

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water CommissionDATE Nov 18, 1980 PLACE _____Bismarck, N. Dak. PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Col Wm W Badger	St Paul, MN	U.S. ARMY CORPS OF ENGINEERS
William Spychalla	St. Paul MN	U.S. Army Corps of Engineers
Bill Hanson	BIS.	NDSWR
Joseph M. Elliott	Bismarck, ND	N.D. SW.
Betty Jones	Bismarck	KXMB
Jerry Peterson	Bismarck	N.D. S. W. C.
Ken Carrohaus	Bismarck	U.S. Fish & Wildlife Serv
Lloyd Jones	Valley City	N.D. Chapt. Wildlife Soc.
D. Truchell	West Fargo, N.D.	S.E. Can WIND
D Spyncey, Jr.	Bis	SW
L McMeny	M, ND	N. D. WATER USERS
Liane Christensen	Bismarck	Indian Affairs
Mark Johnson	Bismarck	Old West Water Development Office
Jim Bullock	Lincoln Neb.	First National Bank Lincoln
Bill BEAVERS	OMAHA NEB.	CHILES-HEIDER + Co. INC.

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission

DATE Aug 19, 1980 PLACE _____

Bismarck, N. Dak. PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Raymond Trailing	Bismarck N.D.	Chamin Trucking District
Wm. S. Hardy	Walhalla "	Cavalier Co Water Board
D. Twickell	West Fargo	S.E. Cass WMB
Viv Hall	Bismarck	U.S.F. + W.S.
	Howard Egan	West Fargo WMB
W. Melburn	Horace N. Dak.	SELF
Doug Christianson	Horace N. Dak.	Self
Howard Johnson	Horace N. Dak.	self.
Marshall Moore	2919 Edgemont Fargo ND	SE Cass WMB
Ken Loveland		
Ross Milne		
John Roper		

MINUTES

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

November 18 and 19, 1980

The North Dakota State Water Commission held a two-day meeting in Bismarck, North Dakota, on November 18 and 19, 1980. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:50 a.m. on November 18, 1980, in the Vocational Education Conference Room, and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Arthur A. Link, Governor-Chairman
Richard Gallagher, Vice Chairman, Mandan
Gordon Gray, Member from Valley City
Alvin Kramer, Member from Minot
Arthur Lanz, Member from Devils Lake
Myron Just, Commissioner, Department of Agriculture, Bismarck
Vernon Fahy, State Engineer and Secretary, North Dakota
State Water Commission, Bismarck

MEMBER ABSENT:

Arlene Wilhelm, Member from Dickinson

OTHERS PRESENT:

State Water Commission Staff Members
Approximately 25 persons interested in agenda items

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 AUGUST 19 AND 20, 1980 -
APPROVED

Secretary Fahy offered a correction to the minutes of the August 19 and 20, 1980 State Water Commission meeting with the following suggested revision of the motion that was adopted on August 20 granting

Basin Electric Power Cooperative an extension of time for water permit No. 2179:

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission approve an extension of time, without other amendment, for conditional water permit No. 2179 until December 31, 1983 for Unit I, and until December 31, 1986 for Unit II.

It was moved by Commissioner Lanz, seconded by Commissioner Just, and unanimously carried, that the minutes be corrected as suggested by the State Engineer relative to water permit No. 2179, Basin Electric Power Cooperative.

Secretary Fahy reviewed the minutes of the August 19 and 20, 1980 meeting held in Bismarck, North Dakota, and updated the Commission members on various items.

It was moved by Commissioner Gallagher, seconded by Commissioner Gray, and unanimously carried, that the minutes of August 19 and 20, 1980, be approved as amended.

**CONTINUED DISCUSSION OF
PROGRESS REPORT BY STAFF
CONCERNING COMPREHENSIVE
PLANNING PROCESS
(SWC Project No. 322)**

\$93,000 from the Comprehensive Planning program. He noted that the entire comprehensive planning program is aimed ultimately at making our claim on the Missouri River waters. If the proposed cut remains in the budget, the plan will not be completed in the detail as originally anticipated nor in the recommended time frame.

The Office of the Budget recently held a hearing on the State Water Commission's proposed budget for the coming biennium, and Secretary Fahy informed the Commission members that one of the areas that is being proposed to be cut is approximately

**PRESENTATION BY CORPS OF
ENGINEERS RELATIVE TO
SHEYENNE RIVER FLOOD CONTROL
STUDY
(SWC Project No. 1344)**

preparatory study went into this decision, and ultimately, the Corps of Engineers and the local citizens came to the State Water Commission with an analysis of the alternatives. At that time, the proposed Kindred Dam was determined to be

Several years ago, there was a decision made that perhaps the way to solve the flooding problems in the Red River Valley area and for the city of Fargo was the construction of a tributary dam on the Sheyenne River. A great deal of

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the most feasible method of providing the greatest benefits for the least cost for flood control to Fargo and the surrounding area.

In subsequent years, with the coming of environmental concerns, and the concerns of the local people in the impoundment area, a great deal of controversy developed as to what was actually the best method to proceed.

Since the State Water Commission became the sponsoring agency years ago for the proposed Kindred Dam, the locals made an appearance before the Commission and the decision was made to form a citizens committee that would work with the Corps of Engineers and the citizens of the area. They would restudy the Kindred Dam alternative, and in addition, present other alternatives that might equal in protection that which was offered in the Kindred alternative.

That study has been underway for the past three years and has recently been completed and the alternatives have been developed. Since the State Water Commission is the sponsoring agency, Secretary Fahy said that it is important that the Corps of Engineers present their recommendations to the Water Commission and ultimately, the Commission will then make their decision as to which alternative, or combination of alternatives, it would support.

Secretary Fahy indicated that the Joint Red River Water Management Boards will be meeting next week to also consider the recommendations. Secretary Fahy stated that at one of the previous hearings, the local citizens were assured that before a final decision is made, a hearing would be held in the Fargo area.

Secretary Fahy then introduced Colonel William Badger and William Spychalla from the St. Paul Corps of Engineers. The Commission members were provided with copies of the stage 2 report documentation titled "Phase I General Design Memorandum, Flood Control and Related Purposes, Sheyenne River, North Dakota".

Colonel Badger and Bill Spychalla presented a technical, detailed presentation, accompanied by a series of slides relative to background history, and recommendations.

Mr. Spychalla indicated that the purpose of the stage 2 report documentation is to provide for agency and public review of the working information compiled to date during the Phase I General Design Memorandum studies for flood control and other purposes on the Sheyenne River, North Dakota. The information contained in the report has been the basis for the formulation of water management plans to address basin-wide water and related problems and needs. The Phase I study is required by the Corps of Engineers regulations to insure that the water management plans being developed are consistent with current basin needs and conditions and meet current evaluation criteria for federal water projects.

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Mr. Spychalla stated that the concerns of the public in the lower Sheyenne River Basin were assessed through public meetings, citizen committee meetings, correspondence, testimony before congressional committees, and media accounts of community and citizen concerns. Several of the key concerns regarding water and related land resource planning expressed prior to and during the Phase I evaluation of alternatives include: Citizens of Fargo-Moorhead were very concerned about water supply shortages in late 1976 and early 1977 when flow in the Red River of the North dropped to zero; Residents along the Sheyenne River from Kindred to the mouth suffered considerable economic loss, mental anguish, and physical inconvenience during the floods of 1975, 1978, and 1979, 3 of the last 5 years. Residents along the entire Sheyenne River were adversely affected by the 1979 flood, resulting in a strong wish to see some type of flood damage reduction measures implemented; Public concern in North Dakota over the continued acquisition of wetland areas was expressed through a stoppage of the federal wetland easement programs; Continued removal of property from the tax rolls was another item of concern; Dissatisfaction with the potential impacts of the multiple-purpose Kindred Dam was expressed, centering on the issues of the number of families to be relocated, the large number of acres to be taken from private ownership, potential changes in ranching operations in the adjacent lands as a result of rises in the ground-water table, and impacts on the large wooded area in the reservoir area; Residents in flood-prone areas consider the increased flooding of the past several years to be a direct result of drainage of wetland areas and farmland. Much concern has been expressed for having the uncontrolled drainage stopped to prevent any further increase in flooding; and Many opponents of the authorized Kindred Lake project expressed their concern that the Corps of Engineers do an objective analysis of the alternatives to the authorized project. All affected parties in the lower Sheyenne River basin expressed the view that an objective reanalysis should be done.

Mr. Spychalla indicated that the preliminary plans formulated to meet the flood damage reduction needs of the basin include four plans that have the levee and diversion at West Fargo/Riverside as the key component and three plans that have Kindred Dam as the key component. Each plan uses a different combination of these and additional measures to provide the needed protection. The following seven plans were presented and discussed in detail by Mr. Spychalla: 1) PLAN D-1 - consists of five basic components including the levees and diversion around West Fargo; the diversion to the Wild Rice River; revised management and/or a raise of Baldhill Dam; tributary dams T-150 and T-158; and restoration of drained wetlands, increasing the storage capacity of existing wetlands, and/or putting control structures on legal drains from Baldhill Dam to Kindred. The estimated total cost of this plan is \$24.5 to \$44.5 million; 75 percent federally funded and 25 percent non-federal costs. These components combine to provide a 49 to 55 percent reduction in flood damages in the Sheyenne River Basin at locations from Baldhill Dam downstream to the mouth of the Sheyenne River. 2) PLAN D-2 - consists of five basic components including levees and diversion around West Fargo; diversion of the Sheyenne River from Horace to West Fargo; revised management of Baldhill Dam; relocation of frequently flooded residences at

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Valley City; and ring levees at farmsteads and residences from Kindred to Horace and from West Fargo to the mouth. Total estimated costs of this plan is \$24 - \$40 million; 75 percent federally funded and 25 percent non-federal costs. These components would combine to provide about a 57 percent reduction in flood damages in the Sheyenne River Basin at locations from Baldhill Dam downstream to the mouth of the Sheyenne River. 3) PLAN D-3 - consists of four components including levees and diversion around West Fargo; a 5- to 15-foot raise of Baldhill Dam; tributary dams T-150 and T-158; and restoration of drained wetlands, increasing the storage capacity of existing wetlands, and/or putting control structures on legal drains from Baldhill Dam to Kindred. These components would combine to provide a 53 to 59 percent reduction in flood damages in the Sheyenne River Basin and some reduction along the Red River of the North main stem. 4) PLAN D-4 - consists of six components including levees and diversion around West Fargo; channelization of the Sheyenne River from Kindred to West Fargo; revised management of Baldhill Dam; tributary dams T-150 and T-158; ring levees at farmsteads and residences from West Fargo to the mouth of the Sheyenne River; and restoration of drained wetlands, increasing storage capacity of existing wetlands, and/or putting control structures on legal drains from Baldhill Dam to Kindred. These components would combine to provide about a 62 percent reduction in flood damages in the Sheyenne River Basin, including some reduction along the Red River of the North. 5) PLAN K-1 - consists of two components including a full-sized Kindred Dam and revised management of Baldhill Dam. This plan would provide about a 68 percent reduction in flood damages along the Sheyenne River and would also reduce damages along the Red River of the North. 6) PLAN K-2 - consists of three components including a reduced-sized Kindred Dam; a major raise of Baldhill Dam; and a diversion of the Maple River to the Red River of the North. This plan would provide a 61 to 83 percent reduction in flood damages in the Sheyenne River Basin plus additional benefits along the Red, Lower Maple and Rush Rivers. 7) PLAN K-3 - consists of four components including a reduced-sized Kindred Dam; a diversion to the Wild Rice River; levees from Kindred Dam to the mouth of the diversion channel; and revised management of Baldhill Dam. This plan would provide about a 65 percent reduction in flood damages along the Sheyenne River and would also benefit the Red River main stem. The estimated cost of this Plan is \$42 to \$54 million; 75 percent federally funded and 25 percent non-federal costs.

The following recommendations were presented by the Corps of Engineers regarding the water management planning being conducted through the current study: 1) the views of the federal and state agencies, the Lower Sheyenne River Citizens Committee, and other interests should be requested regarding the conclusions reached and the recommendations for further work on the water management planning as presented in the report; 2) more detail should be developed for plans centering on the concepts presented in Plans D-1, D-2, and K-3. The additional details on these plans should be developed only to the point necessary to make further judgements as to which plan is clearly the "best", most implementable, water management plan for the basin. This plan would then be identified as the selected plan and be recommended for implementation;

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3) actions by federal agencies which would assist the non-federal interests in implementing those portions of the plans carried forward that are the non-federal responsibility should be identified. After identification and upon request by the non-federal interests, these actions should be pursued by the federal agencies where possible; and 4) potential non-federal sponsors for the plans and plan components recommended for further study should be contacted to determine their interest and capability in providing the necessary assurances.

Mr. Spychalla indicated that the comments of other agencies and interested parties on the information, conclusions, and recommendations presented in this report will be used to refine and modify the alternatives to be carried into the stage 3 evaluations. The alternatives carried into stage 3 should be the most workable plans identified through the planning process. The potential support for an alternative will be important in the development of a plan in further detail. Mr. Spychalla indicated that continued coordination with the Lower Sheyenne River Citizens Committee, state and federal agencies, local communities, and other interested citizens will be instrumental in the final plan selection. The final plan selection is currently scheduled for early 1981.

The Commission recessed their meeting at 12:00 p.m.; reconvened at 1:45 p.m.

CONTINUATION OF SHEYENNE
RIVER FLOOD CONTROL STUDY
PRESENTATION BY THE CORPS
OF ENGINEERS
(SWC Project No. 1344)

Secretary Fahy indicated that his office has received a copy of the comments submitted by the Sheyenne Valley Association to the Corps of Engineers relative to the alternatives. The recommendations of the Association

indicate that based on the information provided in the technical appendices on Sheyenne River Flood Control, it is the conclusion of the Association that Plan K-3 does not meet the criteria established for carrying a plan into stage 3 planning. Based on a number of factors and since the flood control alternatives provide essentially similar flood relief for urban areas, K-3 should not be preferred over D-1 or D-2 on the basis of agricultural benefits alone. It is the belief of the Sheyenne Valley Association that none of the plans provides real relief for farmlands and that some plans claiming a positive effect will actually have a negative effect. It does not seem certain that farmlands can really be spared from flooding. The Corps of Engineers should continue in its recent realistic appraisal of the nature of flooding in the Red River Valley. Emphasis should be placed of giving relief where it is economically justifiable and realistically achievable, for example, through the use of ring dikes to protect farmsteads and grain bins. It was also suggested by the Association that the Corps should begin a statistical analysis of historic events to see how closely theoretical projections tally with the actual final result. Actual net effect due to a project must include all possible effects, weighing the total losses against the

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total benefits to come out with an accurate estimation of the value of the project to the state and the nation.

Commission members - After discussion and questions by the

It was moved by Commissioner Lanz and seconded by Commissioner Gallagher that the State Water Commission endorses the findings and recommendations presented by the Corps of Engineers and the citizens committee relative to the Sheyenne River Flood Control project, and recommends that the study continue based on the concepts of Plans D-1, D-2, and K-3. All members voted aye; the motion carried.

CONTINUED DISCUSSION OF
INTERIM FINANCING LEGISLATION

Bill Beavers, representing Chiles, Heider & Co., Inc. from Omaha, Nebraska, and Jim Bullock representing the First National Bank in Lincoln, Nebraska, were introduced.

Mr. Beavers reviewed the background which led to the drafting of the proposed legislation, and explained each section of the legislation. The final draft of the proposed legislation was distributed to the Commission members. Copies of the final draft are available from the State Water Commission office.

Commissioner Gallagher suggested that Section 4 be amended to read as follows: "Before issuing any interim notes pursuant to Section 2, the state water commission shall conduct a review of the feasibility of the project or works to ensure that construction costs, operation and maintenance costs, revenues and other statistics relating to the project are accurate and feasible and that the project will be able to pay its expenses. The commission shall state the findings of its review in a motion entered in the minutes of its proceedings." Commissioner Gallagher indicated that the amended language would not limit the feasibility to only water supply but to other projects the Water Commission may undertake.

It was moved by Commissioner Gallagher, seconded by Commissioner Kramer, and unanimously carried, that Section 4 of the draft legislation relating to interim financing be amended as indicated above.

It was moved by Commissioner Kramer, seconded by Commissioner Gallagher, and unanimously carried, that the State Water Commission support

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legislation to provide the State Water Commission with authority to borrow money and issue interim notes to provide tax exempt construction period financing for works and projects authorized in Chapter 61-02 of the North Dakota Century Code.

CONSIDERATION OF REQUEST
TO APPROVE PLANS AND SPECS
FOR IMPROVEMENTS IN SOUTHEAST
CASS WATER MANAGEMENT
DISTRICT WATER AND SEWER
DISTRICT NO. 15
(SWC Project No. 720)
(Resolution No. 80-11-480)

Secretary Fahy stated that the Commission had previously indicated its approval of the concept of a project for improvements in Southeast Cass Water Management District Water and Sewer District No. 15.

A request has now been received from the District requesting the Commission's favorable consideration of the plans and specifications for this project. Secretary Fahy indicated that the Commission's approval of the plans and specs would be contingent upon the State Health Department's approval.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission adopt resolution No. 80-11-480 approving the plans and specifications for improvements in the Southeast Cass Water Management District Water and Sewer District No. 15.
SEE APPENDIX "A"

DISCUSSION OF WEST RIVER
WATER SUPPLY PROJECT
(SWC Project No. 1674)

Murray Sagsveen indicated to the Commission members that he had been asked by the West River Water Supply District to draft legislation which would fund a water

supply facility to Dickinson and the surrounding area. Vern Zink and Jim Skaret have been assisting Mr. Sagsveen in drafting such legislation.

Mr. Sagsveen noted that it appears the costs for a water supply facility for Dickinson would be so great that the consumers could not pay all the costs of such a water supply and distribution system. Therefore, Mr. Sagsveen asked the Commission members if they would be willing to support the establishment of a revolving fund to support water supply projects throughout the State of North Dakota, including such a project for Dickinson.

Mr. Sagsveen discussed several possibilities for a fund which would divert a portion of existing tax revenues into a special fund to accumulate so that the legislature could appropriate those funds for special water projects.

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Secretary Fahy indicated that it is not only the southwestern portion of the state that is in need of water, but the entire state at some time or another will probably be in need of a water supply. He indicated that it is important to keep in mind that what is being considered is some method whereby the state can give some consideration to assuming responsibility for water supply without infringing upon the present method for the distribution of water which is done by the FHA and rural water districts.

After discussion, Governor Link read a proposed resolution for the Commission's consideration. After hearing the resolution, it was the consensus of the Commission members that the concept be supported, but that the resolution should be broadened to refer to any water supply project in the state; and also that this resolution should refer to all water uses, not just domestic use. It was recommended by the Commission members that the legal staff amend the language of the proposed resolution to coincide with the suggestions made and be brought before the Commission for further consideration at tomorrow's meeting.

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

Secretary Fahy presented the water permit agenda, labeled as APPENDIX "B", for the Commission's consideration.

Milton Lindvig referred to water permit application No. 3296 applied for by Mr. Eugene C. Erickson of Ithaca, New York. Mr. Erickson had requested 320.0 acre-feet of water to irrigate 160.0 acres. On the agenda the recommendation is to defer action, but Mr. Lindvig requested the Commission to reconsider this action to approve 120.0 acre-feet of water to irrigate 120.0 acres and the remainder of the original application be denied.

The Commission members concurred with Mr. Lindvig's recommendation for water permit No. 3296.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the actions of the State Engineer be confirmed. SEE APPENDIX "B"

The following applications were approved subject to the conditions that were attached to each respective application:
No. 3280 - Florence Nelson, Hazen; No. 3270 - Gulf Oil Corporation, Casper, Wyoming (this application was approved by State Engineer on September 10, 1980); No. 1782A - Loren DeWitz, Tappen (this was a request for a change in point of diversion); No. 3282 - Helmuth and Oscar Mettler, Bismarck; No. 3285 - DeTienne

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Contracting, Inc., Williston; No. 2311 - Marvin W. Mund, DeLamere (this was a request for a change in point of diversion); No. 2496 - Thomas W. and Marvin W. Mund, DeLamere (this was a request for a change in point of diversion); No. 3286 - City of Zap; No. 3289 - Amoco Production Company, Dickinson; No. 3290 - Amoco Production Company, Dickinson; No. 3292 - Monte and Blake Vander Vorst, Pollock, S.D.; No. 2920 - Raymond Arnold, Esmond (this was a request for a change in point of diversion and was approved by State Engineer on September 29, 1980); No. 2990 - Jerome N. Nissen - Fargo (this was a request for a change in point of diversion and approved by State Engineer on September 29, 1980); No. 3029 - Arthur Streifel, Esmond (this was a request for a change in point of diversion and approved by State Engineer on September 29, 1980); No. 3217 - Floyd Orn, Stirum (this request was approved by State Engineer on September 30, 1980); No. 3258 - Basin Electric Power Cooperative, Bismarck (this request was approved by State Engineer on September 30, 1980); No. 3209 - Fabian E. and Lloyd H. Noack, Grand Forks; No. 3243 - Trail County Rural Water Users, Inc., Portland; No. 2156 - Joey Schmidt, LaMoure (this was a request for a change in point of diversion and was approved by State Engineer on October 30, 1980); No. 3308 - Amoco Production Company, Dickinson; No. 3300 - City of Marion; No. 3302 - Shell Oil Company, Houston, Texas; No. 3310 - Tenneco Oil Company, Denver, Colorado; No. 3277 - City of Northwood; No. 3232 - Reinhold Opp, Napoleon; No. 3120 - B. Anthony Petterson, Binford; No. 3296 - Eugene C. Erickson, Ithaca, New York; No. 3143 - Thomas A. Heimbuch, Cogswell (approving remainder of request); No. 3247 - Gordon and Daniel Lund, Enderlin; and Nos. 1824, 2314 and 2253 - James P. and John B. Iglehart, Emmet (these are all requests for changes in point of diversion).

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The following applications were deferred at this time: No. 3274 - Tony Belohlavek, Mandan; No. 3276 - Arnet O. Weinlaeder, Drayton; No. 3284 - Rahlf Brothers, Binford; No. 3288 - Forest River Colony, Fordville; No. 3291 - Scott Mitchell, Erie; No. 3293 - Walsh Water Users, Inc., Grafton; No. 3294 - Raymond Burkle, Fredonia; No. 3295 - Larry R. DeJardine, Alkabo; No. 3233 - R & T Water Supply, Ray; No. 3298 - American Crystal Sugar Company, Moorhead, Minn.; No. 3299 - Louis L. Bickler, Orrin; No. 3287 - The Western Company of North American, Fort Worth, Texas; No. 3279 - Elmer R. and Gladys V. Herdt, Fairview, Montana; No. 3241 - Alvin A. Bischke, Harvey; No. 3271 - City of Ross; No. 3237 - John Dows, Erie; No. 3303 - Marvin Skogen, Cartwright; No. 3305 - William Freeland, Oakes; No. 943 - Gordon J. Ueckert, Sentinel Butte; No. 3297 - F. C. Roney, Oakes; and No. 3177 - City of Esmond.

The following application was withdrawn at the request of the applicant: No. 2787 - Velma McAllister, Huron, S.D.

The Commission recessed their meeting at 5:20 p.m.

Governor Link reconvened the meeting at 9:30 a.m. in the Vocational Education Conference Room on November 19, 1980, and requested Secretary Fahy to continue with the agenda.

**CONTINUED DISCUSSION
OF SECTION 404
RECOMMENDATIONS**

Secretary Fahy indicated that in 1979, the North Dakota Legislative Assembly approved a study resolution to explore the possibility of North Dakota assuming the administration of the Section 404 program. The interim study was concluded by the Natural Resources Interim Committee in September, 1980, without recommendation as to whether the State of North Dakota should make efforts to assume the program. Instead, the Interim Committee requested the State Water Commission to do additional study and make a recommendation to the 1981 Legislative Assembly.

On October 22, 1980, the Environmental Protection Agency sponsored a workshop on Section 404 Program Implementation,

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which was attended by Dave Sprynczynatyk and Joe Schmitt of the Water Commission. Mr. Schmitt commented that approximately 32 states were represented at the workshop, as well as the Fish and Wildlife Service, the Corps of Engineers and EPA. Mr. Schmitt said that of the states represented, one state felt that it could now assume Section 404 responsibility, and four were working on state programs for Section 404. At the present time, no states have taken over the program.

Mr. Schmitt stated that the substantive guidelines which are set forth by EPA are very stringent and the oversight which is built into a state Section 404 program by the EPA would allow North Dakota little discretion, if any, in the granting of individual permits. This would prohibit flexibility by the state in assuming and administering the permit program.

Relative to the resource commitment which will be required by North Dakota if it assumes the responsibility of the Section 404 program, Mr. Schmitt stated that based on figures provided by the Corps of Engineers and the States of Rhode Island and Michigan (the two states that would possibly be the first to implement a state program), it is estimated that a maximum of \$300,000 - \$400,000 annually may be required for program costs, considering a staff requirement of about one person for each 20 permits.

Mr. Schmitt indicated that some money has been provided to the four or five states which became involved early in the State 404 program, but it appears there will be little, if any, financial assistance available, and perhaps very little technical assistance either due to lack of manpower. There is a possibility that existing funds for other programs under the Clean Water Act could be transferred for use under Section 404, but this is not likely since it would require that existing funds in other programs be reduced to make money available for Section 404.

Secretary Fahy recommended, based on the information available, that North Dakota should not assume Section 404 responsibility at this time. Between now and the 1983 Legislative Assembly, North Dakota can follow what is being done by states which do adopt a State 404 program, and the actions of the Fish and Wildlife Service, the Corps of Engineers, and the Environmental Protection Agency in relation to those programs.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the State Water Commission recommend to the 1981 Legislative Session that the State of North Dakota should not assume Section 404 responsibility at this time, and that copies of the memorandum from the legal staff and the draft letter to the North Dakota Congressional Delegation accompany this recommendation.
SEE APPENDIX "C"

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**CONTINUED DISCUSSION OF WATER
MANAGEMENT DISTRICTS
RE-ORGANIZATION LEGISLATION**

Committee on September 24, 1980. This legislation has now been submitted to the Legislative Council for introduction into the 1981 session. Copies of the final draft are available at the State Water Commission office.

Secretary Fahy presented the final bill draft relative to the re-organization of water management districts, which was approved by the Natural Resources Interim

**CONTINUED DISCUSSION OF FLOOD-
PLAIN MANAGEMENT ACT
LEGISLATION**

and has been submitted to the Legislative Council for introduction into the 1981 Legislative Session. Copies of the final bill draft are available at the State Water Commission office.

Secretary Fahy presented the final flood-plain management bill draft to the Commission members. This bill draft has been approved by the Natural Resources Interim Committee,

**INTAKE WATER COMPANY VS.
YELLOWSTONE COMPACT
COMMISSION ET. AL.**

declared unconstitutional and void. The litigation was first initiated in 1974, but was delayed due to a water rights fight in Montana, which Intake eventually won. The Defendants in the renewed litigation have until December 19, 1980 to respond to the amended complaint.

Intake Water Company has renewed its litigation against the Yellowstone River Compact Commission and others to have Article X of the Yellowstone River Compact

**CONSIDERATION OF
FINANCIAL STATEMENT**

62.5 percent of the biennium elapsing for salaries, and 66.6 percent of the biennium elapsing for fees, data processing, supplies, equipment, contracts and special assessments. The Commission members were briefed relative to the budget hearing.

Matt Emerson presented the financial statement for the Commission's consideration, noting that the accounts are in order with

**CONSIDERATION OF REQUEST FROM
CAVALIER COUNTY WATER
MANAGEMENT DISTRICT FOR COST
PARTICIPATION FOR MULBERRY
CREEK IN CAVALIER COUNTY
(SWC Project No. 1438)**

Commission first became aware of the flooding problems along Mulberry Creek in 1965. At that time, a series of channel improvements were proposed but nothing was implemented. The main problem along Mulberry Creek is the overflow of the banks of the creek by runoff causing substantial damage to cropland in the area. Since 1965, there has been some minor channel improvement by landowners, but an extensive project has not been undertaken.

Secretary Fahy presented a request from the Cavalier County Water Management District for cost participation from the State Water Commission for the construction of Phase I channel improvements on Mulberry Creek.

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During 1980, the Cavalier County Water Management Board decided to undertake a channel improvement project along approximately 17 miles of Mulberry Creek. The project calls for ditch grading in selected areas within the natural streambed. The State Water Commission staff has approved the plans for the project and a drainage permit has been granted by the State Engineer.

Cary Backstrand explained that this project is being constructed in two phases, which he depicted through the use of maps. The engineer's estimate for the complete project is approximately \$300,000. Bids have been let for Phase I improvements in an amount of \$140,751. Of that amount, \$125,271 has been considered to be eligible for cost participation under the Water Commission's criteria used to determine funding for projects of this nature. Normal participation would be 40 percent of the eligible costs, or a state share of \$50,500.

Cary Backstrand stated that when considering a drainage permit for the project, Fish and Wildlife Service interests were taken into consideration by the Board and a letter from the U.S. Fish and Wildlife Service indicated that "our inspection revealed that there will be no wetlands included within the creek channel proper. Deepening of the channel would not, therefore, conflict with our easements".

There was also concern expressed that this project will outlet into Canada. Canadian officials were notified relative to this concern and a letter from them indicated that "we have no objection to the project as outlined in your submission, but would appreciate being kept informed of the status of the project".

Mr. William Hardy with the Cavalier County Water Management District was introduced. Mr. Hardy stated that excavation has begun on the project with the first five miles from the Canadian border south already completed. Plans are to complete the project in 1981, and Mr. Hardy indicated that he felt the project would be a benefit to the county. Mr. Hardy said that there has been a favorable vote in the area on the project, and the only protest being expressed was from four farmers who already had the drain cleaned out on their land, which they had paid for themselves. It was decided that the initial assessment would be waived for the four farmers where this situation had occurred.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission approve cost participation of 40 percent of the eligible costs, in an amount not to exceed \$50,500, contingent upon the availability of funds, for construction of Phase I channel improvements on Mulberry Creek in Cavalier County.

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CONSIDERATION OF REQUEST
FROM TRAILL COUNTY DRAIN
BOARD FOR COST PARTICIPATION
FOR CONTROL STRUCTURE AT
OUTLET OF DRAIN NO. 26 IN
TRAILL COUNTY
(SWC Project No. 1243)

Secretary Fahy presented a request from the Traill County Drain Board for cost participation in the improvement of the outlet of Traill County Drain No. 26 (also known as Hillsboro Drain No. 26).

Cary Backstrand indicated that this drain was originally established in 1917, and cleaned out or reconstructed in 1948. The drain is approximately three miles long, and located one mile east of the city of Hillsboro. The drain is a north-south drain outleting into the Goose River. Records indicate that the state contributed approximately \$864 to the 1948 reconstruction.

In 1972, the Drain Board initiated a project consisting of a complete reconstruction of the drain and construction of a drop structure at the outlet. In August of that year, the State Water Commission approved cost participation amounting to 40 percent of construction costs relating to the drain, and 50 percent of the costs to install the drop structure, not to exceed \$9,187.63. An agreement to that effect was signed, but the project was never constructed.

The project was reconsidered again in 1975 and preliminary plans were developed by the Soil Conservation Service and approved by the State Water Commission in April of that year. However, the project was voted down by the landowners within the assessment district.

The funds that were committed by the State Water Commission for the project were still considered as obligated funds, thus, in 1977, the Traill County Drain Board released the funds approved in 1972, per a request by the State Water Commission.

Since 1975, the main drain has been improved by the Drain Board without levying a general assessment, and they have been making the improvements in phases using maintenance funds. Mr. Backstrand stated that the greatest need at this time would be reconstruction of the drop structure at the outlet. Without a drop structure, the erosion will continue and the amount of sediment reaching the Red River will continue to increase. The Drain Board has been working with the Lake Agassiz RC & D and the Soil Conservation Service in the development of this project. The estimated costs for the construction of the drop structure is \$43,540.41. The Soil Conservation Service is providing technical assistance with financial assistance coming from the Lake Agassiz RC & D, and the local costs to the Drain Board has been estimated at \$11,000. Their request is for 40 percent of the local costs, or approximately \$4,400.

Mr. Raymond Kraling, Chairman of the Traill County Drain Board was introduced, and he indicated that there are severe erosion problems. He noted that this drain was built in 1917 and there has been some work done in the past. No objections have been expressed relative to the project, according to Mr. Kraling.

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It was recommended by the State Engineer that the State Water Commission approve participation in this project in an amount not to exceed \$5,000, which is greater than the 40 percent of the estimated local costs but would cover the possibility of over-runs and/or inflation in construction prices between now and next spring when the contract will probably be let. State Water Commission participation will be limited only to the erosion control structure.

It was moved by Commissioner Gray, seconded by Commissioner Kramer, and unanimously carried, that the State Water Commission approve cost participation in an amount not to exceed \$5,000, contingent upon the availability of funds, to assist the Trail County Drain Board in the improvements of the outlet of Hillsboro Drain No. 26.

CONSIDERATION OF REQUEST
FROM SOUTHEAST CASS WATER
MANAGEMENT DISTRICT FOR
FINANCIAL PARTICIPATION IN
SHEYENNE RIVER CHANNEL CHANGE
(SWC Project No. 1272)

Secretary Fahy indicated that this project was presented to the State Water Commission at their April 3, 1980 meeting for consideration of cost participation, but was denied by the Commission at that time because the Commission felt the only area receiving benefit from the project would be

Holman's Second Addition, a subdivision adjacent to the river at this location. This was stated in a letter to the Southeast Cass Water Management District dated April 22, 1980, and the letter also indicated that the Commission would reconsider the request if the Board could show that the project would, in fact, result in benefit to agricultural land and/or agricultural production.

Secretary Fahy stated that a request has been received from the Southeast Cass Water Management District requesting that the State Water Commission reconsider participating in the cost of the construction of the channel change on the Sheyenne River.

Cary Backstrand indicated that on November 6, 1980, he accompanied the water management district's engineer to conduct an on-site inspection of the project. He stated that the present dike system was apparently in place prior to the development of the housing subdivision and the houses in the subdivision have been constructed on fairly high fills and apparently do not sustain substantial damages even during high flows. He noted that there has been some severe erosion on the river side of the dikes, and there is also an agricultural ditch that outlets into the Sheyenne River at this point. Some time in the past the water management district apparently had reconstructed the outlet of this drain, which consists of a 36-inch corrugated steel pipe that extends from the river eastward approximately 300 feet to a large weir box and slide gate. The slide gate is used to prevent backup from the Sheyenne River during times of high flows.

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Mr. Dan Twichell of the Southeast Cass Water Management District was introduced and explained the project in detail. He stated, with accompanying photographs, that there has been a considerable amount of damage caused by flooding during flood years. He explained that if the bank on the east side of the Sheyenne River breaks, it is free to flow across several sections of land to the Red River, which has caused considerable damage in previous years.

Mr. Twichell explained that by cutting the bank back on the west side of the Sheyenne River, as proposed, it will alleviate the cutting problems on the east side of the river, thereby, reducing the possibilities of it cutting through the bank and inundating the land to the east.

The latest estimate of project costs is \$79,912.50, including \$3,374 in engineering costs and \$6,500 in contingencies. The engineering costs would not be eligible for state participation, however, some of the contingency costs may be eligible. The Southeast Cass Water Management District has requested that the Water Commission reconsider 40 percent of eligible items for financial assistance in the project, not to exceed \$30,000.

Secretary Fahy stated that this particular project is an example of the importance of having a well-documented presentation by the locals when requests are made for funding from the Water Commission. He noted that there were a number of significant factors brought out during Mr. Twichell's presentation which were not apparent in the original application.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the State Water Commission approve cost participation of 40 percent of eligible items, in an amount not to exceed \$30,000, contingent upon the availability of funds for the construction of the channel change on the Sheyenne River.

CONSIDERATION OF REQUEST
FROM STEELE COUNTY FOR
COST PARTICIPATION FOR
GOLDEN LAKE CHANNEL
IMPROVEMENT IN STEELE COUNTY
(SWC Project No. 475)

Secretary Fahy presented a request from the Steele County Water Management District and Drain Board for cost participation in the channel improvement of the Golden Lake diversion.

Dave Sprynczynatyk stated that the Golden Lake project is a recreation complex which was developed by the State Water Commission, the State Game and Fish Department, the State Outdoor Recreation Agency, and the Steele County Park Board in 1966.

The proposed project involves cleaning the channel which diverts water from Beaver Creek into Rush Lake, Golden Lake

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and North Golden Lake. The channel in its present condition causes overflow of water onto adjacent farmlands. The estimated cost for the channel cleaning is \$58,000. The State Water Commission contributed 19.2 percent toward the original project.

It was recommended by the State Engineer that the Water Commission participate in the channel cleaning at the same percentage as the original project, and considering the eligible cost items this would amount to \$8,000. He also suggested that the Steele County Board should contact the State Game and Fish Department and the State Outdoor Recreation Agency to request cost participation since they participated in the original application.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the State Water Commission approve cost participation in an amount not to exceed \$8,000, contingent upon the availability of funds, for the channel cleaning of the Golden Lake Diversion in Steele County.

CONSIDERATION OF COST
PARTICIPATION IN A FLOOD
CONTROL PROJECT FOR CITY
OF BEULAH
(SWC Project No. 1291)

Secretary Fahy presented a request from the City of Beulah for consideration of cost participation in funding the construction of Phase I of the flood control project. Phase I of the flood control project for the city includes construction of a dry dam northeast of the city.

Dave Sprynczynatyk stated that flooding on tributary streams to the Knife River through the city of Beulah has been a problem for a number of years. In 1969, the Corps of Engineers studied the flood problems along the two coulees that run through the city and they determined that channel improvements and construction of a dry dam appeared to be feasible projects. Due to the high cost of the proposed projects and the fact that the city of Beulah could not provide the necessary local funding, implementation was not undertaken.

In 1975, the State Water Commission again looked at the problem and proposed construction of dry dams on the problem coulees, but due to the high costs, the projects were not undertaken.

During 1980, the city once again considered what could be done to prevent flooding in the community and requested the State Water Commission to update its 1975 cost estimate for dry dam construction. The estimated cost of construction of this dam is \$500,000.

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The city has requested funding from the Coal Development Impact Office and by letter dated November 3, 1980, the city was informed by that office that \$256,250 could be available for a flood control dam, if the project receives favorable approval and funding support from the State Water Commission.

Mr. John Rogers, Beulah City Planner; and Mr. Ken Loveland and Mr. Ross Milne from Interstate Engineers, were introduced.

Mr. Rogers stated that contacts have been made with the FHA office and he has been assured that the project has been placed among the top three projects to be considered for the Governor's State Investment Energy Impact funding. Mr. Rogers stated that the water management district has been contacted and he will be meeting with them to request their participation in the project.

Mr. Rogers noted that a storm sewer project in the city has recently been completed. Relative to the proposed dry dam project, he said that no impoundment easements have been acquired at this time and likewise no land has been acquired for actual construction of the dam. He said that it will require approximately 30 acres for the floodpool and embankment and an additional 10 acres could be required for emergency spillway, for a total of approximately 48 acres that could be affected.

It was recommended by the State Engineer that the Commission give favorable consideration to this request but the approval should be contingent upon the undertaking of a feasibility investigation of the flooding and drainage problems within the city. If the construction of the dry dam is feasible in solving the city's flood problem, the money should then be made available. If the Water Commission's staff is requested to conduct the investigation, the cost of the investigation would be an eligible cost item. If the investigation is undertaken by a private engineering firm, normal policy does not allow for this to be an eligible cost item for participation.

It was moved by Commissioner Gallagher, seconded by Commissioner Just, and unanimously carried, that the State Water Commission approve an amount not to exceed \$200,000, or 40 percent of the eligible costs for construction of Phase I of the Beulah flood control project, contingent upon the availability of funds, and contingent upon the undertaking of a feasibility investigation of the flooding and drainage problems in the city to determine if the construction of the dry dam is feasible in solving the city's flood problems.

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CONSIDERATION OF REQUEST
FROM CITY OF JAMESTOWN
FOR SNAGGING AND CLEARING
OF JAMES RIVER THROUGH THE
CITY OF JAMESTOWN
(SWC Project No. 480)

Secretary Fahy presented a request from the Jamestown Shade Tree Committee for funds to assist in the snagging and clearing of the James River through Jamestown. The request is to snag and clear approximately 8.6 miles of the James River through the city at a cost

estimate of \$2,000 per river mile. The City of Jamestown and the Stutsman County Commission will provide equipment and the manpower.

Mr. Sprynczynatyk stated that on September 23, 1966, the State Water Commission entered into an agreement with the Stutsman County Commission to snag and clear the James River from its confluence with the Pipestem Creek downstream to the Stutsman-LaMoure County line, for a distance of approximately 40 river miles at an estimated cost of \$60,935. One of the conditions of that agreement was "the Board will maintain the channel and bank improvements after completion in satisfactory condition for the natural and storage-released flows of water by annually clearing and snagging the channel in banks of the river through cutting, felling, removing, and disposing of timber, trees, willows, brush, snag, and debris, and otherwise prevent encroachment on the carrying capacity of the channel which would unduly interfere with the conveyance in waterflows, in accordance with the regulations prescribed by the Commission".

Mr. Sprynczynatyk said that it is apparent from this 1966 agreement that it is the responsibility of the Stutsman County Commission to annually maintain the channel and improve the bank on the James River downstream of its confluence with the Pipestem Creek, and precludes direct financial participation by the Water Commission to maintain this reach.

It was recommended by the State Engineer that the Water Commission participate in the snagging and clearing of the James River through Jamestown from the Jamestown Dam to the confluence of the James River with Pipestem Creek of approximately 4 miles which was not included in the 1966 Memorandum of Understanding. Cost participation should be limited to 25 percent of the estimated costs not to exceed \$2,000. He also indicated that the agreement for cost participation shall be made between the State Water Commission and the Stutsman County Water Management District, and not the Jamestown Shade Tree Committee which is not a governmental unit. He also suggested that if requested by the Water Management Board, the Water Commission could provide technical assistance and supervisory assistance to snag and clear the remaining 4.6 miles of the James River through Jamestown.

Commissioner Kramer expressed concern relative to the downstream impacts if funding is approved for snagging and clearing the 4 miles not included in the 1966 agreement, and concerning channel capacity.

Mr. Sprynczynatyk replied that in answer to Commissioner Kramer's question relative to channel capacity, there is a

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requirement by the Corps of Engineers and the Bureau of Reclamation for channel capacity through Jamestown of 750 cubic feet per second and during the recent lawsuit with South Dakota, the Corps made the comment that the channel capacity through Jamestown is not sufficient to handle the operational releases from the Pipestem and Jamestown Dam reservoirs. In the past, they have had to reduce the amount of discharge in order to prevent additional flooding with the city of Jamestown.

It was moved by Commissioner Just, seconded by Commissioner Kramer, and unanimously carried, that the State Water Commission approve cost participation in snagging and clearing of the James River through Jamestown from the Jamestown Dam to the confluence of the James River with the Pipestem Creek of 4 miles which was not included in the 1966 Memorandum of Agreement in an amount not to exceed \$2,000, contingent upon the availability of funds. Approval of funds is also contingent upon the Stutsman County Water Management District making the initial application for the request. The State Water Commission shall provide technical assistance and supervisory assistance to snag and clear the remaining 4.6 miles of the James River through Jamestown if requested by the Water Management District for such assistance.

It was suggested by Joe Schmitt, and concurred to by the Commission members, that the County Commission Boards should be reminded that they do have this annual ongoing obligation of maintaining the channels and banks in a satisfactory condition, and that the State Water Commission is precluded from direct financial participation in this type of work, but that the State Water Commission could provide its technical assistance and supervisory assistance. A reminder to the counties would allow budgeting and personnel to be staffed each year to do this work.

Secretary Fahy commented that the State Water Commission's major contacts with the county governments are through the water management district and at the regional meetings which are held in different parts of the state several times each year. He said that although this is discussed with the water management district, there is very limited opportunity to meet with the County Commission Boards themselves. He said that the proposed legislation which would create water management districts along hydrologic boundaries would give additional powers and duties in this field and would eliminate the maintenance function fractured among various governmental units.

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The meeting was recessed at 12:00 p.m.; reconvened at 1:45 p.m.

CONTINUED DISCUSSION ON
DRAINAGE POLICY
(SWC Project No. 1053)

Secretary Fahy suggested that this item be deferred at this time, but shall be a continuing item at future meetings.

STATUS REPORT ON REVISION
OF FEDERAL RECLAMATION ACT
OF 1902

Secretary Fahy reported that there are still a number of bills being considered, and that Congressman Udall is still trying to get legislation considered on the floor

in the lame duck session, but nothing has been assured since they haven't received a rule.

STATUS REPORT ON OGALLALA
AQUIFER STUDY
(SWC Project No. 1706)

Secretary Fahy reported that the study is progressing very well in the areas of taking a look at each state in the Ogallala Aquifer area to see what can

be done to improve the management of the resource. Secretary Fahy indicated that he had appeared before the Committee and discussed with them North Dakota's extensive management program of its limited resource, and suggested to them that probably the way the whole operation should have begun was to first authorize the first phase of the study which was how to improve the situation, before considering importation. He said that the entire project had been approved before North Dakota became aware of it.

CONTINUED DISCUSSION OF
MANDAN PROJECT

Dave Sprynczynatyk indicated that an application has been submitted to the Public Service Commission for a

Certificate of Compatibility for the proposed Mandan project. He outlined the study area boundary considered for the project and noted that the length of the corridor has been reduced to approximately six miles wide.

The State Water Commission is in the process of reviewing the application. Mr. Sprynczynatyk said that one of the Commission's concerns is how the construction, if it is undertaken, could possibly affect the streams and water resources in the areas. There will be a series of hearings on the proposal during December 2-12 in Valley City, Lisbon, Forman, Cavalier, Park River, LaMoure and Finley.

DISCUSSION OF
PROPOSED LEGISLATION

Commission legal counsel Mike Dwyer indicated that the deadline for introducing agency bills into the 1981 Legislative Session

has been changed by the Legislative Council to the 15th day of December. Therefore, he stated that if the State Water Commission is interested in

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introducing legislation regarding its activities, such proposals must be approved by the State Water Commission prior to December 15.

Mr. Dwyer presented, and discussed, the following suggested legislative proposals for the Commission's review and consideration at its next meeting: 1) legislation that would provide a "phased-type" development for irrigation water permits; 2) legislation that would provide for the creation of a State Water Bank Program; 3) legislation that would provide a mechanism for the protection and maintenance of rivers in this state; 4) legislation that would provide for appeals from decisions of the State Water Commission and the State Engineer; 5) legislation providing for the waiver of fees for recording orders affecting forfeited, abandoned and void water rights; 6) concurrent resolution which would direct the Legislative Council to study and review the powers, duties and authorities of the State Water Commission; 7) a concurrent resolution which would direct the Legislative Council to study and review the powers and authorities of irrigation districts and related statutes pertaining to irrigation as outlined in Chapters 61-05 through 61-14 of the North Dakota Century Code; and 8) a concurrent resolution which would direct the Legislative Council to study the statutes and programs of this state pertaining to water quantity and water quality relationships.

CONTINUED DISCUSSION
RELATIVE TO ESTABLISHMENT
OF A WATER SUPPLY
CONSTRUCTION FACILITY FUND
(Resolution No. 80-11-409)

Copies of the draft resolution were distributed to the Commission members, and following a continuation of yesterday's discussion -

It was moved by Governor Link, seconded by Commissioner Just, and unanimously carried, that the State Water Commission supports proposals that it utilize its authorities in planning, designing, and constructing water supply systems and works for North Dakota; and that the State Engineer cooperate with all interested parties to develop legislation to assist in financing and to amend, if necessary, Chapter 61-02 to ensure that the State Water Commission could plan, design, construct or provide other appropriate assistance for such water supply systems or works.
(SEE APPENDIX "D", Resolution No. 80-11-409)

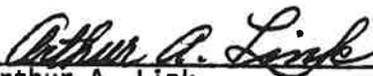
STATE WATER COMMISSION
DECEMBER MEETING

It was suggested by Secretary Fahy, and was the consensus of the Commission members, that the next meeting of the

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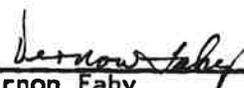
Water Commission will be held on December 2, 1980, at 4:00 p.m. at the Holiday Inn in conjunction with the annual convention of the North Dakota Water Users Association and the North Dakota Water Management Districts Association.

It was moved by Commissioner Just, seconded by Commissioner Kramer, and unanimously carried, that the meeting adjourn at 3:00 p.m.



Arthur A. Link
Governor-Chairman

ATTEST:



Vernon Fahy
State Engineer and Secretary

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APPENDIX "A"

RESOLUTION NO. 80-11-408

Approval of Plans and Specifications for
Improvements in Southeast Cass Water Management
District Water and Sewer District No. 15

BE IT RESOLVED by the North Dakota State Water Commission that the plans and specifications for improvements in Water and Sewer District #15 of the Southeast Cass Water Management District, Cass County, North Dakota, heretofore prepared by Houston Engineering, engineer for said project, be and the same hereby are approved, ratified and confirmed as the plans and specifications in accordance with which said improvements shall be constructed and the Secretary of the Water Management District shall file the same in his office open to public inspection.

NOW, THEREFORE, BE IT RESOLVED by the North Dakota State Water Commission at their meeting held in Bismarck, North Dakota, on this 18th day of November, 1980, that the above stated specifications and plans be hereby approved.

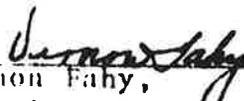
FOR THE NORTH DAKOTA STATE WATER COMMISSION:

SEAL



Arthur Link
Governor-Chairman

ATTEST:



Vernon Fahy,
Secretary

* INDICATES PRIOR
PERMIT STATUS

WATER PERMIT AGENDA FOR NOVEMBER 18 AND 19, 1980 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3280	Nelson, Florence - Hazen (Mercer County) Priority: 7- 7-80 Hearing: 8-25-80	Ground Water (Knife River Aquifer) * NO PRIOR PERMITS	Irrigation	628.0 acre-feet 314.0 acres	471.0 acre-feet 314.0 acres (The remainder of original application shall be denied.)
3270	Gulf Oil Corporation - Casper, Wyoming (Billings County) Priority: 6-17-80 Hearing: 8-25-80	Ground Water (Fox Hills Formation) * #2968 (Priority Date: 9-15-77) Granted 120.0 acre-feet	Industrial	96.8 acre-feet	96.8 acre-feet (This application was approved by the State Engineer on Sept. 10, 1980.)
3274	Belohlavek, Tony - Mandan (Morton County) Priority: 6- 4-80 Hearing: 8-25-80	Missouri River * NO PRIOR PERMITS	Irrigation	230.0 acre-feet 115.0 acres	It is recommended that action be deferred at this time.
3276	Weinlaeder, Arnet O. - Drayton (Walsh County) Priority: 6-20-80 Hearing: 8-25-80	Park River, trib. to Red River * NO PRIOR PERMITS	Irrigation	224.0 acre-feet 224.0 acres	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1782A	DeWitz, Loren - Tappen (Kidder County) Priority: 6-16-71 Hearing on Amendment: 8-25-80	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that the request for a change in the point of diversion be approved.
3282	Mettler, Helmuth and Oscar - Bismarck (McLean County) Priority: 6- 2-80 Hearing: 8-25-80	Ground Water (Painted Woods Aquifer) * NO PRIOR PERMITS	Irrigation	141.2 acre-feet 94.1 acres	141.2 acre-feet 94.1 acres
3284	Rahlf Brothers - Binford (Griggs County) Priority: 7-22-80 Hearing: 8-25-80	Ground Water * NO PRIOR PERMITS	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
3285	DeTienne Contracting, Inc. - Williston (Williams County) Priority: 7- 9-80 Hearing: 9- 2-80	Ground Water (Unnamed Aquifer) * NO PRIOR PERMITS	Irrigation	223.0 acre-feet	115.0 acre-feet (Remainder of original request shall be denied.)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2311	Mund, Marvin W. - DeLamere (Sargent County) Priority: 9- 2-75 Hearing on Amendment: 10- 6-80	Ground Water	Irrigation	This is a request for a change in points of diversion.	It is recommended that this request for a change in points of diversion be approved.
2496	Mund, Thomas W. and Marvin W. - DeLamere (Sargent County) Priority: 7-20-76 Hearing on Amendment: 10- 6-80	Ground Water	Irrigation	This is a request for a change in points of diversion.	It is recommended that this request for a change in points of diversion be approved.
3286	Zap, City of - Zap (Mercer County) Priority: 6-24-80 Hearing: 10-13-80	Ground Water	Municipal	323.0 acre-feet	156.8 acre-feet (Remainder of original request to be denied.)
				* #1659 (Priority Date: 9-11-69) Granted 100.81 acre-feet	
3288	Forest River Colony - Fordville (Grand Forks Co.) Priority: 8- 4-80 Hearing: 10-13-80	Forest River, trib. to Red River of the North	Irrigation	392.0 acre-feet 280.0 acres	It is recommended that action be deferred at this time.
				* #1877 (Priority Date: 9-15-72) Granted 960.0 acres	

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3289	Amoco Production Company - Dickinson (Billings County) Priority: 8-13-80 Hearing: 10-13-80	Ground Water (Unnamed Aquifer)	Industrial	32.26 acre-feet	32.26 acre-feet * #3210 (Priority Date: 11-6-79) Granted 3.0 acre-feet * #3257 (Priority Date: 5-2-80) Granted 4.8 acre-feet
3290	Amoco Production Company - Dickinson (Billings County) Priority: 8-25-80 Hearing: 10-13-80	Ground Water (Unnamed Aquifer)	Industrial	32.26 acre-feet	32.26 acre-feet * See #3289 above.
3291	Mitchell, Scott - Erle (Cass County) Priority: 8-21-80 Hearing: 10-20-80	Ground Water	Irrigation	451.0 acre-feet 300.8 acres	It is recommended that action be deferred at this time. * NO PRIOR PERMITS
3292	Vander Vorst, Monte and Vander Vorst, Blake - Pollock, S.D. (Emmons County) Priority: 9- 8-80 Hearing: 10-20-80	Ground Water (Strasburg Aquifer)	Irrigation	936.0 acre-feet 624.0 acres	450.0 acre-feet 300.0 acres (Remainder of original request to be held in abeyance) * NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2920	Arnold, Raymond - Esmond (Benson County) Priority: 6-30-77 Hearing: 10-10-77 Deferred: 12- 7-77	Ground Water (Esmond Aquifer) * NO PRIOR PERMITS	Irrigation	936.0 acre-feet 468.0 acres	Recommend for approval: 225.0 acre-feet 150.0 acres (Remainder of original request to be held in abeyance.) (This request was approved by the State Engineer on September 29, 1980.)
2990	Nissen, Jerome N. - Fargo (Benson County) Priority: 6-30-77 Hearing: 12- 5-77 Deferred: 3-16-78	Ground Water (Esmond Aquifer) * NO PRIOR PERMITS	Irrigation	760.0 acre-feet 380.0 acres	Recommend for approval: 124.0 acre-feet 83.0 acres (Remainder of original request to be held in abeyance.) (This request was approved by the State Engineer on September 29, 1980.)
3029	Streifel, Arthur - Esmond (Benson County) Priority: 11-15-77 Hearing: 2-21-78 Deferred: 3-16-78	Ground Water (Unnamed Aquifer) * #2589 (Priority Date: 10-26-76) Granted 150.0 acres	Irrigation	861.0 acre-feet 430.5 acres	Recommend for approval: 225.0 acre-feet 150.0 acres (Remainder of original request to be held in abeyance.) (This request was approved by the State Engineer on September 29, 1980.)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3217	Floyd Orn - Stirum (Sargent County) Priority: 12-17-79 Hearing: 2-25-80 Deferred: 2-29-80	Ground Water (Englevale Aquifer) * NO PRIOR PERMITS	Irrigation	580.8 acre-feet 387.2 acres	530.4 acre-feet 353.6 acres (The remainder of original request shall be denied.) (This request was approved by the State Engineer on September 30, 1980.)
3258	Basin Electric Power Cooperative - Bismarck (Mercer County) Priority: 5- 2-80 Hearing: 8-11-80 Deferred: 8-19-80	Ground Water (Antelope Creek Aquifer) * The applicant holds a number of permits.	Industrial	500.0 acre-feet for remainder of 1980, 1981 and 1982; and 100.0 acre-feet for 1983 & 1984	500.0 acre-feet for remainder of 1980, 1981 and 1982; and 100.0 acre-feet for 1983 & 1984 (This request was approved by the State Engineer on September 30, 1980.)
3293	Walsh Water Users, Inc. - Grafton (Walsh County) Priority: 8-22-80 Hearing: 10-20-80	Ground Water * #1876 (Priority Date: 1-15-73) Granted 235.0 acre-feet	Municipal- (Rural Domestic)	380.0 acre-feet	It is recommended that action be deferred at this time.
3294	Burkle, Raymond - Fredonia (Logan County) Priority: 8-27-80 Hearing: 10-20-80	Unnamed Sloughs, trib. to Missouri River * NO PRIOR PERMITS	Irrigation	495.0 acre-feet 330.8 acres	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3295	DeJardine, Larry R. - Alkabo (Divide County) Priority: 6-23-80 Hearing: 10-20-80	Ground Water	Irrigation	451.0 acre-feet 293.9 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3233	R & T Water Supply - Ray (Williams County) Priority: 9-25-80 Hearing: 10-20-80	Ground Water	Municipal- (Rural Domestic)	1609.0 acre-feet	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3298	American Crystal Sugar Company - Moorhead, Minn. (Trail County) Priority: 9-10-80 Hearing: 10-20-80	Ground Water	Irrigation	2000.0 acre-feet 1538.0 acres	It is recommended that action be deferred at this time.
		* # 251 (Priority Date: 4-9-46) Granted 1841.0 acre-feet #1076 (Priority Date: 3-18-63) Granted 4250.0 acre-feet #1917 (Priority Date: 3-23-73) Granted 450.0 acre-feet			
3299	Bickler, Louis L. - Orrln (Pierce County) Priority: 9-10-80 Hearing: 10-20-80	Ground Water	Irrigation	224.7 acre-feet 149.8 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3287	The Western Company of North America - Fort Worth, Texas (Stark County) Priority: 7-18-80 Hearing: 10-20-80	Ground Water	Industrial	241.0 acre-feet	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3279	Herdt, Elmer R. and Herdt, Gladys V. - Fairview, Montana (McKenzie County) Priority: 9-15-80 Hearing: 10-20-80	Missouri River	Irrigation	176.0 acre-feet 46.47 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3241	Bischke, Alvin A. - Harvey (Sheridan County) Priority: 9-19-80 Hearing: 10-27-80	Wolf Lake and/or Ground Water; trib. to Devils Lake	Irrigation	200.7 acre-feet 133.8 acres	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			
3271	Ross, City of - Ross (Mountrail County) Priority: 6-23-80 Hearing: 10-27-80	Ground Water	Municipal	40.0 acre-feet	It is recommended that action be deferred at this time.
		* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3237	Dows, John - Erie (Cass County)	Ground Water	Irrigation	236.0 acre-feet 156.8 acres	It is recommended that action be deferred at this time.
	Priority: 9-23-80 Hearing: 10-27-80	* #2659 (Priority Date: 12-20-76) Requested 472.84 acres; in deferred status at this time.			
3209	Noack, Fabian E. and Noack, Lloyd H. - Grand Forks (Eddy County)	Ground Water (New Rockford Aquifer)	Irrigation	702.0 acre-feet 407.0 acres	Recommend for approval: 234.0 acre-feet 160.0 acres (Remainder of original request shall be held in abeyance.)
	Priority: 1- 7-80 Hearing: 3-24-80 Deferred: 4- 3-80	* NO PRIOR PERMITS			
3243	Traill County Rural Water Users, Inc. - Portland (Traill County)	Ground Water (Galesburg Aquifer)	Municipal- (Rural Domestic)	600.0 acre-feet	322.0 acre-feet (Remainder of original application shall be denied.)
	Priority: 2-22-80 Hearing: 4-21-80 Deferred: 6- 2-80	* #1954 (Priority Date: 8-8-73) Granted 644.0 acre-feet			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3303	Skogen, Marvin - Cartwright (McKenzie County) Priority: 9-22-80 Hearing: 10-27-80	Missouri and Yellowstone Rivers * NO PRIOR PERMITS	Irrigation	150.0 acre-feet 75.0 acres	It is recommended that action be deferred at this time.
2156	Schmidt, Joey - LaMoure (LaMoure County) Priority: 9-27-74 Hearing on Amendment: 10-27-80	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended this request for a change in point of diversion be approved. (This request was approved by the State Engineer on October 30, 1980)
3305	Freeland, William - Oakes (Dickey County) Priority: 10- 1-80 Hearing: 10-27-80	Ground Water	Irrigation	960.0 acre-feet 480.0 acres	It is recommended that action be deferred at this time.
3308	Amoco Production Company - Dickinson (Billings County) Priority: 10- 2-80 Hearing: 10-27-80	Ground Water (Fox Hills Aquifer)	Industrial	67.75 acre-feet 67.75 acres * #3210 (Priority Date: 11-6-79) Granted 3.0 acre-feet #3257 (Priority Date: 5-2-80) Granted 4.8 acre-feet #3289 (Priority Date: 8-13-80) Requested 32.26 acre-feet; in pending status #3290 (Priority Date: 8-25-80) Requested 32.26 acre-feet; in pending status	

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
943	Ueckert, Gordon J. - Sentinel Butte (Golden Valley Co.) Priority: 10-17-61 Hearing on Amendment: 10-27-80	North Branch of Garner Creek, trib. to Garner Creek and Little Missouri River	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
3300	Marion, City of - Marion (LaMoure County) Priority: 9-12-80 Hearing: 11- 3-80	Ground Water (Unnamed Aquifer) * NO PRIOR PERMITS	Municipal	20.0 acre-feet	20.0 acre-feet
3297	Roney, F. C. - Oakes (Dickey County) Priority: 9- 8-80 Hearing: 11- 3-80	Ground Water * NO PRIOR PERMITS	Irrigation	9.9 acre-feet 6.6 acres	It is recommended that action be deferred at this time.
3302	Shell Oil Company - Houston, Texas (McKenzie County) Priority: 9-19-80 Hearing: 11- 3-80	Ground Water (Fox Hills Aquifer) * #3222 (Priority Date: 1-22-80) Granted 8.0 acre-feet	Industrial	8.0 acre-feet	8.0 acre-feet

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3310	Tenneco Oil Company - Denver, Colorado (Billings County) Priority: 9-16-80 Hearing: 11- 3-80	Ground Water (Unnamed Aquifer)	Industrial	8.76 acre-feet	8.76 acre-feet * #3245 (Priority Date: 3-31-80) Granted 7.06 acre-feet
3277	Northwood, City of - Northwood (Grand Forks Co.) Priority: 10-14-80 Hearing: 11- 3-80	Ground Water (Elk Valley Aquifer)	Municipal	242.0 acre-feet	242.0 acre-feet * # 719 (Priority Date: 6-3-57) Granted 92.0 acre-feet #1114 (Priority Date: 11-19-63) Granted 58.0 acre-feet
3177	Esmond, City of - Esmond (Benson County) Priority: 10-15-80 Hearing: 11- 3-80	Ground Water	Municipal	161.0 acre-feet	It is recommended that action be deferred at this time. * NO PRIOR PERMITS
3232	Opp, Reinhold - Napoleon (Logan County) Priority: 2-27-80 Hearing: 3-31-80 Deferred: 4- 3-80	Ground Water (Streeter Aquifer)	Irrigation	480.0 acre-feet 312.0 acres	450.0 acre-feet 300.0 acres (Remainder of original request to be denied) * #3124 (Priority Date: 8-23-78) Granted 300.0 acres

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3120	Petterson, B. Anthony - Binford (Griggs County) Priority: 8-7-78 Hearing: 9-25-78 Deferred: 10-20-78	Ground Water (Spiritwood Aquifer) * NO PRIOR PERMITS	Irrigation	624.0 acre-feet 312.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres (Remainder of original request to be held in abeyance)
3296	Erickson, Eugene C. - Ithaca, New York (Ransom County) Priority: 7-31-80 Hearing: 11-10-80	Ground Water * NO PRIOR PERMITS	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time. (This recommendation was amended Nov. 18, 1980 to approve 120.0 acre-feet to irrigate 120.0 acres; remainder to be denied.)
3143	Heimbuch, Thomas A. - Cogswell (Sargent County) Priority: 12-1-78	Ground Water (Spiritwood Aquifer) * #2261 (Priority Date: 2-19-75) Granted 270.0 acres #2362 (Priority Date: 1-27-76) Granted 135.0 acres #3252 (Priority Date: 4-17-80) Requested 160.0 acres; In deferred status	Irrigation	636.0 acre-feet 318.0 acres	On October 12, 1979, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; balance of request held in abeyance. It is now recommended that an additional 257.5 acre-feet be released to irrigate an additional 165.0 acres; remainder of original request to be denied. Totals granted the applicant would be 450.0 acre-feet to irrigate 300.0 acres. (This request was approved by the State Engineer on October 30, 1980.)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2787	McAllister, Velma - Huron, S.D. (Ransom County) Priority: 3-17-77 Hearing: 5-31-77 Deferred: 7- 8-77	Ground Water	Irrigation	240.0 acre-feet 160.0 acres	On November 8, 1980, the applicant indicated by letter that she is no longer interested in developing her land for irrigation, and therefore, requested that the application be withdrawn.
3247	Lund, Gordon and Daniel - Enderlin (Barnes & Cass Cos.) Priority: 4- 1-80 Hearing: 6-30-80 Deferred: 7-14-80	Ground Water (Bantel Aquifer)	Irrigation	719.0 acre-feet 479.4 acres	670.0 acre-feet 446.8 acres (Remainder of original request shall be denied).
		* NO PRIOR PERMITS			
1824	Iglehart, James P. and John B. - Emmet (McLean County) Priority: 2-11-72 Hearing on Amendment: 1-29-79 Amendment Action Deferred: 2-20-79	Ground Water (White Shield Aquifer)	Irrigation	This is a request for a change in points 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
2314	Iglehart, James P. and John B. - Emmet (McLean County)	Ground Water (White Shield 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.
	Priority: 9- 8-75 Hearing on Amendment: 1-29-79 Amendment Action Deferred: 2-20-79				
2253	Iglehart, James P. and John B. - Emmet (McLean County)	Ground Water (White Shield 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.
	Priority: 4- 2-75 Hearing on Amendment: 2-19-80 Amendment Action Deferred: 2-29-80				



NORTH DAKOTA STATE WATER COMMISSION

900 east boulevard
701-224-2750

bismarck 58505
north dakota

MEMO TO: State Water Commission Members
THROUGH: Vern Fahy, State Engineer
FROM: Joseph M. Schmitt, Legal Assistant
RE: Section 404 of the Clean Water Act
SWC Project File #1632
DATE: November 6, 1980

The State Water Commission has been asked by the Natural Resources Interim Committee to recommend whether or not North Dakota should assume the permitting responsibilities under Section 404 of the Clean Water Act. Section 404 deals with placing dredged or fill material into waters and wetlands. The Environmental Protection Agency sponsored a workshop on State 404 Program Implementation which Mr. Dave Sprynczynatyk, Director of Engineering, and I attended. Approximately 32 states were represented at the workshop, as well as the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the Environmental Protection Agency. Of the represented states, one state felt that it could now assume Section 404 responsibility, and four were working on state programs for Section 404. At the present time, no states have taken over the program.

The following represents pertinent questions about the Section 404 Program and their apparent answers as a result of the workshop.

- 1.) What flexibility is provided to a state which assumes §404 responsibility?

It appears that the only flexibility which a state might enjoy is procedural, and that there is no flexibility with respect to the substantive issues in §404. The substantive guidelines which are set forth by the Environmental Protection Agency are very stringent. The oversight which is built into Section 404 would preclude North Dakota from exercising any discretion in developing its state program or in the granting of individual permits.

- 2.) What resource commitment will be required by North Dakota if it assumes the responsibilities of the §404 program?

The E.P.A. personnel were asked about this and responded that they were unable to accurately make a program implementation cost estimate. Based on figures provided by the Corps of Engineers and the states of Rhode Island and Michigan, it is estimated \$300,000 to \$400,000 annually may be required for program costs, considering a staff requirement of about one person for each 20 permits.

- 3.) What financial assistance will be available to a state from the federal government?

GOVERNOR ARTHUR A. LINK
Chairman

ALVIN A. KRAMER
Minor

ARTHUR J. LANZ
Devils Lake

MYRON JUST, EX-OFFICIO MEMBER
Comm. of Agriculture

RICHARD P. GALLAGHER
Vice Chairman-Mandan

GORDON K. GRAY
Valley City

ARLENE WILHELM
Dickinson

VERNON FAHY
Secretary & State Engineer

Although a little money has been provided to the four or five states which became involved early in the state 404 program, it appears there will be little, if any, financial assistance available, and perhaps very little technical assistance either due to lack of manpower. There is a possibility that existing funds for other programs under the Clean Water Act could be transferred for use under §404, however this is not likely since it would require that existing funds in other programs be reduced to make money available for §404.

4.) Should North Dakota assume the responsibility?

It is my recommendation that North Dakota should not assume §404 responsibility at this time. The Clean Water Act provides so much oversight authority that the state of North Dakota would have little, if any, discretionary authority over §404 decisions. Furthermore, the U.S. Fish and Wildlife Service indicated that protection of prairie potholes was one of its five main areas of concern. This suggests that each permit which is applied for in North Dakota will be closely reviewed and scrutinized, with many recommendations made and/or conditions being attached. The E.P.A. always retains the authority to remove an individual permit or the entire program from North Dakota's administration.

Rather than attempt to take over the program, it is suggested that North Dakota wait at least until the 1983 session. In the meantime, North Dakota can follow what is being done by states which do accept the program, if any do accept it, and by the Fish and Wildlife Service, the Corps of Engineers, and the Environmental Protection Agency.

Thank you.



Joseph M. Schmitt
Legal Assistant

JMS:pw

D R A F T

TO: Senator Milton R. Young
Senator Quentin N. Burdick
Congressman Mark Andrews

This is in regard to Section 404 (33 U.S.C. 1344) and the provisions of the 1977 Clean Water Act which authorize states to assume jurisdiction and administration of the §404 Program. In 1979, the North Dakota Legislative Assembly approved a study resolution to explore the possibility of North Dakota assuming the administration of the §404 Program. The study resolution provided, in part:

WHEREAS, the Clean Water Act of 1977 (P.L. 95-217) provides that the Governor of any State desiring to administer its own individual and general permit programs for the discharge of dredged or fill material into the navigable waters may submit a proposed State program to the EPA; and

WHEREAS, if the Administrator of the EPA determines that sufficient authority exists for the State to administer and enforce the proposed State Section 404 program, then the proposed State program shall be approved; and

WHEREAS, it is the express policy of the Legislative Assembly that state and local governments are more responsive to the needs of the people, and that wherever possible state and local governments should exercise jurisdiction which would otherwise be exercised by the Federal government; and

WHEREAS, existing statutory authority may not be sufficient for the State of North Dakota through its State Water Commission to administer and enforce a Section 404 program.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council is hereby directed and authorized to conduct an interim study on the development of a state program to administer and enforce Section 404 of the Clean Water Act, through its State Water Commission;

The interim study was concluded by the Natural Resources Interim Committee in September, 1980, without recommendation as to whether the state of

North Dakota should make efforts to assume the §404 program. Instead, the Interim Committee requested the State Water Commission to do additional study and make a recommendation to the 1981 Legislative Assembly. At this time, we have decided to recommend against making application for administration of the §404 program, for several reasons. The purpose of this letter is to advise you of our concern about the present situation with respect to §404.

A brief history of the development of §404 may be helpful in understanding our concerns. Section 404 was first created in 1972 as part of the FWPCA (P.L. 92-500, codified as 33 U.S.C. 1251 et. seq). Generally, §404 requires that a permit be secured from the Corps of Engineers before dredged or fill material may be placed in "navigable waters". The term "navigable waters" was initially construed by the Corps of Engineers as meaning "navigable waters of the U.S." and thus regulations were published limiting the application of §404 to interstate bodies of water over which commerce "had been, was presently or could reasonably in the future" be conducted. This interpretation was short-lived.

In NRDC vs. Callaway, 392 F Supp. 685 (D.D.C. 1975), decided March 27, 1975, the Corps' regulations were held invalid as inconsistent with the intent of Congress to assert "federal jurisdiction over the nation's waters to the maximum extent permissible under the Commerce Clause of the Constitution". The Court ordered the Corps to publish new regulations "clearly recognizing the full regulatory mandate of the Act" [FWPCA]. (392 F Supp. 685, at page 686.) Under the new regulations, the Corps has extended its jurisdiction under Section 404 to virtually all surface streams, lakes and wetlands. (See 33 CFR Part 323).

During the Ninety-fifth Congress, amendments to Section 404 provided much controversy. The task was finally completed in December of 1977, with the passage of the Clean Water Act. One of the most significant amendments to Section 404 provides for the Governor to submit a plan to the Administrator of the Environmental Protection Agency for state administration and enforcement of Section 404 permits. The reasons for this amendment were succinctly summarized by the EPA as follows:

1. A state 404 Program could reduce duplication and red tape and avoid "excessive regulation" by the Federal government.
2. A state is best qualified to deal with the protection and allocation of its waters and balance social and economic concerns in this area.
3. Federal involvement is necessary only where interstate or foreign commerce might be affected.

I believe the foregoing analysis by EPA accurately reflected the plausible intent of Congress when it provided authority for states to assume jurisdiction of §404. However, I am greatly concerned about the manner in which Congress effectuated that intent, and the manner in which EPA is carrying out that intent.

Let me explain my concern with the following analysis. Section 404g(1) of the Clean Water Act begins as follows:

The Governor of any state desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under state law or under an interstate compact.

It would appear from this provision that EPA's previously stated interpretation that "Federal involvement is necessary only where interstate or foreign commerce might be affected" is accurate. However, Congress also included the following provisions in the Section 404 amendments of the Clean Water Act.

(j) Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h) (1) (E), or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed

under subsection (b) (1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this Act.

This provision seems inconsistent with the Congressional purpose of allowing states to assume administration of the §404 program. First of all, 404(j) will increase duplication and red tape, rather than decrease it, since the Federal government, including the Department of Interior and Department of Army, through the Administrator of the EPA, will review, and for all practical purposes, process individual 404 permits over a 90 to 180 day period. Thus, both the federal and state governments will process §404 permits. Second, even though a state may be best qualified to deal with the protection and allocation of its water and balance social and economic concerns in this area, 404(j) allows EPA to overrule a state on any given permit application as it so desires. Of what benefit is it to allow a state to assume a program and balance social and economic concerns when the Federal government (either the Fish & Wildlife Service or the Corps of Engineers, through the EPA, or the EPA itself) can exercise final substantive decision-making authority? It should be pointed out that EPA override can occur only for a permit submitted pursuant to 404(h) (1) (E), or when a state permit is outside this section (404), including 404(b) (1) guidelines developed by EPA. It is our opinion that 404(b) (1) guidelines (published in proposed form in the September 18, 1979, Federal Register, Volume 44, No. 182, page 54222) are so comprehensive that it could be argued in almost any circumstances that a proposed activity in a stream, lake, or wetland, is contrary to the public interest as set forth in the 404(b) (1) guidelines. Thus, EPA has extensive discretion regarding override of state permits. Finally, if Federal involvement is necessary only where interstate or foreign commerce might be affected, it would appear totally unnecessary and inappropriate to provide for extensive Federal control over all permits, at the discretion of EPA or another Federal agency.

While the provisions of §404(j) are objectionable and contrary to what we believe to be Congress' intent regarding state 404 administration, those provisions might be palatable and workable if administered in a flexible and reasonable manner by the EPA. Members of my staff attended a State 404 workshop on October 22-24, 1980, which was sponsored and put on by the EPA. The workshop by the EPA clearly revealed that EPA does not consider a state 404 program to include any substantive flexibility. For example, materials distributed at the workshop include the following statement:

EPA's role both in approving state programs and overseeing decisions made under them emphasizes the importance Congress placed on maintaining Federal programs and ensuring that water quality and wetlands be protected.

To ensure that there is no misunderstanding, our concern and objection to the extensive Federal involvement in a State 404 program should not be construed as a desire by North Dakota to alter the nature and substance of the §404 program. We clearly recognize that when Congress authorized the opportunity for a state 404 program, it did not intend that the nature and substance of the program be altered or diminished. However, the extensive involvement of the Federal government, including existing provisions of §404 as well as EPA's posture towards state 404 programs, make it virtually meaningless for a state to assume the 404 program. The discretion on the part of any state to balance the various concerns is extremely limited, since EPA can overrule virtually any state decisions on the basis that such decision is inconsistent with the 404(b)(1) guidelines. In addition, the minimum 90-day review for federal agencies, with additional time periods if there is objection, will certainly not result in a decrease in processing time as compared to the federal program. Finally, there is a tremendous amount of criticism to excessive federal regulation at this time. Section 404 would justify that criticism, and unfortunately, the plausible effort by Congress in providing for state 404 programs will do little to decrease federal regulation and duplication.

It is inappropriate to criticize the current state of §404 without offering an alternative. In the first instance, H.R.440, introduced by Congressmen Powell and Senator Towers during 1980, would eliminate all federal involvement pursuant to §404 except in those traditionally "navigable" waters. This would alleviate the serious question that I have about what specific federal interest is being protected under the commerce clause by regulating, pursuant to §404, even the smallest and most isolated streams and wetlands in this country. Assuming, however, that Congress is not likely to limit the geographic jurisdiction of §404 at this time, I would suggest that 404(g), 404(h), and 404(j) be eliminated, and replaced with simple language stating that a state may apply to take over the §404 program; the application for a state program must be processed within a certain time period; and, in order to be approved, the state must have the requisite authority to issue permits in accordance with the 404(b)(1) guidelines, and Sections 307 and 403 of the Clean Water Act, to enforce violations, to provide federal, state, interstate, and other agencies, and also individuals, a reasonable opportunity to comment on individual applications, to issue general permits, and in general carry out the intent of §404.

Sincerely,

Vern Fahy
State Engineer

VF:MD:pw

cc: Byron Dorgan, Congressman-elect
State Water Commission

APPENDIX "D"

RESOLUTION NO. 80-11-409

Supporting Active Role By The
Commission In Planning, Designing,
And Constructing Water Supply Systems

WHEREAS, the Governor of North Dakota, Arthur A. Link, as Chairman of the State Water Commission, has actively supported and encouraged the expeditious development of water for domestic, municipal, and rural uses; and

WHEREAS, the State Water Commission has determined that many cities and rural areas in North Dakota do not have assured, adequate, good quality water for domestic, municipal, and rural uses; and

WHEREAS, the State Water Commission recognizes that a dependable water supply is the key to a stabilized municipal and rural economy; and

WHEREAS, recent studies indicate that water from the Missouri River and other sources should be used to augment present water supplies in North Dakota, but the consumers cannot pay all costs of a water supply and distribution system; and

WHEREAS, the State Water Commission appears to be the appropriate entity to plan, design, and construct water supply systems and works for areas in North Dakota; and

WHEREAS, modification of Chapter 61-02 of the North Dakota Century Code and other laws may be necessary, to enable the State Water Commission to plan, design, and construct water supply systems for North Dakota.

NOW, THEREFORE, BE IT RESOLVED at its meeting held in Bismarck, North Dakota, on this 19th day of November, 1980, that the State Water Commission supports proposals that it utilize its authorities in planning, designing, and constructing water supply systems and works for North Dakota; and

BE IT FURTHER RESOLVED that the State Engineer cooperate with all interested parties to develop legislation to assist in financing and to amend, if necessary, Chapter 61-02 to ensure that the State Water Commission could plan, design, construct or provide other appropriate assistance for such water supply systems or works.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:



Arthur A. Link
Arthur A. Link
Governor-Chairman

ATTEST:

Vernon Fahy
Vernon Fahy
State Engineer and Secretary