

## NORTH DAKOTA STATE WATER COMMISSION

## REGISTER

ATTENDANCE AT State Water Commission Meeting  
 DATE April 2-3, 1980 PLACE Loc. 101, Bonanza Farm  
Bismarck, N. Dakota  
 PROJECT NO. \_\_\_\_\_

| Your Name        | Your Address   | Who do you Represent?<br>(Or Occupation)                         |
|------------------|--|--|
| LAURIE McMEETY   | MINOT  | N.D. WATER USERS   |
| Bill Guy         | Bismarck   | Basin Electric   |
| greg tursoak     | Bismarck   | Tribune  |
| Steve Kargin     | KFYR-TV  | Bismarck   |
| Ruben Hummel     | mot. N. Dak.   | Legislative director<br>member of N. Dak. Natural Resources Ass. |
| Colleen Williams | POB 2379, BIS  | Recorder   |
| Lewis Martin     | PO Box 640<br>Belcourt, N. D.  | Director of Tribal Planning<br>Turtle Mt. Indian Reservation     |
| Bob Lettergrass  | Tribal Planning<br>Box 640<br>Belcourt, N D                              | Turtle mt. Band of Chippewa                                      |
| Donald Morgan    | Bureau of Indian Affairs<br>Aberdeen area office<br>Aberdeen, S.D. 57401 | Bureau of Indian Affairs   |
| Karen Jones      | Office of Natural Resources<br>Fort Berthold<br>New Town                 | Three Affiliated Tribes  |
| ROGER W. THOMAS  | Box 549<br>ABERDEEN, S D 57401   | Solicitors office<br>Dept. of Interior                           |
| Raymond Franklin | Box 18F<br>Belcourt, N. Dak 58316  | Bureau of Indian Affairs   |
| Fred E Dillio    | Box 698<br>Belcourt, N D 58316   | Supt. - BIA  |
| KENNETH LOVELAND | Interstate Engineering<br>P.O. Box 630<br>Jamestown, N.D. 58401          | Turtle mt. Band of Chippewa<br>R.W. Eng.                         |
| RANDY POPE       | INTERSTATE ENERGO<br>Box 630<br>JAMESTOWN, N.D. 58401                    | TURTLEMOUNTAIN BAND OF<br>CHIPPEWA INDIANS - R.W. ENGR           |

## NORTH DAKOTA STATE WATER COMMISSION

## REGISTER

ATTENDANCE AT State Water Commission MtgDATE April 2-3, 1980 PLACE Accepted Conference Rooms  
Bismarck, N.D.

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

| Your Name         | Your Address                             | Who do you Represent?<br>(Or Occupation) |
|-------------------|--|--|
| De Baldwin        | Bismarck                                 | State Water Comm                         |
| Leslie Wilkie     | Belcourt                                 | Jurtle Mt. Echo II                       |
| Clitus Potvin     | Belcourt                                 | T.M. TRIBE                               |
| Juanita Kelprey   | Bismarck                                 | N.D. Ind. Aff. Comm.                     |
| Jim Eastgate      | "  | Burleigh Co. WMB                         |
| Daniel J. Holter  | Hatton N.D.                              | traill Co. R. Bd.                        |
| Charles E. Mumm   | Bismarck                                 | USOA - SCS                               |
| Robert R. Doon    | Felice, N.D.                             | USOA SCS                                 |
| Neal McFlure      | Hawford<br>1815 - Bismarck               | N.D. Rural Water Assoc                   |
| Naanok Kelling    | P.O. Box 458<br>West Fargo<br>N.D. 58078 | Highland Ct.<br>DRAIN Bd.                |
| Leander Weaver    | Fairmount<br>N.D.                        | "  |
| Burrig Stone      | Bosmy N. Dak.                            | "  |
| Jorgen Haugen     | McLeod N. Dak.                           | "  |
| James Iwomy       | Wahpeton N.D.                            | "  |
| Melford Gudvangen | M <sup>o</sup> Hugo, ND                  | Williams Co. WMB                         |

**NORTH DAKOTA STATE WATER COMMISSION  
REGISTER**

ATTENDANCE AT \_\_\_\_\_  
 DATE \_\_\_\_\_ PLACE \_\_\_\_\_  
 \_\_\_\_\_ PROJECT NO. \_\_\_\_\_

| Your Name         | Your Address              | Who do you Represent?<br>(Or Occupation)               |
|-------------------|---------------------------|--|
| Cathy Lou Schmitt | Box 476<br>Williston N.D. | Wms. County W Mngt<br>Drain Bd.                        |
| Dale Kirkwood     | TIOGA, N.D.               | Wmo. Co. WMD   |
| LAURIE McMEYER    | Box 1934 - MINOT          | N.D. WATER USERS                                       |
| Karen J. Jorg     | Box 460 NewTown           | Three Affiliated Tribes<br>office of Natural Resources |
| Jeff Brenner      | P.O. Box 814, Bronson     | Associated Press                                       |
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## MINUTES

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

April 2 and 3, 1980

The North Dakota State Water Commission held a meeting in the Vocational Education Conference Room of the State Office Building, Bismarck, North Dakota, on April 2 and 3, 1980. Governor-Chairman, Arthur A. Link, called the meeting to order at 9:45 a.m. on April 2, 1980, and requested Secretary Vernon Fahy to present the agenda.

MEMBERS PRESENT:

Arthur A. Link, Governor-Chairman  
Richard Gallagher, Vice Chairman, Mandan  
Alvin Kramer, Member from Minot  
Gordon Gray, Member from Valley City  
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  
Approximately 35 persons interested in various agenda items

The attendance register is on file in the State Water Commission offices (filed with official copy of minutes).

The proceedings of the meeting were recorded to assist in compilation of the minutes.

AMENDMENT TO MINUTES  
OF DECEMBER 12, 1979  
MEETING

It was requested by Commissioner Wilhelm that the portion of the December 12, 1979 meeting relating to the discussion that took place regarding the expenditures for

Secretary Fahy's involvement as President of the National Water Resources Association be reopened for discussion, as was agreed on by the Commission members at their February 29, 1980 meeting.

Commissioner Wilhelm requested that for the sake of simplicity, all of the material pertaining to the matter in the December 12, 1979 minutes be deleted, and the following be inserted:

**DISCUSSION CONCERNING  
NATIONAL WATER RESOURCES  
ASSOCIATION**

River Basin Commission. He stated the positions would impose additional time and travel costs on the Water Commission budget. He felt these were justified in that he was "representing the wishes of the Water Commission while carrying out the functions of another office on a national and regional scale".

Secretary Fahy raised the topic of his concurrent Chairmanship of the National Water Resources Association and Vice-Chairmanship of the Missouri

Commissioner Wilhelm indicated she had no problems with the Missouri River Basin Commission Vice-Chairmanship. She did register her concern that the National Water Resources Association is a private organization representing special interests which are not consistent with the interests of a broad segment of the North Dakota public. She questioned the propriety of the use of North Dakota monies for such participation. Following questions by Governor Link, Secretary Fahy indicated he would not speak officially for the Water Commission in his capacity as Chairman of the National Water Resources Association. Several Commissioners indicated support for the use of funds by Secretary Fahy for the activities under discussion. Governor Link indicated there was a legitimate basis for Commissioner Wilhelm's concern, and he also complimented Secretary Fahy for his sensitivity to the role he would be assuming. Governor Link suggested the Commission be kept informed by memo of National Water Resources Association activities and policies.

It was moved by Commissioner Wilhelm and seconded by Commissioner Gallagher that the material relative to the discussion concerning the National Water Resources Association in the minutes of December 12, 1979 be deleted and the substitute material as read be inserted. All members voted aye; the motion carried.

It was moved by Commissioner Gallagher, seconded by Commissioner Wilhelm, and unanimously carried, that the minutes of December 12, 1979 be approved as amended.

**CONSIDERATION OF  
MINUTES OF FEBRUARY  
29, 1980 MEETING -  
APPROVED**

Secretary Fahy reviewed and updated the Commission members on items discussed at the February 29, 1980 meeting held in Bismarck, North Dakota. There were no corrections or additions to the minutes as presented.

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It was moved by Commissioner Kramer, seconded by Commissioner Just, and unanimously carried, that the minutes of the February 29, 1980 meeting be approved.

PRESENTATION OF ANALYSIS  
OF ENGLEVALE AQUIFER STUDY

Milton Lindvig and Royce Cline presented a very detailed discussion relative to the Englevale Aquifer. Mr. Lindvig stated that this discussion can be used as an example of the way many of the other aquifers under development are being handled. They discussed, through use of maps, charts and cross-sections, types of data that are needed for an aquifer study, current data collection, types of procedures that are used in interpreting these kinds of data, and some of the objectives to be accomplished in providing information on the impacts of the development that occurs in an area.

Mr. Lindvig indicated that the first development in the Englevale Aquifer occurred in 1958. Since that time, interest has been increasing, and in 1979, approximately 7,900 acres were under irrigation. Water level records were begun in 1968 and more observation wells were installed in that aquifer in 1974 when the county ground-water studies were undertaken in Ransom and Sargent Counties. There are now 52 observation wells monitoring the water levels in the aquifer.

Other information that is being collected is the water use information from the individual operators so that it can be determined how much water was pumped to cause the particular water level response that was observed in the observation well during that particular operating season. With these data, interpretations can be made as to the impacts that can result from additional development and the greater water use by the individual operators. Mr. Lindvig indicated that for the most part, the operators have been granted 18 inches of water per acre, however, that is not the normal use. In a normal year, an operator uses between 10 inches and 14 inches of water.

Royce Cline, who is developing a predictive model of the Englevale Aquifer which will more precisely define some of the interpretations that have been made in the allocations of water to date, explained in a very technical, detailed manner the characteristics of the aquifer, the data that has been accumulated to date, and present and future possible development of the aquifer.

Discussion then pursued on the possibilities of establishing irrigation districts. Secretary Fahy indicated that the idea is very favorable but that one of the problems of establishing a district in a partially developed area is "how do you now go back after all the investments have been made individually in the area and make a collective system out of the area and properly reimburse those who made the investment?" He noted that this question has been posed to the North Dakota State University Extension Service for a study. He

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said that this study is worthy of expenditure and would recommend to the Water Commission to financially participate to get such a study underway. Because of the interest generated by the Commission members to get such a study underway, Governor Link appointed Commissioners Gallagher and Just to work with the staff in this endeavor.

After a lengthy discussion, Governor Link commended and thanked the staff for a very informative and valuable presentation.

The meeting was recessed at 12:30 p.m.; reconvened at 1:40 p.m.

PRESENTATION BY REPRESENTATIVES  
OF THE TURTLE MOUNTAIN BAND OF  
CHIPPEWA INDIANS REQUESTING  
MORATORIUM ON ISSUING WATER  
PERMITS FROM SHELL VALLEY AQUIFER  
(SWC Project No. 1400)

Mr. Vance Gillette, Attorney representing the Turtle Mountain Band of Chippewa Indians, recalled that last fall when he appeared before the Water Commission to discuss public participation, the Commission members encouraged public participation and that is why his

delegation requested this audience before the Commission.

Mr. Gillette indicated that the Turtle Mountain Tribal Council has received \$4 million from the United States Congress to develop a rural water system with an additional \$2 - \$4 million to be appropriated. The rural water system would benefit approximately 1,200 families, utilizing water from the Shell Valley Aquifer as the main source of supply. Mr. Gillette expressed concern that there is no recent available use data on the Shell Valley Aquifer and he said that the Water Commission has been issuing water permits to divert water from the aquifer with full knowledge of plans to develop the rural water project, and that the issuing of water permits might jeopardize the project.

Therefore, the Tribal Council has requested that the State Water Commission declare a moratorium on the issuing of water permits from the Shell Valley Aquifer.

Mr. Gillette indicated that the Turtle Mountain Reservation was created on June 3, 1884. That establishes the priority date of water rights for the reservation. This was upheld in the case of *Winters v. United States* in 1908, stating: "If the United States by treaty, act of Congress, or executive order reserves a portion of the public domain for a federal purpose which will ultimately require water, and if at the same time the government intends to reserve unappropriated water for that purpose, then sufficient water to fulfill that purpose is reserved from appropriation by private users."

Cletus Poitra, representing the Turtle Mountain Water Commission, indicated that the rural water system project has been in the planning stages for approximately 10-12 years and is a system

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that will distribute good quality water throughout the reservation. Studies and tests have indicated that the water in the Turtle Mountains is substandard, stating that approximately 60 percent of the domestic wells are substandard and the others are barely adequate in quality and quantity to serve the people.

Mr. Poitra expressed his concern whether "the Indian people have some sort of priority to that water for their domestic use, or is the State's priority for irrigation"? He said that they do have a permit with the State at this time for 350 acre-feet of water from the Shell Valley Aquifer for a municipal water supply system which serves approximately 3,000 people in the city of Belcourt. He indicated that they have no way of expanding that particular water permit where the wells are now located. To satisfy the rural water system would require an additional 1,000 acre-feet of water annually to serve an additional 1,500 new homes and approximately 7,000 - 8,000 people.

He requested that the State Water Commission seriously consider the Indian people's domestic needs when issuing further water permits for irrigation from the Shell Valley Aquifer, and prior to issuing any further permits, the Indian people be allowed to identify their needs and locate their wells. Plans for the rural water system project are that test drilling would begin within the next two months and would be completed by mid-summer. Mr. Poitra did indicate that the funds which have been appropriated for the project must be expended within the four-year period.

Mr. Poitra questioned whether or not the Tribe needs a water permit for this additional water if the source is identified on tribal and trust lands, and whether or not a water permit application to the state would be a waiver of the Winters Doctrine.

Mr. Poitra stated that the Tribe will be more than willing to share with the state any information obtained from test drilling and will be more than willing to apply for a water permit after they have located an adequate source of supply, provided that their rights will not be waived by such a permit. After they have completed their test drilling and find out where their wells can be located, Mr. Poitra related that the Tribe wants to work very closely with the state to assure that the aquifer is managed properly.

In a letter to Mr. Poitra dated February 14, 1980, a hydrologist of the State Water Commission stated the Commission employs a sustained yield management policy in dealing with all aquifers in the state. Sustained yield refers to the amount of water withdrawn from an aquifer which can be replaced on a perennial basis by snowmelt, rainfall, and stream recharge. This recharge varies from year to year depending on the amount of precipitation, but the aquifer is managed so that there will be no continuing long-term water level declines. Ground-water permits issued to date represent only a small fraction of the total amount of water in the system. The major concern of the State Water Commission is that

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the aquifer be developed in the best manner possible so that interference will not result from wells too closely spaced, or that too much water will be withdrawn from any particular area. He stated that the 1979 water use was about 430 acre-feet of water and in a study conducted by the city of Belcourt, there is approximately 5,000 acre-feet of water per square mile in storage in the aquifer and that about 2,500 acre-feet of water per square mile may be available to properly constructed wells.

In response to a question whether or not the staff is in a position to recommend further permits for irrigation, Mr. Lindvig indicated that there would probably be no recommendations made until after this operating season for further permits for irrigation.

Vance Gillette indicated that the Solicitor's Office has contacted the State Water Commission and has requested that a Notice be inserted as a condition on water permits granted, which states:

Notice is hereby given that all rights to the use of water granted by this permit are subject and subordinate to the reserved water rights of the Turtle Mountain Band of Chippewa Indians of the Turtle Mountain Reservation and that the use of water granted by this permit must be curtailed, if necessary, to allow utilization of the Indian reserved water rights.

Secretary Fahy replied that recognition of prior rights is a standard condition placed on all water permits granted by the State Engineer.

Mr. Roger Thomas, Attorney, from the Solicitor's Office, Department of the Interior in Aberdeen, South Dakota, briefly discussed the federal water rights for Indians and indicated that the Department of the Interior does not feel it is necessary to apply for a water permit. But on the other hand, he said they feel they should have a water permit so that the state would have notice as to the amounts of water being withdrawn from the aquifer on the reservation. Mr. Thomas expressed concern if an application would be a waiver of the Winters Doctrine and stated that if an application is made that an understanding between the state and the Tribe would have to be made so that it would not waive 1) the sovereign immunity of the Tribe; and 2) a waiver of the Tribe's reserved water rights. He noted this is part of the hesitancy of the Tribe for applying for a water permit. Mr. Thomas indicated that his office has sent previous correspondence to the State Engineer's office objecting to the granting of water permits from the Shell Valley Aquifer, and their objection was based on prior federal reserved water rights of the Indian reservations, which were essentially established by treaty. In the State's Constitution, there is a clause which states that the Indian lands shall remain under the jurisdiction of Congress. Congress has saw fit to allow, especially in the Turtle Mountains, the Tribe to purchase other lands near the reservation and after that purchase has been made that the reserved federal water rights apply to those lands.

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Mr. Dwyer then asked why the Tribe applied for a water permit for the city of Belcourt in 1975 since it had purchased 10 acres for its wells for that permit.

Mr. Thomas responded that it was a matter of comity.

Mr. Dwyer then asked Mr. Thomas if his position was that a Winters reserved water right applied to any land purchased by the Tribe, regardless of the time of purchase.

Mr. Thomas responded in the affirmative.

Mr. Thomas indicated that the purpose of their appearance today is to file a letter as the official position of the Bureau of Indian Affairs objecting to the issuing of future water permits which may affect the Turtle Mountain Rural Water Project, and to give notice to the State Water Commission of the proposed Turtle Mountain Rural Water Project.

Secretary Fahy explained that in order to maintain overall aquifer management, it is necessary to have all of the potential withdrawals from the aquifer and a permit would certainly help to accomplish this. He also stated that because of the lack of financial capabilities and the lack of staff to do a predictive model study on each aquifer, the only way to acquire necessary knowledge of the aquifer is by granting strategic permits and then monitor those production wells to determine their actual impact on the aquifer. He indicated that he hoped nothing would be done in terms of the Shell Valley Aquifer which would preclude gaining the knowledge that is necessary for the analysis of the aquifer. Secretary Fahy said that a moratorium on the issuing of further water permits may bring to a complete halt the study of the water yielding capabilities for that aquifer.

Mr. Randy Pope, representing Interstate Engineers, indicated that approximately 1,500 new homes will be added with this proposed system. The feasibility study that was done by the Tribe and the Indian Health Service in 1974 and 1975 estimated the number of homes at 1,000, which represents substantial growth. Based on the other rural systems, it is anticipated that approximately 500 acre-feet of water would be required at a maximum rate of withdrawal of 1,000 gallons per minute annually. Mr. Pope did indicate that probably the use per users is going to be larger because the family sizes are larger estimating between 150 and 200 gallons per household per day.

Vance Gillette expressed his concern of not including Indian representation for public participation on the Advisory Committee for the State Comprehensive Plan.

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Secretary Fahy replied that the proposal is to develop watersheds and do the planning on a watershed basis. Within the watershed, there will be involvement of all of the groups within the watershed, but it will be done on a component basis, watershed by watershed. It is now done by county boundary lines, which does not manage water at all.

In discussion of the proposal and the request for a moratorium on issuing further water permits, it was suggested that the Legal Counsel for the Water Commission and the Legal Counsel for the Tribe develop a proposal which will recognize the needs and concerns expressed. A recommendation shall be made to the Water Commission at its next meeting.

Commissioner Gallagher suggested making a reservation to the state for the waters for beneficial utilization in the future for domestic purposes.

It was moved by Commissioner Just, seconded by Commissioner Wilhelm, and unanimously carried, that the Commission's Legal Counsel be directed to meet with the Turtle Mountain Band of Chippewa Indians and develop a proposal which will recognize the concern and needs of the Turtle Mountain Indians as presented to the State Water Commission on April 2, 1980. Factors such as jurisdiction and immunity of the Turtle Mountain Indians and authority of the State Water Commission to reserve and set aside waters for beneficial utilization in the future shall be taken into account in the development of this proposal. A recommendation shall be made to the State Water Commission at its next meeting.

DISCUSSION OF WATER  
MANAGEMENT DISTRICTS  
BILL - HCR 3022

Mike Dwyer, Legal Counsel for the State Water Commission, made a detailed presentation of draft legislation relating to the creation of water resource districts

in accordance with hydrologic patterns and the election of water resource district managers. Mr. Dwyer explained that the proposal is primarily a reorganization of existing water management districts, since the powers and duties of existing water management districts could be transferred to the new water resource districts.

The second draft of the bill and supporting testimony is attached hereto as APPENDIX "A".

Mr. Dwyer indicated that the Advisory Committee developed a water management policy which includes a provision that encourages landowners to retain water on their land to the maximum extent possible in accordance with sound water management practices.

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Commissioner Gallagher suggested that relative to transfer of assets, many districts have easements which are a part of flood projects, and he felt they should be transferred to the watershed in which they are located without any costs assigned to them.

Mr. Dwyer replied that he would present this suggestion to the Advisory Committee.

Mr. Jim Eastgate, a member of the Advisory Committee, recommended to the Water Commission members that they attend the water management district area workshops in their respective areas when they are held. The following workshops are scheduled: April 7 in Minot; April 8 in Lisbon; and April 9 in Bismarck, all beginning at 10:00 a.m.

PRESENTATION BY  
RUBEN HUMMEL, MOTT, ND

Mr. Ruben Hummel of Mott, North Dakota, appeared before the Water Commission expressing concern about funding for the proposed water resource districts. Mr. Dwyer did reply that there are provisions in the bill draft which would provide funding.

Mr. Hummel also restated his concern relative to state funds being used to support "private" groups and urged the Water Commission to become a leader in recommending irrigation law revision rather than waiting to see what Congress will do with various proposals.

Mr. Hummel also asked the Commission to consider further the resolution he had presented at the last meeting concerning financial participation in various organizations. The text of the resolution is in the last minutes and copies were mailed to each Commissioner.

Several of the Commission members emphasized the numerous occasions that North Dakota has solicited advice and information from the National Water Resources Association and that this organization has been particularly helpful in keeping the state abreast of federal legislation which is being proposed.

Considerable discussion ensued relative to Mr. Hummel's comments and the Commission focused its attention on the suggestion to forward a position on acreage limitations to our congressional delegation which would represent the formal state position.

Following further discussion, it was moved by Commissioner Wilhelm, seconded by Commissioner Gallagher, and unanimously carried, that the North Dakota State Water Commission support acreage limitation revision of the Reclamation Act of 1902

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to reflect changes in modern farming and irrigation practices. The North Dakota State Water Commission supports increasing the limitation on acreage eligible to receive waters from federal reclamation projects from 160 acres to 480 acres per individual not to exceed 960 acres per family farm.

The meeting was recessed at 6:15 p.m.; reconvened at 11:00 a.m. on April 3, 1980.

CONSIDERATION OF REQUEST FROM  
RICHLAND COUNTY DRAIN BOARD  
FOR STATE WATER COMMISSION  
FINANCIAL PARTICIPATION IN A  
DROP STRUCTURE ON RICHLAND  
COUNTY DRAIN NO. 2  
(SWC Project No. 1176)

Secretary Fahy indicated that a new policy had been initiated requiring local units of government to appear before the Water Commission to support financial requests for drainage and related projects, and to highlight for the local units of government the concerns that the Water Commission has towards drainage.

Mr. Duane Breitling was appearing on behalf of the Richland County Drain Board to request financial assistance in the replacement of a drop structure on Richland County Drain No. 2.

Mr. Breitling explained the history of the drain indicating that Richland County Drain No. 2 was first constructed in 1904. In 1959, a project was undertaken to build a drop structure which would substantially reduce the velocities and also control erosion that was occurring at the outlet of the drain. The erosion was causing a great deal of problems with the adjoining property owners and the sediment was being washed into the Wild Rice River. The location of the proposed construction was approximately one mile north and three miles east of Colfax, at a point where Drain No. 2 outlets into the Wild Rice River. The existing drop structure that was constructed in 1959, is inadequate and gully erosion has occurred around the endwalls. Measures have been taken in an attempt to stop the erosion, however, these measures have been unsuccessful. Preliminary design plans have been completed by the Soil Conservation Service and an environmental evaluation has been made by the SCS which determined that the project will not cause a significant local, regional, or national impact on the environment.

Mr. Breitling indicated that the Richland County Drain Board has requested financial assistance from the Soil Conservation Service and that the SCS will finance 75 percent of the construction costs of the project. The local sponsor, the Richland County Drain Board, will be responsible for the remaining 25 percent of the costs associated with construction, plus all of the costs associated with land

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rights. The Drain Board's share of construction costs has been estimated at \$60,534.

Mr. Chuck Mumma of the Soil Conservation Service explained how his agency becomes involved in a project such as this, and stated that this project does have priority under the Lake Agassiz RC&D program. He indicated that the SCS would contribute \$181,000 towards the project and would provide the required engineering and technical assistance.

Mr. Robert Boone from the Soil Conservation Service in Fargo explained the proposed project. Using a series of slides, he showed the condition of the existing structure.

Other members of the Richland County Drain Board in attendance were introduced: Leander Wawers, Chairman, Bev Stone and Jorgen Haugen.

Secretary Fahy stated that under present criteria used by the State Water Commission, 40 percent of the construction costs would be eligible for cost sharing and recommended that the Water Commission participate in 40 percent of the actual construction costs, not to exceed \$25,000.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the Water Commission assist in the cost sharing for the replacement of a drop structure in the Richland County Drain No. 2, in an amount not to exceed \$25,000, subject to the availability of funds.

Secretary Fahy presented five requests for cost participation for the following projects:

TRAILL COUNTY DRAIN NO. 48  
(SWC Project No. 1719)

Cary Backstrand, Drainage Engineer for the State Water Commission, noted that in February, 1978, the State Water Commission received an application for a drainage permit from the Traill County Drain Board. The application has been approved by both the State Engineer and the Traill County Water Management Board. In January, 1980, the Traill County Drain Board requested cost participation from the State Water Commission.

The State Water Commission staff has reviewed the plans and cost estimates prepared by the Soil Conservation Service and determined that the plans provide adequate channelization and show the project will not adversely affect lands of lower proprietors. The total cost of the project is estimated at \$156,100. The Traill County Drain Board has requested that the Water Commission consider financial assistance for 40 percent of the eligible costs amounting to \$52,450.

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Mr. Dave Holter, Chairman of the Traill County Drain Board, answered several questions of Commissioners relative to Traill County Drain No. 48 requesting support for the project and for financial assistance.

It was recommended by Secretary Fahy that the Water Commission participate in this project in an amount not to exceed \$52,450, contingent upon the availability of funds, the inclusion of adequate controls to prevent downstream damages and a successful vote of the assessed area.

GRAND FORKS-TRAILL COUNTY  
DRAIN NO. 47  
(SWC Project No. 1722)

Cary Backstrand stated that a request has been received from the Joint Board of Drainage Commissioners from Grand Forks and Traill Counties to participate

in the construction of Drain No. 47. This drain begins in Grand Forks County and outlets into the north branch of the Goose River in Traill County. The project consists of two separate channels. Both channels outlet into the north branch of the Goose River at separate locations. The application to drain was approved by the Traill County Water Management District in November, 1979 and the project was determined to be of statewide significance, therefore, necessitating approval by the State Engineer, which was granted on December 18, 1979.

The construction plans were prepared by the Soil Conservation Service. The staff's review of the plans indicate that the design complies with sound engineering practices. The estimated cost of the project is \$418,000. Mr. Backstrand indicated that this project is eligible under present Commission criteria for 40 percent cost sharing of eligible items, which would amount to \$121,270.

Mr. Dave Holter, Chairman of the Joint Board, stated that the project would benefit some 7,000 acres on 40 farm units in Grand Forks County, and 1,950 acres on 12 farm units in Traill County. He indicated that the drain has not been established, pursuant to Section 61-21, however, the Joint Board will call for an election pursuant to Section 61-21 after the Water Commission has acted on their request for cost participation. Mr. Holter requested the Commission's favorable consideration of this project and indicated that this project would not adversely affect lands of downstream landowners.

Secretary Fahy indicated that this project is eligible under present State Water Commission criteria for 40 percent cost sharing in an amount of \$121,270 and recommended favorable approval contingent upon the availability of funds, the inclusion of adequate controls to prevent downstream damages, and the successful vote of the assessed area.

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NELSON COUNTY DRAIN NO. 4  
(LAKOTA DRAIN)  
(SWC Project No. 1557)

Mr. Backstrand stated that a request has been received from the Nelson County Water Management District for cost sharing by the State Water Commission

in the construction of Nelson County Drain No. 4, also known as Lakota Drain. The area that will be drained by the proposed project is relatively flat, 25-foot drop in approximately three miles, and has numerous depressions. The cost estimate for the project is \$80,000. A review of the project indicates agricultural land would be the primary beneficiary of this project, however, the city of Lakota will also derive some benefits. He indicated that this project is eligible under Commission criteria for 40 percent of eligible items, which would amount to \$31,000.

Mr. Ben Varnson, Chairman of the Nelson County Water Management District, introduced Richard Morken and Miles Ophaug as the other members of the Board. Mr. Varnson requested favorable consideration of this project by the Commission and said that a public hearing was held on March 6, 1980 and on the same day the water management district conducted a public hearing on the application to drain. A final determination by the State Engineer has not been made. The vote was tallied indicating approximately 80 percent of those voting favored the construction of the drain. The Board also determined that the proposed project will not cost more than the amount of benefits to be derived, therefore, the Board ordered the establishment of the drain.

It was recommended by the State Engineer that the Water Commission honor this request and participate in 40 percent of the eligible costs in an amount not to exceed \$31,000, contingent upon the availability of funds, the inclusion of adequate controls to prevent downstream damages, as well as obtaining a drainage permit.

ENTERPRISE DRAIN NO. 1  
(NELSON COUNTY)  
(SWC Project No. 1688)

Cary Backstrand indicated that on March 16, 1978, the State Water Commission approved cost participation for the construction of the Enterprise Drain in an amount not to exceed \$12,660.

Mr. Backstrand indicated that the original cost for this project was \$31,647. Because of higher costs than anticipated, a \$5,653 cost overrun has resulted. The Nelson County Water Management District has requested that the Water Commission consider increasing their cost participation. Mr. Backstrand indicated that 40 percent of the overrun costs would be \$2,260.

Secretary Fahy requested that the Commission approve additional funding for this project not to exceed \$2,260, contingent upon the availability of funds.

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TIOGA DRAIN  
 (WILLIAMS COUNTY)  
 (SWC Project No. 1640)

Cary Backstrand indicated that at the request of the Williams County Water Management District, the Water Commission conducted a preliminary engineering investigation of a drainage plan for an area west of the city of Tioga. This investigation resulted in a preliminary engineering report dated November 1978. The report indicates that slough areas west of the city fill and overflow during periods of high water resulted in flood damages within the city of Tioga.

Mr. Backstrand indicated that approximately two miles west of the city of Tioga, there is a large slough known as the Biver Slough. A channel was constructed a number of years ago that drained this slough to the east. A ditch block has been placed within this channel with a 24-inch gated pipe.

Mr. Backstrand reviewed solutions to the problem that had been developed prior to the 1978 State Water Commission investigation. One solution included a floodway channel west of the city that would allow high waters to drain south to a natural coulee. Because of problems in acquiring the necessary right of way for the floodway, the project was dropped.

The city then retained an engineering firm to make a study of the flooding problem. As a result of the study, a ditch was constructed along the south side of the railroad tracks, and a 36-inch storm sewer was installed to carry floodwaters east through the city. Control gates were installed on the culverts just west of the city. This project cost approximately \$50,000 and was completed in the fall of 1976.

In June, 1977, the State Water Commission completed a preliminary design for total drainage of the area calling for channels with bottom widths of 12-40 feet, three concrete structures, plus other structural items. The cost estimate for this project not including right of way costs or relocation of utilities was \$666,000. In July, 1978, the Williams County Water Management District requested the State Water Commission to develop new cost estimates and preliminary design based on a controlled drainage project. The preliminary engineering report, dated November, 1978, included two possible projects, both incorporating drainage controls. There were three areas that were studied: Simon Slough, Schmidt Slough, and the Biver-Mowdy Sloughs. Alternative No. 1 included channelization from all three areas at an estimated cost of \$367,000. Alternative No. 2 included channelization from the Schmidt Slough and Biver-Mowdy Sloughs only at an estimated cost of \$149,000. The State Water Commission recommended Alternative No. 1. After a number of changes requested by the Board, the latest cost estimate indicates a total cost of \$155,500.

Mr. Dale Karlgaard, Williams County Water Management District, requested that the State Water Commission participate

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financially in the project and provide technical assistance in the final design. An application for a drainage permit has been submitted which has since been declared of statewide significance and returned to the Board in accordance with the rules and regulations of the State Engineer. Mr. Karlgaard said that a vote had been taken in accordance with Section 61-21 and the vote tally indicated that approximately 90 percent of those voting were in favor of the drainage project.

Secretary Fahy indicated that this project is eligible for 40 percent cost sharing by the Commission under present criteria and recommended approval in an amount not to exceed \$55,500, contingent upon the availability of funds, the inclusion of adequate controls to prevent downstream damages and obtaining a drainage permit.

Dave Sprynczynatyk indicated that in reviewing the contract fund for the current biennium, \$400,000 had been earmarked for legal drain assistance. To date, \$265,232 has been committed or spent for legal drain assistance leaving a balance of \$134,768. He said that the total of these five requests is \$262,480.

It was moved by Commissioner Gray, seconded by Commissioner Lanz, and unanimously carried, that the Water Commission contribute 40 percent of the qualified items toward the following projects:

|                                   |          |
|-----------------------------------|----------|
| Trail County Drain No. 48         | \$52,450 |
| Nelson County Drain No. 4         | 31,000   |
| Grand Forks-Trail Drain<br>No. 47 | 121,270  |
| Tioga Drain                       | 55,500   |
| Nelson County Drain No. 1         | 2,260    |

Participation in these projects is contingent upon the inclusion of adequate controls to prevent downstream damages and the successful vote of the assessed area as well as obtaining a drainage permit. All funds are contingent upon the availability of funds, with 50 percent of the approved funding to be deferred until there is adequate assurance there will be sufficient funds in the contract fund during the current biennium.

The meeting was recessed at 12:45 p.m.; reconvened at 2:00 p.m.

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APPEARANCE BY LAVERNE JOHNSON,  
WASHBURN, NORTH DAKOTA

Mr. LaVerne Johnson from Washburn, North Dakota, requested an audience before the Water Commission to discuss flooding and water problems that he feels have been brought about by the United Power Association/Cooperative Power Association project. He said that last fall UPA/CPA was given a permit from the county to add two 30-inch culverts into a road that already had one 24-inch culvert that was running less than one-third full at the time they installed the two 30-inch culverts. UPA/CPA began pumping with five pumps which caused all three culverts to run full, thus causing flooding downstream onto Mr. Johnson's property. Mr. Johnson said that he had the flooded land surveyed by the local ASC office and the survey indicated that over 99 acres of hay and cropland had been lost due to the flooding. He said that he approached UPA/CPA and requested that they pay for damages but they indicated to him that they hadn't done anything. UPA/CPA, according to Mr. Johnson, did offer him \$10 an acre for a perpetual easement, which he refused.

Mr. Johnson also said that UPA/CPA has too much water in their mine so now they want to dig a canal from the mine down to his land. He also expressed concern that several years ago they got a permit for a well for construction purposes only, but they have continued to use this well. He inquired if they needed a meter on the well.

He expressed his concern on the permit recently granted to UPA/CPA for emergency backup water, indicating that the state law requires that all landowners within a one-mile radius of the point of diversion be notified by certified mail and that the legal notice be published for two consecutive weeks in the local county newspaper. Mr. Johnson said that a Mr. R. A. Traxel, one of his neighbors, claims that he was not notified by UPA/CPA, and he also said that the legal notice was not published in the official county newspaper, therefore, he was not notified until just a few days prior to the hearing. He also made reference to a petition which was filed at the hearing containing 300 signatures opposing the granting of this permit because of the effect it may have on the property owners wells.

He referred to a farmer living southwest of Underwood, North Dakota, claiming that when UPA/CPA was using the pump for construction that he lost the water from his well. After a complaint to the State Water Commission and pumping was stopped, the water came back. He also said that UPA/CPA did not have their permit approved by the Public Service Commission prior to construction.

Governor Link indicated that the Public Service Commission is the agency which has been designated with the responsibility to enforce the reclamation laws and suggested that Mr. Johnson contact that agency. Mr. Johnson said that he had not discussed these matters with that agency as yet.

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Secretary Fahy replied that in respect to Mr. Johnson's complaint that his neighbor was not notified, the Affidavit of Mailing would reveal the names of the landowners within a one-mile radius who had been notified and is filed in the water permit file. (The Affidavit of Mailing on file contains Mr. Traxel's name so proper notification was made.) Secretary Fahy also stated that he is aware of the fact there has been considerable dissatisfaction in many aspects of that operation. He indicated that the law does require a meter on the well. He said that the Public Service Commission has water management plan responsibility with cooperation with his agency, while their authority only extends to the limits of the mine and does not extend to downstream areas that are affected by water management.

It was suggested that Mr. Johnson file a complaint with the local water management district, and if the flooding does persist that it may be necessary to file a complaint with the States Attorney.

Governor Link thanked Mr. Johnson for appearing and expressing his concerns with the Commission and that note will be made of his concerns and the staff be instructed to communicate with North American Coal and respond to the complaints registered by Mr. Johnson.

DISCUSSION ON RURAL  
WATER INTERIM FINANCING  
PROPOSAL

Mike Dwyer stated that the proposal to provide a new method of interim financing (construction financing) for rural water systems will be the subject of discussion by the State Water Commission at its meetings until a final proposal has been developed. He indicated that for the purposes of clarity, the discussion will be divided into five parts: 1) existing system of interim (construction) financing for rural water systems; 2) proposal for new method of interim financing; 3) existing statutory authority of State Water Commission to implement the proposal for interim financing; 4) additional statutory authority needed for State Water Commission to implement proposal for interim financing; and 5) possible involvement of the Bank of North Dakota to carry out the proposal for interim financing.

Mr. Dwyer indicated that at the next meeting of the Commission, the present methods of interim financing and the proposal for the new method of interim financing for rural water systems will be discussed, and the existing statutory authority of the State Water Commission to implement this proposal and additional statutory authority which might be needed will also be discussed.

Mr. Dwyer said that if so directed by the Water Commission, he will also prepare draft legislation which would grant to the State Water Commission the necessary authority to implement the interim financing proposal.

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DISCUSSION OF NORTH DAKOTA  
FLOODPLAIN MANAGEMENT ACT  
HCR - 3016

floodplain management ordinances; to establish permissible development of floodplain and floodway areas; to provide criteria for variances; to provide for enforcement and penalties; and to require application to the national flood insurance programs in certain instances. This bill draft and supporting testimony is attached hereto as "APPENDIX "B".

Mike Dwyer discussed in detail the bill draft to require delineation of flood plains and floodways; to require local governmental units to adopt minimum

DISCUSSION OF SECTION 404  
BILL DRAFT - HCR 4012

guidelines for Section 404 are very strict and unyielding and there is general uncertainty as to whether the state should even endeavor to take over administration of Section 404. Further information and proposed bill drafts will be provided at the next State Water Commission meeting.

Mike Dwyer indicated that legislation has not been prepared at this time.

He also indicated that the federal

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

Secretary Fahy presented the water permit agenda for the Commission's consideration, attached hereto as "APPENDIX "C".

Since there were a number of applications on the agenda from the Page Aquifer, Dave Ripley, Hydrologist for the State Water Commission, presented a very detailed explanation of the aquifer system. Mr. Ripley indicated, through the use of maps and charts, that the Page Aquifer overlies the counties of Traill, Steele and Cass. He stated that there have been a total of 52 applications filed for withdrawal from this aquifer and that two-thirds of those applications were filed within a five-month period. He indicated that this is the largest area for which applications have been received at one time.

Mr. Ripley said that in early 1977, there was little data available on the aquifer when the area was started to be evaluated. There are now 36 production wells and about 50 state observation wells and about 90 to 95 percent of the wells are being monitored. He noted that there is a lot of well and pumping data which has been accumulated during the past three operating seasons providing a great deal of information about the aquifer behavior.

Mr. Ripley indicated that the water levels have been observed very closely during the past three years to determine how they are responding to the development in the area. Two basic factors are considered when interpreting water level data: 1) at the time of the stress, during the growing season, what is the behavior of the water levels; and 2) long term, from year to year, what is the nature of those water levels - are they stable or is there a steady decline year after year. About 90 wells have been measured and the average of those wells measured have indicated

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a decline of approximately two to three feet. The recharge is basically from precipitation and is basically three to four inches over the whole aquifer.

Mr. Ripley indicated that acre-foot useage for 1977 was just under 1,000 acre-feet; 1978 useage about 2,550 acre-feet; and 1979 useage approximately 2,200 acre-feet. In 1978, the operators applied six to eight inches of water; in 1979, they applied three to five inches of water per quarter. He indicated that the permit holders who have been granted a water permit have been granted 12 to 18 inches of water per quarter.

Mr. Lindvig explained that in normal years, the irrigators can take the allocation granted them and spread it over more acres; however, if there is a drought situation, there is little possibility that they will be able to do an adequate job on two quarters of land with the equipment and capture system that they have. They would have to reduce the acres they are covering in order to do a better job of irrigating. They will still be using more water but they won't be able to spread it over as many acres.

Discussion centered on water permit No. 2538 and water permit No. 2539. Water Permit No. 2538 applied for by Ralph and William Thompson, Thomas A. Thompson Trust and William J. Thompson Trust requests a total of 2,640.0 acre-feet of water to irrigate a total of 1,784.16 acres. The applicant has already been granted 810.0 acre-feet of water to irrigate 675 acres and the remainder of the original request is being held in abeyance. It is now recommended by the State Water Commission staff that the applicant be granted an additional 405 acre-feet of water to irrigate an additional 765 acres and the remainder of the original application would continue to be held in abeyance.

Water Permit No. 2539 was applied for by Robert Thompson, Thomas A. Thompson Trust, and William J. Thompson Trust for a total of 2500 acre-feet of water to irrigate 1702.26 acres of land. The applicants have been granted 810 acre-feet of water to irrigate 810 acres of land and the remainder of the request has been held in abeyance. It is now recommended by the staff that the applicant be granted an additional 359.0 acre-feet of water to irrigate an additional 550.0 acres of land and the remainder of the original request shall continue to be held in abeyance.

The Commission members expressed concern about spreading the resource to as many potential irrigators as possible and it was their feeling that by allowing the large amounts of acreage under two permits as is being recommended, may not be spreading the resource to everyone who may want to irrigate. Mr. Ripley indicated that several of the applicants have later priority dates than the Thompson's, but also due to the physical geographical location of their property, the physical properties of the aquifer may not allow, on a conservative basis, for that particular development.

Mr. Dwyer explained that North Dakota has a modified prior appropriation doctrine due to a statute which provides

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that permit applications which are not in the public interest must be denied. The statute, Section 61-04-06 of the North Dakota Century Code, lists six areas for the State Engineer to consider in determining public interest:

- 1) benefit to the applicant resulting from the proposed appropriation;
- 2) the effect of the economic activity resulting from the proposed appropriation;
- 3) the effect on fish and resources;
- 4) the effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation;
- 5) harm to other persons resulting from the proposed appropriation; and
- 6) the intent and ability of the applicant to complete the appropriation.

It was questioned whether or not denying the remainder of the Thompson permits would help the other potential irrigators in the area to have an adequate supply for their proposed development, and Mr. Ripley indicated that with the studies and information that has been accumulated to date, he felt that the effect would be minimal primarily because of the physical location of lands to be irrigated by the junior water permit applicants.

It was moved by Commissioner Just and seconded by Commissioner Lanz that additional acreage for water permit Nos. 2538 and 2539 be deferred for one year on the basis of public interest of other potential irrigators in the area, and that we wait for additional information after this operating season before the State Water Commission grants any further acre-feet or acreage to applicants in the Page Aquifer area.

It was expressed by Commissioner Kramer that he would not be able to support the motion because the staff hydrologist has indicated that he feels there would be no inter-relationships between the land irrigated under permits No. 2538 and 2539 and other applications in the same area. He indicated that he would have no problem in putting a further stipulation on the motion that no further consideration will be given to new applications filed for withdrawal from the Page Aquifer until more data can be obtained.

In further discussion of the motion, it was suggested that a public hearing be held in the Page Aquifer area in the very near future and that notice be published in the local newspaper and that those individuals who have permits or who have applied for a permit be personally notified of the hearing. The purpose of the hearing will be to determine whether the granting of any further water permits are in the public interest in that area.

Commissioner Just indicated that he was in agreement with holding a hearing in the area and withdrew his motion. Commissioner

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Lanz indicated that he likewise was in agreement with holding a hearing and would withdraw his second to the motion.

It was moved by Commissioner Just and seconded by Commissioner Gallagher that action be deferred on all applications in the Page Aquifer area until a public hearing has been held in the area to determine whether the granting of any additional permits are in the public interest in that area. This further investigation shall be conducted without prejudice to existing applicants' priority dates. All members voted aye; the motion unanimously carried.

Mr. Dwyer indicated that for the Commission's next meeting he will prepare a draft Notice of Hearing for the Commission's review.

It was moved by Commissioner Kramer, seconded by Commissioner Gallagher, and unanimously carried, that the remainder of the applications appearing on the water permit agenda be confirmed as recommended by the State Engineer.

The following applications were approved, subject to conditions as specified on each permit: No. 3222 - Shell Oil Company, Houston, Texas (this request was approved by the State Engineer on March 28, 1980); No. 3224 - Henry Becker, Streeter; No. 3226 - Rocklin W. Bateman, New Salem; No. 2189 - Francis Vculek, Crete (this is a request for a change in point of diversion); No. 2182 - Allen Kamoni, Pettibone (this is a request for a change in point of diversion); No. 880 - Jerome and Dennis Delzer, Bismarck (this is a request for a change in point of diversion); No. 2098 - Lawrence T. and Frances E. Walker, Maddock (this is a request for a change in point of diversion); No. 2221 - Peter Kieffer, Casselton (this is a request for a change in point of diversion); No. 2580 - James Dick, Englevale (this is a request for a change in point of diversion); No. 3216 - US Water and Power Resources Service, Billings, Montana; No. 697 - City

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of Park River (this is a request for a change in point of diversion); No. 3228 - Patterson Tower Partnership, Ltd., Bismarck; No. 1356 - James Perhus, Taylor (this is a request for a change in point of diversion); No. 1964 - Minnkota Power Cooperative, Inc. and Square Butte Electric Cooperative, Grand Forks (this is a request for a change in point of diversion); No. 3207 - City of Pekin; No. 2438 - Richard Dick, Englevale (this request was approved by the State Engineer on March 17, 1980); No. 2537 - Gary A. Streich, Englevale (this request was approved by the State Engineer on March 18, 1980); No. 3211 - Texaco, Inc., Keene; No. 3168 - Laverne Wolff, Chaseley; No. 2652 - David Schwab, Englevale (this request was approved by the State Engineer on March 28, 1980); No. 3220 - Kaiser Engineers, Inc., Oakland, California; No. 2962 - Leslie T. Connell, Medora; No. 1908 - Harwood Development Association, Harwood; and No. 2770 - Jerome Heitkamp, Mooreton.

The following applications were deferred at this time: No. 3223 - Robert Hackman, Tappen; No. 3225 - Laudie L. Dvorak, Manning; No. 3227 - Robert E. Mohberg, Milnor; No. 3206 - Leo and Betty Rust, Cogswell; No. 3171 - City of Lehr; No. 2467 - William Fortier, Wildrose; No. 2915 - Florence M. Flatla, Bergen; No. 3209 - Fabian E. and Lloyd H. Noack, Grand Forks; Mr. Joe Loh, Manning; No. 669 - City of Drayton (this is a request for a change in point of diversion); No. 3232 - Reinhold Opp, Napoleon; No. 2750 - Douglas Bower, Page; No. 2635 - William Conrad, Page (this request was to approve another portion of his original request); No. 2621 - Sidney Holden, Page; No. 2551 - Douglas A. Bower, Page (this request was to approve the remainder of his original request); No. 2538 - Ralph and William Thompson, Thomas A. Thompson Trust, and William J. Thompson Trust, Page (this request was to approve another portion of original request); No. 2568 - Charles and Edward Satrom, Page (this request was to approve another portion of original request); No. 2600 - Paul Feder, Fargo (this request was to approve remainder of original request); No. 2539 - Robert Thompson, Thomas A. Thompson Trust, and William J. Thompson

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Trust, Page (this request was to approve another portion of original request); No. 2654 - Jerome Johnk, Albert Johnk, and Darlene Erickson, Page; No. 2667 - Donald Olstad, Galesburg (this request was to approve the remainder of original request); No. 2672 - Paul Feder, Fargo (this request was to approve remainder of original request); No. 2729 - Gilmore and Philip Jondahl, Hope; No. 2775 - John E. Mewes, Hope; No. 2805 - Lynn Bring, Galesburg; No. 2989 - Lynn Kyser, Erie; No. 2674 - Heino Vosgerau, Page (this request was to approve remainder of original request); No. 2755 - Vera Smart, Fargo; and No. 2988 - Lynn Kyser, Erie.

The following application was withdrawn by the applicant: No. 2523 - Norman Glinz, Bottineau.

The following applications were denied: No. 2328 - Duane Brekke, Minot; and No. 3176 - Leo A. Paintner, Hannaford.

SEE APPENDIX "C"

Governor Link stated that he had been approached by a representative of the Irrigation Association about appointing an irrigator to the State Water Commission, and they also indicated that they would be willing to work with the Commission concerning the various issues that are presented as a result of irrigation development. The Governor strongly recommended that the Irrigation Association be included in working on these various matters. It was also noted that the Red River Valley Joint Board has indicated a desire to have a member from the immediate Red River Valley area on the State Water Commission.

DISCUSSION OF LEASE  
AGREEMENT FOR INDIAN  
CREEK DAM  
(SWC Project No. 1556)

Secretary Fahy explained the manner in which the State Water Commission has financially participated with water management districts in the development of projects involving recreational facilities. Recently the Bureau of Outdoor Recreation has determined that they will no longer participate unless the State Water Commission has a bona fide interest in the property involved.

To fulfill this mandate, a lease agreement, attached hereto as APPENDIX "D", would be sufficient for the Indian Creek project. Secretary Fahy indicated that this procedure will apply to all future projects because none of the local units of government would have the funds available to finance a project.

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It was moved by Commissioner Just and seconded by Commissioner Gray that the Water Commission approve the lease agreement for Indian Creek Dam entering into a 25-year lease with the North Dakota Game and Fish Department, the Hettinger County Water Management District, and the State Water Commission. All members voted aye; the motion unanimously carried.

DISCUSSION ON PROPOSED  
PEMBILIER DAM  
(RESOLUTION NO. 80-4-407)  
(SWC Project No. 567)

Dave Sprynczynatyk reported that a call had been received from the Corps of Engineers in St. Paul indicating that OCE in Washington, D. C. is considering cutting the funding for further study

of Pembilier Dam in view of the President's financial cuts.

It was suggested that the Water Commission consider adopting a resolution indicating its support for continued funding for advanced planning studies of the Pembilier Dam, and that such resolution be forwarded to the proper officials.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the State Water Commission adopt Resolution No. 80-4-407, Resolution of Support for the Pembilier Dam Flood Control Project, indicating its support for continued funding for advanced planning studies of the Pembilier Dam.  
SEE APPENDIX "E"

Secretary Fahy presented three requests for cost participation in river snagging and clearing projects:

ANTELOPE CREEK-WILD RICE RIVER  
(RICHLAND COUNTY)  
(SWC Project No. 988)

The Richland County Water Management and Drain Board have requested financial assistance for a snagging and clearing project for the Antelope Creek-Wild

Rice River which has been completed. The total cost of the project was \$159,883.

Dave Sprynczynatyk indicated that prior to 1977, the State Water Commission had contributed 40 percent toward snagging and clearing projects such as this. At that time, it was decided that for future projects, the Water Commission would encourage the counties to utilize their own manpower and equipment to do this type of work. The Water Commission did indicate that they would provide technical assistance in the form of supervisory assistance and available Commission equipment to assist in these projects. This was done since it was thought that many streams in the state

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were in need of such cleanout and that requests for financial assistance could place a burden on the contract fund. In estimates prepared for water management boards since that time, the Water Commission has indicated that by providing man hours and equipment hours, approximately 25 percent of the total project cost would be contributed toward the project.

Mr. Sprynczynatyk stated that this project would be eligible for 25 percent financial assistance contingent upon field inspection of the work.

It was recommended by the State Engineer that the Water Commission cost share in this project in an amount not to exceed \$39,970.

**SHEYENNE RIVER SNAGGING  
AND CLEARING  
(SWC Project No. 1509)**

Dave Sprynczynatyk presented a request from the Richland County Water Management and Drain Board for financial assistance in a snagging and clearing project on the

Sheyenne River. This project has been completed and the total cost of the project is \$39,805.

It was recommended by the State Engineer that the Water Commission contribute 25 percent of the cost of eligible items toward this project in an amount not to exceed \$9,951. This would be contingent upon a field inspection of the project.

**TONGUE RIVER SNAGGING  
AND CLEARING PROJECT  
(SWC Project No. 1694)**

Dave Sprynczynatyk presented a request from the Pembina County Water Management District for financial assistance in a snagging and clearing project on the

Tongue River. The total cost of this project is \$4,709 and the project has been completed.

It was recommended by the State Engineer that the Water Commission honor this request, contingent upon a field inspection, and contribute 25 percent of the eligible items amounting to \$1,177.

It was moved by Commissioner Lanz, seconded by Commissioner Gray, and unanimously carried, that the Water Commission approve 25 percent cost sharing in the following projects, contingent upon the availability of funds, and contingent upon a field inspection of each project:

|                     |          |
|---------------------|----------|
| Antelope Creek-Wild |          |
| Rice River          | \$39,970 |
| Sheyenne River      | 9,951    |
| Tongue River        | 1,177    |

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CONSIDERATION OF REQUEST  
FOR SHEYENNE RIVER CHANNEL  
CHANGE  
(SWC Project No. 1271)

Dave Sprynczynatyk presented a request from the Southeast Cass Water Management District requesting cost sharing in the construction of a channel change on the Sheyenne River in Cass County. The project is located approximately two miles north of Horace and involves the widening of the existing river channel by removing approximately 43,225 cubic yards of material. Spring floods have eroded the east bank of the river threatening property in a housing development known as Holman's Second Addition. The project sponsors feel that the benefits will more than offset the costs of the project and will not induce additional flooding or create downstream problems. The estimated cost of the project is \$55,300.

Mr. Sprynczynatyk stated that the project is feasible since it will protect a housing development which is experiencing severe erosion. The plans for the project appear to provide for the best alternative for protecting this area. The primary beneficiaries of this project would be the owners of the lots of the subdivision and it appears that the lots were purchased by people knowing the dangers presented by the river since a dike borders the development.

Secretary Fahy stated that since the benefits could not be agriculturally related that there seemed to be nothing in State Water Commission policies to justify participation in this project. If the project sponsors can identify benefits to agricultural areas as a result of the project, then the request could be reconsidered.

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and unanimously carried, that the request for financial assistance for the Sheyenne River Channel Change be denied.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the meeting adjourn at 5:30 p.m.

  
Arthur A. Link  
Governor-Chairman

ATTEST:

  
Vernon Fahy  
State Engineer and Secretary

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## APPENDIX "A"

Water Management District  
Advisory Committee  
Second Draft - March 31, 1980

A Bill for an act to create and enact Chapter 61-16.1 of the North Dakota Century Code, relating to the creation of water resource districts in accordance with hydrologic patterns; selection of interim water resource boards; establishment of subdistricts; election of managers; assumption of assets and obligations; expenses of managers; water resource district budget; powers, duties, and responsibilities of water resource board; revenue bonds; development of master plans; financing of water related projects; regulation of construction of dikes and drainage projects; installation of culverts and bridges; and to repeal Chapter 61-16 of the North Dakota Century Code, relating to water management districts; and to repeal Sections 61-21-03 through 61-21-09 of the North Dakota Century Code, relating to board of drainage commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

61-16.1-01. SHORT TITLE.) This chapter may be cited and shall be known as the Water Management Reorganization Act of 1981.

61-16.1-02. LEGISLATIVE INTENT AND PURPOSE.) The legislative assembly of North Dakota hereby recognizes and declares that the general welfare and the protection of the lives, health, property, and the rights of all people of this state require that the management, conservation, protection, development and control of waters in this state, public or private, navigable or non-navigable, surface or subsurface, the control of floods, the prevention of damage to property therefrom, 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. To realize these objectives it is hereby declared to be the policy of the state to provide for the management, conservation, protection, development, and control of water resources and for the prevention of flood damage in the watersheds of this state and thereby to protect and promote the health, safety and general welfare of the people of this state.

The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is by creating water resource districts encompassing all of the area of the state, in accordance with hydrologic boundaries, as provided by this Act. The legislative assembly further

declares that the functions heretofore performed by water management districts and boards of drainage commissioners shall be consolidated and made functions of water resource districts. All acts necessary to complete the organization of water resource districts as authorized by this Act shall be completed on or before January 1, 1983, and the governing boards of water management districts and county drainage districts shall complete, before January 1, 1983, the necessary transfers and other arrangements; and all water resource districts shall commence operation on that date with full authority to exercise the powers, duties, and responsibilities provided in this Act.

~~61-16-01-~~ 61-16.1-03. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise provides: §61-16-01  
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1. "Affected landowners" means landowners whose land is subject to special assessment or condemnation for a project.
2. "Assessment drain" includes any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works, which are financed in whole or in part by special assessment. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area.
3. "Board of managers" means the board of managers of a water management resource district.
4. "Commission" means the state water commission.
5. "Conservation" means planned management of water resources to prevent exploitation, destruction, neglect, or waste.
6. "District" means a water management resource district; wherever the terms "water conservation and flood control district" or "water management district" appears, it they shall mean "water management resource district".
7. "Project" as used in this Act, means, and includes, any undertaking for water conservation, flood control, water supply, water delivery, watershed improvement and drainage of surface waters, or collection, processing, and treatment of sewage, or any combination thereof, including incidental features of any such undertaking.
8. "Water resource board" means the water management resource district's board of managers.

61-16.1-04. WATER RESOURCE DISTRICTS - BOUNDARIES.)  
In furtherance of the policy set forth in section 61-16.1-02, the entire area of the state of North Dakota shall be divided into water resource districts. The state engineer,

after public hearings, is hereby authorized and directed to determine and establish the exact number, and the boundaries of such districts. The State Water Commission shall approve the State Engineer's determinations. Boundaries of water resource districts shall be established and approved on or before January 1, 1982. When establishing such boundaries the State Engineer shall employ the following guidelines and criteria:

1. The primary objective shall be to establish boundaries which provide effective coordination, planning, development and general management of areas which have related water resource problems. To the extent that this primary objective will be accomplished, these areas shall be determined according to hydrologic patterns, utilizing recognized river basins of the state. Where appropriate and necessary for more efficient development and general management two or more districts may be created within a river basin.
2. The state engineer shall hold extensive public hearings in each affected area. In determining and establishing the boundaries for districts, due recognition and emphasis shall be given to the wishes of the local people, consistent with these guidelines and criteria.
3. Existing boundaries of counties and other political subdivisions or voting precincts shall be followed wherever feasible, consistent with these guidelines and criteria.
4. Watershed boundaries shall follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities which might hinder the effective operation of the districts.
5. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement, and at the same time provide for maximum local representation.

61-16.1-05. ORDER CREATING WATER RESOURCE DISTRICTS.)  
Upon final determination and approval of the number and boundaries of water resource districts, the state water commission shall issue an order of establishment for each water resource district. The commission's order shall specify the name or number by which a district shall be known. A certified copy of the order creating a district shall be filed with each water management resource district shall be filed with the county auditor of each county within the district. A like copy of the order shall be filed with the secretary of state. The secretary of state shall issue to the state water conservation commission his a certificate, bearing the seal of the state, of the due organization of the district, and shall file a copy of the certificate and the commission's order creating the district. The secretary of state's certificate, or a copy authenticated by him the secretary of

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state, shall be prima facie evidence of the organization of the district. This new district shall be, and is hereby declared to be, a governmental agency, and a body politic and corporate with the authority to exercise the powers specified in this chapter, or which may be reasonably implied to exercise such powers. The commissioner's order shall specify the name or number by which a district shall be known.

61-16.1-06. CHANGE OF BOUNDARIES.) The state water commission shall have the power to change the boundaries of water resource districts, to adjust territorial limits of two or more districts, to combine two or more such districts into a single district, and to divide one district into two or more districts. In exercising such powers, the state water commission shall be bound by the criteria and procedures provided by this Act for the initial establishment of water resource districts and shall follow the procedure set forth in sections 61-16.1-07 through 61-16.1-10. No change in boundaries as provided for by this section shall take place unless the boards of the affected districts, by majority vote of each board, favor such change.

61-16.1-07. HEARING.) A hearing in each affected district on proposed changes as provided by section 61-16.1-06 may be initiated by written request of a majority of the commissioners of any or each district of which the boundaries are proposed to be changed. Such proposal shall set forth the existing boundaries of such districts and the proposed new boundaries or the legal description of lands proposed to be transferred to any adjoining district, or both.

61-16.1-08. NOTICE.) Within sixty days after such proposal for a change of boundaries is made and filed with the commission, the commission shall publish notice of a public hearing on the question. Notice requirements shall be satisfied by publishing such notice at least once a week for two consecutive weeks in the legal newspaper or newspapers of general circulation in the areas affected, and in the official county newspaper of each county affected by the proposed change. A public hearing shall then be held as set forth in the notice and in accordance with applicable statutes and regulations.

61-16.1-09. DETERMINATION OF COMMISSION AND AFFECTED BOARDS.) After the hearing, as provided in section 61-16.1-08, the commission and the affected boards shall determine upon the basis of the proposed change, upon the facts and evidence presented at such hearing, upon consideration of the standards provided in section 61-16.1-04 relative to the organization of districts and upon such other relevant facts and information as may be available, whether such changes in boundaries would promote the public interest and would be administratively and financially practicable and feasible.

61-16.1-10. CERTIFICATE OF CHANGE OF BOUNDARIES.) If the boards of the affected districts favor a change as provided by sections 61-16.1-06 through 61-16.1-10, the various affected district boards shall each present a resolution indicating approval of the proposed change of boundaries with the state water commission. If the commission approves such change, it shall forward the resolutions to the Secretary of State along with a statement by the commission certifying that the boundary between the districts has been changed in accordance with the procedures prescribed in sections 61-16.1-06 through 61-16.1-10 and setting forth the new boundary line, or the legal descriptions of the lands transferred or both, as in the judgment of the commission shall be adequate to describe such boundary changes of districts. When the resolutions and statement have been filed with the Secretary of State, the change of boundary shall be deemed effective and the Secretary of State shall issue to the commission a certificate evidencing the change of boundaries. The commission shall provide a copy of the certificate to the managers of each affected district and to the county auditor of each county affected by the change in boundaries.

61-16.1-11. ASSUMPTION OF ASSETS.)

1. Each district established pursuant to section 61-16.1-04 shall assume, on or before January 1, 1983, all assets, liabilities and obligations of any water management district or county drain board whose territory is included within the boundaries of such water resource district. When the jurisdiction of any water management district or county drain board is included within two or more water resources districts, the state engineer shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate amount of taxable valuation included in each district. Property interests and physical assets attached to the land shall be assumed by the district in which they are located. The value of property interests and attached physical assets shall be considered in the apportionment of the assets, liabilities and obligations, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment.

2. All taxes levied in 1982 pursuant to sections 61-16-12 and 61-21-09 for water management districts or county drain boards shall be treated as assets of such water management districts and county drain boards and when funds are not available or paid to such districts on account of such levies until after January 1, 1983, such funds shall be paid to the order of the water resource district or districts in which such water management district or county drainage district are located, and in the proportionate amounts as other assets are to be divided. Tax funds in possession of or payable to each water management district or county drain board at the time of merger shall be put in a special fund of the water resource district or districts receiving the assets of such water management district or county drain

board. Such funds shall be expended within the boundaries of such water management districts or county drain boards for projects which benefit such districts, or shall be used to satisfy general mill levy obligations of the area within such districts. Expenditure of such funds for projects shall be limited to the amount of benefits accruing to the area within such water management district or county drain board.

3. Available tax funds which have been committed by a water management district to a project which has been approved by the water management district prior to July 1, 1982, shall be transferred to the water resource district in which area the project is located, and shall be reserved by the water resource district for the designated project.

61-16.1-12. NUMBER OF MANAGERS.) Beginning on January 1, 1983, each district shall be governed by a board of managers of five, seven, or nine, the number to be recommended to the state engineer by the interim board of managers on or before July 1, 1982. The state engineer, with the approval of the state water commission, shall determine the number of managers, and in making such determination shall consider the number recommended by the first board, the complexity of the foreseeable programs, and the population and land area of the district.

61-16.1-13. INTERIM BOARD OF MANAGERS.) To insure continuity in completing existing programs and to promote the efficient and effective transition of powers and programs of existing water management districts and county drain boards, as provided by this Act, all commissioners of such water management districts and drain boards which are located entirely or partially within a water resource district shall comprise the interim board of the water resource district. These individuals shall be officially convened by the state engineer as interim boards of the respective water resource districts on or before February 1, 1982. The state engineer shall, by order, establish the time, date and place of the first meeting of the interim board, at which time and place they shall elect temporary officers. This interim board shall serve until January 1, 1983, when successor board members shall have been elected and qualified as provided by this Act. The responsibility of this interim board shall include assumption of assets and other acts necessary to accomplish the requirements of section 61-16.1-11, creation of subdistricts for nomination of candidates for managers, and determination of whether there shall be one or two managers per subdistrict. In the establishment of subdistricts, which shall be complete on or before July 1, 1981, the interim board shall give due regard to all factors including but not limited to the extent that works of improvement are located in rural areas and the extent to which population and taxable values are located in urban areas and the wishes of the people in the district. Creation

of subdistricts and determination of whether there shall be one or two managers per subdistrict shall require approval of the state water commission. Vacancies on such boards during the period of July 1, 1982, to January 1, 1983, shall be filled through appointment by the interim board.

61-16.1-14. ELECTION OF MANAGERS.)

1. District managers shall be elected for four-year terms at the general election of the state. The first election of water resource district managers shall be conducted at the general election in November, 1982. On or before July 1 of every even-numbered year the secretary of the water resource district shall notify the water resource board of the names of those whose terms expire as provided by law.

2. Managers of water resource districts shall be elected on a non-partisan ballot and pay no filing fee. Candidates may place their names on the ballot by filing petitions with the county auditor of each county within the district and the Secretary of State, not more than sixty days or less than forty days before a general election at which managers of the district are to be elected. Registered electors residing within the district or subdistrict shall be eligible for nomination and for signing petitions. Petitions shall bear the signatures of not less than twenty-five qualified registered electors residing within the district or subdistrict, to which each signer has added an address, and the date of signing, and shall state whether such nominee shall be placed on the ballot as a candidate from the district at large or a subdistrict.

3. The petition shall be accompanied by an affidavit substantially as follows:

STATE OF NORTH DAKOTA        )  
  ) ss.  
County of \_\_\_\_\_ )

I, \_\_\_\_\_, being duly sworn, depose and say that I reside in the water resource district of \_\_\_\_\_ and State of North Dakota; that I am a qualified voter therein; that I am a candidate for nomination to the office of manager (from subdistrict) (at large) of the \_\_\_\_\_ water resource district to be chosen at the general election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and I do hereby request that my name be printed upon the no-party general election ballot as provided by law, as a candidate for said office.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public,  
North Dakota

4. The number of subdistricts for a district shall equal a number which is one less than a majority of managers for the district, or which is one less than the number of managers. The ballots shall list each nomination subdistrict and candidates therefrom and also the at-large candidates. Candidates must be residents of the subdistrict designated on their nomination petition. Registered electors may each cast a number of votes not larger than the total number of managers to be elected. The candidate receiving the most votes in each listed subdistrict, or the district at large when applicable, shall be elected. Whenever the number of managers to be elected exceeds the number of subdistricts, candidates may petition from the district at large, in which case the ballots shall list such candidates under an appropriate heading.

5. Nominations for office of water resource district managers, certification, notice of election, ballots and all other matters relating to election of managers, not expressed in this section, shall be governed by title 16 of the North Dakota Century Code.

6. Candidates shall be elected by the qualified electors of the entire district and all electors shall vote on the candidates representing each subdistrict. At the general election votes shall be canvassed, returned, certified and certificates of nomination and election issued in the manner provided by law for the nomination and election of county officers. The county auditor shall forward to the Secretary of State pursuant to law the official canvass of the votes cast in the county for managers. The Secretary of State shall canvass the results of the election of managers for water resource districts. The Secretary of State shall mail an election certificate to each candidate elected.

7. The Secretary of State and county auditor shall have the power and authority to do those things necessary to carry out the provisions and intent of this Act.

8. Except in those districts which have elected to have a single manager serve from each subdistrict, in the 1982 election two candidates shall be elected from each subdistrict and the candidate receiving the highest number of votes from each subdistrict shall serve for four years and the candidate receiving the next highest number of votes shall serve for two years. In those districts which have elected to have a single manager serve from each subdistrict, in the 1982 election one candidate shall be elected from each subdistrict and the candidates elected from even-numbered subdistricts shall serve for four years and the candidates elected from odd-numbered subdistricts shall serve for two years. In addition, when there shall be candidates on the ballot from the district at large, one manager shall be elected to serve for four years from this slate of candidates.

9. Not later than September 1 of any election year, the secretary of the district shall certify to the Secretary of State the names of the counties, municipalities and

election precincts and geographical description then comprising the district, and at the same time the secretary of the district shall certify the number of managers to be elected and the election district or subdistrict from which they are to be elected, respectively. The secretary of the district shall also furnish to the Secretary of State and county auditor such maps and additional information as they may reasonably require in the proper performance of their duties in the conduct of elections and certification of the results of the same.

10. Subject to the approval of the commission and not later than May 1 of any election year, the water resource board may elect that a single manager shall serve from each subdistrict, or that two managers shall serve from each subdistrict.

11. The board of managers of a water resource district may, upon approval of the commission, change subdistrict boundaries in accordance with this section. Any changes shall be made with due regard to all factors including but not limited to the extent that works of improvement are located in rural areas and the extent to which population and taxable values are located in urban areas and the wishes of the people in the district. Any changes must be proposed and approved by May 1 of any election year.

61-16.1-15. VACANCY. A vacancy on the board shall exist in the event of the death, disability, resignation or removal from the district of any manager or the elimination or detachment from the district of the territory in which a manager resides. In the event of a vacancy from any of such causes, or otherwise, such vacancy shall be filled by the board of managers. Such appointments shall be in writing, for the remainder of the unexpired term, or until the next general election, at which time a successor shall be elected and qualified. If the next general election comes before the end of the unexpired term, the manager elected shall serve only for the remainder of the unexpired term. The written appointment shall be filed with the Secretary of State.

61-16.1-16. REMOVAL OF MANAGER.) Members of the board may be removed from office for the same reasons and in the same manner as provided by law for the removal of county officers.

61-16.1-17. COMPENSATION AND EXPENSES OF BOARD MEMBERS.)  
~~ELIGIBILITY FOR APPOINTMENT TO BOARD --- TERM OF OFFICE --  
REMOVAL --- FILLING VACANCIES --- COMPENSATION OF COMMISSIONERS ---  
When a water management district has been created, any  
resident landowner in the district, except a county commissioner,  
shall be eligible, subject to the provisions of this section,  
for appointment to the board of commissioners thereof. -- The  
terms of office of commissioners appointed to the first  
district board shall be determined by lot and shall be as~~

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herein provided,--if such district board shall consist of three commissioners, one commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years from the first day of January next following the date of their appointment.--After expiration of the first term to expire after January 17, 1980, at least one of the commissioners appointed to a three-member district board shall be from a flood-prone area, if any, within the district.--When a district board consists of five commissioners, two commissioners shall hold office for the term of two years, one for three years, one for four years, and one commissioner a term of five years from the first day of January next following the date of their appointment.--After expiration of the first two terms to expire after January 17, 1980, at least two of the commissioners appointed to a five-member district board shall be from flood-prone areas, if any, within the district.--When a board shall consist of seven commissioners, two commissioners shall hold office for two years, two for three years, two for four years, and one for five years from the first day of January next following the date of their appointment.--After expiration of the first three terms to expire after January 17, 1980, at least three of the commissioners appointed to a seven-member district board shall be from flood-prone areas, if any, within the district.--For the purposes of this section, a flood-prone area is a flood plain area of a river subject to periodic and recurring flooding.--When the term of office of a district commissioner has expired, his successor shall hold office for five years from the first day of January next following the date of his appointment. The term of office of a commissioner shall not terminate until his successor in office is appointed and qualified. In case the office of any district commissioner shall become vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board whose office became vacant.

Each member of the water resource board of commissioners shall receive the sum of forty dollars per day same compensation per day as provided for in section 54-35-10 for members of the legislative council while performing his the duties as a member of the board, and an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15 and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01.

A commissioner may be removed from the board by the board of county commissioners after it appears to the board of county commissioners by competent evidence, and after a public hearing, if so requested by the commissioner subject to removal, at which hearing such commissioner must be apprised of and allowed ample opportunity to repudiate such evidence, that such commissioner has been guilty of misconduct, malfeasance, crime in office, neglect of duty in office,

~~habitual-drunkenness, gross-incompetency, or-inability-to perform-the-duties-of-office-for-reasons-of-health.~~

61-16.1-18. OATH OF OFFICE - ORGANIZATION-OF-BOARD OF-COMMISSIONERS-- APPOINTMENT OF EMPLOYEES - MEETINGS.) §61-16-09  
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Upon receiving notice of his the appointment election to serve as a member of the board of managers of a water conservation and flood-control resource district, such appointee manager shall take the oath of office prescribed for civil officers. Such oath shall be filed with the secretary of the board, after organization thereof as herein provided. Notice of the appointment of a member or members of a board of commissioners shall be mailed to the state water conservation commission.--Such notice shall state the name and post office address of each appointee and the date of his appointment.

The managers appointed, after establishment of a water conservation and flood-control resource district, shall meet to organize at a time and place designated by selecting a chairman and vice-chairman of the board and shall name a temporary secretary pending appointment of a permanent secretary. A majority of the managers shall constitute a quorum for the transaction of such business as may come before the board, but any and the concurrence of a majority of a quorum shall be sufficient to take actions and make determinations. Any number may adjourn a meeting for want of a quorum. The board shall appoint a secretary and treasurer and such other employees as shall be deemed needed necessary for the efficient conduct of the district's business and shall fix their compensation. The offices of secretary and treasurer may be held by the same person. Officers and employees shall hold office during the pleasure of the board.

The board shall provide an office suitable for its use as a meeting place and for conducting the affairs of the district. It shall adopt such rules or regulations for transacting the business of the district as it may deem necessary, including the time and place of holding regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon written request of two members of the board. Notice of a special meeting shall be mailed to each member of the board at least five days before any such meeting, provided that a special meeting may be held whenever all members of the board are present or consent thereto in writing.

61-16.1-19. MINUTES, BOOKS, AND RECORDS.) The board shall cause to be kept accurate minutes of its meetings and accurate records and books of account, clearly setting out and reflecting the entire operation, management and business of the district. Such books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience



of the districts, its customers, and electors. Such books and records shall at reasonable business hours be open to public inspection.

61-16.1-20. BONDS OF TREASURER AND APPOINTIVE OFFICERS.)  
The treasurer of a water conservation and flood control resource district shall be bonded in such amount as shall be required by the water resource board but such bond shall not be less than one thousand dollars. Other district employees shall be bonded in such an amount as the board may prescribe. Every officer or employee of whom a bond shall be required shall be deemed bonded with the state bonding fund upon notice of his that appointment given to the state commissioner of insurance by the secretary of the district. Upon notification by the state bonding fund of the premium required, the treasurer shall remit the same. \$61-16-10  
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61-16.1-21. DISTRICT BUDGET - TAX LEVY - FINANCING BY SPECIAL ASSESSMENT.) The fiscal year of the district shall begin July 1 and end June 30. The board of commissioners shall estimate the expenses of the district from the date of its establishment until the end of the ensuing fiscal year, and before July first in of each year, thereafter shall estimate district expenses for the fiscal year ensuing. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects therein. The district budget may also include an amount necessary for projects which are part of a master plan prepared and adopted pursuant to section 61-16.1-29. Upon completion and adoption of a budget covering necessary expenses, the board of managers shall, send a copy of such budget or apportionment thereof to the county auditor of each county in the district. The estimates of necessary expenditures and the tax levies required therefor, together with a notice that the water resource board will meet on a specified date for the purpose of making tax levies as set forth in the estimates, naming the time and place of holding such meeting, shall be published at least once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the district, and in the official county newspaper of each county located entirely or partially in the district. The water resource board shall meet at the time and place designated in the public notice, at which time any taxpayer may appear in favor or against any proposed expenditures or tax levies. When the hearing shall have been concluded, the board shall adopt such estimate as it finally determines, but not to exceed the amount specified in the published estimates. If a district includes more than one county, the estimates shall be apportioned to counties affected. Each county auditor shall transmit the same to the board of county commissioners of his county. The board of county commissioners shall either disapprove the budget, amend and approve \$61-16-12  
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the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, The board shall then, by resolution, levy, authorize and direct the county auditor or county auditors of the county or counties in the district to extend and spread upon the tax roll of the county or portion of the county in the district a tax of not to exceed four mills on each dollar of taxable valuation in the district or part of district situated in the county in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by such tax levy shall be available until expended, and if such tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the same may be accumulated. The acquisition of rights-of-way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board of commissioners, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

~~If the project is one involving the maintenance of a drain, and it is desired to finance such project in whole or in part by means of special assessments, the levy in any year for such maintenance shall not exceed fifty cents per acre (1.40 hectare) on any agricultural lands benefited by the drain. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of one dollar per acre (1.40 hectare). The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full one dollar per acre (1.40 hectare). Nonagricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessments or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of one dollar per acre (1.40 hectare) for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board of commissioners may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for two years.~~

61-16.1-22. DISTRICT MAY ISSUE WARRANTS IN ANTICIPATION OF TAXES LEVIED TO PAY CURRENT EXPENSES.) After a water conservation and flood control resource district has been established and organized and a water resource board has been appointed and organized, elected, the water resource board may, in order to pay current district expenses including

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per diem, compensation, and expenses of managers and wages or salaries of officers and employees, by resolution authorize and issue district warrants in anticipation of and pending collection and receipt of taxes levied. Such warrants shall bear such rate of interest as the board may determine, not exceeding, however, eight percent per annum. The district treasurer shall keep a register in which to enter each warrant issued, showing the date and amount of each warrant, the date of payment, and the amount paid in redemption thereof. All warrants shall be paid in order of their presentation for payment to the district treasurer. Such warrants shall be drawn to the claimant or bearer in the same manner as a county warrant, and shall be signed by the chairman of the board of commissioners and countersigned by the treasurer of the district. The total amount of such warrants issued in any year to pay current district expenses shall not exceed eighty percent of the district's tax levy for such year.

61-16.1-23. COUNTY TREASURER TO COLLECT AND REMIT TAXES TO DISTRICT TREASURER - DEPOSIT INVESTMENT OF DISTRICT FUNDS - EXPENDITURE OF DISTRICT FUNDS.) The treasurer of each county in which a water management resource district, or a part of such district, is situated shall collect all district taxes and special assessments together with penalty and interest thereon, if any, in the same manner as county taxes are collected, and shall within twenty days after the close of each month pay to the treasurer of the district those taxes and assessments collected by him during the preceding month, and shall notify the secretary of the district of such payment. The district treasurer shall on or before the twentieth day of each month report to the chairman of the board the amount of money in the district treasury, the amount of receipts in the preceding month, and items and amounts of expenditures. At each meeting of the board the treasurer shall submit to the board a statement of the district's finances.

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Each district may invest any money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district, in accordance with chapter 21-04 of the North Dakota Century Code.

Funds of the district shall be paid out or expended only upon the authorization or approval of the water resource board and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee or agent of the district as shall be authorized by the treasurer to sign in his behalf of the treasurer. However, such authorization shall be in writing and filed with the secretary of the district.

61-16.1-24. REVENUE BONDS.) Each district shall have the power and authority to issue revenue bonds for the purpose of financing construction of projects and incidental

facilities authorized by this Act. Issuance of revenue bonds must be approved by two-thirds of all of the members of the board of managers of the district. The district shall pledge sufficient revenue from any revenue producing facility constructed with the aid of revenue bonds for the payment of principal and interest on such bonds, and shall establish rates for such facilities at a sufficient level to provide for the operation of such facilities and for the bond payments.

61-16.1-25. POWERS AND DUTIES OF WATER RESOURCE BOARD §61-16-11 OF COMMISSIONERS.) The water resource board of commissioners NDCC shall have the power:

1. To sue and be sued in the name of the district.
2. To exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams and other water conservation and supply works of any nature and to flood lands, and to secure the right of access to such dams and other devices and the right of the public access to the waters impounded thereby.
3. To accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water conservation and flood control projects; and cooperate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local cooperation requirements of any project involving control, conservation and use of water.
4. To procure the services of engineers and other technical experts, and employ an attorney or attorneys to assist, advise, and act for it in its proceedings.
5. To plan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation devices of every nature and water channels and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district.
6. To maintain and control the water levels and the flow of water in the bodies of water and streams involved in water conservation and flood control projects within its district, and regulate streams, channels or watercourses and the flow of water therein by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.
7. To regulate and control flood waters for the

- prevention of floods and flood damages, by deepening, widening, or straightening or ~~diking~~ the channels or diking the channels or flood plains of any stream or watercourse within its district, and construct reservoirs or other means to hold and control such waters.
8. To make rules and regulations concerning the use to which such management, control, and conservation of waters may be put and to prevent the pollution, contamination or other misuse of the water resources, streams, or bodies of water included within the district.
  9. ~~After-organisation-of-the-board, and on~~ On or before July first, in of each year, after public hearing, thereafter to adopt a budget showing estimated expenses for the ensuing fiscal year commencing July first, and by resolution ~~submit such budget to the board of county commissioners in each county in which the district is located. The board of county commissioners shall consider such budget and by resolution~~ levy a tax of not to exceed four mills on each dollar of taxable valuation in the district or part thereof and direct the county auditor or auditors to file such budget and spread the levy on his the tax roll.
  10. To do all things reasonably necessary and proper to preserve the benefits to be derived from the conservation, control and regulation of the water resources of this state including, but not limited to, the construction, operation and maintenance of recreational facilities including, but not limited to, beaches, swimming areas, boat docking and landing facilities, toilets, wells, picnic tables, trash receptacles and parking areas and to establish and enforce rules and regulations for the use thereof.
  11. To have, in addition to any powers provided in this chapter, ~~all~~ of the powers conferred by ~~statutes upon a board of county drain commissioners.~~ the authority to construct an assessment drain in accordance with the procedures and provisions of chapter 61-21.
  12. To acquire by lease, purchase, gift, condemnation or other lawful means and to hold in its corporate name for use and control as provided by law both real and personal property and easements and rights of way within or without the limits of the district for all purposes authorized by law or necessary to the exercise of any power.
  13. To convey, sell, dispose of, or lease personal and real property of the district as provided by this chapter.
  14. To contract with the United States government or any department thereof, with persons, railroads or

- other corporations, with public corporations, and state government of this or other states, with drainage, flood control, conservation, conservancy or improvement districts, in this or other states, to carry out the provisions of this chapter, and to purchase, lease or acquire land or other property in adjoining states for any purpose authorized by this chapter.
15. To authorize and issue warrants to finance construction of water conservation and flood control projects, to assess benefited property for part or all of the cost of such projects, and to require appropriations and tax levied to maintain sinking funds for construction warrants on a cash basis at all times.
  16. To borrow money within the limitations imposed by this chapter for projects herein authorized and to pledge security for the repayment of such money.
  17. To order or initiate appropriate legal action to compel the entity responsible for the maintenance and repair of any bridge or culvert, to remove from under, within and around such bridge or culvert all dirt, rocks, weeds, brush, shrubbery, and other debris which hinders or decreases the maximum flow of water through such bridge or culvert.
  18. To order or initiate appropriate legal action to compel the cessation of the destruction of native woodland bordering within two hundred feet [60.96 meters] of that portion of a riverbank subject to overflow flooding that will cause extensive property damage, or in the alternative, to order, that if such destruction is permitted, the party or parties responsible for the destruction must plant a shelterbelt which meets the specifications of the board, when the board has determined that such destruction will cause excessive property damage from the overflow flooding, due to the erosion or blocking of such river channel. In the event the native woodland within such area has already been destroyed, the board may, in its discretion, order the planting of a shelterbelt which, in the judgment of the board, will curtail the erosion or blocking of such river channel where overflow flooding has caused extensive property damage. For purposes of this section, the words "riverbank" and "river channel" relate to rivers as defined in the United States geological survey base map of North Dakota, edition of 1963. The provisions of this subsection shall not be construed to in any manner limit, impair or abrogate the rights, powers, duties or functions of any federal, state, or local entity to construct and maintain any flood control, irrigation, recreational or municipal or industrial water supply project.

19. To petition any zoning authority established pursuant to chapters 11-33, 11-35 or 40-47 or section 58-03-13 to assume jurisdiction over a flood plain for zoning purposes when such zoning is required to regulate and enforce the placement erection, construction, reconstruction, repair and use of buildings and structures in order to protect and promote the health, safety and general welfare of the public lying within a flood plain area. In the event such zoning authority fails to act or does not exist the board may request the state water commission to assist it in a study to determine and delineate the flood plain area. Upon completion of such study the board shall make suitable recommendations for the establishment of a flood plain zone to all zoning authorities and the governing bodies of all political subdivisions having jurisdiction within the flood plain area.
20. To plan, locate, relocate, construct, reconstruct, modify, extend, improve, operate, maintain, and repair sanitary and storm sewer systems and water supply systems, or combinations thereof, including sewage and water treatment plants; and to contract with the United States government, or any department or agency thereof, or any private or public corporation, the government of this state, or any department, agency, or political subdivision thereof, or any municipality or person with respect to any such systems.
21. Each district shall have the power and authority to develop water supply systems, store and transport water, and to provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and to fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipe lines, tunnels, and any and all works, facilities, improvements, and property necessary therefor.
22. To encourage the state highway department, and counties and townships in the district, to coordinate proposals for installation, modification, or construction of culverts and bridges with the district, in an effort to achieve appropriate sizing and maximum consistency of road openings.

61-16.1-26. RESPONSIBILITIES AND DUTIES OF WATER RESOURCE BOARD.) The water resource board shall have the responsibility and mandatory duty to:

1. Meet jointly with the boards of commissioners of other water resource district boards within a common river basin at least twice a year at such



times and places as may be mutually agreed upon for the purpose of receiving and coordinating their efforts for the maximum benefit of the entire river basin.

2. In addition to meeting twice each year to coordinate activities, water resource boards of a common river basin shall in all other efforts and activities cooperate and provide mutual assistance to the maximum extent possible.
3. Upon order of the state water commission, enter into an agreement with all water resource districts of a river basin to collectively address and attempt to resolve a water management problem or problems of significant magnitude to the entire river basin. If the districts of a river basin are not able to agree to the provisions of an agreement for joint exercise of powers in accordance with section 61-16.1-27 the state water commission shall establish and enforce the terms of the agreement.
4. Encourage all landowners to retain water on the land to the maximum extent possible in accordance with sound water management policies, and to carry out to the maximum extent possible the water management policy of this state that upstream landowners who have artificially altered the hydrologic scheme must share with downstream landowners the responsibility of providing for proper management and control of surface waters.
5. In the planning of any surface water project which will have an impact downstream in the water resource district or another water resource district, to fully address and consider such impacts. A determination of whether to proceed with the construction of any such project shall be based on the following principles:
  - a.) Reasonable necessity of the project;
  - b.) Reasonable care to be taken to avoid unnecessary injury by fully considering all alternatives;
  - c.) Whether the utility or benefit accruing from the project reasonably outweighs the gravity of the harm resulting from the project;
6. Projects which cause an adverse impact to lands of other landowners shall require that appropriate easements be obtained in accordance with applicable state and federal law.

61-16.1-27. JOINT EXERCISE OF POWERS.)

1. Two or more boards districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by title 61. The agreement shall state the purpose of the agreement or the powers to be exercised, and it shall provide for

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the method by which the purpose sought shall be accomplished or the manner in which the power shall be exercised. When the agreement provides for the use of a joint board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board.

2. The boards districts which are parties to such an agreement may provide for disbursements from their individual budgets to carry out the purpose of the agreement. In addition, a joint board established pursuant to this section may, by resolution, on or before July first of each year, adopt a budget showing estimated expenses for the ensuing fiscal year and the proposed contributions of each member district as determined by the agreement. The boards of the member districts shall then, submit such budget to their respective board of county commissioners. Each board of county commissioners shall consider such budget and, if approved, by resolution, levy an ad valorem tax not to exceed two mills upon the real property within the district. Such levy shall be in excess of any other levy authorized for a district.
3. The proceeds of one-half of this levy shall be credited to the joint board's administrative fund and shall be used for regulatory activities and for the construction and maintenance of projects of common benefit to the member districts. The remainder shall be credited to the construction funds of the joint board and shall be used for the construction and maintenance of projects of common benefit to more than one district.
4. Funds may be paid to and disbursed by the joint board as agreed upon, but the method of disbursement shall agree as far as practicable with the method provided by law for the disbursement of funds by boards. Contracts let and purchases made under the agreements shall conform to the requirements applicable to contracts and purchases by boards. The joint board shall be accountable for all funds and reports of all receipts and disbursements to the state water commission in a manner prescribed by the commission.
5. The agreement may be continued for a definite term or until rescinded or terminated in accordance with its terms. The agreement shall provide for the disposition of any property required as the result of a joint or cooperative exercise of powers, and the return of any surplus moneys in proportion to contributions of the several contracting boards districts after the purpose of the agreement has been completed.

6. Residence requirements for holding office in a district shall not apply to any officer appointed to carry out any agreement.
7. This section does not dispense with procedural requirements of any other statute providing for the joint or cooperative exercise of any governmental power.

61-16.1-28. MAY CONTRACT WITH FEDERAL AND STATE GOVERNMENTS - LOCAL DISTRICTS, PERSONS AND CORPORATIONS - CANADIAN GOVERNMENT, PROVINCES AND MUNICIPALITIES - ACQUIRE PROPERTY IN ADJOINING STATES AND PROVINCES.) The water resource board of commissioners shall also have the right, power and authority to enter into contracts or other arrangements for water conservation, water supply, or flood control works with the United States \$61-16-19 government or any department thereof, with the Canadian NDCC government or any department thereof or any of its provinces or municipalities, with persons, railroads or other corporations, with public corporations, and state governments of this or other states, with drainage, water management resource, conservation, conservancy, or improvement districts, or other such districts in this or other states, for cooperation or assistance in planning, constructing, maintaining, and operating such works and in making investigations and reports thereon; and may purchase, lease or acquire land or other property in adjoining states or provinces in order to secure outlets to construct and maintain dikes or dams, or for other purposes authorized by this chapter and may let contracts or spend money for securing such outlets or works in adjoining states or provinces. Provided, that no board of managers of any water management resource district shall have the right, power or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharged into the other.

61-16.1-29. MASTER PLANS).

1. Each water resource district shall prepare and adopt a master plan to include but not be limited to a statement of goals and objectives for each of the various water management activities in the district, such as drainage, flood control, water supply, recreation, etc. The master plan for each specific water management activity shall be reviewed and updated as often as deemed necessary by the district. A copy of the master plan as adopted and all revisions and updates thereto shall be filed with the state water commission.
2. Each district shall also prepare and adopt a two-year priorities schedule which shall summarize planned district projects and financial needs of the district for at least the next two years. A copy of the priorities schedule shall be filed with the state water commission on or before May 1 of each even-numbered year.

3. The state water commission shall develop and make available to the districts guidelines regarding the format and general content of master plans, which shall be utilized by each district. The state water commission shall provide such assistance, within appropriate budget limitations, as may be necessary to help districts develop master plans and priority schedules.
4. All plans submitted to the commission by a district under subsections 1 and 2 of this section, shall be accorded a thirty day period for review and comment. Failure to reply within thirty days shall be conclusive that the plans have been endorsed by the commission. In addition, the district shall give notice and hold public hearings on all proposed master plans. All comments on plans shall be reviewed by the district and alterations of the plans shall be made as are appropriate.
5. No state funds shall be allocated or disbursed to a district, after July 1, 1985, unless that district has submitted a master plan for the specific water management activity of request in accordance with this section, and until the commission has determined that such funds are for projects and programs which are in conformance with the plans of the commission and the district.

61-16.1-30. CONSTRUCTION AND REPAIR OF DAM - PROPOSALS FOR - PRESENTED TO WHOM - HEARING PROPOSALS). No dikes, dams or other devices for water conservation, flood control regulation, watershed improvement or storage of water which are capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15,418.52 cubic meters] of water shall be constructed within any water management resource district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam or other facilities, along with complete plans and specifications therefor, shall be presented first to the state engineer. After the receipt thereof, the state engineer shall consider the same in such detail as it may seem necessary and proper, and shall make recommendations and suggestions as to the propriety, efficiency, and feasibility of the proposal application, and, within forty-five days of its receipt forward the same to the water resource board of commissioners of the district within which the contemplated project is located. The board thereupon shall consider the same, and if the proposal and recommendations shall meet with its approval, it shall return the same within forty-five days to the state engineer. The state engineer shall either refuse to allow the construction of any unsafe, improper, or dangerous dike, dam or other device which would interfere with the orderly control of the water resources of the district, or order such changes or modifications thereof as in his the judgment of the state engineer may be necessary

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for safety or the protection of property. Any person aggrieved by any such ruling of the state engineer shall have the right to a full hearing before the state engineer and a full consideration of all evidence available before a final order of the state engineer shall be entered. ~~Such order of the state engineer shall be subject to appeal to the district court as provided in this chapter.~~

61-16.1-31. COMMISSION, STATE ENGINEER, AND WATER RESOURCE BOARD OF COMMISSIONERS SHALL ENCOURAGE BOTH STRUCTURAL AND NON-STRUCTURAL ALTERNATIVES CONSTRUCTION OF DAMS AND OTHER WATER CONTROL DEVICES). The state water commission, state engineer, and the water resource board of commissioners shall encourage the construction of dams both structural and non-structural alternatives other water control works within the district by federal and state agencies, private individuals, and public and private corporations, and shall lend their aid, counsel, and assistance to any such project alternatives. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, unless specifically exempted therefrom, shall be subject to all of the provisions of this chapter. \$61-16-16 NDCC

61-16.1-32. DAMS CONSTRUCTED WITHIN A DISTRICT SHALL COME UNDER CONTROL OF WATER RESOURCE BOARD OF COMMISSIONERS). All dams, dikes, and other water conservation and flood control works constructed within any district, unless specifically exempted therefrom, shall, without affecting the state water commission's or the state engineer's authority relative to such dams and works, automatically come under the jurisdiction of the water resource board of commissioners. No changes or modification of any existing dams, dikes, or other devices shall be made without complying fully with the provisions of this chapter. \$61-16-17 NDCC

61-16.1-33. WHEN DAMS CONSTRUCTED BY FEDERAL AGENCY UNDER CONTROL OF WATER MANAGEMENT RESOURCE DISTRICT). Any dam or water control device or flood control project constructed by or with the assistance of any federal agency which has no one responsible for it, shall become the responsibility of the water management resource district where it is located. The water management resource district may take any action concerning this dam or water control device it deems feasible or necessary. \$61-16-18 NDCC

61-16.1-34. CONTRACTS FOR CONSTRUCTION OR MAINTENANCE OF PROJECT). If the cost of construction or maintenance of a project does not exceed five thousand dollars, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such construction or maintenance exceeds five thousand dollars, the lowest and best bid shall be accepted. The board of \$61-16-19 NDCC

commissioners shall give at least ten days' notice of the time and place where contract will be let. Such notice shall be published at least once in a newspaper of general circulation in a county in which the work is to be carried on and shall be mailed to any prospective bidders known to the water resource board of commissioners.

Any person receiving a contract for construction or maintenance of a project shall give a performance bond in an amount set by the water resource board of commissioners conditioned upon the proper performance of the contract within the time specified by such contract. The board shall reserve the right to reject any or all bids and may postpone the letting of contracts from time to time or to such other time and place as the board may publicly announce. Any contracts not let at the original contract letting may be let by the board at a later time after notice and in accordance with the provisions of this section. The competitive bid requirement of this section shall be waived, upon the determination of the water resource board of commissioners, and upon approval of the county commissioners, that an emergency situation exists requiring the prompt repair of a project, and a contract may be made for the prompt repair of the project without seeking bids.

61-16.1-35. FINANCING PROJECT THROUGH SPECIAL ASSESSMENTS OR PARTLY THROUGH GENERAL TAXES AND PARTLY THROUGH SPECIAL ASSESSMENTS - APPORTIONMENT OF BENEFITS). The water resource board of commissioners may have the authority, either upon request or by its own motion, to acquire needed interests in property and provide for the cost of construction, alteration, repair, operation, and maintenance of a project through issuance of improvement warrants or with funds raised by special assessments or a general tax or by a combination of a general property ad valorem tax and special assessments. Whenever a water resource board of commissioners shall decide to acquire property or interests in property in order to construct, operate, alter, repair, or maintain a project with funds raised in whole or in part through special assessments, such assessments shall be apportioned to and spread upon lands or premises benefited by the project in proportion to and in accordance with direct and indirect benefits accruing thereto. The board shall assess the proportion of the cost of the project, or the part of the cost to be financed with funds raised through levy and collection of special assessment taxes which any lot, piece, or parcel of land shall bear in proportion to the benefits accruing thereto and any county, city, or township which is benefited thereby. In determining assessments under this section the water resource board shall include both direct and indirect benefits and shall carry out to the maximum extent possible the water management policy of this state that contributing landowners must share with downstream landowners the responsibility to provide for the proper management of surface waters.

The following sections are taken from Chapter 61-16 of the North Dakota Century Code. Sections 61-16.1-36 through 61-16.1-48 provide procedures for constructing water management district projects to be financed by special assessment. Sections 61-16.1-36 through §61-16.1-74 are listed below:

- 61-16.1-36. Financing of Special Improvements-Procedure.)
- 61-16.1-37. Hearing on Engineer's Report-Notice-Contents.)
- 61-16.1-38. Protest.)
- 61-16.1-39. Voting Right or Powers of Landowners.)
- 61-16.1-40. Assessment of Cost of Project.)
- 61-16.1-41. Assessment List to be Prepared-Contents-Certificate Attached to Assessment List-Preparation of Assessment List and Notice of Hearing of Objection to List-Alteration of Assessments at Hearing-Limitations-Confirmation of Assessment List of Board Certifying List-Filing).
- 61-16.1-42. When Assessments May Be Made.)
- 61-16.1-43. Liability for Deficiencies.)
- 61-16.1-44. Reassessment of Benefits.)
- 61-16.1-45. Correction of Errors, and Mistakes in Special Assessments-Regulations Governing.)
- 61-16.1-46. Certification of Assessments to County Auditor.)
- 61-16.1-47. Extension of Special Assessments on Tax Lists-Collection-Payment to Water Resource District.)
- 61-16.1-48. Lien of Special Assessment.)
- 61-16.1-49. Sale of Property when General and Special Assessment Taxes are Delinquent.)
- 61-16.1-50. Collection of Tax or Assessment Levied Not to be Enjoined or Declared Void-Exceptions.)
- 61-16.1-51. Water Resource Board May Apportion Assessments for Benefits of A Project Against A County or City or any Tract of Land Benefited.)
- 61-16.1-52. Warrants-Issuance-When Payable-Amounts-Interest-Interest Coupons.)
- 61-16.1-53. Warrants May Be Used In Making Payments On Contract-Warrants Payable Out Of Fund On Which Drawn-May Be Used To Pay Special Assessments.)

61-16.1-54. Refunding Special Assessment Warrants-  
Purposes For Which Such Warrants May Be Issued-Payment Of  
Warrants.)

61-16.1-55. Appeal From Decision of Water Resource  
Board-Undertaking-Jurisdiction.)

61-16.1-56. Appeal From Decision of Water Resource  
Board-How to be Taken.)

61-16.1-57. Time For Taking Appeal From Commission Or  
Board Of Commissioners.)

61-16.1-58. Filing Appeal-Docketing And Hearing Appeals-  
Final Judgment And Sending Back.)

61-16.1-59. Attorney General To Assist Boards-Employment  
Of Counsel.)

61-16.1-60. Proceedings To Judicially Confirm Contracts,  
Special Assessments And Other Acts.)

61-16.1-61. Penalty For Violation of Chapter.)

61-16.1-62. Validating Organization And Acts Of Water  
Resource Districts.)

61-16.1-63. Maintenance of Drainage Projects.)

61-16.1-64. Drains Along And Across Public Roads And  
Railroads.)

61-16.1-65. Construction Of Bridges And Culverts-  
Costs.)

61-16.1-66. Petition For A Lateral Drain-Bond Of  
Petitioners.)

61-16.1-67. Establishing New Drains In Location Of  
Invalid Or Abandoned Drain.)

61-16.1-68. Drain Kept Open And In Repair By Board.)

61-16.1-69. Assessment Of Costs Of Cleaning And Repairing  
Drains.)

61-16.1-70. Drains Having A Common Outlet May Be  
Consolidated.)

61-16.1-71. Removal Of Obstructions To Drain-Notice  
And Hearing-Appeal-Injunction-Definition.)

61-16.1-72. Culvert And Pipe Arch Bids And Acceptance.)

61-16.1-73. Closing A Noncomplying Drain-Notice And Hearing-Appeal-Injunction.)

61-16.1-74. Removal Of A Noncomplying Dike Or Dam-Notice And Hearing-Appeal-Injunction.)

61-16.1-75. AUTHORIZATION TO ORGANIZE ASSOCIATION OF WATER RESOURCE DISTRICTS.)

1. Water resource districts, organized and established pursuant to this chapter, are hereby authorized upon motion of the water resource boards to organize and participate in an association of counties.
2. The organization or organizations authorized hereunder shall be organized pursuant to chapters 10-24 through 10-28.

SECTION 2. Section 61-21-01 is hereby amended as follows:

61-21-01. DEFINITIONS.) In this chapter, unless the subject matter otherwise requires:

1. The word "drain" shall include any natural watercourse opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works. This definition may include more than one watercourse or artificial channel constructed for the aforementioned purpose when the watercourses or channels drain land within a practical drainage area as determined by the written petition called for in section 61-21-10 and the survey and examination called for in section 61-21-12;
2. "Board" shall mean the board of drainage commissioners managers of a water resource district;
3. "Cleaning out and repairing of drain" shall include deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition;
4. "Lateral drain" shall mean a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain, provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board; and
5. "Affected landowners" shall mean landowners whose land is subject to assessment or condemnation.



SECTION 3. REPEAL.) Chapter 61-16 and sections 61-21-03 through 61-21-09 of the North Dakota Century Code are hereby repealed. This section shall not take effect until January 1, 1983.

Michael Dwyer  
State Water Commission  
February 15, 1980

TESTIMONY

FIRST DRAFT LEGISLATION FOR HCR-3022

During the 1979 Legislative Session, the Legislature passed a study resolution which called for a study of Water Management Districts and their powers, duties, and jurisdictional boundaries. Many complex water management problems have been experienced lately, and the Legislature apparently felt that a study of water management districts was necessary to find out if water management districts could be more effective and efficient. To insure that any proposed changes in water management district laws would represent the views of local water managers themselves, an advisory committee was created, consisting of 12 water management district representatives and 3 legislators. The advisory committee, after several meetings, proposed to the Natural Resources Interim Committee a bill draft which included several significant changes to the current set-up. The advisory committee utilized my services as draftsman and legal counsel, and also requested that I attend these workshops to help explain their proposed recommendations. I have prepared written testimony which includes several tables and summaries to help understand the mechanics, deadlines, and intent of the proposal.

I would like to make four points before I begin as a background to the advisory committee's first bill draft:

1. Procedure Followed by the Advisory Committee.

You recall that at the Natural Resources Interim Committee's organizational meeting last June it was suggested and agreed that the State Water Commission would provide information and drafting assistance for the three water-related studies. While the floodplain management and §404 programs, if adopted, would be state programs, any legislation resulting from the water management district study would directly affect water management districts. It was my feeling and the State Engineer's feeling that local water managers should be primarily responsible for development of any proposed legislation, to insure that any such proposals represent the wishes of the local water managers themselves. Thus, an advisory committee was created, with Ralph Christensen as Chairman, consisting of water management district people from around the state, plus 3 legislators from this Committee. The advisory committee has met four times. First, it undertook a detailed review of our own water management statutes, and then a detailed review of water management schemes in other states. The committee then proceeded to determine whether changes in our existing laws were necessary, and finally various alternatives were considered. The recommendations contained in the first bill draft are a result of that process, which involved many hours of thought and discussion.

2. My Role in the Advisory Committee Process.

I provided legal information and drafting assistance to the advisory

committee. While I personally feel that the recommendations of the first bill draft would result in tremendous improvement in our water management scheme in North Dakota, it is important to keep in mind that the proposed changes are the recommendations of the water management district advisory committee. In addition to my testimony to explain the mechanics and intent of the proposed bill draft, several members of the advisory committee will be testifying on rationale and supporting reasons for the recommendations.

3. Underlying Theme Adopted by Advisory Committee.

The North Dakota Legislature has consistently maintained the policy that water management is best handled at the local level. This policy is evidenced by the extensive powers given to water management districts. In most cases these powers are much more extensive than those of the State Water Commission or the State Engineer. The policy of local control set out by the Legislature has been consistently adhered to by the State Water Commission and the State Engineer.

This policy was adopted by the advisory committee as the underlying theme in its deliberations. Thus, the recommendations of the advisory committee in the first bill draft represent an attempt to create the proper mechanism and machinery which will enable water management districts to be effective, and thereby ensure local control. The recommendations in the bill draft are an attempt to improve and provide effective local water management, to make sure that local control is not replaced by state control.

4. What Changes are Necessary to Improve Local Water Management, Thereby Ensuring Local Control?

a. Powers & Authority.

The advisory committee looked carefully at the existing powers of water management districts, and determined that they were generally sufficient to carry out the prescribed responsibilities of water management districts. Thus, many of the sections of existing law relating to powers and authorities were not changes, and as a result, you will see throughout my testimony and in review of the bill draft that many sections are merely existing statutes which are re-numbered.

b. Organization & Structure.

The advisory committee then turned to the organization and structure of water management districts, to determine if changes in that area would be helpful. Certain changes were determined to be necessary. Thus, it is the area of organization and structure of water management districts where the major changes are proposed.

A. CHANGE OF BOUNDARIES

A change in boundaries of Water Management Districts represents one of the three major changes to the organization and structure of Water Management Districts proposed in the bill draft. The advisory committee

is recommending that water management districts be reorganized along watershed boundaries, and that the new districts be called "Water Resource Districts". The advisory committee felt that this new name would avoid confusion during the transition period, and they also felt that it was a more appropriate reflection of the duties of the water board. The general policy statement found in Section 61-16.1-02 provides, in part:

"The legislative assembly further recognizes the significant achievements that have been made in the management, conservation, protection, development, and control of our water and related land resources, and declares that the most efficient and economical method of accelerating these achievements is by creating water resource districts encompassing all of the area of the state, in accordance with hydrologic boundaries, as provided by this Act." [Emphasis added].

Presently, Water Management Districts and Legal Drain Boards are created along county boundaries, with two or three exceptions. After much discussion about the existing problems caused by artificial boundaries for water management, it was agreed by the advisory committee that watershed boundaries was the only way to achieve consistent, coordinated and effective water management throughout the state. Under the present system, two or more different boards are responsible for the same watershed area, oftentimes resulting in confusing, fragmented, and ineffective water management. Unfortunately, flow of water does not recognize county boundaries. Thus, establishment of watershed boundaries for water resource districts is proposed in the bill draft.

The best explanation for changing to Water Resource Districts with watershed boundaries is provided in Ralph Christensen's summary which you received in the mail. His summary states:

The advisory committee recommends that water management districts be reorganized along watershed boundaries, and called Water Resource Districts. The primary reason for this recommendation is that water management cannot be truly coordinated unless one board is responsible for all decisions in a particular watershed. Increased coordination will naturally result in more effective Water Resource Districts. For example, I have heard about water management problems between Ward and Renville counties; Ramsey and Cavalier counties; Walsh and Nelson counties; Griggs, Barnes and Stutsman counties, Cass and Richland counties; Wells, Foster and Eddy counties; Benson, Towner and Pierce counties, and Logan and LaMoure counties, all of which are much more difficult to resolve because of an artificial boundary. I'm sure there are many more than I've mentioned. While some of these problems are being addressed in a joint manner, all of them could be resolved much more efficiently and effectively if a single board were responsible for the entire watershed area involved.

After deciding to adopt the watershed concept, the advisory committee had to address the question of establishing the boundaries.

Sections 61-16.1-04 through 61-16.1-10 govern the establishment of boundaries of water resource districts. The advisory committee recommends the following procedure for establishing watershed boundaries:

1. How and by whom should the boundaries be established.  
Two alternatives were discussed.

Alternative 1

- a. Boundaries set out by legal and geographical description in bill draft.
- b. Boundaries then approved by Legislature.

Alternative 2

- a. Delegate to State Engineer the authority to establish exact number and boundaries of water resource districts.
- b. Require the State Engineer to conduct public hearings to ensure that the wishes of each local area are recognized.
- c. Require approval of State Water Commission.
- d. Include in legislation guidelines which must be followed by State Engineer.

The advisory committee selected alternative 2, because it felt that the establishment of boundaries should be based solely on technical, professional, hydrologic factors, in accordance with guidelines set out by the legislature. The advisory committee also reviewed Nebraska's experience in establishing watershed boundaries. Nebraska first tried alternative one. Through one entire legislative session, Nebraska's unicameral legislature amended, revised, further amended, changed, adjusted, altered, and re-amended the boundaries set out in the proposed bill. Although a substantial majority supported the concept of watershed boundaries, no agreement could be reached on the exact boundaries. Thus, the entire bill failed. At the next Nebraska legislative session, it was decided that boundaries should be established outside the political arena. Alternative 2 was subsequently proposed and approved.

Thus, the advisory committee is proposing that the exact number and boundaries be established in the following manner:

1. After extensive public hearings the State Engineer establish the exact number and location.
2. The determinations of the State Engineer would be subject to the approval of the State Water Commission.
3. The following guidelines must be utilized by the State Engineer and the State Water Commission:
  - (a) The primary objective shall be to establish boundaries which provide effective coordination, planning, development

and general management of areas which have related water resource problems. These areas shall be determined according to hydrologic patterns. The recognized river basins of the state shall be utilized in determining and establishing the boundaries for districts and where necessary for more efficient development and general management two or more districts shall be created within a basin.

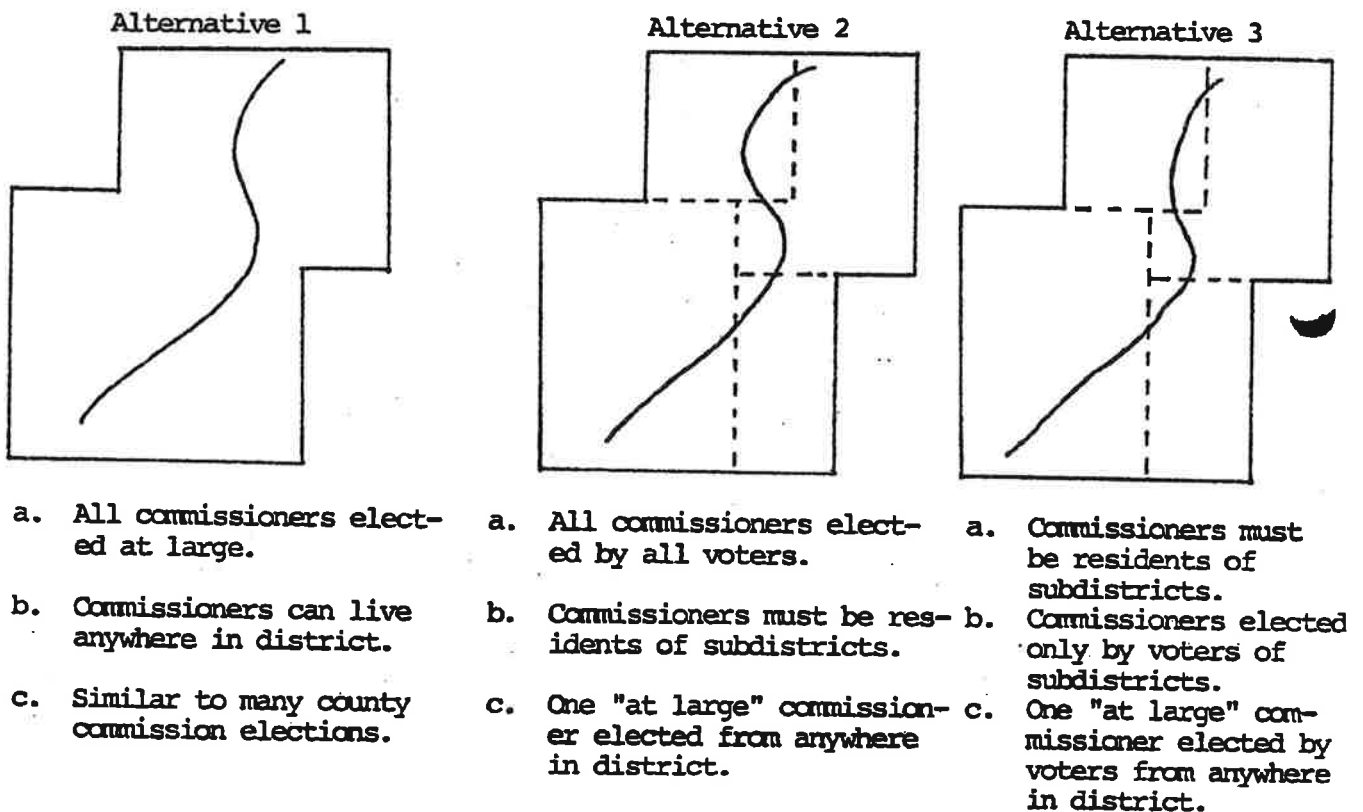
- (b) Boundaries of districts shall follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities which might hinder the effective operation of the districts.
- (c) Existing boundaries of political subdivisions or voting precincts shall be followed wherever feasible. For example, in the attached diagram illustrating a proposed Water Resource District, the area in county 1 could be included in the Water Resource District which encompasses County 1.
- (d) Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement (§61-16.1-04).
- (e) Consistent with these guidelines, the State Engineer shall give due recognition to the wishes of the local people.

- 2. By when should boundaries be established?  
The advisory committee set January 1, 1982, as the deadline for establishment of Water Resource Districts.
- 3. How can boundaries be changed?  
The advisory committee did not want the initial determination of the State Engineer and State Water Commission to be cast in concrete. Thus, it provided a mechanism for change of watershed boundaries. (§61-16.1-05 through 61-16.1-10).
  - 1. No change in boundaries shall take place unless the boards of the affected districts favor such change.
  - 2. The State Water Commission must approve a proposal for change in boundaries. The State Water Commission is bound by the guidelines for initial determination of boundaries.
  - 3. A proposal to change boundaries may be initiated by:
    - (1) State Water Commission
    - (2) Boards of affected water resource districts
    - (3) Petition of landowners
  - 4. State Water Commission must hold hearing in local area.

## B. ELECTION OF COMMISSIONERS

The advisory committee recommends that commissioners of water resource districts be elected rather than appointed. (§61-16.1-14). Before I explain the method of electing water resource district commissioners, I would like to point out that this is the second major change in structure and organization of water management districts, and presented a complicated issue for the advisory committee in terms of language and alternatives.

The following table sets forth the alternatives for election of commissioners for water resource districts and illustrates how the proposed elections would work. The advisory committee adopted the alternative for elections which it felt would result in maximum local responsiveness and still satisfy constitutional requirements.



As you can see, alternative 2 is a hybrid of alternative 1 and alternative 3. The advisory committee rejected alternative 1 because it does not achieve maximum local representation, as all commissioners could be from a densely populated area. The advisory committee rejected alternative 3 because it violates the one-man one-vote principle, and thus would be unconstitutional. The advisory committee felt that alternative 2 would result in maximum local representation, yet still satisfy constitutional requirements.

Thus, the election of commissioners proposed by the advisory committee would be as follows:

### Election of Commissioners

1. First election: General election, November, 1982.
2. Nominations, certification, notice of election, ballots and other related matters shall be governed by title 16 of the North Dakota Century Code.
3. Commissioners shall be elected on a non-partisan ballot.
4. Terms: Four-year terms.
5. Subdistricts: To provide flexibility for districts with different circumstances and different areas, the advisory committee proposes:
  - a.) All commissioners but one shall represent subdistricts. One commissioner in each Water Resource District shall be elected "at large."
  - b.) Each Water Resource District can choose whether there shall be one commissioner per subdistrict or two commissioners per subdistrict.
  - c.) Except for the "at large" commissioner, each commissioner representing a subdistrict shall be a resident of that subdistrict.
  - d.) Under the proposal of the advisory committee, each Water Resource District could have either 8, 6, 4, 3, or 2 subdistricts, depending on the wishes of the subdistrict and whether there will be one or two commissioners per subdistrict.
6. Who elects commissioners? All of the qualified electors of a water resource district shall elect commissioners.
7. Number of Water Resource District Commissioners: The advisory committee is recommending that each Water Resource District shall be governed by 5, 7, or 9 commissioners. This is to provide maximum flexibility for the varying circumstances, needs, and size of each Water Resource District.



EXAMPLES:

Water Resource District #1

- a. Nine commissioners
- b. Two commissioners/subdistrict
- c. Four subdistricts
- d. 20,000 qualified voters in water resource district

Water Resource District #1

|                                  |                                  |
|----------------------------------|----------------------------------|
| Subdistrict 1<br>2 Commissioners | Subdistrict 3<br>2 Commissioners |
| Subdistrict 2<br>2 Commissioners | Subdistrict 4<br>2 Commissioners |

one "at large" commissioner

Water Resource District #2

- a. Five Commissioners
- b. One commissioner/subdistrict
- c. Four subdistricts
- d. 20,000 qualified voters in water resource district.

Water Resource District #2

|                                 |                                 |
|---------------------------------|---------------------------------|
| Subdistrict 1<br>1 Commissioner | Subdistrict 3<br>1 Commissioner |
| Subdistrict 2<br>1 Commissioner | Subdistrict 4<br>1 Commissioner |

one "at large" commissioner

1982 election: 9 positions open;  
2 from each subdistrict; 1 at large;  
Assume 15 candidates, 3 for the "at large" position, and 3 from each subdistrict. Each of the 20,000 voters would vote for 9 persons, one for the "at large" position and 2 for each subdistrict.

1982 election: 5 positions  
1 from each subdistrict; 1 at large;  
Assume 11 candidates, 3 for the "at large" position, and 2 from each subdistrict. Each of the 20,000 voters would vote for 5 persons, one for the "at large" position and one for each subdistrict.

1984 election: 4 positions open;  
1 from each subdistrict;  
Assume 8 candidates, two from each subdistrict. Each of the 20,000 voters in the district would have 4 votes, one for each subdistrict.

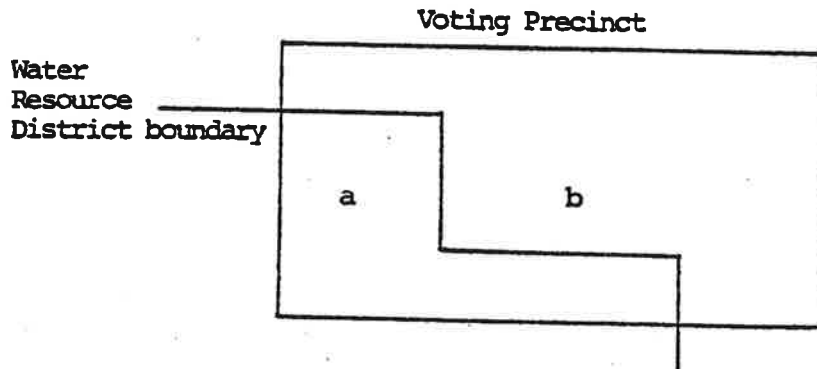
1984 election: 2 positions open;  
1 from each subdistrict;  
Assume 4 candidates, two from each subdistrict. Each of the 20,000 voters in the district would have 2 votes, one for each subdistrict.

1986 election: 5 positions open;  
1 from each subdistrict, one "at large". Assume 10 candidates, 2 for "at large" position, 2 for each subdistrict. Each of the 20,000 voters would have 5 votes, one for "at large" position and one for each subdistrict.

1986 election: 3 positions open;  
1 each is subdistricts 2 and 4, and one "at large". Assume 6 candidates, 2 for "at large" position, 2 for each subdistrict. Each of the 20,000 voters would have 3 votes, one for "at large" position and one for each subdistrict.

The advisory committee has recognized a difficult question concerning existing voting precincts:

1. Assume a water resource district boundary divides an existing voting precinct. For example:



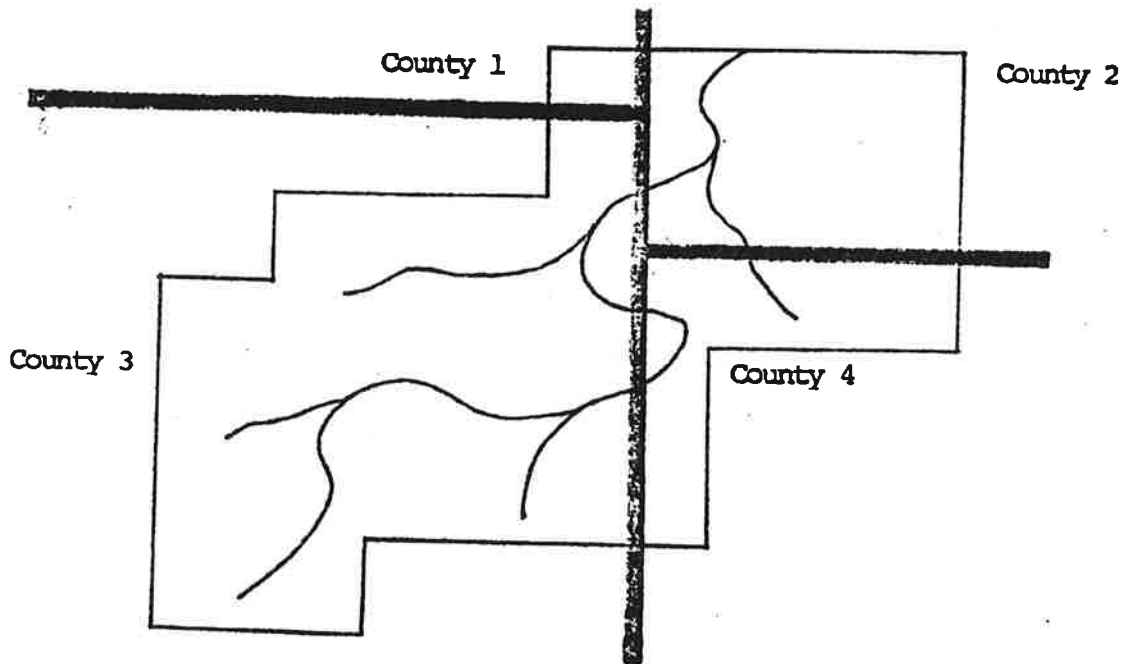
Those voters in area (a) of the voting precinct will require different ballots than those in area (b) of the voting precinct in order to vote for water resource district commissioners. Thus, the advisory committee is recommending that a separate ballot be used for Water Resource District elections, and perhaps area (a) would receive a red Water Resource District ballot while area (b) would receive a blue Water Resource District ballot.

The advisory committee rejected the idea of special elections for two reasons. First, it felt special elections would be too costly. Second, it felt that election of Water Resource District commissioners was sufficiently important to prefer the large voter turn-out associated with general elections. Finally, the advisory committee felt that since only a few voting precincts would be divided by a Water Resource District boundary, it was a problem that could be overcome without confusion and expense.

The advisory committee is proposing election of Water Resource District commissioners for several reasons. In addition to those reasons, a mechanical and practical problem was discussed by the advisory committee.

#### Election of Commissioners.

If the Legislature is to adopt and approve the recommendation of the advisory committee that watershed boundaries will result in coordinated and more effective water management, then it must seriously consider election of commissioners from a practical and mechanical standpoint (in addition to the other reasons which the advisory committee will present). An example will best illustrate the potential problem:



X Water Resource District is composed of four counties. It is easily apparent that appointment of Water Resource District commissioners would be a very difficult process. In addition, the county commission in each county must approve the estimated budget. Each year the budget process for Water Resource Districts would be very burdensome, and refusal by one county commission to approve the budget would hamstring the operation of the Water Resource District and severely impair its effectiveness.

Thus, from a practical standpoint, election of commissioners for Water Resource Districts would be much less difficult and cumbersome.

The advisory committee does recognize that whatever election provisions are finally adopted, they must be constitutional. The Nebraska Supreme Court upheld a constitutional challenge to the Natural Resources District legislation which contains the same election provisions as the bill draft. While such an issue must ultimately be decided by a court of law, it is my legal opinion that the foregoing election law provisions would be upheld.

C. ELIMINATION OF EXISTING WATER MANAGEMENT DISTRICTS AND LEGAL DRAIN BOARDS

This constitutes the third and final major change to the organization and structure of water management districts. The bill draft provides that the first election of commissioners will be held at the general election in November, 1982. (61-16.1-14, paragraph 1). The bill draft also provides that before January 1, 1983, the governing boards of water management districts and Legal Drain Boards shall complete all the necessary transfers and arrangements so that water resource district Boards of Commissioners may begin operation on that date. (§61-16.1-02 and §61-16.1-13). Finally, the first bill draft then provides that effective December 31, 1982, Chapters 61-16 and 61-21, which established Water Management Districts and Legal Drain Boards, will be repealed.

Legal Drain Boards exist primarily in the eastern part of North Dakota. The purpose for eliminating legal drain boards is so that only one local entity has complete jurisdiction, authority, and responsibility for the area within its boundaries.

It is important to keep in mind that of the existing powers of Water Management Districts, and most of the powers of county drain boards, are being transferred to the new Water Resource Districts.

#### D. INTERIM BOARDS

The deadline for establishment of Water Resource District boundaries is January 1, 1982. Between the time the exact number and boundaries of Water Resource Districts are established (January 1, 1982) and the first election of commissioners of the new Water Resource Districts (November, 1982), which is about 10 months, several interim or preliminary decisions have to be made to enable the elections to be carried out. For example, the number of subdistricts, the boundaries of subdistricts, and whether there will be one or two commissioners per subdistrict must be determined. The obvious question, of course, is "Who will make those decisions?"

The advisory committee decided that existing Water Management District and Drain Board Commissioners would best carry out the transition of powers and programs, and make decisions regarding subdistricts of Water Resource Districts. Thus, §61-16.1-13 provides for interim boards of commissioners. The section of the bill draft creating the interim boards begins as follows:

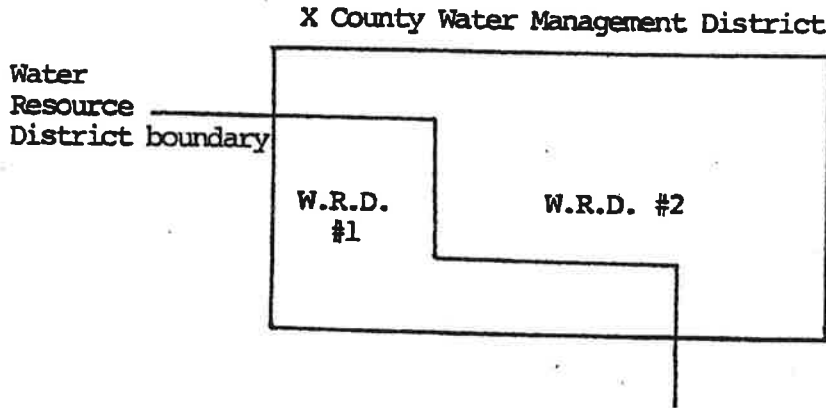
61-16.1-13. INTERIM BOARD OF COMMISSIONERS.) To insure continuity in completing existing programs and to promote the efficient and effective transition of powers and programs of existing water management districts and county drain boards, as provided by this act, all commissioners of such water management districts and drain boards which are located entirely or partially within a water resource district shall comprise the interim boards of the water resource district.

The following table illustrates the duties and representation of the interim boards:

#### Representation on Interim Board.

All members of a Water Management District or Drain Board which is located entirely or partially within a new Water Resource District would serve on the interim board.

Example: X County Water Management District is now part of two Water Resource Districts. All members of X County Water Management District would serve on interim boards for both Water Resource Districts.



Duties of Interim Board.

Deadline for Final Action

- |   |                 |
|---|-----------------|
| 1. Recommend to State Engineer number of commissioners.   | July 1, 1982    |
| 2. Determine whether there will be one or two commissioners per subdistrict.  | July 1, 1982    |
| 3. Determine subdistrict boundaries.  | July 1, 1982    |
| 4. Take necessary actions to accomplish transfer of assets and obligations from water management districts and County Drain Boards to Water Resource Districts. | January 1, 1983 |

The deadline for final action of the first three duties of the interim board is July 1, 1982. The purpose for this deadline is to provide sufficient time to prepare for elections in November, 1982. Interim boards are established and convened on or before February 1, 1982. Thus, they have five months from the time they are first convened to recommend number of commissioners, determine whether there will be one or two commissioners per subdistrict, and to establish subdistricts.

Section 61-16.1-12 provides the following mandate for establishing subdistricts:

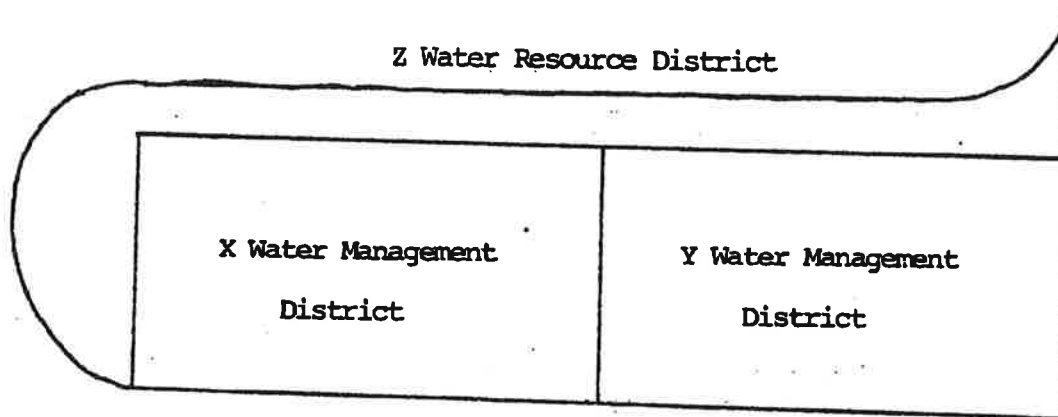
In the establishment of subdistricts, which shall be complete on or before July 1, 1982, the interim board shall give due regard to all factors including but not limited to the extent that works of improvement are located in rural areas and the extent to which population and taxable values are located in urban areas and the wishes of the people in the district.

E. TRANSFER OF ASSETS AND OBLIGATIONS

Similar to the reorganization of school districts, it will be necessary to transfer both the assets and obligations from the existing Water Management District and Drain Boards to the new Water Resource Districts. Section 61-16.1-11 provides for this transfer in the following manner:

1. All assets, obligations, and liabilities are transferred by January 1, 1983. The transfer process begins when interim is established February 1, 1982. This allows for 11 months to complete this process.
2. The State Engineer is required to determine apportionment of assets, liabilities, and obligations when a Water Management District is divided into two or more Water Resource Districts.
3. The State Engineer apportionment is non-discretionary. Based strictly on proportionate amount of taxable valuation in each Water Resource District.
4. Value of attached assets are to be considered in apportionment.

In assuming assets of existing Water Management Districts, Water Resource Districts are required to recognize and protect Water Management District which have been very active and aggressive. An example will best illustrate how this is done:



Assume X Water Management District and Y Water Management District are now part of Z Water Resource District. Also assume that X Water Management District has been very active, and has levied its maximum four mills each of the last several years to accumulate sufficient revenues for projects it is planning to construct. Also assume that the total amount accumulated equals \$200,000. Pursuant to §61-16.1-11, Z Water Resource District will assume these assets.

Now, also assume that Y Water Management District has been very inactive, and has levied no taxes. Or assume that Y Water Management District has just completed a project and has no reserve available. Z Water Resource District will assume nothing from Y Water Management District.

It would be unfair if the taxes paid by people in X Water Management District were used for the benefit of people in Y Water Management District. Thus, §61-16.1-11 requires that the \$200,000 be placed in a special fund, for the benefit of X Water Management District. The \$200,000 can then be used to satisfy the future general or specific obligations of the area formerly comprised of X Water Management District.

For Example: Assume 4 mills in Z Water Resource District will bring in \$200,000; \$100,000 from X area, and \$100,00 from Y area. X area can satisfy its \$100,000 obligation by using half of the \$200,000 special fund.

For Example: Assume a project is constructed costing \$400,000; X area receives \$200,000 benefit and Y area receives \$200,000 benefit. X area can use the \$200,000 special fund for its obligation, while the Water Resource District Board must levy 8 mills in Y area.

Once the special fund is exhausted, X area must satisfy its obligations just like Y area.

F. SUMMARY OF PROVISIONS RELATING TO ORGANIZATION & STRUCTURE  
- TIMETABLE -

All of my testimony up to this point has dealt with changes to organization and structure of Water Management Districts. As I indicated earlier, changes to organization and structure of Water Management Districts represent the major changes recommended by the advisory committee to ensure the effectiveness of Water Resource Districts. The following timetable should help to visualize the transition from Water Management District and Drain Boards to Water Resource Districts.

Timetable

| <u>Activity</u>   | <u>Dates &amp; Deadlines</u>   |
|---|--|
| 1. Current Date —   | January, 1980  |
| 2. Effective Date of Legislation, if approved.  | July 1, 1981   |
| 3. State Engineer determines exact number and boundaries of Water Resource District, after public hearings & subject to approval of State Water Commission.   | January 1, 1982 (Deadline)   |
| 4. Interim Boards are established and convened.   | February 1, 1982 (Deadline)  |
| 5. Interim Boards recommend to State Engineer number of commissioners, and determine, subject to State Water Commission approval, sub-district boundaries and whether there will be one or two commissioners per subdistrict. | Begins February 1, 1982, after interim boards are created, final action by July 1, 1982.                 |
| 6. Transfer of Assets, Liabilities, and Obligations.  | Process begins on February 1, 1982, after interim boards are created, to be complete by January 1, 1983. |
| 7. Election of Commissioners.   | November, 1982.  |
| 8. Water Management Districts and Drain Boards are terminated - substantive Water Management decisions have been made by Water Management Districts and Drain Boards until now.   | December 31, 1982.   |
| 9. Water Resource Districts commence operation.   | January 1, 1983.   |



G. ADDITIONAL AUTHORITIES GRANTED TO WATER RESOURCE DISTRICTS

As I mentioned earlier, the advisory committee carefully reviewed the existing powers of Water Management Districts and Drain Boards and determined that they were generally sufficient to carry out the duties and responsibilities of proper water management. However, the advisory committee has recommended via its bill draft the following new powers to assist Water Resource Districts:

1. Revenue Bond Authority.

Section 61-16.1-24 of the bill draft provides:

Each district shall have the power and authority to issue revenue bonds for the purpose of financing construction of projects and related facilities authorized by this act. Issuance of revenue bonds must be approved by two-thirds of all of the members of the board of directors of the district. The district shall pledge sufficient revenue from any revenue producing facility constructed with the aid of revenue bonds for the payment of principal and interest on such bonds, and shall establish rates for such facilities at a sufficient level to provide for the operation of such facilities and for the bond payments.

You will notice that two-thirds of all the board members of a Water Resource District must approve use of revenue bonds to help finance various activities.

2. Review of Proposed Culverts & Bridges.

Existing law is very fragmented in terms of making sure that culverts and bridges are consistent with any kind of a water management plan. For example, a township may install an 18-inch culvert in its road, but a mile downstream the county road may have a 36-inch culvert. Thus, in an attempt to allow a Water Resource District to make sure that culverts and bridges are consistent with their water management scheme, the advisory committee recommends the following paragraph as an addition to existing powers:

61-16.1-25.

22. To encourage the state highway department, and counties and townships in the district, to coordinate proposals for installation, modification, or construction of culverts and bridges with the district, in an effort to achieve appropriate sizing and maximum consistency of road openings.

3. Rural Water Systems.

Existing Water Management Districts have the authority to construct, own, and operate water supply systems. The advisory committee felt that a more specific expression of this authority would be helpful for domestic and rural water systems. Thus, the following new

paragraph was added to existing powers.

20. Each district shall have the power and authority to develop water supply systems, store and transport water, and to provide, contract for, and furnish water service for domestic, municipal, and rural water purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and to fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipe lines, tunnels, and any and all works, facilities.

#### H. BUDGETS

The advisory committee recommends that the mill levy authority for Water Resource Districts remain the same. Presently, Water Management Districts have enabling authority to levy 4 mills, with 2 additional mills for joint boards. (Thus, sections 61-16.1-21 and 61-16.1-27 are existing sections of law which have merely been renumbered.) However, due to the change from appointing Water Management District commissioners, (as is done currently) to election of Water Resource District commissioners, the procedure for adopting a budget and levying the necessary mills will be different, because county commission approval will no longer be necessary.

##### Current Procedure: Appointed Board

##### New Procedure: Elected Board

- |   |  |
|---|--|
| 1. Board estimates budget.  | 1. Board estimates budget.   |
| 2. Board sends budget to co. auditor.   | 2. Board adopts budget after public hearing, and, by resolution authorizes levy. |
| 3. County auditor transmits budget to county commission.                      | 3. Board directs county auditor to spread necessary levy.                        |
| 4. County commission approves, rejects or amends budget after public hearing. |  |
| 5. County commission, by resolution authorizes levy.                          |  |
| 6. County commission directs auditor to spread necessary mill levy.           |  |

The difference in the procedure, as shown by the table, is that county commission approval will not be required for the Water Resource District budget. The North Dakota Supreme Court has ruled that appointive boards do not have the authority to independently levy taxes. Since the advisory committee is proposing election of commissioners, the Water Resource

District Board would have the authority to levy its own mills, within the limits set by the Legislature.

It is appropriate at this point to address a practical problem which the advisory committee discussed:

1. Mill levies in portions of counties.

Each county auditor will be provided a geographical description of each Water Resource District. If a Water Resource District determined that it needed a 2 mill levy to satisfy its estimated budget, the county auditor would spread the 2 mill levy over the lands in the Water Resource District. This process would be the same process as is used for school district levies.

I. DUTIES OF WATER RESOURCE DISTRICTS

The advisory committee is recommending certain mandatory duties for Water Resource Districts. These duties for the most part are expressions of current requirements and activities rather than something brand new. However, in two instances new duties are included. Those two areas are identified in the following comments. (Sections 61-16.1-26 and 61-16.1-29). Traditionally, special purpose districts are given a list of powers which they may exercise at their discretion. For example, Section 61-16-11 of the North Dakota Century Code sets out 20 separate discretionary powers for Water Management Districts. Those powers will be transferred to Water Resource Districts (§61-16.1-25), to be exercised at the discretion of the Water Resource District Board.

In addition to the discretionary powers, three mandatory responsibilities and duties are set out in §61-16.1-26 and §61-16.1-29:

1. Exercise of Joint Powers.

Presently, Water Management Districts are authorized to jointly exercise powers. The advisory committee felt that cooperation of all Water Resource Districts in a river basin is extremely important. Thus, paragraph 2 of §61-16.1-26 is a new provision:

2. In addition to meeting twice each year to coordinate activities, water resource boards of a common river basin shall in all other efforts and activities cooperate and provide mutual assistance to the maximum extent possible.

2. Upstream & Downstream Interests.

The advisory committee recommends that language to require equal consideration of upstream and downstream interests be included in the law. This is already being done at this time, so it does not represent new policy. The following language proposed by the advisory committee is consistent with the state water resources policy:

"upstream landowners which have artificially altered the hydrologic scheme have an equal responsibility with downstream landowners" (61-16.1-26, paragraph 4).

and that

"in the planning of any surface water project which will have an impact downstream in the Water Resource District or another Water Resource District, to fully address and consider such impacts" (61-16.1-26, paragraph 5).

3. Master Plan.

Section 61-16.1-29 requires each Water Resource District to prepare and adopt a master plan for each of the various water management activities in the Water Resource District, such as drainage, water supply, recreation, flood control, etc. A plan is required only for each activity which the Water Resource District is involved with. Thus, if a Water Resource District is involved in drainage and flood control, a master plan would only be required for each of those two activities.

Section 61-16.1-29 also states that any Water Resource District which asks for money from the State Water Commission Contract fund must have its master plan completed for the management activity of request in order to receive funds.

The advisory committee did not want to require unnecessary planning and expense. Rather, the master plan idea is merely an attempt to require that a Water Resource District consider the long and short range impacts of its actions.

4. Priority Schedules.

The State Water Commission Contract Fund is North Dakota's version of other states' "Water Resource Development Fund". Each biennium the State Water Commission budget proposal contains an amount for the Contract Fund based on projected local financial needs. A priority schedule must be submitted to the State Water Commission by May 1 of each even-numbered year, consisting of a summary of planned district projects and financial needs for the next two years. It will be used by the Commission to help prepare an estimate for Contract Fund request, and will serve as a basis on which the Legislature can consider and appropriate funds for the Contract Fund.

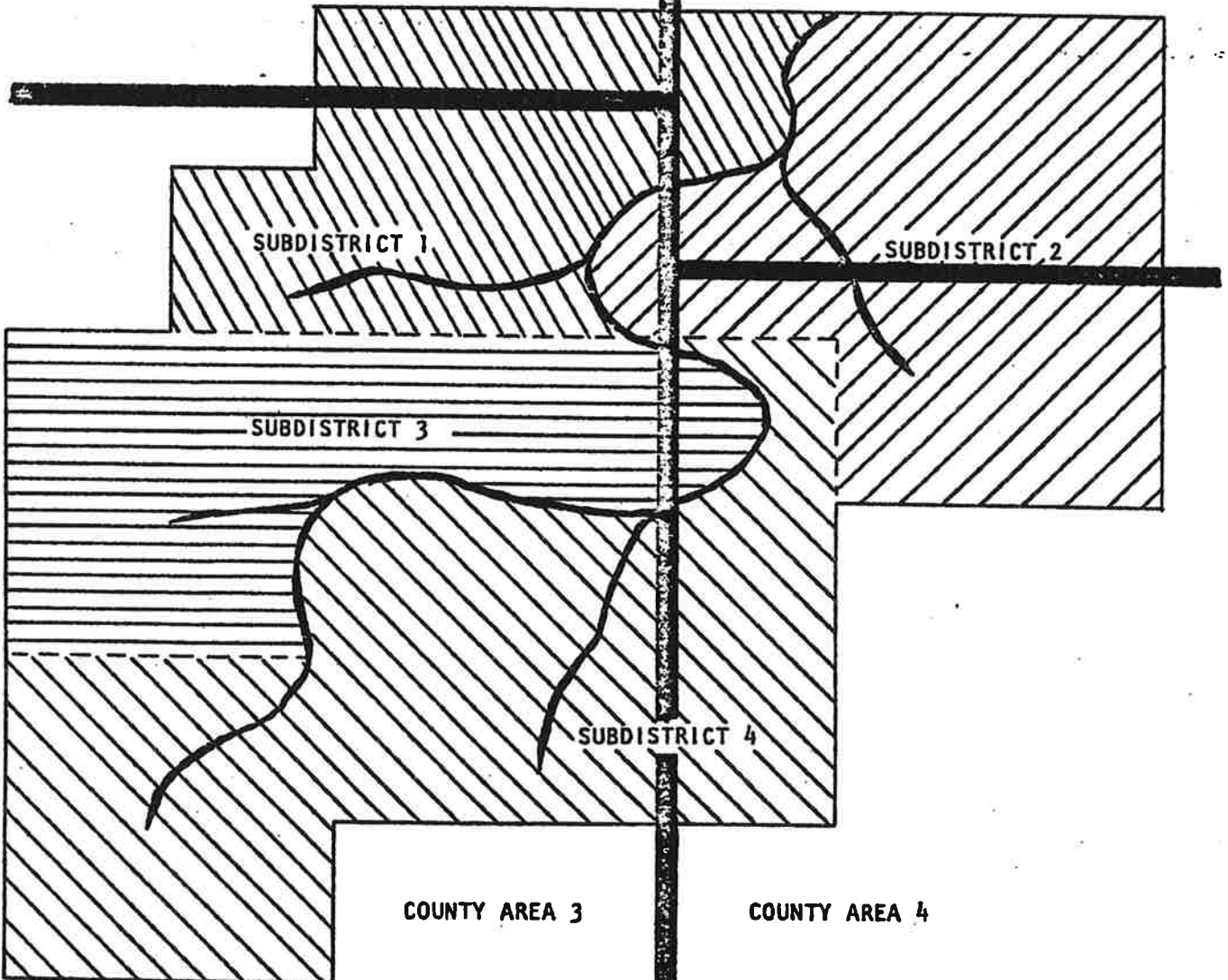
J. | CONCLUSION

Thank you for enduring the length of my testimony. As you can see, this is a complex area of law, and hopefully I have provided an explanation of the mechanism and practical problems which the advisory committee considered. The advisory committee felt that since the Water Management District study came from the Legislature itself, the Legislature apparently feels that changes are necessary to improve Water Management District activities. The conclusion of Ralph Christensen's summary of Water Management Districts best summarizes the work of the advisory committee. It provides:

As I stated earlier, the Legislature and State Water Commission have consistently adhered to a policy of local control over water management activities. The advisory committee's recommendations are consistent with that spirit, and provide the mechanism and machinery for more effective Water Resource Districts. Thereby, we can ensure that local water control is not lost.

COUNTY AREA 1

COUNTY AREA 2



SUBDISTRICT 1

SUBDISTRICT 2

SUBDISTRICT 3

SUBDISTRICT 4

COUNTY AREA 3

COUNTY AREA 4

## NORTH DAKOTA FLOODPLAIN MANAGEMENT ACT

A Bill for an Act to require delineation of flood plains and floodways; to require local governmental units to adopt minimum floodplain management ordinances; to establish permissible development of flood plain and floodway areas; to provide criteria for variances; to provide for enforcement and penalties; and to require application to the national flood insurance program in certain instances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. TITLE.) This act may be cited and shall be known as the North Dakota floodplain management act.

SECTION 2. LEGISLATIVE INTENT AND PURPOSE.) The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the flood plains of this state be developed in a manner which will result in minimum loss of life and threat to health, and reduction of private and public economic loss caused by flooding.

It is therefore the policy of this state and the purpose of this Act to guide development of the flood plains of this state in accordance with the enumerated legislative findings, to reduce flood damages through floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, and flood warning practices; and that the channels and that portion of the flood plains of watercourses, which are the floodways, should not be inhabited and should be kept free and clear of interference or obstructions which will cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this act to provide state coordination and assistance to local governmental units in floodplain management activities, to encourage local governmental units to adopt, enforce and administer sound floodplain management ordinances, and to provide the state water commission with authority necessary to carry out a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

SECTION 3. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise provides:

1. "Base flood" is the flood of one hundred-year frequency and means the flood having a one percent chance of being equalled or exceeded in any given year, as the state engineer determines.
2. "Base flood elevation" means the elevation of the base flood at the time of delineation of the floodway.
3. "Channel" means either the natural or artificial channel of a watercourse.
4. "Commission" means state water commission.
5. "District" means a water resource district, as defined in chapter 61-16.1.
6. "Flood" or "Flood water" means the water of any watercourse in North Dakota or upon or adjoining any boundary-line of North Dakota, which is above the bank and/or outside the channel and banks of the watercourse; and also means the water of any lake which is above and outside the normal boundary thereof.
7. "Flood control" means the prevention of floods, the control, regulation, diversion or confinement of flood water or flood flow, and the protection therefrom, according to sound and accepted engineering practice in order to minimize the extent of floods, and the death, damage and destruction caused thereby, and, all things incidental thereto or connected therewith.
8. "Flood easement" means an easement on property to be inundated or covered by water.
9. "Flood fringe" means that portion of a flood plain outside of the floodway.



10. "Flood plain" means the area adjoining a watercourse, which has been or may be hereafter covered by the base flood. Flood plain is the floodway plus the flood fringe.
11. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, primarily for the reduction or elimination of flood damage.
12. "Floodway" means the channel of a watercourse and those portions of the adjoining flood plains which must be reserved to efficiently carry and discharge the base flood, without cumulatively increasing the flood stage of the base flood higher than the allowable limit established pursuant to section 4.
13. "Floodway elevation" means the elevation that corresponds to the increased flood stage of the base flood allowed by delineation of the floodway.
14. "Local governmental unit" means a county, city, or organized township, or water resource district if the district has petitioned to assume zoning jurisdiction pursuant to section 61-16.1-25.
15. "Non-conforming use" means any existing use or activity in a floodway or flood fringe which is not consistent with sections 11 through 13 of this Act.
16. "Person" means any person, firm, partnership, association or corporation.
17. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this Act, his designee.
18. "Variance" means any use or activity proposed to be constructed or placed in a floodway or flood fringe after July 1, 1981, which is not consistent with sections 11 through 13 of this Act.
19. "Watercourse" means a watercourse as defined in section 61-01-06.

**SECTION 4. FLOODWAY.)** The state water commission shall have the authority to establish, by regulation, the total cumulative increase in the flood stage of the base flood that can be caused by total encroachment of the flood plain for the purposes of determining the floodway. However, in no event shall the total cumulative increase in the flood stage of the base flood exceed one foot.

**SECTION 5. DUTIES OF COMMISSION.)** The commission shall:

1. Collect and distribute information relating to flooding and floodplain management;
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to local governmental units and districts for planning purposes, to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist local governmental units and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the office of disaster emergency services.
4. Do all other things, within lawful authority, which are necessary or desirable to manage the flood plains for uses compatible with the preservation of the capacity of the flood plain to carry and discharge the base flood. In cooperation with local governmental units and districts, the commission shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

**SECTION 6. DELINEATION OF FLOOD PLAINS AND FLOODWAYS.)** The commission shall initiate a comprehensive program for the delineation of flood plains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of flood plains and floodways on a watercourse, he shall notify the appropriate district that this technical information is available, and shall recommend flood plain and floodway areas.

The district shall then consult with the affected local governmental units, and shall specifically request in writing that each affected local governmental unit submit to the district pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential



hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as the local governmental unit considers appropriate. Local governmental units shall provide this information to the district within ninety days after the request is mailed. The district shall consider information provided by local governmental units, as well as pertinent information and recommendations provided by the state engineer, and shall delineate, by order after a public hearing, the flood plain and floodway within which the local governmental unit may adopt appropriate ordinances and regulations. Those delineations shall be based upon reasonable hydrological assessment, and shall be in accordance with section 4.

**SECTION 7. FURNISHING OF MATERIAL TO LOCAL GOVERNMENTS - RECORDING.)**  
When the flood plain or the floodway is delineated, the district shall furnish this data to officials of the local governmental units having jurisdiction over those areas, together with a map outlining the areas involved. A copy shall also be furnished to the state water commission. Upon receipt of the flood plain and floodway maps, the commission shall immediately send to the officials of the local governmental unit a copy of this Act, and any rules adopted pursuant to this Act.

**SECTION 8. ALTERATION OF DELINEATION OF FLOOD PLAINS OR FLOODWAYS.**  
The district may alter the delineated flood plains or floodways at any time, by order after a public hearing, if it is warranted by an evaluation of subsequently available information and data. Any alteration of a floodway must be in accordance with section 4.

**SECTION 9. NOTICE.)** A district shall give notice of a hearing prior to delineating or altering the delineation of flood plains or floodways by publishing the notice once each week for two consecutive weeks in the official county newspaper in each county where the flood plain or floodway is located, and in a newspaper of general circulation in the area involved, the last publication of which shall be not less than ten days nor more than twenty days prior to the date set for the hearing.

**SECTION 10. FLOODPLAIN MANAGEMENT ORDINANCES.)**

1. Upon transmittal of the floodplain information to officials of each local governmental unit, each local governmental unit shall have six months from the date of transmittal to adopt or amend floodplain management ordinances which meet or exceed the minimum standards of this Act. The floodplain management ordinances shall be based on the flood plain and floodway as delineated by the district, and shall include but not be limited to preservation of the capacity of the floodway to carry and discharge the base floods, minimization of flood hazards, and guidance of development in the flood plain. The ordinances shall be based on adequate technical data and competent engineering advice and shall be consistent where possible with local and regional comprehensive planning.
2. Each local governmental unit shall adopt floodplain management ordinances and shall submit the ordinances to the commission for review. If the ordinances are satisfactory and in compliance with this Act, the commission shall so notify the local governmental unit as soon as possible, but no later than ninety days. If the ordinances are not in compliance with this Act, the commission shall return the ordinances to the local governmental unit with a written statement of necessary changes. Within ninety days thereafter, the local governmental unit shall amend its ordinances as necessary to satisfy the provisions of this chapter. A local governmental unit may adopt floodplain management ordinances in the absence of delineation of a flood plain and a floodway, provided that any such ordinances are in compliance with this Act. Nothing in this Act shall limit the power of a local governmental unit to adopt or continue in force any floodplain management ordinance which is more restrictive than that which may be required pursuant to this Act.
3. A local governmental unit may amend its floodplain management ordinances so long as such amendments are consistent with this Act.
4. If a local governmental unit fails to adopt floodplain management ordinances within the six month period, as required by this Act, the commission shall adopt an ordinance for the local governmental unit which meets the minimum standards established pursuant to this Act. The commission shall hold at least one public hearing on the proposed ordinance. Prior to such

hearing or hearings, notice shall be provided in accordance with section 8 of this chapter. The ordinance shall be effective for the local governmental unit on the date and in accordance with such regulations relating to compliance as the commission prescribes.

5. If the commission determines that there is a failure by a local governmental unit to comply with the intent, purposes, and provisions of this Act and the minimum standards adopted hereunder, the commission shall enforce the minimum standards of this Act until such time as the commission determines that the local governmental unit will comply.

#### SECTION 11. PERMISSIBLE FLOODWAY USES.)

##### Alternative 1.

The following uses shall be permitted within the floodway to the extent that they do not cause an increase in the base flood elevation:

1. Agricultural uses.
2. Industrial-commercial uses such as loading areas, parking areas, or emergency landing strips.
3. Private and public recreational uses such as tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails.
4. Forestry, including processing of forest products with portable equipment.

Any uses which do not cause an increase in the base flood elevation proposed to be located in the floodway which are not prohibited by section 12 but which are not included in subsections 1 through 4 of this section, shall require a variance permit in accordance with sections 15 and 16 prior to construction or installation. Any uses which will cause an increase in the base flood elevation shall require a variance permit prior to construction or installation.

##### Alternative 2.

Uses shall be permitted within the floodway to the extent that they do not cause an increase in the base flood elevation. This shall include, but shall not be limited to:

1. Agricultural uses.
2. Industrial-commercial uses such as loading areas, parking areas, or emergency landing strips.
3. Private and public recreational uses such as tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, or hiking and horseback riding trails.
4. Forestry, including processing of forest products with portable equipment.

Any uses which will cause an increase in the base flood elevation shall require a variance permit in accordance with sections 15 and 16 prior to construction or installation.

##### Alternative 3.

Uses shall be permitted within the floodway to the extent that they do not cause an increase in the base flood elevation. Any uses which will cause an increase in the base flood elevation shall require a variance permit in accordance with sections 15 and 16 prior to construction or installation.

SECTION 12. PROHIBITED USES WITHIN FLOODWAY.) The following uses shall be prohibited within any floodway, and in no event shall any variance be granted for any of these uses:

1. A building for living purposes or place of assembly or permanent use by human beings.
2. A structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway.
3. The construction or permanent storage of an object subject to flotation or movement during flood level periods.

SECTION 13. PERMISSIBLE USES WITHIN FLOOD FRINGE.) The following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

1. Any use permitted in the designated floodway pursuant to section 11.

2. Structures, including residential, commercial, and industrial structures, provided that:
  - a. Such structures meet the standards adopted by the local governmental unit or of this Act, whichever are more restrictive.
    - Alternative 1.
  - b. Residential structures are constructed on fill such that the lowest floor including basements is elevated to or above the base flood elevation.
  - c. Commercial and industrial structures are either constructed on fill as specified in subdivision b or are adequately floodproofed to or above the base flood elevation.
    - Alternative 2.
  - b. Residential structures are constructed on fill such that the lowest floor elevation including basements is one foot above the base flood elevation.
  - c. Commercial and industrial structures are either constructed on fill as specified in subdivision b or are adequately floodproofed up to an elevation no lower than one foot above the base flood elevation. Such floodproofing shall be in accordance with the standards adopted by the local governmental unit or of this Act, whichever are more restrictive.

**SECTION 14. ENFORCEMENT AND PENALTIES.)**

1. It is unlawful for any person to establish any use not permitted by section 11 within any flood plain or floodway without a permit from the state engineer and the appropriate district. Every such use placed in the flood plain without a permit in violation of this Act or a flood plain management ordinance adopted under or in compliance with the provisions of this Act is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the commission or the appropriate local governmental unit. A person who violates any of the provisions of this Act is guilty of a class B misdemeanor. Each day during which such violation exists is a separate offense.
2. This section shall not affect any existing nonconforming use established in the flood plain or floodway before the flood plain management ordinances adopted by the local governmental unit are effective or before the minimum standards pursuant to this Act or implementing regulations are effective.
3. A person may not make nor may an owner allow alterations of a nonconforming use within any flood plain or floodway except upon express written approval of the state engineer and the appropriate district. Maintenance of a non-conforming use is not an alteration.
4. Any governmental unit which fails to adopt or enforce floodplain management ordinances as required by this Act shall not be eligible to receive any flood disaster funds from North Dakota pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

**SECTION 15. VARIANCE.)**

1. Permits for the establishment or alteration of any uses which would otherwise violate sections 11 or 13 of this chapter shall be required. The application for the permit shall be submitted first to the appropriate district and shall include, but shall not be limited to, complete maps, plans, profiles, and specifications of the proposed use.
2. Within forty-five days after receipt of a permit application for a variance to be established in the flood plain or floodway of watercourses, the district shall indicate its approval or disapproval of the application. If the permit is denied by the district, no further action is necessary, but the applicant shall be immediately notified of such denial. If the application is approved, the district shall forward it to the state engineer, who shall make a determination on the application within forty-five days. A permit application must be approved by both the appropriate district and the state engineer in order to be a valid permit.
3. The state engineer and the appropriate district may attach reasonable conditions to any permit. In order for the permit to continue to remain in force, the variance must be maintained so as to comply with the conditions and specifications of the permit.

**SECTION 16. CRITERIA TO BE CONSIDERED IN CONNECTION WITH VARIANCE REQUEST.** In passing upon an application for a variance, the state engineer and the district shall consider:

1. The danger to life and property by water which may be backed up or diverted by the variance.
2. The danger that the variance will be swept downstream to the injury of others.
3. The construction or alteration of the variance in such a manner as to lessen the danger.
4. The permanence of the variance.
5. Such other factors as are in harmony with the purpose and intent of this Act.

**SECTION 17. RULES AND REGULATIONS.)** The commission shall promulgate rules and regulations, consistent with this Act, which are necessary to carry out the purposes of this Act, including but not limited to the following:

1. Criteria for determining the floodplain uses which may be permitted without creating an unreasonable public hazard or unduly restricting the capacity of the floodway to carry and discharge the base flood.
2. Variance procedures.
3. The establishment of criteria for alternative or supplemental floodplain management measures.

**SECTION 18. AUTHORITY TO ENTER AND INVESTIGATE LANDS OR WATERS.)**

Alternative 1.

The commission or the local governmental unit may make reasonable entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this chapter. An investigation of a variance or non-conforming use shall be made by the commission either on its own initiative, on the written request of three titleholders of land abutting the watercourse involved, or on the written request of a local governmental unit.

Alternative 2.

An investigation of a variance or non-conforming use shall be made by the commission either on its own initiative, on the written request of three titleholders of land abutting the watercourse involved, or on the written request of a local governmental unit.

Alternative 3.

The commission or the local governmental unit must notify all landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this Act. An investigation of a variance or nonconforming use shall be made by the commission either on its own initiative, on the written request of three titleholders of land abutting the watercourse involved, or on the written request of a local governmental unit.

Alternative 4.

Eliminate section 18 from the proposed bill.

**SECTION 19. PERMIT CONSIDERED AS ADDED REQUIREMENT.)**

The granting of a permit under this chapter does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement.

**SECTION 20. FLOOD INSURANCE.)**

1. It is the policy of this state that all local governmental units subject to excessive flooding shall participate in the national flood insurance program, Public Law 90-448, and acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance.
2. Within ninety days after July 1, 1981, the commission shall prepare a list of local governmental units having areas subject to excessive flooding and shall notify each local governmental unit included on the list of his findings. If a local governmental unit objects to the commission's findings, it shall submit evidence supporting its objections within forty-five days after receiving the commission's notification. Thereafter the commission shall accept or reject the findings of each local governmental unit submitting evidence, shall prepare an amended list of local governmental units having areas subject to excessive flooding, and shall notify each local governmental unit of its inclusion on the amended list.
3. Within one hundred twenty days after receiving notice of inclusion on the amended list, each local governmental unit shall apply for participation in the national flood insurance program in the manner prescribed by federal laws and regulations.

Michael Dwyer  
State Water Commission  
March 19, 1980

TESTIMONY TO NATURAL RESOURCES INTERIM COMMITTEE  
ON SECOND DRAFT OF N.D. FLOODPLAIN MANAGEMENT ACT - HCR-3016

Mr. Chairman, members of the committee, my testimony on the second draft of the North Dakota Floodplain Management Act will consist of three parts:

- I. Summary of Existing Federal, State, & Local Floodplain Management Efforts.
- II. General Floodplain Terminology.
- III. Second Draft Floodplain Management Act.

The purpose of providing a brief summary of existing efforts is to clearly delineate the various programs to avoid as much confusion as possible.

I. Summary of Existing Federal, State, & Local  
Floodplain Management Efforts.

It is essential that floodplain management programs be distinguished from other flood related activities. The following diagram gives an illustration of the distinction between the various flood related activities:

1. FLOOD CONTROL. This includes activities directed at reducing or minimizing a flood itself. This would include retention structures, temporary storage, diversion structures, and other activities which actually help to reduce the amount of water in a flood.
  - a. Federal Effort.
    - 1.) Corps of Engineers Programs.
    - 2.) Soil Conservation Service Programs.
  - b. State Effort.
    - 1.) HCR-3022
    - 2.) State Water Commission - financial (state funds) and technical assistance.
  - c. Local Effort.
    - 1.) HCR-3022 - Water Management Districts.  
One of the many duties of WMD's is "flood control".  
Improved WMD's will result in improved "flood control".
2. FLOODPLAIN MANAGEMENT - FLOOD DAMAGE REDUCTION.  
This represents the effort to reduce and minimize the damages caused by floods. For example, rather than spend \$50,000 to repair a home in a floodway each time there is a flood, it would seem wiser to move that home to a safe place, which is a one-time expenditure. Or perhaps a wise floodplain development program would have prevented the construction of the home in the floodway in the first place.

- a. Federal Effort: National Flood Insurance Program (NFIP).
  - 1.) Subsidized flood insurance is provided if ordinances are adopted by local governmental units.
  - 2.) Federal funds, loans, etc., withheld if ordinances are not adopted or enforced.
- b. State Effort.
  - 1.) HCR-3016 - Proposed N.D. Floodplain Management Act
- c. Local Effort:
  - 1.) Participation in NFIP.
  - 2.) Compliance with N.D. Floodplain Management Act if passed.

\*The NFIP encourages, but does not require, adoption of a state floodplain management act. However, if a state floodplain management act is adopted, the activities under it will be very similar to the activities under the NFIP; i.e. delineation of floodplain and floodway, adoption of local ordinances, withholding funds if not enforced, etc.

3. DISASTER RELIEF - FLOOD DAMAGE RECOVERY.

This represents the effort to assist local areas to recover from the severe damages suffered once a flood has occurred. The primary form of assistance is financial.

- a. Federal Effort: Federal Disaster Relief Act. This is the source of federal financial assistance for flood disaster relief.
- b. State Effort:
  - 1.) Flood Hazard Mitigation Plan. Required by Federal Disaster Relief Act and Federal-State Disaster Assistance Agreement.
    - (a) HCR-3016: State legislation included as part of Hazard Mitigation Plan to provide necessary authority to implement the plan.
  - 2.) Disaster Emergency Services
    - (a) Disaster preparedness
    - (b) Disaster response
    - (c) Disaster Recovery Programs
- c. Local Effort.

\*It is pursuant to the Federal Disaster Relief Act and the disaster relief program through which the federal government has indicated that failure to adopt a state floodplain management act will render the state ineligible for future disaster assistance.

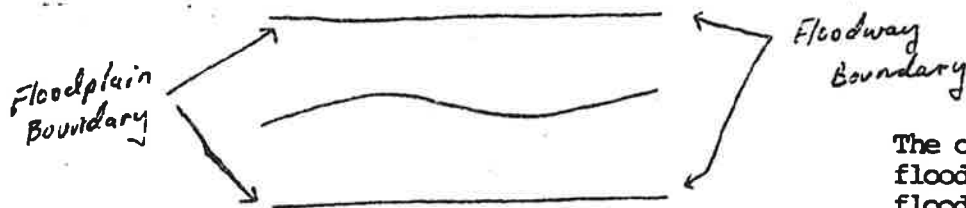
## II. General Floodplain Terminology

Floodplain management standards and terminology are complex and thus difficult to understand. The following review may be helpful to understand the 2nd bill draft of the proposed North Dakota Floodplain Management Act.



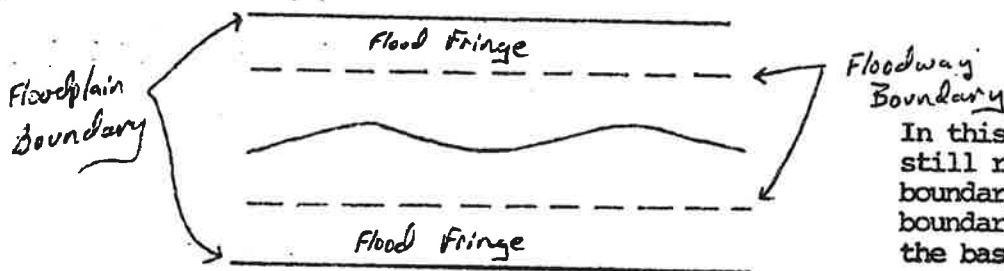
1. Virgin Flood Plain. Officials are faced with a virgin floodplain, which is completely undeveloped in only very limited instances. In such a case, the floodplain would be the same as the floodway. The floodway is the area which must be reserved to efficiently carry and discharge the 100-year flood. Under virgin conditions, the floodway is the same as the floodplain since the area needed to efficiently discharge the base flood is the area which is inundated.
2. Floodway. Since we very seldom deal with undeveloped floodplain areas, delineation of the floodway becomes an arbitrary decision. The arbitrary decision is based on how much of the flood plain can be developed and still have enough open area to discharge the 100-year flood. The following example should illustrate:

Undeveloped Flood Plain



The outer lines represent the floodplain boundary and the floodway boundary.

Developed Flood Plain



In this situation, the outer lines still represent the floodplain boundary. However, the floodway boundaries have been narrowed, on the basis that there is still enough area adjoining the channel to efficiently carry and discharge the 100-year flood.

3. Total Encroachment. Let us assume that the area designated as flood fringe is totally developed and filled in. The 100-year flood will naturally be higher than prior to development. How much higher? Under the proposed floodplain management act, only a maximum of one foot.

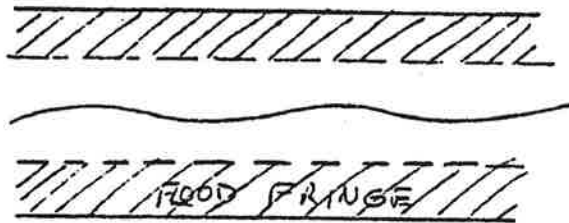
Why one foot? This is clearly an arbitrary limit, but is based on several reasonable factors. First, it has generally been determined that causing a 100-year flood to rise more than one foot would increase velocity, displace flood water, and thus cause adverse impacts elsewhere equal to or greater than the impacts which are being reduced. Second, it is the same standard as is used by the federal government.

4. Delineation of Floodway. Thus, a floodway is established by determining an area of the flood plain, which if totally developed (total encroachment), would cause a total cumulative rise in the 100-year flood of up to one foot. That area would then be delineated as flood fringe, and in between the flood fringe areas would be the floodway. All encroachment can take place on one side of the river, or on both sides. The floodway can be adjusted however the Water Resource District sees fit, except that in no event can more than a one-foot rise in the base flood take place if the area outside the floodway (flood fringe) were totally developed.

The following examples illustrate the process of delineating the floodway:

Floodplain Boundaries   
 Floodway Boundaries 

(1)



Total development of the shaded area would cause a two-foot rise in the 100 yr flood. Under the proposed floodplain act, this would not be permissible, and the floodway would have to be wider.

(2)



Total development of the shaded area would only cause a one foot rise in the 100 year flood. This floodway would be permissible.

(3)



Total development of the shaded areas would only cause a 1/2 foot rise in the 100 year flood. This floodway would be permissible.

### III. N.D. Floodplain Management Act

#### A. Procedure

##### 1. Delineation of floodplains and floodways.

With the assistance of the State Water Commission, Water Resource Districts will utilize information obtained from federal agencies, the State Water Commission, and local entities and designate a floodplain and a floodway for various watercourses. Designation of floodplains and floodways must be completed before any other requirements are imposed.



2. Notify local governments.

In North Dakota, townships, counties and cities have zoning authority over floodplain areas. Townships can relinquish that authority if they choose. After a Water Resource District has designated the floodplain and floodway area, it must notify each local government which has jurisdiction and provide a copy of the floodplain and floodway map.

3. Adoption of floodplain management ordinances.

After receipt of the floodplain and floodway maps, each local governmental entity has 6 months to adopt floodplain management ordinances which meet the minimum criteria of the North Dakota Floodplain Management Act. The ordinances can be more stringent. The State Water Commission must approve the floodplain management ordinances before they are adopted.

4. Failure to adopt ordinances.

If the local government has not adopted the required floodplain management ordinances during the six month period, the State Water Commission shall adapt and enforce minimum ordinances for the local government.

B. Minimum Criteria

1. Permissible Floodway Development.

Certain development in the floodway is permitted as long as it does not cause a rise in the base flood. However, in no event shall any residence or place of assembly be allowed in a floodway.

2. Permissible Activity in Flood Fringe.

Keep in mind that flood fringe and flood way = floodplain. Any activity permitted in the floodway is permitted in the flood fringe, and any other development or structure is allowed in the flood fringe so long as it is:

- a. Residence - lowest floor elevation (at or above) (one foot above) 100-year flood
- b. Any other structure - floodproofed to an elevation (at or above) (no lower than one foot above) 100-year flood.

3. Permits.

Any activity which does not satisfy the permissible activities in floodways or floodplains must be approved by the State Engineer and the Water Resource District prior to construction. (Variance.)

C. I will review each section of the second bill draft individually.

\* INDICATES PRIOR  
PERMIT STATUS

WATER PERMIT AGENDA FOR APRIL 2 AND 3, 1980 MEETING

| NO.  | NAME AND ADDRESS  | SOURCE   | PURPOSE    | AMOUNTS REQUESTED              | COMMENTS & RECOMMENDATIONS  |
|------|---|--|------------|--------------------------------|---|
| 3222 | Shell Oil Company -<br>Houston, Texas<br>(McKenzie County)<br><br>Priority: 1-22-80<br>Hearing: 3-10-80 | Ground Water<br><br>* NO PRIOR PERMITS   | Industrial | 8.0 acre-feet                  | 8.0 acre-feet<br><br>(This request was approved by the State Engineer on March 28, 1980.) |
| 3223 | Hackman, Robert -<br>Tappen<br>(Kidder County)<br><br>Priority: 1-23-80<br>Hearing: 3-17-80             | Ground Water<br><br>* NO PRIOR PERMITS   | Irrigation | 240.0 acre-feet<br>157.6 acres | It is recommended that action be deferred at this time.                                   |
| 3224 | Becker, Henry -<br>Streeter<br>(Logan County)<br><br>Priority: 1-25-80<br>Hearing: 3-17-80              | Ground Water<br><br>* #1924 (Priority Date: 3-12-74) Granted 157.0 acres               | Irrigation | 468.0 acre-feet<br>312.0 acres | 405.0 acre-feet<br>270.0 acres<br><br>(Remainder of original request shall be denied.)    |
| 3225 | Dvorak, Laudie L. -<br>Manning<br>(Dunn County)<br><br>Priority: 1-28-80<br>Hearing: 3-17-80            | Crooked Creek and<br>Knife River, trib.<br>to Missouri River<br><br>* NO PRIOR PERMITS | Irrigation | 372.0 acre-feet<br>186.0 acres | It is recommended that action be deferred at this time.                                   |

| NO.  | NAME AND ADDRESS   | SOURCE   | PURPOSE    | AMOUNTS REQUESTED  | COMMENTS & RECOMMENDATIONS  |
|------|--|--|------------|--|---|
| 3226 | Bateman, Rocklin W. -<br>New Salem<br>(Morton County)<br><br>Priority: 2- 1-80<br>Hearing: 3-17-80             | Ground Water<br>(Heart River<br>Aquifer)<br><br>* NO PRIOR PERMITS | Irrigation | 188.0 acre-feet<br>94.0 acres  | 141.0 acre-feet<br>94.0 acres<br><br>(Remainder of original<br>acreage applied for<br>shall be denied.) |
| 3227 | Mohberg, Robert E. -<br>Milnor<br>(Sargent County)<br><br>Priority: 2-15-80<br>Hearing: 3-17-80                | Ground Water<br><br>* NO PRIOR PERMITS                             | Irrigation | 202.5 acre-feet<br>135.0 acres   | It is recommended that<br>action be deferred at<br>this time.   |
| 2189 | Vculek, Francis -<br>Crete<br>(Sargent County)<br><br>Priority: 12-23-74<br>Hearing for<br>Amendment: 3-17-80  | Ground Water   | Irrigation | This is a request<br>to change the point<br>of diversion approved<br>for SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section<br>13 to NW $\frac{1}{4}$ of Section 13,<br>Township 132, Range 58 | It is recommended<br>that this request for<br>a change in point of<br>diversion be approved.            |
| 2182 | Kamoni, Allen -<br>Pettibone<br>(Kidder County)<br><br>Priority: 12-10-74<br>Hearing for<br>Amendment: 3-17-80 | Ground Water   | Irrigation | This is a request for<br>a change in point of<br>diversion.  | It is recommended that<br>this request for a<br>change in points of<br>diversion be approved.           |

| NO.  | NAME AND ADDRESS  | SOURCE                             | PURPOSE    | AMOUNTS REQUESTED   | COMMENTS & RECOMMENDATIONS   |
|------|---|------------------------------------|------------|---|--|
| 880  | Delzer, Jerome<br>and Dennis -<br>Bismarck<br>(Burleigh County)       | Ground Water and<br>Missouri River | Irrigation | This is a request<br>for a change in<br>point of diversion. | It is recommended that<br>this request for a<br>change in point of<br>diversion be approved. |
|      | Priority: 10-10-60<br>Hearing for<br>Amendment: 3-17-80               |                                    |            |   |  |
| 2098 | Walker, Lawrence T.<br>and Frances E. -<br>Maddock<br>(Benson County) | Ground Water                       | Irrigation | This is a request<br>for a change in<br>point of diversion. | It is recommended that<br>this request for a change<br>in point of diversion<br>be approved. |
|      | Priority: 4- 1-74<br>Hearing for<br>Amendment: 3-17-80                |                                    |            |   |  |
| 3206 | Rust, Leo and Betty -<br>Cogswell<br>(Sargent County)                 | Ground Water                       | Irrigation | 948.6 acre-feet<br>632.4 acres                              | It is recommended that<br>action be deferred at<br>this time.                                |
|      | Priority: 2- 5-80<br>Hearing: 3-24-80                                 | * NO PRIOR PERMITS                 |            |   |  |
| 2221 | Kleffer, Peter -<br>Casselton<br>(Ransom County)                      | Ground Water                       | Irrigation | This is a request<br>for a change in<br>point of diversion. | It is recommended that<br>this request for a change<br>in point of diversion<br>be approved. |
|      | Priority: 2-21-75<br>Hearing for<br>Amendment: 2-24-80                |                                    |            |   |  |

| NO.  | NAME AND ADDRESS   | SOURCE  | PURPOSE    | AMOUNTS REQUESTED   | COMMENTS & RECOMMENDATIONS   |
|------|--|---|------------|---|--|
| 2580 | Dick, James -<br>Englevale<br>(Ransom County)<br><br>Priority: 10-21-76<br>Hearing for<br>Amendment: 3-24-80 | Ground Water  | Irrigation | This is a request<br>for a change in<br>point of diversion. | It is recommended that this<br>request for a change in<br>point of diversion be<br>approved. |
| 3171 | Lehr, City of -<br>Lehr<br>(Logan County)<br><br>Priority: 2-20-80<br>Hearing: 3-24-80                       | Ground Water<br><br>* NO PRIOR PERMITS  | Municipal  | 60.0 acre-feet  | It is recommended that<br>action be deferred at<br>this time.                                |
| 2467 | Fortler, William -<br>Wildrose<br>(Divide County)<br><br>Priority: 2-19-80<br>Hearing: 3-24-80               | Unnamed Lake,<br>Non-Contributing<br>to Missouri River<br>Watershed<br><br>* NO PRIOR PERMITS | Irrigation | 120.0 acre-feet<br>79.8 acres                               | It is recommended that<br>action be deferred at<br>this time.                                |
| 2915 | Flatla, Florence M. -<br>Bergen<br>(McHenry County)<br><br>Priority: 2-15-80<br>Hearing: 3-24-80             | Ground Water<br><br>* NO PRIOR PERMITS  | Irrigation | 640.0 acre-feet<br>295.0 acres                              | It is recommended that<br>action be deferred at<br>this time.                                |

| NO.   | NAME AND ADDRESS   | SOURCE                               | PURPOSE   | AMOUNTS REQUESTED                                     | COMMENTS & RECOMMENDATIONS                              |
|---|--|--------------------------------------|---|---|---|
| 3216  | U.S. Water and Power Resources Service - Billings, Montana (Stark County)<br><br>Priority: 2-11-80<br>Hearing: 3-24-80                       | Heart River, trib. to Missouri River | Increase Storage in Dickinson Dam; Municipal; Industrial; Recreation; Fish and Wildlife | 3,493.0 acre-feet                                     | 3,493.0 acre-feet                                       |
| * The applicant has several permits in various counties throughout the State of North Dakota. |  |                                      |   |   |   |
| 3209  | Noack, Fabian E. and Lloyd H. - Grand Forks (Eddy County)<br><br>Priority: 1- 7-80<br>Hearing: 3-24-80                                       | Ground Water                         | Irrigation  | 702.0 acre-feet<br>407.0 acres                        | It is recommended that action be deferred at this time. |
| * NO PRIOR PERMITS  |  |                                      |   |   |   |
| 697   | Park River, City of - Park River (Walsh County)<br><br>Priority: 12-3-56<br>Hearing for Amendment: 5- 8-78<br>Amendment<br>Deferred: 6- 1-78 | Homme Reservoir                      | Municipal   | This is a request for a change in point of diversion. | It is recommended that this request be approved.        |
| * NO PRIOR PERMITS  |  |                                      |   |   |   |

| NO.  | NAME AND ADDRESS  | SOURCE   | PURPOSE                               | AMOUNTS REQUESTED   | COMMENTS & RECOMMENDATIONS  |
|------|---|--|---------------------------------------|---|---|
| 2523 | Glinz, Norman -<br>Bottineau<br>(Stutsman County)<br><br>Priority: 9- 7-76<br>Hearing: 9-20-76<br>Deferred: 9-28-76                       | Ground Water<br><br><br>* NO PRIOR PERMITS   | Irrigation                            | 520.0 acre-feet<br>312.0 acres                              | The applicant has indicated that he could not locate an adequate water supply and is no longer interested in completing the application; therefore, it is recommended that this request be withdrawn. |
| 3228 | Patterson Tower<br>Partnership, Ltd. -<br>Bismarck<br>(Burleigh County)<br><br>Priority: 2-21-80<br>Hearing: 3-31-80                      | Ground Water<br>(Dakota Group)<br><br>* NO PRIOR PERMITS                                       | Industrial<br>(Geothermal<br>Heating) | 1935.61 acre-feet   | 1935.61 acre-feet   |
| 3230 | Loh, Joe -<br>Manning<br>(Dunn County)<br><br>Priority: 2-22-80<br>Hearing: 3-31-80   | Knife River and<br>Unnamed Dry Creeks,<br>trib. to Missouri<br>River<br><br>* NO PRIOR PERMITS | Irrigation                            | 108.0 acre-feet<br>54.0 acres                               | It is recommended that action be deferred at this time.   |
| 1356 | Perhus, James -<br>Taylor<br>(Dunn County)<br><br>Priority: 3- 9-66<br>Hearing on<br>Amendment: 5- 7-79<br>Deferred<br>Amendment: 6-25-79 | Knife River, trib.<br>to Missouri River  | Irrigation                            | This is a request<br>for a change in<br>point of diversion. | It is recommended that this request for a change in point of diversion be approved.   |

| NO.  | NAME AND ADDRESS  | SOURCE   | PURPOSE  | AMOUNTS REQUESTED   | COMMENTS & RECOMMENDATIONS  |
|------|---|--|--|---|---|
| 1964 | <p>Minnkota Power<br/>Cooperative, Inc. and<br/>Square Butte Electric<br/>Cooperative -<br/>Grand Forks<br/>(Oliver County)</p> <p>Priority: 9-10-73<br/>Hearing for<br/>Amendment: 2-26-79<br/>Deferred<br/>Amendment: 4-18-79</p> | Missouri River                                       | Industrial and<br>supplemental<br>water supply<br>to Nelson Lake<br>and Milton R.<br>Young Steam Plant | This is a request<br>for a change in<br>point of diversion. | It is recommended that<br>this change in point of<br>diversion be approved. |
| 669  | <p>Drayton, City of -<br/>Drayton<br/>(Pembina County)</p> <p>Priority: 5- 3-56<br/>Hearing on<br/>Amendment: 3-31-80</p>   | Red River of<br>the North                            | Municipal and<br>Industrial  | This is a request<br>for a change in<br>point of diversion. | It is recommended that<br>action be deferred at<br>this time.               |
| 3232 | <p>Opp, Reinhold -<br/>Napoleon<br/>(Logan County)</p> <p>Priority: 2-27-80<br/>Hearing: 3-31-80</p>  | Ground Water   | Irrigation   | 480.0 acre-feet<br>312.0 acres                              | It is recommended that<br>action be deferred at<br>this time.               |
|      |   | * #3124 (Priority Date: 8-23-78) Granted 300.0 acres |  |   |   |



| NO.  | NAME AND ADDRESS   | SOURCE                                | PURPOSE    | AMOUNTS REQUESTED                 | COMMENTS & RECOMMENDATIONS  |
|------|--|---------------------------------------|------------|-----------------------------------|---|
| 3207 | Pekin, City of -<br>Pekin<br>(Nelson County)<br><br>Priority: 10-25-79<br>Hearing: 12-10-79<br>Deferred: 2-29-80 | Ground Water<br>(McVillie<br>Aquifer) | Municipal  | 175.0 acre-feet                   | 35.0 acre-feet<br><br>(Remainder of original<br>request to be denied.)<br><br>* #1844 (Priority Date: 4-26-72) Granted 27.0 acre-feet   |
| 2750 | Bower, Douglas -<br>Page<br>(Cass County)<br><br>Priority: 1-17-79<br>Hearing: 2- 5-79<br>Deferred: 2-20-79      | Ground Water<br>(Page Aquifer)        | Irrigation | 699.3 acre-feet<br>466.2 acres    | Recommend for approval:<br>202.5 acre-feet<br>270.0 acres<br><br>(Remainder of request<br>held in abeyance)<br><br>* #2551 (Priority Date: 9-27-76) Requested 306.6 acres;<br>135.0 acres approved; remainder held in abeyance.<br><br>(THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980)   |
| 2635 | Conrad, William -<br>Page<br>(Cass County)<br><br>Priority: 12- 9-76   | Ground Water<br>(Page Aquifer)        | Irrigation | 2300.0 acre-feet<br>1544.65 acres | On February 11, 1977, the<br>applicant was granted<br>approval for 405.0 acre-<br>feet of water to irrigate<br>270.0 acres; remainder<br>held in abeyance.<br><br>On December 21, 1978, the applicant was granted approval<br>for an additional 135.0 acre-feet of water to irrigate<br>an additional 405.0 acres; remainder held in abeyance.<br><br>It is now recommended that the applicant be granted an<br>additional 67.5 acre-feet of water to irrigate the<br>above approved 675.0 acres; remainder shall continue to<br>be held in abeyance.<br><br>Total amounts granted would then be 607.5 acre-feet<br>of water to irrigate 675.0 acres. |

(THIS APPLICATION WAS DEFERRED PURSUANT  
TO STATE WATER COMMISSION ACTION OF  
APRIL 3, 1980)

| NO.  | NAME AND ADDRESS   | SOURCE  | PURPOSE    | AMOUNTS REQUESTED              | COMMENTS & RECOMMENDATIONS  |
|------|--|---|------------|--------------------------------|---|
| 2621 | Holden, Sidney -<br>Page<br>(Cass County)  | Ground Water<br>(Page Aquifer)  | Irrigation | 470.0 acre-feet<br>314.0 acres | Recommend for approval:<br>202.5 acre-feet<br>270.0 acres<br><br>(Remainder of original<br>request shall be held<br>in abeyance)  |
|      | Priority: 11-19-76<br>Hearing: 12-20-76<br>Deferred: 2-11-77                                     | * NO PRIOR PERMITS  |            |                                |   |
|      | (THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980)       |   |            |                                |   |
| 2551 | Bower, Douglas A. -<br>Page<br>(Cass County)   | Ground Water<br>(Page Aquifer)  | Irrigation | 480.0 acre-feet<br>306.6 acres | On February 11, 1977, the<br>applicant was granted<br>approval to appropriate<br>202.5 acre-feet of water<br>to irrigate 135.0 acres;<br>remainder of request held<br>in abeyance.<br><br>It is now recommended that<br>the applicant be granted<br>an additional 67.5 acre-<br>feet of water to irrigate<br>an additional 135.0 acres;<br>remainder of request to<br>be denied.<br><br>Total amounts granted would<br>then be 270.0 acre-feet<br>of water to irrigate a<br>total of 270.0 acres. |
|      | Priority: 9-27-76  | * #2750 (Priority Date: 1-17-79) requested 466.2 acres;<br>on page 8 of this agenda it is recommended that<br>270.0 acres be approved; remainder to be held<br>in abeyance. |            |                                |   |
|      | (THIS APPLICATION WAS DEFERRED PURSUANT<br>TO STATE WATER COMMISSION ACTION OF<br>APRIL 3, 1980) |   |            |                                |   |

| NO.  | NAME AND ADDRESS  | SOURCE   | PURPOSE    | AMOUNTS REQUESTED                 | COMMENTS & RECOMMENDATIONS   |
|------|---|--|------------|-----------------------------------|--|
| 2538 | Thompson, Ralph and William; Thompson, Thomas A. Trust; and Thompson, William J. Trust -<br>Page<br>(Cass County) | Ground Water<br>(Page Aquifer)                       | Irrigation | 2640.0 acre-feet<br>1784.16 acres | <p>On December 7, 1976, the applicants were granted 405.0 acre-feet of water to irrigate 270.0 acres of land; remainder of request held in abeyance.</p> <p>On February 11, 1977, the applicants were granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 135.0 acres; remainder of request held in abeyance.</p> <p>On November 14, 1978, the applicants were granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 270.0 acres of land; remainder of request held in abeyance.</p> <p>It is now recommended that the applicants be granted an additional 405.0 acre-feet of water to irrigate an additional 765.0 acres of land; remainder of original request shall continue to be held in abeyance.</p> <p>Total amounts granted thus far would be 1215.0 acre-feet of water to irrigate 1440.0 acres of land.</p> |
|      | Priority: 9- 1-76   | * See No. 2539 on page 11.                           |            |                                   |  |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER<br>COMMISSION ACTION OF APRIL 3, 1980)                  |  |            |                                   |  |
| 2568 | Satrom, Charles and Edward -<br>Page<br>(Steele County)   | Ground Water<br>(Page Aquifer)                       | Irrigation | 960.0 acre-feet<br>640.0 acres    | <p>On December 7, 1976, the applicants were granted 405.0 acre-feet of water to irrigate 270.0 acres of land; remainder of request to be held in abeyance.</p> <p>It is now recommended that an additional 135.0 acre- to irrigate an additional 270.0 acres be released; remainder of original request to be denied.</p> <p>Total amounts granted would then be 540.0 acre-feet to irrigate a total of 540.0 acres</p>  |
|      | Priority: 10-12-76  | * #2679 (Priority Date: 1-7-77) Granted 1004.0 acres |            |                                   |  |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER<br>COMMISSION ACTION OF APRIL 3, 1980)                  |  |            |                                   |  |

| NO.  | NAME AND ADDRESS  | SOURCE   | PURPOSE    | AMOUNTS REQUESTED                 | COMMENTS & RECOMMENDATIONS  |
|------|---|--|------------|-----------------------------------|---|
| 2600 | Feder, Paul -<br>Fargo<br>(Cass County)<br><br>Priority: 10-25-76   | Ground Water<br>(Page Aquifer)   | Irrigation | 307.37 acre-feet<br>307.37 acres  | <p>On March 24, 1977, the applicant was granted approval to appropriate 45.13 acre-feet of water to irrigate 157.37 acres; remainder of request held in abeyance.</p> <p>It is now recommended that an additional 67.50 acre-feet to irrigate an additional 112.63 acres be released; remainder of original request shall be denied.</p> <p>Total amounts granted would be 112.63 acre-feet to irrigate 270.0 acres.</p>  |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER<br>COMMISSION ACTION OF APRIL 3, 1980)                                      | * #2552 (Priority Date: 9-27-76) Granted 157.37 acres<br>#2672 (Priority Date: 12-29-76) Requested 319.0 acres;<br>135.0 acres granted, remainder being held<br>in abeyance. |            |                                   |   |
| 2539 | Thompson, Robert;<br>Thompson, Thomas<br>Trust; and Thompson,<br>William J. Trust -<br>Page<br>(Cass County)<br><br>Priority: 9- 1-76 | Ground Water<br>(Page Aquifer)   | Irrigation | 2500.0 acre-feet<br>1702.26 acres | <p>On December 7, 1976, the applicants were granted approval to appropriate 607.5 acre-feet of water to irrigate 405.0 acres of land; remainder of request held in abeyance.</p> <p>On November 14, 1978, the applicants were granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 405.0 acres; remainder of original request held in abeyance.</p> <p>It is now recommended that an additional 359.1 acre-feet of water to irrigate an additional 550.0 acres of land be released; remainder of original request shall continue to be held in abeyance.</p> <p>Total amounts granted thus far would be 1169.1 acre-feet of water to irrigate 1360.0 acres of land.</p> |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER<br>COMMISSION ACTION OF APRIL 3, 1980)                                      | * See No. 2538 on page 10.   |            |                                   |   |

| NO.  | NAME AND ADDRESS  | SOURCE   | PURPOSE    | AMOUNTS REQUESTED               | COMMENTS & RECOMMENDATIONS   |
|------|---|--|------------|---------------------------------|--|
| 2438 | Dick, Richard -<br>Englevale<br>(Ransom County)<br><br>Priority: 2-14-77<br>Hearing: 3-21-77<br>Deferred: 3-24-77                                       | Ground Water<br>(Englevale<br>Aquifer)<br><br>* NO PRIOR PERMITS   | Irrigation | 800.0 acre-feet<br>400.0 acres  | Recommend for approval:<br>90.0 acre-feet<br>60.0 acres<br><br>(Remainder of original<br>request shall be held<br>in abeyance)<br><br>(This request was approved<br>by the State Engineer on<br>March 17, 1980.)                   |
| 2537 | Streich, Gary A. -<br>Englevale<br>(Ransom County)<br><br>Priority: 9-13-76<br>Hearing: 11-29-76<br>Deferred: 12- 7-76                                  | Ground Water<br>(Englevale<br>Aquifer)<br><br>* #1465A (Priority Date: 7-13-67) Granted 191.80 acres<br>#2457 (Priority Date: 5-26-76) Granted 100.0 acres<br>#2536 (Priority Date: 9-13-76) Requested 191.8 acres;<br>in deferred status at present time. | Irrigation | 418.8 acre-feet<br>279.2 acres  | 297.0 acre-feet<br>198.0 acres<br><br>(The remainder of original<br>request shall be denied)<br><br>(This request was approved<br>by the State Engineer on<br>March 18, 1980.)   |
| 2654 | Johnk, Jerome;<br>Johnk, Albert; and<br>Erickson, Darlene -<br>Page<br>(Cass County)<br><br>Priority: 12-16-76<br>Hearing: 1-24-77<br>Deferred: 2-11-77 | Ground Water<br>(Page Aquifer)<br><br>* NO PRIOR PERMITS   | Irrigation | 936.0 acre-feet<br>623.95 acres | Recommend for approval:<br>202.5 acre-feet<br>270.0 acres<br><br>(Remainder of original<br>request shall be held<br>in abeyance)<br><br>(THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980) |

| NO.  | NAME AND ADDRESS   | SOURCE   | PURPOSE   | AMOUNTS REQUESTED               | COMMENTS & RECOMMENDATIONS  |
|------|--|--|---|---------------------------------|---|
| 2667 | Olstad, Donald -<br>Galesburg<br>(Cass County)   | Ground Water<br>(Page Aquifer)   | Irrigation  | 1425.0 acre-feet<br>952.8 acres | <p>On March 24, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of request held in abeyance.</p> <p>On October 20, 1978, the applicant was granted approval to appropriate an additional 202.5 acre-feet of water to irrigate an additional 270.0 acres; remainder of request held in abeyance.</p> <p>It is now recommended that an additional 135.0 acre-feet of water to irrigate an additional 135.0 acres be released; remainder of original request shall be denied.</p> <p>Total amounts granted would then be 540.0 acre-feet of water to irrigate 540.0 acres.</p> |
|      | Priority: 1- 4-77  | * #3149 (Priority Date: 1-11-79)   | Requested 153.0<br>acres; in deferred status at present time. |                                 |   |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER<br>COMMISSION ACTION OF APRIL 3, 1980) |  |   |                                 |   |
| 2672 | Feder, Paul -<br>Fargo<br>(Cass County)  | Ground Water<br>(Page Aquifer)   | Irrigation  | 478.5 acre-feet<br>319.0 acres  | <p>On March 24, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of request held in abeyance.</p> <p>It is now recommended that the applicant be granted an additional 67.5 acre-feet of water to irrigate an additional 135.0 acres of land; remainder of original application shall be denied.</p> <p>Totals granted would then be 270.0 acre-feet to irrigate 270.0 acres.</p>  |
|      | Priority: 12-29-76   | * #2600 (Priority Date: 10-25-76)<br>Requested 307.37 acres;<br>157.37 acres granted;<br>remainder held in abeyance. |   |                                 |   |
|      |  | #2552 (Priority Date: 9-27-76)<br>Granted 157.37 acres   |   |                                 |   |
|      | (THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980)       |  |   |                                 |   |

| NO.  | NAME AND ADDRESS  | SOURCE                            | PURPOSE   | AMOUNTS REQUESTED                | COMMENTS & RECOMMENDATIONS  |
|------|---|-----------------------------------|---|----------------------------------|---|
| 2328 | Brekke, Duane -<br>Minot<br>(McHenry County)<br><br>Priority: 10-27-75<br>Hearing: 12-29-75<br>Deferred: 4-21-76              | Ground Water                      | Irrigation  | 202.5 acre-feet<br>135.0 acres   | The applicant has indicated that an adequate supply of water could not be found and he is not interested in developing the land; therefore, it is recommended that this request be denied.  |
| 3211 | Texaco, Inc. -<br>Keene<br>(McKenzie County)<br><br>Priority: 11-14-79<br>Hearing: 2-19-80<br>Deferred: 2-29-80               | Ground Water<br>(Unnamed Aquifer) | Industrial<br>(To dissolve salt accumulations in producing oil wells) | 22.59 acre-feet                  | 22.59 acre-feet<br><br>* The applicant holds a number of permits in various counties.   |
| 2729 | Jondahl, Gilmore<br>and Philip -<br>Hope<br>(Steele County)<br><br>Priority: 2-22-77<br>Hearing: 4-11-77<br>Deferred: 4-15-77 | Ground Water<br>(Page Aquifer)    | Irrigation  | 2290.0 acre-feet<br>1526.7 acres | Recommend for approval:<br>540.0 acre-feet<br>540.0 acres<br><br>(Remainder of original request shall be held in abeyance.)<br><br>* NO PRIOR PERMITS<br><br>(THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980) |
| 2775 | Mewes, John E. -<br>Hope<br>(Steele County)<br><br>Priority: 3-14-77<br>Hearing: 7-19-77<br>Deferred: 8-16-77                 | Ground Water<br>(Page Aquifer)    | Irrigation  | 480.0 acre-feet<br>320.0 acres   | Recommend for approval:<br>270.0 acre-feet<br>270.0 acres<br><br>(Remainder of original request shall be held in abeyance.)<br><br>* NO PRIOR PERMITS<br><br>(THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980) |

| NO.  | NAME AND ADDRESS   | SOURCE                                      | PURPOSE    | AMOUNTS REQUESTED              | COMMENTS & RECOMMENDATIONS   |
|------|--|---|------------|--------------------------------|--|
| 3168 | Wolff, Laverne -<br>Chaseley<br>(Kidder County)<br><br>Priority: 4-11-79<br>Hearing: 5-7-79<br>Deferred: 6-25-79                     | Ground Water<br>(Unnamed Aquifer)           | Irrigation | 222.0 acre-feet<br>148.0 acres | 222.0 acre-feet<br>148.0 acres<br><br>* NO PRIOR PERMITS   |
| 2652 | Schwab, David -<br>Englevale<br>(Ransom County)<br><br>Priority: 12-13-76<br>Hearing: 2-28-77<br>Deferred: 3-24-77                   | Ground Water<br>(Englevale<br>Aquifer)      | Irrigation | 720.0 acre-feet<br>360.0 acres | Recommend to approve:<br>220.0 acre-feet<br>220.0 acres<br><br>(An additional 110.0<br>acre-feet shall be<br>held in abeyance)<br><br>(This request was approved<br>by the State Engineer on<br>March 28, 1980.)     |
| 3220 | Kaiser Engineers, Inc. -<br>Oakland, California<br>(Mercer County)<br><br>Priority: 1-15-80<br>Hearing: 2-25-80<br>Deferred: 2-29-80 | Ground Water<br>(Antelope Creek<br>Aquifer) | Industrial | 800.0 acre-feet                | Recommend for approval:<br>310.0 acre-feet<br><br>(Remainder of original<br>application shall be<br>held in abeyance.)<br><br>* NO PRIOR PERMITS   |
| 2805 | Bring, Lynn -<br>Galesburg<br>(Traill County)<br><br>Priority: 4-4-77<br>Hearing: 7-5-77<br>Deferred: 7-8-77                         | Ground Water<br>(Page Aquifer)              | Irrigation | 830.0 acre-feet<br>554.6 acres | 410.0 acre-feet<br>410.0 acres<br><br>(Remainder of original<br>request shall be denied)<br><br>* NO PRIOR PERMITS<br><br>(THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980) |



| NO.  | NAME AND ADDRESS   | SOURCE   | PURPOSE  | AMOUNTS REQUESTED               | COMMENTS & RECOMMENDATIONS  |
|------|--|--|--|---------------------------------|---|
| 2989 | Kyser, Lynn -<br>Erie<br>(Cass County)   | Ground Water<br>(Page Aquifer)                       | Irrigation   | 320.0 acre-feet<br>160.0 acres  | 125.0 acre-feet<br>135.0 acres<br><br>(Remainder of original request shall be denied.)  |
|      | Priority: 5- 2-79<br>Hearing: 7- 9-79<br>Deferred: 7-25-79                                       |  |  |                                 |   |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER COMMISSION<br>ACTION OF APRIL 3, 1980) |  | * #2988 (Priority Date: 5-2-79) Requested 160.0 acres;<br>in deferred status at this time but<br>is recommended for approval of 135.0<br>acres on page 17. |                                 |   |
| 2674 | Vosgerau, Heino -<br>Page<br>(Cass & Steele Cos.)  | Ground Water<br>(Page Aquifer)                       | Irrigation   | 1425.0 acre-feet<br>952.8 acres | On March 24, 1977, the applicant was granted approval to appropriate 202.5 acre-feet of water to irrigate 135.0 acres; remainder of original request held in abeyance.  |
|      | Priority: 1- 4-77  |  | * NO PRIOR PERMITS   |                                 |   |
|      | (THIS APPLICATION WAS DEFERRED<br>PURSUANT TO STATE WATER COMMISSION<br>ACTION OF APRIL 3, 1980) |  |  |                                 | It is now recommended that the applicant be granted an additional 337.5 acre-feet of water to irrigate an additional 405.0 acres; remainder of original request shall be denied.<br><br>Total amounts granted the applicant would be 540.0 acre-feet of water to irrigate a total of 540.0 acres. |
| 2962 | Connell, Leslie T. -<br>Medora<br>(Billings County)  | Little Missouri<br>River, trib. to<br>Missouri River | Irrigation   | 172.0 acre-feet<br>115.0 acres  | 115.0 acre-feet<br>115.0 acres<br><br>(Remainder of original request shall be denied.)  |
|      | Priority: 5- 8-79<br>Hearing: 6-18-79<br>Deferred: 6-25-79                                       |  |  |                                 |   |
|      |  |  | * #233 (Priority Date: 1-10-40) Granted 15.0 acres   |                                 |   |

| NO.  | NAME AND ADDRESS  | SOURCE  | PURPOSE    | AMOUNTS REQUESTED              | COMMENTS & RECOMMENDATIONS  |
|------|---|---|------------|--------------------------------|---|
| 1908 | Harwood Development Association - Harwood (Cass County)<br><br>Priority: 11- 7-79<br>Hearing: 12-10-79<br>Deferred: 2-29-80 | Ground Water (West Fargo Aquifer)   | Municipal  | 100.0 acre-feet                | 100.0 acre-feet   |
|      |   | * NO PRIOR PERMITS  |            |                                |   |
| 2755 | Smart, Vera - Fargo (Steele County)<br><br>Priority: 3- 7-77<br>Hearing: 5- 9-77<br>Deferred: 5-27-77                       | Ground Water (Page Aquifer)   | Irrigation | 600.0 acre-feet<br>407.5 acres | Recommend for approval:<br>271.0 acre-feet<br>216.0 acres<br><br>(Remainder of original request shall be held in abeyance.) |
|      |   | * NO PRIOR PERMITS  |            |                                |   |
|      | (THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980)                                  |   |            |                                |   |
| 2988 | Kyser, Lynn - Erie (Cass County)<br><br>Priority: 5- 2-79<br>Hearing: 7- 9-79<br>Deferred: 7-25-79                          | Ground Water (Page Aquifer)   | Irrigation | 320.0 acre-feet<br>160.0 acres | 160.0 acre-feet<br>135.0 acres<br><br>(Remainder of original request shall be denied.)                                      |
|      |   | * #2989 (Priority Date: 5-2-79) Requested 160.0 acres; In deferred status at this time but is recommended for approval of 135.0 acres on page 16. |            |                                |   |
|      | (THIS APPLICATION WAS DEFERRED PURSUANT TO STATE WATER COMMISSION ACTION OF APRIL 3, 1980)                                  |   |            |                                |   |

| NO.  | NAME AND ADDRESS  | SOURCE                                  | PURPOSE    | AMOUNTS REQUESTED              | COMMENTS & RECOMMENDATIONS  |
|------|---|---|------------|--------------------------------|---|
| 2770 | Heitkamp, Jerome -<br>Mooreton<br>(Richland County)<br><br>Priority: 3-17-77<br>Hearing: 5-31-77<br>Deferred: 7- 8-77 | Ground Water<br>(Unnamed Aquifer)       | Irrigation | 240.0 acre-feet<br>160.0 acres | 202.5 acre-feet<br>135.0 acres<br><br>(Remainder of original<br>request to be denied.)<br><br>* #2769 (Priority Date: 3-9-77) Granted 281.0 acres<br>to Mrs. Jerome Heitkamp  |
| 3176 | Paintner, Leo A. -<br>Hannaford<br>(Griggs County)<br><br>Priority: 3-21-79<br>Hearing: 6-18-79<br>Deferred: 6-25-79  | Ground Water<br>(Spiritwood<br>Aquifer) | Irrigation | 135.0 acre-feet<br>90.0 acres  | On March 31, 1980, the<br>applicant indicated that<br>he is no longer interested<br>in proceeding with the<br>permit. A soil evaluation<br>showed that the soil was too heavy and<br>the geometry of the area would not allow<br>for utilization of a full-sized pivot<br>and the area that could be irrigated<br>was not large enough to make the project<br>economically feasible; therefore, it is<br>recommended that this request be denied. |

KNOW ALL MEN BY THESE PRESENTS, that the undersigned First Party, for and in consideration of the sum of One and no/100 Dollars (\$1.00), the receipt of which is hereby acknowledged, does hereby grant to the Hettinger County Water Management Board and the North Dakota State Water Commission, parties of the Second Part, for a period of time of Twenty-Five (25) years, at which time this lease shall terminate and expire, the exclusive right and easement to establish, construct and manage recreational facilities such as boat docks, boat ramps, playgrounds, picnic facilities including shelters, tree plantings, bath houses, swimming beaches, etc., for the use and enjoyment of the citizens of North Dakota and of the United States. This lease in no way releases the parties of the Second Part from the terms and conditions of the overall project agreement, in particular as regards articles 3 and 4 of form ADS entitled "Project Assurances."

Furthermore, the operation, management and maintenance responsibilities on the described lease lands shall be assigned and adhered to as set forth in the "Project Assurance."

The lands upon and over which said exclusive rights and easement are granted are described as follows:

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (S $\frac{1}{2}$ SW $\frac{1}{2}$ SW $\frac{1}{2}$ ), AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW $\frac{1}{2}$ SE $\frac{1}{2}$ SW $\frac{1}{2}$ ) OF SECTION NINE (9), TOWNSHIP ONE HUNDRED THIRTY THREE (133) NORTH, RANGE NINETY FIVE (95) WEST, CONTAINING 30 ACRES, MORE OR LESS.

THE NORTH HALF OF THE NORTHWEST QUARTER (N $\frac{1}{2}$ NW $\frac{1}{2}$ ), THE NORTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER (N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{2}$ ), THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SE $\frac{1}{2}$ SE $\frac{1}{2}$ NW $\frac{1}{2}$ ), AND THAT PART OF THE NORTHEAST QUARTER (NE $\frac{1}{2}$ ) LYING WEST OF A LINE COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER (NE $\frac{1}{2}$ ); THENCE SOUTHWEST A DISTANCE OF 2800 FEET TO A POINT AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SE $\frac{1}{2}$ SE $\frac{1}{2}$ NE $\frac{1}{2}$ ); THENCE SOUTH A DISTANCE OF 330 FEET; THENCE WEST A DISTANCE OF 1650 FEET; THENCE SOUTH A DISTANCE OF 330 FEET TO THE QUARTER LINE; THENCE WEST ALONG THE QUARTER LINE A DISTANCE OF 330 FEET TO THE CENTER POINT OF SECTION 16. ALL SECTION SIXTEEN (16), TOWNSHIP ONE HUNDRED THIRTY THREE (133) NORTH, RANGE NINETY FIVE (95) WEST, CONTAINING 192.5 ACRES MORE OR LESS.

THE NORTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER (N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{2}$ ), THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHEAST QUARTER (S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{2}$ ), AND THE SOUTH HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{2}$ ), THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW $\frac{1}{2}$ NW $\frac{1}{2}$ SE $\frac{1}{2}$ ) OF SECTION SEVENTEEN (17), TOWNSHIP ONE HUNDRED THIRTY THREE (133) NORTH, RANGE NINETY FIVE (95) WEST, CONTAINING 110 ACRES MORE OR LESS.

EXCEPTING AND RESERVING UNTO THE FIRST PARTY THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTH-EAST QUARTER (SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ) AND THAT PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER (NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ ) OF SECTION SEVENTEEN (17), TOWNSHIP ONE HUNDRED THIRTY THREE (133) NORTH, RANGE NINETY FIVE (95) WEST, LYING WEST OF THE TRAIL AND CONTAINING THE DAM STRUCTURE AND POND, CONTAINING 8 ACRES, MORE OR LESS.

TOTAL LEASE ACRES: 324.5 ACRES, MORE OR LESS.

This lease shall specifically exempt the First Party from any and all liability, claims and damages caused by the construction, maintenance, and/or use of facilities on the premises. The Hettinger County Water Management Board agrees to hold and save the First Party harmless from any damages due to the use, occupation and possession of the rights herein granted.

It is further agreed that the Hettinger County Water Management Board shall assume any and all tax and/or special assessment liabilities levied upon the above described lands.

It is further agreed that this lease may not be assigned and that no part of said premises will be subleased to a private person, organization or corporation.

IN WITNESS WHEREOF, the First Party has executed this lease this

2nd day of April, 19 80.

North Dakota Game and Fish Department  
First Party


By:   
Larry L. Kruckenberg, Commissioner

State of North Dakota )  
                                  ) ss.  
County of Burleigh )

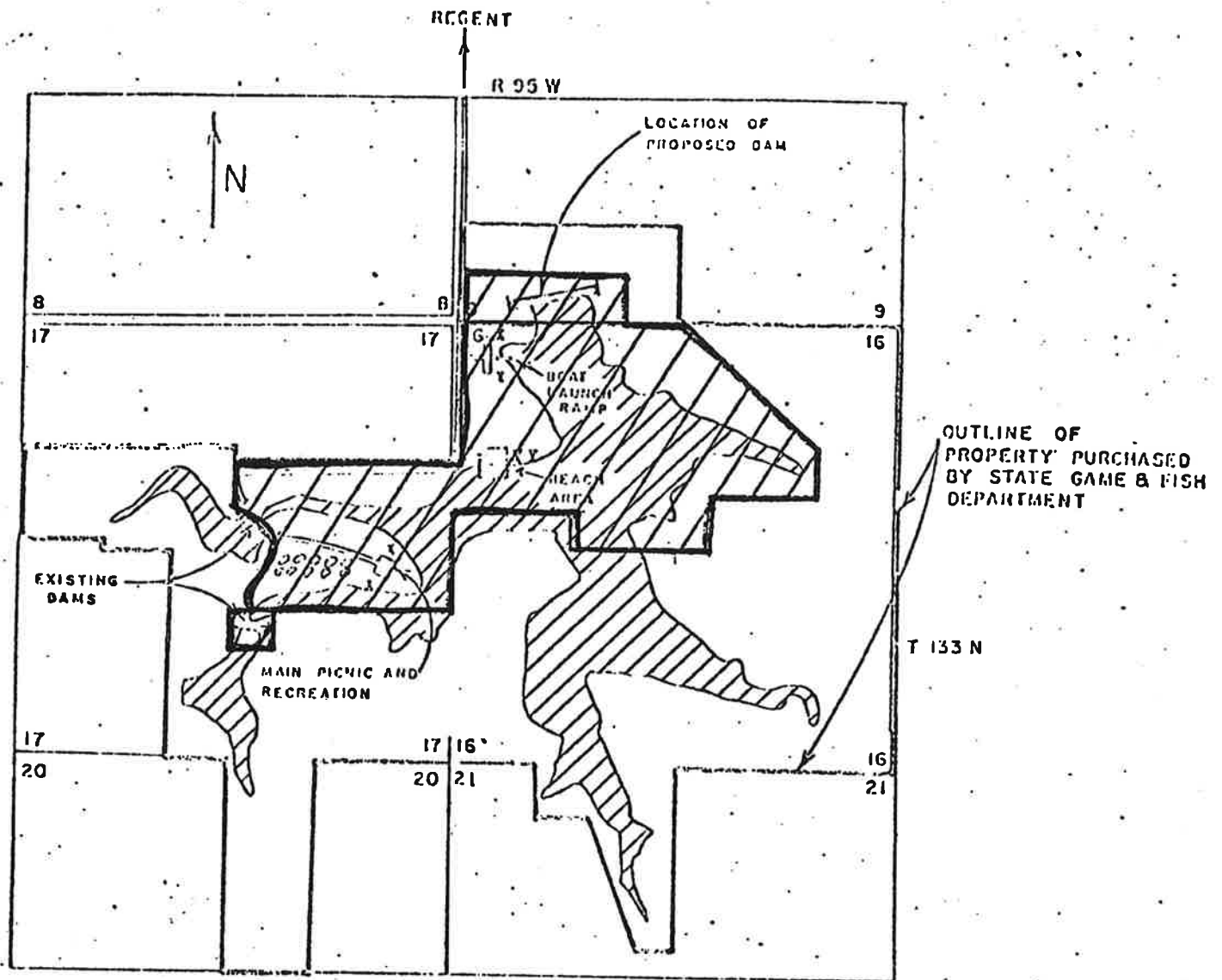
On this 2nd day of April, 19 80.

before me personally appeared Larry L. Kruckenberg,

known to me to be the person described in and who executed the within instrument and acknowledged to me that he executed the same as his free act and deed.

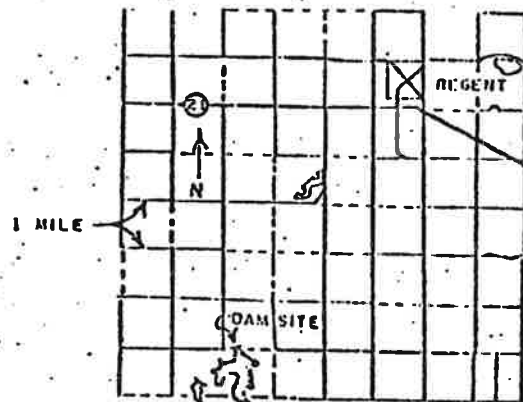
  
Notary Public,  
Notary Public, Burleigh Co.,  
State of North Dakota

My commission expires: July 28, 1984



INDIAN CREEK DAM  
GENERAL LAYOUT MAP

 - Area under easement



SITE LOCATION  
SEC. 16 T 133N, R 95W

## RESOLUTION 80-4-407

RESOLUTION OF SUPPORT FOR THE  
PEMBILIER DAM FLOOD CONTROL PROJECT

WHEREAS, The District Engineer, St. Paul District Office, U.S. Army Corps of Engineers, recently completed the feasibility report for flood control and related purposes on the Pembina River, North Dakota; and

WHEREAS, the plan of improvement from the feasibility report included the Pembiller Lake Project; and

WHEREAS, the feasibility report concludes that the Pembilier Dam would be effective in reducing damages resulting from the frequent flooding of 40,000 acres of rich agricultural lands and several urban areas by the Pembina River which originates in Canada; and

WHEREAS, the project is supported by a broad range of individuals and organizations within North Dakota; and

WHEREAS, this project is essential to the solution of the controversial "border dike" problem which has caused international tensions, and which is the subject of an agreement between the two countries contingent upon the construction of Pembilier Dam; and

WHEREAS, the Rivers and Harbors Review Board, Corps of Engineers has recommended favorably upon the project features; and

WHEREAS, the St. Paul District Corps of Engineers has developed a preliminary plan of study for the Phase I General Design memorandum study on the Pembina River, North Dakota.

NOW, THEREFORE BE IT RESOLVED, that the North Dakota State Water Commission at its meeting held in Bismarck, North Dakota, on this 3rd day of April, 1980 does hereby support the continued efforts of the Corps of Engineers toward the completion of this valuable flood control project,

and that the Phase 1 General Design memorandum be completed by the Corps of Engineers at the earliest possible date; and

BE IT FURTHER RESOLVED, that authorized funding for the Phase 1 General Design memorandum not be included in any budgetary reductions now recommended for Corps projects because of the importance of the Pembilier Dam to the abatement of international problems and the identified agricultural and urban benefits which will accrue as a result of completion of the project; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to Lieutenant General J. W. Morris, Chief of Engineers, Department of Army, Washington, D.C., Colonel William Badger, District Engineer, U.S. Army Corps of Engineers, St. Paul, Minnesota; North Dakotas Congressional Delegation; Cavalier County Water Management District; and Pembina County Water Management District.

FOR THE NORTH DAKOTA STATE WATER COMMISSION:



*Arthur A. Link*  
Arthur A. Link  
Governor-Chairman

ATTEST:

*Vernon Fahy*  
Vernon Fahy  
State Engineer