

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE January 5, 1979 PLACE SWC Conference Room
Bismarck, N. Dak.

PROJECT NO. _____

1/5/79

Your Name	Your Address	Who do you Represent? (Or Occupation)
David A. Sprague	Bismarck	S-W-C
Fletcher H. Poling	Bismarck	Basin Electric Power Co-op
Jim Eastgate	"	Burleigh Co. W.M.D.
Dwight Connor	Bismarck	Natural Res. Council
Ted Nare	Box 507, Dickinson	Design
Malcolm Pitter	Bismarck	Tribune
Mark Johnson	Bismarck	Old West Rural Water Office
Kenneth F. Anderson	Taylor	Rep. Dist 38 - ND Leg.
Adam Kruter	Reput	Advisory Committee Member
Erlyn Newton	Gladstone	" " Prof
Sammy Galletta	Holliday	" " "
Layton Newton	Gladstone	Farmer & Driver
Alvin Ziman	852 W 6 St Dickinson, ND	Badlands Environmental Ass.
Road Drikler	Gladstone	Concerned Citizen
Don Norton	Box 254 Dickinson	Dakota Resource Council

MINUTES

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

January 5, 1979

The North Dakota State Water Commission held a special meeting on January 5, 1979, in the State Water Commission Conference Room, Bismarck, North Dakota, for the purpose of discussing legislation that has been introduced, or is proposed to be introduced into the 46th Legislative Session. Governor-Chairman, Arthur A. Link, called the meeting to order at 1:45 p.m., and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Arthur A. Link, Governor-Chairman
Richard Gallagher, Vice Chairman, Mandan
Alvin Kramer, Member from Minot
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

MEMBER ABSENT:

Gordon Gray, Member from Valley City

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 20 people interested in legislation to be discussed

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

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

CONSIDERATION OF MINUTES
OF DECEMBER 5 AND 6, 1978 -
APPROVED

Secretary Fahy reviewed the minutes of the December 5 and 6, 1978 meeting held in Bismarck, North Dakota. There were no corrections or additions to the minutes which had been previously circulated.

It was moved by Commissioner Just, seconded by Commissioner Kramer, and carried, that the minutes of the December 5 and 6, 1978 meeting be approved as prepared and distributed.

DISCUSSION OF LEGISLATION
INTRODUCED, OR PROPOSED TO
BE INTRODUCED INTO 46TH
LEGISLATIVE SESSION

Commission Counsel Michael Dwyer discussed the following bills, noting that those designated by numbers have already been introduced into the 46th Legislative Session and pertain to the State Water

Commission and the State Engineer, either directly or indirectly. Those bills which do not have designated numbers are for discussion purposes at this meeting.

H.B. 1002 is a bill for an Act directing the Legislative Council to create an interim committee to administer an environmental assessment program, to establish its membership, to set forth its powers and duties, to provide for its staffing; to provide an appropriation; and declaring an emergency.

H.B. 1042 is a bill for an Act to create and enact a new section to chapter 54-44.3 of the North Dakota Century Code, relating to revisions to the classification and compensation plan established by the central personnel division.

H.B. 1074 is a bill for an Act to amend and reenact sections 61-02-46 and 61-02-50 of the North Dakota Century Code, relating to revenue bonds issued by the water commission.

H.B. 1128 is a bill for an Act to amend and reenact section 61-16-28.1 of the North Dakota Century Code, relating to removal of obstructions to a drain, and providing a definition of "obstruction to a drain".

H.B. 1155 is a bill for an Act to amend and reenact section 61-16-08 of the North Dakota Century Code, relating to membership of water management district boards of commissioners.

S.B. 2031 is a bill for an Act making an appropriation for defraying the expenses of the water commission of the State of North Dakota.

Secretary Fahy distributed supporting data to S.B. 2031, which is attached as APPENDIX "A". He explained that page 1 represents a summary of the appropriations request for 1979-1981 as received from the Executive Office for the State Water Commission's operation during the next two years. He noted that these amounts will be presented to the Legislature, and indicated that a 9.6 percent increase has been allowed in

January 5, 1979

expenditures over the present biennium. Of this 9.6 percent increase, only 1 percent of that amount is in the General Fund. The rest must come from federal programs and from collections.

Page 2 of APPENDIX "A" shows a summary of staff positions considered for the 1979-81 biennium.

Pages 3 and 4 represent further details of the budget adjustments from the Executive Office.

S.B. 2064 is a bill for an Act relating to "best management practices" for farming land to be irrigated by water from the Garrison Diversion Unit of the Pick-Sloan Missouri River basin project.

DISCUSSION OF SOUTHWEST
WATER SUPPLY LEGISLATION
(SWC Project No. 1674)

Secretary Fahy reviewed the background of the Southwest Area Water Supply Study noting that the 1977 Legislative Assembly directed that a plan and cost estimate

be made by the Water Commission concerning the delivery of water to Dickinson and other areas south and west of the Missouri River in North Dakota. That study was undertaken in conjunction with a Citizens Advisory Committee from the area, working with staff members of the Water Commission and Engineering Consultants. The Water Commission completed its obligation when the preliminary feasibility report is presented to the 46th Legislature.

Representatives of the Citizens Committee were present at the meeting to discuss proposed draft legislation. Senator Adam Krauter reviewed with the Commission members the proposed legislation to create a Southwest Advisory Committee whose primary function would be to serve as a coordinating committee for the development and initial implementation of a pipeline delivery system to supplement and provide a potable water supply to the southwest area. The Advisory Committee would be vested with the power and duty to: 1) determine and select the proper management scheme for the Southwest area water supply system; 2) conduct educational programs concerning the establishment, development, and implementation of a pipeline water delivery system for the southwest area; 3) determine the exact location of potential water users in the area and obtain a commitment from them to become a part of the system; and 4) initiate, when appropriate, project feasibility engineering studies. The proposed legislation is attached as APPENDIX "B".

During discussion of the bill, numerous language changes were recommended by Senator Krauter. The bill will be rewritten with these changes by the Legislative Council.

The proposed bill also requests that \$320,000 be appropriated for the purposes of carrying out the provisions of the bill.

January 5, 1979

Dave Sprynczynatyk explained that the estimated \$320,000 appropriation was prepared at the request of the Citizens Advisory Committee at their last meeting on December 19, 1978. The Committee asked that the budget include all the necessary steps as shown in the report for implementation in accordance with the proposed time schedule.

The following six major items were considered in the budget breakdown:

1) State Water Commission staff requirements -	\$ 70,000
2) Funds for the Committee to carry out a public education program in the area to inform everyone of the project and how it would be implemented and operated -	25,000
3) The organization of the Management System, including drafting and filing of corporate papers, legal fees, temporary directors, etc. -	5,000
4) Funds for a detailed water need survey, including membership solicitation -	100,000
5) Initiation of feasibility design -	100,000
6) Per diem, travel expenses, etc. of Committee members -	<u>20,000</u>
TOTAL	\$320,000

Commissioner Kramer indicated that the Commission strongly supports the concept of the project, but the real barrier will be getting support of the Legislature.

It was moved by Commissioner Gallagher that the Water Commission go on record in support of the legislation contained in the bill. Commissioner Wilhelm seconded the motion. All members voted aye; the motion unanimously carried.

Mr. Mike Cuskelly, City Engineer for the City of Dickinson, presented a letter from the President of the Board of City Commissioners wherein the City of Dickinson recommends to the State Water Commission and the State Engineer that an appropriation be made in this Legislative Session for a feasibility study of the southwest area project. The letter is attached hereto as APPENDIX "C".

January 5, 1979

DISCUSSION ON WATER
USE FEES LEGISLATION
(SWC Project No. 1695)

Commissioner Wilhelm distributed, and discussed, copies of notes reflecting some of her thoughts on the issue of water marketing, attached as APPENDIX "D".

At the last meeting of the Commission, the Legal Counsel was directed to request an Attorney General's opinion whether a water use fee constitutes a fee or a tax. The letter requesting the Attorney General's opinion, and a summary of the opinion dated December 27, 1978 to the State Engineer and the State Water Commission regarding water use fee regulations is attached as APPENDIX "E".

Secretary Fahy stated that at a recent meeting, Governor Link requested the Commission staff to prepare figures in answer to a question raised by the Governor - "What kind of a fee would it take to amortize the costs of the total Water Commission's operation for a biennium?"

Dale Frink, Hydrologist-Engineer for the Commission, prepared a memorandum in answer to the Governor's question. He explained the memo in detail, which is attached as APPENDIX "F".

Mike Dwyer stated that the Legislative Assembly has authorized the State Engineer to issue water permits subject to fees for the use of water, but specifically limited to those amounts for planning and administration for regulation of the use of water "necessary to protect the rights of others, and the public interest".

It was suggested by Commissioner Gallagher that in order to assist the Commission in determining a specific amount for which the State Engineer can levy a fee for the use of water, that the State Engineer take his initial budget and extract those amounts that fall within the criteria of the Attorney General's opinion, i.e. planning and administration for regulation of the use of water.

In discussion of the proposed legislation to establish a special fund, attached as APPENDIX "G", Commissioner Kramer stated that he felt the bill should be introduced but that no specific appropriation should be requested for this biennium. The bill would establish a special fund for fees collected pursuant to the power and authority granted to the State Engineer in Title 61 of the North Dakota Century Code.

Mike Dwyer indicated that some of the phraseology contained in the bill in its present form is not in accordance with criteria outlined in the Attorney General's opinion; therefore, if the Commission decides to have the bill introduced to the Legislature, it will have to be rewritten.

It was moved by Commissioner Gallagher that the State Engineer be directed to determine

January 5, 1979

from his proposed budget and the needs of his agency, monies that would meet the criteria of the Attorney General's opinion in order that a fixed amount can be determined, so that the Commission can project and determine what fees should be charged. The motion was seconded by Commissioner Just.

In discussion of the motion, it was suggested by Commissioner Just that the Secretary also take into account other high priority areas such as the second generation ground-water studies, the Southwest Area Water Study, etc.

Mike Dwyer cautioned the Commission that it must stay within the realm of the Attorney General's opinion in determining those items to be considered for fees.

Secretary Fahy stated that he would have no problem carrying out the thrust of the motion; but expressed concern of Commissioner Just's suggestion to also include high priority areas. He stated that in the high priority areas, the Commission would have to determine what components they wished to consider.

On the call of the question, all members voted aye; the motion unanimously carried.

It was moved by Commissioner Kramer and seconded by Commissioner Just that legislation be prepared and introduced to provide for the establishment of a special fund to be utilized by the State Water Commission and the State Engineer in the planning and administration for the regulations of the use of water 'necessary to protect the rights of others, and the public interest'. All members voted aye; the motion unanimously carried.

CONTINUED DISCUSSION OF
LEGISLATION INTRODUCED,
OR PROPOSED TO BE INTRODUCED
INTO 46TH LEGISLATIVE ASSEMBLY

S.B. 2082 is a bill which would fix expenses of all state board members at \$50 daily.

S.B. 2083 is a bill for an Act to provide for the referral of proposed and existing administrative rules to an interim committee of the legislative council.

January 5, 1979

S.B. 2141 is a bill for an Act to amend and reenact sections 20.1-02-17 and 20.1-02-18 of the North Dakota Century Code, relating to assent to federal aid projects for wildlife and fish restoration, and consent to United States' acquisition of areas for migratory bird reservations; and to repeal sections 20.1-02-17.1, 20.1-02-18.1, and 20.1-02-18.2 of the North Dakota Century Code, relating to procedures and conditions for land acquisitions for wildlife and fish restoration, submission of federal wildlife area proposed acquisitions to county commissioners, and negotiation of leases, easements, and servitudes for wildlife production purposes.

SCR 4001 is a concurrent resolution directing a Legislative Council study of the feasibility and benefits of reorganizing the executive branch of state government.

Mike Dwyer mentioned that the duplication and conflict between water quantity and water quality laws may be considered during this study.

SCR 4005 is a concurrent resolution to recreate a special Garrison Diversion Legislation Overview Committee to review matters concerning Garrison Diversion through the upcoming interim and the next legislative session and to represent legislative interests in the Garrison Diversion Project.

Mike Dwyer noted that the following bills have not been introduced into the Legislature at this time, but are presented for discussion:

A Bill for an Act to create and enact a new section to Chapter 61-03 of the North Dakota Century Code, relating to removal of unauthorized drains. (Enforcement of illegal drains by the State Engineer via administrative action.)

Mr. Dwyer indicated that four years ago, a similar bill was passed giving this authority to the water management districts. Senator Fritzell intends to introduce this legislation to give this authority to the State Engineer.

Secretary Fahy expressed his concern that passage of this bill would take away powers from the local water management districts and stated that these powers should remain at the local level. If there is weaknesses at the local level in enforcing the powers, something should be done to generate enthusiasm, but he said that this legislation is not the best answer.

January 5, 1979

A Bill for an Act to amend and reenact section 61-02-02.1 of the North Dakota Century Code relating to emergency or temporary use of water. (Length of time for which State Engineer may authorize emergency or temporary use of water. Since it takes a year or more to process a water permit, if the Legislature is not going to improve State Engineer's ability to process permits, it ought to increase his flexibility; thus it has been proposed to increase the authority from six to twelve months.)

It was moved by Commissioner Lanz, seconded by Commissioner Wilhelm, and unanimously carried, that the Water Commission support the legislation increasing the length of time from six to twelve months for which the State Engineer may authorize emergency or temporary use of water.

A Bill to create a new section to Chapter 61-04 of the North Dakota Century Code relating to "best management practices" to be employed by all persons irrigating lands in North Dakota.

A Bill for an Act to amend and reenact Sections 43-35-02, 43-35-07, 43-35-17, to repeal Section 43-35-15 of the North Dakota Century Code, relating to the State Board of Water Well Contractors.

A Bill for an Act to amend and reenact Sections 43-35-02, 43-35-11, 43-35-12, 43-35-13, 43-35-14, 43-35-19, 43-35-20, 43-35-22, and to enact and create Section 43-35-11.1, 11.2, 11.3 relating to licensing of water well contractors. (Bill relating to the regulations of water well contractors.)

It was moved by Commissioner Just, seconded by Commissioner Lanz, and unanimously carried, that the Water Commission support legislation relating to the regulation of water well contractors.

A Bill for an Act to amend and reenact Section 61-01-23 of the North Dakota Century Code, relating to the removal of obstructions in the channel of a nonnavigable stream.

January 5, 1979

(Section 61-01-23 is proposed to be amended to give the water management districts the right of entry for snagging and clearing. This has been requested by the Water Management Districts Association.)

It was moved by Commissioner Lanz, seconded by Commissioner Just, and unanimously carried, that the Water Commission support legislation giving the water management districts the right of entry for snagging and clearing.

A Bill for an Act to create and enact a new subsection to Section 57-02-08 of the North Dakota Century Code, to provide a property tax exemption for certain associations and corporations furnishing potable water.

Mr. Dwyer recalled that the Commission went on record supporting this legislation at previous meetings.

A Bill for an Act to amend and reenact Section 61-04-26 of the North Dakota Century Code, relating to the recording of orders affecting water rights. (This legislation would waive the filing fee that would ordinarily be charged by the register of deeds for the filing or recording of water right forfeitures.)

It was moved by Commissioner Lanz, seconded by Commissioner Gallagher, and unanimously carried, that the Water Commission support legislation which would waive the recording fee for the recording of forfeiture permits.

A Bill for an Act to amend and reenact section 58-03-11 of the North Dakota Century Code, relating to the zoning regulations and restrictions of organized townships. (This legislation would allow townships to participate in Flood Insurance Program.)

It was moved by Commissioner Kramer, seconded by Commissioner Just, and unanimously carried, that the Water Commission support this proposed legislation.

A concurrent resolution directing the Legislative Council to study floodplain management, including the construction of dikes and other devices for flood control regulation.

January 5, 1979

It was moved by Commissioner Kramer, seconded by Commissioner Wilhelm, and unanimously carried, that the Water Commission support legislation for an interim study on floodplain management.

A Bill for an Act to amend and reenact Section 61-16-07 of the North Dakota Century Code, relating to the board of commissioners of water management districts. (This legislation would amend the Code so that county commissioners are ineligible to serve on water management district boards.)

A Bill for an Act to create a new section to Chapter 61-15 of the North Dakota Century Code, relating to the removal of illegal dikes and dams. (This legislation would give water management districts the same authority over "illegal" dikes and dams as they have with "illegal" drains.)

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and unanimously carried, that the Water Commission support legislation that would give water management districts the same authority over "illegal" dikes and dams as they have with "illegal" drains.

A Bill for an Act to amend and reenact Section 61-16-08 of the North Dakota Century Code, relating to compensation of appointed members to a water management board. (This legislation would increase the allowance of water management district commissioners from \$20 to \$45.)

A concurrent resolution directing the Legislative Council to study and review possible implementation of Section 404 of the Federal Water Pollution Control Act by the State of North Dakota through its State Water Commission as provided in the Clean Water Act of 1977.

Mr. Dwyer recalled that the Commission at previous meetings had expressed its support that the Legislative Council conduct a study of the 404 permit system.

A concurrent resolution directing the Legislative Council to study and review the powers, duties, and jurisdictional boundaries

January 5, 1979

of water management districts and legal drain boards.

Mr. Dwyer explained that the Water Commission has already expressed its support of this legislation at a previous meeting.

A Bill for an Act to create and enact a new section to Chapter 61-03 of the North Dakota Century Code, relating to the authorization of dikes and dams.

Mr. Dwyer explained that this legislation amends Section 61-16-15 to streamline the procedure for dike and dam permits.

It was moved by Commissioner Lanz, seconded by Commissioner Gallagher, and unanimously carried, that the Water Commission support the legislation relating to dikes and dams.

A Bill for an Act to amend and reenact sections 61-30-13 and 61-02-11, and to create and enact a new section to chapter 61-04 relating to the authority of the state engineer concerning irrigation water permits.

Commissioner Just explained that this legislation would provide a new section to Chapter 61-04, to prohibit any applicant, during any 36-month period, from applying for a permit or permits to irrigate more than 320 acres. This legislation will be introduced by legislators.

It was moved by Commissioner Just, seconded by Commissioner Gallagher, and unanimously carried, that the Water Commission supports the concept of the proposed legislation relating to irrigation permits.

**NEXT STATE WATER
COMMISSION MEETING**

and place to be established by the Governor and the State Engineer.

It was agreed by the Commission members that the next meeting be held sometime during the middle of February, a date

Secretary Fahy also indicated that he would set up a tentative schedule of meeting dates for 1979 and forward to the Commission members for their review.

**DISCUSSION CONCERNING
RE-ESTABLISHMENT OF A
WATER RESOURCES
DEVELOPMENT FUND**

Mike Dwyer referred to a memorandum he prepared as a result of confusion over one of the resolutions adopted by the Water Users and the Water Management Districts Association, in

January 5, 1979

regard to re-establishing a water resources development fund. Mr. Dwyer explained the confusion, as outlined in a memo attached as APPENDIX "H".

DECISION REGARDING
RESERVATION OF WATERS
IN YELLOWSTONE RIVER
(SWC Project No. 1677)

Mike Dwyer stated that about four years ago, the State of Montana set up a reservation system for the Yellowstone River. The law provided for governmental entities to apply for a reservation

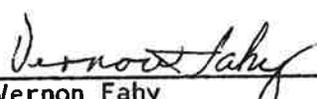
for a specific use and to provide a ten-year plan of use and development. The Board of Natural Resources recently made a decision and provided a reservation of approximately 5.5 million acre-feet of water in the Yellowstone River for instream use and environmental protection. Their original request was for 8.2 million acre-feet.

Secretary Fahy indicated that the significance was that the request had to be based on a bonafide plan, or a commitment. If they don't perfect that use within that planning period, they forfeit their right. He noted that it is similar to the Garrison Diversion project; they have been issued a permit based on a plan over a period of years.

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and carried, that the meeting adjourn at 6:15 p.m.


Arthur A. Link
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer and Secretary

January 5, 1979

NORTH DAKOTA STATE WATER COMMISSION
SUMMARY OF APPROPRIATION REQUEST 1979-81

APPENDIX "A"

	Present Budget 1977-79	Requested Budget 1979-81	Increase or Decrease Requested	Executive Recommendation 1979-81	Increase or Decrease Recommended	Percent Increase
<u>By Program</u>						
Administration	549,083	723,809	174,726	709,759	160,676	29%
Planning	427,712	745,564	317,852	621,008	193,296	45%
Hydrology	1,518,384	2,196,752	678,368	1,851,240	332,856	22%
Engineering	2,103,398	2,822,718	719,300	2,564,642	461,244	22%
Legal	100,517	191,058	90,541	182,636	82,119	81%
Devils Lake Channel A	600,000		(600,000)		(600,000)	-
Unallocated	111,116		(111,116)		(111,116)	-
TOTAL	5,410,210	6,679,901	1,269,691	5,929,285	519,075	9.6%
<u>By Line Item</u>						
Salaries and Wages	1,917,268	3,105,759	1,188,491	2,536,022	618,754	32%
Fees and Services	488,636	656,402	167,766	556,120	67,484	14%
Data Processing	28,890	90,360	61,470	90,360	61,470	212%
Micro-Filming	5,000	5,000	-	5,000	-	-
Supplies & Materials	255,450	327,265	71,815	299,273	43,823	17%
Equipment	138,100	165,600	27,500	112,995	(25,105)	(18%)
Contracts	1,865,750	2,305,000	439,250	2,305,000	439,250	23%
Special Assessments		24,515	24,515	24,515	24,515	100%
Devils Lake Channel A	600,000		(600,000)		(600,000)	(100%)
Unallocated	111,116		(111,116)		(111,116)	(100%)
TOTAL	5,410,210	6,679,901	1,269,691	5,929,285	519,075	9.6%
<u>By Revenue Source</u>						
General Fund	4,679,454	5,479,901	800,447	4,729,285	49,831	1%
Federal Fund	383,756	550,000	166,244	550,000	166,244	43%
Other	347,000	650,000	303,000	650,000	303,000	87%
TOTAL	5,410,210	6,679,901	1,269,691	5,929,285	519,075	9.6%

NORTH DAKOTA STATE WATER COMMISSION

SUMMARY OF STAFF POSITIONS
CONSIDERED FOR 1979-81 BIENNIUM

	Positions Recommended Legislative Study Report	Positions Requested By Program	Positions Granted By Executive Budget Recommendation
Administration	1 Assistant State Engineer 1 Stenographer	1 Stenographer	1 Stenographer
Planning	1 Economist	1 Hydrologist 2 Resource Planners 1 Research Analyst 1 Environmental Scientist	1 Hydrologist* 1 Environmental Scientist 1 Research Analyst
Hydrology	2 Hydrologists 2 Technicians	5 Hydrologists 3 Technicians 1 Soil Scientist	1 Hydrologist* 1 Technician
Engineering	2 Engineers 1 Technician 1 Draftsman/Clerk	4 Engineers 2 Technicians 1 Draftsman/Clerk 1/2 Time-Stenographer	3 Engineers* 1/2 Time Stenographer*
Legal	1 Attorney	1 Attorney 1 Research Assistant	1 Research Assistant
	10	24.5	10.5

*5.5 Positions approved previously by Emergency Commission action and special programs and were on the 1977-79 Commission payroll at the time of the Legislative Study.

BUDGET ADJUSTMENTS

<u>PROGRAM</u>	<u>LINE ITEM</u>	<u>AMOUNT INC/(DEC)</u>	<u>SOURCE OF FUND</u>	<u>COMMENTS</u>
Administration	Salaries			Request 22 positions of which 5 have been approved in the various programs. All positions recommended in the Booz-Allen study were approved (3 of these were authorized by the Emergency Commission, and were approved to continue) Approved clerk position \$18,674
	Travel	\$ (3,000)	G	Base \$14,806 x 2.3
	Equip. Rent	(2,900)	G	Base \$7,814 + 6% increase each year
	Other Rental	(1,000)	G	Base \$447 + 6% increase each year
	Repair Ser.	(700)	G	Base \$635 + 6% increase each year
	Other Fees	(2,800)	C	Base \$847 + 6% increase each year
	Supplies	(1,000)	G	Base \$14,643 + 7% increase each year
	Printing	(900)	G	Base \$3,465 + 7% increase each year
	Other	(1,000)	G	Base \$814 + 7% increase each year
		<u>(13,300)</u>		
		Equip. (750)		No change in Exec. Budget
Planning	Salaries			Approved 2 positions \$70,562, Research Analyst II, Environmental Scientist
	"	(71,205)	G	Denied 2 positions, Resource Planners
	Travel	(10,440)	G	Base \$7,156 x 2.3 + \$5,000 for added positions
	Consultants	(36,180)	G	Base \$11,913 + 6% increase each year + \$100,000 for Public Participation Program
	Dues	(17,000)	G	Base \$35,372 + 6% increase each year
	Building	(2,139)	G	Base \$1,291 + 7% increase each year
	Printing	(9,256)	G	Base \$561 + 7% increase each year
		<u>(146,220)</u>		
		Equip. (7,700)		\$29,364 restored in Exec. Budget
Hydrology	Salaries			Approved 1 Eng. Tech position
	"	(270,681)	G	Denied 7 positions--4 Hydrologists, 2 Eng. Tech & 1 Water Resource Eng.
	Travel	(19,156)	G	Base \$16,844 x 2.3
	Equip. Rental	(400)	G	Base \$270 + 6% increase each year
	Consul. Fees	(4,900)	C	Base \$2,234 + 6% increase each year
	Printing	(700)	G	Base \$19,990 + 7% increase each year
	Auto Supp.	(15,000)	G	Base \$9,848 + 7% increase each year
		<u>(310,837)</u>		
		Equip. (40,675)		\$6,000 restored in Exec Budget

BUDGET ADJUSTMENTS

PROGRAM	LINE ITEM	AMOUNT INC/(DEC)	SOURCE OF FUND	COMMENTS
Engineering Div.	Equip. Rental	(4,700)		Base \$4,529 + 10% each year
	Salaries			Emergency Commission approved 3 additional positions Feb, 1978
	"	(241,691)	G	Denied 8 positions
	Travel	(8,500)	G	Base \$19,400 x 2.3
	Bldg Rental	(2,600)	G	Base \$345 x 3 Trend does not reflect increase
	Repair Ser.	(2,400)	G	Base \$3,103 + 6% each year
	Other Prof.	(2,000)	G	Base \$654 + 6% each year
	Other Fees	(584)	G	Base \$272 x 3
	Office Supp.	(1,100)	G	Base \$2,282 + 7% each year
	Resale	(9,600)	G	Base \$995 + 7% each year
	Prof. Supp.	(5,000)	G	Base \$241 + 7% each year
	Mdg. Supp.	(10,000)	G	Base \$6,435 + 7% each year
	Auto Parts	(4,700)	G	Base \$9,880 + 7% each year
	Other	(200)	G	Base \$628 + 7% each year
		<u>(293,075)</u>		
	Equip	(3,080)		\$36,079 restored in Exec. Budget
	Salaries			Approved 1 Legal Assistant
	"	(54,644)	G	Denied alt. position
	Travel	(2,522)	G	Base \$4,925 x 2.3
	Eq. Rental	(5,500)	G	Base \$500 + 6% each year
	Advert.	(3,699)	G	Base \$2,931 + 6% each year
		<u>(66,365)</u>		
	Equip	(400)		\$58,613 restored in Exec. Budget
Administration	Equip.	(750)		
Planning	Equip.	(7,700)		Amounts transferred #6000 vehicle and office furniture for new positions
Technology	Equip.	(40,675)		to program categories \$35,500 vehicles + office furniture for new position
Engineering	Equip.	(3,080)		listed previously Office furniture for new position
Legal	Equip.	(400)		Office machines for new position
		<u>(52,605)</u>		
TOTAL ADJUSTMENT		<u>(882,402)</u>		\$132,056 Total restored in Exec Budget

APPENDIX "B"

			AYE	NAY
Assigned To Committee On:				
SENATE _____				
HOUSE _____	PAGE			
Committee Report	IND			
SENATE <input type="checkbox"/> DO PASS <input type="checkbox"/> POST <input type="checkbox"/> AMEND	S.J.	H.J.		
DO NOT				
HOUSE <input type="checkbox"/> DO PASS <input type="checkbox"/> PASS <input type="checkbox"/> AMEND				
Legislative Action on Amendments				
SENATE <input type="checkbox"/> ADOPTED <input type="checkbox"/> NOT ADOPTED				
HOUSE <input type="checkbox"/> ADOPTED <input type="checkbox"/> NOT ADOPTED				
2nd Reading and Final Passage				
SENATE <input type="checkbox"/> PASS <input type="checkbox"/> FAIL				
HOUSE <input type="checkbox"/> PASS <input type="checkbox"/> FAIL				

1 AN ACT to create an interim Southwest Area advisory committee,
 2 and providing an appropriation.

3

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 5 STATE OF NORTH DAKOTA:

6

7 SECTION 1. FINDINGS AND DECLARATION OF POLICY.) It is
 8 hereby found and declared by the legislative assembly that
 9 many areas and localities in the Southwest area do not enjoy
 10 safe drinking water, and that in many such areas and localities
 11 the water contains iron, sulfates, alkali, salt, nitrates,
 12 and other hazardous and discoloring substances; and that
 13 other areas and localities in the Southwest area which have
 14 good quality water do not have sufficient quantities of
 15 water to ensure a dependable, long-term supply. It is
 16 further found and declared that initial investigation of
 17 supplementation of the water resources of the Southwest area
 18 with water supplies from the Missouri River, utilizing a
 19 pipeline delivery system, is a potentially feasible approach
 20 to provide the Southwest area, including municipalities and
 21 rural areas, with a safe and dependable source of water. It
 22 is therefore declared to be in the best interests of the
 23 people of the Southwest area, as well as the entire state of
 24 North Dakota, to establish an interim advisory committee to

1 further investigate and develop a pipeline delivery system
 2 to provide the Southwest area with a safe and dependable
 3 water supply for purposes including, but not limited to,
 4 domestic, rural water districts, municipal, livestock,
 5 irrigation, light industrial, mining, recreational, fish and
 6 wildlife, and pollution abatement uses which will result in
 7 the best use of such waters and related land resources with
 8 primary emphasis on domestic, rural water district, and
 9 municipal uses.

10 SECTION 2. DEFINITIONS.) Unless the context and
 11 subject matter otherwise requires:

- 12 1. "Commission" shall mean the North Dakota state
 13 water commission;
- 14 2. "Advisory committee" shall mean the Southwest
 15 advisory committee; and
- 16 3. "Southwest area" shall mean the 14 North Dakota
 17 counties lying south and west of the Missouri
 18 River.

19 SECTION 3. ADVISORY COMMITTEE - COMPOSITION - COMPENSATION.)

20 There is hereby created a Southwest advisory committee to
 21 the state water commission, which committee shall consist
 22 of:

- 23 1. The chairman of the water commission, or his
 24 representative.
- 25 2. One representative from the city of Dickinson, who
 26 shall be appointed by the city commission.
- 27 3. One representative from a smaller community in the
 28 Southwest area, other than Dickinson, who shall be
 29 a mayor and who shall represent all municipalities
 30 in the Southwest area which are interested in
 31 receiving supplemental water supplies from the
 32 Missouri River.
- 33 4. One representative from the southwest water managers
 34 association, who shall be selected by such southwest
 35 water managers association.

- 1 5. One representative from each of the Slope Area
2 Water Systems Cooperative, Missouri West Water
3 Systems Cooperative, and the Southwest Rural Water
4 District, to be appointed by the respective rural
5 water cooperative's or district's board of directors.
6 6. Two citizens to be selected by the chairman of the
7 commission. One of the two citizens shall be a
8 recognized conservationist.

9 In the event that additional rural water systems are
10 created and established in the Southwest area, the advisory
11 committee shall be adjusted to provide for a representative
12 from the newly created rural water system, to be appointed
13 by the newly created rural water system.

14 The commission shall appoint a project director, who
15 shall be an employee of the commission. It shall be the
16 responsibility of the project director to carry out the
17 policies and directions of the committee, in accordance with
18 this Act, and shall, within the limits of personnel and
19 funds available, perform such other duties as may be assigned
20 to him by the advisory committee. The commission shall also
21 employ such other administrative and professional personnel,
22 within the limits of available funds, as required to carry
23 out the purposes of this Act.

24 Each member of the advisory committee, not employed by
25 the state or an agency thereof, shall receive the sum of
26 thirty dollars for each day he is engaged in the official
27 business of the advisory committee. Each member shall also
28 be reimbursed for his expenses at the rates and in the
29 manner as provided for in section 54-35-10 for members of
30 the legislative council.

31 SECTION 4. POWERS AND DUTIES.) The advisory committee
32 shall serve as the focal point in the Southwest area to
33 carry out the purposes of this bill. Its principle function
34 shall be that of a coordinating committee for the development
35 and initial implementation of a pipeline delivery system to

1 supplement the water supply of the Southwest area, for the
 2 uses declared in section 1 of this Act. The advisory committee
 3 shall be vested with the power and duty to:

- 4 1. To determine and select the proper management
 5 scheme for the Southwest area water supply system.
 6 The advisory committee shall make this determina-
 7 tion by December 31, 1979, and shall recommend
 8 necessary legislation to create the proper management
 9 scheme to the forty-seventh Legislative Assembly.
- 10 2. Conduct educational programs concerning the establish-
 11 ment, development, and implementation of a pipeline
 12 water delivery system for the Southwest area.
- 13 3. Determine the exact location of potential water
 14 users who have indicated a commitment toward
 15 project implementation.
- 16 4. Initiate, when appropriate, project feasibility
 17 engineering studies.

18 SECTION 5. STATE WATER COMMISSION TO PROVIDE ADMINISTRA-
 19 TIVE SUPPORT.) The advisory committee shall, for administra-
 20 tive purposes, be a division of the state water commission.
 21 The commission shall advise, assist, cooperate with, and
 22 enter into all contracts necessary and desirable on behalf
 23 of the advisory committee. The commission is hereby appointed
 24 fiscal agent for the advisory committee, and as such is
 25 authorized to receive and expend gifts, donations, grants,
 26 and other financial aids and funds received for the benefit
 27 of the advisory committee.

28 SECTION 6. APPROPRIATION.) There is hereby appropriated
 29 out of any moneys in the general fund in the state treasury,
 30 not otherwise appropriated, the sum of \$320,000.00, or so
 31 much thereof as may be necessary, to the state water commission
 32 for the purpose of carrying out the provisions of this Act
 33 for the biennium beginning July 1, 1979, and ending June 30,
 34 1981.

35 SECTION 7. LIMITATION.) This Act shall not diminish

1 or in any way affect the existing powers or duties of the
2 commission, water management districts, or other governmental
3 subdivisions of the state of North Dakota.

4 SECTION 8. EXPIRATION.) This Act shall expire on June
5 30, 1981.

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

INTERSTATE

INTERCHANGE

ROUTE 94

COMMISSIONERS:

HENRY SCHANK, President
 ROBERT B. BAIRD, Water, Sewerage
 ERNEST BAILEY, Finance, Buildings
 ART BAUMGARTNER, Streets, Refuse
 LAVERN JESSEN, Police, Fire

CITY AUDITOR

JAMES K. GEROU, CMC

22

HYWY



QUEEN CITY



CITY OF DICKINSON

NORTH DAKOTA 58601

January 4, 1979

*Governor Link and
 Members of the State Water Commission
 State of North Dakota*

A preliminary study has been finished as of December 1978 by the Water Commission, known as the "Southwest Area Water Supply Study", for rural and municipal water needs of the 14 Southwestern counties of North Dakota.

This study and the statistics in it are very general.

The City Commission of Dickinson is very much interested in a water supply for Dickinson as well as supporting the Rural Water System project. It is most important to get an actual cost figure and the number of users that are interested in this water supply. Therefore the City of Dickinson recommends to the State Water Commission and the State Legislature that an appropriation be made in this legislative session for a feasibility study of the Southwest area project.

Respectfully,

Henry Schank, President
 Board of City Commissioners
 City of Dickinson, North Dakota

Part IV of the Attorney General's Opinion of Water Marketing fees (last paragraph on page 5) states that the State Engineer's authority to subject water appropriation permits to "fees for water use" is limited to those amounts for planning and administration "necessary to protect the rights of others, and the public interest".

This still lets considerable leeway. In addition the opinion still does not address the question of the public trust responsibility. The public trust doctrine could be construed by the courts to require the commission to make sure all of the citizens of the state who own the water receive some benefit from its use through "rental" fees (such as grazing fees) charged against those who use considerable quantities. The public trust is also involved in regulation of the use of the resource to insure its use by the widest possible number of people, the prevention of exploitation and the encouragement of conservation.

The budget request submitted to the legislature appears to be \$4.7 million. To do all of the planning necessary including ^{such things as} the study of the relationship between ground and surface waters, etc., we probably need considerably more than the amount requested.

According to a previous memo prepared by Dave S., ^{annual} income under proposed alternative A (\$20.00 an acre foot with a 500 AF exemption) ^{+ 2.00 Conditional use} would be \$1,925,080. This projection assumes that all conditional permits will become perfected.

II

The commission could establish a basic fee such as the \$20.00 one, which might cover the projected planning and administration expenses. In addition an escalator could be added which would address the "regulation" concerns outlined in the second paragraph of this memo.

The table below uses an example of \$5.00 an AF with an exemption of possibly 500 or 1000 AF.

	<u>new</u>	<u>currently</u> <u>info Commission</u>
up to 500 or 1000 acrefeet	free	
1000-2000	20.00	
2000-3000	25.00	
3000-4000	30.00	
4000-5000	35.00	
5000-6000	40.00	
6000-7000	45.00	
7000-8000	50.00	
8000-9000	55.00	
9000-10000	60.00	
* 10000-11000 ↑ ↑	65.00	2000
11000-12000 (Coyote)-11000	70.00	
12000-13000	75.00	
13000-14000	80.00	
14000-15000 (UPA-CPA)	85.00	2700
15000-16000	90.00	
16000-17000 ANG)	95.00	2600
17000-18000	100.00	
18000-19000 (Antelope Valley)	105.00	2800
19000-20000	110.00	

Note: the \$20.00 base and \$5.00 escalator are only examples. The escalator might also be reduced \$1.00 after each 5000 acrefeet level. (Such as \$4.00 from 5000-10000; \$3.00 from 10000-15000 and \$2.00 from 15000-20000.)

This proposal would allow small and moderate size irrigators and businesses to use water without charge. Irrigators could irrigate possibly 768 or more acres free.

Such a plan has the advantage of discouraging exceptionally large irrigation permits without the commission's application of the acreage or residence restrictions opposed by Water User resolutions, etc.

Current proposal under consideration by Commission is \$100 per AF with no escalator
 10,000 AF @ 200 -
 14,000 AF @ 270 -

Summary of Opinion Dated December 27, 1978, to State Engineer
and State Water Commission Regarding Water Use Fee Regulations

1. Proposed water use fees to be assessed by the State Water Commission and the State Engineer for the purpose of raising revenues necessary to provide for the development of water resource projects would be determined by the courts to be a tax.
2. Section 175 of the North Dakota Constitution reserves exclusively to the Legislature the power to tax.
3. The statutory authority to assess water use fees relied upon by the State Water Commission and the State Engineer fails to set a maximum fee or state the object and purpose to which the water use fees would be applied.
4. Present statutory authority to assess water use fees for revenue raising purposes would be held by the courts to be an unconstitutional delegation of legislative authority to tax in violation of Section 175 of the North Dakota Constitution.
5. The authority of the State Water Commission to provide for the "sale of waters" is limited to those waters which the Commission has itself appropriated and reserved by the construction, operation and control of "works" (project facilities) authorized by Chapter 61-02 of the North Dakota Century Code, and made available for delivery to water users. The amount of monies raised by such "sale" would be limited to the service costs of making water available through storage and delivery "works." (facilities)
6. The authority of the State Engineer to subject water appropriation permits to "fees for water use" is limited to those amounts for planning and administration "necessary to protect the rights of others, and the public interest."

SWC NORTH DAKOTA STATE WATER COMMISSION

**300 east boulevard
701-224-2750**

**bismarck 58505
north dakota**

December 11, 1978

The Honorable Allen I. Olson
Attorney General of North Dakota
State Capitol Building
Bismarck, North Dakota 58505

RE: SWC File No. C7-2

Dear Mr. Olson:

This is to request your opinion concerning the extent and limits of the authority of the State Water Commission and the State Engineer to assess water use fees pursuant to Chapters 61-02 and 61-04 of the North Dakota Century Code. As I am sure you are aware, the State Water Commission and the State Engineer have been considering water use fee regulations for some time. During this time, certain legal issues have surfaced which may have a direct bearing on the validity of water use fee regulations.

The State Water Commission and the State Engineer, of course, have general rule-making authority. The statutes to be implemented by regulations pertaining to water use fees are contained in Sections 61-02-01, 61-02-14, 61-02-29, and 61-04-06.2 of the North Dakota Century Code. Sections 61-02-14 and 61-04-06.2 are most specific, and portions thereof provide as follows:

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

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

a. For the sale of waters and water rights to individuals, associations, corporations, municipalities, and other political subdivisions of the state, and for the delivery of water to users;

61-04-06.2. **TERMS OF PERMIT.** - The state engineer...may issue a permit subject to fees for water use, terms, conditions, restrictions, limitations, and termination dates he considers necessary to protect the rights of others, and the public interest.

GOVERNOR ARTHUR A. LINK
Chairman

ALVIN A. KRAMER
Minor

ARTHUR J. LANZ
Devils Lake

MYRON JUST, EX-OFFICIO MEMBER
Comm of Agriculture

RICHARD P. GALLAGHER
Vice Chairman-Mandan

GORDON K. GRAY
Valley City

ARLENE WILHELM
Dickinson

VERNON FAHY
Secretary & State Engineer

Allen I. Olson
December 11, 1978
Page 2

In addition to the above-mentioned statutes, there are other statutory provisions which lend support and credence to the assessment of water use fees by the State Water Commission and the State Engineer. First, in 1975 the Legislative Assembly adopted the following provision, which is now codified in Section 61-04-16.2 of the North Dakota Century Code:

Conditions and limitations so attached shall be related to matters within the jurisdiction of the state engineer; provided, however, that all conditions attached to any permit issued prior to July 1, 1975, shall be binding upon the permittee.

Prior to July 1, 1975, water permits which were granted to large energy conversion water users contained several conditions, one of which reads as follows:

Should the Commission or the Legislative Assembly at any time provide for the payment of a water users fee, or any other fee or charge, the applicant shall be subject to such charges when they become effective.

By the enactment of the foregoing provision, the Legislative Assembly has clearly expressed its intention and desire that conditions attached to water permits prior to July 1, 1975, such as the condition relating to fees, are valid.

Second, permits for large energy conversion water users which were approved by the State Water Commission subsequent to July 1, 1975, include a contract between the applicant and the Commission. The language of the conditional water permit and the accompanying contract provides as follows:

Appropriator (applicant) offers the following consideration for the water permit:

- A. Appropriator agrees to pay any state fees which may be required by rules or regulations, either currently existing or later promulgated, and any amendments thereto.

This provision is not merely a condition to a water permit but is a provision of a contractual agreement agreed upon and executed by the applicant prior to the granting of the conditional water permit.

As you can see by the foregoing discussion, it is my opinion that the Legislative Assembly has unequivocally granted to the State Water Commission and the State Engineer the authority to levy fees. However, notwithstanding the extensive authority vested in the State Water Commission and the State Engineer to levy water use fees, there is a question concerning potential limits of this authority by virtue of Section 175 of the North Dakota Constitution. Basically, Section 175 provides that only the Legislative Assembly may levy a tax. The State Water Commission and the

Allen I. Olson
December 11, 1978
Page 3

State Engineer are not intending to levy a tax. Rather, it is proposed to levy a reasonable fee for certain uses of water, and to establish through legislative enactment a special fund for the proceeds of such fees, to be used for the development of water resource projects in North Dakota. Since only the Legislature can levy a "tax", if a water use fee is likely to be determined a tax, the Commission intends to seek the appropriate enabling legislation. However, if water use fees do not fall within the definition of a "tax", but rather are "fees," the State Water Commission and the State Engineer intend to proceed to adopt regulations pursuant to existing authority.

Therefore, my question is:

Do water use fees constitute a "tax", whereby the requirements of Section 175 of the North Dakota Constitution must be satisfied?

The State Water Commission will determine its course of action subsequent to receipt of your opinion. Therefore, your response at your earliest convenience will be greatly appreciated.

Sincerely,



Michael Dwyer
Director of Legal Services

MD:pjw

cc: Vern Fahy, State Engineer
State Water Commission

NORTH DAKOTA STATE WATER COMMISSION

OFFICE MEMO

MEMO TO: Vern Fahy, State Engineer
David A. Sprynczynatyk, Director, Engineering Division
FROM: Dale Frink, Hydrologist-Engineer
SUBJECT: Water Charges - SWC Project #1695
DATE: January 3, 1978

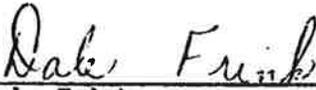
Attached are four annual water charge estimates for industrial users. These alternatives include a 500 and 1000 acre-foot exemption and base water charges of \$25 and \$50 per acre-foot. The number of users that would be required to pay a water fee would be the same regardless of whether a 500 or 1000 acre-foot exemption was included. At present, we have two users declaring a consumptive use of between 500 and 1000 acre-feet.

Basically, a charge of \$25 per acre-foot would result in an annual income of \$2.6+ million and \$50 per acre-foot would provide an annual income of \$5+ million.

This assumes that the power generation plants now under construction would be on line and paying annual water charges. The ANG gasification plant is not included. These estimates also assume that the new power plants will use the amount listed on their water permit application. Generally, the conditional permits are somewhat higher than the average annual use because the plants are not completely designed when a water permit application is made. The water use estimates for the existing plants were taken from the annual use reports completed by the users and returned to the Water Commission each year. If a water use fee should be imposed, users may decrease their water use. A reduction in present use in addition to the new plants using less water than conditionally granted could result in annual income reductions of 25-30% below the estimates shown.

I also believe that consideration should be given to accumulating water permits for each company. In other words, if one company has four permits,

the water charges should be based on the combined total of these four permits rather than charging each permit separately. This would increase the annual charge for some users substantially but would not discriminate against the users with one large permit compared to the users with several smaller permits. Under the present proposal, it would be advantageous for users to breakdown their total water requirements and apply for each segment individually.



Dale Frink
Hydrologist-Engineer

DF:dm

(The last table in this memo shows all industrial users with permits exceeding 100 acre-feet. As can be seen, most of these users would fall out if a 500 or 1000 acre-foot exemption was included.)

Annual Income Estimates
from
Water Use Fees
(Summary)

- A. \$25 per acre-foot for 500-1000 acre-feet; \$2.50 acre-foot increase for each additional 1000 acre-foot interval. No charge for first 500 acre-feet of use.

Annual Income: \$2,882,000

- B. \$25 per acre-foot for 1001-2000 acre-feet; \$2.50 acre-foot increase for each additional 1000 acre-foot interval. No charge for first 1000 acre-feet of use.

Annual Income: \$2,588,000

- C. \$50 per acre-foot for 500-1000 acre-feet; \$5 acre-foot increase for each additional 1000 acre-foot interval. No charge for first 500 acre-feet of use.

Annual Income: \$5,712,000

- D. \$50 per acre-foot for 1001-2000 acre-feet; \$5 acre-foot increase for each additional 1000 acre-foot interval. No charge for first 1000 acre-feet of use.

Annual Income: \$5,155,000

Alternative A

ACTUAL ANNUAL CONSUMPTIVE USE:

0 -	500 acre-feet	no charge
501 -	1,000 acre-feet	@ \$ 25.00 per acre-foot
1,001 -	2,000 acre-feet	@ \$ 27.50 per acre-foot
2,001 -	3,000 acre-feet	@ \$ 30.00 per acre-foot
3,001 -	4,000 acre-feet	@ \$ 32.50 per acre-foot
4,001 -	5,000 acre-feet	@ \$ 35.00 per acre-foot
5,001 -	6,000 acre-feet	@ \$ 37.50 per acre-foot
6,001 -	7,000 acre-feet	@ \$ 40.00 per acre-foot
7,001 -	8,000 acre-feet	@ \$ 42.50 per acre-foot
8,001 -	9,000 acre-feet	@ \$ 45.00 per acre-foot
9,001 -	10,000 acre-feet	@ \$ 47.50 per acre-foot
10,001 -	11,000 acre-feet	@ \$ 50.00 per acre-foot
11,001 -	12,000 acre-feet	@ \$ 52.50 per acre-foot
12,001 -	13,000 acre-feet	@ \$ 55.00 per acre-foot
13,001 -	14,000 acre-feet	@ \$ 57.50 per acre-foot
14,001 -	15,000 acre-feet	@ \$ 60.00 per acre-foot
15,001 -	16,000 acre-feet	@ \$ 62.50 per acre-foot
16,001 -	17,000 acre-feet	@ \$ 65.00 per acre-foot
17,001 -	18,000 acre-feet	@ \$ 61.50 per acre-foot
18,001 -	19,000 acre-feet	@ \$ 70.00 per acre-foot
19,001 -	20,000 acre-feet	@ \$ 72.50 per acre-foot
20,001 -	21,000 acre-feet	@ \$ 75.00 per acre-foot

WATER CHARGES:

<u>ANNUAL USE</u>	<u>WATER CHARGE</u>
1,000 acre-feet	\$ 12,500
2,000 acre-feet	40,000
3,000 acre-feet	70,000
4,000 acre-feet	102,500
5,000 acre-feet	137,500
6,000 acre-feet	175,000
7,000 acre-feet	215,000
8,000 acre-feet	257,500
9,000 acre-feet	302,500
10,000 acre-feet	350,000
11,000 acre-feet	400,000
12,000 acre-feet	452,500
13,000 acre-feet	507,500
14,000 acre-feet	565,000
15,000 acre-feet	625,000
16,000 acre-feet	687,500
17,000 acre-feet	752,500
18,000 acre-feet	820,000
19,000 acre-feet	890,000
20,000 acre-feet	962,500

Alternative B
(1000 acre-foot exemption)

ACTUAL ANNUAL CONSUMPTIVE USE:

0000 - 1,000	acre-feet	no charge
1,001 - 2,000	acre-feet	@ \$ 25.00 per acre-foot
2,001 - 3,000	acre-feet	@ \$ 27.50 per acre-foot
3,001 - 4,000	acre-feet	@ \$ 30.00 per acre-foot
4,001 - 5,000	acre-feet	@ \$ 32.50 per acre-foot
5,001 - 6,000	acre-feet	@ \$ 35.00 per acre-foot
6,001 - 7,000	acre-feet	@ \$ 37.50 per acre-foot
7,001 - 8,000	acre-feet	@ \$ 40.00 per acre-foot
8,001 - 9,000	acre-feet	@ \$ 42.50 per acre-foot
9,001 - 10,000	acre-feet	@ \$ 45.00 per acre-foot
10,001 - 11,000	acre-feet	@ \$ 47.50 per acre-foot
11,001 - 12,000	acre-feet	@ \$ 50.00 per acre-foot
12,001 - 13,000	acre-feet	@ \$ 52.50 per acre-foot
13,001 - 14,000	acre-feet	@ \$ 55.00 per acre-foot
14,001 - 15,000	acre-feet	@ \$ 57.50 per acre-foot
15,001 - 16,000	acre-feet	@ \$ 60.00 per acre-foot
16,001 - 17,000	acre-feet	@ \$ 62.50 per acre-foot
17,001 - 18,000	acre-feet	@ \$ 65.00 per acre-foot
18,001 - 19,000	acre-feet	@ \$ 67.50 per acre-foot
19,001 - 20,000	acre-feet	@ \$ 70.00 per acre-foot
20,001 - 21,000	acre-feet	@ \$ 72.50 per acre-foot

WATER CHARGES:

<u>ANNUAL USE</u>	<u>WATER CHARGE</u>
1,000 acre-feet	\$ 0.00
2,000 acre-feet	25,000.00
3,000 acre-feet	52,500.00
4,000 acre-feet	82,500.00
5,000 acre-feet	115,000.00
6,000 acre-feet	150,000.00
7,000 acre-feet	187,500.00
8,000 acre-feet	227,500.00
9,000 acre-feet	270,000.00
10,000 acre-feet	315,000.00
11,000 acre-feet	362,500.00
12,000 acre-feet	412,500.00
13,000 acre-feet	465,000.00
14,000 acre-feet	520,000.00
15,000 acre-feet	577,500.00
16,000 acre-feet	637,500.00
17,000 acre-feet	700,000.00
18,000 acre-feet	765,000.00
19,000 acre-feet	832,500.00
20,000 acre-feet	902,500.00

Alternative B

ANNUAL WATER CHARGES - (Perfected or Used Permits)^{1/}
(1000 acre-feet minimum)

Permit #	Owner	Source	Appropriated (acre-feet)	Withdrawn-1977 (acre-feet) (2)	Returned-'77 (acre-feet) ^{2/}	Consumed-'77 (acre-feet)	Charge \$25/acre-foot+
483	Standard Oil	Missouri	9521	2262.5	761.6	1500.9	\$12,522.50
2105	Ladish Malt.	Ground Water	1680 (3)	535.6	483	52.6	0.00
251	American Crystal	Red River	1841	45.7	0	45.7	0.00
1076	American Crystal	Red River	4250	894.5	0	894.7	0.00
304/775	Sheyenne Sand & Gravel	Sheyenne	--	560	543.2	16.8	0.00
913	Lake Sand/Gravel	Sheyenne	1325	7.8	0	7.8	0.00
2959	Basin Electric	Missouri	4839	4839	4833	6.0	0.00
659	Basin Electric	Ground Water	3285	957	0	957.0	0.00
						TOTAL	\$12,522.50

- (1) Does not include water permits granted specifically for electric power generation plants.
- (2) Information from 1977 Annual Water Use Report - Accuracy may be questionable.
- (3) Conditional permit.

Alternative B

ANNUAL WATER CHARGES FOR ELECTRIC POWER PLANTS

Permit No.	Owner	Source	Rated Capacity of Plant (Megawatt)	Water Appropriation (Acre-feet)	Estimated Charge (\$)	Charge Per Megawatt (\$/MW)
1977	UPA-CPA* (Coal Creek)	Missouri	900	15,000	577,500	642
2179	Basin Electric* (Antelope Valley)	Lake Sakakawea	880	19,000	832,500	946
2292	MDU* (Coyote Plant)	Missouri	440	11,000	362,500	824
1324	Minnkota M. Young - Unit I	Square Butte Creek	250	6,500	168,750	675
1963	Minnkota M. Young - Unit II	Square Butte Creek		2,480	38,200	
			440			558
1964	Minnkota M. Young - Unit II	Square Butte Creek		7,500	207,500	
Totals			2,910	61,480	2,186,950	752 750/megawatt

*Plants under construction

Alternative B

ANNUAL WATER CHARGES FOR FLOW THROUGH POWER PLANTS

(1) Permit No.	(2) Owner	(3) Source	(4) Rated Plant Capacity (megawatt)	(5) Water Withdrawn (1977) (acre-feet)	(6) Water Returned (1977) (acre-feet)	(7) Consumed (1977) (acre-feet)	(8) Appropriation (acre-feet)	(9) Charge @ \$750 per Megawatt (\$)	(10) Charge @ \$375 per Megawatt (\$)	(11) Charge Per acre-foot Withdrawn (\$) Col's (10÷5)	(12) Charge \$60 per Withdraw (\$)
463	MDU (Heskett)	Missouri	100	56,000	55,935	65	88,700	75,000	37,500	0.67	33,600
1039	BasIn Electric	Missouri	650	347,725	347,222	503	970,000	487,500	243,750	0.70	208,635
1161	UPA	Missouri	172	161,536	161,290	246	733,000	129,000	64,500	0.40	96,922
TOTALS			922	565,261	564,447	814	1,791,700	691,500	345,750	0.61	339,057

Alternative C
(500 acre-foot exemption)

ACTUAL ANNUAL CONSUMPTIVE USE:

500	-	1,000	acre-feet @ \$ 50.00 per acre-foot
1,001	-	2,000	acre-feet @ \$ 55.00 per acre-foot
2,001	-	3,000	acre-feet @ \$ 60.00 per acre-foot
3,001	-	4,000	acre-feet @ \$ 65.00 per acre-foot
4,001	-	5,000	acre-feet @ \$ 70.00 per acre-foot
5,001	-	6,000	acre-feet @ \$ 75.00 per acre-foot
6,001	-	7,000	acre-feet @ \$ 80.00 per acre-foot
7,001	-	8,000	acre-feet @ \$ 85.00 per acre-foot
8,001	-	9,000	acre-feet @ \$ 90.00 per acre-foot
9,001	-	10,000	acre-feet @ \$ 95.00 per acre-foot
10,001	-	11,000	acre-feet @ \$100.00 per acre-foot
11,001	-	12,000	acre-feet @ \$105.00 per acre-foot
12,001	-	13,000	acre-feet @ \$110.00 per acre-foot
13,001	-	14,000	acre-feet @ \$115.00 per acre-foot
14,001	-	15,000	acre-feet @ \$120.00 per acre-foot
15,001	-	16,000	acre-feet @ \$125.00 per acre-foot
16,001	-	17,000	acre-feet @ \$130.00 per acre-foot
17,001	-	18,000	acre-feet @ \$135.00 per acre-foot
18,001	-	19,000	acre-feet @ \$140.00 per acre-foot
19,001	-	20,000	acre-feet @ \$145.00 per acre-foot
20,001	-	21,000	acre-feet @ \$150.00 per acre-foot

WATER CHARGES
ANNUAL USE

WATER CHARGE

1,000	acre-feet	\$ 25,000.00
2,000	acre-feet	80,000.00
3,000	acre-feet	140,000.00
4,000	acre-feet	205,000.00
5,000	acre-feet	275,000.00
6,000	acre-feet	350,000.00
7,000	acre-feet	430,000.00
8,000	acre-feet	515,000.00
9,000	acre-feet	605,000.00
10,000	acre-feet	700,000.00
11,000	acre-feet	800,000.00
12,000	acre-feet	905,000.00
13,000	acre-feet	1,015,000.00
14,000	acre-feet	1,130,000.00
15,000	acre-feet	1,250,000.00
16,000	acre-feet	1,375,000.00
17,000	acre-feet	1,505,000.00
18,000	acre-feet	1,640,000.00
19,000	acre-feet	1,780,000.00
20,000	acre-feet	1,925,000.00

Alternative C

ANNUAL WATER CHARGES - (Perfected or Used Permits) ^{1/}
(500 acre-foot exemption)

Permit #	Owner	Source	Appropriated (acre-feet)	Withdrawn-1977 (acre-feet) (2)	Returned-'77 (acre-feet) ^{2/}	Consumed-'77 (acre-feet)	Charge \$
483	Standard Oil	Missouri	9521	2262.5	761.6	1500.9	\$52,550
1298	Union Stock-yards	Ground Water	548	337.6	0	337.6	0.00
1931	Continental Oil	Ground Water	750 (3)	264.7	0	264.7	0.00
2105	Ladish Malt.	Ground Water	1680 (3)	535.6	483	52.6	0.00
251	American Crystal	Red River	1841	45.7	0	45.7	0.00
1076	American Crystal	Red River	4250	894.5	0	894.7	19,735.00
304/775	Sheyenne Sand & Gravel	Sheyenne	--	560	543.2	16.8	0.00
913	Lake Sand/Gravel	Sheyenne	1325	7.8	0	7.8	0.00
1117	Siouxland	Ground Water	925	0	--	--	0.00
2959	Basin Electric	Missouri	4839	4839	4833	6.0	0.00
659	Basin Electric	Ground Water	3285	957	0	957.0	<u>22,850.00</u>
TOTAL							\$95,135.00

- (1) Does not include water permits granted specifically for electric power generation plants.
- (2) Information from 1977 Annual Water Use Report - Accuracy may be questionable.
- (3) Conditional permit.

Alternative C

ANNUAL WATER CHARGES FOR ELECTRIC POWER PLANTS
(500 acre-foot exemption)

Permit No.	Owner	Source	Rated Capacity of Plant (Megawatt)	Water Appropriation (acre-feet)	Estimated Charge (\$)	Charge per Megawatt (\$/MW)
1977	UPA-CPA* (Coal Creek)	Missouri	900	15,000	1,250,000	1,389
2179	Basin Electric* (Antelope Valley)	Lake Sakakawea	880	19,000	1,780,000	2,023
2292	MDU* (Coyote Plant)	Missouri	440	11,000	800,000	1,818
1324	Minnkota M. Young - Unit 1	Square Butte Creek	250	6,500	390,000	1,560
1963	Minnkota M. Young - Unit II	Square Butte Creek		2,480	108,800	
			440			1,321
1964	Minnkota M. Young - Unit II	Square Butte Creek		7,500	472,500	
TOTALS			2,910	61,480	4,801,300	\$1,650

*Plants under construction

Alternative C

ANNUAL WATER CHARGES FOR FLOW THROUGH POWER PLANTS

(1) Permit No.	(2) Owner	(3) Source	(4) Rated Plant Capacity (megawatt)	(5) Water Withdrawn (1977) (acre-feet)	(6) Water Returned (1977) (acre-feet)	(7) Consumed (1977) (acre-feet)	(8) Appropriation (acre-feet)	(9) Charge @ \$1650 per Megawatt (\$)	(10) Charge @ \$825 per Megawatt (\$)	(11) Charge Per acre-foot Withdrawn (\$) Col's (10÷5)	(12) Charge 1.35 per Withdraw (\$)
463	MDU (Heskett)	Missouri	100	56,000	55,935	65	88,700	165,000	82,500	1.47	75,600
1039	Basin Electric	Missouri	650	347,725	347,222	503	970,000	1,072,500	536,250	1.54	469,429
1161	UPA	Missouri	172	161,536	161,290	246	733,000	283,800	141,900	0.88	218,074
TOTALS			922	565,261	564,447	814	1,791,700	1,521,300	760,650	1.35	763,103

Alternative D
(1000 acre-foot exemption)

ACTUAL ANNUAL CONSUMPTIVE USE:

1,001	-	2,000	acre-feet @ \$ 50.00 per acre-foot
2,001	-	3,000	acre-feet @ \$ 55.00 per acre-foot
3,001	-	4,000	acre-feet @ \$ 60.00 per acre-foot
4,001	-	5,000	acre-feet @ \$ 65.00 per acre-foot
5,001	-	6,000	acre-feet @ \$ 70.00 per acre-foot
6,001	-	7,000	acre-feet @ \$ 75.00 per acre-foot
7,001	-	8,000	acre-feet @ \$ 80.00 per acre-foot
8,001	-	9,000	acre-feet @ \$ 85.00 per acre-foot
9,001	-	10,000	acre-feet @ \$ 90.00 per acre-foot
10,001	-	11,000	acre-feet @ \$ 95.00 per acre-foot
11,001	-	12,000	acre-feet @ \$100.00 per acre-foot
12,001	-	13,000	acre-feet @ \$105.00 per acre-foot
13,001	-	14,000	acre-feet @ \$110.00 per acre-foot
14,001	-	15,000	acre-feet @ \$115.00 per acre-foot
15,001	-	16,000	acre-feet @ \$120.00 per acre-foot
16,001	-	17,000	acre-feet @ \$125.00 per acre-foot
17,001	-	18,000	acre-feet @ \$130.00 per acre-foot
18,001	-	19,000	acre-feet @ \$135.00 per acre-foot
19,001	-	20,000	acre-feet @ \$140.00 per acre-foot
20,001	-	21,000	acre-feet @ \$145.00 per acre-foot

WATER CHARGES:

<u>ANNUAL USE</u>	<u>WATER CHARGE</u>
1,000 acre-feet	\$ 0.00
2,000 acre-feet	50,000.00
3,000 acre-feet	105,000.00
4,000 acre-feet	165,000.00
5,000 acre-feet	230,000.00
6,000 acre-feet	300,000.00
7,000 acre-feet	375,000.00
8,000 acre-feet	455,000.00
9,000 acre-feet	540,000.00
10,000 acre-feet	630,000.00
11,000 acre-feet	725,000.00
12,000 acre-feet	825,000.00
13,000 acre-feet	930,000.00
14,000 acre-feet	1,040,000.00
15,000 acre-feet	1,155,000.00
16,000 acre-feet	1,275,000.00
17,000 acre-feet	1,400,000.00
18,000 acre-feet	1,530,000.00
19,000 acre-feet	1,665,000.00
20,000 acre-feet	1,805,000.00

Alternative D

ANNUAL WATER CHARGES - (Perfected or Used Permits)^{1/}
(1000 acre-feet exemption)

Permit #	Owner	Source	Appropriated (acre-feet)	Withdrawn-1977 (acre-feet) (2)	Returned-'77 (acre-feet) ^{2/}	Consumed-'77 (acre-feet)	Charge \$
483	Standard Oil	Missouri	9521	2262.5	761.6	1500.9	25,045.00
2105	Ladish Malt.	Ground Water	1680 (3)	535.6	483	52.6	0.00
251	American Crystal	Red River	1841	45.7	0	45.7	0.00
1076	American Crystal	Red River	4250	894.5	0	894.7	0.00
304/775	Sheyenne Sand & Gravel	Sheyenne	--	560	543.2	16.8	0.00
913	Lake Sand/Gravel	Sheyenne	1325	7.8	0	7.8	0.00
2959	Basin Electric	Missouri	4839	4839	4833	6.0	0.00
659	Basin Electric	Ground Water	3285	957	0	957.0	0.00
TOTAL							\$25,045.00

(1) Does not include water permits granted specifically for electric power generation plants.

(2) Information from 1977 Annual Water Use Report - Accuracy may be questionable.

(3) Conditional permit.

Alternative D

ANNUAL WATER CHARGES FOR ELECTRIC POWER PLANTS

Permit No.	Owner	Source	Rated Capacity of Plant (Megawatt)	Water Appropriation (Acre-feet)	Estimated Charge (\$)	Charge per Megawatt (\$/MW)
1977	UPA-CPA* (Coal Creek)	Missouri	900	15,000	1,155,000	1,283
2179	Basin Electric* (Antelope Valley)	Lake Sakakawea	880	19,000	1,665,000	1,892
2292	MDU* (Coyote Plant)	Missouri	440	11,000	725,000	1,648
1324	Minnkota M. Young - Unit I	Square Butte Creek	250	6,500	337,500	1,350
1963	Minnkota M. Young - Unit II	Square Butte Creek	440	2,480	76,400	1,117
1964	Minnkota M. Young - Unit II	Square Butte Creek		7,500	415,000	
TOTALS			2,910	61,480	4,373,900	1,503 1,500/megawat

*Plants under construction

Alternative D

ANNUAL WATER CHARGES FOR FLOW THROUGH POWER PLANTS

(1) Permit No.	(2) Owner	(3) Source	(4) Rated Plant Capacity (megawatt)	(5) Water Withdrawn (1977) (acre-feet)	(6) Water Returned (1977) (acre-feet)	(7) Consumed (1977) (acre-feet)	(8) Appropriation (acre-feet)	(9) Charge @ \$1500 per Megawatt (\$)	(10) Charge @ \$750 per Megawatt (\$)	(11) Charge per acre-foot Withdrawn (\$) Coi's (10 $\frac{1}{5}$)	(12) Charge @ 1.25 per A Withdrawn (\$)
463	MDU (Heskett)	Missouri	100	56,000	55,935	65	88,700	150,000	75,000	1.34	70,000
1039	Basin Electric	Missouri	650	347,725	347,222	503	970,000	975,000	487,500	1.40	434,656
1161	UPA	Missouri	172	161,536	161,290	246	733,000	258,000	129,000	0.80	201,920
TOTALS			922	565,261	564,447	814	1,791,700	1,383,000	691,500	1.25	706,576

Alternatives A and C

ANNUAL WATER CHARGES - CONDITIONAL AND NOT USED
(500 acre-foot exemption)

Permit #	Owner	Source	Appropriation AF	Charge
740	Standard Oil	Missouri	9521	\$18,042
1901A	ANG	Lake Sakakawea	17,000	33,000
2115	Froedtert Malt Corp.	Ground Water	1125	<u>1,250</u>
				\$52,292

Alternatives B and D

ANNUAL WATER CHARGES - CONDITIONAL AND NOT USED
(1000 acre-foot exemption)

Permit #	Owner	Source	Appropriation AF	Charge
740	Standard Oil	Missouri	9521	\$17,042
1901A	ANG	Lake Sakakawea	17,000	32,000
2115	Froedtert Malt Corp.	Ground Water	1125	<u>250</u>
				\$49,292

ANNUAL WATER CHARGES (Perfected or Used Permits)^{1/}

Permit #	Owner	Source	Appropriated (acre-feet)	Withdrawn-1977 (acre-feet) (2)	Returned-'77 (acre-feet) ^{2/}	Consumed-'77 (acre-feet)
301	A. Fisher	Green	150	39.2	0	39.2
483	Standard Oil	Missouri	9521 *	2262.5	761.6	1500.9
2154	Minot Sand & Gravel	Missouri	250	448	403.2	44.8
663	Westland Oil	Little Muddy	240	616	280	336
2705	Everetts Sand & Gravel	Pipestem	300	672	650	22
2008	Bottineau Winter Park	Trib. Souris	150 (3)	11.2	0	11.2
2300	Gravel Prod.	Ground Water	150 (3)	168	0	168
2696	Husky	Ground Water	245 (3)	112	0	112
1298	Union Stockyards	Ground Water	548 *	337.6	0	337.6
1538	Burlington Northern	Ground Water	335	168	0	168
1661	Basin Electric	Ground Water	300 (3)	26.9	0	26.9
1769	Texaco	Ground Water	470 (3)	132.1	0	132.1
1931	Continental Oil	Ground Water	750*(3)	264.7	0	264.7
2105	Ladish Malt.	Ground Water	1680*(3)	535.6	483	52.6
2176	UPA	Ground Water	168 (3)	120.9	0	120.9
251	American Crystal	Red River	1841*	45.7	0	45.7
1076	American Crystal	Red River	4250 *	894.5	0	894.7
304/775	Sheyenne Sand & Gravel	Sheyenne	---	560	543.2	16.8
913	Lake Sand/Gravel	Sheyenne	1325 *	7.8	0	7.8
1917	American Crystal	Goose	450	2240	1680	560
690	MDU	Ground Water	182	28.2	0	28.2
1117	Siouxland	Ground Water	925 *	0	---	---
1181	Hardy Salt Co.	Ground Water	274	196	0	196
1183	Williston Packing	Ground Water	110	112.56	112	.56
215	MDU	Knife	214	180.8	174.8	6.0
2959	Basin Electric	Missouri	4839	4839	4833	6.0
659	Basin Electric	Ground Water	3285	957	0	957.0

TOTAL

(1) Does not include water permits granted specifically for electric power generation plants.

(2) Information from 1977 Annual Water Use Report - Accuracy may be questionable.

(3) Conditional permit

APPENDIX "G"

				AYE	NAY
Assigned To Committee On:					
SENATE _____					
HOUSE _____	PAGE				
Committee Report	IND	S.J.	H.J.		
SENATE <input type="checkbox"/> DO PASS <input type="checkbox"/> POST <input type="checkbox"/> AMEND					
HOUSE <input type="checkbox"/> DO PASS <input type="checkbox"/> PASS <input type="checkbox"/> AMEND	DO NOT				
Legislative Action on Amendments					
SENATE <input type="checkbox"/> ADOPTED <input type="checkbox"/> NOT ADOPTED					
HOUSE <input type="checkbox"/> ADOPTED <input type="checkbox"/> NOT ADOPTED					
2nd Reading and Final Passage					
SENATE <input type="checkbox"/> PASS <input type="checkbox"/> FAIL					
HOUSE <input type="checkbox"/> PASS <input type="checkbox"/> FAIL					

1 A BILL for an Act to create and enact Chapter 61-02.1 of the
 2 North Dakota Century Code, providing for the establishment
 3 of a special fund for water marketing revenues, and providing
 4 for an appropriation of monies to the North Dakota State
 5 Water Commission for planning, research and development of
 6 special water resource projects in North Dakota.

7
 8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 9 STATE OF NORTH DAKOTA:

10
 11 SECTION 1.) Chapter 61-02.1 of the North Dakota Century
 12 Code is hereby created and enacted to read as follows:

13 61-02.1-01. LEGISLATIVE INTENT AND PURPOSES.) The
 14 intent of this chapter is to provide for the establishment
 15 of a special fund to be utilized by the State Water Commission
 16 and the State Engineer to promote planning, research,
 17 development, and implementation of special water resource
 18 projects in this state. The Legislative Assembly has authorized
 19 the State Water Commission and the State Engineer to levy
 20 fees for the use of water. This authority is contained in
 21 Chapters 61-02 and 61-04 of the North Dakota Century Code,
 22 and was provided because the Legislative Assembly recognized
 23 that economic stability is of primary concern to the people
 24 of this state, and that judicious appropriation and use of

1 water resources in accordance with Chapter 61-04 of the
2 North Dakota Century Code is of utmost importance to the
3 economy of the state of North Dakota and the health and
4 welfare of its citizens. The Legislative Assembly also
5 recognized, and hereby reiterates and re-affirms its policy,
6 that it is in the reasoned best interests of the citizens of
7 this state to levy fees for certain uses of water in this
8 state.

9 61-02.1-02. SPECIAL FUND.) All fees collected pursuant
10 to the power and authority granted to the state water commission
11 and the state engineer in title 61 of the North Dakota
12 Century Code shall be deposited in the State Treasury in a
13 special fund to be known as the Water Resources Development
14 Fund, and shall be used for planning, research, development,
15 and implementation of special water resource projects in
16 North Dakota. All income of the Water Resources Development
17 Fund and all interest of such income shall be used only by
18 the State Water Commission or the State Engineer.

19 61-02.1-03. PURPOSES OF FUND.) The Water Resource
20 Development Fund may be expended under the direction of the
21 Legislative Assembly to fund any water resource activity
22 authorized to the State Water Commission by title 61 of the
23 North Dakota Century Code.

24 61-02.1-04. APPROPRIATION.) There is hereby appropri-
25 ated out of any moneys in the Water Resource Development
26 Fund in the state treasury, not otherwise appropriated, the
27 sum of

28 , or so much thereof as may be necessary, to the
29 state water commission for the purpose of

30

31

32

33

34

35

SWC NORTH DAKOTA STATE WATER COMMISSION

APPENDIX "H"

800 east boulevard
701-224-2750

Bismarck 58005
north dakota

MEMO TO: Vern Fahy, State Engineer, and State Water Commission
FROM: Michael Dwyer, Counsel
SUBJECT: Resolution adopted by Water Users & Water Management Districts' Association
DATE: December 13, 1978

This is to clarify some confusion over one of the resolutions adopted by the Water Users and Water Managements Districts Associations. The resolution as proposed provided:

WE COMMEND AND CONGRATULATE:

- 5. THE STATE WATER COMMISSION for its competent and successful leadership in the wise use and proper conservation, development and utilization of North Dakota's water resources; and recommend the re-establishment of a water resources development fund as a standing and continuing appropriation to be administered by the State Water Commission as a means of financing water and related land resources development projects on a sound, orderly and economical basis pursuant to the State Water Resources Development Plan.

An amendment was proposed and adopted to delete the following portion of the resolution:

and recommend the re-establishment of a water resources development fund as a standing and continuing appropriation to be administered by the State Water Commission as a means of financing water and related land resources development projects on a sound, orderly and economical basis pursuant to the State Water Resources Development Plan.

Thus, the resolution was presented and adopted by the water users and water management officials as follows:

WE COMMEND AND CONGRATULATE:

- 5. THE STATE WATER COMMISSION for its competent and successful leadership in the wise use and proper conservation, development and utilization of North Dakota's water resources.

GOVERNOR ARTHUR A. LINK
Chairman

ALVIN A. KRAMER
Minot

ARTHUR J. LANZ
Devils Lake

MYRON JUST, EX-OFFICIO MEMBER
Comm. of Agriculture

RICHARD P. GALLAGHER
Vice Chairman-Mandan

GORDON K. GRAY
Valley City

ARLENE WILHELM
Dickinson

VERNON FAHY
Secretary & State Engineer

MEMO TO Vern Fahy
 December 13, 1978
 Page 2

As you can see, the portion which was deleted dealt with a fund, to be re-established as a standing and continuing appropriation. It was apparent at the Water Users and Water Management Districts business meeting, however, that two different funds were being discussed, leading to confusion amongst the Water Users and Water Management officials.

I do not suggest herein that the resolution should have been approved as originally proposed. However, I think it important to clarify the confusion which appeared to exist during its discussion. The resolution was first proposed and adopted by the Water Users and Water Management officials in 1966, and has been included as a part of the Water Users' resolutions each year since then. The resolution as passed in 1966 provided:

RESOLUTION NO. 8

Water Resources Development Fund

WHEREAS, the North Dakota State Legislature in 1965, in view of legislative findings and determination of ever-increasing demand and anticipated future need for water in the State for every beneficial purpose or use, by statutory enactment established and declared a state water resources policy; and

WHEREAS, said declaration provides that:

"Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of the budgetary requirements and administrative capabilities"; and further that

"Required assurances of state cooperation and for meeting non-federal repayment obligation of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency"; and

WHEREAS, the North Dakota State Water Commission has the responsibility of supplying assurances, funds and cooperation in connection with the development of water and related land resources;

NOW, THEREFORE, BE IT RESOLVED by the North Dakota Water Users Association, Inc., and the North Dakota Water Management Districts Association, Inc., meeting in annual joint convention, in the City of Dickinson, North Dakota, this 14th day of October, 1966, that they do hereby recommend the creation of a WATER RESOURCES DEVELOPMENT FUND within the state's fiscal structure to provide a means of financing water and related land resources development projects on a sound, orderly and economical basis by accumulating an adequate reserve for anticipated water and related land resources development

MEMO TO Vern Fahy
 December 13, 1978
 Page 3

projects, and requirements related thereto which must be assumed by local and state participation; and

BE IT FURTHER RESOLVED that they recommend such WATER RESOURCES DEVELOPMENT FUND be constituted and operated as a standing and continuing appropriation to be and remain available until expended and that it shall not revert to the state general fund under the provisions of section 54-44.1-11, North Dakota Century Code; and

BE IT FURTHER RESOLVED that a copy of this Resolution be by the Secretary of the North Dakota Water Users Association, Inc., transmitted to Honorable William L. Guy, Governor; Mr. Milo W. Hoisveen, Secretary-Chief Engineer of State Water Commission; Mr. Ralph Dewing, Director of the Department of Accounts and Purchases; and to Mr. C. Emerson Murry, Director, Legislative Research Committee.

The resolution was adopted for two primary reasons. First, and foremost, it served as a response to the change in the administration of the State Water Commission's contract fund by the Legislative Assembly in 1965. The change was brought about by the enactment of Section 54-44.1-11 of the North Dakota Century Code, which provides:

54-44.1-11. DEPARTMENT OF ACCOUNTS AND PURCHASES TO CANCEL UNEXPENDED APPROPRIATIONS--WHEN THEY MAY CONTINUE.--The department of accounts and purchases, thirty days after the close of each biennial period, shall cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn after the expiration of the biennial period during which they became available under the law. The chairman of the appropriations committees of the senate and house of representatives of the legislative assembly with the office of the budget may continue appropriations or balances in force for new construction projects and for major repair or improvement projects for not more than two years after the expiration of the biennial period during which they became available upon recommendation of the director of the budget.

As you know, Section 61-02-64.1 of the North Dakota Century Code provides for the State Water Commission contract fund. That section states:

61-02-64.1. CONTRACT FUND--PURPOSE--REIMBURSEMENTS TO BE DEPOSITED WITH THE STATE TREASURER.--All contractual obligations of the commission, excepting salaries and expenses of commission employees and the cost of any supplies, materials and equipment, shall be paid from the contract fund. The moneys in the contract fund shall be paid out or disbursed in such manner as may be determined by the commission. Any moneys paid to the state water commission by any department, agency, or political subdivision of this or another state or of the United States or any person or corporation to meet its part of the cost of a water project, shared with the commission

MEMO TO Vern Fahy
December 13, 1978
Page 4

on a matching basis, and as determined by a contract entered into with the commission, shall be deposited with the state treasurer and are hereby appropriated out of the state treasury and shall be credited to the contract fund.

Prior to 1965, the contract fund was a standing and continuing appropriation, whereby the State Water Commission could commit funds to a project and be assured that those funds would be held over as part of the contract fund into a next biennium. The language of the appropriation bill which authorized the continuing nature of the contract fund provided as follows:

Any appropriation in the contract fund shall remain available to the commission as a standing and continuing appropriation until expended or encumbered and shall not revert to the general fund....

In compliance with Section 54-44.1-11, the Legislature in 1967 amended its State Water Commission appropriation bill, deleting the above provision which provided that the contract fund was to be a standing and continuing appropriation. Therefore, as a result of Section 54-44.1-11 and the amendment to the State Water Commission appropriation bill, the State Water Commission contract fund was no longer a standing and continuing appropriation. This change is still in effect today. Thus, if the State Water Commission commits funds to a project but only spends a portion prior to the end of the biennium, the remaining portion reverts to the general fund. The result, of course, is that there is no guarantee that the particular project will receive the remaining portion of the funds. Section 54-44.1-11 does provide a method whereby the chairman of the Senate and House appropriations committees, together with the office of budget, may continue appropriations or balances in force for new construction projects or for major repair or improvement projects. However, this authority is specifically limited to not more than two years after the close of the particular biennium.

The second reason (closely related to the first) for the adoption of the "water resources development fund" resolution is contained in the resolution itself. The state water resources policy adopted by the Legislative Assembly in 1965 provides that the State Water Commission has the responsibility of supplying assurances, funds, and cooperation in connection with the development of water and related land resources. Water related development projects, by their very nature, extend over a period of years, from development through construction. Operation and maintenance must also be provided on a continuing basis. It was the intention of the Water Users and Water Management officials that if funds in the "contract fund" did not revert to the general fund if unexpended, but remained in the "contract fund" as a standing and continuing appropriation, the means of financing water and related land resource development projects would be more "sound and orderly".

In any event, the resolution discussed herein, first adopted in 1966, is directed, and always has been directed, toward the State Water Commission

MEMO TO Vern Fahy
December 13, 1978
Page 5

contract fund. The purpose, of course, has been to support the re-establishment of the contract fund, or a "water resource development fund", as a standing and continuing appropriation.

Many of the Water Users and Water Management officials, however, were under the impression that another fund was the object of the resolution. This other is the one which has been discussed by the State Water Commission in relation to water use fees. During the business meeting, one water user mentioned that at the recent State Water Commission meeting in Dickinson on November 14, 1978, a certain legislator had objected to the creation of a "special" fund from water use fees because it deprived the Legislative Assembly of flexibility and control over the expenditure of money from the special fund. This mention of a special fund for water use fees only served to confuse the discussion of the resolution. First, the Legislative Assembly must appropriate all moneys which are to be spent, regardless of whether they are located in the general fund or a special fund. Section 186 of the North Dakota Constitution provides, in part:

SECTION 186. (1) All public moneys, from whatever source derived, shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the State receiving the same, to the State Treasurer, and deposited by him to the credit of the State, and shall be paid out and disbursed only pursuant to appropriation first made by the Legislature;

The only difference between a special fund and the general fund is that only a certain agency or body may spend money from a special fund. Thus, the only flexibility which is lost is that money in a special fund, can only be spent by certain entities. The Legislature must still appropriate the money, if it is to be spent. (For example, the Game and Fish Department special fund, cannot be spent by the State Water Commission, or the State Parks Department. However, the Legislature must appropriate all money to be spent by the Game & Fish Department.)

Second, the special fund which has been discussed by the State Water Commission in relation to water use fees is totally unrelated to the State Water Commission's contract fund. It is conceivable, of course, that a special fund for water use fees could take the place of the State Water Commission contract fund, if Section 61-02-64.1 were repealed, or that the contract fund could be funded from the special fund for water use fees. These possibilities, however, have never been proposed or discussed by the State Water Commission.

In summary, if a special fund is created for the proceeds of water use fees, the Legislative Assembly must still appropriate all money that is to be spent by the State Water Commission from the special fund. The creation of such a special fund only serves to avoid competition from

MEMO TO Vern Fahy
December 13, 1978
Page 6

other agencies for those funds when the State Water Commission is seeking an appropriation to develop specific water resource projects.

Hopefully, the foregoing discussion has been of assistance to you.

Mike
Michael Dwyer
Counsel

MD:pjw
cc: Laurie McMerty
Milo Hoisveen
Russ Dushinske
Matt Emerson
Ralph Christensen
Charles Mitchell
Royal Berstler