

MINUTES

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

February 20, 1979

The North Dakota State Water Commission held a meeting in the State Water Commission Conference Room, Bismarck, North Dakota, on February 20, 1979. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:45 a.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
Myron Just, Commissioner, Department of Agriculture, Bismarck
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBERS ABSENT:

Gordon Gray, Member from Valley City
Arlene Wilhelm, Member from Dickinson

OTHERS PRESENT:

State Water Commission Staff Members
Milo Hoisveen, Burleigh County Water Management District, Bismarck
G. A. Neideffer, Burleigh County Water Management District, Bismarck
Laurie McMerty, N.D. Water Users Association, Minot
Pat Miller, Bismarck Tribune, Bismarck

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

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

CONSIDERATION OF MINUTES
OF JANUARY 5, 1979 MEETING -
APPROVED

minutes which had been previously circulated.

Secretary Fahy reviewed the minutes of the January 5, 1979 meeting which was held in Bismarck, North Dakota. There were no corrections or additions to the

It was moved by Commissioner Just, seconded by Commissioner Lanz, and carried, that the minutes of the January 5, 1979 meeting be approved as prepared and distributed.

CONSIDERATION OF REQUEST
FOR RELEASE OF EASEMENT IN
GRAND FORKS COUNTY - SECTION
31, TOWNSHIP 154, Range 54

Forks County. The easement is for an old WPA dam which is still in existence, but an investigation by the Water Commission Engineering staff indicates that the tract of land (1.44 acres) requested to be released from the easement is above the 100-year floodplain.

Mike Dwyer, Legal Counsel for the Water Commission, discussed a request for the release of an easement for a tract of land located in Section 31, Township 154 North, Range 54 West, in Grand

It was recommended by the State Engineer that the Water Commission release that portion of the easement covering the 1.44 acres of land as described above.

It was moved by Commissioner Just and seconded by Commissioner Lanz that the Water Commission release that portion of the easement covering the 1.44 acre-tract of land located in Section 31, Township 154 North, Range 54 West, in Grand Forks County. The release of easement is attached hereto as APPENDIX "A". All members voted aye; the motion unanimously carried.

CONSIDERATION OF REQUEST
TO RELEASE FUNDS APPROPRIATED
FOR NELSON-STEELE COUNTY
DRAIN NO. 7A
(SWC Project No. 1622)

of the area wanted the project and demonstrated their desires to have the project by an election. The election was held and the proposed drain project was defeated by a vote of 53 percent against and 47 percent for the project.

Secretary Fahy recalled that at the July 19, 1978 Commission meeting, 40 percent of eligible construction costs not to exceed \$90,540 was approved for the construction of the Nelson-Steele County Drain No. 7A, providing that the people

Secretary Fahy stated that a letter has been received from the Chairman of the Steele County Water Management District requesting that the funds that were set aside for the project be released. It was recommended by the State Engineer that this request be honored.

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It was moved by Commissioner Just and seconded by Commissioner Gallagher that the action taken by the Water Commission on July 19, 1978 to provide for 40 percent of the eligible construction costs for the construction of Nelson-Steele County Drain No. 7A, in an amount not to exceed \$90,540, be rescinded in accordance with the request from the Chairman of the Steele County Water Management District. All members voted aye; the motion unanimously carried.

LEGISLATION REVIEW

Mike Dwyer reviewed and discussed with the Commission members the legislation that has been introduced into the 46th Legislative Assembly which directly or indirectly affects the State Water Commission or the State Engineer.

Each week during the session, a summary and status report is prepared by the Legal Counsel of the Water Commission and the report prepared for the week of February 12-16 was used as the basis for the general legislation discussion. Report is attached as APPENDIX "B".

Mr. Dwyer also noted that February 23 is the cross-over deadline for bills from one house to the other.

LEGISLATION RELATING TO GARRISON DIVERSION PROJECT (SWC Project No. 237)

Mr. Dwyer indicated that two related irrigation bills were introduced: S.B. 2064 provides for the best management practices of irrigated land receiving water from the Garrison Diversion Unit; and S.B. 2261 directed the State Engineer, in consultation with the Director of the Agriculture Experiment Station, to promulgate rules and regulations for best management practices of irrigation and would apply to all irrigated land in the state, including lands irrigated by the Garrison Diversion Unit.

Mr. Dwyer indicated that S.B. 2261 which was introduced by the State Water Commission was defeated by the Senate 1-47. S.B. 2064 has been passed and moved over to the House. One of the purposes of S.B. 2064 is to provide for best management practices to properly address Canadian and Minnesota concerns about irrigation return flow.

Secretary Fahy stated that the primary reason S.B. 2261 was introduced was to avoid the creation of another regulatory agency. Through a motion of the Garrison Diversion Overview Committee, S.B. 2064, which would designate the Experiment Station as a regulatory agency, was approved for introduction. Secretary Fahy indicated that S.B. 2064 should be amended to have the regulation done by the State Engineer, in consultation with the Director of the Experiment Station. He requested the Commission's support in his attempts to amend the bill.

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It was moved by Commissioner Kramer and seconded by Commissioner Lanz that the Commission support the State Engineer and the State Water Commission in an attempt to amend S.B. 2064 as indicated by the State Engineer, and that the State Engineer develop a recommendation to be submitted to the appropriate committee which indicates the support of the Water Commission for the legislation and urges that the regulatory responsibilities be vested in the State Engineer. All members voted aye; the motion unanimously carried.

LEGISLATION RELATING TO
SOUTHWEST AREA WATER SUPPLY
(SWC Project No. 1674)

Dave Sprynczynatyk provided a status report of the legislation introduced regarding the Southwest Area Water Supply. He commented that a great deal

of interest and controversy has been shown concerning S.B. 2310, particularly in the southwest area of the state. The original bill contained a provision for an appropriation of \$320,000, which was deleted and sent to the Finance and Taxation Committee requesting them to find an alternative method of financing. The Finance and Taxation Committee held two hearings on the bill and suggested that a conservancy district be created. This amendment to the bill also included an appropriation of \$40,000. The bill, as amended, was returned to the Appropriations Committee for re-hearing.

It was moved by Commissioner Lanz and seconded by Commissioner Just that because of the interest and the controversy generated by this legislation, that the State Engineer be directed to provide to the Commission members for their information packets containing all of the background material relating to S.B. 2310, Southwest Area Water Supply. All members voted aye; the motion unanimously carried.

The Commission discussed all of the other items of legislation contained in the legislative report attached as APPENDIX "B".

The Commission recessed their meeting at 12:15 p.m., and reconvened at 1:40 p.m.

CONTINUED DISCUSSION OF
SOUTH BISMARCK GROUND-
WATER STUDY
(SWC Project No. 1692)

Mike Dwyer distributed a memorandum which provided information and a recommendation concerning the proposed agreement between the State Water Commission and the Burleigh County Water

Management District. The memo is attached hereto as APPENDIX "C". There is

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no disagreement between any of the parties as to the merits and necessity of the ground-water study itself; the dispute is limited solely to the indemnification provision of the proposed contract. The memo explains the general factual background of the situation; the contract dispute; legal considerations; and suggested recommendations for resolving the dispute.

Mr. Dwyer reported that three options are available: 1) drop the indemnification clause and proceed; 2) do not proceed; and 3) seek insurance coverage and proceed. Of these three options, it was recommended that the Water Commission seek insurance coverage and proceed. The questions - Is the Water Commission budgeted for insurance coverage? and What type of precedent will be established with future agreements? were discussed. It was also suggested that if the State Water Commission decides to secure insurance coverage that the water management district be requested to pay for the coverage, or at a very minimum, one-half of the coverage. The precedent of such a decision should apply only to those contracts which call for work to be conducted by the Water Commission.

Governor Link read a letter which had been received from Mr. Jim Eastgate of the Burleigh County Water Management District, attached hereto as APPENDIX "D".

Mr. Milo Hoisveen indicated that he feels the matter should be solved amicably and of the options suggested, a 50-50 split by the Water Management District and the State Water Commission on the insurance would be an acceptable way to resolve the dispute.

Mr. Bert Neideffer, Chairman of the Burleigh County Water Management District, indicated that he also feels a 50-50 split of the cost of insurance coverage seems reasonable.

Secretary Fahy stated that his recommendation is that the Water Commission declare necessary insurance to be eligible for State Water Commission participation. The Commission would then share in costs of project insurance in relation to total Water Commission share of the project. He noted that this should only apply to projects when the State Water Commission is doing the work.

Commissioner Gallagher suggested investigating the possibility of purchasing a general insurance policy that would cover all of the activities of the Commission.

Secretary Fahy indicated that he would prefer going the route of his recommendation because he would not have a budgetary problem because it can be covered in the Contract Fund. Funds are not budgeted to purchase a general policy to cover all of the activities.

Governor Link suggested that the Water Commission authorize insurance cost coverage on the south Bismarck ground-water study at this time and then investigate the possibilities of an insurance policy that would continue in all other aspects.

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It was moved by Commissioner Kramer and seconded by Commissioner Lanz that the staff investigate the feasibility of securing coverage for the south Bismarck ground-water project, and further authorize that it become an eligible item for cost participation. All members voted aye; the motion unanimously carried.

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

Secretary Fahy presented APPENDIX "E" 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 and seconded by Commissioner Gallagher that the actions of the State Engineer be confirmed. All members voted aye; the motion carried unanimously.

The following applications were approved:
No. 1185P - City of Rolla (this is a request for a change in points of diversion);
No. 2875 - Cyrus Tripp, Pettibone; No. 2899 - Painted Woods Golf Course, Washburn;
No. 3127 - Clem J. Dietrich, Menoken; No. 3134 - ND Parks and Recreation Department (Turtle River State Park), Arvilla; No. 2273 - Leon F. Dubourt, Walhalla (this is a request for a change in points of diversion); No. 214B - Yellowstone Pumping Irrigation District, Cartwright (this is a request for a change in points of diversion);
No. 2468 - Dale N. Bang, Killdeer; No. 2541 - James Olson, Crete (this grants a portion of the original request which has been held in abeyance); No. 3126 - Franklin Weyrauch, Tioga; No. 3027 - Keith W. Ruhn, Cogswell;
No. 3033 - Iver G. Lundeby, Tolna; No. 2991 - Art Greenberg, Grand Forks; No. 3108 - Willis Vander Wal, Pollock, SD; No. 3012 - Robert J. Barton, Ellendale; No. 3101 - Jim Kussy, New Hradec; No. 2471 - Martinson Brothers Oakes Farms, Oakes; No. 2999 - Allan Wang, Baker, Montana; No. 3043 - Daniel E. Maus, Golva; No. 3060 - Ronald J. Bowman, Bowman; No. 2766 - Carter Nicholson Powell, Leonard; No. 3036 - Steven R. Palaniuk, Belfield;

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No. 3008 - Bois De Sioux Golf Club, Wahpeton;
 No. 2908 - Charles L. Linderman, Carrington;
 No. 2769 - Mrs. Jerome Heitkamp, Mooreton;
 No. 1465B - Eldon A. Streich, Englevale (this
 is a request for a change in points of diversion);
 No. 2550 - Arnold Widmer, Crete (this is a request
 for a change in points of diversion); No. 2550 -
 Arnold Widmer, Crete; No. 2708 - Larry
 Quesenberry, Carrington; No. 2872 - Vaughn
 Zacharias, Kathryn; and No. 2754 - Jerrold S.
 Skadberg, Carrington.

The following applications were deferred:
 No. 3136 - Stanley Soderstrom, Bowman; No.
 3135 - Ronald Ophaug, Klotten; No. 3140, 3141,
 3145, 3146 and 3147 - Knife River Coal Mining
 Company (Gascoyne Pond #17, Beulah Pond #2,
 Beulah Pond #1, Beulah Pond #5, and Beulah
 Pond #15); No. 3142 - Dan Laintz, Selfridge;
 No. 3133 - Willis L. Calderwood, Crary; No.
 3109 - Owen Thurlow, Carrington; No. 3105 -
 Neil Bartelson, Parshall; No. 3139 - Patterson
 Land Co., Bismarck; No. 1824 and 2314 - James
 P. and John B. Iglehart, Emmet (both permits
 request a change in points of diversion); No.
 3143 - Thomas A. Heimbuch, Straubville; No.
 3148 - Virgil Rott, Nortonville; No. 3144 -
 Robert McDaniel, Englevale; No. 2986 - City of
 South Heart (this is a request for a change
 in points of diversion); No. 3138 - Robert
 Faber, Milnor; No. 2037 - John M. Leininger,
 Binford (this is a request for a change in
 points of diversion); No. 1816 - Martinson
 Brothers Oakes Farms, Oakes (this is a request
 for a change in points of diversion); No.
 3152 - Bagge Farms, Hillsboro; No. 2750 -
 Douglas Bower, Page; No. 3151 - Jess E.
 Thompson, Beulah; and No. 3153 - US Fish and
 Wildlife Service (Wengler Dam), Denver,
 Colorado.

The following applications have been withdrawn:
 No. 2997 - Oscar Halgren and Eleanor Keller,
 Devils Lake; No. 1766 - David Kono, Wibaux,
 Montana; and No. 1789 - T. W. Asbridge, Carson.

The following application was denied:
 No. 2629 - James P.A. Peterson, Kathryn.
 (SEE APPENDIX "E").

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CONTINUED DISCUSSION OF
RULES AND REGULATIONS
CONCERNING ACREAGE
LIMITATIONS
(SWC Project No. 1400)

Secretary Fahy stated that this item was placed on the agenda at the request of Commissioner Wilhelm as she wanted to offer some additional comments relative to the Attorney General's Opinion regarding acreage limitations.

It was suggested by Commissioner Kramer, and was the consensus of the other Commission members, to wait and see what results from the Legislature before moving in any direction, and that further discussion of this item be tabled until the next Commission meeting.

CONSIDERATION OF REQUEST
FROM CITY OF WILLISTON FOR
FINANCIAL PARTICIPATION IN
CONSTRUCTION OF DIVERSION
SYSTEM WEST OF CITY
(SWC Project No. 1315)

Secretary Fahy stated that on January 24, 1979, a letter was received from the City of Williston requesting financial assistance in the construction of a diversion system west of the city of Williston. This diversion system would carry flows from an agricultural area

through an area to be developed as part of the city.

The proposed project plans have been reviewed by staff engineers and there are some problems with the design which must be corrected before the Water Commission can approve the project.

Secretary Fahy noted that cost participation on this project may be somewhat questionable since the benefits are not as identifiable as on other drainage projects. A precedence for participating in projects of this type may have been established by Water Commission participation in projects at Tioga and Devils Lake. In each of these projects, grants were made to improve drainage through parts of the city either to alleviate existing flooding problems or to prevent future flood problems in developed areas. He noted that in each of these projects, the potential for increased agricultural activity did exist upstream of the project. On the Williston project, this is not necessarily true since most of the area appears to be pasture.

Secretary Fahy stated that in view of the fact that the primary benefactors of this project would be the city of Williston and that the State of North Dakota would not benefit as greatly from increased agricultural productivity as on other projects, he recommended that the Water Commission only grant 25 percent of qualified costs instead of 40 percent as has normally been done. This would amount to approximately \$17,800 and should be contingent upon the modification of the project design so that it would comply with Water Commission standards and be approved by our engineers.

It was moved by Commissioner Kramer and seconded by Commissioner Lanz that the Water Commission approve cost participation for 25 percent of qualified costs, or approximately \$17,800, contingent upon

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the availability of funds, and modification of the project design, for the construction of a diversion system west of the city of Williston, North Dakota. All members voted aye; the motion unanimously carried.

**DISCUSSION OF INDIAN
WATER RIGHTS**

Governor Link initiated a general discussion of Indian water rights and what initiatives the State Water Commission could take to

receive Indian input on a continuing and ongoing basis in discussions involving the allocation of water from the reservoir where the Indians lay claim to it.

Secretary Fahy replied that a meeting has been held with the Fort Berthold tribe to specifically respond to the problem of "lets take care of our own problems without litigation". This meeting was arranged by the Director of the Indian Affairs Commission and Secretary Fahy indicated that arrangements are being made to meet with each of the other two tribes to continue this dialogue.

Secretary Fahy also stated that the upper basin states have recommended, and it has been accepted, that the Indians participate in the Missouri River Basin Commission. Congress did not provide a spot for the Indians on this Commission because each tribe is sovereign and there are some 28 tribes, but Congress did not preclude them from being observers.

Governor Link suggested that a copy of the agenda for each of the Water Commission meetings be sent to the Director of the Indian Affairs Commission and she could then be responsible for notifying the tribes of any item that may be of interest to them.

Secretary Fahy replied to the Governor's suggestion by indicating that the Director of the Indian Affairs Commission along with each of the tribes does receive copies of the agenda now. He also suggested that perhaps the Governor should visit with the Director of the Indian Affairs Commission in an attempt to speed up arrangements for the meetings with the other two tribes.

It was suggested by Commissioner Kramer that the Commission should designate time at some future meeting, whereby items of Indian concern would be on the agenda to discuss what is being done both by the Indians and the Water Commission. This suggestion received the consensus of the other Commission members.

**DISCUSSION OF PROPOSAL BY
TEXAS EASTERN TRANSMISSION COAL
SLURRY PIPELINE TO DIVERT WATER
FROM LITTLE BIGHORN RIVER IN WYOMING
(SWC Project No. 1677)**

Mike Dwyer stated that on April 29, 1977, the State of North Dakota had initiated a lawsuit against Tenneco, Inc., Intake Water Company and Tenneco Coal Company to enjoin activities relating to the diversion of water from the Yellowstone

River Basin until defendants had complied with Article X of the Yellowstone River Compact. Article X provides, in part: "No waters shall be diverted from

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the Yellowstone River Basin without the unanimous consent of all the signatory states..." The signatory states are Wyoming, Montana, and North Dakota, but only Montana and Wyoming are state members of the Yellowstone River Compact Commission.

Subsequently, the defendants in the case agreed that they would request the necessary consent from the signatory states for the proposed transbasin diversion, and a petition was filed with the Yellowstone River Compact Commission.

Mr. Dwyer stated that now, Texas Eastern Transmission Company is proposing to divert a substantial amount of water yearly from the Little Bighorn River in Wyoming for a coal slurry pipeline to transport coal to the Gulf Coast region, probably Houston. A bill has been enacted by the Wyoming Legislature (HB-241) which would authorize Texas Eastern to divert 40,000 acre-feet of water from the Little Bighorn River annually for the coal slurry pipeline. The company has acquired a water permit for approximately 40,000 acre-feet for industrial purposes.

Secretary Fahy noted that consistent with our previous position concerning Intake, both the state of Wyoming and the Texas Eastern Transmission Company should be notified that the state of North Dakota, through its State Water Commission, must approve any transbasin diversion as a signatory state to the Yellowstone Compact Commission, as required by Article X of the Compact. Depending on future developments, it may be necessary to initiate similar litigation concerning the above proposed activities.

It was suggested by Secretary Fahy that the following proposed telegram be sent by the Chairman of the North Dakota State Water Commission to the Governor of Wyoming to express North Dakota's concern that Article X of the Compact be recognized and complied with:

"The Honorable Ed Herschler
Governor of Wyoming
State Capitol
Cheyenne, Wyoming 82001

February 20, 1979

It is our understanding that the Wyoming Legislative Assembly has enacted HB-241, authorizing Texas Eastern Wyoming, Inc., to divert surface waters from the Little Bighorn River out of the Yellowstone River Basin and out of your state, via a coal slurry pipeline.

In view of Article X of the Yellowstone River Compact providing that no water shall be diverted from the Yellowstone River Basin without the unanimous consent of all the signatory states, HB-241 should contain provisions recognizing these requirements of the Compact.

Please inform me of your action concerning this bill so I can advise the ND State Water Commission, which in executive session today, directed this inquiry.

Arthur A. Link
Governor of North Dakota"

February 20, 1979

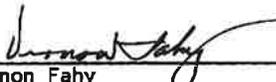
It was moved by Commissioner Gallagher and seconded by Commissioner Lanz that the Governor Link as Chairman of the State Water Commission file by telegram a protest with Governor Herschler concerning the proposed allocation of water without adherence to the Yellowstone Compact. All members voted aye; the motion unanimously carried.

It was moved by Commissioner Kramer, seconded by Commissioner Gallagher, and unanimously carried, that the meeting adjourn at 3:35 p.m.



Arthur A. Link
Governor-Chairman

ATTEST:



Vernon Fahy
State Engineer and Secretary

February 20, 1979

APPENDIX "A"

RELEASE OF EASEMENT

WHEREAS, Hazel F. Glass owns the following tract of land:

All that part of the northeast quarter (NE $\frac{1}{4}$) of Section 31, Township 154 North, Range 54 West, described as follows: Beginning at a point on the north line of said NE $\frac{1}{4}$ which is 1406 feet west of the northeast corner of said NE $\frac{1}{4}$; thence south parallel with the east line of said NE $\frac{1}{4}$ a distance of 330 feet to a point; thence at right angles west a distance of 190 feet to a point; thence at right angles north to the north line of said NE $\frac{1}{4}$; thence east along said section line to the point of beginning.

WHEREAS, Hazel F. Glass, as owner of the above-described tract of land, has requested that the portion of the following described easement which covers the above-described tract, granted to the State of North Dakota for the construction and maintenance of a dam, be released.

The dam for which the easement was granted is located 980 feet South, thence 400 feet West, from the northeast corner of Section 31, Township 154 North, Range 54 West, of Grand Forks County.

The easement, Document No. 167810, was granted to the State of North Dakota for the purpose of construction and maintenance of a dam, and for the use and benefit of the public the lands inundated, the waters impounded thereon, and the lands adjacent to the land inundated. This easement was dated September 26, 1934, and was recorded on March 16, 1935, at 5:00 p.m., in Book 30 of Miscellaneous, Page 127, at the office of the Register of Deeds, County of Grand Forks, North Dakota.

LEGAL DESCRIPTION OF EASEMENT
RECORDED MARCH 16, 1935

WHEREAS, as a part of a certain water and conservation project of the State and federal Government, it is proposed to construct a dam 275 feet wide and 12 feet high above the average stream bed elevation of the Branch of the Turtle River at a point on said River 980 South 400 feet West from the NE corner of Sec. 31, Twp. 154, Rg. 54; and

WHEREAS, the construction and maintenance of said dam will or may cause portions of the lands of the undersigned to be flooded or inundated by the waters of the said Branch Turtle River,

NOW, THEREFORE, For and in consideration of \$ paid, receipt whereof is hereby acknowledged, and in consideration of the construction of said dam, the undersigned, being the owner in fee of the following described lands in the vicinity of said River, to-wit:

160 acres more or less in NE $\frac{1}{4}$ Section 31-154-54, do hereby grant, bargain, sell, convey and dedicate unto the State of North Dakota, an easement and right to inundate so much of the said lands as the construction and maintenance of the above described dam will cause to be inundated, and do hereby release the State of North

Dakota and the United States of America, and any and all persons concerned with the construction and/or maintenance of said dam, from any and all liability for damage to the said lands of the undersigned which may result from the construction of said dam.

And the undersigned does further dedicate to the State of North Dakota, for the use and benefit of the public, the said lands so occupied, used, or inundated, the waters impounded thereon through the erection of said dam, and so much of the lands adjacent to the waters impounded thereon as may be necessary to afford to the public full and free right of access to and use of said waters, and do surrender and dedicate to the State all rights of control over said dam and the body of water impounded thereby, forever.

WHEREAS, Section 61-02-14.1 of the North Dakota Century Code authorizes the State Water Commission to release easements granted to the state for dams; and

WHEREAS, the dam for which the above-described easement was granted is located such that it will not effect that portion of the easement which covers the above-described tract owned by Glass;

WHEREAS, that due to the above circumstances, that portion of the easement which covers the above-described tract, granted to the State of North Dakota on September 26, 1934, is of no value to the State of North Dakota and therefore is not necessary; and

WHEREAS, the State Water Commission and the Grand Forks County Water Management District, have requested the State of North Dakota, by and through the Governor and Secretary of State, to grant, release, and surrender unto Hazel F. Glass its right and interest granted and dedicated to the State of North Dakota under and by virtue of that portion of the easement which covers the previously described tract of land owned by Hazel F. Glass.

NOW THEREFORE, the State of North Dakota acting by and through the Governor and Secretary of State, and upon the approval of the State Water Commission does hereby convey, grant, release, and surrender unto Hazel F. Glass its right and interest granted and dedicated to the State under and by virtue of the easement filed for record in the Office of the Register of Deeds of Grand Forks County on March 16, 1935.

IN WITNESS WHEREOF, the State of North Dakota has caused these presents to be executed in its name by the Governor and attested by the Secretary of State, and the seal of the State affixed this _____ day of _____, 1979.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:

ARTHUR A. LINK
Governor-Chairman

(SEAL)

ATTEST:

VERNON FAHY
Secretary

FOR THE GRAND FORKS COUNTY WATER MANAGEMENT DISTRICT:

Tom Ronan

TOM RONAN
Chairman

STATE OF NORTH DAKOTA

By _____
ARTHUR A. LINK
Governor of North Dakota

ATTEST:

SECRETARY OF STATE

(SEAL)

STATE OF NORTH DAKOTA)
) SS.
COUNTY OF BURLEIGH)

On this _____ day of _____, 1979, before me, a Notary
Public of Burleigh County, North Dakota, personally appeared the Honorable
Arthur A. Link known to me to be the Governor of North Dakota, and the
Honorable Ben Meier, known to me to be the Secretary of the State, and
acknowledged to me that the State of North Dakota executed the within
and foregoing Release of Easement.

(SEAL)

Notary Public, Burleigh County
North Dakota



NORTH DAKOTA STATE WATER COMMISSION

800 east boulevard
701-224-2750

bismarck 58505
north dakota

MEMO TO: Vern Fahy & State Water Commission Members
FROM: Michael Dwyer, Counsel
RE: Legislative Report
DATE: February 9, 1979

This is to provide a brief summary, and status report, of legislation introduced into the Forty-sixth Legislative Assembly, which directly or indirectly affects the North Dakota State Water Commission or the North Dakota State Engineer. Please note committee hearing dates for bills which have been scheduled for hearing during the week of February 12 - February 16.

APPROVED
BY HOUSE

1. HB-1043: Would amend section 54-27-10 and 54-27-11 to provide that 25% of appropriations for an executive agency must be available at the beginning of the fourth quarter of the biennium. Referred to State and Federal Committee. Approved by House, 93-1. Sent to Senate. Referred to State & Federal Committee.

DEFEATED
BY HOUSE

2. HB-1074: The result of an interim study. Presently, the State Water Commission has the authority to sell revenue bonds to provide financial assistance for a water development project or projects, up to a total maximum limit of 3 million dollars. HB-1074, as introduced, would have increased the revenue bonding authority to 20 million dollars, with authority beyond that limit upon approval of the Legislature. Committee amended bill (decreased maximum limit from 20 million to 10 million dollars) and sent it to the floor "without recommendation". House defeated the bill on January 29 by a 43-55-2 vote.

APPROVED
BY HOUSE

3. HB-1128: Section 61-16-28.1 of the North Dakota Century Code provides water management districts with the authority to remove obstructions to artificial drains caused by the negligent act or omission of a landowner. This bill, as amended, expands the definition of "obstruction to a drain" to mean natural watercourses as well as artificial drains. Introduced by Representative Berg. Referred to Agriculture Committee. Recommended "do pass as amended" by committee. House approved the bill as amended 84-7-9.

APPROVED
BY HOUSE

4. HB-1155: Would require that floodplain areas of rivers subject to periodic and reoccurring flooding have representation on water management district boards. Introduced by Representatives Kingsbury, Gorder. Recommended for passage (as amended) by Committee on Political Subdivisions, and approved by House, 97-1. Sent to Senate. Referred to Political Subdivisions Committee, which recommended a "do pass as amended".

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

APPROVED
BY HOUSE

5. HB-1207: Would increase the per diem and travel expenses of state officers and employees. Introduced by Department of Accounts & Purchases. State & Federal Government Committee recommended passage. House approved on January 16, by a vote of 86-11. Rereferred to Appropriations Committee.
6. HB-1221: Would create the cross ranch state park. Introduced by Parks & Recreation Department, and referred to Appropriations Committee. Hearing was held on Friday, February 2.

DEFEATED
BY HOUSE

7. HB-1238: Would have appropriated \$70,000.00 to the State Highway Department for joint projects of cities and counties for the removal and replacement of bridges causing flood damages. Introduced by Representatives Knudson & Martin, and Senators Krauter, Barth, and Albers. Referred to Transportation Committee. House defeated the bill, 16-82.

APPROVED
BY HOUSE

8. HB-1274: Would amend §61-16-15 to streamline the procedure for applications to construct dikes and dams greater than 12½ acre-feet. Introduced by State Water Commission. Referred to Natural Resources Committee, which recommended a "do pass as amended".
9. HB-1276: Would increase the authority of the State Engineer to authorize temporary or emergency uses of water from six to twelve months. Introduced by State Water Commission. Referred to Natural Resources Committee. House approved by 90-0 vote.

APPROVED
BY HOUSE

10. HB-1277: Provides a waiver to the State Engineer for payment of recording fees for water permit forfeitures. Referred to Political Subdivision Committee. Approved by House by a 68-30 vote. Heard by Senate Political Subdivision Committee and no action yet taken.

APPROVED
BY HOUSE

11. HB-1317 and HB-1345: HB-1317 would have increased mileage for all county officials, including appointed and elected officials, from 15 cents to 20 cents per mile. Introduced by Representative Conny and Senator Sands. Referred to Political Subdivisions Committee. Defeated by House, 3-89. HB-1345 would set mileage expenses for elected and appointed county officials at the same rate as for state officers and employees. Introduced by Representative Gunsch. Referred to Political Subdivisions Committee. Approved by House 97-0-3. Sent to Senate. Hearing scheduled for Thursday, February 15, at 9:45 a.m.

HB-1345:
SENATE HRG
SCHEDULED

DEFEATED
BY HOUSE

12. HB-1372: Would legalize artificial drains, regardless of size, if they had been in existence for more than ten years. Introduced by Representative Berg. Referred to Agriculture Committee, which sent the bill to the floor without recommendation. Defeated by House 20-77-3.

13. HB-1380: Would require full, adequate, and timely notice of the meetings of all public bodies. Introduced by Representatives Stenehjem and Holmberg. Referred to State and Federal Committee.

14. HB-1391: Would increase the compensation of irrigation district board members. Introduced by Representatives Hedstrom & Langley. Referred to Agriculture Committee, which recommended a "do pass".
15. HB-1393: Would amend §61-01-23 of the North Dakota Century Code to give Water Management Districts the right of entry for snagging and clearing projects. Introduced by Representatives Lipsea & Tweten. Referred to Agriculture Committee, which recommended a "do pass".
16. HB-1395: Relates to the regulation of locating solid waste disposal sites over aquifers and declaring an emergency. Introduced by Representative Dotzenrod. Re-referred to House Natural Resources Committee, which recommended a "do pass as amended".
17. HB-1413: Act directing the office of the budget to control appropriations for salaries and wages. Introduced by Representative Freborg. Referred to State & Federal Committee, and re-referred to Appropriations Committee.
18. HB-1468: Would amend Section 54-35-10 of the NDCC to increase the compensation for legislators attending Legislative Council interim committee meetings from \$45 to \$52 per day. Compensation for State Water Commission members is controlled by Section 54-35-10. Introduced by Representatives Strinden & Backes. Committee on State & Federal recommended passage & House approved, 60-36.
19. HB-1479: Act providing water management districts with the authority to refund special assessment warrants. Introduced by Representative F. Larson. Referred to Political Subdivisions Committee. Approved by House, 89-0. Sent to Senate. Hearing scheduled for Friday, February 16, at 10:15 a.m.
20. HB-1493: Act relating to water use fees. Introduced by Representatives Gackle, Berg, and Hausauer, and Senators Nelson and Tallackson. Referred to Natural Resources Committee. House approved as amended by 70-19-11.
21. HB-1547: Act relating to the control of drainage of lands during times of flooding; and providing a penalty. Introduced by Representative Wessman. Referred to Agriculture Committee, which recommended an "indefinite postponement".
22. HB-1551: Act relating to entry upon land for making surveys under eminent domain. Introduced by Representative Houmann. Referred to Judiciary Committee. This bill has been withdrawn.
23. HB-1560: Act providing for ownership by a park district of property located outside this state. (Results from attempted ownership of Dam built by Ottertail Power Company). Introduced by Representatives Hausauer and Dietz. Referred to Political Subdivisions Committee. Approved by House 93-0-7.

APPROVED
BY HOUSE

APPROVED
BY HOUSE
&
SENATE HRG.
SCHEDULED

APPROVED
BY HOUSE

WITHDRAWN

APPROVED
BY HOUSE

APPROVED
BY HOUSE

24. HB-1572: Act relating to distribution of moneys received for flood control lands. Introduced by Representative Winkjer. Referred to Political Subdivisions Committee. Approved by House 91-2-7.

25. HB-1676: Act relating to the use of Garrison Diversion Conservancy District funds to provide food or alcoholic beverages for public officials. Introduced by Representatives Matheny and Maixner. Referred to Political Subdivisions Committee, which recommended an "indefinite postponement".

APPROVED
BY HOUSE

26. HCR-3016: Calls for an interim study resolution on floodplain management, to determine if it would be in the best interest of the people of this state to develop a floodway and floodplain management program. Introduced by State Water Commission. Referred to Natural Resources Committee. Adopted by House 95-1.

27. HCR-3022: Water Management District and Legal Drain Board Study Resolution. Introduced by Representatives Wessman, Berg, and Weber; and Senators Fritzell, Nelson, and Thane. Referred to Agriculture Committee.

DEFEATED
HOUSE

28. HCR-3036: Urges Congress to change the name of Lake Audubon to that of a prominent North Dakotan. Introduced by Representatives Marsden and others. Referred to State & Federal Committee. Defeated in House by a voice vote.

29. HCR-3037: Urges that construction of Garrison Diversion project and acquisition of land for mitigation acreage be halted until certain information has been provided to people of North Dakota. Introduced by Representatives Matheny & Walsh. Referred to Agriculture Committee, and no action yet taken.

APPROVED
BY SENATE

30. SB-2031: State Water Commission Appropriation bill. Committee recommended a "do pass." (Executive Budget recommendation was thus affirmed.) Approved by Senate 49-1-0.

APPROVED
BY SENATE

31. SB-2064: This provides for best management practices of irrigated lands receiving water from the Garrison Diversion Unit. Introduced by Garrison Diversion Overview Committee. Referred to Natural Resources Committee. Approved by Senate 48-2.

APPROVED
BY SENATE

32. SB-2075: Would amend §54-35-02 of the North Dakota Century Code to provide the Legislative Council with the authority to screen and prioritize studies assigned by concurrent or joint resolution. Referred to State and Federal Government Committee. Approved, as amended, by Senate 47-3.

DEFEATED
SENATE

33. SB-2082: Would have fixed expenses of all state board members, including SWC, at \$50 daily. Referred to State & Federal Committee. Senate defeated the bill 2-47.

APPROVED
BY SENATE

34. SB-2083 and SB-2151: SB-2083 provides for the review by a Legislative Council interim committee of existing or proposed rules of an administrative agency. Introduced by State & Federal Interim Committee; referred to State & Federal Committee. Approved by Senate, 46-2-2. SB-2151 is similar to SB-2083 and was introduced by Senator Melland; referred to State & Federal Government Committee. Approved by Senate, 47-2.

DEFEATED
BY SENATE

35. SB-2138 and SB-2141: SB-2141 would have repealed those portions of statutes which provide procedures for wetland acquisitions and which impose limitations on wetland easements. SB-2138 would have required local entities of government which cause financial hardship to a seller by interfering with a sale to compensate the seller for the hardship incurred. Introduced by Senator Fritzell. Both bills were defeated; SB-2138 by a 4-44 vote, and SB-2141 by a 14-35 vote.

APPROVED
BY SENATE

36. SB-2186: Would establish a political subdivision liability fund, to carry out the purposes and intent of the Act passed by the Legislature in 1975, contained in S.L. 1975, Chapter 295. Introduced by Attorney General. Referred to Judiciary Committee, and re-referred to Appropriations Committee.

37. SB-2235: Relates to the authority of the board of county commissioners to construct, rebuild or repair a bridge under its own supervision. Introduced by Senator Shirado. Referred to Transportation Committee. Approved by Senate 41-8.

APPROVED
BY SENATE

38. SB-2254: Presently, Section 61-04-06.2 of the North Dakota Century Code provides the State Engineer with the authority to issue water permits subject to fees for the use of water, for the purpose of regulating the allocation and distribution of water. Introduced by State Water Commission. SB-2254 would establish a special fund for the deposit of any such fees. An amendment was proposed which would place water permit application fees pursuant to Section 61-04-04.1 into the special fund, also. It does not request an appropriation. Referred to Natural Resources Committee. Approved by Senate as amended by a 40-9-1 vote.

APPROVED
BY SENATE
&
HOUSE HRG.
SCHEDULED

39. SB-2255: Would amend §58-03-11 of the NDCC so that townships can participate in the Federal Flood Insurance Program. The State Water Commission has been designated by the Governor to be the coordinating agency to assist the FIA in the implementation of the National Flood Insurance Program. Introduced by State Water Commission. Referred to Political Subdivisions Committee. Approved by Senate, 49-0. Sent to House. Hearing scheduled for Thursday, February 15, at 9:15 a.m.

DEFEATED
BY SENATE

40. SB-2261: This bill directed the State Engineer, in consultation with the director of the agriculture experiment station, to promulgate rules and regulations for best management practices for irrigation. Would apply to all irrigated land in the state, including lands irrigated by the Garrison Diversion Unit. Introduced by State Water Commission. Referred to Natural Resources Committee. Defeated by Senate 1-47.

- APPROVED
BY SENATE
41. SB-2295: Would expand definition of "well," pursuant to Chapter 43-35 of the NDCC, to include test holes drilled for water exploration, and changes procedures for re-certification by State Board of Water Well Contractors. Introduced by Senator Lodoen. Referred to State & Federal Committee. Approved by Senate, as amended, 26-19.
- DEFEATED
BY SENATE
42. SB-2296: Would have required certification for pump installation. Introduced by Senator Lodoen. Referred to State & Federal Committee. Approved by Senate by a 26-23 vote. Reconsidered, and defeated, 12-35.
- APPROVED
BY SENATE
43. SB-2299: Property tax exemption for rural water systems. Introduced by Senator Erdman and others. Referred to Finance & Taxation Committee. Approved by Senate 45-3.
- HEARING
SCHEDULED
44. SB-2310: Southwest Water Supply Bill. Provides for the creation of an advisory committee to continue the development of a pipeline delivery system. Introduced by Senators Olin & Krauter, and Representatives Meyer & Thompson. Appropriations Committee recommended deletion of the general fund appropriation, and re-referred to Finance & Tax Committee to review alternative fund sources. Scheduled for hearing on Tuesday, February 13, at 10:00 a.m.
45. SB-2346: Would require open voting at all public meetings. Introduced by Representatives Holmberg and Stenehjem. Referred to Judiciary Committee, and no action yet taken.
- APPROVED
BY SENATE
46. SB-2380: Increases allowance of Water Management District Commissioners. Introduced by Senator Sands. Referred to Agriculture Committee. Approved by Senate 47-3-0.
- DEFEATED
BY SENATE
47. SB-2398: Relates to petitions to construct legal drains and allocation of costs when petition denied. Introduced by Senators Shablow & Jones. Referred to Agriculture Committee. Defeated by Senate 23-23-4.
- DEFEATED
BY SENATE
48. SB-2401: Enforcement of Illegal Drains by the state engineer via administration action. Introduced by Senator Fritzell and Representative Wessman. Referred to Agriculture Committee. Defeated by Senate, 12-35.
- APPROVED
BY SENATE
49. SB-2417: Would provide water management districts with the same enforcement authority over "illegal" dikes and dams as they presently have over "illegal" drainage. Introduced by Senator Jones & Representative Berg. Referred to Agriculture Committee. Approved by Senate, 47-0.
- APPROVED
SENATE
50. SB-2453: Would amend §61-04-14 relating to cancellation of conditional water permits. Introduced by Senator Jacobsen. Referred to Natural Resources Committee. Approved by Senate 49-0-1.

51. SB-2476: Provides a time limitation for applying for and developing irrigation water permits. Introduced by Senator Hoffner, among others. Referred to Agriculture Committee, which recommended an "indefinite postponement".
- APPROVED
BY SENATE
52. SCR-4001: Calls for a study of the feasibility and benefits of re-organizing the executive branch of state government. Referred to State & Federal Government Committee. Adopted by Senate and sent to House.
- APPROVED
BY SENATE
53. SCR-4005: Would recreate the Garrison Diversion Legislative Overview Committee. Referred to State & Federal Government Committee. Adopted by Senate & sent to House.
- APPROVED
BY SENATE
54. SCR-4012: Calls for an interim study to determine whether North Dakota should implement and administer Section 404 of the Federal Water Pollution Control Act. Referred to Natural Resources Committee. Adopted by Senate and sent to House.
- APPROVED
BY SENATE
55. SCR-4014: Urges Secretary of Interior to proceed with portions of Garrison Diversion Project which do not affect Canada. Referred to Agriculture Committee. Adopted by Senate and sent to House.
56. SCR-4016: Directs Legislative Council to study possible barge traffic on Missouri River above Sioux City, Iowa. Introduced by Senator Jones. Referred to Transportation Committee, which recommended a "do pass".
57. SCR-4044: Urges U.S. Dept. of State to refer matter of flood control and water use in Souris River Basin to the International Joint Commission for its investigation and recommendations. Introduced by Senator Sorum and others. Referred to Natural Resources Committee.
58. SCR-4050: Directs a Legislative Council study of the use of special funds. Introduced by Senator Melland. Referred to Appropriations Committee.

Michael Dwyer
Counsel

MD:pjw

cc: Russ Dushinske
Laurie McMerty
Homer Engelhorn
Guy Larson
Duane Breitling
Dwight Connor
Charles Mitchel
Murray Sagsveen
Ralph Christiansen
Kris Hogan, Gov.'s Leg. Asst.
Gary Helgeson
Jim Marsden
John Leininger
Jim Eastgate
Allen Fiske
Cary Backstrand



NORTH DAKOTA

STATE WATER COMMISSION

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Bismarck 58506

north dakota

MEMO TO: Vern Fahy, State Engineer, and State Water Commission Members
 FROM: Michael Dwyer, Counsel
 SUBJECT: South Bismarck Ground-Water Study (#1692)
 DATE: February 16, 1979

This is to provide information and a recommendation concerning the proposed agreement between the State Water Commission and the Burleigh County Water Management District. There is no disagreement between any of the parties as to the merits and necessity of the groundwater study itself. Rather, the dispute is limited solely to the indemnification provision of the proposed contract.

I. GENERAL FACTUAL BACKGROUND

The South Bismarck-Mandan water table study was initiated by the city of Bismarck. A letter dated March 29, 1976, from the Bismarck Planning Commission requested as follows:

At its meeting of 18 March 1976 the Bismarck Planning Commission asked me to research with you the possibility of an underground water condition survey for the area 3 miles South of Bismarck. This area is, as I am sure you are aware, the site of increased pressure to grow residentially.

I would appreciate your thoughts on such a study and the possibility of State Water Commission entering into same. I would also like to know of any costs associated with such a study which would be done by the city.

On May 14, 1976, Milton Lindvig, Director of Hydrology, responded to the request. Portions of his response provided as follows:

We believe that a study of the ground-water conditions in the area from Bismarck south to the Missouri River would be very helpful in determining proper land use planning and zoning. Such a study would identify those areas having a high water table now and those areas that may have a higher water table in the future as a result of changing hydrologic conditions. These changing conditions could be either long term or seasonal.

* * *

We currently have 10 observation wells at 6 locations in this area. They would not begin to provide an adequate data base upon which a water table map could be prepared and potential problem areas identified. Thus a substantial amount of additional data would have to be collected through test drilling, construction

GOVERNOR ARTHUR A. LINK
Chairman

RICHARD P. GALLAGHER
Vice Chairman-Mandan

ALVIN A. KRAMER
Minot

GORDON K. GRAY
Valley City

ARTHUR J. LANZ
Devils Lake

ARLENE WILHELM
Dickinson

MYRON JUST, EX-OFFICIO MEMBER
Comm. of Agriculture

VERNON FAHY
Secretary & State Engineer

of observation wells and periodic measurement of water levels. The water level measurements should be continued for at least two years in order to identify seasonal fluctuations. Upon completion of the study water level measurements should be continued on selected observation wells to monitor long-term trends.

* * *

If you agree in principle with the approach we have outlined and wish us to do so, a firm cost estimate could be prepared. The State Water Commission has a program of assisting governmental subdivisions in developing solutions to water related problems. Even though the problem presented here is somewhat unique they would certainly consider a request for assistance.

The need for the South Bismarck-Mandan water table study is best explained in a letter dated January 6, 1977, to Governor Link from the Army Corps of Engineers. It provides in part:

This letter is in response to your questions concerning high groundwater levels in the south Bismarck area.

* * *

From 1969 through 1972 the relative variations in the water table at all four wells were quite consistent. However, during 1973 and 1974 the water table levels were unusually low and were unusually high in 1975. These variances seem to follow the stage trends of the Missouri River, but not entirely. Thus, there apparently are other influencing factors which have not been identified. Our groundwater observations and studies are continuing but at this time can offer no further insight as to the cause or probable future effect.

* * *

We believe that the factor which restricts the expansion of the City of Bismarck to the south is not groundwater levels alone, but also proper land management. As identified in our August 1974 Flood Plain Information Study, prepared at the request of the City of Bismarck and Burleigh County, much of the land south of Bismarck lies within the 100-year flood plain zone. Some of these lands also lie within the limits necessary for flood control operations of the Missouri River reservoir system including the Oahe Project. Yet, today, continuing development and expansion in these same flood prone lands is being envisioned by planners and permitted by local authorities. We view this as poor and unsound land management practice.

* * *

In summary, the cause and effect of the groundwater problems at Bismarck and Buford-Trenton are entirely different. The only similarity between the two is their location relative to the backwater reach of a reservoir. A sizeable delta exists in the headwaters of Lake Sakakawea because of heavy sediment

contributions from the Yellowstone River Basin. At Lake Oahe, hydrographic surveys show no accumulative deposition trends or patterns through the Bismarck reach nor significant upward shifts in the stage-discharge curves. Apparently, factors other than river stage have a measurable influence on groundwater levels south of Bismarck.

The Burleigh County Water Management District became involved in the proposed water table study in early 1977, and as a result they included an item in their 1977-1978 budget to participate in the study. A June 21, 1977 letter to the Bismarck City Auditor from the water management district provided, in part, as follows:

This is to inform you that the Burleigh County Water Management District has included an item in its 1977-78 budget to participate with the State Water Commission in a project to monitor the ground-water levels in the Missouri river floodplain within and adjacent to the City of Bismarck.

This matter was discussed with Vern Fahy, State Engineer and Secretary of the State Water Commission, some months ago, resulting in the Water Management District making provisions in our 1977-78 budget to get the project underway this summer.

* * *

May we suggest you consult with your Mandan counterparts to see if a similar arrangement could be worked out on the west side of the river? If the Water Commission's investigations could be done on both sides of the river at the same time, costs in time and dollars would likely be much less.

Subsequently, Mandan indicated its interest in participating in the south Bismarck-Mandan water table study, and requested the State Water Commission to prepare estimated costs for their consideration. This was prepared by Milton Lindvig, and was sent to Bismarck and Mandan via letter dated January 26, 1978. It provided, in part:

Enclosed is a cost estimate for conducting a study of the ground-water conditions in the Missouri bottom south of Bismarck and that portion of the bottom in Morton County lying south of Interstate Highway 94 to the mouth of the Heart River. This includes approximately 15 square miles in Burleigh County and 6 square miles in Morton County.

In addition it is proposed that some hydrologic data be gathered in an area of 10 square miles lying east of the River bottom in Burleigh County. This area generally overlies the Apple Creek aquifer system which, in this area, is closely related to the aquifer system underlying the Missouri River bottom. It is termed the secondary area in the cost estimate.

* * *

The position of the water table in relation to the land surface can be a determining factor for certain types of land use. A large portion of the proposed study area is subject to a high water table problem. Those areas lying below elevation 1635 msl are probably the most problem prone. When planning for land use those potential problem areas should be identified. A high water table can have a detrimental effect on certain types of structures, waste disposal facilities and domestic water supplies when waste disposal facilities do not operate properly.

The purpose of the proposed study is to determine the hydrologic conditions in the described area. The principal objectives are:

- 1) Identify the water table using a map with a contour interval of one foot.
- 2) If data are adequate, construct a map of the study area showing depth to the water table.
- 3) Establish a network of observation wells for long term monitoring of water levels.
- 4) Identify those hydrologic events that cause the greatest change in water table elevation.

The estimated duration of the study is 2 years.

The State Water Commission has given approval to participating in this most important study. Upon approval by the participating local entities contracts can be drafted and executed. In the meantime if you have any questions regarding the proposal, please do not hesitate to contact us.

A copy of the cost estimate for conducting the proposed study is attached as Appendix #1.

On May 2, 1978, the cost estimate for the Morton County portion of the south Bismarck-Mandan water table study was revised. A copy is attached to this memorandum as Appendix #2.

Upon informal agreement of all parties involved to participate in the water table study, State Water Commission counsel prepared the required easements to be secured from the appropriate landowners, and the contracts to be executed between the State Water Commission and the Burleigh and Morton County Water Management Districts. Easements were secured during late summer and fall of 1978. Contract negotiations also began at that time.

II. CONTRACT DISPUTE

During September of 1978, a proposed contract was sent to the Burleigh County Water Management District. The Water Management District recommended two changes to the proposed agreement. (A copy of the agreement, as proposed, with the suggested amendments of the Burleigh County Water Management District, is attached as Appendix #3.) The dispute concerning

the proposed agreement centers around section VIII, which is the indemnification clause. It provides:

VIII. INDEMNIFICATION CLAUSE

The District hereby accepts responsibility for, and holds the Commission free from all claims and damages to public or private places, rights, or persons, arising out of the construction, operation, and maintenance of the project. In the event a suit is initiated or judgment entered against the Commission, the District shall indemnify it for any judgment arrived at or judgment satisfied.

The indemnification clause is a standard provision in State Water Commission agreements. Most State Water Commission agreements involve situations wherein the Commission is granting funds (from the contract fund authorized by Section 61-02-64.1 of the North Dakota Century Code) to a water management district for construction or maintenance of a water related project. The actual construction work is done either by the water management district or a contracting party hired by the water management district. The primary purpose of the indemnification clause is to ensure that the State Water Commission is not held liable for those situations where it has no involvement or control over the specific project, except for the grating of funds.

Another purpose of the indemnification clause is to allow recovery by an injured party since water management districts, as political subdivisions, are insured.

In the present situation, the water table study is to be conducted solely by the State Water Commission, and the Burleigh County Water Management District is to pay to the Commission its portion of the local cost. Total local cost is 50% of the project costs.

The Burleigh County Water Management District objected (via letter to the State Water Commission dated October 26, 1978) to the inclusion of the indemnification clause, since the Commission and not the Water Management District would be responsible and have control over the work.

The State Engineer made the following response to the Water Management District:

This is in response to your letter dated October 26, 1978, concerning the agreement for a groundwater study in South Bismarck.

The matter will be on the agenda for the next Commission meeting. Unless instructed otherwise by the Commission, I will not sign the agreement as modified.

Memo To: Vern Fahy & SWC
February 16, 1979
Page 6

After the State Water Commission meeting, the State Engineer sent a follow-up letter to the Water Management District, which provided:

At the State Water Commission meeting in Dickinson on November 14, the agreement for the groundwater study south and east of Bismarck was discussed. It was the feeling of the State Water Commission that an indemnification clause is an important part of its agreements with various water management districts, and that without such a clause it would not be willing to proceed with the study.

Subsequently, the Water Management District requested the Bismarck City Commission to accept liability for the water table study. This request was based on the district's insurance company's refusal to insure it from lawsuits stemming from a project over which it has no control. The request was also based on the fact that the city would be the main beneficiary of the proposed water table study. In its request, the Water Management District indicated it would reimburse the city for any costs it might incur, if the city would agree to assume liability for the proposed water table study. However, the city refused the Water Management District's request.

At its December 5 meeting in Bismarck, the State Water Commission referred the dispute to counsel for the Commission, to determine possible alternatives that might be taken.

III. LEGAL CONSIDERATIONS

Section 22 of the North Dakota Constitution provides that suits may be brought against the state in such manner as the Legislative Assembly may, by law, direct. It states:

SECTION 22. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

The Legislature has specified the instances in which a suit can be brought against the state. As an example, the Legislature has consented to suit against the state in contract (32-12-02, NDCC) and in actions respecting title to property (32-12-02 NDCC):

The North Dakota Supreme Court, in 1974, held that Section 22 extends only to the state and not any of its political subdivisions. Kitto v. Minot Park District, 224, NW 2d 795.

Subsequently, the 1975 session of the Legislative Assembly enacted temporary legislation (Chapter 295, 1975 Session Laws) in order to protect political subdivisions during the 1975-1977 biennium. During the interim period, the Legislative Council Committee on Political

Subdivisions studied the problem and recommended legislation. Chapter 303 (1977 North Dakota Session Laws) was passed and is codified as Chapter 32-12.1 of the North Dakota Century Code.

In enacting Chapter 32-12.1 of the North Dakota Century Code, the Legislature was quite explicit in stating that:

32-12.1-03. LIABILITY OF POLITICAL SUBDIVISIONS—LIMITATIONS.—

* * *

4. The sovereign immunity of the state is not waived in any manner by this chapter, and this chapter shall not be construed to abrogate the immunity of the state.

The foregoing constitutional, statutory, and judicial provisions have been briefly reviewed to assist in determining whether state sovereign immunity has been reserved unto the State Water Commission. I have previously expressed concern over the sovereign immunity of the State Water Commission because of the following statutory provision:

61-02-09. COMMISSION A PUBLIC CORPORATION--AGENCY OF STATE.—
The commission shall be a public corporation with all of the powers and authority possessed by such a corporation in the performance of its duties. The commission may sue and be sued, plead and be impleaded, and contract and be contracted with, in its corporate name. The commission in the exercise of all its powers and in the performance of all of its duties shall be deemed to be an agency of the state.

Did the Legislature expressly remove, pursuant to §22 of the North Dakota Constitution, all sovereign immunity of the State Water Commission? Or is it merely providing that the State Water Commission may be sued for those purposes authorized elsewhere in the North Dakota Century Code?

A review of the provisions concerning other state agencies may be helpful. Section 61-28-04 of the North Dakota Century Code provides:

61-28-04. POWERS AND DUTIES.—The state department of health shall have and may exercise the following powers and duties:

* * *

22. Initiate actions in court for the enforcement of this chapter.

Section 38-14-03.1 of the North Dakota Century Code provides:

POWERS OF THE COMMISSION.—The commission shall have the following powers:

1. To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder.

Section 20.1-02-04 of the North Dakota Century Code provides:

20.1-02-04. DUTIES OF COMMISSIONER.--The commissioner shall:

* * *

4. Enforce state laws involving game animals, game birds, fish, and harmless birds and animals.

As you can see, statutory provisions relating to other state agencies do not contain the authority to be sued. Even if Section 61-02-09 of the North Dakota Century Code did not exist, the meaning of which I am uncertain, it may not be long before the North Dakota Supreme Court completely overturns the sovereign immunity doctrine, as it relates to the state.

IV. RECOMMENDATIONS

Three options are apparently available:

- a. Drop the indemnification clause and proceed; or
- b. Do not proceed; or
- c. Seek insurance coverage and proceed.

I do not believe alternative b. is viable, since a problem concerning the water table does exist, and the Governor and State Water Commission strongly favor this study to alleviate potential future problems.

I am reluctant to advise proceeding without coverage for two reasons. First, I am not convinced that the State Water Commission would be immune from liability on this project. Because of the statutory provision contained in Section 61-02-09, and due to judicial reluctance to consider sovereign immunity, a lawsuit could result in a recovery against the Commission or its employees.

Thus, it is suggested that the State Water Commission consider option c. Several questions arise. Are we budgeted for insurance coverage? What type of precedent will be established with future agreements?

Two statutory provisions authorize the State Water Commission to secure insurance coverage. Section 39-01-08 relates to motor vehicles, and provides:

39-01-08. STATE AND POLITICAL SUBDIVISIONS AUTHORIZED TO CARRY INSURANCE OF VEHICLES--WAIVER OF IMMUNITY TO EXTENT ONLY OF INSURANCE PURCHASED.--

1. The state of North Dakota or any department, agency, or bureau, as well as any county, city, or other political subdivision including townships, school and park districts using or operating motor vehicles and aircrafts, are hereby authorized to carry insurance for their own protection and for the protection of any employees from

claims for loss or damage arising out of or by reason of the use or operation of such motor vehicle or aircraft, whether such vehicle or aircraft at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, such policies of insurance may be taken out for more than one year, but in no event beyond a period of five years.

Section 32-12.1-15 provides:

32-12.1-15. STATE AGENCIES AUTHORIZED TO PURCHASE INSURANCE.-- The state of North Dakota or any state agency, bureau, or department is hereby authorized to insure against liabilities provided by this chapter for its own protection and for the protection of any state employee. If a premium savings will result therefrom, such policies of insurance may be taken out for more than one year, but in no event beyond a period of five years. If the state or any state agency, bureau, or department shall purchase insurance pursuant to this section, the purchaser shall waive its immunity to suit only to the types of insurance coverage purchased and only to the extent of the policy limits of such coverage. The insurance coverage authorized by this chapter may be in addition to insurance coverage which may be purchased by the state or any state agency, bureau, or department, or a political subdivision, under any other provision of law. The attorney general shall appear and defend all actions and proceedings against any state employee for alleged negligence within the scope of employment in any court in this state or of the United States when the agency, bureau, or department employing such employee has not purchased liability insurance coverage pursuant to law. If both parties to an action are state employees, the attorney general shall determine which state employee he shall represent, and the other employee may employ counsel to represent him. If one of the adverse parties is a state agency, bureau, or department, the attorney general shall appear and defend the agency, bureau, or department in the manner otherwise provided by law.

If the State Water Commission decides to secure insurance coverage, it is suggested that the Water Management District be requested to pay for the coverage, or at a very minimum, one-half of the coverage. The precedence of such a decision should apply only to those contracts which call for work to be conducted by the State Water Commission.

Michael Dwyer
ub
Michael Dwyer
Counsel

MD:pjw
cc: Attorney General Allen Olson

**COST ESTIMATE FOR CONDUCTING A STUDY OF
GROUND-WATER CONDITIONS IN SELECTED AREAS OF
THE MISSOURI RIVER BOTTOM, BURLEIGH AND MORTON COUNTIES**

	<u>Burleigh</u>	<u>Morton</u>
Subsurface Exploration & Observation Well Construction	\$20,100*	\$ 8,100*
Subsurface Exploration & Observation Well Construction - secondary area in Burleigh County	<u>4,500</u>	<u> </u>
	\$24,600	\$8,100
Water level & precipitation monitoring for 24 months	7,800	2,700
Surveying	2,700	900
Right-of-way & easements for observation wells, and site restoration	3,500	1,200
Data compilation, map & report preparation	<u>7,800</u>	<u>2,700</u>
	<u>\$21,800**</u>	<u>\$7,500**</u>
Subtotal - direct costs	46,400	15,500
Indirect costs - 10% of direct	<u>4,600</u>	<u>1,600</u>
	51,000	17,200

* - Prorated on land area

** - Prorated on number of estimated data points.

Agency participation

Burleigh County WMD and/or city of Bismarck	\$25,500
City of Mandan and/or Morton County	8,600
State Water Commission	34,100
TOTAL	<u>\$68,200</u>

COST ESTIMATE FOR CONDUCTING A STUDY OF
GROUND-WATER CONDITIONS IN SELECTED AREAS OF
THE MISSOURI RIVER BOTTOM, BURLEIGH AND MORTON COUNTIES
(Revised Horton County, Portion May 1, 1978)

	<u>Burleigh</u>	<u>Morton</u>
Subsurface Exploration & Observation Well Construction	\$20,100*	\$12,200*
Subsurface Exploration & Observation Well Construction - secondary area in Burleigh County	<u>4,500</u>	_____
	\$24,600	\$12,200
Water level & precipitation monitoring for 24 months	7,800	3,700
Surveying	2,700	1,400
Right-of-way & easements for observation wells, and site restoration	3,500	2,000
Date compilation, map & report preparation	<u>7,800</u>	<u>4,100</u>
	\$21,800**	\$11,200**
Subtotal - direct costs	<u>46,400</u>	<u>23,400</u>
Indirect costs - 10% of direct	<u>4,600</u>	<u>2,300</u>
	<u>51,000</u>	<u>25,700</u>

* - Prorated on land area

** - Prorated on number of estimated data points.

Agency participation

Burleigh County WMD and/or city of Bismarck	\$25,500
City of Mandan and/or Morton County	12,850
State Water Commission	<u>38,350</u>
TOTAL	<u>\$76,700</u>

A G R E E M E N T
Study of Ground Water Conditions

I. PARTIES

THIS AGREEMENT is between the North Dakota State Water Commission, hereinafter referred to as the Commission, acting through the State Engineer, Vern Fahy, and the Board of Commissioners, Burleigh County Water Management District, hereinafter referred to as the District, acting through its chairman, G. A. Nardaffer.

II. INTENT OF AGREEMENT

The Commission agrees to conduct a study of the ground water conditions in the Missouri River Valley south of Bismarck and an adjacent area east of the valley in Burleigh County. A study of the ground water conditions in these areas is deemed essential for those involved in land use planning and zoning since the study would identify those areas having a high water table now and those areas that may have a higher water table in the future as a result of anticipated changes in hydrologic conditions.

The position of the water table in relation to the land surface can be a determining factor for certain types of land use. A large portion of the proposed study area is subject to a high water table problem. A high water table can have a detrimental effect on certain types of structures, waste disposal facilities and domestic water supplies when waste disposal facilities do not operate properly.

III. LOCATION

The study will be conducted in the Missouri River Valley south of Bismarck, which consists of approximately 15 square miles, and in an adjacent area east of the valley in Burleigh County, which consists of approximately 10 square miles.

IV. PURPOSE

The principal objectives of the study are:

1. Identify the water table using a map with a contour interval of one foot.
2. If data is adequate, construct a map of the study area showing depth to the water table.
3. Establish a network of observation wells for long term monitoring of water levels.
4. Identify those hydrologic events that cause the greatest change in water table elevation.

V. SCHEDULE

The estimated duration of the study is two years.

VI. EASEMENTS

Easements for observation wells shall be acquired by the Commission. Assistance will be provided by the district upon request.

VII. COST

J.R.

The District shall pay the Commission \$25,500 for the study. An cost estimate including payment schedule itemized/statement is attached to this agreement and incorporated by reference herein.

~~VIII. INDEMNIFICATION CLAUSE~~

J.R.

~~The District hereby accepts responsibility for, and holds the Commission free from all claims and damages to public or private places, rights, or persons, arising out of the construction, operation, and maintenance of the project. In the event a suit is initiated or judgment entered against the Commission, the District shall indemnify it for any judgment or trial or judgment satisfied.~~

J.R.

IX. CHANGES TO AGREEMENT

Changes to any contractual provision herein will not be effective or binding unless such changes are made in writing, signed by the parties, and attached hereto.

DATE:

NORTH DAKOTA STATE WATER COMMISSION
By:

Vern Fahy
State Engineer

DATE:

BOARD OF COMMISSIONERS, BURLEIGH COUNTY
WATER MANAGEMENT DISTRICT By:

October 24, 1978

J.R. Miller
Chairman

COST ESTIMATE FOR CONDUCTING A STUDY OF
GROUND-WATER CONDITIONS IN SELECTED AREAS OF
THE MISSOURI RIVER BOTTOM, BURLEIGH AND MORTON COUNTIES
(Revised Morton County, Portion May 1, 1978)

	<u>Burleigh</u>	<u>Morton</u>
Subsurface Exploration & Observation Well Construction	\$20,100*	\$12,200*
Subsurface Exploration & Observation Well Construction - secondary area in Burleigh County	<u>4,500</u>	_____
	\$24,600	\$12,200
Water level & precipitation monitoring for 24 months	7,800	3,700
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	\$21,800**	\$11,200**
Subtotal - direct costs	<u>46,400</u>	<u>23,400</u>
Indirect costs - 10% of direct	<u>4,600</u>	<u>2,300</u>
	<u>51,000</u>	<u>25,700</u>

* - Prorated on land area

** - Prorated on number of estimated data points.

Agency participation

Burleigh County WMD and/or city of Bismarck	\$25,500
City of Mandan and/or Morton County	12,850
State Water Commission	<u>38,350</u>
TOTAL	<u>\$76,700</u>

The Burleigh County Water Management District will make payments to the Commission upon receipt of invoices as follows:

\$8,500.00	April 1, 1979
\$8,500.00	April 1, 1980 when accompanied by a status report
\$8,500.00	April 1, 1981 when accompanied by a final report



BURLEIGH COUNTY WATER MANAGEMENT DISTRICT

1021 - 8th STREET NORTH - BISMARCK, NORTH DAKOTA 58501
TELEPHONE (701) 223-8348

February 20, 1979

Governor Arthur A. Link, Chairman
North Dakota State Water Commission
900 East Boulevard
Bismarck, North Dakota 58505

Re: Floodplain Groundwater Study
SWC #1692

Dear Governor Link:

The proposed Agreement submitted to the Burleigh County WMD for the State Water Commission to conduct a 2-year study of groundwater conditions in a 15-square mile area of the Missouri River floodplain in and adjacent to Bismarck, plus an estimated 10-square mile area of adjoining land, has yet to be agreed upon.

This Agreement, submitted to us on September 8, 1978 for execution, contained an Indemnification paragraph to which we objected as being unreasonable, impossible of performance and uninsurable. The paragraph was deleted when the Agreement was returned to the Commission October 26, 1978 after extensive consultation with our attorneys and insurance carriers. On October 30, 1978 we were notified the Commission Secretary would not execute the Agreement unless instructed otherwise by the Commission.

At the Commission's December 5, 1978 meeting we understood it was your decision to consult with the Attorney General before reaching a decision. We have received no information since our attorney and City Attorney John Zuger met with your attorney on January 16, 1979.

Inasmuch as the Commission will be doing all tasks and the Burleigh County WMD's participation will only involve payment of half the costs, with no control whatever over the people or equipment involved, we believe any "hold harmless" clause should be in favor of the WMD rather than the Commission, if such a clause is needed.

The Burleigh County WMD requests a "Yes" or "No" decision by the Commission as to whether it will execute the Agreement with the Indemnification paragraph deleted, not later than March 8, 1979 - six months after submission and about 3 weeks before the study is scheduled to commence.

We would hope this matter can be resolved amicably rather than deteriorate into a "Naumachia" (def. A Roman spectacle resembling a naval battle).

Sincerely,

BURLEIGH COUNTY WATER MANAGE-
MENT DISTRICT

Jim Eastgate
Jim Eastgate, Com'r. & Sec'y.

cc: Vern Fahy, Secretary

WATER PERMIT AGENDA FOR FEBRUARY 20, 1979 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1185P	Rolla, City of - Rolla (Rolette County) Priority: 10- 1-27 & 10- 1-40	Ground Water	Municipal	This is a request for a change in points of diversion.	It is recommended that the request for amending the points of diversion be approved.
3136	Soderstrom, Stanley - Bowman (Bowman County) Priority: 10-20-78 Hearing: 12-11-78	Unnamed Stream, trib. to Grand River * NO PRIOR PERMITS	Recreation	56.5 acre-feet storage 42.0 acre-feet annual use	It is recommended that action be deferred at this time.
3135	Ophaug, Ronald - Kloten (Nelson County) Priority: 10-18-78 Hearing: 12-11-78	Ground Water	Irrigation	507.0 acre-feet 338.0 acres	It is recommended that action be deferred at this time.
		* #2818 (Priority Date: 4-14-77) Granted 135.0 acres			
3140	Knife River Coal Mining Company (Gascoyne Pond #17)- Bismarck (Bowman County) Priority: 10-24-78 Hearing: 12-26-78	Unnamed Stream, trib. to Buffalo Creek and Grand River; and also from Ground Water	Industrial (Dust control & settlement of suspended solids)	56.8 acre-feet storage 180.0 acre-feet annual use (120.0 acre-feet from Surface Water & 60.0 acre-feet from Ground Water)	It is recommended that action be deferred at this time.
		* #2901 (Priority Date: 6-1-77) Granted 98.4 acre-feet storage; 25.0 acre-feet industrial use; and 130.0 acre-feet evaporation			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3141	Knife River Coal Mining Company - (Beulah Pond No. 2) Bismarck (Mercer County)	Unnamed Stream, trib. to Knife River; and from Ground Water	Industrial (Dust control, settlement of suspended solids and dewatering mine)	6.3 acre-feet storage 30.0 acre-feet annual use (6.0 acre-feet from Ground Water; 24.0 acre-feet from Surface Water)	It is recommended that action be deferred at this time.
	Priority: 10-24-78 Hearing: 12-26-78	* Same as water permit No. 3140 on page 1			
2875	Tripp, Cyrus - Pettibone (Stutsman County)	Ground Water (Marstonmoor Plain Aquifer)	Irrigation	320.0 acre-feet 156.0 acres	202.5 acre-feet 135.0 acres
	Priority: 6- 3-77 Hearing: 7-18-77 Deferred: 8-16-77	* NO PRIOR PERMITS			
2899	Painted Woods Golf Course - Washburn (McLean County)	Painted Woods Creek, trib. to Missouri River; and/or from Ground Water	Irrigation (Golf Course)	40.0 acre-feet 91.0 acres (only a total of 20.0 acres will be irrigated)	40.0 acre-feet 91.0 acres (only a total of 20.0 acres will be irrigated)
	Priority: 3-21-78 Hearing: 5- 8-78 Deferred: 5- 8-78	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3142	Laintz, Dan - Selfridge (Sioux County) Priority: 11- 3-78 Hearing: 1-22-79	Unnamed Stream, trib. to Porcupine Creek and Missouri River * NO PRIOR PERMITS	Stockwater	48.2 acre-feet storage; 29.1 acre-feet annual use	It is recommended that action be deferred at this time.
3133	Calderwood, Willis L. - Crary (Ramsey County) Priority: 9-28-78 Hearing: 1- 8-79	Unnamed lake or slough, trib. to Devils Lake * NO PRIOR PERMITS	Irrigation	227.0 acre-feet 158.0 acres	It is recommended that action be deferred at this time.
3109	Thurlow, Owen - Carrington (Foster County) Priority: 12-15-78 Hearing: 1- 8-79	Ground Water * NO PRIOR PERMITS	Irrigation	1521.0 acre-feet 1014.0 acres	It is recommended that action be deferred at this time.
3145	Knife River Coal Mining Company (Beulah Pond #1) - Bismarck (Mercer County) Priority: 10-24-78 Hearing: 1- 8-79	Unnamed Stream, trib. to Knife and Missouri Rivers; and also from Ground Water * Same as No. 3140 on page 1	Industrial (Settlement of suspended solids & Dust Control)	19.9 acre-feet storage; 60.0 acre-feet annual use (12.0 acre-feet from Ground Water & 48.0 acre-feet from Surface Water)	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3146	Knife River Coal Mining Company (Beulah Pond No. 5) - Bismarck (Mercer County) Priority: 10-24-78 Hearing: 1- 8-79	Unnamed Stream, trib. to Knife and Missouri Rivers; and from Ground Water * Same as No. 3140 on page 1	Industrial (Settlement of suspended solids, dust control & dewatering mine)	19.1 acre-feet storage; 60.0 acre-feet annual use (12.0 acre-feet from Ground Water and 48.0 acre-feet from Surface Water)	It is recommended that action be deferred at this time.
3147	Knife River Coal Mining Company (Beulah Pond No. 15) - Bismarck (Mercer County) Priority: 10-24-78 Hearing: 1- 8-79	Unnamed Stream, trib. to Knife and Missouri Rivers; and from Ground Water * Same as No. 3140 on page 1	Industrial (Settlement of suspended solids, dust control & dewatering of mine)	19.9 acre-feet storage; 60.0 acre-feet annual use (12.0 acre-feet from Ground Water and 48.0 acre-feet from Surface Water)	It is recommended that action be deferred at this time.
3105	Bartelson, Neil - Parshall (Mountrail County) Priority: 7-21-78 Hearing: 1- 8-79	Ground Water * NO PRIOR PERMITS	Irrigation	300.0 acre-feet 73.0 acres	It is recommended that action be deferred at this time.
3127	Dietrich, Clem J. - Menoken (Burleigh County) Priority: 3- 6-78 Hearing: 10- 2-78 Deferred: 10-20-78	Dam on Non-Contributing Slough, a trib. on Missouri River * #1663 (Priority Date: 9-22-69) Granted 32.48 acre-feet storage; 10.11 acre-feet annual use	Irrigation	76.6 acre-feet (32.48 storage) 38.3 acres	38.3 acre-feet 38.3 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3134	ND Parks and Recreation Department (Turtle River State Park) - Arvilla (Grand Forks County) Priority: 10-10-78 Hearing: 11-27-78 Deferred: 12- 5-78	Turtle River, trib. of Red River of the North * NO PRIOR PERMITS	Industrial (Snowmaking)	3.0 acre-feet	3.0 acre-feet
2273	Dubourt, Leon F. - Walhalla (McHenry County) Priority: 4-24-75 Hearing on Amendment: 11-27-78	Ground Water (New Rockford Aquifer)	Irrigation	This is a request for a change in points of diversion.	It is recommended that the request for a change in points of diversion be approved.
3139	Patterson Land Co. - Bismarck (Kidder County) Priority: 10- 4-78 Hearing: 1-29-79	Ground Water * # 799 (Priority Date: 5-22-59) #2881 (Priority Date: 6-15-77)	Irrigation	458.0 acre-feet 229.0 acres Granted 221.24 acres Granted 145.0 acres	It is recommended that action be deferred at this time.
1824	Iglehart, James P. and John B. - Emmet (McLean County) Priority: 2-11-72 Hearing on Amendment: 1-29-79	Ground Water	Irrigation	This is a request for a change in points of diversion and an increase in withdrawal rate from 1200 to 2400 gallons per minute.	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2314	Iglehart, James P. and John B. - Emmet (McLean County)	Ground Water	Irrigation	This is a request for a change in the points of diversion.	It is recommended that action be deferred at this time.
	Priority: 9- 8-75 Hearing on Amendment: 1-29-79				
3143	Heimbuch, Thomas A. - Straubville (Sargent County)	Ground Water	Irrigation	636.0 acre-feet 318.0 acres	It is recommended that action be deferred at this time.
	Priority: 12- 1-78 Hearing: 1-29-79	* #2261 (Priority Date: 2-19-75) Granted 270.0 acres #2362 (Priority Date: 1-27-76) Granted 135.0 acres			
3148	Rott, Virgil - Nortonville (LaMoure County)	Dugouts in low areas within James River Basin	Irrigation	384.0 acre-feet 320.0 acres	It is recommended that action be deferred; the applicant has decided to include ground water as a source of appropriation; therefore, a re-hearing will be needed.
	Priority: 12-21-78 Hearing: 1-29-79	* #1607 (Priority Date: 10-22-68) Granted 786.0 acres) #1831 (Priority Date: 3-24-72) Granted 194.0 acres)			Permits Issued to Rott Bros.
3144	McDaniel, Robert - Englevale (Ransom County)	Ground Water	Irrigation	480.0 acre-feet 240.0 acres	It is recommended that action be deferred at this time.
	Priority: 12-15-78 Hearing: 1-29-79	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2986	South Heart, City of - South Heart (Stark County) Priority: 10-14-77 Hearing on Amendment: 1-29-79	Ground Water	Municipal	This is a request for a change in the point of diversion.	It is recommended that action be deferred at this time.
3138	Faber, Robert - Milnor (Ransom County) Priority: 12-21-78 Hearing: 1-29-79	Ground Water	Irrigation	3520.0 acre-feet 1760.0 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
2997	Halgren, Oscar and Keller, Eleanor - Devils Lake (Benson County) Priority: 11- 4-77	Ground Water	Irrigation	936.0 acre-feet 624.0 acres	The applicants have requested to withdraw this request, the land has been sold and the new owners are not interested in developing at this time.
1766	Kono, David - Wibaux, Mont. (McKenzie County) Priority: 3-30-71	Intermittent Draw, trib. to Little Missouri River	Irrigation- Waterspreading	40.0 acre-feet 28.9 acres	The applicant has sold the land and the new owner has indicated he is not interested in developing for irrigation at this time; therefore, it is recommended that the application be withdrawn.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1789	Asbridge, T. W. - Carson (Grant County) Priority: 7-20-71	Unnamed Creek, trib. to Cannon- ball River	Irrigation- Waterspreading	344.0 acre-feet 172.0 acres	The applicant has indicated that the project was not feasible and was not interested in completing the application; therefore, it is recommended that the application be withdrawn.
2037	Leininger, John M. - Binford (Griggs County) Priority: 2-11-74 Hearing on Amendment: 1-29-79	Ground Water	Irrigation	This is a request for an additional point of diversion.	It is recommended that action be deferred at this time.
1816	Martinson Brothers Oakes Farms - Oakes (Dickey County) Priority: 12-29-71 Hearing on Amendment: 1-29-79	Ground Water	Irrigation	This is a request for a change in the points of diversion.	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
214B	Yellowstone Pumping Irrigation District Cartwright (McKenzie County) Priority: 7-25-40 Hearing on Amendment: 10-23-78 Deferred: 11-14-78	Yellowstone River	Irrigation	This is a request for a change in the points of diversion.	It is recommended that the request to amend the points of diversion be approved.
2468	Bang, Dale N. - Killdeer (Dunn County) Priority: 1- 5-78 Hearing: 2- 6-78 Deferred: 3-16-78	Ground Water (Unnamed Aquifer)	Irrigation	374.0 acre-feet 187.0 acres	280.5 acre-feet 187.0 acres
		* NO PRIOR PERMITS			
2541	Olson, James - Crete (Sargent County) Priority: 9-20-76	Ground Water (Englevale Aquifer)	Irrigation	480.0 acre-feet 320.0 acres	On March 2, 1977, the applicant was granted 202.5 acre-feet of water to irrigate 135.0 acres; balance of request held in abeyance. The SWC staff has reviewed that portion held in abeyance and recommends releasing an additional 120.0 acre-feet of water to irrigate an additional 80.0 acres; the balance of the request held in abeyance shall be denied. Totals granted the appli- cant are 322.5 af - 215.0a.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3126	Weyrauch, Franklin - Tioga (Williams County) Priority: 8-11-78 Hearing: 10- 2-78 Deferred: 10-20-78	Lake Sakakawea	Irrigation	452.0 acre-feet 226.0 acres	452.0 acre-feet 226.0 acres * #8A (Priority Date: 6-18-1901) Granted 64.0 acres
3027	Ruhn, Keith W. - Cogswell (Sargent County) Priority: 1-18-78 Hearing: 1-27-78 Deferred: 3-16-78	Ground Water (Glacial Lake Dakota Aquifer & Englevale or Spiritwood Aquifers)	Irrigation	228.0 acre-feet 152.2 acres	228.0 acre-feet 152.2 acres * NO PRIOR PERMITS
3033	Lundeby, Iver G. - Toina (Nelson County) Priority: 2- 3-78 Hearing: 2-27-78 Deferred: 3-16-78	Ground Water (Spiritwood Aquifer and an Unnamed Aquifer)	Irrigation	60.0 acre-feet 241.3 acres	60.0 acre-feet 241.3 acres * #1889 (Priority Date: 11-29-72) Granted 30.0 acres
3152	Bagge Farms - Hillsboro (Traill County) Priority: 1-15-79 Hearing: 2- 5-79	Unnamed Stream and Red River of the North	Irrigation	600.0 acre-feet (Includes 198.2 acre-feet storage) 800.0 acres	It is recommended that action be deferred at this time.
					* NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2750	Bower, Douglas - Page (Cass County) Priority: 1-17-79 Hearing: 2-12-79	Ground Water	Irrigation	699.3 acre-feet 466.2 acres	It is recommended that action be deferred at this time. * #2551 (Priority Date: 9-27-76) Granted 135.0 acres
2991	Greenberg, Art - Grand Forks (Grand Forks Co.) Priority: 11- 1-77 Hearing: 12-19-77 Deferred: 3-16-78	Ground Water (Dakota or Winnipeg Sandstones)	Industrial (Potato Wash Plant)	20.0 acre-feet	20.0 acre-feet * #1916 (Priority Date: 1-23-73) Granted 1906.0 acres
3108	Vander Wal, Willis - Pollock, S.D. (Emmons County) Priority: 5-20-78 Hearing: 7-24-78 Deferred: 8-23-78	Ground Water and Unnamed Slough (Cat Tail Aquifer)	Irrigation	252.0 acre-feet 126.4 acres	190.0 acrefeet 126.4 acres * NO PRIOR PERMITS
3151	Thompson, Jess E. - Beulah (Mercer County) Priority: 1-12-79 Hearing: 2-12-79	Ground Water	Irrigation	366.0 acre-feet 183.0 acres	It is recommended that action be deferred at this time. * NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3153	US Fish and Wildlife Service (Wengler Dam) - Denver, Colorado (Cavalier County) Priority: 1-22-79 Hearing: 2-12-79	Starkweather Coulee, trib. to Devils Lake	Recreation	53.0 acre-feet storage; 250.0 acre-feet annual use	It is recommended that action be deferred at this time. * The applicant holds a number of permits.
3012	Barton, Robert J. - Ellendale (Dickey County) Priority: 12-24-77 Hearing: 2-6-78 Deferred: 3-16-78	Ground Water (Ellendale Aquifer)	Irrigation	200.0 acre-feet 133.8 acres	150.0 acre-feet 100.0 acres * NO PRIOR PERMITS
3101	Kussy, Jim - New Hradec (Dunn County) Priority: 2-2-78 Hearing: 6-26-78 Deferred: 11-19-78 ReHearing: 11-13-78 Deferred: 12-5-78	Green River, trib. to Heart River	Irrigation	152.0 acre-feet annual use plus 33.0 acre-feet storage 76.0 acres	76.0 acre-feet annual use plus 33.0 acre-feet storage 76.0 acres * NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2471	Martinson Brothers Oakes Farms - Oakes (Dickey County)	Ground Water (James Aquifer)	Irrigation	384.0 acre-feet 256.0 acres	Recommend for approval: 120.0 acre-feet 80.0 acres (The remainder of the request shall be held in abeyance.)
	Priority: 3-23-76 Hearing: 7-19-76 Deferred: 9-28-76	* #1816 (Priority Date: 12-29-71) Granted 619.0 acres #2091 (Priority Date: 4-23-74) Granted 135.0 acres #2160 (Priority Date: 9-26-74) Granted 480.0 acres #2429 (Priority Date: 3-15-76) Granted 600.0 acres			
2999	Wang, Allan - Baker, Montana (Slope County)	Little Missouri River, trib. to Missouri River	Irrigation	246.0 acre-feet 123.2 acres	123.2 acre-feet 123.2 acres
	Priority: 11-25-77 Hearing: 1-23-78 Deferred: 3-16-78	* NO PRIOR PERMITS			
3043	Maus, Daniel E. - Golva (Golden Valley Co.)	Unnamed Stream, trib. to Bullion Creek and Little Missouri River	Irrigation- Waterspreading	140.0 acre-feet 70.0 acres	70.0 acre-feet 70.0 acres
	Priority: 2-16-78 Hearing: 5- 8-78 Deferred: 6- 1-78	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3060	Bowman, Ronald J. - Bowman (Bowman County) Priority: 7-11-77 Hearing: 5-15-77 Deferred: 6- 1-78	Spring Creek, trib. to Grand River * NO PRIOR PERMITS	Irrigation- Waterspreading	156.0 acre-feet 104.3 acres	104.3 acre-feet 104.3 acres
2766	Powell, Carter Nicholson - Leonard (Richland County) Priority: 2- 7-77 Hearing: 8- 1-77 Deferred: 8-16-77	Ground Water and Sheyenne River (Sheyenne Delta Aquifer) * NO PRIOR PERMITS	Irrigation	175.0 acre-feet 116.0 acres	Recommend for approval: 143.3 acre-feet 95.2 acres from Ground Water (31.7 acre-feet from Shey- enne River shall be held in abeyance.)
3036	Palaniuk, Steven R. - Belfield (Stark County) Priority: 2- 2-78 Hearing: 3-20-78 Deferred: 6- 1-78	Abandoned Uranium Pit, trib. to Heart River (Golden Valley and Sentinel Butte Formations) * NO PRIOR PERMITS	Irrigation	333.0 acre-feet 222.0 acres	278.0 acre-feet 185.0 acres
3008	Bois De Sioux Golf Club - Wahpeton (Richland County) Priority: 11-29-77 Hearing: 1-30-78 Deferred: 3-16-78	Red River of the North * NO PRIOR PERMITS	Irrigation	15.0 acre-feet 52.7 acres	15.0 acre-feet 52.7 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2908	Linderman, Charles L. - Carrington (Foster County) Priority: 6-13-77 Hearing: 10- 4-77 Deferred: 12- 7-77	Ground Water (Carrington Aquifer)	Irrigation	546.0 acre-feet 312.0 acres	435.0 acre-feet 290.0 acres
		* NO PRIOR PERMITS			
2769	Heltkamp, Mrs. Jerome - Mooreton (Ransom County) Priority: 3- 9-77 Hearing: 6-20-77 Deferred: 7- 8-77	Ground Water (Englevale Aquifer)	Irrigation	600.0 acre-feet 390.93 acres	422.0 acre-feet 281.0 acres
		* NO PRIOR PERMITS			
1465B	Streich, Eldon A. - Englevale (Ransom County) Priority: 6-13-67 Hearing on Amendment: 6- 5-78 Deferred: 6-23-78	Ground Water (Englevale Aquifer)	Irrigation	This is a request for an additional point of diversion.	It is recommended that this request for an additional point of diversion be approved.
2550	Widmer, Arnold - Crete (Sargent County) Priority: 9-24-76 Hearing on Amendment: 5-15-78 Deferred: 6- 1-78	Ground Water (Englevale Aquifer)	Irrigation	This is a request for an additional point of diversion located in NW¼ of Section 14, Township 132, Range 58.	It is recommended that this request for an additional point of diversion be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2550	Widmer, Arnold - Crete (Sargent County) Priority: 9-24-76 Hearing: 10-20-76 Deferred: 12- 7-76	Ground Water (Englevale Aquifer)	Irrigation	640.0 acre-feet 398.7 acres	Recommend for approval: 202.5 acre-feet 135.0 acres (Remainder of request shall be held in abeyance.)
		* #2450 (Priority Date: 5-12-76) Granted 155.0 acres			
2629	Peterson, James P.A. - Kathryn (Ransom County) Priority: 11-8-76 Hearing: 12-20-76 Deferred: 2-11-77	Ground Water	Irrigation	860.0 acre-feet 572.1 acres	The applicant has done test drilling and an adequate water supply was not located; therefore, the applicant does not intend to take any further action to develop the land. It is recommended that this request be denied.
		* NO PRIOR PERMITS			
2708	Quesenberry, Larry - Carrington (Foster County) Priority: 1-31-77 Hearing: 4- 4-77 Deferred: 4-15-77	Ground Water (Carrington Aquifer)	Irrigation	285.2 acre-feet 142.6 acres	203.0 acre-feet 135.0 acres
		* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2872	Zacharias, Vaughn - Kathryn (Barnes County)	Ground Water (Sand Prairie Aquifer)	Irrigation	231.0 acre-feet 154.0 acres	Recommend for approval: 124.0 acre-feet 135.0 acres (79.0 acre-feet of water shall be held in abeyance)
	Priority: 5- 6-77 Hearing: 7-18-77 Deferred: 8-16-77	* #2169 (Priority Date: 2-19-76) Granted 260.0 acres			
2754	Skadberg, Jerrold S. - Carrington (Foster County)	Ground Water (Carrington Aquifer)	Irrigation	460.0 acre-feet 310.0 acres	435.0 acre-feet 290.0 acres
	Priority: 3- 4-77 Hearing: 5- 9-77 Deferred: 5-27-77	* NO PRIOR PERMITS			