

## MINUTES

North Dakota State Water Commission  
 Meeting Held In  
 Vocational Education Conference Room  
 State Office Building  
 Bismarck, North Dakota

June 23, 1978

The North Dakota State Water Commission held a meeting on June 23, 1978, in the Vocational Education Conference Room, State Office Building, Bismarck, North Dakota. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:45 a.m., 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  
 Arlene Wilhelm, Member from Dickinson  
 Myron Just, Commissioner, Department of Agriculture, Bismarck  
 Vernon Fahy, State Engineer and Secretary, North Dakota  
 State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members  
 Earl F. Backhaus, Montana-Dakota Utilities Company, Bismarck, ND  
 O. B. Johnson, Otter Tail Power Company, Fergus Falls, Minn.  
 Jay Myster, Otter Tail Power Company, Fergus Falls, Minn.  
 Don Lokken, Otter Tail Power Company, Fergus Falls, Minn.  
 Ken Ziegler, Basin Electric Power Cooperative, Bismarck, ND  
 Milo W. Hoisveen, Burleigh County WMD, Bismarck, ND  
 Bert Neideffer, Burleigh County WMD, Bismarck, ND  
 Jim Eastgate, Burleigh County WMD, Bismarck, ND  
 Laurence McMerty, ND Water Users Association, Minot, ND  
 Glenda Lotow, Natural Gas Pipeline Company, Bismarck, ND  
 Chuck Rupe, Natural Gas Pipeline Company, Bismarck, ND  
 Karl Limvere, North Dakota Farmers Union, Ypsilanti, ND

Attendance Register is on file in the State Water Commission offices for the meeting of June 1, 1978 - filed with official copy of minutes.

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

**CONSIDERATION OF MINUTES  
OF JUNE 1, 1978 MEETING -  
APPROVED**

Secretary Fahy briefly reviewed the minutes of the June 1, 1978 meeting held in Bismarck, North Dakota. There was no discussion by the Commission members on the minutes.

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and carried, that the minutes of the June 1, 1978 meeting be approved as prepared and distributed.

**CONTINUED DISCUSSION  
ON ACREAGE LIMITATIONS  
(SWC Project No. 1400)**

Mr. Lynnard K. Spiry, Sr., from Straubville, North Dakota, appeared before the Commission members and presented and discussed a proposal regarding acreage limitations. Mr. Spiry's

proposal is attached hereto as APPENDIX "A".

Following Mr. Spiry's presentation, Commissioner Wilhelm requested that further discussion on this item be deferred until later on in the day, as she had been out-of-state for the past month and did not have an opportunity to review the second draft of the proposed rules and regulations.

It was the consensus of the other Commission members that further discussion on this item be tabled until later on in the meeting.

**CONTINUED DISCUSSION ON  
WATER MARKETING**

At the June 1, 1978 meeting, the Commission members directed the State Water Commission staff to prepare an additional analysis of

potential water use charges to be used for water marketing incorporating the suggestions made at this meeting. Such direction was carried out and is attached hereto as APPENDIX "B".

Dave Sprynczynatyk briefly reviewed alternatives which were discussed at the June 1 meeting and also discussed the additional analysis.

It was suggested by Governor Link that the staff attempt to get figures showing the cost of a cooling tower system and a flow-through cooling system and make a comparison using both systems in terms of actual consumption of the water.

Commissioner Kramer suggested that two factors should be considered: 1) the economics of plants putting in a closed system where the water would be retained rather than recirculated; and 2) what type of effects would such a proposal have on the plant operations as far as their cost factors to the customers?

June 23, 1978

Governor Link suggested that the procedure to be followed would be that the Commission would adopt a proposal and then public hearings would be held. He also noted that the Commission would be receptive of industry input at their regular Commission meetings.

Secretary Fahy stated that a series of informational meetings could also be held prior to adopting a proposal and holding the formal hearings, as was the procedure that was followed for the acreage limitations.

At this time, Governor Link invited comments from industry representatives.

Ken Ziegler, Basin Electric Power Cooperative, indicated that his industry would be responding after reviewing the proposals that are being discussed.

O.B. Johnson, Coyote Project, stated that his industry has not reviewed the proposals discussed today, but indicated that he is in agreement with the general hearing procedure to be followed.

Commissioner Gray suggested that the industries which will be affected be provided copies of the proposals being discussed for their review.

Commissioner Gallagher indicated that it would be helpful if costs to the consumer could be determined and suggested that a monthly bill be obtained from an electric utility and establish various water charges to that typical annual bill and determine that amount of increase to the consumer.

Following a discussion of the need for retaining all six alternatives for future discussion -

It was moved by Commissioner Kramer, seconded by Commissioner Gallagher, and carried, that a combination of alternatives B and E be considered when computing future use charge calculations.

It was the consensus of the Commission that the suggestions discussed today be incorporated and redrafted for review.

Commissioner Wilhelm requested that special efforts be made by the Commission to inform the public of this subject matter, and suggested that a news release be issued prior to the next Commission meeting indicating therein what the Commission will be considering.

It was moved by Commissioner Wilhelm and seconded by Commissioner Gallagher that the Water Commission release to the news media the specific proposal intact that

June 23, 1978

will be considered at the next meeting of the State Water Commission and include the additional factors that may be available at that time.

In discussion of the motion, there was much concern expressed that the computations not be misconstrued as proposals by those reading the news stories.

After considerable discussion, Commissioner Wilhelm amended her original motion.

It was moved by Commissioner Wilhelm and seconded by Commissioner Gallagher to amend the motion to read: That the Water Commission release to the news media the information that will be considered at the next meeting of the State Water Commission including any additional factors that may be available at that time. On the call of the question, all members voted aye; the motion carried.

Murray Sagsveen very briefly discussed the third draft of rules and regulations of the North Dakota State Water Commission proposed to be adopted pursuant to Title 61 of the North Dakota Century Code governing water use fees, attached hereto as APPENDIX "C".

Discussion was initiated by Commissioner Gray for developing an outline of "What are we going to do with the potential money that may be derived from the proposed water use charges?"

Murray Sagsveen referred to Section 89-00-01-01. INTENT of the draft rules and regulations.

After discussion, it was moved by Commissioner Gray, seconded by Commissioner Kramer, and carried, that the State Water Commission staff develop a statement of policy concerning use of funds accrued as a result of income from industrial use charges.

PROGRESS REPORT REGARDING  
MINNESOTA-NORTH DAKOTA  
COORDINATION RELATIVE  
TO RED RIVER DIKING  
(SWC Project No. 1638)

Secretary Fahy recalled that in mid-March, Governors Link and Perpich met in Grand Forks to discuss methods to establish some floodplain planning and regulations in the Red River Valley on a joint basis. It was decided at that meeting that both North Dakota and Minnesota would develop an entity that could work back and forth across the state boundaries as a flood entity to make recommendations to the Governors and to the Legislatures regarding steps necessary to help improve the situation.

June 23, 1978

On May 31st, the Minnesota group met and they plan to have a group appointed to meet with the North Dakota group.

On June 7th, North Dakota representatives met and had only eight of the twelve water management districts involved present, therefore, the water management districts could not enter into a joint-use concept at that time.

The decision was made at that meeting by the eight water management districts present and by the general public that the formation of a joint-use concept proceed and that the Governor be requested to extend a personal invitation to the twelve water management districts involved inviting them to a meeting, scheduled for July 28 in Grand Forks, at which the Governor will preside and joint-use resolutions would be adopted by all of the districts.

It was the consensus of the Commission members that the July 28th meeting be called as a special meeting of the Commission for the purpose indicated previously.

Discussion then centered around the possibility of re-establishing the Souris-Red-Rainy River Basins Commission and it was suggested that the Governor invite the Chairman of the Upper Mississippi River Basin Commission to North Dakota to discuss this matter.

Secretary Fahy also indicated that at some point in time, it will be necessary for the State Water Commission to adopt a resolution supporting the re-establishment of the Souris-Red-Rainy River Basins Commission, which would include the Governor's comments to the last Legislature in which it was suggested in the Governor's message that it be re-created.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and carried, that the State Water Commission endorse the exercise of joint-use powers by all water management districts within the Red River Basin for the specific purpose of developing a floodplain management program in the Valley.

The Commission recessed at 12:00 noon, and reconvened at 1:40 p.m.

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

Mike Dwyer briefed the Commission members on the Russell Diversion situation noting that in the fall of 1975, a group of landowners built a drain seven or eight miles long, but failed to notify affected landowners prior to construction, they did not obtain the necessary permits and did not properly construct the drain. During these past three years, severe erosion has occurred.

June 23, 1978

In November, 1977, the Bottineau County Water Management District was notified of the problem and it was requested to take corrective measures, but no response was received. In March, 1978, another request was sent to the Water Management District, and also no response.

In April, 1978, the State Water Commission sent out a Notice of Intent to file suit, indicating that if no desire or intent is shown within 30 days to correct some of the problems, it will be necessary for the State Water Commission to take action.

Mr. Dwyer indicated that no response has been received to the Notice of Intent, therefore, a complaint has been filed with the Bottineau County District Court.

**PROGRESS REPORT  
ON SOUTHWEST NORTH  
DAKOTA WATER DELIVERY  
STUDY  
(SWC Project No. 1674)**

the engineering firms will be there to guide the Advisory Committee in selecting evaluation criteria to be used in eliminating some of the many alternatives that they will be developing.

Dave Sprynczynatyk reported that there has not been a meeting of the Advisory Committee since the Commission's June 1 meeting, but a meeting is scheduled for June 26 in Dickinson. This meeting will be a working session primarily in that

He stated that Houston Engineering is in the final process of evaluating all of the water needs surveys that were turned in from the three rural water districts and will present a detailed report to the Advisory Committee on June 26.

Commissioner Wilhelm asked if any additional results were obtained from the surveys.

Mr. Sprynczynatyk replied that the area in the extreme southwestern part of the State did turn in about 100 additional completed forms, bringing the total for that area to approximately 1300, or about 95 percent.

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

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

After a brief discussion, it was moved by Commissioner Kramer, seconded by Commissioner Gray, and carried, that the action of the State Engineer be confirmed as presented.

The following water permit applications were approved: No. 3090 - Edwin Holman, Horace; No. 3094 - City of Washburn; No. 3005 - City of Warwick; No. 3097 - Inyan Wakagapi Human

June 23, 1978

Development Corp., Cannonball; No. 3067 - Jim Irgens, Williston; No. 2936 - Albert Schmaltz, Orrin; No. 3034 - Dakota Gardens, Mandan; No. 2612 - City of Adams; No. 3082 - City of Upham; No. 2850 - James Cleveland, New Rockford; No. 2116 - Robert and Dennis Sletten, Ryder (this releases the remaining portion held in abeyance); No. 893 - City of Grafton (this is a request for a change in point of diversion); No. 2576 - Grand Forks County Water Management District (Dam Site #9, Upper Turtle River Watershed), Grand Forks; and No. 3084 - Ronald and Paul Andahl, Bismarck.

The following applications were deferred:  
 No. 3085 - LeRoy Fettig, Hebron; No. 3095 - Grand Forks-Traill Water Users, Inc., Thompson; No. 3054 - Paul W. White; No. 3081 - Lawrence Widdel and Daniel Tuchscherer, Minot; No. 2066 - Ralph M. Krebsbach, Warwick; No. 1230P - City of Hebron (this is a request for a change in point of diversion); No. 1465B - Eldon A. Streich, Englevale (this is a request for a change in point of diversion); No. 3086 - Edmund Hartl, Jr., New Rockford; No. 3053 - Cass Rural Water Users, Inc., Kindred; No. 3073 - David Gibbon, Milnor; and No. 3099 - A. K. Lewis, Lisbon. (SEE APPENDIX "D")

CONTINUED DISCUSSION OF  
 ACREAGE LIMITATIONS  
 (SWC Project No. 1400)

hereto as APPENDIX "E".

Murray Sagsveen read the Sections of the proposed rules and regulations which were amended at the June 1 meeting. Draft No. 2 incorporating these changes is attached

It was suggested by Commissioner Gallagher that in Section 89-00-03-06, Subsection 3, the phrase "whichever is longer", should be amended to state "whichever occurs later".

It was the consensus of the other Commission members that this change be incorporated when Draft No. 3 is prepared.

General discussion pursued on Lynnard Spiry's proposal and it was decided that his proposal be prepared as an option and be attached to Draft No. 3.

It was suggested that Section 89-00-02-08 be amended to read "All applications shall contain a statement of soil and water

June 23, 1978

compatibility for the land to be irrigated from any governmentally employed or licensed soil scientist."

In concluding the discussion, the Commission staff was directed to prepare Draft No. 3 containing the amendments discussed and adopted at this meeting; and as an option, Mr. Spiry's proposal.

JULY 19, 1978  
STATE WATER COMMISSION  
MEETING

An invitation has been received from Mr. Russ Dushinske, Secretary for the North Dakota Water Management Districts Association, inviting the Commission to hold their July 19 meeting in Carrington, North Dakota. The summer meeting of the Water Management Districts Association is scheduled for the same day, thereby permitting an opportunity for both groups to meet jointly after separate meetings in the morning. Items for discussion would include review of progress on the seven-point program the Governor outlined to the Water Management Districts Association at the annual meeting in Minot three years ago, and multi-district approach to solving the Red River Valley flood problems and coordination with Minnesota.

If time permits, a tour of the Carrington Irrigation Station will be arranged.

It was the consensus of the Commission members, that Mr. Dushinske's invitation be acknowledged and that the Commission hold their July 19 meeting in Carrington.

DISCUSSION ON NATIONAL  
WATER POLICY

Discussion pursued on the President's Water Policy Message, attached hereto as APPENDIX "F".

Secretary Fahy stated that his position is that where the State has contributed and sacrificed to provide benefits beyond our State's borders, the amounts of those benefits should be accrued in the State's bank account.

It was suggested by Commissioner Kramer that as North Dakota is taking a strong position in the State's involvement in repayment and the amount of benefits that have already been generated beyond North Dakota's borders, it should also be re-emphasized that Garrison Diversion is part of a total development program and is not a new start.

WATER POLICY CONFERENCE  
HELD IN CASPER, WYOMING  
ON MAY 19 AND 20, 1978

Commissioner Wilhelm distributed copies of resolutions for information to the Commission members that were adopted at a Water Policy Conference she had attended in Casper, Wyoming, which was sponsored by the Powder River Basin Resource Council, on May 19 and 20, 1978. These resolutions are attached hereto as APPENDIX "G".

There being no further business to come before the Commission at this time -

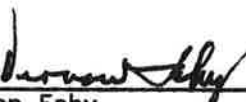
June 23, 1978



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

  
\_\_\_\_\_  
Arthur A. Link  
Governor-Chairman

ATTEST:

  
\_\_\_\_\_  
Vernon Fahy  
State Engineer and Secretary

June 23, 1978

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Permissives Meeting

DATE June 23, 1978 PLACE Vocational Education Conference Room Bismarck, N.D.

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

Your Name	Your Address	Who do you Represent? (Or Occupation)
Earl J. Barkhaus	Bismarck, ND	Montana-Dakota Utilities Co.
O. B. JOHNSON	Fergus Falls MN	Otter Tail Power Co.
Jay Myster	Fergus Falls, Minn.	Otter Tail Power Co.
DON LOKKEN	Fergus Falls, MN	Otter Tail Power Co.
Milo Hoisveen	Bis	Burlingame Co. W.M.D
Bert Linduff	"	" "
Jim Eastgate	"	" "
LAWRENCE McMERTY	MINOT, N.D	N.D. WATER USERS
Glenda Lotow	PO Box 1073 Bismarck	Natural Gas Pipeline Co.
Chuck Rupe	"	" " " "
KARL LIMVIERE	YPSILANTI, N.D	N. PAK FARMERS UNION

RR #1, Box 75  
Straubville, N. D. 58070

June 22, 1978

Hon. Gov. Arthur Link  
State Capital  
Bismarck, North Dakota

Dear Gov. Link:

Thank you for your answer to my request for an appointment with you. In accordance with your request, I am enclosing what I think might be a satisfying compromise between those who are for, and those who are against acreage limitations in our state.

First of all, it has been stated so many times that the large agriculture operation, whether it be dryland or irrigation, is replacing the small agriculture operation in the state. There is no denying this fact; the reasons are not that of land grabbing as some have said, but rather it is next to impossible for anyone to go into this field without some type of backing. I think I can safely say that in better than 95% of the transactions in this state today, anyone going into the business is now in agriculture, or in another business and is using his or her profits as an investment in agriculture for purpose of capital gains so as to keep the government from ending up with the "lion's share."

Time and time again, one can go anywhere in the state and see another auction sale liquidating another agricultural business because of many reasons. Three of the most important are:

- 1) The people are getting along in age and have to sell,
- 2) The small farmer is realizing he can make a better living working a regular job,
- 3) The young people have left home, received an education in some other field and do not wish to return to agriculture.

Again, these are only three of many reasons why people are leaving the farm.

Land management is not the answer to the irrigation problem in this state. In limiting the acres a person can irrigate, one major problem arises that I can see. If one is irrigating the maximum amount of land allowed and his neighbor wants to sell a unit he is irrigating, he cannot sell to ~~one~~ no matter what one offers above what anyone else is offering. To me, this is treading on too many rights of people. Also, the advocacy of setting a unit size now and saying it can always be increased later is absurd.

The 160 acre limitation was installed by the federal government in the early 1900's and is still with us today. Granted in some areas of the U.S. this limitation is necessary, but in others it is a deterrent to being able to turn unproductive land into productive land. The answer is not land management, but water management.

Gov. Link, my proposal is this:

Anyone owning land in this state can start irrigating with as much as 320 acres providing the state Hydrologist agrees that there is sufficient water in the area to irrigate the amount of land. This will last for a three year period. At the end of this period, if the irrigator wishes to add to his unit, he must write a letter of intent to all owners bordering the proposed add-on or his intentions with a copy to go on file either with

the water commission, or a water district, or both. As long as there are no objections, 160 acres or a quarter of land can be added every other year going through this same process. This can go on as long as the water in the area will support irrigation. Now if a neighbor wishes to irrigate, he or she has to write the State Water Commissioner within 30 days of receipt of the first irrigator's intention letter. Upon the writing of this letter he will be given a period of one year in which to make up his mind whether he wants to irrigate or not.

Again, before the end of this period, he has to notify the governing body of his intentions. If he decides not to, the first irrigator automatically gets his permit. If on the other hand he decides to irrigate, then from that point on, he has two years in which to develop as much as 320 acres. At the end of this time if he has failed to start, the first irrigator's permit is automatically issued. The second irrigator does not lose his right to irrigate. All he has to do is reapply and go through the above process all over again. This assures everyone interested, or not in irrigation at the present time, to make up his or her mind as to the possibility of setting up an irrigation unit for themselves. While this is going on, a stipulation as to the amount of water per permit has to be established. I suggest a maximum of 20" and a minimum of 12". This assures a partial control over permits issued under the above in the event that a supply of water is being over taxed. For instance, if it is noted that the supply is not keeping up with the demand,

then all permits issued from the time of this going into effect all permits in the area of the supply in jeopardy will be dropped two inches a year until the minimum of twelve inches is reached. In the event that this happens and it is noted that the supply has not stabilized, then the last permit issued in the area in trouble will be revoked for a period of one year. At this time the supply will be locked at once again. If it is noted that the supply by this time has not stabilized, then the next permit in line is to be suspended and so on down the line. If, on the other hand, it is noted the supply is increasing, then in the reverse order they were suspended the permits would be reinstated. Again, as long as the supply increases, additional inches of water will be added to all permits in the area in question.

We know there is not enough water in the state to irrigate all the land in the state. We also know that all the land in the state is not suited for irrigation. I honestly believe the above proposal will assure North Dakota the most land irrigated with the best conservation of water available in the state. The preceding is not the whole answer, but it is a start. I again think it is a compromise that the people who want limitations and those who do not can live with. It is going to have to be water management, not land controls. Land controls would set a dangerous precedent in which I have a fear that would come back in the future and haunt us.

It is my opinion, the Water Commissioner should install a fact-finding committee on this subject. The impact on this state is too great for us not to look further into this. If

Page - 5 -

need be, I would offer my time and thoughts to such a committee.  
Here's hoping you have the best of future day's.

Sincerely,

Leonard K. Spiry, Sr.,  
Ranch Manager,  
GILBERT RANCH

## NORTH DAKOTA STATE WATER COMMISSION

APPENDIX "B"

## OFFICE MEMO

TO: Vern Fahy, State Engineer  
 FROM: David A. Sprynczynatyk, Director, Engineering Division  
 SUBJECT: SWC Project #1400 - Water Use Charges  
 DATE: June 22, 1978

As a result of the June 1, 1978 State Water Commission meeting, I have made an additional analysis of potential water use charges to be used for water marketing. This analysis is intended to supplement my previous memo of May 1, 1978.

At the meeting, Commissioner Gallagher expressed interest in a method of water use charges incorporating alternatives B and E.

Alternative B: \$2.00 per acre-foot conditional use  
 \$100.00 per acre-foot actual use

Alternative E: Representative Maxiner's method  
 (applied to Perfected Permits only)  
 Up to 500 acre-feet - no charge  
 501 to 1000 acre-feet @ \$50.00 per acre-foot  
 1001 to 2000 acre-feet @ \$100.00 per acre-foot  
 2001 to 3000 acre-feet @ \$200.00 per acre-foot  
 3001 to 4000 acre-feet @ \$300.00 per acre-foot  
 4001 to 6000 acre-feet @ \$400.00 per acre-foot  
 6001 to 8000 acre-feet @ \$500.00 per acre-foot  
 8001 to 10,000 acre-feet @ \$600.00 per acre-foot  
 10,001 to 12,000 acre-feet @ \$700.00 per acre-foot  
 Over 12,000 acre-feet @ \$800.00 per acre-foot

The details of such a combination as discussed were as follows:

Combination of Alternative B and E: \$2.00 per acre-foot conditional use  
 0 to 1000 acre-feet @ \$100.00 per acre-foot  
 1001 to 2000 acre-feet @ \$102.00 per acre-foot  
 2001 to 3000 acre-feet @ \$104.00 per acre-foot  
 3001 to 4000 acre-feet @ \$106.00 per acre-foot  
 4001 to 5000 acre-feet @ \$108.00 per acre-foot  
 5001 to 6000 acre-feet @ \$110.00 per acre-foot  
 6001 to 7000 acre-feet @ \$112.00 per acre-foot  
 7001 to 8000 acre-feet @ \$114.00 per acre-foot  
 8001 to 9000 acre-feet @ \$116.00 per acre-foot  
 9001 to 10,000 acre-feet @ \$118.00 per acre-foot



10,001 to 11,000	acre-feet @ \$120.00	per acre-foot
11,001 to 12,000	acre-feet @ \$122.00	per acre-foot
12,001 to 13,000	acre-feet @ \$124.00	per acre-foot
13,001 to 14,000	acre-feet @ \$126.00	per acre-foot
14,001 to 15,000	acre-feet @ \$128.00	per acre-foot
15,001 to 16,000	acre-feet @ \$130.00	per acre-foot
16,001 to 17,000	acre-feet @ \$132.00	per acre-foot
17,001 to 18,000	acre-feet @ \$134.00	per acre-foot
18,001 to 19,000	acre-feet @ \$136.00	per acre-foot
19,001 to 20,000	acre-feet @ \$138.00	per acre-foot
20,001 to 21,000	acre-feet @ \$140.00	per acre-foot

Using the present perfected and conditional permits greater than 500 acre-feet this alternative would produce the following income:

Conditional use - 86,055 acre-feet at \$2.00	\$172,110
Actual use - 8199 acre-feet on graduated scale	<u>875,390</u>

\$1,047,500

Applying this method to both existing perfected permits and conditional permits assuming they become perfected, the annual income would be \$10,714,730.00.

Typical annual water use charges under this alternative would be as follows:

<u>Annual Use</u>	<u>Combination of Alternative B &amp; E</u>
500 acre-feet	\$50,000
1000	100,000
2000	202,000
3000	306,000
4000	412,000
5000	520,000
6000	630,000
7000	742,000
8000	856,000
9000	972,000
10,000	1,090,000
11,000	1,210,000
12,000	1,332,000
13,000	1,456,000
14,000	1,582,000
15,000	1,710,000
16,000	1,840,000
17,000	1,972,000
18,000	2,106,000
19,000	2,242,000
20,000	2,380,000

Also discussed at the meeting was the possibility of charging a fee for use of water in flow through cooling systems as found at three electrical power generation plants in North Dakota. These include the following:

<u>Permit #</u>	<u>Owner</u>	<u>Source</u>	<u>Power Capacity MW</u>	<u>Perfected Amount AF</u>	<u>Recommended Use AF</u>	<u>Annual Flow Through Amount AF</u>
463	MDU	Mo. R.	100	88,700	70	88,630
1039	Basin Elec.	Mo. R.	650	970,000	500	969,500
1161	UPA	Mo. R.	172	733,000	250	732,750

Applying various water use charges for the flow through portion of the annual water use and the combination B and E alternative discussed above, the attached table was prepared. It must be noted that the flow through water would be available for downstream water use, whereas a large percentage of the water used by cooling towers is lost to evaporation.

  
David A. Sprynozynatyk  
Director, Engineering Division

DAS:ad

ANNUAL WATER USE CHARGES

Permit	MW Capacity	Perfected Amt. AF	Annual Use AF	\$0.10 per AF Flow Through and Comb.B & E	\$1.00 per AF Flow Through and Comb.B & E	\$2.00 per AF Flow Through and Comb.B & E	\$10.00 per AF Flow Through and Comb.B & E
162	14	1460	970	\$97,000	\$97,000	\$97,000	\$97,000
463 <sup>1/</sup>	100	88,700	70	15,863 <sup>4/</sup>	95,630	184,260	893,300
659 <sup>2/</sup>	42	3285	800	80,000	80,000	80,000	80,000
1039 <sup>1/</sup>	650	970,000	500	146,950 <sup>5/</sup>	1,019,500	1,989,000	9,745,000
1161 <sup>1/</sup>	172	733,000	250	98,275 <sup>6/</sup>	757,750	1,490,500	7,352,500
1324	234	6,500	2240	226,960	226,960	226,960	226,960
1963 & 1964 <sup>3/</sup>	450	9,980		1,087,640	1,087,640	1,087,640	1,087,640
1977 <sup>3/</sup>	900	15,000		1,710,000	1,710,000	1,710,000	1,710,000
2179 <sup>3/</sup>	880	19,000		2,242,000	2,242,000	2,242,000	2,242,000
2292 <sup>3/</sup>	440	11,000		1,210,000	1,210,000	1,210,000	1,210,000

1/ Flow through cooling system

2/ Ground water

3/ Proposed plants

4/ Annual charge would be \$7,000 if there would not be a charge for flow through water.

5/ Annual charge would be \$50,000 if there would not be a charge for flow through water.

6/ Annual charge would be \$25,000 if there would not be a charge for flow through water.

**RULES AND REGULATIONS**  
**OF THE NORTH DAKOTA STATE WATER COMMISSION**

Proposed to be Adopted

Pursuant to Title 61 of the North Dakota Century Code

**GOVERNING WATER USE FEES**

---

GENERAL INFORMATION

Title 89: State Water Commission and State Engineer

Article 89-00: Water Use Fees

Action: Proposed Rules and Regulations. (First Draft dated 18 November 1975; Second Draft dated 17 December 1976; Third Draft dated 21 June 1978)

Summary: The State Water Commission and the State Engineer are considering regulations which would, if adopted, establish fees for certain large industrial uses of water.

Hearings: It is the policy of the State Water Commission to afford the public an opportunity to participate in the development of the proposed regulations. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the State Water Commission. Public hearings will be held. Comments may be submitted to the State Engineer, State Water Commission, State Office Building, 900 East Boulevard, Bismarck, N.D. 58505.

Effective date of proposed regulations: The proposed regulations are still in the developmental state. Therefore, the State Water Commission has not yet determined whether the proposed regulations will be adopted or, if adopted, when they will be effective.

Supplemental information: The concepts contained in the proposed regulations have been provided by members of the State Water Commission. They do not constitute opinions or suggestions by the author. The proposed regulations have

been drafted by Assistant Attorney General Murray G. Sagsveen,  
(701) 224-2750.

The \$2 and \$20 fee schedules utilized herein are only for  
the purpose of illustration; they do not represent final  
decision of the Commission and State Engineer.

Authority: These regulations are adopted pursuant to general  
regulation-making authority of the state water commission  
and the state engineer in North Dakota Century Code sections  
61-02-11 and 61-03-13.

The authority for the state water commission and the state  
engineer to adopt regulations governing water use fees is  
contained in the following sections of the North Dakota  
Century Code:

61-02-01. WATER CONSERVATION, FLOOD CONTROL, AND  
ABATEMENT OF STREAM POLLUTION DECLARED A PUBLIC  
PURPOSE.--It is hereby declared that the general  
welfare and the protection of the lives, health,  
property, and the rights of all the people of this  
state require that the conservation and control of  
waters in this state, public or private, navigable  
or unnavigable, surface or subsurface, the control  
of floods, and the regulation and prevention of  
water pollution, involve and necessitate the  
exercise of the sovereign powers of this state and  
are affected with and concern a public purpose.  
It is declared further that any and all exercise  
of sovereign powers of this state in investigating,  
constructing, maintaining, regulating, supervising,  
and controlling any system of works involving such  
subject matter embraces and concerns a single  
object, and that the state water conservation  
commission in the exercise of its powers, and in  
the performance of all its official duties, shall  
be considered and construed to be performing a  
governmental function for the benefit, welfare,

and prosperity of all the people of this state.

\* \* \*

61-02-14. POWERS AND DUTIES OF THE COMMISSION.--  
The commission shall have full and complete power,  
authority, and general jurisdiction:

1. To investigate, plan, regulate, undertake,  
construct, establish, maintain, control,  
operate, and supervise all works, dams, and  
projects, public and private, which in its  
judgment may be necessary or advisable.

\* \* \*

- n. To provide water for the generation of  
electric power and for mining and manufactur-  
ing purposes;

\* \* \*

2. To define, declare, and establish rules and  
regulations:
  - a. For the sale of waters and water rights  
to individuals, associations, corporations,  
municipalities, and other political  
subdivisions of the state, and for the  
delivery of water to users;

\* \* \*

5. To exercise all express and implied rights,  
power and authority, that may be necessary,  
and to do, perform, and carry out all of the  
expressed purposes of this chapter and all of  
the purposes reasonably implied incidentally  
thereto or lawfully connected therewith;

\* \* \*

61-02-29. COMMISSION TO HAVE FULL CONTROL OVER  
UNAPPROPRIATED PUBLIC WATERS OF THE STATE.--The  
commission shall have full control over all  
unappropriated public waters of the state, whether  
above or under the ground, to the extent necessary  
to fulfill the purposes of this chapter.

61-04-06.2. TERMS OF PERMIT.--The state engineer....may  
issue a permit subject to fees for water use,  
terms, conditions, restrictions, limitations, and  
termination dates he considers necessary to protect  
the rights of others, and the public interest.

**GENERAL PROVISIONS**

**89-00-01-01 INTENT**

**89-00-01-02 DEFINITIONS**



89-00-01-01. INTENT. The intent of this chapter is to establish fees for the beneficial industrial use of water, and for the privilege of holding an option to place waters to beneficial use.

Further, these regulations establish a procedure for the State Engineer in the assessment of such fees.

Water for industrial use, as defined herein, is considered available only from the main stem Missouri River (including Lake Sakakawea) due to the quantities of water involved. The Missouri River, because of the construction and regulation pursuant to the 1944 Flood Control Act (ch. 665, 58 Stat. 887), is able to provide water even during years when its tributaries may be intermittent or dry.

The State consented to the construction of the Pick-Sloan Plan for the Missouri River since it promised a more stable supply of water for domestic, municipal, stock watering, irrigation and industrial uses -- all considered essential for the economic stability of North Dakota. Indeed, the Flood Control Act provides that:

The use for navigation, in connection with the operation and maintenance of such works herein authorized for construction, of waters arising in States lying wholly or partly west of the ninety-eighth meridian shall be only such use as does not conflict with any beneficial consumptive use, present or future, in States lying wholly or partly west of the ninety-eighth meridian, of such waters for domestic, municipal, stock water, irrigation, mining, or industrial purposes.

Economic stability continues to be a critical concern for the State Water Commission. The Commission has granted a number of water permits for energy conversion purposes. Such a use of water will stimulate concurrent uses of water for domestic, municipal, and other industrial uses in the region.

However, the Commission recognizes that energy conversion water uses may only be short-term, thereby leading to a boom and bust economy for the region. Anxious to prevent such economic instability, the Commission desires to realize revenue from the current energy conversion uses of water and apply the revenue to preparing for long-term domestic municipal, irrigation, industrial, and fish, wildlife and recreation beneficial uses of water in the region.

These regulations are adopted to accomplish that purpose.

The Commission realizes that the revenues received will accrue to the state treasury. However, it is the intent of the Commission to request a biennial appropriation of all funds received under these regulations to fund the development of water distribution facilities for the long term economic stability of North Dakota.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
61-02-01  
61-02-14  
61-02-29  
61-04-06.2

89-00-01-02. DEFINITIONS. Unless the context otherwise requires, the following definitions apply to this article:

1. "Commission" means the state water commission (Governor, Commissioner of Agriculture, and five citizen members).
2. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code Section 61-03-01, who is also the chief engineer and secretary of the commission.
3. "Application" means an application for a conditional water permit.
4. "Applicant" means a person submitting an application for a conditional water permit.
5. "Industrial use" means the use of 5,000 acre-feet or more of water annually for electrical generation or synthetic natural gas production and other uses incidental thereto including irrigation for reclamation for associated mining operations.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
61-02-01  
61-02-14  
61-02-29  
61-04-06.2

## RATE AND ASSESSMENT

### Section

- 89-00-02-01 Rate for Conditional Water Permit
- 89-00-02-02 Assessment and Payment on Conditional Water Permit
- 89-00-02-03 Rate for Perfected Water Right
- 89-00-02-04 Assessment and Payment on Perfected Water Right
- 89-00-02-05 Concerning Water Permit Interest for Delinquent Payments

89-00-02-01. RATE FOR CONDITIONAL WATER PERMIT. Upon the granting of a conditional water permit by the State Engineer, the holder of a conditional water permit for industrial use shall remit to the State of North Dakota an annual fee of \$2.00 per acre-foot for the quantity of water stated in the permit.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29  
61-04-06.2

89-00-02-02. ASSESSMENT AND PAYMENT ON CONDITIONAL WATER RIGHT.

1. On or before January 15 of each year, the State Engineer shall forward to every holder of a conditional water permit for industrial use an assessment according to the following formula:

$$\$2/\text{acre-foot} \times \text{acre-feet authorized in conditional permit} \times \% \text{ of assessable year} = \$ \text{ fee}$$

2. Examples: [For each example assume the regulations became effective July 1, 1977]
  - a. Permittee secured a conditional water permit for 15,000 acre-feet on October 10, 1977.  
$$\$2/\text{acre-foot} \times 15,000 \text{ acre-feet} \times 0.2246575$$
  
(82 days: Oct. 11 - Dec. 31) = \$6,739.73.  
$$\frac{\quad}{365 \text{ days}}$$
  - b. Permittee secured a conditional water permit for 15,000 acre-feet in 1976. \$2/acre-foot  $\times$  15,000 acre-feet  $\times$  0.5041095  
(184 days: July 2 - Dec. 31) = \$15,123.29.  
$$\frac{\quad}{365 \text{ days}}$$
  - c. Permittee secured a conditional water permit in 1977 for 15,000 acre-feet. The 1978 water use fee, to be assessed on or before January 15, 1979, would be \$30,000.
  - d. Applicant voluntarily forfeits conditional water permit for 15,000 acre-feet on February 15, 1979. \$2/acre-foot  $\times$  15,000 acre-feet  $\times$  0.1986301 (January 1 - February 5 is 36 days) = \$2,958.90

3. The assessed permit holder shall remit the proper amount to the Treasurer of the State of North Dakota on or before March 15 of the year in which the assessment is forwarded by the State Engineer.

General Authority  
 NDCC 61-02-11  
 28-32-02

Law Implemented  
 NDCC 61-02-01  
 61-02-14  
 61-02-29  
 61-04-06.2

89-00-02-03. RATE FOR PERFECTED WATER RIGHT. Upon the application of water to a beneficial use, whether or not a perfected water permit has been granted, the holder of a water permit for industrial use shall remit to the State of North Dakota an annual fee of \$20 per acre-foot for the quantity of water actually put to consumptive beneficial use and \$.20 per acre-foot for the quantity of water actually used for flow through cooling or other similar nonconsumptive purposes.

General Authority  
 NDCC 61-02-11  
 28-32-02

Law Implemented  
 NDCC 61-02-01  
 61-02-14  
 61-02-29  
 61-04-06.2

89-00-02-04. ASSESSMENT AND PAYMENT ON PERFECTED WATER RIGHT.

1. On or before January 15 of each year, the State Engineer shall forward to every permittee utilizing water for industrial use an assessment according to the following formula:

$$$.20 \text{ or } \$20/\text{acre-foot} \times \text{acre-feet actually applied to beneficial use} = \$ \text{ fee}$$

2. The assessed permit holder shall remit the proper amount to the Treasurer of the State of North Dakota on or before March 15 of the year in which the assessment is forwarded by the State Engineer.

General Authority  
 NDCC 61-02-11  
 28-32-02

Law Implemented  
 NDCC 61-02-01  
 61-02-14  
 61-02-29  
 61-04-06.2

89-00-02-05. INTEREST FOR DELINQUENT PAYMENTS.

1. Industrial use permittees shall pay interest on

fees which become delinquent computed at the rate of 1 percent per month for the amount of the delinquent fees. A payment shall be considered delinquent if not paid on or before March 15. The interest shall accrue from March 16, and it shall include the date of payment.

2. If a delinquency should continue past May 1, the State Engineer may proceed to terminate an otherwise valid water permit pursuant to Section 61-04-23 through 61-04-25 and any contractual provisions accompanying a permit.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29  
61-04-06.2

**WATER MEASUREMENT**

**89-00-03-01**

**Metering Device Required**

89-00-03-01. METERING DEVICE REQUIRED. Water use subject to fees herein shall be measured by a metering device satisfactory to the State Engineer. It shall be installed, operated, and maintained by permittee as required by the State Engineer at no expense to the State. It shall be accessible for inspection at all reasonable times by proper representatives of the State Engineer.

General Authority

NDCC 61-01-11  
28-32-02

Law Implemented

NDCC 61-02-01  
61-02-14  
61-02-29  
61-04-06.2



WATER PERMIT AGENDA FOR JUNE 23, 1978 MEETING

\* INDICATES P )R  
PERMIT STATUS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3085	Fettig, LeRoy - Hebron (Mercer County)  Priority: 4- 5-78 Hearing: 6- 5-78	Ground Water	Irrigation	236.0 acre-feet 138.0 acres	It is recommended that action be deferred at this time.  * #2144 (Priority Date: 9-1-74) Granted 526.6 acres
3090	Holmen, Edwin - Horace (Cass County)  Priority: 4-20-78 Hearing: 6- 5-78	Ground Water (West Fargo Aquifer)	Municipal - (Rural Domestic)	20.0 acre-feet	20.0 acre-feet  * NO PRIOR PERMITS
3094	Washburn, City of - Washburn (McLean County)  Priority: 4-25-78 Hearing: 6- 5-78	Missouri River	Municipal	1000.0 acre-feet	1000.0 acre-feet  * NO PRIOR PERMITS
3095	Grand Forks-Traill Water Users, Inc. - Thompson (Grand Forks Co.)  Priority: 4-27-78 Hearing: 6- 5-78	Ground Water	Municipal - (Rural Domestic)	2895.0 acre-feet	It is recommended that action be deferred at this time.  * #1795 (Priority Date: 5-28-71) Granted 650.0 acre-feet #2497 (Priority Date: 7-22-76) Granted 200.0 acre-feet

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3054	White, Paul W. - Bowman (Bowman County)  Priority: 3-22-77 Hearing: 6- 5-78	Unnamed Creek, trib. to North Grand River  * NO PRIOR PERMITS	Irrigation- Waterspreading	100.0 acre-feet 54.0 acres	It is recommended that action be deferred at this time.
3081	Widdel, Lawrence and Tuchscherer, Daniel - Minot (Ward County)  Priority: 4- 4-78 Hearing: 6- 5-78	Ground Water  * NO PRIOR PERMITS	Irrigation	677.0 acre-feet 450.8 acres	It is recommended that action be deferred at this time.
3005	Warwick, City of - Warwick (Benson County)  Priority: 5- 8-78 Hearing: 6- 5-78	Ground Water (Warwick Aquifer)  * NO PRIOR PERMITS	Municipal	65.0 acre-feet	50.0 acre-feet
2066	Krebsbach, Ralph M. - Warwick (Eddy County)  Priority: 3- 8-74 Hearing on Amendment: 6- 5-78	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1230P	Hebron, City of - Hebron (Morton County)  Priority: 8- 1-28 Hearing on Amendment: 6- 5-78	Ground Water	Municipal	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
1465B	Streich, Eldon A. - Englevale (Ransom County)  Priority: 7-13-67 Hearing on Amendment: 6- 5-78	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
3086	Hartl, Edmund Jr. - New Rockford (Wells County)  Priority: 4- 7-78 Hearing: 6- 5-78	Ground Water	Irrigation	234.0 acre-feet 156.0 acres	It is recommended that action be deferred at this time.
				* #2753 (Priority Date: 3-3-77) Granted 114.0 acres	
3053	Cass Rural Water Users, Inc. - Kindred (Cass County)  Priority: 3- 1-78 Hearing: 6- 5-78	Ground Water	Municipal (Rural Domestic)	400.0 acre-feet	It is recommended that action be deferred at this time.
				* #2293 (Priority Date: 7-8-75) Granted 1200.0 acre-feet #2697 (Priority Date: 1-24-77) Granted 500.0 acre-feet	

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3073	Gibbon, David - Milnor (Ransom County)  Priority: 3-17-78 Hearing: 6-12-78	Ground Water   * NO PRIOR PERMITS	Irrigation	320.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.
3097	Inyan Wakagapi Human Development Corp. - Cannonball (Morton County)  Priority: 5- 1-78 Hearing: 6-19-78	Cannonball River   * NO PRIOR PERMITS	Irrigation	35.0 acre-feet 17.25 acres	34.5 acre-feet 17.25 acres
3067	Irgens, Jim - Williston (Williams County)  Priority: 3- 2-78 Hearing: 6-19-78	Unnamed tributaries, trib. to East Fork of Little Muddy River  * NO PRIOR PERMITS	Recreation	35.3 acre-feet storage plus 24.0 acre-feet annual use	35.3 acre-feet storage plus 24.0 acre-feet annual use
3099	Lewis, A. K. - Lisbon (Ransom County)  Priority: 4-12-78 Hearing: 6-19-78	Ground Water   * NO PRIOR PERMITS	Irrigation	240.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2936	Schmaltz, Albert - Orrin (Pierce County)	Ground Water (Kilgore Aquifer)	Irrigation	1280.0 acre-feet 546.0 acres	Recommend for approval: 90.0 acre-feet 60.0 acres  (Remainder of request should be held in abeyance)
	Priority: 7-18-77 Hearing: 10-17-77 Deferred: 12- 7-77	* NO PRIOR PERMITS			
3034	Dakota Gardens - Mandan (Morton County)	Missouri River	Irrigation	282.2 acre-feet 144.6 acres	282.2 acre-feet 144.6 acres
	Priority: 1-11-78 Hearing: 3-20-78 Deferred: 6- 1-78	* NO PRIOR PERMITS			
2612	Adams, City of - Adams (Walsh County)	Ground Water (Unnamed Aquifer)	Municipal	58.8 acre-feet	58.8 acre-feet
	Priority: 8- 4-76 Hearing: 11-28-77 Deferred: 12- 7-77	* NO PRIOR PERMITS			
3082	Upham, City of - Upham (McHenry County)	Ground Water (Unnamed Aquifer)	Municipal	61.0 acre-feet	61.0 acre-feet
	Priority: 3-21-78 Hearing: 5-23-78 Deferred: 6- 1-78	* #1254 (Priority Date: 12-10-64) Granted 100.0 acre-feet			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2850	Cleveland, James - New Rockford (Eddy County)  Priority: 6-21-77 Hearing: 7-11-77 Deferred: 8-16-77	Ground Water (New Rockford Aquifer)  * NO PRIOR PERMITS	Irrigation	237.0 acre-feet 158.0 acres	237.0 acre-feet 158.0 acres
2116	Sletten, Robert and Dennis - Ryder (Ward County)  Priority: 8-12-74	Ground Water (Douglas Aquifer)  * NO PRIOR PERMITS	Irrigation	903.0 acre-feet 451.5 acres	On December 16, 1974, the applicant was granted 420.0 acre-feet to irrigate 451.5 acres. An additional 180.0 acre-feet was held in abeyance.  The Comm. staff has reviewed that portion held in abeyance and recommends that the applicant be granted an additional 180.0 acre-feet.  The total amounts would then be 600.0 acre-feet to irrigate 451.5 acres.
893	Grafton, City of - Grafton (Walsh County)  Priority: 3-3-61	Red River of the North	Municipal	This is a request for a change in points of diversion.	It is recommended that this change be approved.

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2576	Grand Forks County Water Management District (Dam Site #9, Upper Turtle River Watershed) - Grand Forks (Grand Forks County)  Priority: 4- 3-78 Hearing: 5- 8-78 Deferred: 6- 1-78	South Branch of Turtle River, trib. to Turtle River	Flood Control & Recreation	5100.0 acre-feet flood pool, 850.0 acre-feet permanent pool plus 216.0 acre-feet annual use	5100.0 acre-feet flood pool, 823.0 acre-feet permanent pool storage plus 216.0 acre-feet annual use (evaporation)
* THE APPLICANT HAS SEVERAL PERMITS					
3084	Andahl, Ronald and Paul - Bismarck (Burleigh County)  Priority: 4-14-78 Hearing: 5-23-78 Deferred: 6- 1-78	Unnamed Stream, trib. to Missouri River	Erosion Control Dam	54.5 acre-feet storage plus 19.4 acre-feet annual use	54.5 acre-feet storage plus 19.4 acre-feet annual use (evaporation)
* # 977 (Priority Date: 3-12-62) Granted 535.3 acres #2021 (Priority Date: 1-10-74) Granted 598.6 acres					

RULES AND REGULATIONS  
OF THE NORTH DAKOTA STATE WATER COMMISSION

Proposed to be Adopted

Pursuant to Title 61 of the North Dakota Century Code

GOVERNING THE USE OF WATER FOR IRRIGATION PURPOSES

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## GENERAL INFORMATION

Title 89: State Water Commission and State Engineer

Article 89-00: The Use of Water for Irrigation Purposes

Action: Proposed Rules and Regulations. This is the second draft dated 6/2/78; the first draft, dated 2/28/78.

Summary: The State Water Commission is considering regulations which would, if adopted, establish residency requirements for water permit applicants and permittees, establish age requirements for water permit applicants and permittees, establish limitations on the water permit application by persons during a three year time period, establish limitations on undeveloped permits by a water permit applicant and permittee, and establish maximum authorized irrigable acreage by a permittee.

Hearings: It is the policy of the State Water Commission to afford the public an opportunity to participate in the development of the proposed regulations. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the State Water Commission. Public hearings have been held. Comments may be submitted to the State Engineer, State Water Commission, State Office Building, 900 East Boulevard, Bismarck, N.D. 58505.

Effective date of proposed regulations: The proposed regulations are still in the developmental state. Therefore, the State Water Commission has not yet determined whether the proposed regulations will be adopted or, if adopted, when they will be effective.

Supplemental information: The concepts contained in the proposed regulations have been provided by members of the State Water Commission. They do not constitute opinions or suggestions by the author. The proposed regulations have been drafted by Assistant Attorney General Murray G. Sagsveen, (701) 224-2750.

Authority: These regulations are adopted pursuant to general regulation-making authority of the state water commission and the state engineer in North Dakota Century Code sections 61-02-11 and 61-03-13.

The authority for the state water commission and the state engineer to adopt regulations limiting the area of land which may be irrigated and requiring the landowner to reside on or in the neighborhood of the land irrigated is implied in the following sections of the North Dakota Century Code:

61-02-01. WATER CONSERVATION, FLOOD CONTROL, AND ABATEMENT OF STREAM POLLUTION DECLARED A PUBLIC PURPOSE.--It is hereby declared that the general welfare and the protection of the lives, health, property, and the rights of all the people of this state require that the conservation and control of waters in this state, public or private, navigable or unnavigable, surface or subsurface, the control of floods, and the regulation and prevention of water pollution, involve and necessitate the exercise of the sovereign powers of this state and are affected with and concern a public purpose. It is declared further that any and all exercise of sovereign powers of this state in investigating, constructing, maintaining, regulating, supervising, and controlling any system of works involving such subject matter embraces and concerns a single object, and that the state water conservation commission in the exercise of its powers, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function for the benefit, welfare, and prosperity of all the people of this state.

\* \* \*

61-02-14. POWERS AND DUTIES OF THE COMMISSION.--  
The commission shall have full and complete power,  
authority, and general jurisdiction:

1. To investigate, plan, regulate, undertake,  
construct, establish, maintain, control,  
operate, and supervise all works, dams, and  
projects, public and private, which in its  
judgment may be necessary or advisable.

\* \* \*

- k. To provide for the storage, development,  
diversion, delivery, and distribution of  
water for the irrigation of agricultural  
land and supply water for municipal and  
industrial purposes....

\* \* \*

2. To define, declare, and establish rules and  
regulations:

\* \* \*

- b. For the full and complete supervision,  
regulation, and control of the water  
supplies within the state....

\* \* \*

5. To exercise all express and implied rights,  
power and authority, that may be necessary,  
and to do, perform, and carry out all of the  
expressed purposes of this chapter and all of  
the purposes reasonably implied incidentally  
thereto or lawfully connected therewith;

\* \* \*

61-02-29. COMMISSION TO HAVE FULL CONTROL OVER  
UNAPPROPRIATED PUBLIC WATERS OF THE STATE.--The  
commission shall have full control over all  
unappropriated public waters of the state, whether  
above or under the ground, to the extent necessary  
to fulfill the purposes of this chapter.

## GENERAL PROVISIONS

89-00-01-01 INTENT  
89-00-01-02 APPLICATION  
89-00-01-03 DEFINITIONS

89-00-01-01. INTENT. The commission policies of acreage limitations, residency, time limitations, development of permits prior to filing additional applications, and other criteria are designed:

1. To provide opportunity for a maximum number of farmers on the land.
2. To widely distribute the benefits which accrue from utilizing waters of the state.
3. To promote the family-size owner-operated farm.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
61-02-01  
61-02-14  
61-02-29

89-00-01-02. APPLICATION. the policies contained in this article shall apply to water permits granted after the effective date of the article.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
61-02-01  
61-02-14  
61-02-29

89-00-01-03. DEFINITIONS. Unless the context otherwise requires, the following definitions apply to this article:

1. "Commission" means the state water commission (Governor, Commissioner of Agriculture, and five citizen members).
2. "State engineer" means the state engineer, appointed pursuant to North Dakota Century Code Section 61-03-01, who is also the chief engineer and secretary of the commission.
3. "Application" means an application for a conditional water permit for irrigation purposes.
4. "Applicant" means a person submitting an application for a conditional water permit for irrigation purposes.
5. "Irrigable land" means the area to which acreage limitations are applicable and is the net acreage possessing irrigated crop production potential, after excluding areas that are occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feed lots, equipment storage yards, and similar facilities, together with dedicated roads open for general unrestricted use by the public. Areas used for field roads, farm ditches and drains, tail water ponds, temporary equipment storage, and other uses dependent on operational requirements necessary to produce a specific crop, and subject to change at

- will, are included in the net irrigable acreage.
6. "Resident owner" means a landowner who has his principal place of residence within the State of North Dakota or within 25 miles of the state's boundary.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

**CRITERIA FOR APPLICANTS PROPOSING TO SUBMIT APPLICATIONS  
FOR A CONDITIONAL WATER PERMIT FOR IRRIGATION PURPOSES**

**Section**

- 89-00-02-01      Applicant Criteria**
- 89-00-02-02      Rejection of Unacceptable Applications**
- 89-00-02-03      Residency**
- 89-00-02-04      Legal Age**
- 89-00-02-05      Time Limitations Concerning Water Permit  
Applications**
- 89-00-02-06      Development of Permits Prior to Filing  
Application**
- 89-00-02-07      Acreage Limitations**
- 89-00-02-08      Soil and Water Compatability**

89-00-02-01. APPLICANT CRITERIA. All applicants must meet the criteria contained in this chapter.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-02. REJECTION OF UNACCEPTABLE APPLICATIONS. The state engineer shall not accept an application unless the applicant meets the criteria contained in this chapter.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-03. RESIDENCY. An applicant must be a resident owner.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-04. LEGAL AGE. An applicant must be eighteen years of age.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-05. TIME LIMITATIONS CONCERNING WATER PERMIT APPLICATIONS. An applicant may not, during any thirty-six month period, apply for water permits to irrigate more than three hundred and twenty acres of irrigable land. Examples:

1. Mr. Irrigator files water permit applications with the state engineer on August 1, 1979. The applications request water to irrigate three hundred twenty acres of irrigable land. Mr. Irrigator may not file additional water permit applications until August 1, 1982.
2. Miss Waterspreader files a water permit application with the state engineer on August 1, 1979. The application requests water to irrigate one hundred sixty acres of irrigable land. A second application for one hundred sixty acres is filed on September 1, 1980. Miss Waterspreader will be eligible to file additional permit applications to irrigate up to one hundred sixty acres of irrigable land on



August 1, 1982. If no additional applications are filed by September 1, 1983, Miss Waterspreader may file water permit applications for the irrigation of up to three hundred twenty more acres of irrigable land.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-06. DEVELOPMENT OF PERMITS PRIOR TO FILING APPLICATION. A person who holds an undeveloped permit or permits to irrigate one hundred sixty acres or more of irrigable land may not submit an application.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-07. ACREAGE LIMITATIONS. A person may not submit an application which, if approved, would authorize the irrigation of more than four hundred eighty acres of irrigable land under the criteria defined in section 89-00-03-06.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-02-08. SOIL AND WATER CAPABILITY. All applications shall contain a statement of soil and water compatibility for the land to be irrigated from the Soil Conservation Service, U.S. Department of Agriculture.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

**POLICIES CONCERNING TRANSFERS OF PERMITTED LAND**

- 89-00-03-01      **General Policy Concerning Transfers of Permitted Land**
- 89-00-03-02      **Certain Transfers of Permitted Land Contrary to the Public Interest**
- 89-00-03-03      **Transfer of Permitted Land to Nonresident**
- 89-00-03-04      **Transfer of Permitted Land to Minor**
- 89-00-03-05      **Transfer of Permitted Land to Person Holding Undeveloped Permits**
- 89-00-03-06      **Transfer of Permitted Land to Person Holding Maximum Amount of Permitted Land**

89-00-03-01. GENERAL POLICY CONCERNING TRANSFERS OF PERMITTED LAND. North Dakota Century Code section 61-04-15 provides, in part, that: "The transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes". This chapter does not prohibit the transfer of title to land for irrigation purposes. Rather, this chapter declares certain transfers to be contrary to the public interest and that continued use of water by the transferee is a nonbeneficial use.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-03-02. CERTAIN TRANSFERS OF PERMITTED LAND CONTRARY TO THE PUBLIC INTEREST. The transfers identified in section 89-00-03-03 through 89-00-03-06 are contrary to the public interest. Consequently, the use of water for irrigation purposes by a permittee-transferee is not a beneficial use. Therefore, the state engineer shall initiate forfeiture proceedings against permits connected with unauthorized transfers.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-03-03. TRANSFER OF PERMITTED LAND TO NONRESIDENTS. The transfer of permitted land to a nonresident is contrary to the public interest.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-03-04. TRANSFER OF PERMITTED LAND TO MINOR. The transfer of permitted land to an individual less than eighteen years of age is contrary to the public interest.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-03-05. TRANSFER OF PERMITTED LAND TO PERSON HOLDING UNDEVELOPED PERMITS. The transfer of permitted land to a person holding an undeveloped permit or permits to irrigate one hundred sixty acres or more of irrigable land

is contrary to the public interest.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

89-00-03-06. TRANSFER OF PERMITTED LAND TO PERSON HOLDING MAXIMUM AMOUNT OF PERMITTED LAND. The transfer of permitted land is contrary to the public interest if the permittee-transferee would hold permits to irrigate more than four hundred eighty acres of irrigable land after the transfer.

1. However, a husband and wife may together hold permits to irrigate up to nine hundred sixty acres of irrigable land notwithstanding the extent of their individual ownerships.
2. If a permittee is a legal entity other than a single ownership (e.g. partnership, cooperative, trust), the permitted irrigable acreage shall be prorated in proportion to the beneficial or legal ownership interest. For example, if a person has a one-third interest in a partnership holding a permit to irrigate four hundred eighty acres of irrigable land, one hundred sixty acres shall be prorated to that person. If that person also has a 10% beneficial interest in a trust comprised of a permit to irrigate 2000 acres of irrigable land, 200 acres shall also be prorated to that person. The person, therefore, would be authorized to irrigate an additional 120 acres under these regulations.
3. A permittee who involuntarily acquires permitted irrigable acreage in excess of the limits authorized in this section (e.g. by inheritance or death of a spouse) shall have five years or until age 23, whichever is longer, to transfer such property before the initiation of forfeiture proceedings by the state engineer.

General Authority  
NDCC 61-02-11  
28-32-02

Law Implemented  
NDCC 61-02-01  
61-02-14  
61-02-29

CHAPTER 89-00-04

POLICIES CONCERNING HOLDERS OF WATER PERMITS

Section

89-00-04-01 Maintenance of Residency

89-00-04-01. MAINTENANCE OF RESIDENCY. The state engineer shall initiate forfeiture proceedings against any permittee who changes his residence thereby losing his status as a resident owner.

General Authority

NDCC 61-02-11  
28-32-02

Law Implemented

NDCC 61-02-01  
61-02-14  
61-02-29

CHAPTER 89-00-05

CONDITIONS TO BE ATTACHED TO WATER PERMITS

Section

89-00-05-01 Permit Conditions

89-00-05-01. PERMIT CONDITIONS. The state engineer shall attach the following condition to all permits granted for irrigation purposes: Acceptance of this permit binds permittee to applicable rules and regulations of the state water commission and the state engineer.

General Authority

NDCC 61-02-11  
28-32-02

Law Implemented

NDCC 61-02-01  
61-02-14  
61-02-29

## PRESIDENT CARTER'S WATER POLICY MESSAGE

APPENDIX "F"

JUNE 6, 1978

THE WHITEHOUSE

I am today sending to Congress water policy initiatives designed to:

--Improve planning and efficient management of Federal water resource program to prevent waste and to permit necessary water projects which are cost-effective, safe and environmentally sound to move forward expeditiously.

--Prove a new, national emphasis on water conservation.

--Enhance Federal-State cooperation and improved State water resources planning.

--Increase attention to environmental quality.

None of the initiatives would impose any new Federal regulatory program for water management.

Last year, I directed the Water Resources Council, the Office of Management and Budget and the Council on Environmental Quality, under the chairmanship of Secretary Cecil Andrus, to make a comprehensive review of Federal water policy and to recommend proposed reforms.

This new water policy results from their review, the study of water policy ordered by the Congress in Section 80 of the Water Resources Planning Act of 1974 and our extensive consultations with Members of Congress, State, county, city, and other local officials and the public.

Water is an essential resource, and over the years, the programs of the Bureau of Reclamation, the Corps of Engineers, the Soil Conservation Service and the Tennessee Valley Authority have helped permit a dramatic improvement in American agriculture, have provided irrigation water essential to the development of the West, and have developed community flood protection, electric power, navigation, and recreation throughout the nation.

I ordered this review of water policies and programs because of my concern that while Federal water resources programs have been of great benefit to our nation, they are today plagued with problems and inefficiencies. In the course of this water policy review, we found that:

--Twenty-five separate Federal agencies spend more than \$10 billion per year on water resources projects and related programs.

--These projects often are planned without a uniform, standard basis for estimating benefits and costs.

--States are primarily responsible for water policy within their boundaries, yet are not integrally involved in setting priorities and sharing in Federal project planning and funding.

--There is a \$34 billion backlog of authorized or uncompleted projects.

--Some water projects are unsafe or environmentally unwise and have caused losses of natural streams and rivers, fish and wildlife habitat, and recreational opportunities.

The study also found that water conservation has not been addressed at a national level even though we have pressing water supply problems. Of 106 watershed subregions in the country, 21 already have severe water shortages. By the year 2000, this number could increase to 39 subregions. The nation's cities are also beginning to experience water shortage problems which can only be solved at very high cost. In some areas, precious ground water supplies are also being depleted at a faster rate than they are replenished. In many cases, an effective water conservation program could play a key role in alleviating these problems.

These water policy initiatives will make the Federal government's water programs more efficient and responsive in meeting the nation's water-related needs. They are designed to build on fundamentally sound statutes and on the Principles and Standards which govern the planning and development of Federal water projects, and also to enhance the role of the States, where the primary responsibilities for water policy must lie. For the first time, the Federal government will work with State and local governments and exert needed national leadership in the effort to conserve water. Above all, these policy reforms will encourage water projects which are economically and environmentally sound and will avoid projects which are wasteful or which benefit a few at the expense of many.

Across the nation there is remarkable diversity in the role water plays. Over most of the West, water is scarce and must be managed carefully--and detailed traditions and laws have grown up to govern the use of water. In other parts of the country, flooding is more of a problem than drought, and in many areas, plentiful water resources have offered opportunities for hydroelectric power and navigation. In the urban areas of our nation, water supply systems are the major concern--particularly where antiquated systems need rehabilitation in order to conserve water and assure continued economic growth.

Everywhere, water is fundamental to environmental quality. Clean drinking water, recreation, wildlife, and beautiful natural areas depend on protection of our water resources.

Given this diversity, Federal water policy cannot attempt to prescribe water use patterns for the country. Nor should the Federal government preempt the primary responsibility of the States for water management and allocation. For those reasons, these water policy reforms will not preempt State or local water responsibilities. Yet water policy is an important national concern, and the Federal government has major responsibilities to exercise leadership, to protect the environment and to develop and maintain hydroelectric power, irrigation agriculture, flood control, and navigation.

The primary focus of the proposals is on the water resources programs of the Corps of Engineers, the Bureau of Reclamation, the Soil Conservation Service and the Tennessee Valley Authority, where annual water program budgets total approximately \$3.75 billion. These agencies perform the Federal government's water resource development programs. In addition, a number of Federal agencies with water-related responsibilities will be affected by this water policy.

I am charging Secretary Andrus with the lead responsibility to see that these initiatives are carried out promptly and fully. With the assistance of the Office of Management and Budget and the Council on Environmental Quality, he will be responsible for working with the other Federal agencies, the Congress, State and local governments, and the public to assure proper implementation of this policy and to make appropriate recommendations for reform in the future.

#### Specific Initiatives

##### Improving Federal Water Resource Programs

The Federal government has played a vital role in developing the water resources of the United States. It is essential that Federal water programs be updated and better coordinated if they are to continue to serve the nation in the best way possible. The reforms I am proposing are designed to modernize and improve the coordination of Federal water programs. In addition, in a few days, I will also be sending to the Congress a budget amendment proposing funding for a number of new water project construction and planning starts. These projects meet the criteria I am announcing today. This is the first time the Executive branch has proposed new water project starts since Fiscal Year 1975, four years ago.

The actions I am taking include:

.A directive to the Water Resources Council to improve to implementation of the Principles and Standards governing the planning of Federal water projects. The basic planning objectives of the Principles and Standards--national economic development and environmental quality--should be retained and given equal emphasis.



In addition, the implementation of the Principles and Standards should be improved by:

--Adding water conservation as a specific component of both the economic and environmental objectives.

--Requiring the explicit formulation and consideration of a primarily nonstructural plan as one alternative whenever structural water projects or programs are planned.

--Instituting consistent, specific procedures for calculating benefits and costs in compliance with the Principles and Standards and other applicable planning and evaluation requirements. Benefit-cost analyses have not been uniformly applied by Federal agencies, and in some cases benefits have been improperly recognized, "double-counted" or included when inconsistent with Federal policy or sound economic rationale. I am directing the Water Resources Council to prepare within 12 months a manual which ensures that benefits and costs are calculated using the best techniques and provides for consistent application of the Principles and Standards and other requirements.

--Ensuring that water projects have been planned in accordance with the Principles and Standards and other planning requirements by creating, by Executive order, a project review function located in the Water Resources Council. A professional staff will ensure an impartial review of preconstruction project plans for their consistency with established planning and benefit-cost analysis procedures and applicable requirements. They will report on compliance with these requirements to agency heads, who will include their report, together with the agency recommendations, to the Office of Management and Budget. Project reviews will be completed within 60 days, before the Cabinet officer makes his or her budget request for the coming fiscal year. Responsibility will rest with the Cabinet officer for budget requests to the Office of Management and Budget, but timely independent review will be provided. This review must be completed within the same budget cycle in which the Cabinet officer intends to make budget requests so that the process results in no delay.

--The manual, the Principles and Standards requirements and the independent review process will apply to all authorized projects (and separable project features) not yet under construction.

.Establishment of the following criteria for setting priorities each year among the water projects eligible for funding or authorization, which will form the basis of my decisions on specific water projects:

--Projects should have net national economic benefits unless there are environmental benefits which clearly more than compensate for any economic deficit. Net adverse environmental consequences should be significantly outweighed by economic benefits. Generally, projects with higher benefit/cost ratios and fewer adverse environmental consequences will be given priority within the limits of available funds.

--Projects should have widely distributed benefits.

--Projects should stress water conservation and appropriate nonstructural measures.

--Projects should have no significant safety problems involving design, construction, or operations.

--There should be evidence of active public support including support by State and local officials.

--Projects will be given expedited consideration where State governments assume a share of costs over and above existing cost-sharing.

--There should be no significant international or intergovernmental problems.

--Where vendible outputs are involved preference should be given to projects which provide for greater recovery of Federal and State costs, consistent with project purposes.

--The project's problem assessment, environmental impacts, costs and benefits should be based on up-to-date conditions (planning should not be obsolete).

--Projects should be in compliance with all relevant environmental statutes.

--Funding for mitigation of fish and wildlife damages should be provided concurrently and proportionately with construction funding.

.Preparation of a legislative proposal for improving cost-sharing for water projects. Improved cost-sharing will allow States to participate more actively in project decisions and will remove biases in the existing system against nonstructural flood control measures. These changes will help assure project merit. This proposal, based on the study required by Section 80 of P.L. 93-251, has two parts:

--Participation of States in the financing of Federal water project construction. For project purposes with vendible outputs (such as water supply or hydroelectric power), States would contribute 10 percent of the costs, proportionate to and phased with Federal appropriations. Revenues would be returned to the States proportionate to their contribution. For project purposes without vendible outputs (such as flood control), the State financing share would be 5 percent. There would be a cap on State participation of 1/4 of 1 percent of the State's revenues per project per year, so that a small State would not be precluded from having a very large project located in it. Where project benefits accrue to more than one State, State contributions would be calculated accordingly, but if a benefiting State did not choose to participate in cost-sharing, its share could be paid by other participating States. This State cost-sharing proposal would apply on a mandatory basis to projects not yet authorized. However, for projects in the authorized backlog, States which voluntarily enter into these cost-sharing arrangements will achieve expedited Executive branch consideration and priority for project funding, as long as other project planning requirements are met. Soil Conservation Service projects will be completely exempt from this State cost-sharing proposal.

--Equalizing cost-sharing for structural and nonstructural flood control alternatives. There is existing authority for 80 percent-20 percent Federal/non-Federal cost-sharing for nonstructural flood control measures (including in-kind contributions such as land and easements). I will begin approving nonstructural flood control projects with this funding arrangements and will propose that a parallel cost-sharing requirements (including in-kind contributions) be enacted for structural flood control measures, which currently have a multiplicity of cost-sharing rules.

Another policy issue raised in Section 80 of P.L. 93-251 is that of the appropriate discount rate for computing the present value of future estimated economic benefits of water projects. After careful consideration of a range of options, I have decided that the currently legislated discount rate formula is reasonable, and I am therefore recommending that no change be made in the current formula. Nor will I recommend retroactive changes in the discount rate for currently authorized Projects.

#### Water Conservation

Managing our vital water resources depends on a balance of supply, demand and wise use. Using water more efficiently is often cheaper and less demanding to the environment than developing additional supplies.

While increases in supply will still be necessary, these reforms place emphasis on water conservation and make clear that this is now a national priority.

In addition to adding the consideration of water conservation to the Principles and Standards, the initiative I am taking include:

Directives to all Federal agencies with programs which affect water supply or consumption to encourage water conservation, including:

--making appropriate community water conservation measures a condition of the water supply and wastewater treatment grant and loan programs of the Environmental Protection Agency, the Department of Agriculture and the Department of Commerce;

--integrating water conservation requirements into the housing assistance programs of the Department of Housing and Urban Development, the Veterans Administration and the Department of Agriculture;

--providing technical assistance to farmers and urban dwellers on how to conserve water through existing programs of the Department of Agriculture, the Department of the Interior and the Department of Housing and Urban Development;

--requiring development of water conservation programs as a condition of contracts for storage or delivery of municipal and industrial water supplies from federal projects;

--requiring the General Services Administration, in consultation with affected agencies, to establish water conservation goals and standards in Federal buildings and facilities;

--encouraging water conservation in the agricultural assistance programs of the Department of Agriculture and the Department of the Interior which affect water consumption in water-short areas; and

--requesting all Federal agencies to examine their programs and policies so that they can implement appropriate measures to increase water conservation and re-use.

A directive to the Secretary of the Interior to improve the implementation of irrigation repayment and water service contract procedures under existing authorities of the Bureau of Reclamation. The Secretary will:

--require that new and renegotiated contracts include provisions for recalculation and renegotiation of water rates every five

years. This will replace the previous practice of 40-year contracts which often do not reflect inflation and thus do not meet the beneficiaries' repayment obligations;

--under existing authority add provisions to recover operation and maintenance costs when existing contracts are renegotiated, or earlier where existing contracts have adjustment clauses;

--more precisely calculate and implement the "ability to pay" provision in existing law which governs recovery of a portion of project capital costs.

Preparation of legislation to allow States the option of requiring higher prices for municipal and industrial water supplies from Federal projects in order to promote conservation, provided that State revenues in excess of Federal costs would be returned to municipalities or other public water supply entities for use in water conservation or rehabilitation of water supply systems.

#### Federal-State Cooperation

States must be the focal point for water resource management. The water reforms are based on this guiding principle. Therefore, I am taking several initiatives to strengthen Federal-State relations in the water policy area and to develop a new, creative partnership. In addition to proposing that States increase their roles and responsibilities in water resources development through cost-sharing, the actions I am taking include:

Proposing a substantial increase from \$3 million to \$25 million annually in the funding of State water planning under the existing 50%-50% matching program administered by the Water Resources Council. State water planning would integrate water management and implementation programs which emphasize water conservation and which are tailored to each State's needs including assessment of water delivery system rehabilitation needs and development of programs to protect and manage groundwater and instream flows.

Preparation of legislation to provide \$25 million annually in 50%-50% matching grant assistance to States to implement water conservation technical assistance programs. These funds could be passed through to counties and cities for use in urban or rural water conservation programs. This program will be administered by the Water Resources Council in conjunction with matching grants for water resources planning.

Working with State Governors to create a Task Force of Federal, State, county, city and other local officials to continue to address water-related problems. The administrative actions and

legislative proposals in this Message are designed to initiate sound water management policy at the national level. However, the Federal government must work closely with the States, and with local governments as well, to continue identifying and examining water-related problems and to help implement the initiatives I am announcing today. This Task Force will be a continuing guide as we implement the water policy reforms and will ensure that the State and local role in our nation's water policy is constant and meaningful.

An instruction to Federal agencies to work promptly and expeditiously to inventory and quantify Federal reserved and Indian water rights. In several areas of the country, States have been unable to allocate water because these rights have not been determined. This quantification effort should focus first on high priority areas, should involve close consultation with the States and water users and should emphasize negotiation rather than litigation wherever possible.

#### Environmental Protection

Water is a basic requirement for human survival, is necessary for economic growth and prosperity, and is fundamental to protecting the natural environment. Existing environmental statutes relating to water and water projects generally are adequate, but these laws must be consistently applied and effectively enforced to achieve their purposes. Sensitivity to environmental protection must be an important aspect of all water-related planning and management decisions. I am particularly concerned about the need to improve the protection of instream flows and to evolve careful management of our nation's precious groundwater supplies, which are threatened by depletion and contamination.

My initiatives in this area include the following:

A directive to the Secretary of the Interior and other Federal agency heads to implement vigorously the Fish and Wildlife Coordination Act, the Historic Preservation Act and other environmental statutes. Federal agencies will prepare formal implementing procedures for the Fish and Wildlife Coordination Act and other statutes where appropriate. Affected agencies will prepare reports on compliance with environmental statutes on a project-by-project basis for inclusion in annual submissions to the Office of Management and Budget.

A directive to agency heads requiring them to include designated funds for environmental mitigation in water project appropriation requests to provide for concurrent and proportionate expenditure of mitigation funds.

Accelerated implementation of Executive Order No. 11988 on flood plain management. This Order requires agencies to protect flood plains and to reduce risks of flood losses by not conducting, supporting or allowing actions in flood plains unless there are no practicable alternatives. Agency implementation is behind schedule and must be expedited.

A directive to the Secretaries of Army, Commerce, Housing and Urban Development and Interior to help reduce flood damages through acquisition of flood-prone land and property, where consistent with primary program purposes.

A directive to the Secretary of Agriculture to encourage more effective soil and water conservation through watershed programs of the Soil Conservation Service by:

--working with the Fish and Wildlife Service to apply fully the recently-adopted stream channel modification guidelines;

--encouraging accelerated land treatment measures prior to funding of structural measures on watershed projects, and making appropriate land treatment measures eligible for Federal cost-sharing;

--establishing periodic post-project monitoring to ensure implementation of land treatment and operation and maintenance activities specified in the work plan and to provide information helpful in improving the design of future projects.

A directive to Federal agency heads to provide increased cooperation with States and leadership in maintaining instream flows and protecting groundwater through joint assessment of needs, increased assistance in the gathering and sharing of data, appropriate design and operation of Federal water facilities, and other means. I also call upon the Governors and the Congress to work with Federal agencies to protect the fish and wildlife and other values associated with adequate instream flows. New and existing projects should be planned and operated to protect instream flows, consistent with State law and in close consultation with States. Where prior commitments and economic feasibility permit, amendments to authorizing statutes should be sought in order to provide for streamflow maintenance.

#### Conclusion

These initiatives establish the goals and the framework for water policy reform. They do so without impinging on the rights of States and by

calling for a closer partnership among the Federal, State, county, city and other local levels of government. I want to work with the Congress, State and local governments and the public to implement this policy. Together, we can protect and manage our nation's water resources, putting water to use for society's benefit, preserving our rivers and streams for future generations of Americans, and averting critical water shortages in the future through adequate supply, conservation and wise planning.



**WATER POLICY CONFERENCE**

Sponsored By  
Powder River Basin Resource Council

Casper, Wyoming  
May 19 and 20, 1978

**I. GROUND-WATER RESOLUTIONS**

1. Each state should vigorously pursue and enforce plugging of test holes with a full-length column of cement to maintain the integrity of the aquifer.
2. Each state should create and maintain a complete ground-water inventory and data base for the following reasons:
  - a) water is our most valuable resource;
  - b) many new demands are affecting ground water;
  - c) ground water and surface water are often tied together; and
  - d) data should be gathered before decisions are required by state officials on ground-water matters.
3. Each state should develop capabilities to identify in advance those instances where ground water use will exceed recharge.
4. Each state should develop information and criteria to predict and control the effects of mine dewatering upon water tables, water quality and stream flows.
5. Approval of individual in situ underground mineral development should be conditioned upon proof that ground water will not be degraded. States should develop standards and guidelines for required permits for such in situ projects.

**II. IN-STREAM FLOWS**

1. While recognizing the realities of present economic needs, water resource decisions should require designation of stream flows needed for unforeseen future public uses, as well as those recognized benefits such as fish and wildlife, recreation, esthetics, maintenance of ground-water resources and stock-water needs.
2. Resolved: that the states should provide for appropriation and adjudication for in-stream flows, without the requirement for a diversion, but within the present prior appropriations system.
3. Resolved: that existing and future water projects are planned and operated to maintain healthy aquatic ecosystems.

**III. INDIAN WATER RIGHTS**

1. **WHEREAS, this conference recognizes that Indian tribes have certain claims to water rights; and**

**WHEREAS, further recognizes that resolutions of the extent of these rights is essential if Indian tribes and states are to adequately address future development.**

**THEREFORE, this conference hereby recommends the following:**

- a) **A means of communication should be developed which will enhance resolution of Indian water rights conflicts with mutual respect for all parties' interests and claims; and**
- b) **That course of action that will allow the best resolution of water rights claims would be through compacts negotiated between Indian tribes and state governments, rather than in the legislative or legal arenas.**