

MINUTES

North Dakota State Water Commission
Meeting Held In
Vocational Education Conference Room
State Office Building
Bismarck, North Dakota

August 23, 1978

The North Dakota State Water Commission held a meeting on August 23, 1978, in the Vocational Education Conference Room, State Office Building, Bismarck, North Dakota. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:50 a.m., and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Arthur A. Link, Governor-Chairman
Richard Gallagher, Vice Chairman, Mandan
Gordon Gray, Member from Valley City
Alvin Kramer, Member from Minot
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 30 persons interested in various agenda items

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

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

CONSIDERATION OF MINUTES
FOR JULY 19, 1978 MEETING -
CORRECTION

Secretary Fahy made reference to the minutes of July 19, 1978, wherein it was stated that an agreement is presently being negotiated with Towner County for a county ground-water study.

He noted that at the present time, there are no negotiations with Towner County; therefore, he requested that portion of the minutes be deleted.

It was moved by Commissioner Kramer that the minutes of the July 19, 1978 meeting be corrected as suggested by the State Engineer. The motion received a second from Commissioner Wilhelm. The motion was unanimously approved.

CONSIDERATION OF MINUTES
OF JULY 28, 1978 MEETING -
APPROVED

of the efforts to formally organize a cooperative arrangement among the Water Management Districts in the Red River Valley for development and implementation of a comprehensive approach to water management problems.

Secretary Fahy reviewed the minutes of the July 28, 1978 meeting held in Grand Forks, North Dakota, and updated the Commission members on the status

It was moved by Commissioner Kramer, seconded by Commissioner Wilhelm, and carried, that the minutes of the July 28, 1978 meeting be approved as prepared and distributed.

CONSIDERATION OF REQUEST FROM
CITY OF ZAP, ND, FOR FINANCIAL
PARTICIPATION FOR A WATER
SUPPLY STUDY FOR CITY
(SWC Project No. 1291)

Secretary Fahy presented a request from the City of Zap, North Dakota, in which it requested assistance in helping the city locate a supplemental water supply.

Secretary Fahy read the following portion of the request from the City:

"As you know, the City of Zap is located in an area of our State that is currently experiencing rapid development of our energy resources. As a result, the population of our City may more than double in the next few years. Accordingly, the City is faced with the task of increasing community services and facilities.

While the supply of good water for municipal services has been adequate in the past, we are faced with several developments that will create a demand beyond our existing water supply.

Beginning this month, construction will begin east of our City on a mobile home court that will accommodate more than 100 units. This court will be ready for occupancy prior to the end of this fall. Currently, there is a shortage in Mercer County of mobile home lots. This indicates that this court could realize full occupancy in a very short time. In addition, 40 lots on the west side of the City will be available for occupancy later this summer as soon as water and sewer lines are installed. Recently, 59 acres were purchased adjacent to the City and preliminary plans are being made to develop that area for residential uses."

Secretary Fahy indicated that the request seeks State Water Commission financial assistance in the amount of

August 23, 1978

\$7,100, or 50 percent of the total cost of the study.

It was recommended by the State Engineer that the Commission honor this request.

It was moved by Commissioner Gallagher and seconded by Commissioner Lanz that the State Water Commission allocate an amount not to exceed \$7,100, contingent upon the availability of funds, to conduct a water supply study for the City of Zap, North Dakota. All members voted aye; the motion unanimously carried.

PROGRESS REPORT ON
SOUTHWESTERN NORTH DAKOTA
WATER DELIVERY STUDY
(SWC Project No. 1674)

Dave Sprynczynatyk distributed to the Commission members copies of a report developed by Kirkham, Michael and Associates, and Houston Engineering, Inc., which basically details ten alternatives

for a water delivery system to southwestern North Dakota. These alternatives were selected to be presented to the Advisory Committee to the Study for their consideration at its August 17 meeting. The alternatives were considered and screened and one alternative was selected. Under the alternative which was selected, water would be drawn from Lake Sakakawea in two places: the water intake for the ANG coal gasification plant near Beulah; and a special intake to be built in northwest McKenzie County. Another intake would be built near Mandan on the Missouri River. Pipes from the ANG plant would carry the water to the cities of Beulah, Halliday, Dickinson, Amidon, the Beach area and the Mott area. Water from the McKenzie County intake would be delivered to Watford City and the Mandan intake would deliver water to New Salem, Flasher and Solen. Water treatment plants would be built at the Mandan and McKenzie County intakes. Other treatment plants would be placed near Beulah, Dickinson, Halliday and Richardton.

Mr. Sprynczynatyk explained that the multi-intake plan lends itself to phased construction so the next set of detailed alternatives based on this plan to be drawn up by consultants may include a plan to supply water relatively soon to counties who have expressed an interest, and plans may be held back for the present time on construction for areas that have no current need for it.

The selected plan is estimated to cost \$90.4 million in 1978 dollars. At the Committee's September 28 meeting, the members will consider the new set of detailed alternatives and select a recommended plan for the 1979 Legislature. Cost estimates and engineering data is anticipated to be complete by December 1, 1978.

Mr. Jim Ketterling presented a progress report on the Missouri West Rural Water Users Association; and Mrs. Evelyn Newton indicated that she had attended the August Committee meeting as a proxy member

August 23, 1978

and felt that the people attending the meeting were well informed and that everyone was relatively satisfied with the alternative which had been selected.

CONSIDERATION OF WATER
PERMIT NO. 2957 -
THEODORE SHIMELFENIG,
CARRINGTON, ND

A delegation of interested persons were in attendance at the meeting for the consideration of water permit No. 2957, filed by Mr. Theodore Shimelfenig of Carrington, North Dakota. Mr. Shimelfenig

has applied for a permit to divert 342.0 acre-feet of water to irrigate 171.26 acres of land in Wells County.

A petition containing 35 signatures was presented to the Commission from landowners and renters adjoining Section 32, Township 147 North, Range 70 West, protesting the granting of water permit No. 2957.

Mr. Milton Lindvig addressed this particular request indicating that there is little information known about the aquifer from which Mr. Shimelfenig intends to withdraw. Mr. Shimelfenig has drilled three test holes on this particular tract and did encounter a significant thickness of sand from depths of about 100 feet to 150 feet.

On this basis and in discussing the applicant's intentions with him, it is recommended that Mr. Shimelfenig be granted a conditional water permit to appropriate 255.0 acre-feet of water to irrigate 170.0 acres, subject to the following conditions: 1) that the location of the wells shall be approved by the State Engineer prior to construction; 2) that the total appropriation and pumping rate shall be subject to the results of an aquifer test that is to be conducted before the water is put to beneficial use; 3) the specifications for the pumping test shall be set by the State Engineer; and 4) a representative of the State Water Commission shall be present during the test.

A group of citizens from the area in which Mr. Shimelfenig intends to irrigate expressed much concern for their domestic and livestock water supplies. Questions asked by the group included: how can we be assured that our wells won't go dry because of Mr. Shimelfenig's irrigating; will deepening our wells assure us of more water; can the wells be tested for the amount of water before the supply is completely depleted; and whose responsibility will it be if the well goes dry and another well has to be drilled?

Mr. Lindvig stated that members of his department have had communications with these people. Their wells are approximately 1/4 to 1-1/2 miles away from the appropriation site and some of the wells appear to be quite shallow, 20 feet - 30 feet, and it does not appear that these wells will be affected by the irrigation pumping based on review of the application.

Secretary Fahy explained that when situations such as these arises, an actual development which is conditioned, is used to give more information about the aquifer. It not only gives an applicant the right to

August 23, 1978

utilize some of the water, but it gives the residents of the State more information about the aquifer.

The landowners requested that granting this permit be delayed until the testing information is obtained, but Secretary Fahy informed them that the applicant must have a water permit in order to drill a well to obtain this information.

Concern was also expressed that a qualified geologist be present when the applicant is test drilling, and Secretary Fahy assured the group that the State Water Commission would examine very carefully the results of the tests as they are run.

The group asked if they would know when the applicant will run the tests. It was decided by the Commission members that when the tests are conducted the applicant will be required under the State Engineer's supervision to measure the domestic wells in the area to establish their static level where they are measureable. The group was also assured that when the wells are monitored and the level is established, this will be done with the knowledge and disclosure to the owner.

It was moved by Commissioner Gallagher and seconded by Commissioner Gray that a conditional water permit be granted to Mr. Theodore Shimelfenig of Carrington, North Dakota, water permit No. 2957, to appropriate 255.0 acre-feet of water to irrigate 170.0 acres of land, subject to the following conditions: 1) the State Engineer will concur in the location of the well site; 2) the State Engineer will determine the rate and volume of pumping; 3) the State Engineer will select three or four domestic wells in the area to monitor effects the test wells will have; and 4) the State Engineer will provide the necessary personnel to supervise the testing. All members voted aye; the motion carried unanimously.

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

Secretary Fahy presented APPENDIX "A" for the Commission's consideration, which represents water permit actions.

Secretary Fahy indicated that each application has been reviewed and appropriate conditions attached.

It was moved by Commissioner Kramer, seconded by Commissioner Wilhelm, and carried, that the action of the State Engineer be confirmed.

August 23, 1978

The following water permit applications were approved: No. 2860 - Consolidation Coal Company, Stanton (the applicant requested a change in the point of diversion); No. 1767 - City of Killdeer, Killdeer (this is a request for a change in point of diversion and an increase in withdrawal rate); No. 3113 - City of New Town, New Town (this request was approved by the State Engineer on August 16, 1978); No. 2855 - Duane Reistad, Leonard; No. 2946 - William Wayne Smith, LaMoure; No. 2625 - Allen E. Nielson, Valley City; No. 2819 - M. H. Schrader, Adrian; No. 2957 - Theodore Shimelfenig, Carrington; No. 2922 - Michael P. Daner, Beulah; No. 2791 - Elroy Schlenker, Adrian; No. 3035 - Lynn Hovde, Alexander; and No. 2966 - Marvin Bodvig, Tappen.

The following water permit applications were deferred: No. 3108 - Willis Vander Wal, Pollock, S.D.; No. 3066 - Curtis and Robert Knutson, Oakes; No. 3112 - Clarence Unruh, Hebron; No. 3106 - Clem J. Dietrich, Bismarck; No. 3111 - Terry L. Hall, Binford; and No. 3077 - Wayne Severson, Kathryn.

(SEE APPENDIX "A")

The Commission recessed at 12:00 noon, and the meeting was reconvened at 1:45 p.m.

CONTINUED DISCUSSION ON
ACREAGE LIMITATIONS
(SWC Project No. 1400)

Secretary Fahy indicated that copies of a draft had been forwarded to the Commission members last week, which is attached hereto as APPENDIX "B", for their consideration.

Commissioner Just distributed Draft No. 5 of Proposed Rules and Regulations of the North Dakota State Engineer Governing Applications for Conditional Water Permits for Irrigation Purposes. He indicated that this specific proposal concerns the areas of Legal Age, Residency, Limitations on Pending Applications and Undeveloped Permits, Application Procedures if Applicant has Pending Applications or Holds Permits to Irrigate More Than 200 Acres of Irrigable Land, and Soil and Water Compatibility Tests. Draft No. 5 is attached hereto as APPENDIX "C".

In discussion of Draft No. 5, the following changes were suggested:

August 23, 1978

"1. Intent 3. To promote the family-size owner-operated farm." It was suggested by Commissioner Gallagher, and was the consensus of the other Commission members that the word "size" be deleted. That Section shall now read: "1. Intent 3. To promote the family owned and operated farm."

The first paragraph after Intent in Draft No. 5 states: "It is the intent of these proposed rules and regulations to maximize....."

It was suggested that the words "It is the intent of these proposed rules and regulations" be deleted and that the remainder of that sentence be made Intent 4. By consensus of the Commission members, that Section shall now read: "1. Intent 4. To maximize the benefits of water resources which North Dakota law declares to be a public resource to the greatest number of irrigators."

It was suggested, and was the consensus of the Commission members, that the words "North Dakota Constitution" shall follow 1. SECTION 210 - reading: "1. SECTION 210, North Dakota Constitution:"

Draft No. 5 under 11. Definitions 3. "Applications" means an application for a conditional water permit for irrigation purposes.

It was suggested by Commissioner Gallagher that rules and regulations governing surface water permits should be handled separately, therefore, he suggested that the words "from an underground source" be included at the end of that definition.

Commissioner Wilhelm expressed concern that permits may be granted for surface water appropriations from lakes, streams or ponds that are not underground water and are not a part of a federal project where federal rules, regulations and requirements would apply, and that the rules and regulations that the State Water Commission is contemplating should apply to both surface and ground-water permits; therefore, she indicated that she would not be a part of the consensus to change this definition.

It was moved by Commissioner Gallagher and seconded by Commissioner Kramer that 11. Definitions - 3. shall include the language "from an underground source".

A roll call vote was called by the Chairman. Commission members voted as follows:

Commissioner Gallagher	-	aye
Commissioner Gray	-	aye
Commissioner Kramer	-	aye
Commissioner Lanz	-	nay

August 23, 1978

Commissioner Wilhelm - nay
 Commissioner Just - nay
 Governor Link - nay

The results recorded 3 ayes; and 4 nays; the motion was declared as failed.

11. Definitions - 3. shall read as follows: "Applications" means an application for a conditional water permit for irrigation purposes.

It was suggested, and was the consensus of the Commission members, that a Section be included following V. Soil and Water Compatibility, that reads as follows: "VI. Limitations on Pending Applications and Undeveloped Permits to Irrigate. A person who has applications pending to irrigate more than 200 acres or who has both pending applications and undeveloped permits totalling more than 200 acres may not submit an application."

Draft No. 5 - VI. shall be changed to VII. It now reads: "If an applicant has applications pending to irrigate more than 200 acres or holds permits to irrigate". It was suggested, and was the consensus of the Commission members, that the words "has applications pending to irrigate more than 200 acres or" be deleted. That Section shall now read as follows: "If an applicant holds permits to irrigate more than 200 acres of irrigable land or who has both pending applications and permits totalling more than 200 acres, the following procedure must be followed prior to submission of an application:"

It was suggested, and consensus of the Commission members, that under Section VII. a. the word "auditor" be inserted. Section VII. a. shall now read: "Each city auditor located within a one mile (1.6 kilometer) radius of the proposed water appropriation site."

It was suggested, and consensus of the Commission members, that under Section VII. b. it be amended to read as follows: "Each record title owner of real estate within a one mile (1.6 kilometer) radius of the proposed water appropriation site (include words "and the land to be irrigated") (excluding all landowners within the geographical boundary of a city). Within fifteen days of mailing of notice to landowners, record title ownership shall be established through records in the appropriate register of deeds office, (delete words "treasurers office"), or abstract office. Record title owners of land under a contract for deed shall include both the grantor and grantee of the contract for deed."

It was suggested, and consensus of the Commission members, that Section VII. 3. be amended to read as follows: "The application may not be filed with the state engineer until (delete "sixty")

August 23, 1978

and insert "ninety") days after (delete "all appropriate parties (identified in paragraph 1, above) have actually received the notice of intent to apply,") (insert "notices have been mailed and the second notice published as specified in paragraphs one and two (above),") thereby affording them an opportunity to file an application within the (delete "sixty" and insert "ninety" day period."

Under Section VII. 5. a., it was suggested and consensus of the Commission members that the word "auditor" be inserted, amending the section to read as follows: "each city auditor located within a radius of one mile from the location of the proposed appropriation site; and"

On page 5 of Draft No. 5, the second paragraph from the bottom of the page, it was suggested and consensus of the Commission members that the paragraph shall be changed to read: "The application will be filed with the State Engineer (delete "sixty" and insert "ninety") days after all landowners or cities within a one mile radius of the appropriation site specified above have been notified by certified mail."

It was suggested, and was the consensus of the Commission members, that a Section be included to read as follows: "Rejection of Unacceptable Applications. The state engineer shall not accept an application unless the applicant meets the criteria contained in this chapter. Therefore, an application will not be assigned a priority date pursuant to North Dakota Century Code Section 61-04-04 unless it is filed in compliance with this chapter."

It was suggested by Commissioner Kramer, and was the consensus of the Commission members, that a Section be included stating: "Notice of intent to apply shall be printed, once a week for two consecutive weeks, in a newspaper of general circulation in the area of the proposed appropriation site. The applicant must pay costs of publication."

There was discussion regarding the legal age of an applicant. In Draft No. 5, it states that "An applicant must be eighteen years of age." It was suggested that appropriate language be included to the effect "or he must have a legally court appointed guardian" which would make the applicant eligible if he were under the required age of 18.

It was decided that this Section would be left unchanged at this time because of technical, legal discussions involving trusts, corporations, etc.

After lengthy discussion, it was moved by Commissioner Just that the Water Commission adopt the proposed rules and regulations of

August 23, 1978

the North Dakota State Engineer Governing Applications for Conditional Water Permits for Irrigation Purposes (Draft No. 5) as amended, effective upon the approval of the Attorney General of North Dakota. The motion was seconded by Commissioner Lanz.

In discussion of the motion, it was suggested by Murray Sagsveen that the proposed rules and regulations be prepared as amended in discussion today and forwarded to the Commission members for their final review prior to submission to the Attorney General for approval. It was the consensus of the Commission members that Mr. Sagsveen's suggested procedure be carried out.

Commissioner Wilhelm expressed her appreciation to the Commission for taking this step in adopting the proposed rules and regulations, but said that she hopes this is only a preface to the eventual adoption of an absolute acreage limitation. She requested the Commission to continue considering the advantages of a specific acreage limitation in addition to what has been adopted today.

Commissioner Just also expressed his appreciation, but suggested that the Commission table further discussion toward an absolute limitation until after Congress has acted on various acreage limitation proposals that it may be considering.

After discussion, it was the consensus of the Commission that this item not be tabled until after action by Congress, but that it receive periodic discussion at the Commission meetings.

On the call of the question by the Chairman, all members voted aye on the motion; the motion was unanimously carried.

CONTINUED DISCUSSION OF
WATER USE FEES
(SWC Project No. 1695)

Commissioner Wilhelm requested at the July 19 meeting that tables be prepared which shows the annual water use fee for a rate schedule based on \$100 per acre-foot for the first 1000 acre-feet and a 10 percent increase for each additional 1000 acre-feet. She also requested a table be prepared using the same base rate but use an increase of \$10 per acre-foot for each additional 1000 acre-foot increase. These tables are attached hereto as APPENDIX "D".

A number of letters protesting the proposed regulation have been considered by the Commission. A brief discussion also ensued regarding disposition of income from a water use charge.

Governor Link invited comments from the audience regarding this item of discussion.

August 23, 1978

Mr. Clarence Rupp, representing the James Valley Electric Cooperative Board of Directors, presented a statement labeled as APPENDIX "E".

Representative Rick Maixner from New England, North Dakota, who previously submitted one of the proposals being considered, stated that the real problems to the State are not the administrative costs, but the costs of \$90 million yearly to store the water. He noted that approximately 40 percent of power in the State comes from hydropower, as a result of the Garrison Dam, and the majority of that hydropower is going out of state to subsidize other consumers. By charging for the water, is a way for North Dakota to recover some of these costs from out of state consumers as well as North Dakota consumers. He also said that for each dollar invested, when the plants are completed, \$9.00 would be returned from out of state.

Following lengthy discussion, it was moved by Commissioner Wilhelm and seconded by Commissioner Gallagher that the State Water Commission staff be directed to prepare a summarization of all the alternatives being considered, and all information and correspondence, prior to the next meeting, and that a substantial amount of time be allowed on the agenda of the September meeting for discussion of this item to develop a proposal so that public hearings can be held. All members voted aye; the motion unanimously carried.

It was also suggested that copies of all the alternatives and correspondence be forwarded to the Commission members prior to the next meeting.

STATUS REPORT ON
CHANNEL "A" PROJECT
(SWC Project No. 842)

By use of a map, Murray Sagsveen explained the Channel "A" project. He stated that in the original design of the project, the channel was to be constructed down to Six Mile Bay and the Corps of Engineers had advised that a permit would be required. The design was then modified to stop at approximately 1700 feet above the ordinary high water mark. The Corps of Engineers then said that no permit would be required; the Division Engineer said that no permit would be required; and the Chief of Engineers indicated that no permit would be required. Based on this assumption, the contracts were let and after they were let, the National Wildlife Federation advised that they intended to file a law suit. The Federation filed their law suit stating that a permit would be required because this water would eventually end up as navigable waters of the United States.

North Dakota then intervened to protect the interests of the State and filed a Motion that Devils Lake was not navigable waters of the United States.

August 23, 1978

The Judge did not make a decision for many months. He became ill and passed away, so the case was reassigned to Judge Robinson, the Judge who had previously ordered the Corps to issue National 404 regulations.

A hearing was held in Washington, D. C. last week and an Order was issued this past Friday. The Order granted the National Wildlife Federation's request that a permit would be required and in addition, the Judge ordered that all work on Channel "A" be stopped even though the water management districts that are building the project were not parties to the law suit.

An appeal has been filed in the Circuit Court of Appeals in the District of Columbia. Mr. Sagsveen indicated that members of the Commission staff will be going to Devils Lake tomorrow morning to meet with the project sponsors to formally advise them of the Court Order and to discuss possible options available to the districts.

Secretary Fahy noted that one of the very serious problems is that the project is being funded, except for the \$600,000 allocated by the State Water Commission, by special assessment financing which connotes a benefit to the assessed properties. He said "It pretty hard to prove a benefit with an unfinished project."

**ASSOCIATION OF WESTERN
STATE ENGINEERS CONFERENCE**

Secretary Fahy announced that the Association of Western State Engineer, of which he is President, will be holding their annual Convention in Bismarck on September 20-22 at the Holiday Inn. Governor Link will be addressing one of the sessions, along with Keith Higginson, Commissioner of Reclamation; and Guy Martin, Assistant Secretary. He said that the basis of the program is to examine water resource policy from the standpoint of federal officials who will have to administer it. He invited and encouraged the Commission members to attend if at all possible.

**STATE WATER COMMISSION
MEETING TO BE HELD IN
SEPTEMBER**

Secretary Fahy stated that the next meeting of the Water Commission is scheduled to be held in Bismarck on September 14, 1978. The meeting will be held at the State Highway Auditorium.

Commissioner Wilhelm requested that as an agenda item, time be allowed to discuss official criteria for local participation in projects.

**STATE WATER COMMISSION
MEETING TO BE HELD IN
OCTOBER**

Secretary Fahy indicated that a conflict exists with the presently scheduled date of October 18 for the October meeting and suggested that the date be changed to October 20. The change was approved and the meeting will be held in Minot in the City Council Chambers.

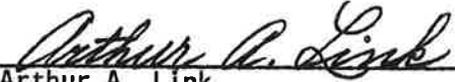
August 23, 1978

CONSIDERATION OF
FINANCIAL STATEMENT

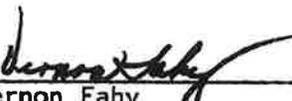
Secretary Fahy stated that all accounts
are within the limits established by the
Department of Accounts and Purchases.

He distributed copies of the Water Commission's proposed budget for the next
biennium for the Commission's information.

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 at
5:40 p.m.


Arthur A. Link
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer and Secretary

August 23, 1978

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting
 DATE August 23, 1970 PLACE Loc. Ed. Conference Room
State office Building - Bismarck
 PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Milo Hoisveen	1208 - N 1st	Burleigh Co. W.M.D.
Jim Eastgate	1021 - 8 th St.	" "
Elmer Agnew		Mott, N. Dak.
Bert Weidner	506 2 nd B ^s	Bismarck
LAWRENCE McMEIKEN	Box 1934 - M. MOT	N. D. WATER USERS
KARL LIMVERE	MONTPELIER, ND.	N. DAK. FARMERS UNION
Fletcher H. Poling	Bismarck	Basin Electric Power Cooperative
Bob Wood	400 N 4 th ST BISMARCK	MDU CO. / Coyote project
JOHN NORTON	Box 254	DICKINSON
Steve Hoetzer	BISMARCK	NDSWC
Thomas E. Cook		Bowdon ND
Jennie Schward Heaton		Land owner
Lawrence Volk Jensen		
Carol Monk	Bowdon, N.D.	land-owner - Teacher
Julia Volk	Fessenden	Land owner

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT _____

DATE _____ PLACE _____

PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Mary Swank	Heaton	Land renter (Bartlett)
Loew Stodig	Bismarck	UPA
Ann Bucholz	Regan	my parents
Arvace V. B...	Edgeley ND	Jensen Valley Elec Coop
Glenda B. Lotow	P.O. Box 1073 Bismarck, N.D.	NATURAL GAS Pipeline Co.
Jim Ketterling	Box 727; Mandan	No. Dak. Assoc. REC's
Fayton Newton	Gladstone ND	Land owner
Evelyn Newton	Gladstone N.D.	Concerned Citizens Rural
Mike Jacobs	Mandan	The UNLOCKER
Finton L. Dorley	Wilton	MIKE DANER
Michael P. Owen	Berth	Land Developer
William Daner	Bismarck	Mike Daner
Homer Engelhorn	Carrington	GDCI

WATER PERMIT AGENDA FOR AUGUST 23, 1978 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3108	Vander Wal, Willis - Pollock, S.D. (Emmons County) Priority: 5-20-78 Hearing: 7-24-78	Unnamed Slough, non- contributing to Missouri River; and Ground Water * NO PRIOR PERMITS	Irrigation	252.0 acre-feet 126.4 acres	Defer action at this time pending lack of time to completely review application.
3066	Knutson, Curtis and Robert - Oakes (LaMoure County) Priority: 6-28-78 Hearing: 7-24-78	Ground Water * #2162 (Priority Date: 4-2-75) Granted 135.0 acres (Issued to Robert) * #2423 (Priority Date: 3-25-76) Granted 70.0 acres (Issued to Oliver & Robert) * #2721 (Priority Date: 2-11-77) Granted 410.0 acres (Issued to Curtis)	Irrigation	305.0 acre-feet 186.4 acres	Defer action at this time pending lack of time to completely review application.
3112	Unruh, Clarence - Hebron (Mercer County) Priority: 6-29-78 Hearing: 7-24-78	Unnamed Stream, trib. to Elm Creek and Knife River * NO PRIOR PERMITS	Irrigation- Waterspreading	154.0 acre-feet 103.0 acres	Defer action at this time pending lack of time to completely review application.
3106	Dietrich, Clem J. - Bismarck (Burleigh County) Priority: 3- 6-78 Hearing: 7-31-78	Unnamed Tributary, trib. to Missouri River * #1663 (Priority Date: 9-22-69) Granted 32.48 acre-feet storage plus 10.11 acre-feet annually for recreation purposes	Irrigation	471.2 acre-feet 235.6 acres	Defer action at this time pending lack of time to completely review application.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3111	Hall, Terry L. - Binford (Griggs County)	Ground Water	Irrigation	874.0 acre-feet 437.0 acres	Defer action at this time pending lack of time to completely review application.
	Priority: 6-21-78 Hearing: 7-31-78	* NO PRIOR PERMITS			
2860	Consolidation Coal Company - Stanton (Mercer County)	Ground Water (Missouri River Aquifer)	Irrigation of Reclaimed Land	40.0 acre-feet 292.5 acres (The applicant has also requested an additional point of diversion)	40.0 acre-feet 292.5 acres (The change in point of diversion is also recommended to be approved)
	Priority: 8-26-77 Hearing on Amendment: 7-31-78	* NO PRIOR PERMITS			
1767	Killdeer, City of - Killdeer (Dunn County)	Ground Water	Municipal	This is a request for a change in point of diversion and an increase in withdrawal rate.	It is recommended that the request for an additional point of diversion and an increase in withdrawal rate be approved.
	Priority: 4-16-71 Hearing on Amendment: 7-31-78	* NO PRIOR PERMITS			
3113	New Town, City of - New Town (Mountrail County)	Ground Water	Irrigation of Golf Course	120.0 acre-feet 60.0 acres	120.0 acre-feet 60.0 acres (This request was approved by the State Engineer on August 16, 1978)
	Priority: 7- 6-78 Hearing: 7-31-78	* #1823 (Priority Date: 2-2-72) Granted 480.0 acre-feet for Municipal Use			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3077	Severson, Wayne - Kathryn (Ransom County) Priority: 7-17-78 Hearing: 8- 7-78	Unnamed Stream, trib. to Sheyenne River; and from Ground Water * NO PRIOR PERMITS	Irrigation	240.0 acre-feet 160.0 acres	Defer action at this time pending lack of time to completely review applica- tion.
2855	Reistad, Duane - Leonard (Richland County) Priority: 5- 4-77 Hearing: 7-11-77 Deferred: 8-16-77	Ground Water (Sheyenne Delta Aquifer) * NO PRIOR PERMITS	Irrigation	260.0 acre-feet 160.0 acres	225.0 acre-feet 150.0 acres
2946	Smith, William Wayne - LaMoure (LaMoure County) Priority: 8- 3-77 Hearing: 11-21-77 Rescheduled Hearing: 12-12-77 Deferred: 12- 7-77 and 3-16-78	Ground Water (LaMoure Aquifer) * NO PRIOR PERMITS	Irrigation	240.0 acre-feet 160.0 acres	202.5 acre-feet 135.0 acres
2625	Nielson, Allen E. - Valley City (Barnes County) Priority: 3- 3-77 Hearing: 4-25-77 Deferred: 5-27-77	Goose Lake, trib. to Maple River * NO PRIOR PERMITS	Irrigation	250.0 acre-feet 240.0 acres	80.0 acre-feet 160.0 acres (a maximum of 80.0 acres to be irrigated each year under an alternating system)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2819	Schrader, M. H. - Adrian (LaMoure County) Priority: 4-15-77 Hearing: 7-19-77 Deferred: 8-16-77	James River; or Ground Water * NO PRIOR PERMITS	Irrigation	277.0 acre-feet 184.6 acres	240.0 acre-feet) Source of 160.0 acres) Appropriation will only be Ground Water
2957	Shimelfenig, Theodore - Carrington (Wells County) Priority: 8-19-77 Hearing: 10-24-77 Deferred: 12- 7-77	Ground Water (Unnamed Aquifer) * NO PRIOR PERMITS	Irrigation	342.0 acre-feet 171.26 acres	255.0 acre-feet 170.0 acres
2922	Daner, Michael P. - Beulah (Mercer County) Priority: 6-30-77 Hearing: 10-10-77 Deferred: 12- 7-77	Ground Water (Fox Hills Aquifer) * NO PRIOR PERMITS	Municipal - (Rural Domestic)	140.0 acre-feet	100.0 acre-feet
2791	Schlenker, Elroy - Adrian (LaMoure County) Priority: 3-21-77 Hearing: 6- 1-77 Deferred: 7- 8-77	Ground Water (Spiritwood Aquifer) * NO PRIOR PERMITS	Irrigation	480.0 acre-feet 320.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres (Remainder of request shall be held in abeyance)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3035	Hovde, Lynn - Alexander (McKenzie County)	Unnamed Stream, trib. to Timber Creek and the Missouri River	Irrigation	140.0 acre-feet 94.0 acres	100.0 acre-feet storage; 94.0 acre-feet annual use 94.0 acres
	Priority: 1-19-78 Hearing: 5-15-78 Deferred: 6- 1-78	* NO PRIOR PERMITS			
2966	Bodvig, Marvin - Tappen (Kidder County)	Ground Water (Kidder County Aquifer)	Irrigation	440.25 acre-feet 293.5 acres	202.5 acre-feet 135.0 acres (An additional 240.0 acre- feet shall be held in abeyance)
	Priority: 9- 8-77 Hearing: 10-31-77 Deferred: 12- 7-77	* #2062 (Priority Date: 3-18-74) Granted 456.0 acres			

7-24-78

APPENDIX "B"

RULES AND REGULATIONS

OF THE NORTH DAKOTA STATE ENGINEER

Proposed to be Adopted

Pursuant to Title 61 of the North Dakota Century Code

GOVERNING THE USE OF WATER FOR IRRIGATION PURPOSES

GENERAL INFORMATION

Title 89: State Water Commission and State Engineer

Article 89-03: Water Appropriations

Chapter 89-03-03: Procedures Concerning Water Permit Applications for Irrigation Purposes.

Action: Proposed Rules and Regulations. This is the fourth draft dated 7/24/78; the first draft was dated 2/28/78; the second draft was dated 6/2/78; the third draft was dated 7/19/78.

Summary: The State Engineer is considering regulations which would, if adopted, establish limitations and procedural requirements on water permit applications for irrigation purposes.

Hearings: It is the policy of the State Water Commission and State Engineer to afford the public an opportunity to participate in the development of the proposed regulations. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations. Public hearings have generally been held on this subject. Comments may be submitted to the State Engineer, State Water Commission, State Office Building, 900 East Boulevard, Bismarck, N.D. 58505.

Effective date of proposed regulations: The proposed regulations are still in the developmental state. Therefore, the State Water Commission and State Engineer have not yet determined whether the proposed regulations should be adopted or, if adopted, when they should be effective.

Supplemental Information: The concepts contained in the proposed regulations have been provided by the State Engineer. They do not constitute opinions or suggestions by the individual drafting the regulations, Assistant Attorney General Murray G. Sagsveen.

Authority: The proposed regulations are considered for adoption pursuant to general regulation-making authority of the state engineer in North Dakota Century Code Sections 61-03-13 and 61-04-03:

61-03-13. RULES AND REGULATIONS MADE BY STATE ENGINEER--MODIFICATION.--The state engineer shall make all general rules and regulations necessary to carry into effect the duties devolving upon his office, and may change the same from time to time in his discretion. All such rules and regulations relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water, shall be modified by the state engineer, if required by a vote of the state water conservation commission.

61-04-03. APPLICATION FOR WATER PERMIT--CONTENTS--INFORMATION TO ACCOMPANY.--The application for a permit to make beneficial use of any waters of the state shall be in the form required by the rules and regulations established by the state engineer. Such rules and regulations shall prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, shall be retained in the office of the commission after approval or disapproval of the application. The state engineer may require additional information not provided for in the general rules and regulations if he deems it to be necessary.

Section

- 89-03-03-01 INTENT
- 89-03-03-02 DEFINITIONS
- 89-03-03-03 REJECTION OF UNACCEPTABLE APPLICATIONS
- 89-03-03-04 LEGAL AGE
- 89-03-03-05 LIMITATIONS ON PENDING APPLICATIONS AND UNDEVELOPED PERMITS
- 89-03-03-06 APPLICATION PROCEDURE IF APPLICANT HAS PENDING APPLICATIONS OR HOLDS PERMITS TO IRRIGATE MORE THAN 200 ACRES OF IRRIGABLE LAND
- 89-03-03-07 SOIL AND WATER COMPATABILITY

89-03-03-01. INTENT. The limitations and procedural requirements for certain water permit applications for irrigation purposes contained in this chapter are designed:

1. To provide opportunity for a maximum number of farmers on the land.
2. To widely distribute the benefits which accrue from utilizing waters of the state.
3. To promote the family-size owner-operated farm.

General Authority
NDCC 28-32-02
61-03-13

Law Implemented
61-04-03

89-03-03-02. DEFINITIONS. Unless the context otherwise requires, the following definitions apply to this chapter:

1. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code Section 61-03-01, who is also the chief engineer and secretary of the commission.
2. "Application" means an application for a conditional water permit for irrigation purposes.
3. "Applicant" means a person submitting an application for a conditional water permit for irrigation purposes.
4. "Irrigable land" means the area to which acreage limitations are applicable and is the net acreage possessing irrigated crop production potential, after excluding areas that are occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feed lots, equipment storage yards, and similar facilities, together with dedicated roads open for general unrestricted use by the public. Areas used for field roads, farm ditches and drains, tail water ponds, temporary equipment storage, and other uses dependent on operational requirements necessary to produce a specific crop, and subject to change at will, are included in the net irrigable acreage.

General Authority
NDCC 61-03-13
28-32-02

Law Implemented
61-04-03

89-03-03-03. REJECTION OF UNACCEPTABLE APPLICATIONS. The state engineer shall not accept an application unless the applicant meets the criteria contained in this chapter. Therefore, an application will not be assigned a priority

date pursuant to North Dakota Century Code Section 61-04-04 unless it is filed in compliance with this chapter.

General Authority
NDCC 28-32-02
61-03-13

Law Implemented
NDCC 61-04-03

89-03-03-04. LEGAL AGE. An applicant must be eighteen years of age.

General Authority
NDCC 28-32-02
61-03-13

Law Implemented
NDCC 61-04-03

89-03-03-05. LIMITATIONS ON PENDING APPLICATIONS AND UNDEVELOPED PERMITS TO IRRIGATE. A person who has applications pending to irrigate more than 200 acres or who has both pending applications and undeveloped permits totalling more than 200 acres may not submit an application.

General Authority
NDCC 28-32-02
61-03-13

Law Implemented
NDCC 61-04-03

89-03-03-06. APPLICATION PROCEDURE IF APPLICANT HAS PENDING APPLICATIONS OR HOLDS PERMITS TO IRRIGATE MORE THAN 200 ACRES OF IRRIGABLE LAND. If an applicant has applications pending to irrigate more than 200 acres or holds permits to irrigate more than two hundred acres of irrigable land or who has both pending applications and permits totalling more than 200 acres, the following procedure must be followed prior to submission of an application:

1. Applicant shall send a notice of intent to apply by certified mail to the following:
 - a. Each city located within a one mile (1.6 kilometer) radius of the proposed water appropriation site.
 - b. Each record title owner of real estate within a one mile (1.6 kilometer) radius of the proposed water appropriation site (excluding all landowners within the geographical boundary of a city). Within fifteen days of mailing of notice to landowners, record title ownership shall be established through records in the appropriate register of deeds office, treasurers office, or abstract office. Record title owners of land under a contract for deed shall include both the grantor and grantee of the contract for deed.

2. After the notice of intent to apply has been mailed to those required by this section, the applicant shall complete an affidavit of mailing which shall accompany the application when it is filed with the state engineer. The certified mail receipts must accompany the affidavit of mailing.
3. The application may not be filed with the state engineer until sixty days after all appropriate parties (identified in paragraph 1, above) have actually received the notice of intent to apply.
4. For purposes of clarification, illustrated examples involving the one mile (1.6 kilometer) radius from the location of the proposed water appropriation site are attached in "Appendix A" as the final page of Article 89-03.
5. The affidavit of mailing shall conform substantially to the following format (a form affidavit shall be supplied to applicant upon request):

I hereby certify that I have sent, by certified mail, a notice of intent to apply for a conditional water permit for irrigation purposes to:

- a. each city located within a radius of one mile from the location of the proposed appropriation site; and
- b. each record title owner of real estate within a radius of one mile from the location of the proposed water appropriation site (excluding all landowners within the geographical boundary of a city).

The record title owners were determined by an actual search of the records in the appropriate register of deeds office or abstract office within fifteen days of the mailing of the notice to landowners. A notice was sent to both the grantor and grantee of land under a contract for deed.

The following list contains the names and addresses of all landowners and cities notified:

NAME

ADDRESS

Signature of Applicant

Subscribed and sworn to before me this ____ day of
____, 19__.

Notary Public

(seal)

6. The notice of intent to apply for a conditional water permit for irrigation purposes shall conform substantially to the following format (a form notice shall be supplied to applicant by the state engineer upon request):

**NOTICE OF INTENT TO APPLY FOR A CONDITIONAL
WATER PERMIT FOR IRRIGATION PURPOSES**

TAKE NOTICE THAT _____ (name and address of applicant)
intends to apply to the state engineer for a
conditional water permit for irrigation purposes.
The application will request a permit to appropriate
water from _____ (specify "groundwater" or name of
stream)

The application will request a permit to appropriate
water from a point or point on the lands described
as follows: _____ (specify legal description) with
an average approximate rate of withdrawal at _____
(specify gallons per minute) during the operating
season for each year with an annual appropriation
of _____ acre-feet.

The application will be filed with the State
Engineer sixty days after all landowners or cities
within a one mile radius of the appropriation site
specified above have been notified by certified
mail. During that period, you may (if authorized
by state law or regulations of the State Engineer)
file an application for a conditional water permit
thereby establishing an early priority day.

Upon the filing of the application, you will be
notified of the time and date for a hearing upon
the application.

(signature of applicant)

General Authority
NDCC 28-32-02
61-03-13

Law Implemented
NDCC 61-04-03

89-03-03-07. SOIL AND WATER CAPABILITY. All applications shall contain a statement of soil and water compatibility for the land to be irrigated from any governmentally employed or licensed soil scientists.

General Authority
NDCC 28-32-02
61-03-13

Law Implemented
NDCC 61-04-03

DRAFT NO. 5

APPENDIX "C"

I. INTENT

INTENT. The commission policies of acreage limitations, residency, time limitations, development of permits prior to filing additional applications, and other criteria are designed:

1. To provide opportunity for a maximum number of farmers on the land.
2. To widely distribute the benefits which accrue from utilizing waters of the state.
3. To promote the family-size owner-operated farm.

It is the intent of these proposed rules and regulations to maximize the benefits of water resources which North Dakota law declares to be a public resource to the greatest number of irrigators.

1. **SECTION 210.** All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.
2. **61-01-01. WATERS OF THE STATE--PUBLIC WATERS.--**All waters within the limits of the state from the following sources of water supply, namely:
 1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; and
 2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground waters; and
 3. All residual waters resulting from beneficial use, and all waters artificially drained; and
 4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is hereby defined to be any area which does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency oftener than once in three years over the latest thirty year period; belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use, shall be acquired pursuant to the provisions of chapter 61-04.

3. In Baeth v. Hoisveen, the North Dakota Supreme Court observed:

....we do not approve the procedure followed by the State Water Commission in the instant case, which resulted in granting to one of two landowners, who owned adjacent land and who made application at approximately the same time for beneficial use of water, the use of so much water that the other was in effect denied use of any water. The failure on the part of the State Water Commission to determine the actual amount of water available before granting the first neighbor's application resulted in a very disproportionate granting of water rights. Such a procedure, if followed in the future, might well justify legislative action directed toward preventing the reoccurrence of such inequitable results.

Water resources and particularly underground sources are extremely difficult to quantify and appropriate fairly.

Therefore, it is the intent of these proposed rules and regulations to establish guidelines for distribution of water rights in an equitable manner during a rapidly escalating development stage.

It is the goal of the North Dakota State Water Commission, that as irrigation development progresses sufficiently and water resources become more clearly defined as to the geographical boundaries, the source, stability and quantity of irrigation water that local irrigation districts can be formed for the purposes of governing the use of this public resource.

II. DEFINITIONS

DEFINITIONS. Unless the context otherwise requires, the following definitions apply to this article:

1. "Commission" means the state water commission (Governor, Commissioner of Agriculture, and five citizen members).
2. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code Section 61-03-01, who is also the chief engineer and secretary of the commission.
3. "Applications" means an application for a conditional water permit for irrigation purposes.
4. "Applicant" means a person submitting an application for a conditional water permit for irrigation purposes.

5. "Irrigable land" means the area to which acreage limitations are applicable and is the net acreage possessing irrigated crop production potential, after excluding areas that are occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feed lots, equipment storage yards, and similar facilities, together with dedicated roads open for general unrestricted use by the public. Areas used for field roads, farm ditches and drains, tail water ponds, temporary equipment storage, and other uses dependent on operational requirements necessary to produce a specific crop, and subject to change at will, are included in the net irrigable acreage.
6. "Resident owner" means a landowner who has his principal place of residence within the State of North Dakota or within 25 miles of the state's boundaries.

III. RESIDENCY

An applicant must be a resident owner.

IV. LEGAL AGE

An applicant must be eighteen years of age.

V. SOIL AND WATER COMPATIBILITY

All applications shall contain a statement of soil and water compatibility for the land to be irrigated from any governmentally employed or licensed soil scientists.

VI. APPLICATION PROCEDURE IF APPLICANT HAS PENDING APPLICATIONS OR PERMITS TO IRRIGATE MORE THAN 200 ACRES OF IRRIGABLE LAND.

If an applicant has applications pending to irrigate more than 200 acres or holds permits to irrigate more than two hundred acres of irrigable land or who has both pending applications and permits totalling more than 200 acres, the following procedure must be followed prior to submission of an application:

1. Applicant shall send a notice of intent to apply by certified mail to the following:
 - a. Each city located within a one mile (1.6 kilometer) radius of the proposed water appropriation site.
 - b. Each record title owner of real estate within a one mile (1.6 kilometer) radius of the proposed water appropriation site (excluding all landowners within the geographical boundary of a city). Within fifteen days of mailing of notice to landowners, record title ownership shall be established through records in the appropriate register of deeds office, treasurers office, or abstract office. Record title owners of land under a contract for deed shall include both the grantor and grantee of the contract for deed.
2. After the notice of intent to apply has been mailed to those required by this section, the applicant shall complete an affidavit of mailing which shall accompany the application when it is filed with the state engineer. The certified mail receipts must accompany the affidavit of mailing.
3. The application may not be filed with the state engineer until sixty days after all appropriate parties (identified in paragraph 1, above) have actually received the notice of intent to apply, thereby affording them an opportunity to file an application within the 60-day period.
4. For purposes of clarification, illustrated examples involving the one mile (1.6 kilometer) radius from the location of the proposed water appropriation site are attached in "Appendix A" as the final page of Article 89-03.
5. The affidavit of mailing shall conform substantially to the following format (a form affidavit shall be supplied to applicant upon request):

I hereby certify that I have sent, by certified mail, a notice of intent to apply for a conditional water permit for irrigation purposes to:

- a. each city located within a radius of one mile from the location of the proposed appropriation site; and
- b. each record title owner of real estate within a radius of one mile from the location of the proposed water appropriation site (excluding all landowners within the geographical boundary of a city).

The record title owners were determined by an actual search of the records in the appropriate register of deeds office or abstract office within fifteen days of the mailing of the notice to landowners. A notice was sent to both the grantor and grantee of land under a contract for deed.

The following list contains the names and addresses of all landowners and cities notified:

NAME

ADDRESS

Signature of Applicant

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public

(seal)

6. The notice of intent to apply for a conditional water permit for irrigation purposes shall conform substantially to the following format (a form notice shall be supplied to applicant by the state engineer upon request):

**NOTICE OF INTENT TO APPLY FOR A CONDITIONAL
WATER PERMIT FOR IRRIGATION PURPOSES**

TAKE NOTICE THAT _____ (name and address of applicant) intends to apply to the state engineer for a conditional water permit for irrigation purposes. The application will request a permit to appropriate water from _____ (specify "groundwater" or name of stream)

The application will request a permit to appropriate water from a point or point on the lands described as follows: (specify legal description) _____ with an average approximate rate of withdrawal at _____ (specify gallons per minute) _____ during the operating season for each year with an annual appropriation of _____ acre-feet.

The application will be filed with the State Engineer sixty days after all landowners or cities within a one mile radius of the appropriation site specified above have been notified by certified mail. During that period, you may (if authorized by state law or regulations of the State Engineer) file an application for a conditional water permit thereby establishing an early priority day.

Upon the filing of the application, you will be notified of the time and date for a hearing upon the application.

(signature of applicant)

Table 1
ANNUAL WATER USE CHARGES
(\$100.00/acre-foot for the first 1000 acre-feet; 10% increase for each
1000 acre-foot increase)

ACTUAL ANNUAL CONSUMPTIVE USE:

0000 - 1,000 acre-feet @ \$100.00 per acre-foot
1,000 - 2,000 acre-feet @ \$110.00 per acre-foot
2,001 - 3,000 acre-feet @ \$121.00 per acre-foot
3,001 - 4,000 acre-feet @ \$133.10 per acre-foot
4,001 - 5,000 acre-feet @ \$146.41 per acre-foot
5,001 - 6,000 acre-feet @ \$161.05 per acre-foot
6,001 - 7,000 acre-feet @ \$177.16 per acre-foot
7,001 - 8,000 acre-feet @ \$194.87 per acre-foot
8,001 - 9,000 acre-feet @ \$214.36 per acre-foot
9,001 -10,000 acre-feet @ \$235.79 per acre-foot
10,001 -11,000 acre-feet @ \$259.37 per acre-foot
11,001 -12,000 acre-feet @ \$285.31 per acre-foot
12,001 -13,000 acre-feet @ \$313.84 per acre-foot
13,001 -14,000 acre-feet @ \$345.23 per acre-foot
14,001 -15,000 acre-feet @ \$379.75 per acre-foot
15,001 -16,000 acre-feet @ \$417.73 per acre-foot
16,001 -17,000 acre-feet @ \$459.50 per acre-foot
17,001 -18,000 acre-feet @ \$505.45 per acre-foot
18,001 -18,000 acre-feet @ \$556.00 per acre-foot
19,001 -20,000 acre-feet @ \$611.59 per acre-foot
20,001 -21,000 acre-feet @ \$672.75 per acre-foot

WATER CHARGES

<u>ANNUAL USE</u>	<u>WATER CHARGE</u>
500 acre-feet	\$ 50,000.00
1,000 acre-feet	100,000.00
2,000 acre-feet	210,000.00
3,000 acre-feet	331,000.00
4,000 acre-feet	464,100.00
5,000 acre-feet	610,510.00
6,000 acre-feet	771,560.00
7,000 acre-feet	948,720.00
8,000 acre-feet	1,143,590.00
9,000 acre-feet	1,357,950.00
10,000 acre-feet	1,593,740.00
11,000 acre-feet	1,853,110.00
12,000 acre-feet	2,138,420.00
13,000 acre-feet	2,452,260.00
14,000 acre-feet	2,797,490.00
15,000 acre-feet	3,177,240.00
16,000 acre-feet	3,594,970.00
17,000 acre-feet	4,054,470.00
18,000 acre-feet	4,559,920.00
19,000 acre-feet	5,115,920.00
20,000 acre-feet	5,727,510.00

Conditional Use:
\$2.00 per
acre-foot

Table 2

(\$100.00/acre-foot for first 1000 acre-feet; \$10 per acre foot increase for additional 1000 acre-foot increase.)

ACTUAL ANNUAL CONSUMPTIVE USE:

0000 - 1,000 acre-feet @ \$100.00 per acre-foot
1,001 - 2,000 acre-feet @ \$110.00 per acre-foot
2,001 - 3,000 acre-feet @ \$120.00 per acre-foot
3,001 - 4,000 acre-feet @ \$130.00 per acre-foot
4,001 - 5,000 acre-feet @ \$140.00 per acre-foot
5,001 - 6,000 acre-feet @ \$150.00 per acre-foot
6,001 - 7,000 acre-feet @ \$160.00 per acre-foot
7,001 - 8,000 acre-feet @ \$170.00 per acre-foot
8,001 - 9,000 acre-feet @ \$180.00 per acre-foot
9,001 - 10,000 acre-feet @ \$190.00 per acre-foot
10,001 - 11,000 acre-feet @ \$200.00 per acre-foot
11,001 - 12,000 acre-feet @ \$210.00 per acre-foot
12,001 - 13,000 acre-feet @ \$220.00 per acre-foot
13,001 - 14,000 acre-feet @ \$230.00 per acre-foot
14,001 - 15,000 acre-feet @ \$240.00 per acre-foot
15,001 - 16,000 acre-feet @ \$250.00 per acre-foot
16,001 - 17,000 acre-feet @ \$260.00 per acre-foot
17,001 - 18,000 acre-feet @ \$270.00 per acre-foot
18,001 - 19,000 acre-feet @ \$280.00 per acre-foot
19,001 - 20,000 acre-feet @ \$290.00 per acre-foot
20,001 - 21,000 acre-feet @ \$300.00 per acre-foot

WATER CHARGES

<u>ANNUAL USE</u>	<u>WATER CHARGE</u>
500 acre-feet	\$ 50,000.00
1,000 acre-feet	100,000.00
2,000 acre-feet	200,000.00
3,000 acre-feet	320,000.00
4,000 acre-feet	450,000.00
5,000 acre-feet	590,000.00
6,000 acre-feet	740,000.00
7,000 acre-feet	900,000.00
8,000 acre-feet	1,070,000.00
9,000 acre-feet	1,250,000.00
10,000 acre-feet	1,440,000.00
11,000 acre-feet	1,640,000.00
12,000 acre-feet	1,850,000.00
13,000 acre-feet	2,070,000.00
14,000 acre-feet	2,300,000.00
15,000 acre-feet	2,540,000.00
16,000 acre-feet	2,790,000.00
17,000 acre-feet	3,050,000.00
18,000 acre-feet	3,320,000.00
19,000 acre-feet	3,600,000.00
20,000 acre-feet	3,890,000.00

Conditional Use: \$2.00 per acre-foot

STATEMENT BY JAMES VALLEY ELECTRIC COOPERATIVE BOARD OF DIRECTORS TO
THE NORTH DAKOTA WATER COMMISSION REGARDING PROPOSED "WATER FEES"

The James Valley Electric Cooperative Board of Directors has given considerable discussion to the proposition of "Water Fees" as currently being proposed by the North Dakota Water Commission.

The Board is fully aware that one purpose of "Water Fees" would be to cover administrative costs occurred by the Commission in rendering and administering water applications and permits. The Board concurs with this purpose but urges that all water users are treated equally which includes municipal users which also supply water to commercial and industrial users engaged in inter state trade.

The Board further understands that still another purpose of "Water Fees" would be to provide income from out-of-state consumers for loss of taxes occurred with the construction of Garrison Dam. The Board does not concur with this philosophy for a number of reasons to wit:

1. It has always been this nation's concept that water was the resource of all the nation's people and was not to be marketed for profit or taxed for the purpose of providing excess revenue.
2. A "Water Fee" which can also be called a "Water Tax" will become a hidden fee on electric bills and will trap North Dakota rural electric consumers as well as out-of-state consumers.
3. A "Water Fee" will escalate the price of electric power to North Dakota's growing number of irrigators who are already

struggling to make irrigation a viable endeavor in North Dakota with its shorter growing season and lack of irrigation crops market.

4. A "Water Fee" will provide no meaningful thrust in solving the nation's energy crunch.
5. A "Water Fee" violates the "contract in spirit" made with out-of-state rural electric consumers who selected to place Basin Electric Power Cooperative in North Dakota whereby the State could market "lignite", a resource then considered of little worth, in return for the economic benefit the generating plant would provide and which then was so vigorously sought to stem the out-migration of North Dakotans unable to find in-state employment.
6. The Water Commission fails to give due credit to the tax revenues provided by water dependent generating plants such as the sales tax on the existing Basin Plants which cost some 145 millions of dollars to construct, plus the sales tax to be collected from the 1.3 billion dollar Antelope Valley station now under construction. Credit must also be given to the income tax and sales taxes paid on the millions of dollars of generating plant payrolls and the additional millions of severance tax dollars. All of these taxes are being paid by rural electric consumers who are now struggling with electric bills escalating more rapidly than the nation's Consumer Price Index and which are providing an increasing burden on farmers not yet out of a depressed farm economy.

The Water Commission should also be reminded that a state statute encouraging the development of lignite exists and many rural electric leaders devoted countless hours to make this law a meaningful law.

The development of lignite requires water. To give on one hand and take away with the other does not develop governmental integrity.

The James Valley Electric Cooperative Board strongly urges the "Water Fees" in excess of costs not be initiated.