall notify the landowner by registered or certified mail at the landowner's post office of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the drain, lateral drain, or ditch is not closed or filled within such period as the joint board shall determine, but not less than thirty days, the joint board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the joint board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such demand, the joint board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the joint board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or

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tenant from constructing or maintaining the drain, lateral drain, or ditch. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the joint board, more than one landowner or tenant has been responsible, the costs may be assessed on a prorata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the joint board under the provisions of this section may appeal the decision of the joint board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-36 through 61-16-39 of the North Dakota Century Code. A hearing as provided for in this section shall not be a prerequisite to such appeal.

This agreement shall in no way limit or restrict the powers and duties of each water management district which is a party to this agreement pursuant to Section 61-16-11 of the North Dakota Century Code. However, if any individual water management district proposes to construct any water management project or works which is of inter-district significance, as determined by the State Engineer, it shall be necessary for the individual water management district to first secure the approval of the Red River Valley Joint Water Management Board.

Nor shall this agreement limit or restrict in any way the regulatory authority and responsibility of each water management district which is a party to this agreement pursuant to Sections 61-16-15 and 61-01-22 of the North Dakota Century Code for applications which are not of inter-district significance, as determined by the State Engineer. However, any application pursuant to Section 61-16-15 or 61-01-22 of the North Dakota Century Code which is determined by the State Engineer to be of inter-district significance, in accordance with applicable regulations, shall be referred to the Red River Valley Joint Water Management Board for determination thereon.

V. JOINT BOARD OF DIRECTORS The Red River Valley Joint Water Management District

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shall be governed by a joint board of directors. The joint board of directors shall consist of one representative from each water management district board of commissioners which is a party to this agreement. The joint board representative shall be a member of a water management district board of commissioners and shall be chosen by a majority of the water management district board of commissioners.

Each representative serving on the Red River Valley Joint Water Management Board shall represent one vote. However, there shall be a maximum of one vote from each county. Therefore, the representatives on the Joint Board from the Rush River, Maple River, Southeast Cass, and North Cass Water Management Districts shall choose one of their representatives each year to vote on behalf of Cass County Water Management Districts.

The Board of Directors of the Joint Board shall adopt such rules and regulations and bylaws for the conduct of the business affairs of the Joint Board as they may deem necessary, including the time and place of regular meetings of the Joint Board. They shall elect from their number a chairman and vice-chairman. They shall also elect a secretary and a treasurer, which offices may be held by the same person, and either or both offices may be held by someone not a member of the board. Special meetings may be called by the secretary on order of the chairman of the Joint Board or upon the written request of the majority of the qualified members of the board. Notice of a special meeting shall be mailed to each member of the Joint Board at least six days before such meeting, provided, that a special meeting may be held at any time when all members of the board are present or consent thereto in writing. [Two-thirds (10)] [Four-fifths (12)] of the members of the joint board of directors shall constitute a quorum for the transaction of business, but any number may adjourn the meeting for want of a quorum.

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VI. JOINT BOARD EXECUTIVE COMMITTEE

The joint board created herein shall appoint from their number an executive committee and vest the same with such powers and duties as the joint board may from time to time delegate thereto, in order to facilitate the duties and work of the joint board in connection with the business affairs involved in the development and implementation of a comprehensive water management plan for the entire Red River Valley.

VII. BUDGET

The Red River Valley Joint Water Management Board shall, by resolution on or before July first of each year, adopt a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district. The boards of the member districts shall then submit such budget to their respective board of county commissioners, requesting that such board of county commissioners consider such budget and levy an ad valorem tax not to exceed two mills upon the real property within each member district which lies in the Red River Valley watershed. The levy to be assessed to meet the expenses and other obligations incurred as a result of this agreement shall be in excess of any other levy authorized for a member district.

Contributions of each member district shall be determined by application of a uniform levy on all the taxable lands within each member district which lie in the Red River Valley watershed. The proportion that a uniform levy in each member district bears to the total revenue accumulated by such uniform levy throughout the Red River Valley Joint Water Management District shall be the proportion of each member district's required contribution to meet the expenses and other obligations which are included in the annual budget. In determining the lands which shall be assessed, those portions of Barnes, Steele, and Nelson counties which fall within the Sheyenne River watershed above the Baldhill Dam shall not be included.

In the event that any county board of commissioners fails to levy an ad valorem tax to satisfy the contributions of each member district pursuant to the provisions of this agreement, the member district located in that county shall be automatically excluded from the Red River Valley Joint Water Management District.

VIII. TERMINATION OF AGREEMENT

This agreement shall be terminated, or a member district may be allowed to withdraw from this agreement, only upon a vote of [four-fifths (12)] [two-thirds (10)] [a majority (8)] of all of the board of directors on the joint board. In the event that this joint powers agreement is terminated, termination shall be carried out according to the following terms:

1. Any property acquired as a result of this joint powers agreement which is not part of an existing water related project shall be sold and the funds received therefrom together with any surplus moneys held by the joint board shall be returned to each member district in proportion to the contributions of each member district.

2. A levy sufficient to cover the costs of operation and maintenance of any project, including any water management works, shall be continued by each member district to insure the continued operation and maintenance of such project. The joint board shall make provisions to determine who will be responsible for carrying out operation and maintenance functions. The revenues collected from such continued levy shall then be paid to the entity or individuals responsible for operation and maintenance of said projects or works.

3. If any contract shall have been made by the joint board before the termination of this agreement, provisions shall be made to continue to pay any tax levies required to meet the obligations of any such contract, or to take any action necessary to meet any other obligations which may

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have been incurred thereunder.

IX. MODIFICATION OF AGREEMENT

In order for any modification or amendment to this agreement to be effective, it must be reduced to writing and signed by all the signatory parties to this agreement.

DATED this _____ day of July, 1978.

Aaron Heglie, Chairman Richland County Water Management District

Tom Ronan, Chairman Grand Forks County Water Management District

Harry Warner, Chairman Maple River Water Management District

Morris Melander, Chairman North Cass County Water Management District

George H. Brown, Chairman Pembina County Water Management District

Howard Emerson, Chairman Southeast Cass County Water Management District

Bennett Rindy, Chairman Steele County Water Management District Ken McIntyre, Chairman Rush River Water Management District

Rodney Cooper, Chairman Traill County Water Management District

Charles Zahradka, Chairman Walsh County Water Management District

Howard McMillan, Chairman Barnes County Water Management District R. H. Schroeder, Chairman Cavalier County Water Management District

Ben Varnson, Chairman Nelson County Water Management District Norman Cross, Chairman Ransom County Water Management District

Maynard Lien, Chairman Sargent County Water Management District

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GRAND FORKS, N. DAK. 58201

July 19, 1978

RESOLUTION

BE IT RESOLVED that on the 18th day of July, 1978, the Grand Forks County Water Management Board unanimously voted in favor of full participation and cooperation in the formulation of a formal organization and institutional agreements for the developing of a water management plan for the entire Red River Valley. Representatives of the Board attending the meeting of the State Water Commission and the Governor's Office on July 28, 1978, at 10:00 o'clock a.m. in the City of Grand Forks Armory Auditorium will have full authority to commit the District to the plans as adopted and formulated at said meeting.

Dated this 19th day of July, 1978.

Ronán, Thomas Chairman Ħ.

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Vincent F. Sec. -Treas. Reed,

CHAIRMAN TOM RONAN MANVEL, N. DAK. 38236

VICE CHAIRMAN EL DEE CUMMINGS LARIMORE, N. DAK. 38251

MEMBERS: A. N. AULT ----GRAND FORKS, N. DAK. 58201

> JOHN GALEGHER THOMPSON, N. DAK. 58278

EMIL RASMUSSEN NORTHWOOD, N. DAK. 58287

SECRETARY-TREASURER VINCENT F. REED 211 FENTON AVENUE GRAND FORKS, N. DAK. 58201

ATTORNEY HENRY H. GALLOWAY 1832 SOUTH WASHINGTON ST. GRAND FORKS, N. DAK. 86201

ENGINEER WILTON GRADY 1301 CHERRY STREET GRAND FORKS. N. DAK. 58201

RECORDING SECRETARY VIVIAN BRAUNBERGER 1832 SOUTH WASHINGTON ST. GRAND FORKS, N. DAK. 56201



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