

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE February 29, 1980 PLACE SWC Conference Room  
Bismarck, N. Dak.

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

Your Name	Your Address	Who do you Represent? (Or Occupation)
DARNELL LUNDSTROM	FARGO	NDSU Extension
NANCY ROCKWELL	STATE CAPITAL	NRC / GOV'S OFC.
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i> / AP
Ruben Hummel	Mott N. Dak.	farmer
LAURIE McMURTY	MINOT	N. D. WATER USERS
<i>[Signature]</i>	Bismarck	Old West Rural Water Office
Neal G. McClure	"	N. Dak. Rural Water Assoc.
DAVID A. Spryn <i>[Signature]</i> Dryer	Bismarck	NDSUC
Mandi Dryer	Bismarck	US Fish + Wildlife Serv
Donna Wright	Bismarck	RBM R
Vic Hall	"	FWS
Cary Backlund	"	SWC
JIM CLAWSNITZER	BISMARCK	SWC
Len Cernohous	Bismarck	U.S. Fish + Wildlife Service
Phillip Arnold	Purple	USFWS

NORTH DAKOTA STATE WATER COMMISSION  
REGISTER

ATTENDANCE AT \_\_\_\_\_

DATE \_\_\_\_\_ PLACE \_\_\_\_\_

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

Your Name	Your Address	Who do you Represent? (Or Occupation)
DAROLD WALLS	Upham, N.D.	Fish & Wildlife Serv.
Kevin Brennan	Upham, ND	ND Chap. The Wildlife Soc.
JOHN T Lotkemoen	Jamestown, N.D.	Pres-Chap N.D. Wildl Soc
Lloyd C. Jones	Valley City N.D	Chapt N.D. Wildl. Soc.
Jon Malcolm	Billings, MT.	The Wildlife Society
Everett Iron Eyes	Fort Yates, N.D.	STANDING ROCK SIOUX TRIBE
Bill Hanson		NOSWC
Dale Frink		SWC
ROGER Smith		SWC
RONALD BLAUFUSS	BISMARCK	N.D. STATE HIGHWAY DEPT.

MINUTES

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

February 29, 1980

The North Dakota State Water Commission held a meeting in the State Water Commission Conference Room in Bismarck, North Dakota, on February 29, 1980. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:30 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  
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  
Arthur Lanz, Member from Devils Lake  
Arlene Wilhelm, Member from Dickinson

OTHERS PRESENT:

State Water Commission Staff Members  
Darnell Lundstrom, NDSU Extension, Fargo  
Nancy Rockwell, Governor's Office, Bismarck  
Jeff Baenen, Associated Press, Bismarck  
Ruben Hummel, Farmer, Mott  
Laurie McMerty, ND Water Users Association, Minot  
Mark Johnson, Old West Rural Water Office, Bismarck  
Neal A. McClure, ND Rural Water Association, Bismarck  
Mark Dryer, Fish & Wildlife Service, Bismarck  
Donna Wright, KBMR, Bismarck  
Vic Hall, Fish & Wildlife Service, Bismarck  
Len Cernohous, Fish & Wildlife Service, Bismarck  
Phillip Arnold, Fish & Wildlife Service, Pingree  
Darold Walls, Fish & Wildlife Service, Upham  
Kevin Brennan, ND Chapter Wildlife Society, Upham  
John T. Lokemoen, ND Chapter Wildlife Society, Jamestown  
Lloyd Jones, ND Chapter Wildlife Society, Valley City

Jon Malcolm, Wildlife Society, Billings, Montana  
 Everett Iron Eyes, Standing Rock Sioux Tribe, Fort Yates  
 Ronald Blaufuss, State Highway Department, Bismarck

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

The proceedings of the meeting were recorded to assist in compilation of the minutes.

**CONSIDERATION OF MINUTES  
 OF DECEMBER 12, 1979 MEETING -  
 APPROVED**

Secretary Fahy reviewed the minutes from the December 12, 1979 meeting held in Fargo, North Dakota.

Secretary Fahy stated that he had received from Commissioner Wilhelm a request to amend the minutes which pertains to the discussion that took place regarding the expenditures for Secretary Fahy's involvement as President of the National Water Resources Association. She did include a verbatim transcript of that portion of the meeting along with a summary of the discussion, but she did not make any specific requests as to how she wished to amend the minutes.

In discussion of Commissioner Wilhelm's request, it was the consensus of the Commission members that since she had not made a specific request as to how she wished to amend the minutes, and the fact that she was not in attendance at this meeting, that this portion of the minutes be left open for discussion purposes at the next meeting.

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and unanimously carried, that the minutes of the December 12, 1979 meeting be approved.

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and unanimously carried, that upon Commissioner Wilhelm's request, that portion of the minutes pertaining to the discussion regarding the expenditures for Secretary Fahy's involvement as President of the National Water Resources Association be reopened for discussion at the next meeting.

**PRESENTATION BY REPRESENTATIVES  
 OF OLD WEST REGIONAL RURAL WATER  
 OFFICE TO DISCUSS TAX EXEMPT  
 CONSTRUCTION (INTERIM) FINANCING  
 FOR RURAL WATER DISTRICTS**

Mark Johnson from the Old West Regional Rural Water Office, and Neal McClure, Executive Director of the North Dakota Rural Water Association, discussed the concept of tax exempt construction

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(interim) financing for rural water districts. Mr. Johnson's presentation is attached hereto as APPENDIX 'A'. Mr. Johnson explained to the Commission members the construction period (interim) financing for FmHA financed rural water systems, the advantages of tax-exempt construction period (interim) financing; the financing procedures used in South Dakota; and financing procedures that are available for North Dakota. Mr. Johnson said that since most rural water systems in North Dakota are organized as nonprofit corporations or as cooperatives, they are not "political subdivisions" and thus they are unable to issue their own tax-exempt notes to enable them to take advantage of the type of construction period or interim financing which is being proposed.

Mr. Johnson pointed out that the North Dakota law authorizes counties and municipalities to issue revenue bonds, which would be tax-exempt under federal law, for a variety of revenue-producing enterprises. The Municipal Industrial Development Act of 1955, authorizes the leasing or sale of such projects to industrial or commercial enterprises and authorizes loaning the proceeds of such bonds to nonprofit corporations for the construction of health care facilities. This law allows such enterprises to take advantage of the lower interest rates available through tax-exempt financing. The Municipal Industrial Development Act of 1955, however, does not authorize the financing of undertakings in connection with obtaining a water supply and the conservation, treatment, distribution, and disposal of water.

Mr. Johnson said that in order for North Dakota rural water systems to be able to benefit from tax-exempt construction period (interim) financing, legislation will be needed which would authorize a "state agency or political subdivision" of the state to issue notes and loan the proceeds to the rural water systems for the construction period of the rural water system. The political subdivision would repay the notes from the proceeds of the permanent FmHA grant or loan secured by the rural water system. The notes would not be general obligations of the state agency or political subdivision, just as bonds issued under the Municipal Industrial Development Act of 1955 are not general obligations of the municipality which issues the bonds. The political subdivision would merely assist the rural water system by serving as a conduit for the issuance of the notes, which are tax-exempt.

There are a number of political subdivisions with water responsibilities in North Dakota which could be authorized to provide tax-exempt construction period (interim) financing for rural water systems. Probably the most efficient method of providing such financing, Mr. Johnson suggested, is to have a single statewide agency issue the notes. Mr. Johnson said that the State Water Commission may be the appropriate entity to issue such notes, since the State Water Commission is a public corporation and state agency. He stated that if the Commission is interested in pursuing this proposal, legislation should be drafted to enable the State Water Commission to provide tax-exempt construction period (interim) financing for North Dakota's rural water systems.

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Mr. Neal McClure, Executive Director of the North Dakota Rural Water Association, conveyed to the Commission members that the Association is interested in pursuing this interim financing plan and that they will be taking the necessary steps to see that legislation is introduced.

Mike Dwyer, Legal Counsel for the Water Commission, said that if the Commission would like to pursue this proposal, he would prepare a document for the next Commission meeting that sets out: 1) how the interim financing is presently done; 2) the authority the Water Commission now has; and 3) what authority would be needed to carry out this proposal. This would give the members a better understanding of exactly what would be required.

After several questions by the Commission members, Governor Link indicated that there appears to be good positive response, a consensus of agreement, and an indication to pursue this proposal on a constructive basis. The Governor also expressed that he felt we should use our state funding resource, the Bank of North Dakota, but that we should obtain as much information as possible from the consultants in Lincoln, Nebraska, who have been engaged in this kind of financing for other Old West Regional States.

Mr. Johnson replied that the Water Commission would be most helpful at this time by endorsing the concept of the proposal and by providing the technical and legal assistance that would be required.

The question arose if the State Water Commission would be a continuing partner in this promotional program if, and after legislation is passed. Mr. Johnson replied that it would provide the Water Commission with a way of becoming intricately involved with rural water in the State of North Dakota. If the program were handled as it now is in South Dakota it would require action of the Water Commission to issue interim bonds upon request properly filed by an appropriate legal entity.

It was moved by Commissioner Just, seconded by Commissioner Gallagher, and unanimously carried, that the State Water Commission proceed with study and recommendations for tax-exempt construction (interim) financing for rural water districts, and that the Legal Counsel for the Commission prepare for the next meeting a general outline of the proposal, and the legislation that would be required to accommodate this proposal.

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CONSIDERATION OF REQUEST  
FROM MERCER AND DUNN  
COUNTIES WMD FOR FINANCIAL  
ASSISTANCE FOR FLOOD HAZARD  
STUDY ON SPRING CREEK  
(SWC Project No. 232)

Secretary Fahy stated that a joint request has been received from the Mercer and Dunn County Water Management Districts asking for financial assistance in the flood hazard study on Spring Creek in the two respective counties. The

study would be conducted by the Soil Conservation Service and is estimated to cost \$80,000, with the local sponsors being responsible for \$16,000 of the total cost. The State Water Commission's share of 40 percent of the local costs would be \$6,400.

It was recommended by the State Engineer that the State Water Commission honor this request in an amount of \$6,400.

It was moved by Commissioner Kramer, seconded by Commissioner Just, and unanimously carried, that the State Water Commission approve financial participation toward the Flood Hazard Study on Spring Creek in an amount not to exceed \$6,400, contingent upon the availability of funds.

CONSIDERATION OF REQUEST FROM  
STEELE COUNTY WATER MANAGEMENT  
DISTRICT FOR INCREASED COST  
PARTICIPATION FOR STEELE  
COUNTY DRAIN NO. 6  
(SWC Project No. 1665)

Secretary Fahy presented a request from the Steele County Water Management District asking for an increase in cost participation for Steele County Drain No. 6. The State Water Commission had approved participation in the amount of \$22,974 prior to construction of the project. However,

during the construction of the project, adverse soil conditions and possible future erosion problems increased the construction costs to build this legal drain to acceptable standards. The additional costs requested of the Water Commission are \$5,547.

It was recommended by the State Engineer that the Water Commission consider increasing their financial participation an additional \$5,547.

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and unanimously carried, that the Water Commission increase their financial participation for the Steele County Drain No. 6 by an additional \$5,547, subject to the availability of funds.

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CONSIDERATION OF REQUEST  
OF STARK COUNTY WATER  
MANAGEMENT DISTRICT FOR  
FINANCIAL ASSISTANCE FOR  
NORTH DICKINSON CHANNEL  
IMPROVEMENT  
(SWC Project No.1507)

Secretary Fahy presented a request received from the Stark County Water Management District for financial assistance in a channel improvement project near the southeast corner of Dickinson. This project will help to control pollution, erosion, and flooding of an unnamed tributary to

the Heart River that flows through the city of Dickinson. Increase runoff from the developed areas of the city has resulted in increased runoff causing flooding on this part of the natural watercourse in the city. A preliminary design cost estimate prepared by the Soil Conservation Service totals \$222,000.

Secretary Fahy noted that from the information that is available to the Water Commission, it is apparent that the primary beneficiary of the project would be the city of Dickinson. State Water Commission cost participation for drainage has, in the past, been predicated on agricultural benefits. Although there may be a small rural area that would benefit, these benefits would be insignificant, and probably very hard to identify. It was Secretary Fahy's recommendation that the Water Commission not cost participate in this project, but if agricultural benefits can be identified, then possible reconsideration should be given to this request. To date, the Stark County Water Management Board has not made the final decision to construct this project, as they are waiting for possible funding from the Roosevelt Custer Resource Conservation and Development Council.

It was moved by Commissioner Just and seconded by Commissioner Kramer that the Water Commission concur with the State Engineer's recommendation relative to the channel improvement project near Dickinson. All members voted aye; the motion carried.

CONSIDERATION OF REQUESTS FROM  
FOSTER, WELLS AND EDDY COUNTIES  
FOR FINANCIAL ASSISTANCE IN  
PROJECTS IN THE ROCKY RUN  
WATERSHED  
(SWC Project No. 1633)

Secretary Fahy presented requests for financial participation in three projects in the Rocky Run Watershed that were received from the Joint Powers Board comprised of Eddy, Foster and Wells Counties.

Dave Sprynczynatyk discussed the Emrick Group drainage project which is located near the western end of the Rocky Run Creek Watershed. This project would provide improved drainage for an area totalling 20.6 square miles. Presently, there is overland flooding throughout this area which has reduced agricultural productivity. The proposed project would provide an outlet from the Emrick area that would handle the 10-year runoff. The project would include control structures that would serve to utilize existing storage areas and which could only be

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operated after the Rocky Run Creek peak flows had passed. Thus, drainage from this area would not increase the peak flow in the downstream area of the Rocky Run Creek, but would lengthen the duration of flows. The estimated cost of this project is \$106,500. Under the present guidelines, eligible items for possible State Water Commission cost participation would amount to \$32,500, of which 40 percent would be \$13,000.

Mr. Sprynczynatyk then discussed the request for financial participation in the project known as the Oak Creek Drain. The Oak Creek Drain project would drain an area of approximately 54 square miles. This area is similar to the Emrick Group area in that there is a considerable amount of overland flooding which reduces agricultural productivity. The outlet from the area is inadequate, resulting in over-bank flooding. Although the outlet is inadequate, the area does drain into Rocky Run Creek. The design of the proposed project is for the 10-year runoff. Since the proposed project includes a diversion channel, the runoff from the Oak Creek area would pass before the runoff from the upper watershed of Rocky Run Creek. This would, in effect, reduce the peak flow that has been experienced in the past on Rocky Run Creek and would result in two smaller peaks. Presently, the 10-year peak flow for Rocky Run Creek at Oak Creek is 910 cubic feet per second. By reducing this into two smaller peaks, the maximum peak flow would only be 765 cubic feet per second. The estimated cost for the Oak Creek Drainage project is \$386,000. Eligible cost items for State Water Commission participation would total \$198,462, of which 40 percent would be approximately \$79,000. The annual benefits that could be realized from this project could total \$72,500.

The third request for financial participation requested funds for channel improvements on the lower end of Rocky Run Creek from Oak Creek to the James River. Presently, there exists a number of obstructions in this channel, which cause over-bank flooding of agricultural land. The proposed project would remove these obstructions and would result in improved channel carrying capacity in this reach. The channel can only handle approximately 400 cubic feet per second of flow. With the proposed improvements, the channel would be able to handle approximately 600 cubic feet per second. Completion of the channel improvements on the lower end of Rocky Run Creek in conjunction with reduced flows as a result of the Oak Creek project would lessen flooding along Rocky Run Creek below Oak Creek.

It was recommended by the State Engineer that the State Water Commission grant financial participation towards these projects, not to exceed the following amounts: Emrick Group Drain - \$13,000; Oak Creek Drain - \$79,000; and Channel Improvements, Lower End of Rocky Run Creek - \$16,800, for a total of \$108,800. Secretary Fahy requested that if financial participation is approved, that the following conditions should also be a part of the cost participation agreement: 1) Appropriate measures shall be included in the final design of both the Emrick Group Drain and the Oak Creek Drain so as not to increase flood peaks downstream of the projects; 2) Financial participation by the

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State Water Commission shall become effective only upon a successful vote of the majority of the landowners in the assessed area of each project; 3) Financial participation by the State Water Commission shall also be contingent upon the successful granting of a drainage permit for each project, with appropriate conditions; and 4) If only the Emrick Group Drain is carried through to construction, or if only the Oak Creek Drain is carried through to construction, then the channel improvements of the lower reaches of Rocky Run Creek shall also be a requirement for construction.

Dave Sprynczynatyk read a letter from Mr. Norman Rudel, Chairman of the Wells County Water Management District and the Joint Powers Board, noting that due to prior commitments the Wells County Water Management District Board could not be in attendance at the meeting but requested State Water Commission support for cost participation in these projects.

In discussion, it was suggested by Commissioner Kramer, and was the consensus of the other members, that if approval is granted for cost participation in these projects, condition No. 4 should be amended to read that all three projects must be constructed as one unit, since all three receive benefits, and all three contribute water to Rocky Run Creek.

It was moved by Commissioner Kramer and seconded by Commissioner Just that the State Water Commission grant approval of financial participation toward the three projects in Rocky Run Creek Watershed not to exceed the following amounts:

Emrick Group Drain	\$13,000
Oak Creek Drain	79,000
Channel Improvements, Lower End of Rocky Run Creek	<u>16,800</u>
Total	\$108,800

This cost participation is contingent upon the availability of funds, and is subject to the first three conditions recommended by the State Engineer, and condition No. 4 shall be amended to read that the Emrick Drain, the Oak Creek Drain, and the Channel Improvements to the Lower Rocky Run Creek shall be considered as one project and that cost participation by the State Water

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Commission shall be valid only if all three portions are approved and constructed as a single project. All members voted aye; the motion carried.

DISCUSSION OF WATER  
MANAGEMENT DISTRICTS  
INTERIM STUDY

Mike Dwyer distributed copies of background information for HCR-3022, the Water Management Districts Study, which is attached hereto as APPENDIX "B".

Mr. Dwyer stated that at the Natural Resources Interim Committee's organizational meeting last June, it was suggested and agreed that the State Water Commission would provide information and drafting assistance for the three water-related legislative studies. It was felt that the local water managers should be primarily responsible for development of any proposed legislation for the Water Management Districts study to insure that any such proposals would represent the wishes of the local water managers themselves. An advisory committee was thus created consisting of water management district people from around the state plus three legislators from the Natural Resources Interim Committee. Mr. Dwyer said that the advisory committee has met several times, undertaking a detailed review of our own water management statutes, looking closely at water management schemes in other states, and then the committee proceeded to determine whether changes in our existing laws would result in improvement. During this process the advisory committee considered various alternatives.

The advisory committee has recommended two basic changes to current law. First, water management districts should be re-organized so that they are created along watershed boundaries; and second, the commissioners be elected rather than appointed. Those recommendations were presented to the Natural Resources Interim Committee, which met on January 29 and 30, and they appeared to be well received by this committee.

The advisory committee decided that because of the comprehensive nature of the proposal, resulting in some substantial changes, that a series of ten workshops should be held throughout the state. Mr. Dwyer reported that he attended all of these workshops to present detailed testimony. He said the overall reception at these meetings was fairly good. Most of the water management districts were concerned about changing the existing system and some of the water management districts were totally opposed to any change. The County Auditors were also invited to the workshops and they expressed concern about additional taxing problems and additional election problems. Farm groups have been invited and were present at the Natural Resources Committee meetings and advisory committee meetings and they indicated that they prefer to have elected officials rather than appointed officials to these Boards. They also felt that the logic of the watershed boundary changes were good.

Mr. Dwyer noted that the advisory committee has begun working on the second bill draft which will be completed

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in the near future and will be forwarded along with a short summary to the Commission members. He also suggested that the Commission should consider allowing ample time at its next meeting for a very thorough briefing of the bill draft, and that the Commission should be prepared to voice its input at that time and state its position.

reconvened at 1:30 p.m.

The meeting was recessed at 12:00 noon;

**PRESENTATION BY NORTH DAKOTA  
WILDLIFE SOCIETY TO DISCUSS  
IMPACT OF WETLAND DRAINAGE  
ON THE FREQUENCY AND MAGNITUDE  
OF FLOODING**

Mr. John Lokemoen, President of the North Dakota Chapter of the Wildlife Society, opened the Society's presentation by indicating that this Society is composed of a group of professional wildlife workers in the

State totalling approximately 250 people. He said that the Society is concerned with water resources and drainage problems. He stated that the Society feels that it can't be denied that when you drain an impoundment, a lake, or a wetland you're adding to the downstream flows. He noted that in the past, waters around the nation and the country have been cleaned up, and by national rules and regulations people have been stopped from throwing sewage and garbage into our rivers and lakes. He said we are going to have to look at what is happening here in our rural environment, start solving our state problems, or he feels that someone else will come in and help us solve them.

Mr. Lokemoen indicated that the Society does support in concept the re-organization of the water management districts into watershed areas. In regard to the law requiring a permit for drainage of 80 acres or more, he noted that this is not being enforced, and in some parts of the state, it is being ignored.

In regard to the Russell Diversion Drain, Mr. Lokemoen said that the Society has requested that the drainage permit for this drain be denied. He said that the Society wants to see local control, but doesn't feel that enforcement at the county and local level is workable at this time. He added that hopefully, the new state water management laws will solve some of these problems, and that these laws will be more effectively enforced. He also said that perhaps there are some federal funds available, like Section 208 of the Clean Water Act, which could help to enforce some of the drainage and water management laws in the state.

Mr. Lokemoen said that his Society would like to interact with the State Water Commission furnishing the expertise of their people to work on a state level. He noted that the Society would like more research done regarding ground-water recharge, flooding, erosion control, sediments and nutrients.

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Mr. John Malcolm from Billings, Montana, representing the North Dakota Wildlife Society, recalled that he had appeared before the Water Commission approximately one and one-half years ago to express his concern about the extensive drainage of wetlands in the Souris River Basin and the impacts resulting on flooding in the Souris River. He stated that they now have two years of data to illustrate these effects. Two reports have been prepared and distributed to Commission members. Mr. Malcolm then showed slides of the accumulated data.

Mr. Lloyd Jones, North Dakota Chapter of Wildlife Society from Valley City, cited two examples of upstream and downstream drainage noting that these examples clearly indicate the need to re-organize, or re-develop, the state's water management and drainage policies. He said that those people who are involved in the decision-making processes must look at all impacts of drainage, and not just the economic benefit of the project.

Following a short discussion, Governor Link thanked the group for appearing before the Commission and sharing a most enlightening presentation.

DISCUSSION ON OGALLALA  
AQUIFER STUDY  
(SWC Project No. 1706)

Secretary Fahy noted that in response to the Governor's request, the State of North Dakota was assigned observer status on the High Plains Council Study, a study of what to do about the declining water levels in the Ogallala Aquifer which covers a seven-state area in the middle of the nation ranging from the southern boundary line of South Dakota down to Lubbock, Texas, and over to the eastern portions of New Mexico, Colorado, Wyoming and bounded on the east by the Missouri River. He said that this particular area is alleged to be responsible for approximately 21 percent of the irrigated agriculture production in the United States. He noted that there have been relatively few controls over the withdrawal of ground water in these areas, particularly in Texas where ground water is owned by the landowner that owns the land over the source, and most of the other states have no water permit systems except in cases where they might declare a critical area. So as a result, the pumping that has taken place over the last 25 and 30 years in the Ogallala Aquifer has been extensive.

Because of those impacts on the national economy, the Economic Development Administration decided to fund a \$6 million study to see what could be done about regaining the economic viability of the Ogallala Aquifer. The format for that study is that a private consultant firm was hired to do the actual work in concert with the states involved under the aquifer study, looking at everything from conservation of water, institutional constraints and the changing to a dryland economy. He said that of most interest to North Dakota is the study of the importation of water from other areas where there might be a surplus and, of course, the Missouri River will be a prime target for

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one of those studies. That particular facet of the High Plains Study has been assigned directly to the Corps of Engineers and will not be under the consultant's contract.

Secretary Fahy noted that up until North Dakota and South Dakota started attending the meetings as observers, they were paying relatively little attention to the areas where water might be withdrawn such as the upper basin states. Since these two states have been represented at the meetings, a concept has been developed in which the contractor and the people involved will be coming to the states to examine what some of the problems are and to see whether or not there actually is, in fact, a surplus of water over and above our present and planned needs.

Secretary Fahy said that at the urging of the States of North and South Dakota to bring all of the Missouri Basin Governors to a meeting, Governor Carlin has extended an invitation to the Governors to attend the next meeting to be held in Lincoln, Nebraska on April 17.

#### DISCUSSION ON FLOODPLAIN MANAGEMENT STUDY

Mike Dwyer reported to the Commission members on the status of the Legislative Council study on floodplain management, and distributed copies of testimony that he had presented to the Natural Resources Interim Committee, attached hereto as APPENDIX "C". He noted two reasons why the Natural Resources Interim Committee may recommend that a statewide floodplain act be adopted. First, to prevent the kinds of damages which occur after uncontrolled floodplain and floodway development; and second, the adoption of a floodplain management act may be required to satisfy the conditions of the Governor's acceptance of disaster assistance.

Mr. Dwyer suggested that the Commission allow ample time at their next meeting to discuss this study in detail and then the Commission may want to take a position on the proposed bill.

#### DISCUSSION OF SECTION 404

Mr. Dwyer stated that the Section 404 study involved a decision by the Natural Resources Interim Committee whether or not it should recommend that North Dakota assume jurisdiction and administration over the Section 404 program. Section 404 is the provision of the Clean Water Act requiring a permit to put dredged or fill material in a body of water. He noted that no draft legislation has been developed at this time for this study. He said that this legislation will have to satisfy federal requirements.

Mr. Dwyer said that drainage and dike permits are closely related to Section 404 permits and require the State Engineer's approval, and he is preparing a number of alternatives for the Section 404 legislation. It is through this study that we will take a look at our current drainage statutes to see if the State Water

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Commission and the Natural Resources Interim Committee feel there should be some changes regarding drainage and diking permits, enforcement, and other areas.

Secretary Fahy noted that to date there has been no state that has adopted the option of taking control of the Section 404 program. It is now being administered throughout the nation by the Corps of Engineers. If the Legislature decides to take over the administration and enforcement of Section 404, North Dakota would be among the first of the states to do so. He said there is a great deal of uncertainty among the states whether or not a state should take over control, but noted that the state could more responsively administer the program and would provide more flexibility to recognize local requirements and needs.

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

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

Milton Lindvig noted that a majority of the requests on the agenda represent backlog and that the date of May 1, 1980 has been set as a target date to complete a first look at all backlog requests.

After discussion, it was moved by Commissioner Kramer, seconded by Commissioner Just, and unanimously carried, that the State Engineer's recommendations be confirmed.

The following requests were approved subject to conditions as indicated on each respective permit: No. 3210 - Amoco Production Company, Powell, Wyoming; No. 3162 - Tompkins, Ulrich and Rolle, Minot (this is a request for a change in point of diversion); No. 2231A - William Schwab, Englevale (this is a request for a change in point of diversion); No. 3213 - Jeffery Presser, Turtle Lake; No. 2219B - Candace Wagner, Englevale (this is a request for a change in point of diversion and was approved by the State Engineer on December 21, 1979); No. 2219B - Candace Wagner, Englevale (this request was approved by the State Engineer on December 21, 1979); No. 2484 - Dick Brothers, Englevale (this grants another portion of the request and was approved by the State Engineer on December 21, 1979); No. 3189 - LeRoy Reinhardt, Almont; No. 3196 - Cooperative

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Power Association/United Power Association, Elk River, Minn.; No. 2007 - Milton Agnew, Menoken (granting remainder of request); No. 3204 - Leon Walz, Beulah; No. 3187 - All Seasons Water Users Association, Inc., Bottineau (this request was approved by the State Engineer on January 28, 1980); No. 2347 - Raymond Dick, Englevale (granting remainder of request); No. 3208 - Fisher Sand and Gravel Co., Dickinson; No. 2043 - Kenneth S. Hagen, Cooperstown (this request was approved by the State Engineer on December 19, 1979); No. 1880 - City of Solen; No. 2015 - Victor J. Richter, Menoken (granting remainder of request); No. 2133 - George Schiff, Ruso; No. 3218 - Leo Fischer, Killdeer; No. 3201 - Gackle Public School District, Gackle; No. 2305 - James Lochthowe, Norwich (granting remainder of request); No. 3115 - Chad Wagner, Englevale; No. 2914 - Darrie Peterson, Warwick; No. 2903 - Frank Hoffart, Bismarck; No. 2851 - Fred W. Appert, Hazelton; No. 2494 - John R. Beckstrand, Warwick (granting remainder of request); No. 1755 - Christine Sewer & Water Association, Christine; No. 2147 - Agnes I. Slater, Minot; No. 2164 - Milton Iszler, Gackle; No. 2175 - City of Glenfield; No. 2193 - Calvin McCullough, Oakes (granting remainder of request); No. 2446 - Paul C. Dinkins, Dunn Center; No. 2553 - Hoggarth Bros., Courtenay (granting portion of request); No. 2637 - Lester A. Hanson, Tolna (granting remainder of request); No. 2668 - Howard L. Pare, Tolna (granting remainder of request); No. 2804 - Morrison Farm, Robinson (granting remainder of request); No. 2888 - Kenneth Scott, Spiritwood; No. 2986 - City of South Heart (this is a request for a change in point of diversion); Nos. 2840, 2842, 2843 and 2844 - Richard H. Huether, Lisbon; No. 3040 - Peter E. Westgard, Plaza; No. 3099 - A. K. Lewis, Lisbon; No. 3151 - Jess E. Thompson, Beulah; No. 3162 - Tompkins, Ulrich and Rolle, Minot; No. 3166 - Ellendale Golf Club, Ellendale; No. 3104 - Orlando K. Olson, Arvilla; No. 2664 - Arley Hammer, Englevale (granting another

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portion of request); No. 2945 - Richard A. Schmaltz, Rugby; No. 3086 - Edmund Hartl, Jr., New Rockford; No. 2837 - Jerry N. Anderson, Enderlin; No. 3085 - LeRoy Fettig, Hebron; No. 2933 - Walter A. Benz, Dunn Center; No. 2610 - James Wall, Lisbon (granting another portion of request); No. 3160 - Norman Haak, Oakes (this is a request for a change in point of diversion); No. 3160 - Norman Haak, Oakes; No. 2317 - City of Surrey; No. 2834 - Dorothy Schiffner, Englevale; No. 2788 - Duane P. Hutchinson, Killdeer; and No. 3133 - Willis L. Calderwood, Crary.

The following requests were deferred at this time: No. 1908 - Harwood Development Association, Harwood; No. 3207 - City of Pekin; No. 3211 - Texaco, Inc., Keene; No. 3203 - Carris Vandal, Bottineau; No. 1250 - Russel Shelley, Absarokee, Montana (this is a request for a change in point of diversion); No. 3212 - Dale K. Bunn, Lisbon; No. 2253 - James P. and John B. Iglehart, Emmet (this is a request for a change in point of diversion); No. 728 - City of Lisbon (this is a request for a change in point of diversion); No. 3217 - Floyd Orn, Stirum; No. 3219 - Steve Voightman, Ludden; No. 3220 - Kaiser Engineers, Inc., Oakland, California; and No. 3221 - Donald D. Helm, Fairview, Montana.

The following applicants have not expressed any further desire to complete their applications, therefore, the requests have been "Void - Application Incomplete": No. 2524 - McCanna Farming Co. Partnership, McCanna; No. 2742 - Jerry Blotter, Coleharbor; and No. 2882 - Richard Daniels, Oakes. SEE APPENDIX "D"

PRESENTATION BY  
RUBEN HUMMEL, MOTT, ND

Mr. Ruben Hummel of Mott, North Dakota, requested an audience before the Commission to express his concern of public officials holding offices and expending state funds for private organizations. Mr. Hummel read a resolution, which states:

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"The State Water Commission should be prohibited from using its funds for membership fees and funds or taxpayers money in non-governmental associations on behalf of Commission members or employees. In order to prevent possible conflicts of interest, the Water Commission should establish a code of conduct which would prohibit its staff from serving in elected or appointed capacities of private water organizations that are involved in public policy decisions."

Mr. Hummel went on to discuss Senate Bill 14, Reclamation Reform Act of 1979, and quoted several paragraphs from this bill, which is attached as APPENDIX "E". Mr. Hummel stated that he wished the Water Commission would support the family farm more than they do as this is an agriculture state and since we do depend on agriculture, we should be more concerned about the family farm.

Governor Link's schedule did not permit him to stay for Mr. Hummel's entire presentation, but Chairman Gallagher assured Mr. Hummel that the Commission members would be provided with copies of the material on Senate Bill 14 referred to by Mr. Hummel, and of the resolution which he read, and that this matter would be taken under advisement for further discussion.

LITIGATION CONCERNING  
GARRISON DIVERSION UNIT  
(SWC Project No. 237)

letter is attached hereto as APPENDIX "F".

Mike Dwyer distributed copies of a letter from Murray Sagsveen, Solicitor, concerning current litigation on the Garrison Diversion Unit. Mr. Sagsveen's

STATUS REPORT ON RUSSELL  
DIVERSION LITIGATION  
(SWC Project No. 1685)

been received from the Wildlife Society that the permit be denied. It is in the permit process and the State Engineer will be receiving necessary information to make a decision in the near future.

Mike Dwyer reported that in the Russell Diversion case, the judge had approved a continuance rather than closing of the illegal drain. A recommendation has

BARNES VS. FARGO CASS  
COUNTY WATER MANAGEMENT  
DISTRICT

in the Cass County area. The other three defendants include the city of Fargo, the Cass County Drain Board, and the Southeast Cass Water Management District. Mr. Dwyer said that he does not have the details on the case.

Mike Dwyer reported that the State Water Commission had just recently been sued as one of four defendants in a case which involves a legal drain

Dave Sprynczynatyk stated that the case is questioning whether or not the use and operation of the Sheyenne Diversion for Fargo water supplies caused damages on the lands near the legal drain.

February 29, 1980

STATUS REPORT ON  
RUSH LAKE LITIGATION  
(SWC Project No. 463)

Mike Dwyer reported that the drainage and diking undertaken since 1969 in the Rush Lake case is the only issue still unresolved and is still pending before the Judge.

STATUS REPORT ON  
JAMES RIVER LITIGATION  
(SWC Project Nos. 690 & 832)

Pipestem Dams, and the State of North Dakota had intervened to ensure that North Dakota interests were protected. North Dakota and the Corps of Engineers has filed a motion for Summary Judgment stating that the Corps of Engineers has operated those dams in accordance with the primary purpose for which they were authorized by Congress. The primary purpose is for protection of Jamestown and for protection downstream from Jamestown, and when possible, protection in South Dakota.

Mike Dwyer reported on the case in which the Oahe Conservancy Subdistrict in South Dakota had sued the Corps of Engineers for operation of the Jamestown and

BARNES COUNTY VS. GARRISON  
DIVERSION CONSERVANCY DISTRICT  
(SWC Project No. 237)

stated that a Notice of Appeal has been filed and there has been no further action by the plaintiffs at this time.

Mike Dwyer said that Barnes County has filed a notice of appeal on the Garrison Diversion Conservancy District Board's decision denying the county's petition for exclusion from the district. He

STATUS REPORT ON  
EPPING DAM  
(SWC Project No. 346)

of land for the project. Staff members of the Water Commission are working on the final design for reconstruction of the spillway. Reconstruction of the spillway is anticipated to begin about the first of June, 1980, and will be completed within the year.

Dave Sprynczynatyk reported that the Williams County Water Management District has filed condemnation proceedings for acquisition of approximately 180 acres

STATUS REPORT ON STUDIES  
IN DEVILS LAKE AREA  
(SWC Project No. 1666)

capacity of Stump Lake and East Bay in the Devils Lake Basin. Dave Sprynczynatyk distributed a memo containing the requested information and suggested that since Commissioner Gray was not in attendance that this item be tabled and put on the agenda for the next meeting. It was the consensus of the Commission members that discussion of this item be tabled at this time and placed on the agenda for the next meeting. Mr. Sprynczynatyk also indicated that hopefully by the next meeting, the Corps of Engineers will have completed their reconnaissance study of that area.

At the December 12, 1979 meeting, it was requested by Commissioner Gray that the Commission be provided with information relative to the storage

February 29, 1980

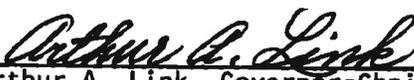
CONSIDERATION OF  
FINANCIAL STATEMENT

Matt Emerson presented the financial statement to the Commission members. He reviewed and discussed the accounts

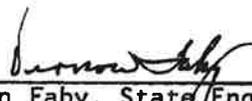
noting that they are in order in comparison to the amount of time that has elapsed in the biennium.

Secretary Fahy reported that the consulting firm of Booz-Allen and Hamilton is doing a compliance and performance review report for the Game and Fish Department as they did for the Water Commission about two years ago. The decision has been made to have the firm come back and look at all resource agencies from an overall standpoint to see what improvements could be made in coordination of activities.

There being no further business to come before the Commission at this time, the meeting was adjourned at 4:00 p.m.

  
Arthur A. Link, Governor-Chairman

ATTEST:

  
Vernon Fahy, State Engineer and Secretary

February 29, 1980

DRAFT  
KR&H  
12-3-79

TAX-EXEMPT CONSTRUCTION PERIOD FINANCING  
OF  
NORTH DAKOTA RURAL WATER SYSTEMS

First National Bank & Trust Company of Lincoln  
Chiles, Heider & Co. Inc.

December 5, 1979

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## I. SUMMARY AND CONCLUSIONS

Substantial savings in construction period interest expense are available to rural water systems through the use of tax-exempt financing. When the Farmers Home Administration provides the long-term financing, it often requires the use of such commercial interim financing where available.

Rural water systems throughout South Dakota are taking advantage of the benefits of tax-exempt construction period financing. Recently enacted legislation authorizes a statewide political subdivision to provide financing for rural water systems organized as nonprofit corporations.

In order for North Dakota rural water systems to be able to benefit from tax-exempt construction period financing, legislation is needed which would authorize a "political subdivision" of the state to issue notes and loan the proceeds to the rural water systems. The State Water Commission may be the entity which should be authorized to issue such notes.

## II. CONSTRUCTION PERIOD FINANCING FOR FmHA FINANCED RURAL WATER SYSTEMS

Pursuant to the Consolidated Farm and Rural Development Act, the Farmers Home Administration of the United States Department of Agriculture ("FmHA") makes loans and grants available to rural water systems to construct, enlarge, extend or improve certain water system facilities in primarily rural areas. These funds are made available at favorable rates and upon favorable terms in order to provide for the long-term or "permanent" financing of such projects. This permanent financing provides funds for a project from the time it is constructed until the time the costs can be repaid, perhaps forty years later.

Funds are also needed, however, before a project is fully constructed. During the construction period, payments must be made to the contractors and engineers as each stage of the project is completed. Consequently, in addition to the permanent financing, some form of construction period financing is needed.

One method of providing such funds is for the FmHA to make a series of partial payments or "multiple advances" of

portions of the permanent loan and grant as needed. FmHA often prefers, however, that funds to finance construction be acquired from commercial sources. This simplifies the procedure for making the construction payments and can lower the rural water system's interest expense on construction period funds. Consequently, FmHA often requires that construction period financing be obtained from commercial sources whenever it is available at reasonable rates.

The method of tax-exempt public financing described in this presentation is a particularly advantageous method of obtaining such commercial financing. Section III below explains why this method of financing is especially advantageous for rural water systems. Section IV describes how rural water systems in South Dakota have accomplished such financings and how the state has promoted such financings through newly enacted legislation. Section V discusses how tax-exempt construction period financings could be accomplished in North Dakota.

### III. ADVANTAGES OF TAX-EXEMPT CONSTRUCTION PERIOD FINANCING

A rural water system which uses tax-exempt construction period financing rather than multiple advances directly from FmHA is benefited in two ways: it pays less interest during the construction period and its procedure for paying construction period costs is simplified.

A. Lower Interest Expense. The interest expense which must be paid by a rural water system during the construction period is generally substantially lower if tax-exempt notes are issued than if multiple advances are made directly by FmHA. The interest savings is even greater when compared to the interest cost of borrowing funds from other commercial sources. This interest savings results since money is borrowed at a low rate, through the issuance of tax-exempt notes, and reinvested at a higher rate until the various stages of construction are completed and the funds are disbursed to pay construction costs.

In a typical tax-exempt construction period financing, tax-exempt notes are issued in an amount equal to the total of the loan and grant which FmHA has committed itself to

provide. The notes are scheduled to mature on a date following the date on which FmHA has promised to advance the loan and grant. The proceeds from the sale of the notes are put on deposit with a trustee-paying agent. A portion of the proceeds is set aside to pay interest on the notes. The balance of the proceeds are paid to the rural water systems' contractors and engineers as each stage of construction of the project is completed. In the meantime, however, until the funds are actually needed for construction, the trustee-paying agent reinvests the proceeds of the note issuance at interest rates in excess of the tax-exempt interest rate paid on the notes. The investments are timed to mature over the construction period in sufficient amounts to pay for each stage of the project as it is completed.

See Appendix "A" for examples of the interest savings which have been obtained for rural water systems in South Dakota through the use of tax-exempt construction period financing.

B. Simplified Payment Procedure. The use of multiple advances directly from FmHA during the construction period of a project complicates the payment procedure. A rural water

system must submit sufficient documentation to FmHA to allow it to close a partial loan or grant as each stage of a project is completed.

When the tax-exempt method of public financing is used, however, funds are available immediately as needed without the required documentation and procedures for a separate loan or grant closing for each stage of construction. Instead, when payments are properly requisitioned by the constructors and engineers, the trustee-paying agent can immediately make funds available. Then when the FmHA loan and grant are closed, the proceeds are made available to repay the purchasers of the notes.

Because of the advantages of this method of interim financing in lowering interest expense and simplifying payment procedures, FmHA often requires that it be used wherever possible.

#### IV. FINANCING PROCEDURES USED IN SOUTH DAKOTA

Rural water systems throughout the State of South Dakota can take advantage of the benefits of tax-exempt construction period financing. Several rural water systems have already

done so and many more are planning to use tax-exempt financing when their systems are ready for construction.

A. Water User Districts. Some South Dakota rural water systems are organized as water user districts under Chapter 46-16 of the South Dakota Codified Laws. Water user districts are local governmental units which have the power of eminent domain and qualify as "political subdivisions" within the meaning of Section 103 of the Internal Revenue Code. Since they are political subdivisions, districts can issue tax-exempt notes to provide interim financing for their rural water systems.

An example of a water user district which has used this method of financing is B-Y Water District in Bon Homme, Yankton, Hutchinson and Turner Counties, South Dakota. On November 1, 1978 it issued \$10,500,000 of its FmHA Loan and Grant Anticipation Notes. Tripp County Rural Water District has also issued tax-exempt notes to provide construction period financing for its rural water system.

B. South Dakota Conservancy District. Only a few of South Dakota's rural water systems are organized as water user districts and able to issue their own tax-exempt notes. The rest of the rural water systems are organized as nonprofit corporations.

Legislation was needed to extend the benefits of tax-exempt construction period financing to those rural water systems organized as non-profit corporations. Accordingly, House Bill 1173 was drafted and was passed by the fifty-fourth legislative session of the State of South Dakota and approved by the Governor of South Dakota on March 27, 1979.

The legislation authorizes the South Dakota Conservancy District, a statewide political subdivision responsible for water development, to issue its notes and enter into financing arrangements with entities such as nonprofit corporation rural water systems. Pursuant to such arrangements the proceeds from the sale of the notes are loaned to the rural water system. At a future date, when it is expected that construction will be complete, FmHA makes its permanent loan and grant and the proceeds of the loan and grant are used to repay the holders of the tax-exempt notes.

Since the enactment of this legislation two non-profit corporations have financed their rural water systems through the South Dakota Conservancy District. On July 1, 1979 the District issued \$6,045,000 of its Loan and Grant Anticipation Notes for Kingbrook Rural Water System, Inc. and on the same

date provided \$1,759,000 of financing for Clay Rural Water System, Inc. The District has adopted resolutions of intent to provide financing for five more rural water systems when their projects are ready for construction.

See Appendix "B" for a discussion of the involvement of First National Bank & Trust Company of Lincoln and Chiles, Heider & Co. Inc. in water development in South Dakota.

#### V. FINANCING PROCEDURES AVAILABLE FOR NORTH DAKOTA

Most rural water systems in North Dakota are organized as nonprofit corporations or as cooperatives. Since they are not "political subdivisions" they are unable to issue their own tax-exempt notes to finance their projects.

North Dakota law authorizes counties and municipalities to issue revenue bonds, which would be tax-exempt under federal law, for a variety of revenue-producing enterprises. The Municipal Industrial Development Act of 1955, §40-57-01 et seq. N.D.C.C., authorizes the leasing or sale of such projects to industrial or commercial enterprises and authorizes loaning the proceeds of such bonds to nonprofit corporations for the construction of health care facilities. This law allows such

enterprises to take advantage of the lower interest rates available through tax-exempt financing. The Municipal Industrial Development Act of 1955, however, does not authorize the financing of undertakings in connection with obtaining a water supply and the conservation, treatment, distribution, and disposal of water. (§§40-57-02; 40-35-02(1) N.D.C.C.)

In order for North Dakota rural water systems to be able to benefit from tax-exempt construction period financing, legislation is needed which would authorize a "political subdivision" of the state to issue notes and loan the proceeds to the rural water systems. The political subdivision would be obligated to repay the notes only from the proceeds of the permanent FmHA grant or loan or other funds provided by the rural water system. The notes would not be general obligations of the political subdivision, just as bonds issued under the Municipal Industrial Development Act of 1955 are not general obligations of the municipality which issues the bonds. The political subdivision would merely assist the rural water system by serving as a conduit for the issuance of the notes, which, since they are issued by a political subdivision, will be exempt from federal income taxation.

There are a number of political subdivisions with water responsibilities in North Dakota which could be authorized to provide tax-exempt construction period financing for rural water systems. Probably the most efficient method of providing such financing, however, is to have a single statewide political subdivision issue the notes. The State Water Commission, a public corporation and state agency, may be the appropriate entity to issue the notes. Legislation should be drafted to enable the State Water Commission to provide tax-exempt construction period financing for North Dakota's rural water systems.

## APPENDIX "B"

506 midwest federal bldg.  
 box 1934  
 minor, north dakota 58701  
 (701)839-7240

*Jan 25, 1980*

## SUMMARY AND SUPPORTING RATIONALE:

## FIRST BILL DRAFT, WATER MANAGEMENT DISTRICT ADVISORY COMMITTEE

TO: Water Management Districts  
 FROM: Ralph Christensen *RC*  
 President, Water Management Districts Association  
 Chairman, Advisory Committee

I. Introduction

The Legislative Council has undertaken a study of water management districts with an eye toward improving the efficiency and effectiveness of local water management. To ensure that any proposed legislation would represent the wishes of local water managers around the state, a water management district advisory committee was created. I served as chairman of that committee. After a detailed review of North Dakota's water management laws, and the water management laws of other states, and after much thought and discussion, the advisory committee is recommending to the Legislative Council several changes to water management district laws.

This is to summarize and explain those changes. The underlying theme of the advisory committee's deliberations was and is that water management is best handled at the local level. Due to the many water management problems experienced throughout the state, it appears certain that changes will be made to the organization and structure of water management districts in an attempt to produce better results. We want to make sure that local control remains local control, and thus our recommendations are aimed at making water management districts more responsive and effective.

North Dakota's existing water management laws are two-fold in nature. First, they provide the organization and structure of water management districts. Second, they set forth the powers and duties of water management districts. The advisory committee has decided to propose major changes to the organization and structure of water management districts. We are also recommending that additional powers and duties be established.

II.

Changes to Organization & Structure of Water Management Districts

A. Watershed Boundaries.

1. The advisory committee recommends that water management districts be reorganized along watershed boundaries, and called Water Resource Districts. The primary reason for this recommendation is that water management cannot be truly coordinated unless one board is responsible for all decisions in a particular watershed. Increased coordination will naturally result in more effective Water Resource Districts. For example, I have heard about water management problems between Ward and Renville counties; Ramsey and Cavalier counties; Walsh and Nelson counties; Griggs, Barnes and Stutsman counties; Cass and Richland counties; Wells, Foster, and Eddy counties; Benson, Towner and Pierce counties; and Logan and LaMoure counties, all of which are much more difficult to resolve because of an artificial boundary. I'm sure there are many more than I've mentioned. While some of these problems are being addressed in a joint manner, all of them could be resolved much more efficiently and effectively if a single board were responsible for the entire watershed area involved.
2. The advisory committee is recommending to the Legislative Council that boundaries be established strictly on the basis of technical and hydrological standards, rather than in the political arena. Thus, we are proposing that the Legislative Council approve watershed boundaries and delegate the duty of establishing the exact number and boundaries of Water Resource Districts to the State Engineer, subject to the approval of the State Water Commission. The State Engineer would be required to follow these guidelines:
  - a. Determine boundaries according to hydrologic patterns, utilizing recognized river basins.
  - b. Sections, cities, and villages shall not be divided.
  - c. Following county, township, or voting precinct boundaries wherever possible.

The advisory committee has discussed anywhere from 20 to 35 Water Resource Districts.

B. Election of Commissioners.

1. The advisory committee is proposing that Water Resource District Boards consist of 5, 7, or 9 commissioners, and that they be elected. Each Water Resource District would be divided into subdistricts, and commissioners would represent the subdistrict in which they reside. Each Water Resource District would have one "at large" commissioner. Number of subdistricts and number of commissioners are to be determined on a case by case basis.

2. Election of commissioners will provide the best method of managing watershed districts. Elected Boards would be more responsive to local needs, and past experience has shown that the elected process would be no more subject to pressures than the appointive process. In addition, it is likely that most Water Resource Districts will encompass portions of at least two counties. Appointment of commissioners, and the process of securing each county commission's approval of the proposed Water Resource District budget, would both be extremely cumbersome. For all of these reasons, the advisory committee recommends election of commissioners.

C. Legal Drain Boards.

The advisory committee is recommending that legal drain boards be eliminated, so that only one water board has power and responsibility over each watershed area. Water Resource Districts would still have the authority to construct special assessment drains.

III. Powers & Duties

A. Transfer of Powers and Duties.

1. All of the existing powers and duties of Water Management Districts would be transferred to Water Resource Districts. For example, each Water Resource District would still have authority to levy up to 4 mills, with authority for 2 additional mills for joint boards. Drainage and dike permits would be handled by the Water Resource Districts. Water Resource Districts could construct the same projects as Water Management Districts.
2. The advisory committee is recommending that one additional power, and one additional duty, be added to the powers and duties of Water Resource Districts. The additional power would give Water Resource Districts the authority to require that all proposed bridges and culverts be reviewed by the Board prior to construction. The additional duty would require that Water Resource District Boards develop water management schemes, consider the short and long range impacts of its various programs, and that upstream and downstream impacts be given full consideration in the planning and implementation of programs.

B. Projects.

Under existing law, Water Management Districts must conduct a protest vote before constructing a project. If a majority of votes "protest", the project is dead. The advisory committee is recommending a proposal to improve the ability of Water Resource Districts to construct projects. If the project is part of the water management

TO: Water Management Districts  
Page 4

scheme of the Water Resource District, and costs less than \$250,000, a special assessment can be levied just as a city would do for a storm sewer. Projects greater than \$250,000 would require the protest vote.

#### IV. Conclusion

As I stated earlier, the Legislature and State Water Commission have consistently adhered to a policy of local control over water management activities. The advisory committee's recommendations are consistent with that spirit, and provide the mechanism and machinery for more effective Water Resource Districts. Thereby, we can ensure that local water control is not lost.

## APPENDIX "C"

Michael Dwyer  
State Water Commission  
January 29, 1980

TESTIMONY TO NATURAL RESOURCES INTERIM COMMITTEE  
ON NORTH DAKOTA FLOODPLAIN MANAGEMENT ACT

The purpose of the proposed North Dakota Floodplain Management Act is set out in Section 2 of the bill draft.

1. Develop floodplain in a manner which will result in minimum loss of life, minimum threat to health, and maximum reduction of private and public economic losses.
2. Keep floodways uninhabited and free and clear of interference or obstructions.
3. Provide coordination of floodplain management activities.
4. Encourage local units of government to adopt consistent and sound floodplain management ordinances.
5. Provide for enforcement.

It is essential that floodplain management programs be distinguished from other flood related activities. Activities to reduce and minimize floods and flood damages can be generally classified into two categories:

1. Floodplain Management: This represents an effort to reduce and minimize the damages caused by floods. For example, rather than spend \$50,000 to repair a home in a floodway each time there is a flood, it would seem wiser to move that home to a safe place, which is a one-time expenditure.
2. Flood Control: This includes activities directed at reducing or minimizing the flood itself. This would include retention structures, temporary storage, diversion structures, and other activities which actually help to reduce the amount of water in a flood.

This distinction is important because this committee is addressing both categories. The proposed North Dakota Floodplain Management Act is strictly limited to floodplain management. This afternoon or tomorrow, this committee will consider a bill draft which is intended to improve the effectiveness and efficiency of Water Management Districts. One of the many duties of Water Management Districts is "flood control", and improved Water Management Districts will result in improved "flood control".

The proposed North Dakota Floodplain Management Act is relatively simple. I have prepared a table to help understand the proposed program.

## I. Procedure

### 1. Delineation of floodplains and floodways.

With the assistance of the State Water Commission, Water Resource Districts will utilize information obtained from federal agencies, the State Water Commission, and local entities and designate a floodplain and a floodway for various watercourses. Designation of floodplains and floodways must be completed before any other requirements are imposed.

### 2. Notify local governments.

In North Dakota, townships, counties and cities have zoning authority over floodplain areas. Townships can relinquish that authority if they choose. After a Water Resource District has designated the floodplain and floodway area, it must notify each local government which has jurisdiction and provide a copy of the floodplain and floodway map.

### 3. Adoption of floodplain management ordinances.

After receipt of the floodplain and floodway maps, each local governmental entity has 6 months to adopt floodplain management ordinances which meet the minimum criteria of the North Dakota Floodplain Management Act. The ordinances can be more stringent. The State Water Commission must approve the floodplain management ordinances before they are adopted.

### 4. Failure to adopt ordinances.

If the local government has not adopted the required floodplain management ordinances during the six month period, the State Water Commission shall adapt and enforce minimum ordinances for the local government.

## II. Minimum Criteria

### 1. Permissible Floodway Development.

Any development in the floodway is permitted as long as it does not cause more than a one foot rise in the base flood. However, in no event shall any residence or place of assembly be allowed in a floodway.

### 2. Permissible Activity in Flood Fringe.

Keep in mind that flood fringe and flood way = floodplain. Any activity permitted in the floodway is permitted in the flood fringe, and any other development or structure is allowed in the flood fringe so long as it is:

- a. Residence - lowest floor elevation one foot above 100-year flood
- b. Any other structure - floodproofed to an elevation no lower than one foot above 100-year flood.

3. Permits.

Any activity which does not satisfy the permissible activities in floodways or floodplains must be approved by the State Engineer and the Water Resource District prior to construction. (Variance.) Any violation of this requirement is a class B misdemeanor, and each day is a separate offense.

III. Miscellaneous

1. Rules and Regulations.

The bill requires the State Water Commission to promulgate rules to implement the Floodplain Management Act.

2. Flood Insurance.

Any commission which is subject to recurrent flooding shall be required to apply to the National Flood Insurance Program.

IV. Conclusion

Your briefing books contain information relating to two separate but related programs.

1. National Flood Insurance Program.

There are no provisions in the Federal Acts which set up the National Flood Insurance Program which require that states adopt a floodplain management act as has been proposed. The National Flood Insurance Program is enforced by prohibiting those persons living in the floodplain from receiving federal loans or loan guarantees of any kind.

2. Federal Disaster Assistance.

The Federal Disaster Relief Act of 1974 requires that in order for states to receive disaster assistance of any kind, they must be willing to take appropriate actions to decrease the possibility of the hazard. Thus, as a condition to receiving disaster assistance for the 42 counties which were declared disaster areas last spring, the Governor was required to execute the State-Federal Disaster Assistance Agreement which is located under Tab H of your briefing book. One of the conditions stated in that agreement is that North Dakota will prepare and implement a Flood Hazard Mitigation Plan. That plan as adopted was sent to you last week, and is located under Tab J of your briefing book. If you have had a chance to read the Flood Hazard Mitigation Plan, you will notice that a floodplain management act is an integral component and objective of the plan.

An important question to be answered is whether the Hazard Mitigation Plan regulations (located under Tab I of your briefing books) require such an act to satisfy the requirements of the Hazard Mitigation Plan, and truly

remain eligible for future federal disaster assistance. In answer to that question, the Federal agency has not made itself completely clear. The regulations under Tab I seem to make it very plain that if a state does not have the necessary authority to regulate floodplain development, so as to decrease the possibility for future damages, its Flood Hazard Mitigation Plan would be incomplete and as a result the state would be ineligible for future disaster assistance. However, discussions with the Federal agency people indicate they are not sure they will give their own regulations that interpretation.

In any event, it is a likely possibility that a floodplain management act will be required in order to receive future federal disaster assistance.

\* INDICATES PRIOR  
PERMIT STATUS

WATER PERMIT AGENDA FOR FEBRUARY 29, 1980 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1908	Harwood Development Association - Harwood (Cass County)  Priority: 11-7-79 Hearing: 12-10-79	Ground Water   * NO PRIOR PERMITS	Municipal	100.0 acre-feet	It is recommended that action be deferred at this time.
3210	Amoco Production Company - Powell, Wyoming (Dunn County)  Priority: 11- 6-79 Hearing: 12-10-79	Ground Water (Hell Creek- Fox Hills Aquifer)  * NO PRIOR PERMITS	Industrial	3.0 acre-feet	3.0 acre-feet
3207	Pekin, City of - Pekin (Nelson County)  Priority: 10-25-79 Hearing: 12-10-79	Ground Water   * #1844 (Priority Date: 4-26-72) Granted 27.0 acre-feet	Municipal	175.0 acre-feet	It is recommended that action be deferred at this time.
3162	Tompkins, Ulrich & Rolle - Minot (McHenry County)  Priority: 2-16-79 Hearing: 4-16-79 Deferred: 4-18-79 Hearing on Amendment: 12-10-79	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that this request for a change in point of diversion be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2231A	Schwab, William - Englevale (Ransom County)  Priority: 3-10-75 Hearing on Amendment: 12- 6-79	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that this request be approved.
3213	Presser, Jeffery - Turtle Lake (McLean County)  Priority: 12- 7-79 Hearing: 1- 7-80	Lake Margaret, non-contributing to Missouri River  * #2400 (Priority Date: 7-21-76)	Irrigation	188.4 acre-feet 125.6 acres  Granted 260.0 acres	Recommend for approval: 90.0 acre-feet 60.0 acres  (Remainder of original request shall be held in abeyance)
2219B	Wagner, Candace - Englevale (Ransom County)  Priority: 2-21-75 Hearing on Amendment: 7-25-77 Deferred Action on Amendment: 8-16-77	Ground Water (Englevale Aquifer)	Irrigation	This is a request for a change in point of diversion.	It is recommended that this request be approved.  This request was approved by the State Engineer on December 21, 1979.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2219B	Wagner, Candace - Englevale (Ransom County)	Ground Water (Englevale Aquifer)	Irrigation	202.0 acre-feet 160.0 acres	202.0 acre-feet 135.0 acres  This request was approved by the State Engineer on December 21, 1979.
	Priority: 2-21-75 Hearing on #2219: 5-19-75				
2484	Dick Brothers - Englevale (Ransom County)	Ground Water (Englevale Aquifer)	Irrigation	960.0 acre-feet 480.0 acres	On October 8, 1979, the applicant was granted 150.0 acre-feet to irrigate 100.0 acres of land; remainder of request held in abeyance.  It is now recommended that an additional 202.0 acre- feet to irrigate an additional 135.0 acres of land be granted; the remainder of request shall continue to be held in abeyance.  Totals granted thus far would be 352.0 acre-feet to irrigate 235.0 acres.  This request was approved by the State Engineer on December 21, 1979.
	Priority: 7-12-76				

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3189	Reinhardt, LeRoy - Almont (Morton County)  Priority: 6-18-79 Hearing: 8-20-79 Deferred: 8-23-79	Big Muddy Creek, trib. to Heart River  * NO PRIOR PERMITS	Irrigation	177.0 acre-feet 88.5 acres	88.5 acre-feet 88.5 acres  (Remainder of original request to be denied.)
3196	Cooperative Power Association/United Power Association - Elk River, Minn. (McLean County)  Priority: 8- 3-79 Hearing: 10- 1-79 Deferred: 12-12-79	Ground Water (Weller Slough Aquifer)	Industrial (Emergency Backup System)	400.0 acre-feet	400.0 acre-feet  * The applicant holds a number of permits in various counties.
2007	Agnew, Milton - Menoken (Burleigh County)  Priority: 11-29-73	Ground Water (Upper Apple Creek Aquifer)  * NO PRIOR PERMITS	Irrigation	541.0 acre-feet 374.0 acres	On May 12, 1975, the applicant was granted 216.0 acre-feet to irrigate 216.0 acres; remainder held in abeyance.  It is now recommended that an additional 223.0 acre-feet of water to irrigate an additional 76.0 acres be granted; remainder of original request to be denied.  Totals granted would be 439.0 acre-feet to irrigate 292.0 acres.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3204	Walz, Leon - Beulah (Mercer County)  Priority: 10- 3-79 Hearing: 11-26-79 Deferred: 12-12-79	Unnamed Stream, trib. to Lake Sakakawea  * NO PRIOR PERMITS	Irrigation- Waterspreading	137.0 acre-feet 137.0 acres	137.0 acre-feet 137.0 acres
3187	All Seasons Water Users Association, Inc. - Bottineau (Rolette County)  Priority: 6-15-79 Hearing: 8- 6-79 Deferred: 8-23-79	Ground Water (Shell Valley Aquifer)  * #2491 (Priority Date: 6-10-76) #2492 (Priority Date: 6-10-76) #2493 (Priority Date: 6-10-76) #2890 (Priority Date: 7-7-77)	Municipal- (Rural Domestic)	28.0 acre-feet  Granted 27.0 acre-feet Granted 17.0 acre-feet Granted 60.0 acre-feet Granted 65.0 acre-feet	28.0 acre-feet  (This request was granted by State Engineer on January 28, 1980.)
2347	Dick, Raymond - Englevale (Ransom County)  Priority: 12-29-75	Ground Water (Englevale Aquifer)	Irrigation	1280.0 acre-feet 640.0 acres	On April 21, 1976, the applicant was granted 404.0 acre-feet to irri- gate 270.0 acres; (405.0 acre-feet held in abey- ance).  It is now recommended that an additional 189.0 acre-feet to irrigate an additional 126.0 acres be released; remainder of original request to be denied.  Totals granted would be 593.0 acre-feet to irrigate a total of 396.0 acres.  (This request was approved by the State Engineer on January 29, 1980.)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3208	Fisher Sand and Gravel Co. - Dickinson (Oliver County)  Priority: 1-15-80 Hearing: 2-19-80	Ground Water (Missouri River Aquifer)	Industrial	28.0 acre-feet	28.0 acre-feet  * #301 (Priority Date: 2-14-48) Granted 150.0 acre-feet
3211	Texaco, Inc. - Keene (McKenzie County)  Priority: 11-14-79 Hearing: 2-19-80	Ground Water	Industrial	22.59 acre-feet	It is recommended that action be deferred at this time.  * The applicant holds a number of permits in various counties.
3203	Vandal, Carris - Bottineau (Rolette County)  Priority: 10- 2-79 Hearing: 2-19-80	Ground Water	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.  * NO PRIOR PERMITS
1250	Shelley, Russel - Absarokee, Mont. (McKenzie County)  Priority: 10-30-64 Hearing on Amendment: 2-19-80	Unnamed Intermittent Draws, trib. to Missouri River	Irrigation- Waterspreading	This is a request for a change in point of diversion.	It is recommended that action on this request be deferred.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3212	Bunn, Dale K. - Lisbon (Ransom County)  Priority: 11-30-79 Hearing: 2-19-80	Ground Water	Irrigation	218.7 acre-feet 145.8 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
2253	Iglehart, James P. and John B. - Emmet (McLean County)  Priority: 4- 2-75 Hearing on Amendment: 2-19-80	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
		* #1824 (Priority Date: 2-11-72) Granted 302.0 acres #2314 (Priority Date: 12-5-75) Granted 420.0 acres			
728	Linton, City of - Linton (Emmons County)  Priority: 6-19-57 Hearing on Amendment: 2-25-80	Ground Water	Municipal	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2043	Hagen, Kenneth S. - Cooperstown (Griggs County)  Priority: 2-25-74 Hearing: 5- 6-74 Deferred: 5-28-74	Ground Water (Spiritwood Aquifer)  * NO PRIOR PERMITS	Irrigation	320.0 acre-feet 160.0 acres	Recommend to approve: 100.0 acre-feet 160.0 acres  (Remainder of request to be held in abeyance)  This request was approved by the State Engineer on December 19, 1979.)
1880	Solen, City of - Solen (Sioux County)  Priority: 8-14-79 Hearing: 9-17-79 Deferred: 9-26-79	Ground Water (Fox Hills Formation)  * NO PRIOR PERMITS	Municipal	194.0 acre-feet	113.0 acre-feet  (Remainder of original request to be denied.)
2015	Richter, Victor J. - Menoken (Burleigh County)  Priority: 12-10-73	Ground Water (Glencoe Channel Aquifer)  * NO PRIOR PERMITS	Irrigation	860.8 acre-feet 430.4 acres	On May 12, 1975, the applicant was granted 202.0 acre-feet to irrigate 135.0 acres; remainder held in abeyance.  It is now recommended that an additional 405.5 acre- feet to irrigate an additional 270.0 acres; remainder of request to be denied.  Totals granted would be 607.5 acre-feet to irrigate 405.0 acres.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2133	Schiff, George - Ruso (McLean County)  Priority: 7-22-74 Hearing: 12-16-74 Deferred: 5-12-75	Ground Water (Horseshoe Valley Aquifer)  * NO PRIOR PERMITS	Irrigation	834.2 acre-feet 417.1 acres	465.0 acre-feet 310.0 acres  (Remainder of original request to be denied.)
3217	Orn, Floyd - Stirum (Sargent County)  Priority: 12-17-79 Hearing: 2-25-80	Ground Water  * NO PRIOR PERMITS	Irrigation	580.8 acre-feet 387.2 acres	It is recommended that action be deferred at this time.
3218	Fischer, Leo - Killdeer (Dunn County)  Priority: 12-20-79 Hearing: 2-25-80	Ground Water  * NO PRIOR PERMITS	Industrial (water to be used for oil well drilling)	724.0 acre-feet	Recommend for approval: 75.0 acre-feet  (Remainder of original request shall be held in abeyance)
3219	Voightman, Steve - Ludden (Dickey County)  Priority: 1- 7-80 Hearing: 2-25-80	James River  * NO PRIOR PERMITS	Irrigation	240.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3220	Kaiser Engineers, Inc. - Oakland, Calif. (Mercer County)  Priority: 1-15-80 Hearing: 2-25-80	Ground Water  * NO PRIOR PERMITS	Industrial (dust control, moisture density control of earth- work, and dewatering for construction)	800.0 acre-feet	It is recommended that action be deferred at this time.
3221	Helm, Donald D. - Fairview, Mont. (McKenzie County)  Priority: 1-18-80 Hearing: 2-25-80	Spring-fed drainage ditch, trib. to Yellowstone River  * NO PRIOR PERMITS	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
3201	Gackle Public School District - Gackle (Logan County)  Priority: 7-17-79 Hearing: 11-26-79 Deferred: 12-12-79	Ground Water; and unnamed lake, non- contributing to James River (Unnamed Aquifer)  * NO PRIOR PERMITS	Irrigation (Golf Course)	56.0 acre-feet 27.99 acres	56.0 acre-feet 27.99 acres
2305	Lochthowe, James - Norwich (Ward County)  Priority: 1-20-76	Ground Water (Unnamed Aquifer)  * NO PRIOR PERMITS	Irrigation	215.1 acre-feet 143.4 acres	On March 24, 1977, the applicant was granted 83.0 acre-feet to irrigate 55.0 acres; remainder of original request held in abeyance.

It is now recommended that an additional 45.0 acre-feet to irrigate an additional 30.0 acres be approved; remainder of request denied. Totals approved would be 128.0 acre-feet to irrigate 77.0 acres.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3115	Wagner, Chad - Englevale (Ransom County)  Priority: 6-12-78 Hearing: 8-28-78 Deferred: 9-14-78	Ground Water (Elliot Aquifer)	Irrigation	480.0 acre-feet 320.0 acres	Recommend for approval: 135.0 acre-feet 135.0 acres  (Remainder of original request to be held in abeyance.)  * #2219A (Priority Date: 2-21-75) Granted 135.0 acres
2914	Peterson, Darrle - Warwick (Benson County)  Priority: 6-27-77 Hearing: 10- 4-77 Deferred: 12- 7-77	Ground Water (Warwick Aquifer)	Irrigation	460.0 acre-feet 230.0 acres	300.0 acre-feet 200.0 acres  (Remainder of original request to be denied.)  * #2661 (Priority Date: 12-20-76) Granted 135.0 acres
2903	Hoffart, Frank - Bismarck (Benson County)  Priority: 6- 6-77 Hearing: 10- 3-77 Deferred: 12- 7-77	Ground Water (Unnamed Aquifer)	Irrigation	684.0 acre-feet 456.0 acres	650.0 acre-feet 434.0 acres  (Remainder of original request to be denied.)  * NO PRIOR PERMITS
2851	Appert, Fred W. - Hazelton (Burleigh County)  Priority: 4- 6-77 Hearing: 7-11-77 Deferred: 8-16-77	Ground Water and/or Dugout (Glencoe Channel Aquifer)	Irrigation	600.0 acre-feet 389.0 acres	580.0 acre-feet 389.0 acres  (Remainder of original request to be denied.)  * NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2494	Beckstrand, John R. - Warwick (Benson County)  Priority: 7-15-76	Ground Water (Warwick Aquifer)  * #2289 (Priority Date: 5-23-75)	Irrigation	240.0 acre-feet 207.0 acres  Granted 135.0 acres	On February 11, 1977, the applicant was granted 180.0 acre-feet of water to irrigate 120.0 acres; 60.0 acre-feet of original request held in abeyance.  It is now recommended that an additional 60.0 acre-feet to irrigate an additional 87.0 acres be approved.  Total amounts granted would be 240.0 acre-feet to irrigate 207.0 acres.
1755	Christine Sewer & Water Association - Christine (Richland County)  Priority: 4-26-79 Hearing: 7- 3-79 Deferred: 7-25-79	Ground Water (Unnamed Aquifer)  * NO PRIOR PERMITS	Municipal	100.0 acre-feet	50.0 acre-feet  (Remainder of original request to be denied.)
2147	Slater, Agnes I. - Minot (McLean County)  Priority: 2-28-75 Hearing: 4-14-75 Deferred: 5-12-75	Ground Water (Horseshoe Valley Aquifer)  * NO PRIOR PERMITS	Irrigation	316.0 acre-feet 115.0 acres	157.5 acre-feet 105.0 acres  (Remainder of original request to be denied.)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2164	Iszler, Milton - Gackle (Stutsman County)  Priority: 10-21-74 Hearing: 12-16-74 Deferred: 5-12-75	Ground Water (Unnamed Aquifer)  * NO PRIOR PERMITS	Irrigation	640.0 acre-feet 312.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request to be held in abeyance.)
2175	Glenfield, City of - Glenfield (Foster County)  Priority: 3-16-79 Hearing: 4- 9-79 Deferred: 4-18-79	Ground Water (New Rockford Aquifer)  * NO PRIOR PERMITS	Municipal	30.0 acre-feet	30.0 acre-feet
2193	McCullough, Calvin - Oakes (Dickey County)  Priority: 1- 7-75	Ground Water (Guelph Aquifer)  * NO PRIOR PERMITS	Irrigation	640.0 acre-feet 320.0 acres	On May 12, 1975, the applicant was granted 135.0 acre-feet to irrigate 135.0 acres; remainder of original request to be held in abeyance.  It is now recommended that an additional 202.0 acre- feet of water to irrigate an additional 135.0 acres be approved; remainder of original request to be denied.  Totals granted would be 337.0 acre-feet to irrigate 270.0 acres of land.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2446	Dinkins, Paul C. - Dunn Center (Dunn County)  Priority: 4-26-76 Hearing: 8- 2-76 Deferred: 9-28-76	Ground Water and Spring Creek, trib. to Knife River  * NO PRIOR PERMITS	Irrigation- Waterspreading	464.0 acre-feet 232.0 acres	Recommend to approve: 44.0 acre-feet 44.0 acres of waterspreading from Spring Creek  It is also recommended that the remaining 376.0 acre- feet to irrigate 188.0 acres from ground-water be denied because of insuffic- ient water in aquifer. Remainder of surface water also to be denied.
2553	Hoggarth Bros. - Courtenay (Stutsman County)  Priority: 9-27-76	Ground Water (Spiritwood Aquifer)  * #2981 (Priority Date: 12-2-77) requested 273.2 acres; 225.0 acres granted and remainder is presently being held in abeyance.	Irrigation	1401.0 acre-feet 936.0 acres	On February 11, 1977, the applicant was granted 300.0 acre-feet of water to irrigate 200.0 acres; remainder of request to be held in abeyance.  It is now recommended that an additional 202.5 acre- feet of water be granted to irrigate an additional 135.0 acres; remainder of original request shall continue to be held in abeyance.  Totals granted thus far would be 502.5 acre-feet of water to irrigate 335.0 acres.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2637	Hanson, Lester A. - Tolna (Benson County)	Ground Water (Spiritwood Aquifer)	Irrigation	600.0 acre-feet 312.0 acres	On February 11, 1977, the applicant was granted 202.0 acre-feet of water to irrigate 270.0 acres; remainder of request held in abeyance.  It is now recommended that an additional 203.0 acre-feet of water be granted; remainder of original request to be denied.  Totals granted would then be 405.0 acre-feet of water to irrigate 270.0 acres.
	Priority: 10- 1-76	* NO PRIOR PERMITS			
2668	Pare, Howard L. - Tolna (Benson County)	Ground Water (Spiritwood Aquifer)	Irrigation	480.0 acre-feet 302.0 acres	On March 24, 1977, the applicant was granted 193.5 acre-feet of water to irrigate 193.0 acres; 140.5 acre-feet held in abeyance.  It is now recommended that an additional 96.0 acre-feet of water be granted; remainder of original request to be denied.  Totals granted would then be 289.5 acre-feet to irrigate 193.0 acres.
	Priority: 11-30-76	* #2110 (Priority Date: 5-29-74) Granted 389.0 acres			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2804	Morrison Farm - Robinson (Kidder County)  Priority: 4- 1-77	Ground Water (Unnamed Aquifer)  * NO PRIOR PERMITS	Irrigation	922.0 acre-feet 615.0 acres	On March 16, 1978, the applicant was granted 225.0 acre-feet of water to irrigate 160.0 acres of land; remainder of original request was held in abeyance.  It is now recommended that an additional 585.0 acre-feet of water be granted to irrigate an additional 380.0 acres of land; remainder of original request to be denied.  Totals granted would then be 810.0 acre-feet of water to irrigate 540.0 acres of land.
2888	Scott, Kenneth - Spiritwood (Stutsman County)  Priority: 6-28-77 Hearing: 7-25-77 Deferred: 8-16-77	Ground Water (Unnamed Aquifer)  * NO PRIOR PERMITS	Irrigation	480.0 acre-feet 308.6 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request to be held in abeyance.)
2986	South Heart, City of - South Heart (Stark County)  Priority: 10-14-77 Hearing on Amendment: 1-29-79 Action on Amendment Deferred: 2-20-79	Ground Water (Tongue River Formation)	Municipal	This is a request for a change in point of diversion.	It is recommended that the request for a change in point of diversion be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2840	Huether, Richard H. - Lisbon (Ransom County)	Ground Water (Elliot Aquifer)	Irrigation	702.0 acre-feet 468.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request shall be held in abeyance.)
	Priority: 4-15-77 Hearing: 6-28-77 Deferred: 7- 8-77	* #2322 (Priority Date: 10-1-75) requested 960.0 acres; 320.0 acres approved, remainder of original request is presently held in abeyance. #2657 (Priority Date: 12-17-76) requested 312.0 acres; 135.0 acres approved, remainder of original request is presently held in abeyance. #2841 (Priority Date: 4-15-77) requested 312.0 acres; entire amount is in deferred status.			
2842	Huether, Richard H. - Lisbon (Ransom County)	Ground Water (Elliot Aquifer)	Irrigation	468.0 acre-feet 312.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request shall be held in abeyance.)
	Priority: 4-15-77 Hearing: 6-28-77 Deferred: 7- 8-77	* Same as #2840 above			
2843	Huether, Richard H. - Lisbon (Ransom County)	Ground Water (Elliot Aquifer)	Irrigation	936.0 acre-feet 624.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request shall be held in abeyance.)
	Priority: 4-15-77 Hearing: 6-28-77 Deferred: 7- 8-77	* Same as #2840 above			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2844	Huether, Richard H. - Lisbon (Ransom County)  Priority: 4-15-77 Hearing: 6-28-77 Deferred: 7- 8-77	Ground Water (Elliot Aquifer)  * Same as #2840 on page 17	Irrigation	345.0 acre-feet 230.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request shall be held in abeyance.)
3040	Westgard, Peter E. - Plaza (Mountrail County)  Priority: 6- 6-78 Hearing: 7-10-78 Deferred: 7-19-78	Ground Water (Shell Creek Aquifer)  * NO PRIOR PERMITS	Irrigation	560.0 acre-feet 289.5 acres	Recommend for approval: 67.5 acre-feet 45.0 acres  (Remainder of original request shall be held in abeyance.)
3099	Lewis, A. K. - Lisbon (Ransom County)  Priority: 4-12-78 Hearing: 6-19-78 Deferred: 6-23-78	Ground Water (Elliot Aquifer)  * NO PRIOR PERMITS	Irrigation	240.0 acre-feet 160.0	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request shall be held in abeyance.)
3151	Thompson, Jess E. - Beulah (Mercer County)  Priority: 1-12-79 Hearing: 2-12-79 Deferred: 2-20-79	Ground Water (Knife River Aquifer)  * NO PRIOR PERMITS	Irrigation	366.0 acre-feet 183.0 acres	Recommend for approval: 210.0 acre-feet 140.0 acres  (Remainder of original request shall be held in abeyance.)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3162	F. L. Tompkins; R. J. Ulrich, Jr.; and Milton Rolle - Minot (McHenry County)	Ground Water (New Rockford Aquifer)	Irrigation	320.0 acre-feet 155.0 acres	225.0 acre-feet 150.0 acres  (Remainder of original request shall be denied.)
	Priority: 2-16-79 Hearing: 4-16-79 Deferred: 4-18-79	* #1762 (Priority Date: 3-25-71) Granted 360.5 acres #2273 (Priority Date: 4-24-75) Granted 676.5 acres #2384 (Priority Date: 3-4-76) Granted 158.0 acres #2548 (Priority Date: 9-24-76) Granted 135.0 acres #2879 (Priority Date: 3-31-77) Requested 320.0 acres; 150.0 acres granted, remainder being held in abeyance. #2949 (Priority Date: 7-19-78) Requested 160.0 acres; 150.0 acres granted, remainder being held in abeyance.			
3166	Ellendale Golf Club - Ellendale (Dickey County)	Ground Water (Unnamed Aquifer); and Dry Branch, trib. to Elm River	Irrigation	42.0 acre-feet 21.0 acres	42.0 acre-feet 21.0 acres
	Priority: 2-21-79 Hearing: 4- 2-79 Deferred: 4-18-79	* NO PRIOR PERMITS			
2524	McCanna Farming Co. Partnership - McCanna (Grand Forks County)	Ground Water	Irrigation	7196.0 acre-feet 3598.0 acres	The applicant has not expressed any further interest in completing the application, therefore, it is recommended that the application be "Void - Application Incomplete".
	Priority: 8-27-76				

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2742	Blotter, Jerry - Coleharbor (McLean County)  Priority: 2- 1-77	Ground Water	Irrigation	934.5 acre-feet 623.0 acres	The applicant has been contacted a number of times and has not shown any further interest in completing the application; therefore, it is recommended that the application be "Void - Application Incomplete".
2882	Daniels, Richard - Oakes (Dickey County)  Priority: 6-17-77	Ground Water	Irrigation	640.0 acre-feet 320.0 acres	The applicant has been contacted a number of times and has not shown any further interest in completing the application; therefore, it is recommended that the application be "Void - Application Incomplete".
3104	Olson, Orlando K. - Arvilla (Grand Forks County)  Priority: 4-19-78 Hearing: 7-10-78 Deferred: 7-19-78	Ground Water (Elk Valley Aquifer)  * NO PRIOR PERMITS	Irrigation	200.0 acre-feet 133.0 acres	199.5 acre-feet 133.0 acres  (Remainder of original request to be denied)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2664	Hammer, Arley - Englevale (Ransom County)	Ground Water (Unnamed Aquifer)	Irrigation	940.0 acre-feet 629.08 acres	On December 7, 1977, the applicant was granted 135.0 acre-feet of water to irrigate 135.0 acres of land; remainder of request to be held in abeyance.
	Priority: 12-23-76	* #2620 (Priority Date: 11-16-76)		Granted 380.0 acres	
					It is now recommended that an additional 67.5 acre-feet of water to irrigate an additional 270.0 acres of land be approved; remainder of original request shall continue to be held in abeyance.
					Totals granted thus far would be 202.5 acre-feet of water to irrigate 405.0 acres of land.
2945	Schmaltz, Richard A. - Rugby (Pierce County)	Ground Water (Kilgore Aquifer)	Irrigation	650.0 acre-feet 389.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres  (Remainder of original request to be held in abeyance.)
	Priority: 8- 2-77 Hearing: 12-12-77 Deferred: 2-16-78	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3086	Hartl, Edmund, Jr. - New Rockford (Wells County)  Priority: 4- 7-78 Hearing: 6- 5-78 Deferred: 6-23-78	Ground Water (New Rockford Aquifer)	Irrigation	234.0 acre-feet 156.0 acres	210.0 acre-feet 140.0 acres  (Remainder of original request shall be denied.)  * #2753 (Priority Date: 3-3-77) granted 114.0 acres to Middle Lane Farm
2837	Anderson, Jerry N. - Enderlin (Cass County)  Priority: 4-27-77 Hearing: 7-25-77 Deferred: 8-16-77	Ground Water (Unnamed Aquifer)	Irrigation	470.0 acre-feet 235.0 acres	Recommend for approval: 205.5 acre-feet 137.0 acres  (Remainder of original request shall be held in abeyance)  * NO PRIOR PERMITS
3085	Fettig, LeRoy - Hebron (Mercer County)  Priority: 4- 5-78 Hearing: 6- 5-78 Deferred: 6-23-78	Ground Water (Knife River Aquifer)	Irrigation	236.0 acre-feet 138.0 acres	207.0 acre-feet 138.0 acres  (Remainder of original request shall be denied)  * #2144 (Priority Date: 9-1-74) Granted 526.6 acres
2933	Benz, Walter A. - Dunn Center (Dunn County)  Priority: 7-11-77 Hearing: 10-17-77 Deferred: 12- 7-77	Ground Water (Unnamed Aquifer)	Irrigation	400.0 acre-feet 200.0 acres	300.0 acre-feet 200.0 acres  (Remainder of original request shall be denied)  * #2014 (Priority Date: 12-7-73) Granted 58.0 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2610	Wall, James - Lisbon (Ransom County)  Priority: 9-24-76	Ground Water (Unnamed Aquifer) and Sheyenne River, trib. to Red River  * NO PRIOR PERMITS	Irrigation	1440.0 acre-feet 720.0 acres	<p>On May 27, 1977, the applicant was granted 202.5 acre-feet of water to irrigate 135.0 acres; remainder of original request held in abeyance.</p> <p>It is now recommended that an additional 202.5 acre-feet of water to irrigate an additional 135.0 acres be approved; remainder of original request shall continue to be held in abeyance.</p> <p>Total amounts granted thus far would be 405.0 acre-feet of water to irrigate 270.0 acres.</p>
3160	Haak, Norman - Oakes (Dickey County)  Priority: 2-16-79 Hearing on Amendment: 11-26-79 Amendment Deferred: 12-12-79	Ground Water (Oakes Aquifer)	Irrigation	This is a request for a change in point of diversion.	It is recommended that this request for a change in point of diversion be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3160	Haak, Norman - Oakes (Dickey County)  Priority: 2-16-79 Hearing: 4- 2-79 Deferred: 4-18-79	Ground Water (Oakes Aquifer)	Irrigation	289.0 acre-feet 192.6 acres	Recommend for approval: 133.5 acre-feet 89.0 acres  (Remainder of original request shall be held in abeyance)  * #2010 (Priority Date: 12-4-73) Granted 160.0 acres to Norman and Arlene Haak
2317	Surrey, City of - Surrey (Ward County)  Priority: 8-11-75 Hearing: 10-20-75 Deferred: 12- 5-75	Ground Water (Unnamed Aquifer)	Municipal	60.0 acre-feet	26.0 acre-feet  (Remainder of original request shall be denied)  * #1414 (Priority Date: 1-16-67) Granted 34.0 acre-feet
2834	Schiffner, Dorothy - Englevale (Ransom County)  Priority: 4-20-77 Hearing: 6-27-77 Deferred: 7- 8-77	Ground Water (Englevale Aquifer)	Irrigation	1280.0 acre-feet 640.0 acres	Recommend for approval: 58.0 acre-feet 115.0 acres  (Remainder of original request shall be held in abeyance)  * NO PRIOR PERMITS
2788	Hutchinson, Duane P. - Killdeer (Dunn County)  Priority: 3-18-77 Hearing: 6- 1-77 Deferred: 7- 8-77	Ground Water (Killdeer Aquifer)	Irrigation	320.0 acre-feet 160.0 acres	Recommend for approval: 222.0 acre-feet 148.0 acres  (Remainder of original request shall be denied)  * NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3133	Calderwood, Willis L. - Crary (Ramsey County)	Unnamed lake or slough, trib. to Devils Lake	Irrigation	227.0 acre-feet 158.0 acres	158.0 acre-feet 158.0 acres (Remainder of original request shall be denied)
	Priority: 9-28-78 Hearing: 1- 8-79 Deferred: 2-20-79	* NO PRIOR PERMITS			

# What EVERYONE Should Know About

# S. 14

# RECLAMATION REFORM ACT OF 1979

## S.14 A BASIC DEPARTURE FROM THE RECLAMATION FAMILY FARM POLICY

On July 6, the U.S. Senate Energy and Natural Resources Committee recommended passage of S.14, the proposed "Reclamation Reform Act of 1979".

Supporters of the reform bill said its purpose is "to conform the law to the current practical considerations of farm practices and economics."

But, in truth, nothing in the bill merits the term "reform."

S.14 would legitimize virtually every past and present violation of the reclamation law.

It would legalize many special exemptions and faulty interpretations of the law which have been summarily rejected by the courts in recent decisions.

Tony T. Dechant, national president of the Farmers Union, has termed the Committee bill a "blatant welfare handout for the corporations and syndicates who have been violating the law for years."

Rep. George Miller (Cal) has declared the provisions of S.14 will lead to the "biggest Western stagecoach robbery since Jesse James."

Secretary of the Interior Cecil D. Andrus has stated that S.14 "would effectively repeal the reclamation law as we have known it . . . it endorses all of the present program aberrations of large farms, absentee speculator owners and enforcement loopholes."

In this special report Farmers Union examines why S.14 is special privilege legislation of the worst kind.

■ ■ ■

## MULTIBILLION DOLLAR GIVEAWAY WOULD MEAN AN END TO FUTURE RECLAMATION PROJECTS, INVESTMENTS

In the 77 years since enactment of the 1902 Reclamation Act, a total of 176 reclamation projects have been constructed and they now provide project water to 146,000 farms in 17 states. A total of 5 million acres receive full water supply and 6 million acres and receiving supplementary water supply.

Potentially, in the 17 states, they are another several million acres of land which could be feasibly irrigated.

The Bureau of Reclamation has already gotten authorization for 23 reclamation projects in 13 states. Many others are in the discussion stage. Extensions and improvements in the existing 176 reclamation projects undoubtedly will be considered necessary.

However, at a time when both federal dollars and Western water are likely to be scarce, there is likely to be little future federal investment in federally subsidized irrigation projects if the benefits are to go principally to corporations, absentee investors, and "paper" farmers.

## THE RECLAMATION ACT OF 1902—ITS GOAL : FARM FAMILIES ON THE LAND

The family farm objective of the reclamation program, which S.14 proposes to repeal, was established in the Reclamation Act of 1902. The law had four basic goals:

- To settle the arid West where irrigated farming was feasible;
- To foster an agricultural pattern based on family farms;
- To distribute the benefits to as many settlers as possible;
- To prevent the concentration of federal subsidies in the hands of wealthy land barons and speculators.

The first of these goals has been largely achieved. The other goals remain valid although unrealized to an extent in some areas.

There can be no mistake about the intent of Congress and the President. The family farm goal was crucial to President Theodore Roosevelt and to the authors of the 1902 Act. Rep. Francis G. Newlands (Ariz), chief author of the bill, said "the very purpose of this bill is to guard against land monopoly and to hold this land in small tracts for the people of the entire country. Another author, Rep. Eben Martin (Wyo), stated the goal of the bill "to build up communities" and "not to encourage the prosecution of agriculture by large corporations."

To achieve these settlement goals, the federal government would build dams and canals to irrigate farms in the West and the farmers, using the project water, would pay back the cost of construction, as able, without interest. To receive this subsidized project water, farmers had to agree to live on or near their farms and were not to receive more water than would irrigate 160 acres for each individual owner (320 acres for husband and wife).

The Reclamation Act has been amended several times over the years to clarify its provisions and to stop abuses.

To stop profiteering in reclamation land, Congress in 1926 ordered that people owning land in excess of 160 acres, who desired to obtain project water to irrigate it, would have to place the excess under recordable contract to sell it within a stated time.

Despite the amendments to the law, many ingenious schemes have been devised by landowners and speculators to obtain the benefits of the federally subsidized project water without strictly complying with the law.

Most common of these devices has been a "lease-back" arrangement under which an owner of excess lands sells the excess acres in 160-acre parcels to friends, family, associates, or employees, who then lease the land back to the original owner. Technical compliance with the law appears to have been made, but the original owner still controls the property and no new family-sized farming units have been created.

# S.14

# RECLAMATION REFORM ACT OF 1979

## WHAT THE NATIONAL FARMERS UNION SAYS IS WRONG WITH S. 14

When S.14 was reported by the Senate Energy and Natural Resources Committee, President Dechant said "we find it unthinkable that Congress would give its approval to such legislation at any time, much less when both Western water resources and federal dollars are scarce."

Dechant has placed the Farmers Union on record as "unalterably opposed" to the passage on S.14 in its present form.

Subsequently, in a letter to Senator Gaylord Nelson (Wis.), Farmers Union urged that any action on S.14 be delayed until an environmental impact statement is completed at some time late in 1980. But, if action is taken now, the bill should either be sent back to Committee or drastically amended.

The Farmers Union listed a total of 26 amendments which would need to be adopted to make the legislation acceptable and in conformity with the recommendations of National Farmers Union's 1979 national convention.

Among the criticisms of S.14 made by Farmers Union are:

- The bill would make an eight-fold increase in the acreage limit from 160 to 1,280 acres. USDA data shows that 91% of all Western farms which irrigate land, irrigate 500 acres or less.
- No effective limits are placed on leasing of land or management contracts. This makes the acreage limit largely an illusion. Department of Interior staff projects that under S.14, the typical reclamation farm would irrigate 1,760 acres, with an average subsidy to such a farm of \$850,000.
- The universal "Class 1 equivalency" provision includes no clause limiting it to areas with a growing season of 180 days or less. The unrestricted Class 1 equivalency provision would give farmers in California and Arizona, where the growing season is year-around, an unfair competitive advantage over areas where the growing season is shorter.
- Special exemptions in S.14 aggravate the problem of the unjustifiably liberal acreage limitations which are proposed. The Imperial Irrigation District would be exempted from the acreage limitation although federal courts have held that the law is applicable there. Trusts and religious groups would be exempted although this could easily be a loophole for evasion of the law. All Corps of Engineers projects would be exempted, in contravention of the provisions of the Flood Control Act of 1944. Companies which own as much as 80,000 acres in the service area of the Pine Flat Dam in California would be the main beneficiaries.
- Landowners wealthy enough to pay off reclamation construction costs attributable to irrigation would be permitted to exempt themselves from acreage restrictions.
- Residency requirement of the 1902 Act would be repealed.
- Provision of water for operators of reclamation project farms at well below the cost of water and services is a subsidy which enables some farmers to reduce their operating costs far below those faced by farmers in other areas of the nation. The result can be a shift of production away from efficient areas to the subsidized areas.



## WHAT SECRETARY ANDRUS SAYS IS WRONG WITH THE SENATE COMMITTEE BILL

Secretary of the Interior Cecil D. Andrus, commenting on the bill reported by the Senate committee; said, "I believe the bill is unacceptable in numerous specific respects. However, the bill's disregard for the most basic social purposes of the Reclamation Act is its greatest general deficiency."

"Farm size, residency and leasing are at the very heart of achieving the primary objectives of the law," Andrus noted. "Yet all of these three factors were done grievous violence by the committee."

Instead of upholding the social purposes of promoting family farming and the building of the rural community, Andrus charged that the bill "opens the doors to nonresident, nonparticipative, investor-type ownership of reclamation farms."

Andrus disputed the contention that the family farm goal of reclamation policy should lapse when project construction costs are repaid.

He maintained that subsidies are never entirely paid off and not intended to be. The federal subsidies have always been considered acceptable because they are designed to promote family farm operations. But, Andrus complained, S.14 would remove the justification for federal investment in reclamation.

Andrus, in his comments to the Senate committee urged a series of amendments to S.14, including one which would restate and reaffirm the basic purpose of the 1902 Act.

Andrus particularly criticized the proposed repeal of the residency requirement, saying that the Department of Interior "considers a strong residency requirement to be the best means of assuring the owner-operated farms that are envisioned by the reclamation program."

The Secretary said that the Department could accept a "payout" provision only if a pattern of family farms had been established and there were a contractual assurance that this would continue.



## HOW IRRIGATION SUBSIDIES FAVOR SOME FARM PRODUCERS OVER OTHERS

Corporations and investors who own land in reclamation project areas enjoy a special advantage over farmers in other parts of the country by having their production costs reduced and their crop yields increased by subsidized project water.

For example, wheat yields in the reclamation areas of the Central Valley in California in 1977 averaged 74 bushels an acre compared with the national average yield of 36 bushels.

Corn yields in the Central Valley averaged 109 bushels an acre, well over the national average, while cotton yields were more than two bales to the acre compared with one bale per acre elsewhere.

In some reclamation projects, farmers use an average of three acre-feet of water per acre annually and pay the government less than \$8 an acre-foot for it. Irrigation costs in other parts of the country run as high as \$45 an acre-foot and are on the increase, while the charges in the reclamation project areas are frozen at current prices for years.

This document for with State funds

# S. 14

# RECLAMATION REFORM ACT OF 1979

## WHO WOULD BENEFIT FROM PASSAGE OF S.14 AND WHY

The real beneficiaries of Congressional and White House approval of S.14 would not be typical family farmers, but a comparatively few large landowners, investors, and syndicates.

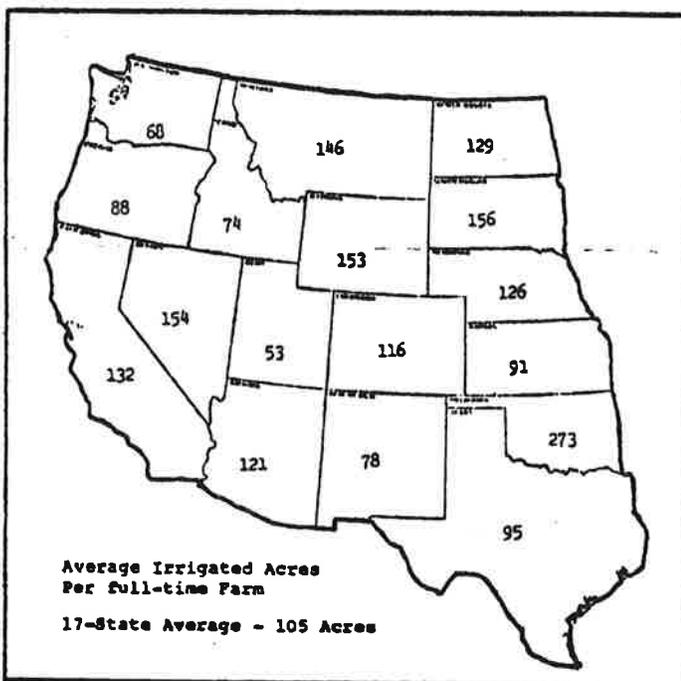
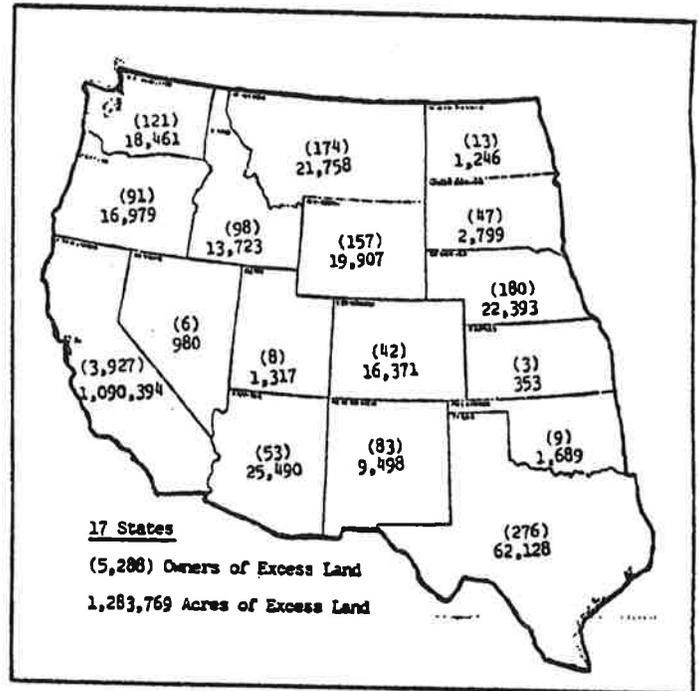
Less than 5% of the existing users of federal project water have lands in excess of that permitted under the 160-acre limitation.

The most vocal and visible support for this legislation comes from groups of the largest corporate landowners, such as the Western Farm Water Alliance, which represents owners of excess lands, most notably in California and Arizona.

Here, from the records of the Department of the Interior, are examples of those who own large tracts of excess lands;

Owner	Acres	Project
J.G. Boswell Co.	88,212	Kings River, Cal.
	21,036	Kern River, Cal.
	23,980	Westlands, Cal.
	133,228	
Southern Pacific Land Co. (Southern Pacific R.R.)	106,680	Westlands, Cal.
Tenneco West, Inc.	64,941	Kern River, Cal.
Salyer Land Co.	29,060	Kings River, Cal.
Standard Oil Co.	11,593	Westlands, Cal.
Chevron USA, Inc.	13,014	Kings River, Cal.
Southlake Farms, Inc.	26,816	Kings River, Cal.
Westlake Farms, Inc.	19,817	Kings River, Cal.
Superior Farming Co. (Superior Oil Co.)	22,581	Kern River, Cal.

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The Department of the Interior reports that there are currently 1,283,769 acres of "excess" land in all reclamation projects in the 17 Western states. Under the provisions of S.14, this figure would be reduced to 158,849 acres. After all of the special exemptions, buyouts, trusts, leases, management contracts, equivalency, and other loopholes, the real total of "excess" lands would likely be reduced to zero. The opportunity to start a new farm in a reclamation area would be closed to anyone who does not have an inside track.

The amount of windfall profit which excess landowners will receive depends on how much land they control. According to the Department of Agriculture, irrigated land in the Central Valley of California sells for an average of \$1,971 an acre. There are 508,254 acres of excess lands in the Central Valley which could become exempted under S. 14. This would mean a windfall profit of more than \$1 billion to excess landowners involved.

About 145,000 farms in the Western states use Bureau of Reclamation project water. The vast majority of these farms, about 96%, are complying with the law now. The map at left shows the average irrigated acres per fulltime farm. In only one state is the average irrigated farm bigger than 160 acres.

The map above shows the number of farms with excess acres and total excess acreage by state. Three-fourths of the excess landowners and 85% of the excess acres are in California and Arizona.

A USDA study has calculated that for the year of 1967, the federal subsidy in one project for each 640 acres of irrigated land was worth \$76,000 a year. It is understandable, then, although not defensible, that the excess landowners would try to keep the windfall they are getting.

# SOME COMMON MISCONCEPTIONS ABOUT THE RECLAMATION POLICY

## The Misconception:

Those who want to enforce the Reclamation Law as it now stands want to turn back the clock to 1902 and force people to live on 160-acre farms that are inefficient and are too small to produce a decent living.

## The Reality:

The Reclamation Law does not limit the size of a farm to 160 acres. Each individual in a family can irrigate 160 acres with federally subsidized water. This means that a husband and wife can receive enough water to irrigate 320 acres, and a family of four can irrigate 640 acres with federally supplied water. There is no limit on how much non-irrigated land can be owned or on land that can be irrigated from other sources. The Department of the Interior reports that in 1977 the average full-time reclamation farm in the 17 Western states had 105 irrigable acres (92,000 farms).

Numerous studies by the U.S. Department of Agriculture and the land-grant universities over the years have concluded that the most efficient production unit in U.S. agriculture is the one-man or two-man farm. Farms of 320 to 640 irrigated acres are large enough to take advantage of all modern technologies and to use equipment efficiently for most crops that can be irrigated. Furthermore, Department of Agriculture studies conducted specifically on farms in reclamation areas have reported that 320-acre farms would produce incomes placing them in the top 10% of earnings for all farms in the United States.

In 1977, the average gross crop value per acre of reclamation farms in the 17 Western states was \$481, ranging from a low of \$131 per acre in Montana to a high of \$830 per acre in California. Taking the average for all states, a 320-acre irrigated farm would produce a gross crop income of \$153,920.

A farm with 640 irrigated acres, which could be owned and operated by a family of four, would have a gross crop income of \$307,840. These figures are severely understated because farm prices in 1977 averaged only 67% of parity.

## The Misconception:

The reclamation law is an infringement of private property rights and an intrusion upon the "free enterprise" system.

## The Reality:

No property owner is required to take subsidized federal water. In choosing to receive this subsidized service landowners are asked to abide by reasonable limitations designed to ensure that public funds are not spent to enrich the few at the expense of the many. When owners of excess lands are required to sell their excess property, they are merely abiding by contractual obligations they have made. Considering the large government subsidies involved, reclamation farms can hardly be characterized as examples of "free enterprise" in any pure form.

## The Misconception:

Enforcement of the reclamation law would hurt many family farmers and help no one.

## The Reality:

The lists of major excess landowners show that many of the landowners who have most to lose by enforcement of the law, and most to gain from the passage of S. 14, are not farmers at all. The 5,288 "entities" that would have to sell 1,283,769 acres would receive fair market value for the land, less any value added by government investments in irrigation works. If the farms created on these excess lands averaged 320 acres, new farming opportunities would be created for 4,012 families. If new families irrigated the 1977 average of 105 acres, the excess lands would serve 12,226 new families.

## The Misconception:

The Reclamation Law does not mandate the creation of family farms. As long as the land is sold in compliance with the acreage limitation, it is no business of the federal government or the public who owns the land or how it is farmed.

## The Reality:

This contention ignores the clear statements of intent by the authors of the law and the reasons that limitations were placed on the use of reclamation water. The purpose of the reclamation program was stated most clearly by F. H. Newel, who was instrumental in drafting the law and working for its passage. Newel stated in 1905, "The object of the Reclamation Act is not so much to irrigate the land as it is to make homes." Compliance with the law on paper through investor syndicates, leases, and other legal trickery is not making homes.

## The Misconception:

Enforcement of the acreage and residency restrictions would increase food costs to consumers, because small farms are inefficient.

## The Reality:

There is simply no objective support for the contention that irrigated farms of the size required by the Reclamation Law are inefficient. These should be family farms, but they are not extremely small farms. Furthermore, reclamation farms represent only 1% of all U.S. farms, and farmers receive only a small portion of the consumer dollar spent for food. Therefore, even if the argument about the inefficiency of reclamation farms were true, it would have little, if any, effect on consumer prices for food.

August 24, 1979

CALIFORNIA	\$830.34	
ARIZONA	\$743.06	
WASHINGTON	\$571.12	
NEW MEXICO	\$391.71	
TEXAS	\$347.63	
COLORADO	\$319.44	
OREGON	\$277.65	
IDAHO	\$274.99	
OKLAHOMA	\$266.13	
NEBRASKA	\$243.05	
NORTH DAKOTA	\$237.92	
NEVADA	\$204.16	
KANSAS	\$188.63	
UTAH	\$179.49	
WYOMING	\$174.67	
SOUTH DAKOTA	\$138.88	
MONTANA	\$131.21	
		AVERAGE FOR 17 STATES \$481.00



**National  
Farmers Union**

1012 14th Street, N.W., Washington, D.C. 20006



STATE OF NORTH DAKOTA  
ALLEN I. OLSON  
**Attorney General**  
State Capitol  
Bismarck, North Dakota 58505

February 27, 1980

Mr. Vernon Fahy  
State Engineer  
State Water Commission  
State Office Building  
Ninth Street and Boulevard Avenue  
Bismarck, North Dakota 58505

Re: Garrison Diversion Unit

Dear Mr. Fahy:

This letter is to inform you of the the current litigation concerning the Garrison Diversion Unit (GDU).

1. National Audubon Society, Inc., v. Andrus, et al.,  
Civil No. 76-0943, United States District Court for  
the District of Columbia (Judge Richey).
  - a. In the recently amended complaint, the National Audubon Society is now challenging the Secretary of the Interior's decision to proceed with the GDU construction for two reasons:
    - (1) That further construction would violate the "substantive" provisions of the National Environmental Policy Act (NEPA); and
    - (2) That further construction would be a violation of the Secretary's trust responsibilities concerning national wildlife refuges.
  - b. Motions for summary judgment have been filed and most briefs have been submitted. Oral arguments are expected within the next several months. We will argue that there are no "substantive" NEPA violations (especially after the very recent Supreme Court decision in Strycker's Bay Neighborhood Council, Inc., v. Karlen, 62 L.Ed. 2d 433) and that Congress

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directed construction of the GDU with full knowledge that there may be limited adverse impacts upon refuges (the 146,530 acres of mitigation and enhancement land was designed to mitigate any fish and wildlife losses).

2. National Audubon Society, Inc., v. Andrus, et al., No. 79-1229 and 78-1452, United States Court of Appeals for the District of Columbia.
  - a. This is an appeal from the District Court's denial of Audubon's motion for an injunction to enforce the terms of the May 1977 stipulation between the United States and Audubon. The stipulation was designed by Audubon to suspend construction until Congress would again reauthorize the GDU at some indefinite time in the future.
  - b. The briefs have been filed and oral arguments were held on January 14, 1980.
  
3. The State of North Dakota and the Garrison Diversion Conservancy District v. Andrus, et al., Civil No. A77-1048, United States District Court for the District of North Dakota (Judge Van Sickle).
  - a. This action was initiated in the North Dakota Supreme Court to challenge the unauthorized withholding of funds from the GDU, and it was subsequently removed to federal court. The case was settled by stipulation; the United States agreed to continue construction of the GDU under a specified schedule.
  - b. The Secretary of the Interior has violated the settlement and the State-GDCD filed a motion on February 15, 1980, to vacate the previously filed judgment of dismissal.
  - c. The Department of the Interior informed the Executive Committee, GDCD, on February 7 that construction contracts would not be let until

Mr. Vernon Fahy  
February 27, 1980  
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future year funding is assured. On Monday, February 11, the Attorney General advised the Deputy Solicitor for Interior that legal action would be reinitiated "unless we are advised by 8 a.m. CST February 15, 1980, that construction for the GDU will proceed in 1980 pursuant to the stipulated schedule with all funds appropriated for the project." No response has been received and our motion was filed on February 15.

- d. Answers to interrogatories in Audubon v. Andrus (#1, above) were received on February 19. One answer stated:

"The FY 1981 budget submitted to the Congress does not include a request for appropriations for the GDU. It should be noted further that the Office of Management and Budget (OMB) has directed that presently existing budget authority in the amount of \$7.4 million should be expended in a manner that does not create funding needs beyond the end of FY 1980. In effect, this means that major construction contracts for Lonetree Dam, the New Rockford Canal and the Oakes Pumping Plant cannot be awarded. Therefore, the existing budget authority can only be expended on such activities as planning, preparation of designs and specifications, administration, operation and maintenance, and land acquisition (on a willing seller-willing buyer basis only until further notice)."

- e. I have been verbally advised that the decision to suspend construction activity pending assurances of future year funding has already caused such "slippage" that no construction is possible in 1980.

4. Barnes County v. Garrison Diversion Conservancy District, North Dakota District Court, Southeast Judicial District (Barnes County).

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- a. The county has filed a notice of appeal on the GDCD Board's decision denying the county's petition for exclusion from the district.
  - b. The notice of appeal was filed November 21, 1979, and there has been no further action by appellants. Mike Dwyer, Director of Legal Services for the State Water Commission, is the lead attorney for the case; he plans to file a motion to dismiss.
5. United States of America v. State of North Dakota, Civil No. Al-79-62, United States District Court for the District of North Dakota, Southwestern Division (Judge Van Sickle).
- a. The United States, at the request of the Department of the Interior, has challenged the 1977 law governing the acquisition of wetland easements by the Fish and Wildlife Service. Governor Link has withheld his approval of fee and easement acquisitions by the Fish and Wildlife Service until, among other things, mitigation and enhancement problems for the GDU are resolved.
  - b. The United States has filed a motion for summary judgment.
  - c. The State has filed a counterclaim alleging that the challenge to state law has invalidated state consent to additional federal acquisitions for national wildlife refuges. A hearing on the State's motion to enjoin federal condemnation of land for the Lake Alice National Wildlife Refuge will be heard in March.
6. Board of Directors, Garrison Diversion Conservancy District v. Andrus, United States District Court for the District of North Dakota, Northeastern Division (Judge Benson).

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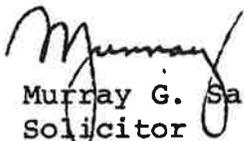
a. This lawsuit, filed in February, is designed to settle, among other things, the following disputes:

- (1) Is the 1965 mitigation and enhancement plan the presently authorized plan for the GDU?
- (2) Must the Department of the Interior give mitigation and enhancement credit for 15,910 acres of land conveyed by the GDCD to the United States in 1971?
- (3) Must modification of the mitigation and enhancement plan be in compliance with §1 of the 1944 Flood Control Act (a procedure requiring state involvement) and require bilateral modification of the Master Contract?
- (4) Ownership problems concerning West Bay of Devils Lake (if landowners intervene).

b. The complaint is now being served upon the Secretary of the Interior.

Please contact me at your convenience if you have any questions concerning these lawsuits.

Sincerely,

  
Murray G. Sagsveen  
Solicitor

dfm

Enclosure

cc: Homer Engelhorn