

MINUTES

North Dakota State Water Commission
Meeting Held At
Holiday Inn
Fargo, North Dakota

February 17, 1976

The North Dakota State Water Commission held a meeting on February 17, 1976 at the Holiday Inn in Fargo, North Dakota. The meeting was held in conjunction with the Third Annual State Water Conference. Governor Link called the meeting to order at 7:30 p.m. and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Arthur A. Link, Governor-Chairman
Alvin Kramer, Member from Minot
Arthur Lanz, Member from Devils Lake
Arlene Wilhelm, Member from Dickinson
Myron Just, Commissioner, Department of Agriculture, Bismarck
Vernon Fahy, State Engineer, Secretary, North Dakota State
Water Commission, Bismarck

MEMBERS ABSENT:

Richard Gallagher, Vice Chairman, Mandan
Gordon Gray, Member from Valley City

OTHERS PRESENT:

Representatives of Basin Electric Power Cooperative
Representatives of Nelson County Water Management District
Representatives of Steele County Water Management District
Citizens from Dunn County
Representatives from Natural Gas Pipeline Company of America
Representatives of United Plainsmen Association
Bill Corwin, Fargo
Grant Trenbeath, Neche
State Water Commission Staff Members

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

CONSIDERATION OF MINUTES
FROM JANUARY 22 AND 23, 1976
MEETING - APPROVED

seconded by Commissioner Lanz, and carried, that the minutes be accepted and approved as distributed.

Secretary Fahy briefly reviewed the minutes of the meeting held on January 22 and 23, 1976. Following discussion, it was moved by Commissioner Kramer,

DISCUSSION OF COMMUNICATION
RECEIVED FROM BASIN ELECTRIC
POWER COOPERATIVE REGARDING
RESOLUTION OF POLICY ADOPTED
BY SWC REGARDING SITING
APPROVAL

(SWC Water Permit No. 2179)

Commissioner Lanz inquired as to whether any further information has been received from Basin Electric Power Cooperative or Montana-Dakota Utilities Company regarding the action that was adopted by the State Water Commission at their January 23, 1976 meeting. Such action required the two Companies, who have applied for water permits for energy conversion purposes, to secure the necessary approval of their energy conversion facility sites and transmission routes from the Public Service Commission before the application will be considered by the State Water Commission.

Governor Link replied that he had received a letter from Mr. James Grahl of Basin Electric and had requested State Water Commission staff members to review and analyze the situation as reported by Basin Electric. Murray Sagsveen, Legal Counsel for the Water Commission, related the substance of Mr. Grahl's letter to the Commission members. Mr. Grahl has brought to the attention of the Commission, through his letter, the potential impasse whereby the Mercer County Planning and Zoning Commission requires in their zoning ordinance that applicant have a water permit before they get a change in the zoning ordinance. The Public Service Commission requires that the applicant have a zoning permit before they will grant a plant siting permit.

Governor Link read a draft of a letter that he intends to send to the Mercer County Planning and Zoning Commission, with the approval of the Commission members. The letter read as follows:

Mr. Jim Cook, Chairman
Mercer County Planning
and Zoning Commission
Hazen, North Dakota

Dated: February 17, 1976

Dear Mr. Cook:

This is to inform you that the State Water Commission at its meeting on January 23, 1976, passed the following motion:

"It was moved by Commissioner Gallagher that the State Engineer notify Montana-Dakota Utilities Company and Basin Electric Power Cooperative that they must secure the necessary approval of their energy conversion facility sites and transmission routes from the Public Service Commission before the application will be considered by the State Water Commission. The motion was seconded by Commissioner Gray."

I understand that such action may conflict with your zoning ordinance, Section 3.4, and the North Dakota Energy Conversion and Transmission Facility Siting Act.

February 17, 1976

As the situation now exists, a utility must obtain a conditional use permit to construct an electric power generating plant or a gasification complex from the Mercer County Zoning Board. To obtain this conditional use permit, the Mercer County Zoning Ordinance, Section 3.4, Conditional Uses, Condition B, requires that an applicant shall "provide written evidence of approval for a water permit from the State Water Commission". The Public Service Commission, however, acting pursuant to Chapter 49-22-7b(3b) states that "no energy conversion facility site shall be designated which violates any county or city land use zoning or building rules, regulations or ordinances". The result is that any energy conversion industry is effectively blocked from selecting and securing a site.

Therefore, it is requested that your Commission consider amending your ordinance to allow the processing of an application for a conditional use permit before a water permit is granted. This request is made after serious consideration. It will permit local authorities and the people most affected to make a determination on plant siting before state agencies designate plant sites such as by granting a water permit for a specific diversion point for use at a specific location.

Your comments on this recommendation would be appreciated.

/S/ Arthur A. Link
Governor of North Dakota

It was moved by Commissioner Just and seconded by Commissioner Kramer that the letter read by Governor Link be approved as presented and be forwarded to the Mercer County Planning and Zoning Commission.

On discussion of the motion, Commissioner Just asked whether Dunn County has a similar ordinance. He also indicated that he has intentions of offering a motion to cause Natural Gas Pipeline Company of America to secure local approval before granting a water permit.

Commissioner Wilhelm indicated that she would support Commissioner Just's motion, but that she did not favor requiring local approval first.

Governor Link called the question on the pending motion. All members voted aye; the motion carried.

February 17, 1976

CONSIDERATION OF REQUEST OF
STEELE AND NELSON COUNTIES
FOR STATE WATER COMMISSION
PARTICIPATION IN MAJOR
DRAINAGE CONSTRUCTION
(SWC Project No. 1622)

Secretary Fahy introduced George McHugh, Nelson County Water Management District, and Bennett Rindy, Steele County Water Management District, who have requested an audience before the Commission to present a proposal for a large multi-county drainage project.

Mr. McHugh stated the project concerns both Steele and Nelson Counties and the overall basin is about the same size in each county. A large portion of this basin is valuable farmland that needs artificial drainage due to silt deposition in the natural channel.

Mr. Rindy of the Steele County Water Management District stated that this particular problem area is in the upper channel of the Middle Branch of the Goose River and involves about 10-12 miles. Local citizens have approached the two water management district boards of the problem and have requested any possible assistance from the State Water Commission.

Delton Schulz, Director of Engineering for the Commission, said that the Commission has done a preliminary survey of the area and a cost estimate has been developed. Estimated cost of the project is \$412,000.

It was recommended by Secretary Fahy that the Commission defer any cost participation action until the next meeting at which time more details regarding the proposal and alternatives for financing of the project will be available for the Commission's consideration.

Mr. Bill Corwin, a businessman residing in the Red River Valley area, appeared to caution the Commission against any further drainage into the entire Red River Basin.

Mr. Rindy pointed out that the Nelson-Steele project was for reconstruction of existing structures in the upper branch of the Goose River; it is not additional drainage.

Secretary Fahy responded to Mr. Corwin's remarks and expressed his concern. He indicated that drainage is one of the major issues facing the State Water Commission, and is also a major issue facing the local water management districts. He indicated that he had attended a meeting with the local water management district boards earlier this date discussing a coordinated approach among the counties with respect to drainage problems; not only looking at a specific area, but at the total area of impact.

After discussion, it was the consensus of the Commission members that action be deferred and that this item be placed on the agenda for the next Commission meeting.

February 17, 1976

CONSIDERATION OF COST
PARTICIPATION IN REPAIR
OF RIVERSIDE PARK DAM,
GRAND FORKS, NORTH DAKOTA
(SWC Project No. 520)

Delton Schulz stated that the Riverside Park Dam is an old WPA dam constructed in the 1930's, which provides the storage for the water supply for the City of Grand Forks, North Dakota. The dam has been repaired several times

throughout the years, and as a result of an inspection made last fall, it was found that there is seepage through the end of the left abutment. The total estimated cost of the necessary repairs is \$13,000.

After discussion, it was recommended by Secretary Fahy that the Commission participate in 50 percent of the total qualified costs for repair of the dam.

It was moved by Commissioner Just that the Commission participate up to 50 percent of the costs in the repair of the Riverside Park Dam, but not to exceed \$6,500 contingent upon the availability of funds. Commissioner Lanz seconded the motion. All members voted aye; motion carried.

CONTINUED DISCUSSION OF DRAFT
CONDITIONS PROPOSED FOR WATER
PERMIT FOR NATURAL GAS PIPELINE
COMPANY OF AMERICA
(SWC Water Permit No. 2083)

At the January 23, 1976 meeting of the Commission, draft No. 4 of conditions, which are being considered for attachment if a conditional water permit is granted to Natural Gas Pipeline Company of America, was considered. It was the

wishes of the Commission members that Murray Sagsveen rewrite such conditions pursuant to the discussion held that date and forward to Commission members for their further review. This item was to be placed on the agenda for the next Commission meeting.

Commissioner Just apologized for not being present at the January 23 meeting, but stated that it is his personal feeling that Natural Gas should have been included in the original motion made by Commissioner Gallagher, seconded by Commissioner Gray, and carried, (meeting held January 23, 1976) which stated that Basin Electric and Montana-Dakota Utilities Company be notified that they must secure siting approval from the Public Service Commission before the State Water Commission will further consider their requests for a water permit for energy conversion purposes. Commissioner Just offered the following motion:

It was moved by Commissioner Just that Natural Gas Pipeline Company of America be included in the resolution of policy adopted by the State Water Commission at their January 23, 1976 meeting, requiring them to secure siting approval from the Public Service Commission before granting a conditional water permit. The motion was seconded by Commissioner Wilhelm.

February 17, 1976

In discussion, Commissioner Kramer stated that Natural Gas was not included in the January 23 motion because the Commission has devoted considerable time and attention to the application since the hearing many months previously, and that because appropriate conditions had also been developed so that Natural Gas would ultimately be required to secure the same permits as Basin Electric and Montana-Dakota Utilities Company, but in a different order. He indicated that his feelings remain unchanged at this time.

Commissioner Just said his reasons for offering the motion are the fact that numerous communications have been received in regard to the project, and also that Congress has defeated the Syn Fuel Bill. He feels it would be premature for the State Water Commission to consider the allocation of water until Congress has acted favorably in support of the construction of gasification plants.

Upon the call of the question on the motion, Commissioners Just and Wilhelm voted aye; Commissioner Kramer and Lanz voted nay. Governor Link declared the motion failed for lack of a statutory majority.

It was moved by Commissioner Kramer that the Commission table the discussion of the application filed by Natural Gas Pipeline Company of America for a water permit until the next meeting of the Commission. Commissioner Lanz seconded the motion and all members voted aye. The motion was declared passed.

REVIEW OF ACCOUNTS OF
PROCEEDINGS OF THE WEST
RIVER CITIZENS COMMITTEE
MEETINGS
(SWC Project No. 1543)

In the area. Transcripts were made of these hearings and have been made available to the Citizens Committee and the Commissioners for their review. The transcripts have not yet been edited and have not been made available to the general public.

In the fall of 1975, it was the wishes of the Commission members, with a West River Area Citizens Committee, to hold a series of public meetings in the West River area to obtain local area citizens' input in respect to development

Secretary Fahy requested of the Commission members as to what disposition they wished to make in regard to the transcripts of public hearings held in the West River area relative to citizens' input on development in that area. He distributed a cost report for expenses incurred during these meetings.

February 17, 1976

Commissioner Kramer suggested that the Commission further review the transcript and that subject matter be placed on the agenda of next Commission meeting and that sufficient time be allowed at that time for a full-Commission discussion.

Commissioner Wilhelm, speaking on behalf of the Citizens Committee, gave a brief overall synopsis of the impressions developed by the Committee as a result of the public meetings.

It was moved by Commissioner Kramer that the West River Citizens Committee report be placed on the agenda for the Commission's next meeting. Commissioner Lanz seconded the motion.

On discussion of the motion, it was suggested by Commissioner Just that each of the seven-member Citizens Committee be requested to prepare a brief report on the overall transcript.

On the call of the question, all members voted aye; motion carried.

**CONSIDERATION OF WATER
PERMIT REQUESTS**

Secretary Fahy presented APPENDIX "A" attached hereto, which represents water permit requests. He indicated that his staff has reviewed each application and has made recommendations noted on the attachment. After reviewing each request, Secretary Fahy recommended that the Commission approve those requests as indicated, and defer those requests recommended for further study and information.

After discussion, it was moved by Commissioner Kramer, seconded by Commissioner Just, and carried, that the Commission approve the following water permit requests, subject to the conditions indicated on the respective application: No. 2346 - Andrew and Ione Bruns, Fargo; No. 2351 - Larry Schramm, Bismarck; No. 2350 - Burleigh County Water Management District (McDowell Dam), Bismarck; and No. 2353 - Lorenz Rohde, Pettibone.

It was moved by Commissioner Kramer, seconded by Commissioner Just, and carried, that the Commission defer action at this time on the following water permit requests pending additional information and study: No. 2349 - Melbert Kemmet, Dawson; No. 2348 - Lucien Peterson, Verona; and No. 2305 - James Lochthowe, Norwich. (SEE APPENDIX "A")

February 17, 1976

STATUS DISCUSSION ON DRAINAGE
PROBLEM IN CAVALIER COUNTY -
WILLARD CROCKETT, LANGDON, ND
(SWC Project No. 1098)

Basin area, an open hearing has tentatively been scheduled for the second week of March in Langdon to receive testimony. Following the hearing, Mr. Sagsveen will prepare a transcript of the hearing and forward it to the State Engineer and the Commission. He indicated that this procedure is agreeable to Mr. Grindberg, the attorney for Willard Crockett.

DISCUSSION ON CONDITIONS
ATTACHED TO CONDITIONAL
WATER PERMIT GRANTED TO
UNITED POWER ASSOCIATION-
COOPERATIVE POWER ASSOCIATION
(SWC Water Permit No. 1977)

On January 30, 1976, the State Engineer sent a joint letter to the Presidents of United Power Association and to Cooperative Power Association inquiring about affirmative action they have taken on the requirements in their conditional water permit. Representatives of the two Companies discussed the matter with Murray Sagsveen and indicated that, to date, no affirmative action had been taken on the requirements in the water permit. They indicated that generally it was their thought that the conditions had been superceded by other Legislative action. Mr. Sagsveen stated that he informed them that the conditions were required, none of the conditions had been waived, and that all of the permit conditions had been ratified by the Legislature.

In response to this discussion, a letter was received this date from the two Companies. It was suggested by Mr. Sagsveen that he be permitted to review and analyze this letter and prepare a memorandum forwarding a copy to each Commissioner.

It was the consensus of the Commission members, that Mr. Sagsveen's suggestion be carried out.

INVITATION TO JAMES COLLINS,
REGIONAL REPRESENTATIVE OF
GAME AND FISH DEPARTMENT
TO MAKE APPEARANCE AT NEXT
SWC MEETING REGARDING EFFECTS
OF DRAINAGE INTO BREWER LAKE
(SWC Project No. 1471)

North Dakota.

SCHEDULING OF NEXT
MEETING OF THE STATE
WATER COMMISSION

Mr. Sagsveen stated that Mr. James Collins, Regional Representative of the Game and Fish Department, has been invited to the next meeting of the Commission to show a slide presentation and to discuss with the Commissioners the effects of drainage into Brewer Lake in eastern North Dakota.

Secretary Fahy suggested that the next meeting of the Commission be scheduled for two days, preferably sometime in March, due to the length of a

number of items which will appear on the agenda. It was the consensus of the members that selection of the final dates and place be left to the discretion of the Governor and the State Engineer.

February 17, 1976

STATUS REPORT ON COURT
CASE WITH THE STATE WATER
COMMISSION VS UNITED PLAINSMEN
ASSOCIATION

Murray Sagsveen reported on the court case filed against the State Water Commission by the United Plainsmen Association indicating that a hearing was scheduled for February 11, 1976.

During the late afternoon of February 10, 1976, the plaintiff had amended the complaint completely. At the hearing, Mr. Sagsveen received an extension of time to prepare a response and he stated that he will be filing an amended motion to dismiss by February 25. The next hearing date is scheduled for March 15. He indicated that the Commission members will be receiving copies of the amended complaint and the amended motion to dismiss.

CONSIDERATION OF VELVA
FLOOD CONTROL PROBLEM
(SWC Project No. 347)

At the request of the Commission at their January 23 meeting for the State Engineer to direct his staff to make an inspection of the Velva flood control

problem, Delton Schulz reported that the following week, Commission survey crews went to Velva and surveyed four different areas that required rock riprap protection and two channel changes. Alternatives and cost estimates were developed that ranged from \$140,000-\$160,000. He also reported that two weeks ago, the National Guard had done some protective work on a critical area which was subject to failure. The Corps of Engineers has been notified of the critical areas, and in the event of the threat of a flood, assistance has been requested for the city of Velva.

Governor Link inquired as to the status of possible flooding on the Souris River and Secretary Fahy replied that reports do indicate above average flows are expected on the Souris River, but has not received an updated report since the recent thaw. This report is anticipated in about two weeks.

APPEARANCE BY GRANT
TRENBEATH, NECHE, ND
(SWC Project Nos. 1098 & 567)

Governor Link introduced Mr. Grant Trenbeath of Neche, North Dakota. Mr. Trenbeath briefly expressed his interest in the Willard Crockett

drainage case in Cavalier County, and also discussed the status of the proposed Pembilier Dam Project.

DISCUSSION OF DIKING
ALONG THE RED RIVER
(SWC Project No. 1638)

Governor Link asked what the status was relative to diking along the Red River. He recalled that county boards of Walsh and Grand Forks counties

had indicated that they were preparing to construct dikes along the west side of the Red River as a counter protection to what had already been done and what was being done on the Minnesota side of the river.

Secretary Fahy addressed Governor Link's question indicating that several public meetings have been held on this matter. At the last meeting held in Fargo, it was agreed to form a Citizens Committee so that the landowners could be represented in any of the decisions that took

February 17, 1976

place in respect to that entire situation. Since that meeting, Secretary Fahy had received a telephone call from the State of Minnesota indicating that the Corps of Engineers would do all of the analysis necessary to measure the impact of that diking and future diking on the river provided that the States of North Dakota and Minnesota would pay for the survey costs, estimated to be \$15,000-\$20,000. He indicated to Minnesota that the maximum extent of North Dakota's budget would allow participation in the amount of \$4,100. It was Secretary Fahy's understanding that other sources of participation will be available to complete the survey so that the Corps can prepare the necessary analysis work and relay it to the citizens along the river, water management districts, county commissions and landowners in the area.

It was moved by Commissioner Just that the Commission adjourn the meeting at 10:00 p.m. The motion was seconded by Commissioner Kramer and all members voted aye.



Arthur A. Link
Governor-Chairman

ATTEST:



Vernon Fahy
State Engineer, Secretary

February 17, 1976

WATER PERMIT AGENDA FOR FEBRUARY 17, 1976 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2346	Bruns, Andrew and lone - Fargo (Sargent County)	Ground Water	Irrigation	573.2 acre-feet 286.6 acres	Recommend approval of 202.5 acre-feet, 135.0 acres in SW¼ 24-132-58 (remaining portion of request held in abeyance pending further data.)
2351	Schramm, Larry - Livona Station Bismarck (Burleigh County)	Oahe Reservoir	Irrigation	898.0 acre-feet 449.0 acres	898.0 acre-feet 449.0 acres
2350	Burleigh County Water Management District (McBowell Dam) - Bismarck (Burleigh County)	Ground Water	Recreation (For domestic water supply)	50.0 acre-feet	5.0 acre-feet
2353	Rohde, Lorenz - Pettibone (Stutsman County)	Ground Water	Irrigation	320.0 acre-feet 156.0 acres	202.0 acre-feet 135.0 acres
2349	Kemmet, Melbert - Dawson (Kidder County)	Ground Water	Irrigation	627.4 acre-feet 313.7 acres	Defer action at this time pending further investigation and study.
2348	Peterson, Luclen - Verona (Ransom County)	Ground Water	Irrigation	640.0 acre-feet 320.0 acres	Defer action at this time pending further investigation and study.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNT REQUESTED	COMMENTS & RECOMMENDATIONS
2305	Lochthowe, James - Norwich (Ward County)	Ground Water	Irrigation	215.1 acre-feet 143.4 acres	Defer action at this time pending further investigation and study.