

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE June 25, 1979 PLACE Bismarck, N.D.

PROJECT NO. \_\_\_\_\_

Your Name	Your Address	Who do you Represent? (Or Occupation)
Laurie McMurtrey	MINOT	NO WATER USERS
Stan Zschomler	Bismarck	Fish & Wildlife Serv.
Susan McDonald	Bismarck	Fish & Wildlife Service
David A. Spryngayatyk	Bismarck	SWC
Tom Nelson	"	KXMR-TV
Homer Engelhorn	Carrington	GDCD
William Bruce Spivell		SDCA

## MINUTES

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

June 25, 1979

The North Dakota State Water Commission held a meeting in the State Water Commission Conference Room, Bismarck, North Dakota, on June 25, 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  
Gordon Gray, Member from Valley City  
Arlene Wilhelm, Member from Dickinson  
Arthur Lanz, Member from Devils Lake (present only for afternoon session)  
Myron Just, Commissioner, Department of Agriculture, Bismarck  
Vernon Fahy, State Engineer and Secretary, North Dakota  
State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members  
Laurie McMerty, N. D. Water Users Association, Minot  
Stan Schomler, Fish and Wildlife Service, Bismarck  
Susan McDonnold, Fish and Wildlife Service, Bismarck  
Homer Engelhorn, Garrison Diversion Conservancy District, Carrington  
William Bosse, Garrison Diversion Conservancy District, Cogswell  
Tom Nilson, KXMB-TV, 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 APRIL 18, 1979 MEETING -  
APPROVED

Secretary Fahy reviewed the minutes of the April 18, 1979 meeting which was held in Bismarck, North Dakota.

Secretary Fahy called the Commission's attention to a typographical error on page 2, in the second motion in the minutes, wherein it reads "\$74,400". This figure should be amended to read "\$7,400". There were no other corrections or additions to the minutes which had been previously circulated.

It was moved by Commissioner Kramer, seconded by Commissioner Wilhelm, and unanimously carried, that the minutes of the April 18, 1979 meeting be approved as amended.

REPORT ON EPPING SPRINGBROOK  
DAM SITUATION  
(SWC Project No. 346)

Secretary Fahy briefed the Commission members on a situation at Epping Dam. In 1978, it was known that the spillway at Epping Dam was in need of repair and

if the structure were to fail, numerous road crossings and railroad crossings downstream would be washed out. The Corps of Engineers inspected the dam to determine its safety and recommended that:

"The investigation of Epping Dam revealed a deteriorated masonry emergency spillway that is a hazard to the project during flood conditions. Since construction in 1936, numerous repairs have not resulted in a permanent solution to the recurring problem, and any further repairs to the structure would probably not prevent a failure under high flows. Therefore, it is recommended that the emergency spillway be replaced."

The Williams County Water Management District was advised of the Corps recommendation. They have tried for some time to repair the spillway, but have not been able to secure the necessary funds.

During the spring flood of 1979, the spillway suffered considerable damage, mainly erosion around the structure and break-up of the concrete. After being inspected again by an engineer from the Corps, a recommendation was made to immediately begin pumping out the reservoir. An engineer from the State Water Commission and members of the Water Management District then inspected the spillway. The Commission engineer agreed with the earlier recommendation that the reservoir should be drawn down. The reason for this recommendation was that the spillway was severely eroded as well as the material beneath the spillway. At that time, water continued to go over the spillway and the watershed was still very wet. It was felt that a one-inch rain could cause a runoff which would wash out the spillway completely.

The Water Management District then began pumping and draining the reservoir as they would be liable for any damage should failure occur. Secretary Fahy indicated that as State Engineer he agreed with the decision of the Water Management Board to breach the dam as the spillway did pose a threat to life and property if it were to fail.

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He indicated that the manner in which the dam was breached is such that it can be rebuilt if a way is found to secure the funds to rebuild the spillway. The cost estimate is \$510,000 to rebuild the spillway; possibly one-half of the costs provided by the Heritage Conservation and Recreation Service and the other half shared by the locals and the Water Commission.

**PRESENTATION BY FISH  
AND WILDLIFE SERVICE  
REGARDING PROPOSED RULES  
AND REGULATIONS FOR THE  
FISH AND WILDLIFE  
COORDINATION ACT**

Stan Schomler and Susan McDonnold of the Fish and Wildlife Service shared with the Commission members a slide presentation on the proposed federal rules and regulations for the Fish and Wildlife Coordination Act.

Mr. Schomler noted that the proposed rules and regulations will not change the Act, but they will establish a standardized set of rules under which everyone can operate.

Following the slide presentation, Mike Dwyer indicated that the proposed rules and regulations are in the review and comment stage and the deadline for public comment on the proposal is July 17. He stated that he will be preparing extensive comments on the regulations, which will include the issue 'whether NEPA will require that the Departments of Interior and Commerce do an environmental impact statement on the impacts resulting from the proposed Coordination Act regulations.' He said that it is his understanding that the two Departments will make their determination, to a large part, to comply with NEPA, based on the comments that are received. Mr. Dwyer noted this point will be stressed in preparing comments, as this is a major federal action which will have a significant impact on the human environment. If an environmental impact statement is prepared, ample time for input of the State Water Commission, individuals, and the general public will then be provided, in accordance with the intent of NEPA.

**CONSIDERATION OF REQUEST FROM  
WELLS COUNTY WATER MANAGEMENT  
DISTRICT TO RELEASE FUNDS  
COMMITTED FOR ESTABLISHMENT  
OF WELLS COUNTY DRAIN NO. 1  
IMPROVEMENT  
(SWC Project No. 1483)**

Secretary Fahy recalled that at the April 18, 1979 meeting, 40 percent of the qualified construction costs not to exceed \$62,550 was approved for the repair of Wells County Legal Drain No. 1, subject to the availability of funds and subject upon the approval of the project by a vote of the landowners.

Secretary Fahy indicated that an election had been held and the project failed by a vote of 53 percent against the project and 47 percent for the project.

Secretary Fahy stated that correspondence has been received from the Wells County Water Management District requesting that the funds that were authorized 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 Kramer that the action taken by the Water Commission on April 18, 1979 to provide 40 percent of the eligible construction costs for the Wells County Legal Drain No. 1 Improvement project, in an amount not to exceed \$62,550, be rescinded in accordance with the request from the Wells County Water Management District. All members voted aye; the motion unanimously carried.

CONSIDERATION OF REQUEST  
FROM CITY OF SURREY TO  
CONDUCT GROUND-WATER STUDY  
(SWC Project No. 992)

A request has been received from the City of Surrey, North Dakota, that the State Water Commission proceed in conducting a ground-water study for the city. The total cost of the

study is estimated at \$8,300. The Water Commission has been requested to participate in one-half of the costs, with the City of Surrey assuming the other half of the costs. It was recommended by the State Engineer that the City of Surrey's request be honored by the Commission.

It was moved by Commissioner Kramer and seconded by Commissioner Wilhelm that the Water Commission conduct a ground-water study for the City of Surrey and approve cost participation up to 50 percent of the total cost, in an amount not to exceed \$4,150, subject to the availability of funds. All members voted aye; the motion unanimously carried.

STATUS REPORT OF TEXAS  
EASTERN WYOMING PROPOSAL

Mike Dwyer reviewed the background of the Texas Eastern Wyoming proposal to construct a coal slurry pipeline.

The Governor of Wyoming was authorized by the Wyoming Legislature to conduct a 90-day review before entering into a contract with Texas Eastern. Failure to enter into a contract before the 90-day period would void the authorization for Texas Eastern to transport water out of Wyoming.

On May 18, 1979, Governor Herschler released his decision not to enter into a contract. There were major questions which he felt must be addressed before he could consent to any out-of-state use of Wyoming's water resources, essentially whether the State of Wyoming could secure enough benefits from this project to justify participating with Texas Eastern in developing the coal slurry pipeline. Governor Herschler's decision release is attached hereto as APPENDIX "A".

Mr. Dwyer noted that in addition to the seven issues and questions listed by the Governor of Wyoming as the basis of his denial, an additional issue expressed by North Dakota and Montana is whether

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Texas Eastern Wyoming and the State of Wyoming intended to comply with the Yellowstone River Compact.

Included herewith as APPENDIX "B", is Montana State House of Representatives Joint Resolution No. 48 forwarded to the Governor of North Dakota, which urges the states of North Dakota, Montana and Wyoming, the signatory states of the Yellowstone River Compact, to abide by the provisions of the Yellowstone River Compact and to limit water diversions to those authorized in manner and amount by the Compact and to permit water diversions only consistent with the provisions of such Compact.

DISCUSSION OF H.B. 1380  
REQUIRING NOTICE OF  
MEETINGS OF UNITS OF STATE  
AND LOCAL GOVERNMENT

Mike Dwyer discussed guidelines provided by the Attorney General's office pursuant to H.B. 1380 (§44-04-19 of the North Dakota Century Code) for the purpose of assistance in complying with the

public notice requirements applicable to meetings of public bodies. The guidelines are attached hereto as APPENDIX "C".

Mr. Dwyer indicated that the Water Commission does satisfy the provisions of this legislation, but did note that the guidelines encourage meetings to be established on a yearly schedule.

DISCUSSION OF INTERIM  
STUDY RESOLUTIONS

Mike Dwyer reported that the Legislative Council Natural Resources Interim Committee recently held their organizational

meetings for the interim study resolutions. The Water Commission will be responsible for developing drafts to the Committee for three study resolutions: 1) an interim study of the powers, duties and jurisdictional boundaries of Water Management Districts and Legal Drain Boards; 2) an interim study of flood problems to determine if North Dakota should adopt a uniform floodplain and floodway management program; and 3) an interim study to determine if North Dakota should implement Section 404 (dredge and fill permits).

Secretary Fahy indicated that state agencies had a meeting on the flood hazard mitigation proposal and it was agreed to develop a Plan of Study, which will be primarily a Water Commission effort. The Plan of Study will be reviewed by the other state agencies and there is a 60-day time frame to provide input to the federal agency that will be acceptable under the contract that the Governor signed before he could get disaster assistance in the state.

DISCUSSION OF WATER  
POLICY STUDY

Mike Dwyer discussed with the Commission members President Carter's water policy study and listed four areas which may

have a major impact on water development: 1) Fish and Wildlife Coordination Act; 2) Cost Sharing; 3) Principles and Standards; and 4) Federal Reserved Rights.

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North Dakota is hoping that the Federal Government will prepare an environmental impact statement on the first three efforts, to provide ample opportunity for substantive input. Otherwise, the input does not allow full discussions of Water Commission prior to final promulgation of the rules.

In regards to water rights, Mr. Dwyer indicated that the federal task force addressing non-Indian federal reserved rights has been very accommodating to state concerns, but the Indian reserved rights task force has held all secret meetings on the grounds that it is necessary to protect the trust responsibility for the Indians.

DISCUSSION OF NEBRASKA  
GROUND-WATER CASE CONCERNING  
REASONABLE RECAPTURE DOCTRINE

In 1977, when the North Dakota Legislature passed the comprehensive water laws for North Dakota, it included a provision that provides that a senior priority does not include the right to prevent additional uses of water so long as the senior user could reasonably recapture his water.

Mr. Dwyer distributed, and discussed, copies of APPENDIX "D", a Nebraska Supreme Court decision which might provide some insight into North Dakota's "reasonable recapture" doctrine. Its applicability in North Dakota is questionable since Nebraska ground-water laws are not the same, but the principles involved in the case should provide further understanding of the "reasonable recapture" concept.

The Commission recessed their meeting at 11:30 a.m.; reconvened at 1:30 p.m.

LITIGATION (U.S. V N.D.)  
ON NORTH DAKOTA WETLANDS  
STATUTES

Mike Dwyer noted that the United States has filed a complaint against North Dakota seeking declaratory judgement that the statutes which require termination of the easement acquisitions upon death or the transfer of the lands be declared unconstitutional and invalid.

The State of North Dakota has filed a Motion to Dismiss and there have been no proceedings or hearings scheduled other than the pleadings filed.

STATUS REPORT ON  
RED RIVER DIKING  
(SWC Project No. 1638)

Governor Link reported on a meeting in which he and Governor Quie of Minnesota met to discuss water management in the Red River Valley, but particularly to discuss the diking situation.

Section 61-16-15 of the North Dakota Century Code requires a permit from the appropriate water management district and the North Dakota State Engineer prior to the construction of any dam, dike, or other device for flood control purposes, which is capable of retaining or

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diverting more than 12.5 acre-feet of water. An extensive series of dikes have been constructed in North Dakota along the Red River without necessary authorization, and therefore, these dikes are illegal. However, the severe flooding of 1979 caused the breach of many of these dikes.

Extensive dikes have also been constructed on the Minnesota side of the Red River, without proper authorization according to Minnesota law. Therefore, the dikes in Minnesota on the Red River are also illegal.

Governor Link indicated that he and Governor Quie agreed that it is necessary to prohibit the reconstruction of any existing dikes, or the construction of any new dikes, until uniform rules for dike construction are adopted in both states. August 15 was set as the deadline for this effort.

As a result, Governor Link issued an Executive Order prohibiting and imposing a moratorium on the construction of any new dikes, or the reconstruction of any existing dikes, along the Red River of the North in North Dakota. Executive Order issued by the Governor is attached as APPENDIX "E". It is understood that similar action will be forthcoming from Governor Quie.

During discussion, a resolution was distributed for the Commission's consideration, supporting the Governor's Executive Order to issue such a moratorium and to provide legal strength to the enforcement of the Executive Order.

It was moved by Commissioner Gray and seconded by Commissioner Kramer that the Water Commission support Governor Link's Executive Order to issue a moratorium prohibiting the construction of any new dikes, or the reconstruction of any existing dikes, along the Red River of the North in North Dakota; and that Resolution No. 79-6-404 be adopted. All members voted aye; the motion unanimously carried.  
SEE APPENDIX "F".

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

options for consideration of the public interest which would be in compliance with the Attorney General's Opinion. The Legal Counsel indicated to the Commission that it is difficult to define public interest without using broad parameters, but he would present as many options as possible.

General discussion pursued regarding rules and regulations for acreage limitations, and the discussion concluded directing the Legal Counsel for the Water Commission to draft

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

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

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

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

The following water permit requests were  
approved: No. 3136 - Stanley Soderstrom,  
Bowman; No. 3061 - City of LaMoure; No.  
3051 - Earl Satterthwaite, New Town; No.  
2425 - Clarence R. Reed, Fargo (this is  
a request for an additional point of  
diversion); No. 2565 - Clouse Peterson,  
Oakes (this request was approved by the  
State Engineer on May 23, 1979); No.  
3175 - Grand Forks County Water Management  
District (Upper Turtle River Watershed,  
Detention Dam No. 4), Grand Forks; No.  
2425 - Clarence R. Reed, Fargo (this  
approves the balance of his request);  
No. 3089 - LeRoy L. Boeckel, Beulah;  
No. 2879 - Robert Dunnigan, Walhalla;  
No. 1179P - City of Mott (this is a  
request for a change in points of  
diversion and for an increase in  
withdrawal rate); No. 3078 - Richard  
C. Madzo, Medora; No. 3095 - Grand Forks-  
Traill Water Users, Inc., Thompson; No.  
2981 - Hoggarth Bros., Courtenay; and  
No. 2977 - James Frauenberg, LaMoure.

The following water permit requests were  
deferred at this time: No. 3170 - Cargill,  
Inc., Minneapolis, Minn.; No. 3023 -  
Alvin N. Leedahl, Leonard; No. 3024 -  
Arlo Leedahl, Leonard; No. 3074 - Donald  
Forsberg, Lisbon; No. 3161 - Lester J.  
Lohse, Williston; No. 3069 - Grosz Brothers,  
Turtle Lake; No. 2214 - David Locken, Oakes;  
No. 3163 - Mary Anne Miller, Moorhead, Minn.;  
No. 3168 - Laverne P. Wolff, Chaseley; No.  
1356 - James Perhus, Taylor; No. 3174 - City  
of Sykeston; No. 3072 - Jim Meehl, Oakes;  
No. 3028 - Oliver Bergstrom and Hartley J.

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Carlson, Bottineau; No. 3173 - Roger Wright, Cummings; No. 3130 - City of Harvey; No. 2931 - Duane A. Leedahl, Fargo; No. 3122 - K. Kulland Excavating and Gravel Company, Williston; No. 2036 - Edward G. Kudrna, Manning; No. 3169 - City of Lincoln; No. 2962 - Leslie T. Connell, Medora; No. 3176 - Leo A. Paintner, Hannaford; and No. 2450 - Arnold Widmer (this is a request for an additional point of diversion).

The following water permit applications were voided: No. 2927 - James Ohlin, Hope; and No. 2893 - City of Mott.

SEE APPENDIX "G"

CONSIDERATION OF INVITATIONS  
FOR JULY, 1979 COMMISSION  
MEETING

Secretary Fahy stated that an invitation has been received from the Water Management Districts Association inviting the Water Commission to hold their July meeting

in Carrington in conjunction with the Association's meeting.

Secretary Fahy also stated that an invitation has been received from the Hettinger County Water Management District for the Commission to hold their July meeting in conjunction with the dedication of the Indian Creek Dam, scheduled for July 25.

After discussion, it was the consensus of the Commission members that the July meeting will be held in conjunction with the dedication of the Indian Creek Dam on July 25.

CONSIDERATION OF INVITATION  
FOR AUGUST, 1979 COMMISSION  
MEETING

Secretary Fahy stated that Basin Electric has extended an invitation to the Water Commission for August 23 to brief the Commission members on some of Basin's

activities and to tour the Antelope Valley project.

It was requested by Commissioner Wilhelm that at this meeting, Basin representatives be invited to make their "Sunrise Study" presentation, which is a briefing on the Preliminary Base-Load Planning and Siting Study for Proposed Coal-Fired Generation for Basin Electric Power Cooperative.

It was the consensus of the Commission members that the invitation from Basin Electric be accepted for the August 23 Commission meeting.

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CONSIDERATION OF  
FINANCIAL STATEMENT

Matt Emerson presented the financial statement for the Commission's consideration. He reviewed each account, noting that the accounts are in order for the remaining one month of the biennium.

It was moved by Commissioner Gray and seconded by Commissioner Just that the financial statement be accepted as presented. All members voted aye; the motion unanimously carried.

DISCUSSION CONCERNING  
ADDITIONAL HYDROPOWER  
STUDY OF PUMPED-STORAGE  
HYDROPOWER ADJACENT TO THE  
MAIN STEM RESERVOIRS ON  
MISSOURI RIVER  
(SWC Project No. 1652)

Secretary Fahy read a letter from the Omaha Corps of Engineers concerning the status of an additional hydropower study for North Dakota, Nebraska, South Dakota and Montana focusing on an evaluation of the feasibility of pumped-storage hydropower adjacent to the main stem reservoirs on the Missouri River.

The correspondence stated that a preliminary evaluation has been completed of more than 50 potential pumped-storage sites located adjacent to Fort Peck Lake, Lake Sakakawea, Lake Sharpe, and Lake Francis Case. The preliminary evaluation identified nine potential pumped-storage sites for further consideration - three adjacent to Lake Sakakawea, Lake Sharpe, and Lake Francis Case. The sites were selected on the basis of head, storage volume, geology, potential archeological, social, and environmental impacts, and the cost of embankment, penstock, and powerhouse.

During the remainder of this fiscal year, the Corps will prepare reconnaissance level designs and cost estimates for the nine potential pumped-storage sites. An analysis of the fish and wildlife impacts and opportunities associated with each site will be requested from the Fish and Wildlife Service and from the North Dakota Game and Fish Department. An archeological reconnaissance will be conducted at each site by the Corps. Input will be requested from the Federal Energy Regulatory Commission on the potential value of the power at each site. Based on these results, the Corps intends to conduct a comparative analysis of these nine sites and select the best two or three sites for a detailed evaluation in Fiscal Year 1980 through 1982. It was noted in the letter from the Corps of Engineers that the views of the State will be an important factor in the comparative analysis, and suggested that a representative be assigned from the State Water Commission to coordinate the state review of these sites.

Secretary Fahy indicated that his staff would be working very closely with the Corps of Engineers during this study to be sure that the state views are interwoven in the study.

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Following brief status reports on the South Bismarck Ground-Water Study, the Channel "A" project, and the Southwest Area Water Study -

It was moved by Commissioner Gallagher, seconded by Commissioner Just, and unanimously carried, that the meeting adjourn at 4:30 p.m.

  
\_\_\_\_\_  
Arthur A. Link  
Governor-Chairman

ATTEST:

  
\_\_\_\_\_  
Vernon Fahy  
State Engineer and Secretary

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WYOMING  
EXECUTIVE DEPARTMENT  
CHEYENNE

APPENDIX "A"

ED HERSCHLER  
GOVERNOR

Cheyenne--Today Governor Herschler directed the following letter to Texas Eastern Pipeline Corporation.

"After considerable review and analysis I have determined that it is not in the best interests of the State of Wyoming to enter into a contract with Texas Eastern on the proposed coal slurry pipeline, at this time. This has not been an easy decision to arrive at, however, it is the decision that I have had to make.

"The primary reason for my decision is that there are too many questions which must be answered before I am convinced that the proposed coal slurry pipeline would serve the best interests of the state.

"I believe that the legislation put the cart before the horse. The review process which I was required to pursue should have been accomplished prior to the passage of this legislation. Careful consideration should be given to any piece of legislation on water issues before it becomes law.

"The 90 day review period authorized by the Legislature was not sufficient to seek full resolution to the following issues and questions:

- 1) Is it in the best interests of the State of Wyoming to export its precious water resources to Texas?
- 2) What is the real amount of water available to the state if this project is constructed?
- 3) Is that amount of water sufficient to satisfy the future water demands in Northeast Wyoming?
- 4) What are the associated social, economic and environmental side affects of this project on Northeast Wyoming?
- 5) Is there a possibility of negotiating an agreement with the Indians concerning future water uses in the Little Big Horn?
- 6) Has there been a thorough assessment of the means to protect the environment of the Little Big Horn River Valley?
- 7) What are the Interstate Commerce Clause ramifications of this project on our water once the water enters the pipeline?

"These are some of the major questions which should and must be addressed before I consent to any out-of-state use of Wyoming's water resources. Essentially, the issue is can the State of Wyoming secure enough benefits from this project to justify participating with Texas Eastern in developing the coal slurry pipeline? At this time, I can not answer that question definitively either yes or no.

"I recognize of course that the proposal has certain benefits, and it has certain liabilities. But even more importantly it has too many uncertainties. Further, as written, the legislation allows Texas Eastern the right to reserve judgement on the merits of the proposal until after completion of the feasibility study. However, the State of Wyoming is not allowed the same luxury. In other words, if I sign the contract now, based on incomplete information, I cannot back out in the future if the feasibility study determines that there is not enough water to satisfy the water needs within Wyoming.

"With continued analysis and discussion, I believe that these uncertainties can be resolved. However, I do not believe that it is prudent or wise to act in haste and thereby commit ourselves and our precious resources to this project until the major uncertainties are resolved.

"It is my policy, and I believe it should be state policy, that no longer will the export of state water be allowed without close and detailed analysis. Further, the export of water will only occur, at least while I am Governor, on terms and conditions that are compatible with the best long-term interests of Wyoming in mind.



MARTHA B. MCGEE  
CHIEF CLERK

*The Big Sky Country*

**MONTANA STATE HOUSE OF REPRESENTATIVES**

OFFICE OF THE CHIEF CLERK

ROOM 347, STATE CAPITOL  
HELENA, MONTANA 59601

May 16, 1979

The Honorable Arthur A. Link  
Governor  
State of North Dakota  
Capitol Building  
Bismarck, North Dakota 58501

Dear Governor Link:

I am directed by the Montana State House of Representatives to transmit a copy of House Joint Resolution No. 48 to you. Herewith, please find a copy of this resolution enclosed.

House Joint Resolution No. 48 concerns the Yellowstone River Compact.

Respectfully,

*Martha B. McGee*

Martha B. McGee  
Chief Clerk

MBM/pg

Enclosure

LR

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ENCOURAGE SIGNATORY STATES OF THE YELLOWSTONE RIVER COMPACT TO ABIDE BY THE PROVISIONS OF THE COMPACT AND TO LIMIT WATER DIVERSIONS TO THOSE AUTHORIZED IN MANNER AND AMOUNT BY THE COMPACT AND TO PERMIT WATER DIVERSIONS ONLY CONSISTENT WITH THE PROVISIONS OF THE COMPACT.

WHEREAS, on December 8, 1950, the states of Montana, Wyoming, and North Dakota, being moved by consideration of interstate comity and desiring to remove present and future controversies between the states respecting waters in the Yellowstone River Basin and designed further to provide an equitable division and apportionment of the waters of the Yellowstone River Basin and recognizing the great importance of water for irrigation in the signatory states, did enter into the Yellowstone River Compact, Section 85-20-101, et seq., MCA, which Yellowstone River Compact was thereafter federally approved by the Congress of the United States; and

WHEREAS, the Yellowstone River Compact has governed water use in the Compact states of Montana, Wyoming, and North Dakota and has promoted cooperation between the states, has encouraged water conservation and development between the states, and has averted costly and time-consuming litigation between the states; and

WHEREAS, recent actions by various legislatures of the Compact states permitting diversions of Yellowstone River Basin

water in methods inconsistent with the Yellowstone River Compact have been introduced and are now under consideration and may be approved by such legislatures; and

WHEREAS, these actions threaten the harmonious cooperation between the states, threaten the purposes of the Yellowstone River Compact, and threaten to involve the states in prolonged and expensive litigation before the United States Supreme Court or in other courts of competent jurisdiction involving the application of the Yellowstone River Compact, its provisions, and the legality of the proposed diversions; and

WHEREAS, such consequences can only result in actions adverse to the water users within the Compact states and adverse to the interests of the Compact states and to the continued cooperative relationship between the states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges and requests the signatory states of the Yellowstone River Compact to abide by the provisions of the Yellowstone River Compact and to limit water diversions to those authorized in manner and amount by the Compact and to permit water diversions only consistent with the provisions of such Compact.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Governor of Wyoming and to the President of the Senate and Speaker of the House of the Wyoming Legislature, to the

Governor of North Dakota and the President of the Senate and Speaker of the House of the North Dakota Legislature, and be further brought to the attention of appropriate members of the Montana Congressional Delegation and the appropriate congressional and executive branch leaders.

I hereby certify that the  
within joint resolution  
originated in the House.

Martha L. McSweeney  
Chief Clerk

Harold E. Gerke  
Speaker of the House  
Signed this 21 day  
of March 1979.

W. L. G. Martin  
President of the Senate  
Signed this 21 day  
of March 1979.

## GUIDELINES FOR IMPLEMENTATION OF HB1380 (N.D.C.C. 44-04-20)

TO: All North Dakota State Agencies and Agencies of Political Subdivisions Holding Meetings Subject to the North Dakota Open Meetings Law

FROM: Allen I. Olson, Attorney General

The North Dakota Attorney General's office is providing these guidelines to you in accordance with the requirements of HB1380, passed by the forty-sixth Legislative Assembly. HB1380 (soon to be codified as North Dakota Century Code Section 44-04-20) requires all units of state and local government holding meetings covered by the provisions of the open governmental meeting statute (North Dakota Century Code Section 44-04-19) to give notice of its meetings. The new law requires this office to establish guidelines for notice of open meetings. These guidelines are set forth below.

NOTE: THESE GUIDELINES MUST BE READ IN CONJUNCTION WITH HB1380, A COPY OF WHICH IS ATTACHED.

IF YOU HAVE ANY QUESTIONS, CONTACT THE SPECIAL ASSISTANT ATTORNEY GENERAL FOR YOUR AGENCY OR THE STATE'S ATTORNEY OF YOUR COUNTY.

### I. WHAT IS A "MEETING"?

Section 44-04-18 of the North Dakota Century Code requires that except as otherwise provided by law, all meetings of bureaus, boards, commissions or agencies of state government, political subdivisions and public bodies supported in whole or in part by state funds shall be open to the public.

- A. Whether or not a meeting is or will be held which must be open to the public under North Dakota Century Code Section 44-04-18 must be determined by the governmental agency, board or commission holding the meeting.
- B. The meetings of some governmental agencies and political subdivisions are exempt from the requirements of an open meeting. Check with your special assistant attorney general or county state's attorney to see if any meetings to be held by your agency, board, or commission are exempt.
- C. In determining whether a meeting is being held, it is suggested you consider: 1) the topic for discussion; 2) whether any decision is to be reached and; 3) the number of members present. These are only some things which must be considered. No one of them is more important than the other.

### II. HOW AND WHEN MUST NOTICE OF OPEN PUBLIC MEETINGS BE MADE?

Once it has been determined that a "meeting" will be held, notice of that meeting must be given. The type of notice to be given under HB1380 depends in turn on the type of meeting that will be held.

- A. Regular meetings -- for which a schedule is established by law or for which a schedule can otherwise be set for an entire year:
  1. One notice must be filed with the Secretary of State, city attorney, or state's attorney, by January 31 of the year for which the schedule applies.
  2. A written notice must also be posted in a conspicuous place at each place the agency, board or commission holds meetings and at the office of the government agency, if it has an office.

3. Each notice must be posted no later than the time the members of the agency, board or commission who are to meet are notified of their own meeting. We encourage you to give notice to the members of your agency attending the meeting and to the members of the public at the earliest possible date.

**B. Regular meetings -- with no yearly schedule**

1. For those agencies, boards or commissions which hold a regular meeting every week, month, every two months, etc., but for which no certain date is set either in state law or in a yearly meeting schedule established by the agency, one written notice must be posted in a conspicuous place at each place the agency regularly holds meetings and the office of the government agency, if it has any.
2. Each posted notice must be posted no later than the time the members of the agency, board or commission who are to meet are notified of the meeting. We encourage every agency to give notice to its members and to the public as early as possible.

**C. Emergency or Special Meetings**

1. No written notice need be posted.
2. Written or oral notice must be given to any member of the news media (newspaper, tv, radio) who requests it. An agency may require representatives of any paper, television station, or radio station to file a written request with the agency, board, or commission, at the beginning of every year if that paper or station requests to be notified of meetings on a regular basis. However, no unwritten, oral request of any paper or station given immediately preceding a meeting should be denied.

**D. Meetings continued to another Time**

1. If notice of the original meeting has been given in accordance with HB1380 and these guidelines, there is no requirement that another notice be given for a continuation of the first meeting to another day if:
  - a. The meeting is continued to a definite time and place.
  - b. The second meeting is held within a reasonably short time of the first meeting.
2. But, any formal action agreed to be taken or not taken should not be reversed or modified at a later meeting unless notice is again given in accordance with HB1380 and these guidelines.

**III. WHAT MUST BE CONTAINED IN THE NOTICE?**

HB1380 requires essentially the same thing in every type of public notice of a meeting.

- A. Every item in the notice (date, time, place, subject) should be specified as clearly as possible.
- B. Each agency, board or commission should attempt to prepare a rough agenda of its meetings beforehand and try to follow its planned agenda as far as is practicable.

REMEMBER: THESE GUIDELINES MUST BE READ ALONG WITH HB1380. IF YOU HAVE ANY QUESTIONS, CONTACT YOUR STATE'S ATTORNEY OR SPECIAL ASSISTANT ATTORNEY GENERAL.

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Forty-Sixth Legislative Assembly, State of North Dakota begun and held at the Capitol in the City of Bismarck, on Wednesday, the third day of January, one thousand nine hundred and seventy-nine.

HOUSE BILL NO. 1380  
(Representative Stenehjem)  
(Senator Holmberg)

AN ACT requiring full, adequate, and timely notice of the meetings of all public bodies.

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

SECTION 1. NOTICE OF PUBLIC MEETINGS REQUIRED - EXCEPTIONS - SCHEDULE SET BY STATUTE, ORDINANCE, OR RESOLUTION.) Unless otherwise provided by law, public notice must be given in advance of all meetings governed by section 44-04-19. This notice shall contain the date, time, and location of the meeting and, where practicable, the topics to be considered. However, the lack of an agenda in the notice, or a departure or an addition to the agenda at a meeting, shall not affect the validity of the meeting or the actions taken thereat. In cases where the public body holds regularly scheduled meetings, the schedule of these meetings, including the aforementioned notice information, shall be filed annually in January with the secretary of state for state-level bodies, the city auditor for city-level bodies, and the county auditor for all other public bodies. This schedule shall be furnished to anyone who requests the information. In addition, every public body shall post public notice of each of its meetings at its principal office, if such exists, and at the location of the meeting. The public body's presiding officer shall have the responsibility of assuring that such public notice is given at the same time as such public body's members are notified, and that this notice is available to anyone requesting such information.

In the event of emergency or special meetings of a public body, the person calling such a meeting shall notify representatives of the news media, if any, located where the meeting is to be held and which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such public body's members are notified.

Where reasonable and practicable, a public body should attempt to set a regular schedule for its meetings by statute, ordinance, or resolution.

The attorney general shall prepare general guidelines to assist public bodies in following the provisions of this Act.

Unless otherwise specified by law, resolution, or ordinance, or as decided by the public body, notices required by this Act do not have to be published. The provisions of section 12.1-11-06 shall not apply to this Act.



# NORTH DAKOTA

# STATE WATER COMMISSION

**900 east boulevard  
701-224-2750**

**bismarck 58505  
north dakota**

MEMO TO: Vern Fahy, Milt Lindvig  
FROM: Michael Dwyer  
RE: Reasonable Recapture Doctrine - SWC File #C7  
DATE: May 21, 1979

Attached is a copy of a Nebraska Supreme Court decision which provides some insight into our "reasonable recapture" doctrine. Its applicability in our state is questionable since Nebraska groundwater laws are not the same, but the principles involved in the case should provide further understanding of the "reasonable recapture" concept.

Generally, with respect to groundwater, Nebraska follows a riparian theory, based on a combination of the "reasonable" use rule, and the "correlative rights" rule. The reasonable use rule provides that all overlying landowners may appropriate and apply waters to beneficial use on their lands. However, any appropriation unconnected with beneficial use of the land is "unreasonable" if such use is injurious to others who have rights to the water. The "correlative rights" rule provides all overlying landowners with an equal share in water. Nebraska's combination of these two rules was stated in Olson v. City of Wahoo, decided in 1933:

The American rule is that the owner of land is entitled to appropriate subterranean waters found under his land, but he cannot extract and appropriate them in excess of a reasonable and beneficial use upon the land which he owns, especially if such use is injurious to others who have substantial rights to the waters, and if the natural underground supply is insufficient for all owners, each is entitled to a reasonable proportion of the whole, and while a lesser number of states have adopted this rule, it is, in our opinion, supported by the better reasoning.

In other words, Nebraska follows the "reasonable" use doctrine with the addition of the "correlative rights" doctrine in times of insufficient supplies of water.

The attached case does not deal with a time of shortage of water. Rather, it is a situation where the aquifer in question has a plentiful supply of water, but an irrigation well caused nearby domestic wells to dry up. It was established during the trial that the domestic wells would produce if improved. Nebraska's preference statute provided guidance to resolve the case. That statute states:

GOVERNOR ARTHUR A. LINK  
Chairman

RICHARD P. GALLAGHER  
Vice Chairman-Mandan

ALVIN A. KRAMER  
Minot

GOROON 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

MEMO TO: Vern Fahy, Milt Lindvig  
May 21, 1979  
Page 2

Preference in the use of underground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations.

The Court relied heavily on the preference statute. However, if this statute had not existed, the Nebraska Court would have been compelled to determine a proper remedy, if any, based on a "reasonable harm" theory. In such a situation, the Nebraska Court indicates it would have used the restatement of Torts, which is similar to our statute, and provides:

Non-liability for use of ground water — exceptions. A possessor of land or his grantee who withdraws ground water from the land and uses it for a beneficial purpose is not subject to liability for interference with the use of water by another, unless (a) the withdrawal of water causes unreasonable harm through lowering the water table or reducing artesian pressure,...

A review of the attached opinion indicates that it is likely that the Nebraska Courts would have found that the irrigation well, which required the plaintiffs to incur expenses of \$5,346.58 to capture their water under the changed conditions, constituted an unreasonable interference. This assumption is derived from the District Court's determination that the defendant's appropriation of water "caused unreasonable harm...by lowering the water table and reducing artesian pressure."

However, since the preference statute is on the books, it was a clear decision that a lower preference could not cause damage to a higher preference, and thus the irrigator was required to pay the costs of improving the plaintiff's wells.

This question in North Dakota would be determined by North Dakota Century Code Section 61-04-06.3, which states:

61-04-06.3. PRIORITY.—Priority in time shall give the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the state engineer, except for water applied to domestic, livestock, or fish, wildlife, and other recreational uses in which case the priority date shall relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

MEMO TO: Vern Fahy, Milt Lindvig  
May 21, 1979  
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Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of stream flow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can reasonably acquire his water under the changed conditions.

Since "reasonableness" is a factual determination, the Courts would be called upon to determine whether a prior appropriator could reasonably acquire his water under the changed conditions.

*Mik*  
Michael Dwyer  
Director of Legal Services

MD:pjw  
Incl.: as  
cc: State Water Commission

PRATHER  
NO. 41203

V.

EISENMANN

Filed February 1, 1978.

1. Preference in the use of underground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

2. Domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations.

3 As between domestic users of ground water there is no preference or priority. Every overlying owner has an equal right to a fair share of the underground water for domestic purposes.

4. The measure of recovery in all civil cases is compensation for the injuries sustained.

5. A possessor of land who withdraws ground water from the land and uses it for a beneficial purpose is not subject to liability to preferential users unless the withdrawal causes unreasonable harm through lowering the water table or reducing the artesian pressure in existing wells having a preferential use.

This document filed for with State funds.

6. Under our preference statute an irrigation appropriation can never obtain a right superior to overlying owners to the use of underground water for domestic purposes.

This document and its contents are confidential.

Heard before White, C. J., Spencer,  
Boslaugh, McCown, Clinton, Brodkey, and White, JJ.

SPENCER, J.

This is an action brought by domestic well owners to enjoin the pumping of ground water from an irrigation well owned by defendants, and for damages. The District Court found defendants' withdrawal caused a loss of artesian pressure in plaintiffs' wells, interfering with their domestic appropriation.

The court found the water was sufficient for all users if plaintiffs lowered their pumps to below the aquifer and defendants did not lower their pump. It permanently enjoined defendants from lowering their pump and from pumping for the period of time reasonably required by plaintiffs to lower their pumps. The court awarded plaintiffs the necessary costs of providing an assured alternative method of water supply, or a total recovery of \$5,346.58. We affirm.

Plaintiffs Prather are the owners of a 9-acre tract upon which they maintain their residence. The residence is supplied with water by an artesian well located on the premises. The artesian pressure was normally sufficient to force water in the well to a level 5 to 6 feet above the ground. The well was 121 feet 10 inches deep and 2 inches in diameter.

Two other landowners, Furleys and Zesins, assigned their claims to Prathers. Unless designated by name hereafter, they are included in the title "plaintiffs." The Furleys are the owners of a 2-acre tract. The residence on the premises is supplied with water from an artesian well 111 feet

deep and 2 inches in diameter. The artesian pressure was sufficient to raise the water above the ground.

The Zessins are the owners of a tract of land in the same area which is occupied by their daughter. The residence upon the premises is supplied with water by a 160-foot well with 4-inch casing and a submersible pump. The water in the Zessin well did not rise above the surface of the ground.

Defendants Eisenmanns purchased a 90-acre tract of land in the area in March of 1976. On July 9, 1976, they completed an irrigation well on the premises. The well was 179 feet deep and had a capacity of 1,250 gallons per minute on a 2-hour test.

On July 9, 1976, Eisenmanns commenced pumping from the well at an estimated rate of 650 gallons per minute. Prathers and Furleys lost the use of their wells on July 10, 1976. Zessins lost the use of their well between the evening of July 12 and the morning of July 13 when the water level dropped below the level of the submersible pump. Because of the loss of water, the Zessins' pump overheated and welded itself to the casing. Zessins were unable to dislodge the pump and were forced to drill a new well to a depth of 164 feet.

Following a stipulation by the parties, a temporary injunction was issued on July 20, 1976, to permit the University of Nebraska Conservation and Survey Division to conduct certain tests on the wells. The tests consisted of pumping the irrigation well at a rate of 375 gallons per minute for 3 days, then measuring the draw down of the Eisenmanns' well and a number of other observation wells which included the three domestic

wells. At the end of the pumping period the measured draw down on the Prathers' well was 61.91 feet; the Furleys' well, 65.45 feet; and the Zessins' well, 65.6 feet. The draw down of the Eisenmanns' well was 97.92 feet. All the wells recovered to the prepumping level within 11 days after cessation of pumping from the irrigation well.

The two hydrologists who conducted the tests made certain findings: (1) The irrigation well and the domestic wells were drawing from the same aquifer. (2) The aquifer could be defined with reasonable scientific certainty. (3) The pumping by Eisenmanns depressed the artesian head of the domestic wells. (4) The cone of influence caused by Eisenmanns' pumping intercepted or affected the plaintiffs' wells. (5) The common aquifer from which the domestic and irrigation wells draw water is sufficient to supply both domestic and irrigation needs. (6) For plaintiffs to obtain water from their wells during periods when Eisenmanns were pumping, they would have to pump water from the top of the shale.

Section 46-635, R. R. S. 1943, defines "ground water" as: " \* \* \* that water which occurs or moves, seeps, filters, or percolates through the ground under the surface of the land." The existence of ground water in any particular area is dependent not only on the source of the water but also on the geologic formation of the earth. The earth materials with sufficient porosity to contain significant amounts of ground water and sufficient permeability to allow its withdrawal in significant quantities are called "aquifers." The upper surface of the water-saturated material is called "the water table."

Aquifers are almost always underlain by an impervious layer which prevents the water from percolating and seeping downward to such a level that it would be beyond economical reach. Two of the domestic wells involved were dependent upon artesian pressure. This results when ground water is not only underlain by impervious material but is confined between or underneath impervious layers as well. A well penetrating through one of the surrounding impervious layers provides an escape valve through which water will flow without external force so long as sufficient artesian pressure exists.

Before restating the current Nebraska law, it is well to note the various common law views concerning rights to ground water. The nonstatutory theories are classified as: (1) The common law, or English rule; (2) the reasonable use, or American rule; and (3) the correlative rights doctrine, or California rule.

Under the English or common law rule, a landowner had absolute ownership of the waters under his land. He could, therefore, without liability, withdraw any quantity of water for any purpose even though the result was to drain all water from beneath surrounding lands.

The American rule of reasonable use also recognized a proprietary interest of an overlying owner in the waters under his lands. "The American, as distinguished from the English rule, is that, while the owner of the land is entitled to appropriate subterranean or other waters accumulating on his land, which thereby becomes a part of the realty, he cannot extract and appropriate them in excess of a reasonable and

beneficial use upon the land he owns, unconnected with the beneficial use of the land, especially if the exercise of such use in excess of the reasonable and beneficial use is injurious to others, who have substantial rights to the water." *Metropolitan Utilities Dist. v. Merritt Beach Co.*, 179 Neb. 783, 140 N. W. 2d 626 (1966). There is no preference as to use under the American rule.

The California or correlative rights rule essentially provides the rights of all landowners over a common aquifer are coequal or correlative and one cannot extract more than his share of the water even for use on his own land where others' rights are injured thereby.

Nebraska has had few decisions dealing with underground water problems. In *Olson v. City of Wahoo*, 124 Neb. 802, 248 N. W. 304, our court, in 1933, enunciated a modified reasonable use rule. It said:

"The American rule is that the owner of land is entitled to appropriate subterranean waters found under his land, but he cannot extract and appropriate them in excess of a reasonable and beneficial use upon the land which he owns, especially if such use is injurious to others who have substantial rights to the waters, and if the natural underground supply is insufficient for all owners, each is entitled to a reasonable proportion of the whole, and while a lesser number of states have adopted this rule, it is, in our opinion, supported by the better reasoning." (Italics supplied.)

The portion emphasized was not a part of the American rule as enunciated in a majority of the states. Nebraska, in *Olson*, adopted the rule of reasonable use with the addition of the California doctrine of

apportionment in time of shortage.

In the subsequent case of Luchsinger v. Loup River P. P. Dist., 140 Neb. 179, 299 N. W. 549 (1941), the court's attention was directed to the fact that the Olson enunciation was dicta. The contention was made it was not binding on the defendants in that controversy. The court answered the suggestion of dicta as follows: "Whatever may be thought of its applicability to the case in which the rule was adopted, it answers for itself as a sound proposition of law essential to the protection of property rights of private individuals and is consistent with the Constitution and with morality and justice."

In Metropolitan Utilities Dist. v. Merritt Beach Co., 179 Neb. 783, 140 N. W. 2d 626 (1966), this court said: "The rule in this state as to the rights of riparian owners is that, while the owner of land is entitled to appropriate subterranean or other waters accumulating on his land, which thereby becomes a part of the realty, he cannot extract and appropriate them in excess of a reasonable and beneficial use upon the land he owns, unconnected with the beneficial use of the land, especially if the exercise of such use in excess of the reasonable and beneficial use is injurious to others who have substantial rights to the water." This statement, which was the reasonable use doctrine, led some commentators to question whether the omission of proportionate use was intentional. It was not. Proportional use was not involved in that case. Our law remained as it was enunciated in Olson v. City of Wahoo, 124 Neb. 802, 248 N. W. 304 (1933).

The question the instant case presents

is one of first impression in this state. The three domestic wells of the plaintiffs do not contribute significantly to a reduction in the artesian pressure or water level of the underground aquifer. It was not until the defendants subsequently sunk and operated their irrigation well that plaintiffs lost the artesian pressure and the use of their wells.

The evidence indicates defendants had a runoff of approximately 15 to 25 gallons of water per minute above the water utilized on their land. The trial court found this was in excess of a reasonable and beneficial use on their own land. It is not necessary for us to reach this issue. We do not deem it material in view of the decision we reach herein. This case must be analyzed in reference to section 46-613, R. R. S. 1943, the preferential use statute.

Under the reasonable use doctrine, two neighboring landowners, each of whom is using the water on his own property overlying the common supply, can withdraw all the supply he can put to beneficial and reasonable use. What is reasonable is judged solely in relationship to the purpose of such use on the overlying land. It is not judged in relation to the needs of others. Harnsberger, Oeltjen, & Fischer, Groundwater: From Windmills to Comprehensive Public Management, 52 Neb. L. Rev. 179 at p. 205 (1973).

Our preference statute points the way to a solution of the present controversy. It is apparent the trial court used it with an adaptation of the rule proposed in the Tentative Draft No. 17 of section 858A of Restatement, Torts 2d (1971). That rule provides in part: "S. 858A. Non-liability

\* \* \*

for use of ground water -- exceptions. A possessor of land or his grantee who withdraws ground water from the land and uses it for a beneficial purpose is not subject to liability for interference with the use of water by another, unless (a) the withdrawal of water causes unreasonable harm through lowering the water table or reducing artesian pressure, \* \* \*." The District Court found defendants' appropriation of water "caused unreasonable harm to plaintiffs by lowering the water table and reducing artesian pressure."

The comment in Restatement, Torts 2d, suggests the tentative rule is the American rule with its protection broadened. It is not so broad, however, as the Nebraska rule. As the comment notes, it gives more or less unrestricted freedom to the possessor of overlying land to develop and use ground water. It does not attempt to apportion the water among users except to the extent that special conditions permit it to be done on a rational basis. It gives the protection of the American rule to owners of small wells harmed by large withdrawals for use elsewhere, but extends that protection in proper cases to harm done by large withdrawals for operation on overlying lands.

Much of the litigation involving users of ground water has involved the collateral effects of a withdrawal of the water rather than a division of it. There was no problem here with the artesian pressure until defendants withdrew in excess of 350 gallons per minute and lowered the water beyond the reach of the domestic wells.

There is sufficient water in the aquifer for all the parties if defendants' irrigation well remains at its

This document sold by the State Library

present level and the domestic wells are lowered to the top of the shale. The trial court found plaintiffs had been damaged to the extent of the expense necessary to lower their wells to the shale.

The term reasonable use, as contemplated in the American rule, relates to the manner in which water is used upon the land of the appropriator. The interests of adjacent landowners are in issue only when the appropriator uses water in excess of the reasonable and beneficial use of it upon his land, and that excess use is injurious to the adjacent landowner.

The term "reasonable use" as defined in the correlative rights doctrine means reasonable share of the whole. Under the correlative rights doctrine, the overlying owners have no proprietary interest in the water, and in times of shortage each overlying owner has an equal and correlative right to make beneficial use of his proportionate share of the water.

Reasonable use, as defined in the proposed Restatement doctrine, means a balancing of the equities between the use made of the water by the subsequent appropriator versus the injury caused by that use to the prior appropriator.

The Nebraska rule, as previously pointed out, is a combination of the American and the correlative rights doctrine. It must be construed, however, in the light of our preference statute, section 46-613, R. R. S. 1943. This statute provides as follows:

"Preference in the use of underground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for

\*\*

any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

"As used in this section, domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations."

It is our statute which distinguishes the Nebraska rule from other rules. Under the statute, the use of underground water for domestic purposes has first preference. It takes priority over all other uses. As between domestic users, however, there is no preference or priority. Every overlying owner has an equal right to a fair share of the underground water for domestic purposes. If the artesian head in the present situation had been lowered by other domestic users, plaintiffs would be entitled to no relief so long as they still could obtain water by deepening their wells. If the water became insufficient for the use of all domestic users, each domestic user would be entitled to a proportionate share of the water. All domestic users, regardless of priority in time, are entitled to a fair share of the water in the aquifer.

That, however, is not the present problem. We are dealing with plaintiffs who have preferential rights. We are confronted with the situation where the appropriation by the defendants rendered the plaintiffs' well useless during the pumping period and the period of time after the pumping ceased to recharge the area so the water again reached plaintiffs' pumps.

In the case of the 3-day test conducted by the hydrologists, this recharge period was 11 days. In the case of the Zessin well, the appropriation by defendants also froze the pump to the pipe and required the drilling of a new well.

Plaintiffs can still obtain sufficient water for domestic purposes by drilling wells to the shale. It would not have been necessary for them to incur the necessary expense to do so except for the action of defendants. Without question, plaintiffs have been damaged by the operation of defendants' well. As the trial court found, defendants' withdrawal of water caused unreasonable harm to plaintiffs by lowering the water table or reducing the artesian pressure. Plaintiffs had obtained a property right in that use so they should have a remedy for their damage.

The remedy devised by the trial court presents a very equitable solution. It reimburses the plaintiffs only for the expense they were forced to incur because of the action of the defendants. Plaintiffs' wells were very adequate for their own purposes. Their use of water for domestic purposes took precedence over the appropriation for agricultural purposes by the defendants. Plaintiffs had a valuable property right in the extraction of water for domestic purposes. It was solely defendants' action which deprived them of their right. Defendants, by pumping large quantities of water from the same aquifer, destroyed the artesian pressure for two of the wells. For the other well, which was deeper and used a pump, defendants' action lowered the water below the reach of the pump and the resultant heat froze the pump to the pipe. The only way plaintiffs could

be assured of water for domestic purposes was to drill wells to the shale. This expense was thrust upon plaintiffs solely as a consequence of defendants' action in destroying plaintiffs' artesian pressure and lowering the water below the reach of their domestic wells. Plaintiffs' right to the extraction of water from their existing wells was appropriated or destroyed by the action of defendants. What should be the extent of plaintiffs' damage? Certainly it should be the cost of restoring or obtaining what plaintiffs had before it was appropriated by defendants' action.

The measure of recovery in all civil cases is compensation for the injury sustained. *Abel v. Conover*, 170 Neb. 926, 104 N. W. 2d 684 (1960). We hold the defendants are liable for the necessary and reasonable expense to restore what plaintiffs lost by defendants' action. This is the result reached by the trial judge, and we affirm the judgment rendered.

The solution devised by the District Court is the correct one. The judgment is affirmed.

AFFIRMED.



# STATE OF NORTH DAKOTA

EXECUTIVE OFFICE

BISMARCK

ARTHUR A. LINK  
Governor

## EXECUTIVE ORDER 1979-8

Section 61-16-15 of the North Dakota Century Code requires a permit from the appropriate water management district and the North Dakota State Engineer prior to the construction of any dam, dike, or other device for flood control purposes, which is capable of retaining or diverting more than 12½ acre-feet of water. An extensive series of dikes have been constructed in North Dakota along the Red River without necessary authorization, and therefore, these dikes are illegal. However, the severe flooding of 1979 caused the breach of many of these dikes.

Extensive dikes have also been constructed on the Minnesota side of the Red River, without proper authorization according to Minnesota law. Therefore, the dikes in Minnesota on the Red River are also illegal. I have agreed with my counterpart in Minnesota, Governor Al Quie, that it is necessary to prohibit the reconstruction of any existing dikes, or the construction of any new dikes, until uniform rules for dike construction are adopted in both states. We have set August 15 as the deadline for this effort.

Therefore, I hereby order that, effective immediately, the provisions of this Executive Order will be implemented by the North Dakota State Water Commission and the North Dakota State Engineer:

1. The North Dakota State Engineer shall take immediate enforcement action against any individual who initiates reconstruction of any existing dike, or construction of any new dike, in North Dakota without proper compliance with law.
2. The North Dakota State Engineer shall immediately dedicate necessary staff personnel to meet with equal counterparts in Minnesota to adopt uniform rules concerning the construction of new dikes and the reconstruction of existing dikes along both sides of the Red River. The agreement between the North Dakota State Water Commission and the Minnesota Department of Natural Resources shall also be amended, if necessary, in a manner deemed appropriate.
3. The North Dakota State Engineer shall immediately dedicate necessary staff personnel to meet with equal counterparts in Minnesota to develop uniform procedures for addressing existing agricultural dikes along both sides of the Red River.
4. The effort set out in paragraphs 2 and 3 shall be completed no later than August 15, 1979, at which time the results and conclusions of uniform rules, procedures and criteria shall be presented at a joint meeting between the Governors of North Dakota and Minnesota.

Executive Order 1979-8  
Page Two

5. During this time, effective immediately, the North Dakota State Engineer shall dedicate staff personnel to cause an inventory to be made of existing dikes in North Dakota along the Red River. It is not necessary, however, that this inventory be completed by August 15.
6. In carrying out this Executive Order, the State Engineer shall consult and seek the advice of the Red River Joint Water Management Board.

Executed at Bismarck, North Dakota, this nineteenth day of June, 1979.

  
\_\_\_\_\_  
ARTHUR A. LINK  
Governor

ATTEST:

  
\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Deputy

## RESOLUTION NO. 79-6-404

ORDER PROHIBITING CONSTRUCTION OF NEW DIKES  
AND RECONSTRUCTION OF EXISTING DIKES ALONG  
THE RED RIVER OF THE NORTH

WHEREAS, the Red River of the North is an interstate and international river, draining thousands of acres of watershed area in North Dakota, South Dakota, and Minnesota; and

WHEREAS, In recent years, frequent flooding by the Red River of the North has caused the loss of millions of dollars in damage and has destroyed crops, roads, bridges, and buildings; and

WHEREAS, extensive dikes have been constructed along the Red River of the North, both in Minnesota and North Dakota, north of Grand Forks, North Dakota. However, the dikes constructed along the Red River in Minnesota are more extensive (46 miles in Minnesota compared to 21 miles in North Dakota); more continuous, and capable of retaining more water, and therefore magnify damages in North Dakota caused by flooding of the Red River; and

WHEREAS, the severe flooding of the Red River in 1979 caused the breach of many of the dikes along the Red River; and

WHEREAS, Governor Link and Minnesota Governor Quie have agreed that it is necessary to prohibit the reconstruction of any existing dikes, or the construction of any new dikes, until uniform rules for dike construction are adopted in both states, to ensure that citizens on both sides of the Red River receive equitable protection from agricultural dikes.

NOW, THEREFORE, BE IT RESOLVED, that the North Dakota State Water Commission in its meeting held in Bismarck, North Dakota, on this 25th day of June, 1979, by virtue of its authority pursuant to Section 61-16-15 of the North Dakota Century Code, which requires a permit from the North Dakota

State Water Commission and the appropriate water management district prior to the construction of any dike or other device for flood control purposes, does hereby prohibit and impose a moratorium on the construction of any new dikes, or the reconstruction of any existing dikes, along the Red River of the North in North Dakota.

BE IT FURTHER RESOLVED, that this Order and Moratorium shall remain in effect until formally rescinded by the North Dakota State Water Commission.

BE IT FURTHER RESOLVED, that this Order and Moratorium is hereby issued in accordance with similar action taken by Minnesota.

BE IT FURTHER RESOLVED, that a copy of this Order and Moratorium shall be published in a newspaper of general circulation where the dikes are constructed, and copies shall be forwarded to all County Commissions, Water Management Districts, and all other local, state, and federal officials and agencies concerned with or having an interest in or impact upon the flooding problems of the Red River in North Dakota, and to the Honorable Al Quie, Governor of Minnesota.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:

  
\_\_\_\_\_  
Arthur A. Link  
Governor-Chairman

SEAL

ATTEST:

  
\_\_\_\_\_  
Vernon Fahy  
State Engineer

WATER PERMIT AGENDA FOR JUNE 25, 1979 MEETING

\* INDICATES PRIOR PERMIT STATUS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3170	Cargill, Inc. - Minn., Minn. (Cass County)  Priority: 3-26-79 Hearing: 5- 7-79	Ground Water	Industrial	175.0 acre-feet	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3023	Leedah, Alvin N. - Leonard (Richland County)  Priority: 4- 4-79 Hearing: 5- 7-79	Ground Water	Irrigation	960.0 acre-feet 480.0 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3024	Leedah, Arlo - Leonard (Ransom County)  Priority: 4- 4-79 Hearing: 5- 7-79	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3074	Forsberg, Donald - Lisbon (Ransom County)  Priority: 4- 4-79 Hearing: 5- 7-79	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3161	Lohse, Lester J. - Williston (Williams County)	Cottonwood Lake	Irrigation	300.0 acre-feet 200.5 acres	It is recommended that action be deferred at this time.
	Priority: 2-16-79 Hearing: 5- 7-79	* NO PRIOR PERMITS			
3069	Grosz Brothers - Turtle Lake (McLean County)	Ground Water	Irrigation	520.0 acre-feet 312.0 acres	It is recommended that action be deferred at this time.
	Priority: 4- 6-79 Hearing: 5- 7-79	* NO PRIOR PERMITS			
2214	Locken, David - Oakes (Dickey County)	Ground Water	Irrigation	480.0 acre-feet 320.0 acres	It is recommended that action be deferred at this time.
	Priority: 4- 6-79 Hearing: 5- 7-79	* #2859 (Priority Date: 5-11-77) Granted 150.0 acres - #3013 (Priority Date: 12-19-77) Granted 135.0 acres - (160.9 acres held in abeyance)			
3163	Miller, Mary Anne - Moorhead, Minn. (Griggs County)	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
	Priority: 3- 2-79 Hearing: 5- 7-79	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3168	Wolff, Laverne P. - Chaseley (Kidder County)  Priority: 4-11-79 Hearing: 5-14-79	Ground Water  * NO PRIOR PERMITS	Irrigation	222.0 acre-feet 148.0 acres	It is recommended that action be deferred at this time.
1356	Perhus, James - Taylor (Dunn County)  Priority: 3- 9-66 Hearing for Amendment: 5- 7-79	Knife River, trib. to Missouri River	Irrigation- Waterspreading	This is a request for additional points of diversion.	It is recommended that action be deferred at this time.
3174	Sykeston, City of - Sykeston (Wells County)  Priority: 4-12-79 Hearing: 5- 7-79	Ground Water  * #1023 (Priority Date: 6-28-62) Granted 100.0 acre-feet	Municipal	65.0 acre-feet	It is recommended that action be deferred at this time.
3072	Meehl, Jim - Oakes (Dickey County)  Priority: 4-16-79 Hearing: 5-14-79	GroundWater  * NO PRIOR PERMITS	Irrigation	240.0 acre-feet 155.4 acres	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2927	Ohlin, James - Hope (Steele County)  Priority: 6-16-77	Ground Water  * NO PRIOR PERMITS	Irrigation	960.0 acre-feet 480.0 acres	The applicant has not expressed any further desire to complete the application, therefore, the application has been "Voided-Application Incomplete".
3136	Soderstrom, Stanley - Bowman (Bowman County)  Priority: 10-20-78 Hearing: 12-11-78 Deferred: 2-20-79	Unnamed Stream, trib. to Grand River  * NO PRIOR PERMITS	Recreation	56.5 acre-feet storage; 42.0 acre-feet annual use	56.5 acre-feet storage; 42.0 acre-feet annual use
3061	LaMoure, City of - LaMoure (LaMoure County)  Priority: 3-22-78 Hearing: 5-15-78 Deferred: 6- 1-78	Ground Water (LaMoure Aquifer)  * #1790 (Priority Date: 6-28-71) Granted 8076.0 acre-feet storage and 1482.0 acre-feet annual use for Cottonwood Creek Dam (permit held by city)	Municipal	214.0 acre-feet	214.0 acre-feet
3051	Satterthwaite, Earl - New Town (Mountrail County)  Priority: 2- 6-78 Hearing: 4- 3-78 Deferred: 6- 1-78	Ground Water (Gibb Springs)  * # 253 (Priority Date: 12-13-1904) Granted 100.0 acres #2449 (Priority Date: 5-7-76) Granted 22.1 acres	Irrigation	54.0 acre-feet 66.3 acres	54.0 acre-feet 66.3 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2425	Reed, Clarence R. - Fargo (Ransom County)  Priority: 10-21-76 Hearing on Amendment: 2-20-78 Deferred action on Amendment: 6- 1-78	Ground Water (Sheyenne Delta Aquifer)	Irrigation	This is a request for an additional point of diversion located in SW $\frac{1}{4}$ of Section 20-135-53.	It is recommended that the request for an additional point of diversion be approved.
2565	Peterson, Clouse - Oakes (Ransom County)  Priority: 10- 4-76 Hearing: 1-17-77 Deferred: 2-11-77	Ground Water (Eggewade Aquifer)  NO PRIOR PERMITS	Irrigation	240.0 acre-feet 156.0 acres	188.0 acre-feet 125.0 acres  (Remaining 52.0 acre-feet and 31.0 acres of original request to be denied.)  (This request was approved by the State Engineer on May 23, 1979.)
3028	Bergstrom, Oliver and Carlson, Hartley J. - Bottineau (Bottineau County)  Priority: 4-17-79 Hearing: 6-18-79	Unnamed Stream, trib. to Lake Metigoshe  NO PRIOR PERMITS	Irrigation (Golf Course)	40.0 acre-feet 20.8 acres	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3175	Grand Forks County Water Management District (Upper Turtle River Watershed, Detention Dam No. 4 - Grand Forks (Grand Forks County)	North Branch, trib. to Turtle River	Flood Control	2050.0 acre-feet flood storage; 59.7 acre-feet annual use	2050.0 acre-feet flood storage; 59.7 acre-feet annual use
	Priority: 3- 6-79 Hearing: 6-18-79	* The applicant holds a number of permits.			
3173	Wright, Roger - Cummings (Traill County)	Red River of the North	Irrigation	65.0 acre-feet 13.0 acres	It is recommended that action be deferred at this time.
	Priority: 4-11-79 Hearing: 6-18-79	* NO PRIOR PERMITS			
3130	Harvey, City of - Harvey (Pierce County)	Ground Water	Municipal	1000.0 acre-feet	It is recommended that action be deferred at this time.
	Priority: 5- 3-79 Hearing: 6-18-79	* # 733 (Priority Date: 6-21-57) Granted 2190.0 acre-feet #2845 (Priority Date: 5- 2-77) Granted 500.0 acre-feet			
2931	Leedah, Duane A. - Fargo (Richland County)	Ground Water	Irrigation	240.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
	Priority: 4-17-79 Hearing: 6-18-79	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3122	Kulland, K. Excavating & Gravel Company - Williston (Williams County)	Ground Water	Industrial (Gravel-Wash Plant)	5.0 acre-feet	It is recommended that action be deferred at this time.
	Priority: 4-19-79 Hearing: 6-18-79	* #2445 (Priority Date: 5-10-76) Granted 10.0 acre-feet			
3026	Kudrna, Edward G. - Manning (Dunn County)	Crooked Creek, trib. to Knife River	Irrigation- Waterspreading	100.0 acre-feet 50.0 acres	It is recommended that action be deferred at this time.
	Priority: 4-24-79 Hearing: 6-18-79	* #1523 (Priority Date: 3-2-68) Granted 55.0 acres			
3169	Lincoln, City of - Bismarck (Burleigh County)	Ground Water	Municipal	350.0 acre-feet	It is recommended that action be deferred at this time.
	Priority: 3- 6-79 Hearing: 6-18-79	* NO PRIOR PERMITS			
2962	Connell, Leslie T. - Medora (Billings County)	Little Missouri River, trib. to Missouri River	Irrigation	172.0 acre-feet 115.0 acres	It is recommended that action be deferred at this time.
	Priority: 5- 8-79 Hearing: 6-18-79	* #233 (Priority Date: 1-10-40) Granted 15.0 acres			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3176	Paintner, Leo A. - Hannaford (Griggs County)  Priority: 3-21-79 Hearing: 6-18-79	Ground Water   * NO PRIOR PERMITS	Irrigation	135.0 acre-feet 90.0 acres	It is recommended that action be deferred at this time.
2450	Widmer, Arnold - Crete (Sargent County)  Priority: 5-12-76 Hearing on Amendment: 6-18-79	Ground Water	Irrigation	This is a request for an additional point of diversion located in NE $\frac{1}{4}$ of Section 10-132-58.	It is recommended that action be deferred at this time.
2425	Reed, Clarence R. - Fargo (Ransom County)  Priority: 10-21-76	Ground Water (Sheyenne Delta Aquifer)  * NO PRIOR PERMITS	Irrigation	2080.0 acre-feet 1040.0 acres	On February 11, 1977, the applicant was granted 202.5 acre-feet to irrigate 135.0 acres; balance of request held in abeyance.  The portion held in abeyance has been reviewed and it is recommended that an additional 112.5 acre-feet to irrigate an additional 135.0 acres be released. The balance of the pending request shall be denied.  Totals granted the applicant would be 315.0 acre-feet to irrigate 270.0 acres.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3089	Boeckel, LeRoy L. - Beulah (Mercer County)  Priority: 4-19-78 Hearing: 7-10-78 Deferred: 7-19-78	Ground Water (Antelope Creek Aquifer)  * NO PRIOR PERMITS	Irrigation	320.0 acre-feet 160.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Balance of request held in abeyance)
2879	Dunnigan, Robert - Walhalla (McHenry County)  Priority: 3-31-77 Hearing: 7-19-77 Deferred: 8-16-77	Ground Water (New Rockford Aquifer)  * #2384 (Priority Date: 3-4-76) Granted 158.0 acres #2548 (Priority Date: 9-24-76) Granted 135.0 acres #2949 (Priority Date: 7-19-78) 160.0 Requested, but still pending. Applicant is Irrigation Development Farm.	Irrigation	608.0 acre-feet 320.0 acres	Recommend for approval: 225.0 acre-feet 150.0 acres  (Balance of request held in abeyance)
1179P	Mott, City of - Mott (Hettinger County)  Priority: 6-3-24 for 1st 100.0 acre-feet; 6-3-64 for additional 400.0 acre-feet Hearing on Amendment: 5-8-78 Amendment Deferred: 6- 1-78	Ground Water  * NO PRIOR PERMITS	Municipal	This is a request for a change in points of diversion & for increase in withdrawal rate.	It is recommended that this request be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2893	Mott, City of - Mott (Hettinger County)  Priority: 7-22-77	Ground Water	Municipal	240.0 acre-feet	It is recommended that this application be voided as the point of diversion that was requested is being considered in the amended request under water permit No. 1179P.
3078	Madzo, Richard E. - Medora (Billings County)  Priority: 11- 2-78 Hearing: 2-26-79 Deferred: 4-18-79	Unnamed Creek and Little Missouri River  * NO PRIOR PERMITS	Irrigation- Waterspreading	126.0 acre-feet 63.0 acres	63.0 acre-feet 63.0 acres
3095	Grand Forks-Traill Water Users, Inc. - Thompson (Grand Forks Co.)  Priority: 4-27-78 Hearing: 6- 5-78 Deferred: 6-23-78	Ground Water (Elk Valley Aquifer)	Municipal - (Rural Domestic)	2895.0 acre-feet	400.0 acre-feet  * #1795 (Priority Date: 5-28-71) Granted 650.0 acre-feet #2497 (Priority Date: 7-22-76) Granted 200.0 acre-feet #2985 (Priority Date: 10-10-77) Granted 60.0 acre-feet
2981	Hoggarth Bros. - Courtenay (Griggs County)  Priority: 12- 2-77 Hearing: 12-27-77 Deferred 3-16-78	Ground Water (Spiritwood Aquifer)	Irrigation	408.5 acre-feet 273.2 acres	Recommend for approval: 337.5 acre-feet 225.0 acres  (71.0 acre-feet held in abeyance)
		* #2553 (Priority Date: 9-27-76) Granted 200.0 acres; 736.0 acres held in abeyance			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2977	Frauenberg, James - LaMoure (LaMoure County)	Ground Water (Unnamed Aquifer)	Irrigation	240.0 acre-feet 160.0 acres	225.0 acre-feet 150.0 acres
	Priority: 10-17-77 Hearing: 11-14-77 Deferred: 12- 7-77	* NO PRIOR PERMITS			