

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE December 30, 1961 PLACE Minot, N. Dak.

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

Your Name	Your Address	Who do you Represent? (Or Occupation)
Al Austad	Rex 727	N.D. ASSOC. of RURAL ELEC. COOP'S
Bob Dorothy	Bismarck	State Water Commission
Charles? Mamma	Bismarck	USOA - SCS
A Richard Moun	Bismarck	Myself ENGINEER
M Sagveen	Bismarck	"
Monie Melander	Hunter	North Cass
Phyllis Hagen	Walgerton	D. County Water Reserve
A. N. Ault	Grand Forks	G. Fks. Co. Wtr. Res. Dist.
C. W. EKNESS	GRAND FORKS	" " " " " "
Tom Ronan	Miamon (N)	" " " " " "
Joe Cady	Beard	SWR
Grant Strick	Richardson	Southwest Water Supply Dist
Joel D. Melarvic	Bismarck	Great Plains Coal Gasification
May H. Jenson	Bismarck	Gov. office
Duane R. Britling	West Fargo	Self

NORTH DAKOTA STATE WATER COMMISSION  
REGISTER

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

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

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

Your Name	Your Address	Who do you Represent? (Or Occupation)
Leroy Klapprott	SWC Bismarck	
SKIP SEISER	MINOT DAILY NEWS	
Bruce F McLollom	Bismarck	Bartlett & West / Boyle
Cary Backstrand	Bismarck	SWC
Mike Dwyer	Bismarck	SWC
David Spryng...	"	"

## MINUTES

North Dakota State Water Commission  
Minot, North Dakota

November 30, 1981

The North Dakota State Water Commission held a meeting in conjunction with the joint annual meeting of the North Dakota Water Users Association and the North Dakota Water Management Districts Association on November 30, 1981 in the Viking Room at the Ramada Inn in Minot, North Dakota. Governor-Chairman, Allen I. Olson, called the meeting to order at 1:00 p.m. and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Allen I. Olson, Governor-Chairman  
Kent Jones, Commissioner, Department of Agriculture, Bismarck  
Alvin Kramer, Member from Minot  
Florenz Bjornson, Member from West Fargo  
Ray Hutton, Member from Oslo, Minnesota  
Garvin Jacobson, Member from Alexander  
Guy Larson, Member from Bismarck  
Henry Schank, Member from Dickinson  
Bernie Vculek, Member from Crete  
Vernon Fahy, State Engineer and Secretary, North Dakota  
State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members  
Approximately 15 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 OCTOBER 13 AND 14, 1981 MEETING -  
APPROVED

The minutes of the October 13 and 14, 1981 meeting were briefly reviewed by Secretary Fahy. There were no corrections or additions to the minutes.

It was moved by Commissioner Kramer, seconded by Commissioner Schank, and unanimously carried, that the minutes of the October 13 and 14, 1981 meeting be approved as presented.

CONTINUED CONSIDERATION OF  
COST SHARING REQUEST BY  
BURLEIGH COUNTY WATER RESOURCE  
DISTRICT FOR APPLE CREEK  
FLOOD PROPOSAL  
(SWC Project No. 1728)

At the Commission's October 13 and 14, 1981 meeting, representatives of the Burleigh County Water Resource District, City of Bismarck and Burleigh County presented for the Commission's consideration a proposal to cost share in the construction of a pilot demonstration structure for flood

reduction purposes on the upper reaches of the east branch of Apple Creek. The county is considering using this type of an approach as the first phase towards a total flood control program for Apple Creek which could extend for a period of up to 20 years. The estimated cost for this phase of the project is \$170,000. The District has requested that the Commission consider 50 percent cost sharing in this project. Action was tabled on this request at the October 13 and 14 meeting since the Commission members had not had an opportunity to review the reconnaissance study made of the area, and the matter was to be placed on the next agenda of the Commission for further consideration.

Commissioner Larson explained the demonstration project and indicated that he felt that the evidence has shown that this project is in conformity with most of the recommendations that have been made in the past by this Commission. He noted that this might be an opportune time to demonstrate some of our watershed concepts that we have been talking about for many years, and might have value as a demonstration project to other parts of the state of what can be done.

It was moved by Commissioner Larson that the State Water Commission approve cost sharing up to 50 percent in the construction of a demonstration flood control structure on the upper reaches of the east branch of Apple Creek in an amount not to exceed \$85,000, contingent upon the availability of funds. The motion received a second from Commissioner Jones. All members voted aye; motion carried.

CONTINUED CONSIDERATION OF  
REQUEST FOR COST SHARING  
IN BURLEIGH COUNTY WATER  
RESOURCE DISTRICT RESEARCH PROJECT  
(SWC Project No. 1551)

At the Commission's October 13 and 14, 1981 meeting, Mr. Jim Eastgate of the Burleigh County Water Resource District presented a request for the Commission's consideration to cost share in a research project involving water management practices on shallow till

soils. The total estimated cost of the project is \$26,000 and the request to the Commission is to consider cost sharing in one-half of the costs. The Commission tabled action at this meeting and indicated that it would be placed on the next agenda.

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Secretary Fahy briefly reviewed the proposal and indicated that there are available funds in the Contract Fund. The recommendation of the State Engineer was that the Commission honor the request and provide funding of one-half of the non-federal costs of this project not to exceed \$15,000.

It was moved by Commissioner Kramer, seconded by Commissioner Vculek, and unanimously carried, that the State Water Commission approve 50 percent of the non-federal costs towards the research study of irrigation on shallow till soils not to exceed \$15,000, which is contingent upon the availability of funds.

UPDATE ON STATE WATER  
COMPREHENSIVE PLAN  
(SWC Project No. 322)

Leroy Klapprodt of the State Water Commission Planning staff reviewed the public involvement process that is currently underway in updating the

Comprehensive Plan. The process involves a series of meetings and noted that participation at these meetings by the Citizens Advisory Board has been excellent. The second round of meetings are currently being held, which are advertised meetings, and are for the purpose of explaining the planning process and what is hoped to be accomplished in this process. Response to these meetings has been varied across the state, but noted that the input has been very good from the people who have attended the meetings.

Mr. Klapprodt reviewed some of the input that had been expressed by the public at these meetings, and noted that in the meetings themselves there was very little response from the various Indian tribes. Since these meetings there has been considerable contact from the tribal representatives and they have forwarded some very good ideas as to how they would like to see things handled in their regions that they are involved in. In discussing the thrust of the public input received so far, Mr. Klapprodt stated that municipal, industrial and rural water systems have received the strongest support. He noted that in a couple of meetings a desire was expressed to develop a demonstration project for lakeside irrigation along Lake Sakakawea. He also discussed some of the problems that have been expressed across the state.

Mr. Klapprodt indicated that the planning process is on schedule at this time. He said that in the planning process in developing projections, it is necessary to make several assumptions. The assumptions referred to are: the Pemblier Dam will proceed as scheduled; 85,000 acres of Garrison constructed in the immediate future and 250,000-acre increment for long-range future; proceeding with Corps of Engineers and Citizens Committee report for Lower Sheyenne River Diversion scheme; and using the existing situation that the Citizens Committee has prepared on Burlington Dam.

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UPDATE ON SOUTHWEST  
PIPELINE PROJECT  
(SWC Project No. 1736)

Bob Dorothy, Project Manager for the Southwest Pipeline Project, updated the Commission members on the project indicating that the aerial surveys were completed in early November. Agreements of Intent were mailed to all cities and customers in the area for delivery of water from the project and the cities were requested to return the signed agreements along with a special intention fee if they were interested in receiving water from the project. To date, Mr. Dorothy said that approximately 33 cities in southwestern North Dakota have signed the Agreements of Intent for delivery of water and about \$10,600 has been collected in special intention fees which will be deposited in the State's Resource Development Trust Fund.

Mr. Dorothy indicated that negotiations are continuing with The Nokota Company on a study involving the possibility of a joint intake structure.

Governor-Chairman Olson leaves the meeting;  
Commissioner Jones assumes chair.

Mr. Bruce McCollom discussed with the Commission members the question of water treatment and water softening. Two alternatives for water treatment that were presented for the Commission's consideration were: 1) a large treatment plant near the source at Renner Bay to treat all of the water that flows into the pipeline; and 2) three smaller plants plus the use of the existing Dickinson plant. Mr. McCollom indicated that construction costs for either alternative are estimated at about \$12 million. Relative to the operation and maintenance costs, the single plant is more economical.

Relative to water softening, Mr. McCollom stated that the costs to include softening in the construction costs are not going to be affected a great deal, but will increase the operation and maintenance costs to approximately an additional five to ten cents per one thousand gallons for the chemicals needed to remove a portion of the hardness from the river water. It was suggested by Mr. McCollom that since most of the cities who will be receiving water from the project are accustomed to soft water and that the initial costs are minimal to include a water softening mechanism in the water treatment plant, it would be feasible to include the water softening capabilities in the treatment plant and it would then be up to the water users to decide whether or not they want to pay the additional five to ten cents per one thousand gallons for soft water.

Commissioner Schank indicated that the Dickinson City Commission met about a week ago and discussed the matter of water treatment. Commissioner Schank stated that although the City of Dickinson does owe a substantial amount of money on its present treatment plant, the Commission did agree to cooperate with the State Water Commission and support the treatment facility which would be of the best interest to all of the users in southwest North Dakota.

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Secretary Fahy stated that the matter of water treatment was not specific in the legislation and suggested that the matter should be taken to the Legislature as an alternative. He said that it appears from a cost standpoint that the most feasible would be a single treatment plant alternative with water softening capabilities.

It was moved by Commissioner Jacobson, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission direct the consultants and staff to proceed with an alternative to include a single water treatment plant with water softening capabilities and this alternative and costs be presented to the 1983 Legislature for their consideration.

Mike Dwyer, Assistant Attorney General, informed the Commission members that on November 10, 1981, he met with representatives of the Three Affiliated Tribes to discuss, among other things, whether or not the Tribal Council would be willing to agree that the State would have sole and complete authority over the Southwest Pipeline Project if an intake structure were located on the reservation. This would include an agreement whereby the tribes would relinquish any rights that they would have over the waters to be appropriated through the intake structure, along with the agreement that such waters would not be part of the Indian water rights under the Winters Doctrine.

Mr. Dwyer stated that at the November 10 meeting, the Three Affiliated Tribes representatives indicated that this proposal would not be acceptable.

Since that meeting, Mr. Dwyer stated that he sent a letter to the Chairman of the Three Affiliated Tribes outlining the discussion of the meeting, and requested that they confirm that this proposal could not be accepted. Mr. Dwyer also stated in the letter to the Chairman that if the Tribal Council representatives wished to discuss the matter further, to contact him. He said that to date no response has been received from the Tribal Council.

CONSIDERATION OF REQUEST FROM  
RED RIVER JOINT BOARD, AND  
STEELE, TRAILL AND NORTH CASS  
COUNTIES FOR COST SHARING ON  
ELM RIVER HYDROLOGIC STUDY  
(SWC Project Nos. 839 & 1705)

Dave Sprynczynatyk, Director of Engineering for the State Water Commission, indicated that a request has been received from the Red River Joint Water Resources Board and the North Cass Water Resource District that the Commission consider cost participation in a hydrologic and water management study of the Elm River Basin. This basin covers parts of Cass, Steele, and Traill Counties. The purpose of the study would be

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to develop a hydrologic model of the basin and to use the model as a management tool to analyze potential projects within the basin. A priority listing of projects to be implemented within the Basin would then be developed.

The total cost of the study is estimated at \$27,400. The Red River Joint Board has agreed to fund 25 percent of the study; another 25 percent of the total cost would be shared by the North Cass Water Resource Board, the Traill County Water Resource Board, and the Steele County Water Resource Board. The request to the State Water Commission is to fund the remaining 50 percent, or \$13,700.

Mr. Robert Thompson, Chairman of the Red River Joint Board, explained the project in detail and stressed the need for such a project. He urged favorable consideration by the Commission for cost sharing.

Secretary Fahy recommended that the State Water Commission participate in 50 percent of the costs of the study and that these funds would come from the appropriation in House Bill No. 1466 and would assist in meeting the requirements of the legislation to develop a priority list of projects within the Red River Watershed. The State Engineer also recommended that the agreement with the local entities state that a copy of the hydrologic model developed be turned over to the State Water Commission upon completion of the study which would allow for staff to use the model for water management purposes in the future.

It was moved by Commissioner Bjornson, seconded by Commissioner Hutton, and unanimously carried, that the State Water Commission participate in 50 percent of the costs in a hydrologic and water management study of the Elm River Basin, in an amount not to exceed \$13,700. This motion is contingent upon the availability of funds which shall come from the appropriation in House Bill No. 1466. The agreement shall include a condition that a copy of the hydrologic model developed be turned over to the State Water Commission upon completion of the study.

CONSIDERATION OF REQUEST  
FOR COST PARTICIPATION IN  
ENGLISH COULEE PROJECT IN  
GRAND FORKS COUNTY  
(SWC Project No. 1351)

Secretary Fahy reported that relative to the English Coulee project, the Grand Forks County Water Resource Board has been informed by the Soil Conservation Service that due to federal funding cuts they will not be able to provide funds

to the fullest extent initially agreed to for the project. In order that the

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project can continue to proceed on schedule it is essential to do a study estimating in costs of \$38,000. The Grand Forks County Water Resource Board has requested that the Commission consider cost sharing in 50 percent of the costs for this study and the remaining 50 percent would be shared by the Grand Forks Water Resource Board and the Red River Joint Board.

It was the recommendation of the State Engineer that the Commission honor this request in the amount of \$19,000, or 50 percent of the costs, in order that the total project may proceed on schedule.

It was moved by Commissioner Larson, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission approve 50 percent cost participation in the English Coulee study, in an amount not to exceed \$19,000, contingent upon the availability of funds.

**RIVER BEND PROPERTIES -  
BANK STABILIZATION SETTLEMENT  
(SWC Project No. 576)**

Mike Dwyer discussed with the Commission members a claim for damages from River Bend Properties which occurred to their property resulting from a Corps of Engineers bank stabilization project adjacent to the River Bend Properties. River Bend Properties is the owner of Lot 10 of Block 1 of River Bend Addition to the City of Mandan. In August of 1980, the Corps of Engineers through its contractor, cleared an area of native trees on the river side of Lot 10 and installed a bank stabilization refusal in Lot 10 by excavating and burying approximately 61 feet of rock underneath the surface of Lot 10. The bank stabilization work on Lot 10 of River Bend Addition was begun and completed without easement from the River Bend Properties.

Mr. Dwyer noted that bank stabilization works along the Missouri River are a cooperative venture of the State of North Dakota, through the State Water Commission, and the Federal Government, through the Corps of Engineers. One of the duties of the State Water Commission in this venture is to secure for the Corps of Engineers the necessary easements for right-of-way and construction of the bank stabilization works along the Missouri River. In this instance, due to an error by the State Water Commission staff, the easement description for the bank stabilization works adjacent to River Bend Addition incorrectly included a portion of Lot 10 of River Bend Addition, and thus the bank stabilization works were actually constructed in Lot 10 of River Bend Addition.

Mr. Dwyer explained that State Water Commission staff and River Bend Properties had reached a tentative settlement of the matter. The proposed settlement provided for payment by the Commission to River Bend Properties for such damages in the amount of \$5,828, and in return

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River Bend Properties would grant easement for the construction, operation and maintenance of the bank stabilization works which presently exist and are located on Lot 10 of River Bend Addition.

It was moved by Commissioner Kramer, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission pay to the River Bend Properties an amount not to exceed \$5,828 as full and complete compensation for damages to Lot 10 of River Bend Addition as a result of the incorrectly placed bank stabilization works; and that River Bend Properties tender an easement for the construction, operation and maintenance of the bank stabilization works which presently exist and are located on Lot 10 of River Bend Addition.

**INDIAN WATER RIGHTS  
DISCUSSION**

Mr. Dwyer indicated that recent discussions have been held with tribal representatives regarding the possibility of quantifying Indian reserved water rights through negotiations rather than through litigation, and also to discuss some mutual efforts that might be undertaken with respect to water planning, water inventories, etc. He explained various reasons why the tribes have not been interested in quantifying their water rights in the past.

The State Engineer's position has always been that it would be of mutual benefit to the Three Affiliated Tribes and the State of North Dakota to quantify Indian water rights through negotiations.

At the November 10, 1981 meeting with representatives of the Three Affiliated Tribes, Mr. Dwyer stated that the tribal representatives expressed an interest and willingness to enter into negotiations for quantifying their water rights. Mr. Dwyer stated that he agreed to present the matter to the State Water Commission at its next meeting to determine the Commission's position about quantifying Indian water rights through negotiations and about discussing other water-related issues.

It was moved by Commissioner Vculek, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission encourage the staff to pursue discussions with the Indian tribes toward agreement on water right issues.

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**DISCUSSION OF FEDERAL  
INDIAN WATER RIGHTS  
LEGISLATION**

Mr. Dwyer discussed legislation in Washington, D. C. addressing Indian water rights and referred to a piece of legislation which has not yet been introduced that would

basically terminate all federal reserved water rights which have not been put to beneficial use and would also provide a procedure for establishing new federal water rights. It would also provide that Indian water rights would have eight years to exercise reserved water rights or they would be terminated. He advised the Commission that he would be following this legislation and would keep the Commission informed. Mr. Dwyer also explained his written comments on the proposed legislation, which are attached hereto as APPENDIX "A".

**WATER EDUCATION:  
WATER AND MAN**

Secretary Fahy stated that education relative to water and water resources has been in the school system for a number of years. Several

years ago, the State Water Commission produced a coloring book for the elementary grades relative to the hydrologic cycle. Approximately 80,000 copies of the coloring book were printed but it was necessary to cut further printing because of the high printing costs to keep up with the demand of requests by the teachers for their students. This demonstrated the interest and the real need for some type of basic water resources education in the school system. Secretary Fahy stated that this same type of material but on a more sophisticated and larger scale has been developed nationally through the National Water Resources Association, the Western States Water Council and a number of other national groups to take a look at developing curriculum for the elementary through the 12th grades. This course has been made available for all of the states through an organization known as Water and Man, Inc.

Secretary Fahy stated that at the recent Economic Development Conference sponsored by the Governor, the following priority recommendation was developed and adopted:

Encourage educator to include water resource subjects as a part of the curriculum at various levels in the system. Urge state financing for this effort. Department of Public Instruction should be requested to become more involved in the information distribution process.

Water and Man, Inc. is a nonprofit education corporation to develop water education materials and promote and assist state water agencies and water user entities in a comprehensive water education effort. In addition to producing water education materials and services as an information center for water-related educational efforts, Water and Man offers a variety of inservice training programs for educators. Water and Man offers different levels of assistance ranging between a cost of \$5,000 and \$20,000.

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Secretary Fahy stated that Water and Man would be an excellent vehicle to implement the water education priority recommendation, and if the Water Commission deems this matter important enough to discuss further and possibly become the lead sponsor in this education effort, additional information will be obtained for the next meeting of the Commission.

Commissioner Kramer expressed his support that this matter is very important, which likewise received the unanimous support of the other Commission members. He suggested that the North Dakota Association of Soil Conservation Districts, who has a similar program, be contacted and perhaps they would be interested in working closely with the Commission in this effort. The State Engineer and staff were directed to proceed with obtaining additional information in this effort.

**CONSIDERATION OF PROPOSED  
COST SHARING GUIDELINES**

at this meeting and that sufficient time be allowed on the next agenda for a discussion of proposed cost sharing guidelines.

Secretary Fahy suggested, and it was agreed to by the Commission members, that discussion of this item be deferred

Mr. Duane Bretling, Chairman of the Resolutions Committee for the North Dakota Water Management Districts Association, briefed the Commission members of a resolution that will be considered at the annual meeting of that Association which urges the State Water Commission to give consideration to engineering costs and right-of-way acquisition costs.

**CONSIDERATION OF AGENCY  
FINANCIAL STATEMENT**

Secretary Fahy reviewed the financial statement for the agency and indicated that the Water Commission is functioning well within its budgetary authorization.

**WATER PERMIT  
APPLICATIONS  
(SWC Project No. 1400)**

Commissioner Larson requested that the staff provide the Commission members with a monthly listing of new water permit applicants.

**WATER PERMIT APPLICATION  
FILED BY THE NOKOTA COMPANY**

16,800 acre-feet of water from Lake Sakakawea for industrial purposes. State law provides for State Water Commission approval for applications that exceed 5,000 acre-feet of water. Secretary Fahy stated that as soon as the Affidavit of Mailing is received from the applicant, which will complete their application, the Commission can schedule a date for a public hearing.

Secretary Fahy indicated that The Nokota Company has filed an application for a water permit for the appropriation of

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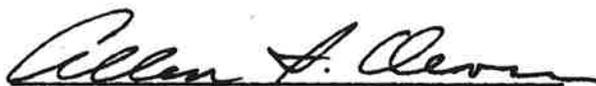
GARRISON DIVERSION  
PROJECT UPDATE  
(SWC Project No. 237)

Gary Helgeson provided the Commission members with an update on the Garrison Diversion Project.

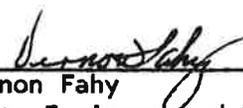
JANUARY, 1982 MEETING OF  
STATE WATER COMMISSION

The next meeting of the State Water Commission was scheduled for January 28 and 29, 1982 in Fargo in conjunction with the Corps of Engineers public meeting on Sheyenne River Diversion.

It was moved by Commissioner Larson, seconded by Commissioner Kramer, and unanimously carried, that the meeting adjourn at 3:30 p.m.

  
Allen I. Olson  
Governor-Chairman

ATTEST:

  
Vernon Fahy  
State Engineer and Secretary

November 30, 1981



**NORTH DAKOTA**

**STATE WATER COMMISSION**

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

**bismarck 58505  
north dakota**

MEMO TO: Cal Rolfson, Deputy Attorney General  
FROM: Michael Dwyer, Assistant Attorney General  
RE: Water Rights Coordination Act of 1981 -  
Gorton's Proposed Water Rights Bill - SWC File #C3-3  
DATE: November 27, 1981

This is to provide comments on the proposed Water Rights Coordination Act of 1981, which Senator Gorton has requested Senator Andrews to join as a co-sponsor for introduction into the 97th Congress. I am sorry for my delay in this matter, and hope that the following comments are provided in time to be helpful. The proposed reserved water rights bill is extremely significant, and deserves Senator Andrew's most careful attention.

As a general observation, it is my opinion that a matter of this importance deserves Congressional attention, and legislation such as proposed by Senator Gorton would be extremely helpful in clarifying various reserved water rights issues. However, it is suggested that certain modifications are necessary before the proposal has any possibility of serious consideration and acceptability. Each Title of the bill will be addressed separately:

**INTRODUCTION AND TITLE I**

The introduction to the bill mentions the two purposes which I believe are the most important purposes of this effort, specifically "to remove the uncertainty associated with reserved water rights" and to "confirm state jurisdiction over the use of water within state boundaries". The uncertainty that surrounds federal reserved water rights, both Indian and non-Indian, is the most frequently cited reason for clarification of these rights. Under the principles established by the U.S. Supreme Court, the federal reserved water right does not have to be used to remain valid (unlike state water right). As a result, in many cases the federal reserved water rights are unquantified. The financial implications created by this uncertainty are of tremendous magnitude. Significant investments are made in industry, agriculture, and other areas which require a dependable water supply, but it is often unknown whether a particular water supply is sufficient to satisfy the needs of other users and the federal reserved water rights. If not, when the federal reserved water right is put to use, its early priority can obliterate investments without compensation, since the agricultural, industrial, and other water uses must legally allow the federal reserved water right to be satisfied first.

It may be suggested by some that industrial and agricultural investments should not be located where federal reserved water rights can potentially jeopardize the investments. However, this suggestion is not practical or realistic in light of the continued growth in the western states. Thus, it is essential that federal reserved water rights be clarified and quantified.

Confirmation of state jurisdiction over the use of water within state boundaries is also an important objective. Congress has traditionally deferred to states for distribution and allocation of water resources, and while states must vigorously address water management issues, it is essential that long-standing state water right systems continue their primacy in water resource allocation. This will continue to allow for the most efficient, flexible and responsive decisions pertaining to these matters. Water use and allocation is often considered one of the last bastions of state primacy, and federal encroachment into this area can hopefully be restrained.

**TITLE II - FEDERAL RESERVED WATER RIGHTS;  
GENERAL RELINQUISHMENT AND FUTURE ESTABLISHMENT:**

Section 201 of this Title provides for the extinguishment of certain federal reserved water rights. Rather than automatically terminate non-exercised federal reserved water rights, a more reasonable and acceptable approach would be to require that all existing reserved water rights be explicitly claimed in writing and presented to the appropriate state within a certain period of time. Such claim should be expressly limited to the primary purpose of the reservation. By forcing the United States to state on the record precisely what it claims, the states will be given an opportunity to either oppose the claim or agree to it and incorporate it into its state water rights system. If the federal government does not present its claims within the prescribed period of time, any unexercised reserved rights would then be terminated. This approach would appear to be more reasonable and have a greater chance of being accepted.

Section 201, paragraph (b), and Sections 202 and 203 will be extremely helpful provisions in that they prescribe the exclusive method and procedure by which new federal reserved water rights can be established. This process will avoid much of the uncertainty and controversy over new reserved water rights, and will allow state input during the establishment process.

**TITLE III - INDIAN WATER RIGHTS**

While I believe that it is essential that Indian reserved water rights be quantified, I do not believe it will be considered equitable to require that Indian water rights be extinguished within 8 years if not exercised. This provision, will thus render the entire proposal unacceptable

MEMO TO: Cal Rolfson  
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to Congress, and preclude possible success for this legislative effort. I believe the legislative process provides the best chance at early resolution of many of the outstanding Indian and other federal reserved rights issues, and should be pursued vigorously. Thus, I would suggest it be modified to require early quantification of Indian water rights. In addition, while I agree that Indian water rights should be exercised and put to use only within the exterior or original boundaries of the Indian reservation, I do not think it is proper to limit the use of such water rights to the specific use for which it was originally reserved. A transfer of use is permissible for many state water rights, and a limit of the use of water to the original purposes is unduly restrictive and unfair. Thus, I suggest any limit on specific use be removed.

Section 302 should be beneficial to all water interests.

#### TITLE IV - GENERAL ADJUDICATIONS AND COMPENSATION

I agree with South Dakota Attorney General Mark Meierhenry that the general adjudication requirement should be deleted from the McCarren amendment, and waive the sovereign immunity of the United States in any declaratory judgment solely to ascertain the nature, extent, and volume of federal reserved water rights.

#### TITLE V - DEFINITIONS AND MISCELLANEOUS

I concur with the suggestion that the definition of reserved right be revised to state that reserved rights exist only when the U.S. withdraws lands from the original public domain.

In conclusion, attached is a copy of a letter from Mort Meierhenry, South Dakota Attorney General, which comments on the proposed reserved water rights bill. While I have commented specifically on certain sections of the proposal, I endorse and concur with the comments of Attorney General Meierhenry on other sections of the proposal, as they are generally reflective of our position in those issues. I must again state that I believe the legislative approach to resolve many of these problems is desirable and proper, and with the suggested modifications would recommend strong support of this effort. If I can be of any further assistance, please let me know, as we are very interested in this matter of extreme importance to us.

Sincerely,

MD:ps  
Incl.: as

Michael Dwyer  
Assistant Attorney General