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STATE WATER CONSERVATION COMMISSION
Minutes of Meeting
Held in Office of Water Conservation Commission
Bismarck, North Dakota

October 7, 1952

At 2:00 o'clock p.m. on Tuesday, October 7, the State Water Commission convened in the Office of the Water Commission for a regular meeting, preceding the Missouri Basin Inter-Agency meeting held on the following days, October 8 and 9, in the Hearing Room of the State Capitol, at Bismarck. The following named persons were present at the regular meetings:

MEMBERS OF STATE WATER CONSERVATION COMMISSION:

Hon. Norman Brunsdale, Governor and Ex Officio Chairman
Curtis Olson, Vice Chairman, Valley City, North Dakota
Earle F. Tucker, Member of Commission from Bismarck
A. M. Christensen, Member of Commission from Minot
Oscar Lunseth, Member of Commission from Grand Forks
J. J. Walsh, Secretary and Chief Engineer, State Engineer

OTHERS PRESENT:

Delegation from Arnegard, N. Dak.:

Iver Drovdal
Orville Hagen

LeRoy Pease, Executive Secretary, Greater North Dakota Association, Fargo
Fred J. Fredrickson, Washington, D.C. representative for the Water Commission

Delegation representing Bismarck Country Club:

C. J. Reff, Bismarck
W. W. Whitson

C. F. Kelsch, Attorney-at-Law, Mandan

Governor Brunsdale called the meeting to order at 2:00 o'clock p.m., with the following Members of the Commission present: Curtis Olson, A. M. Christensen, Oscar Lunseth and Secretary J. J. Walsh. A delegation from Arnegard, Mr. Iver Drovdal and Mr. Orville Hagen, were also present at the opening of the meeting.

It was moved by Commissioner Lunseth, and seconded by Commissioner Tucker, that the Minutes of the State Water Commission meeting held on September 20, 1952, be approved and filed for record. Upon a unanimous vote of the Commissioners the motion carried.

The delegation from Arnegard met with the Water Commission relative to a dam located $2\frac{1}{2}$ miles north and west of Arnegard on Timber Creek. They explained that parts of the lake bed will have to be cleaned out deep enough to meet the requirements of the Game and Fish Commission for stocking with fish. He reported this would necessitate the hiring of a county dozer, for which financial assistance would have to be obtained, as McKenzie County is short of the necessary funds, due to crop failures. For this reason they were contacting the Water Commission to aid in sharing part of the costs. They expect the job to cost approximately \$700 to \$800, and requested assistance from the Commission of \$200. Commissioner Olson moved that the

Water Commission contribute 1/3 of the \$800 estimated cost of rental of equipment to do the work, which motion was seconded by Commissioner Lunseth. On roll call by the Chairman, Commissioners Christensen, Lunseth, Governor Brunsdale and Curtis Olson all voted in favor of the motion. Motion carried.

The delegation from Arnegard left the meeting at 2:15 o'clock p.m.

LeRoy Pease, Executive Secretary of the Greater North Dakota Association, appeared before the Commission and requested assurance that they will continue to assist in the financing of the filming of the water development program by contributing toward the purchase of materials used in the development of the pictures in our state water program. The Commission recommended that pictures of the history of oil development also be included in this program and Mr. Pease advised the Members that they already have enough pictures of oil development for three films. The Commission recommended that these be shown before the Legislature at their next session. Mr. Pease told the Commission a contribution of \$1250, as previously contributed by them, would be appreciated by the Greater North Dakota Association for this purpose.

Commissioner Tucker entered the meeting at 2:20 o'clock p.m.

Commissioner Christensen made a motion, seconded by Commissioner Tucker, that the Water Commission grant the request of the Greater North Dakota Association and make available from the Water Commission funds not to exceed \$1250 for continuing the program of filming and recording the water development program of North Dakota for the fiscal year July 1, 1952 to June 30, 1953. On roll call by the Chairman, Commissioners Tucker, Olson, Lunseth, Christensen and Governor Brunsdale all voted aye and the motion carried.

Fred J. Fredrickson, Washington, D. C. representative for the Water Commission, reported to the Commission on the proposed establishment of additional beet sugar plants in the Red River area. He said that the Army Engineers have allocated to the St. Paul office \$10,000 for a comprehensive Red River of the North study of such development work, with the City of Grafton particularly in mind. He also advised the Commission he thought some development work should be done on the Goose River also, and if they were favorable to this proposal he would see the Corps of Army Engineers on Friday and find out what they have in mind, and get the information and materials together so they could go ahead with this particular study with the allocation they now have, if the Commission deems it feasible. Mr. Fredrickson assured the Commission he would secure the information this week, then contact the Secretary of the Water Commission, who would make a request in writing to the Corps of Army Engineers to go ahead with the study and advise them of what development they would like to have done.

Mr. Fredrickson and Mr. LeRoy Pease left the meeting at 2:42 o'clock p.m.

The request for a more permanent-type spillway construction on Appié Creek, was made by Mr. Reff and Mr. Whitson of the Apple Creek Country Club. Mr. Tucker reported that the County Board has authorized them to go ahead with the proposed work, and the County will take care of the road building. Mr. Whitson, on whose land the fishing area has been located, said the road leading to it was very poor and a good road was needed badly in order to have access to the public fishing area. Don Nichols, engineer with the State Water Commission, entered the meeting at 2:50 p.m. and estimated the total cost of making permanent repairs to the spillway structure would cost about \$6,000. Mr. Reff requested that the Water Commission supervise the job, using Water Commission equipment, the cement to be arranged for by the Bismarck Country Club.

Motion was made by Commissioner Olson, and seconded by Commissioner Lunseth, that the Water Commission contribute \$2,000, and contact the Game and Fish Department for an equal amount, which if not available, the Water Commission will contribute \$3,000, or one-half of the estimated cost, for repairing the spillway on Apple Creek, located on the Bismarck Golf Club grounds. On roll call by the Chairman, Commissioners Tucker, Olson, Lunseth, Christensen and Governor Brunsdale all voted aye and the motion carried. (Mr. Reff, Mr. Whitson and Don Nichols left the meeting at 3:05 o'clock p.m.)

Mr. Reff has since reported to the Water Commission that they have contacted the Delzer Construction Company and they have informed them it is not necessary to arrange for cement but to notify them at least 24 hours ahead of time and they will furnish ready-mixed concrete.

The Secretary was requested to arrange for room reservations for all Members of the Commission, except Mr. Einar Dahl, at the National Reclamation Association convention to be held at Long Beach, California, November 12 to 15. Reservations have been arranged for all Commissioners at Hotel Gardner, Fargo, during the meeting of the State Reclamation Association, October 17 and 18.

A letter from the U. S. Fish and Wildlife Service, Minneapolis, acknowledging a Resolution by the State Water Commission regarding a complaint of persons residing along the Souris River below Lake Darling was given the Commissioners for their information. Mr. T. S. Kibbe, Acting Regional Director, stated they are now making a study of Geological Survey records and are compiling data before a direct reply can be given the State Water Commission. He also stated they have increased the release at Lake Darling to 20 second-feet in accordance with the request of the Water Commission and plan to continue it until this study has been completed.

Rental rates on buildings of the U.S. Corps of Engineers, Fort Lincoln, which have heretofore been used for the storage of materials and equipment by the State Water Commission will hereafter be charged for at the following rates, according to a statement received from R. G. Barbour, Administrative Officer, at Fort Lincoln.

Building T-98	\$ 58.80
Building T-34	144.00
Building T-129	<u>105.60</u>
Total \$ 308.40	

It was moved by Commissioner Tucker, and seconded by Commissioner Christensen, that the Water Commission approve an annual total payment of \$308.40 to the U. S. Corps of Army Engineers, Fort Lincoln, for the use of three buildings: T-98, T-34, and T-129 for storing of State Water Commission materials and equipment. On roll call by the Chairman, Governor Brunsdale, and Commissioners Olson, Christensen, Tucker and Lunseth all voted aye and the motion carried.

A letter received from Einar Johnson and Robert G. Hoghaug, Attorneys-at-Law, Lakota, North Dakota, requesting the release of an easement by the State Water Commission on land owned by Mr. Snortland on which a CCC dam was constructed, was referred to the Commission for their attention. This land is located in Dayton Township, Nelson County, and is described as Sections 4 and 5, Twp. 150 N., Rge. 61 W. The easement was originally given in 1935 when the Civilian Conservation Corps built a dam on this land. Now Mr. Snortland is requesting release of this easement so he can clear the dam area and use it for farming purposes.

The Secretary was instructed by the Commission to write Attorneys Johnson and Hoghaug that the Water Commission has no record of such easement in its files and therefore the Commission can take no definite action. However, if there is no local interest, the Commission instructed the Secretary to inform them that the Commission would release any claim they had as a Commission. Commissioner Christensen moved that

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the State Water Commission comply with the request of Attorneys Johnson and Hoghaug, Lakota, relative to the easement covering Mr. Snortland's land, to the extent of the Commission's participation in this matter. The motion was seconded by Commissioner Ianseth, and on roll call by the Chairman, the Commissioners voted unanimously in favor of the motion, which carried.

A request was received from the City of Crosby for a survey and assistance in their contemplated project of impounding water for a city water supply, to be diverted out of Long Creek by constructing a dam on the creek for the storage of water. It was recommended by the Commission that the Secretary write Mayor Orville Tryhus, Crosby, telling them that the Commission will be glad to cooperate with them and are in sympathy with their problem, and if possible, will assist them in making these surveys; and that in regard to application for a water-right, the City should place their application on file with the State Engineer so that when the final adjudication of water-rights is made by the International Joint Commission, it will be in line for approval. Commissioner Ianseth made a motion, seconded by Commissioner Olson, that the Water Commission office assist the City of Crosby in the planning of their project. On roll call, the Members of the Commission voted unanimously in favor of the motion, which carried.

Secretary Walsh reported on his investigation of the proposed project of Mr. Lloyd Dennis, Belfield, North Dakota, for the irrigation of his lands with water from Spring Creek, tributary of the Green River. It was moved by Commissioner Christensen, and seconded by Commissioner Tucker, that the action of the State Engineer granting the application of Lloyd Dennis, the owner of the premises herein described and whose P. O. address is Belfield, North Dakota, for a permit to divert and appropriate water from Spring Creek, a tributary of the Green River, in the amount of 69.1 acre feet of water for irrigation by sprinkler equipment of 69.1 acres of land situated in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 29, Twp. 142 N., Rge. 98 W., Billings County, North Dakota, be approved subject to the limitations required, namely, that lower riparian owners be not deprived of water in said creek for their livestock and for their domestic use, and in the event a dam is constructed for storage of water, that an outlet pipe and control gate be installed therein to permit the release of water for such use. Upon a unanimous vote of the Members of the Commission the motion carried.

It was moved by Commissioner Olson, and seconded by Commissioner Christensen, that the action of the State Engineer in granting the application of Mr. Arnold F. Luhman, Gladstone, North Dakota, for permit to divert and appropriate water from the Green River, tributary of the Heart River, for the irrigation of 78.5 acres of land described as the NW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 26, Twp. 140 N., Rge. 95 W., located in Stark County, North Dakota, be approved, limiting the annual diversion of water to 78.5 acre feet and subject to all prior and existing water-rights and appropriations covering Green River, tributary of the Heart River. Upon a unanimous vote of the Members of the Commission, the motion carried.

It was moved by Commissioner Tucker, and seconded by Commissioner Ianseth, that the action of the State Engineer in granting the application of Mr. Harold Fuchs, Marmarth, North Dakota, for permit to divert and appropriate water from the Little Missouri River, tributary of the Missouri River, for the irrigation of 80.0 acres of land described as the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Sec. 19, Twp. 133 N., Rge. 105 W., Slope County, North Dakota, be approved, limiting the annual diversion of water to 80.0 acre feet and subject to all prior and existing water-rights and appropriations covering the Little Missouri River, tributary of the Missouri River. Upon a unanimous vote of the Commissioners, the motion carried.

It was moved by Commissioner Ianseth, and seconded by Commissioner Olson, that the action of the State Engineer in granting the application of Mrs. Harold Fuchs, Marmarth, North Dakota, for a permit to divert and appropriate water from the Little Missouri River, tributary of the Missouri River, for the irrigation of 80.0 acres of land described as the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 19, Twp. 133 N., Rge. 105 W., located in Slope

County, North Dakota, be approved, limiting the annual diversion of water to 80.0 acre feet and subject to all prior and existing water-rights and appropriations covering the Little Missouri River, tributary of the Missouri River. Upon a unanimous vote of the Commissioners, the motion carried.

The applications of the Northwest Nursery Company, Valley City, to appropriate water for the Northwest Nursery Irrigation Project, in the amount of 206 acre feet annually, and Mr. Clayton Pederson, Valley City, for permit to appropriate water in the amount of 158 acre feet annually from the Sheyenne River; and the application of Mr. Ole A. Flaas, Grand Forks, for permit to divert and appropriate water from the Red River for the irrigation of his lands in the amount of 440 acre feet per annum, were deferred for further consideration and final approval until a later date when a contract or agreement has been entered into with the State of Minnesota for the division of waters of the Red River and its tributaries, when they will again be considered for approval.

The Commission considered the informal bids received for furnishing one 4-5 ton truck. Bids were received from the McCormick Farm Equipment Store, Bismarck; Western Auto Company, Mandan; Fleck Motor Sales, Bismarck; and Myhra Equipment Company, Fargo. After considering these bids, the Commission decided that, because the current construction season is over, the purchase of a truck should be delayed until next year, at which time further action would be taken.

C. F. Kelsch, Attorney for the Heart River Irrigation District, appeared before the Commission and stated that no judgment has been entered in the Heart River Irrigation District case decided by the Supreme Court over a year ago. In its decision, the Supreme Court held that any 10 acre subdivision of the Heart River Irrigation District containing a "substantial number of irrigable acres" may be retained within the district. Mr. Kelsch stated that Judge Broderick now holds that the word "substantial" means the same as one-half, or more. In other words, he now contends that any 10 acre subdivision of the irrigation district which does not contain at least 5 acres of irrigable land must be excluded from the irrigation district. Mr. Kelsch informed the Commission that until this matter is settled nothing can be done to establish an irrigation system within the district. He stated that it will probably be necessary to obtain a supervisory writ from the Supreme Court directing District Judge Broderick to enter "Findings of Fact" and "Order for Judgment" in the Heart River case.

The meeting adjourned at 5 o'clock p.m.

Respectfully submitted,


Secretary

Attest:

Chairman