

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission

DATE June 2 + 3, 1980 PLACE Proc. Educators Conf. (Room)

Bismarck, N Dakota PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Laurie McMerty	Box 1934 - Minot ND	N D. WATER USERS ASSOCIATION
Mark Dwyer	1500 Capitol Ave	US Fish & Wildlife
Bill Lynott	2121 LOUETT AVE	NDBF DEPT.
Mike Dwyer	Bis	SWC
Joseph M. Schmitt	Bismarck	SWC
Bill Beavers	Omaha NE	Old West Rural Water Office
Jim Bullock	Lincoln	" " " " "
Denis Burke	Omaha NE	" "
Clayton Hoffman	1533-10-12 Bismarck	Old West Rural Water Office
Doran Miller	Minot N.D. alone	ND Rural Water Systems
Mark Johnson	Bismarck ND	Old West Rural Water Office
Steve Karger	KFYR - TV	

NORTH DAKOTA STATE WATER COMMISSION
REGISTER

ATTENDANCE AT State Water Commission
 DATE June 3, 1980 PLACE Vol Education Prof. Room
Bismarck, N. Dak. PROJECT NO. _____

Your Name	Your Address	Who do you Represent? (Or Occupation)
Phillip Arnold	Pineau, N.D.	Arrowwood NWR - USFWS
Joseph M. Schmitt	Bismarck, N.D.	State Water Commission
DON HART	FORT TOTTEN, N.D.	DEVILS LAKE SIOUX TRIBE
Mark Dwyer	Bismarck	US Fish and Wildlife
Homer Engelhin	Carrington	GDCD
Iyle J. Schuman	Bismarck	FWS
→ Rocky Run Ct Iruing Driesner	Fessenden	Emrick Drain (Farmer)
Jim Eastgate	Bismarck	Burleigh Co WMA
→ Rainy Slough Jim Toay	Edgeley	LaBoure Co WMA

MINUTES

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

June 2 and 3, 1980

The North Dakota State Water Commission held a meeting in Bismarck, North Dakota, on June 2 and 3, 1980. On the morning on June 2, the Commission members toured a wetland area near Wilton for which an application to drain has been filed. Governor-Chairman, Arthur A. Link, called the business meeting to order at 2:00 p.m. on June 2, 1980, in the Vocational Education Conference Room, 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 20 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.

CONSIDERATION OF MINUTES
OF APRIL 2 AND 3, 1980 MEETING -
APPROVED

Secretary Fahy reviewed and updated the Commission members on items discussed at the April 2 and 3, 1980 meeting held in Bismarck, North Dakota. There were no corrections or additions to the minutes as presented.

It was moved by Commissioner Kramer, seconded by Commissioner Gray, and unanimously carried, that the minutes of the April 2 and 3, 1980 meeting be approved.

CONTINUED DISCUSSION OF
PROPOSAL FOR INTERIM
(CONSTRUCTION) FINANCING
FOR RURAL WATER DISTRICTS

At its February 29, 1980 meeting, the Commission accepted an invitation from the Old West Rural Water office to consider a proposal to provide (construction period) interim financing for rural water

systems. The proposal, which is primarily for the purpose of saving interest costs for rural water systems during the construction period, would require that the State Water Commission have the statutory authority to issue tax-exempt interim notes. The Commission directed its Legal Counsel to prepare background information and necessary legislation for review and discussion at a subsequent meeting.

Mike Dwyer explained that the Farmers Home Administration is the primary source of permanent financing for rural water systems. The permanent financing is usually a combination of grant and loan, at a maximum ratio of 75 percent grant and 25 percent loan. The ratio is established individually for each rural water system and has normally been approximately 50 percent grant and 50 percent loan. The loan is repayable at 5 percent interest over 40 years.

Mr. Dwyer stated that FmHA prefers that the grant and loan funds it provides for a rural water system not be made available until after construction is complete, so that it can conduct a final investigation of the project and to avoid cumbersome paperwork. Thus, FmHA requires that each rural water system receiving FmHA grant and loan funds first attempt to obtain (construction period) financing from a commercial or conventional source. If commercial or conventional (construction period) financing is not available, FmHA will make multiple advances of its funds to a rural water system for payment to a contractor. Thus, Mr. Dwyer stated that at the present time, there are two sources of (construction period) financing which are potentially available to rural water systems: 1) short-term commercial or conventional financing; and 2) FmHA multiple advances. He said that generally commercial or conventional financing is very expensive and not available, and that FmHA multiple advances are both expensive and cumbersome.

Under the new proposal, the State Water Commission would be given the statutory authority to issue tax-exempt notes equal to the total amount of funds committed by FmHA for permanent financing of the rural water system. Proceeds from the sale of the notes are deposited with a trustee-paying agent. Some of the proceeds are then set aside to cover the interest payments on the notes and the balance is used to pay the contractors and engineers as each construction phase is completed. Until the funds are actually needed for construction payments, the proceeds are

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reinvested in such items as Treasury Bills which pay higher interest rates than the tax-exempt interest rate paid on the notes. The maturity of the reinvested funds are timed to cover the payments to the contractor for each stage of project as it is completed.

Mr. Dwyer explained that the advantage of (construction period) financing is that the interest expense during the construction period is lower than that of multiple advances made directly by FmHA or of borrowing funds from conventional sources. This, of course, results in much-needed savings to rural water systems, and improves the chances of all people to obtain good quality and sufficient quantities of water for human consumption. Mr. Dwyer noted that South Dakota enacted legislation in 1979 extending the benefits of tax-exempt (construction period) financing to rural water systems. Three South Dakota systems used tax-exempt interim financing at a savings in interest cost (over the cost of FmHA advances) ranging from \$4,371 to \$92,118.

Mr. Dwyer indicated that the State Water Commission has the authority to issue revenue bonds not to exceed a total of \$3 million dollars to finance various water development projects. This authority is intended to provide for permanent financing of various water projects, and would not be sufficient to enable the State Water Commission to implement the proposal for (construction period) interim financing. Thus, new legislation would be required. An initial draft of proposed legislation to provide the State Water Commission with the authority to borrow money and issue notes to provide (construction period) financing for rural water systems is attached as APPENDIX "A".

Bill Beavers representing Chiles, Heider & Co., Inc. of Omaha; Denis Burke of the law firm of Kutac Rock & Huie of Omaha; and James Bullock of the First National Lincoln Bank in Lincoln, Nebraska, were introduced. Mr. Beavers indicated that he and Mr. Bullock have been involved for the past five or six years with many water development projects in the mid-west and have had extensive dealings with the Water and Power Resources Service and with FmHA in several states. They have also been involved in developing feasibility proposals for states and municipalities and have worked with developing legislation dealing with irrigation projects. Mr. Beavers briefly explained the proposal under discussion and how a similar program has been implemented in South Dakota.

In answer to a question asked by Commissioner Kramer relative to the costs for their services performed for projects of this nature, Mr. Beavers indicated that it approximates about one and one-half percent of the volume of money that is involved per project (\$15,000 per \$1 million). He stated that the service fees are part of the financing itself. He noted that in other states, those expenses have been a part of the financing, and that those costs on most occasions might be less than some of the discounts from private lenders.

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Mr. Dwyer indicated that discussions with the Bank of North Dakota are currently being held regarding the services that could be provided by that Bank for this program.

Mr. Beavers said that his firm would be most willing to involve the Bank of North Dakota in any manner in which they would wish to become involved.

Mr. Dwyer indicated that a representative of the Bank of North Dakota did state that legislation should not specifically require services by the Bank of North Dakota but rather the State Water Commission and the Bank should approach bank services on an individual basis. This type of arrangement would be more flexible and would leave room for other services at appropriate times.

Commissioner Gallagher inquired if amending the existing law would provide capacity to finance other water projects.

Mr. Dwyer responded by saying that the draft legislation contains two options: 1) an option which would limit the construction period financing to only rural water entities; and 2) an option which would allow the State Water Commission to provide the construction period financing to all water projects. He noted that the Commission would have to indicate its support of one of the two options at an early date.

Mr. Dwyer stated that it was initially envisioned that the State Association of Rural Water Systems would solicit sponsors to introduce this legislation. However, State Water Commission support would be necessary since the State Water Commission would be involved with the issuing of the interim notes, etc.

Mr. Doran Miller, President of the North Dakota Rural Water Systems, indicated that at their quarterly Board meeting, the Association went on record in support of this proposal and that it wishes to pursue the proposal further. Mr. Miller stated that his Association will be most willing to sponsor the legislation.

Governor Link discussed the possibility that the state may have to advertise for bids for services performed as were discussed by Mr. Beavers.

Mr. Beavers indicated that this was understandable, and said in summary that whether or not his firm was selected for such services that it is a good proposal for whomever may carry it out and would be a definite benefit to the people who live within the rural water system areas.

Governor Link thanked Mr. Beavers, Mr. Bullock and Mr. Burke for taking time to appear before the Commission and sharing their views.

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

Secretary Fahy indicated to the Commission members that because of the drought conditions in the state, his office has received several requests for temporary water permits, particularly from sugar beet farmers. He stated that there is a provision in the law for the issuance of a temporary water permit, and due to the drought conditions, he wanted the Commission to be aware that when a temporary water permit application will not jeopardize anyone else, he has approved a temporary water permit.

Governor Link commented on a very well attended multi-agency meeting recently held to evaluate the impact of the drought and its seriousness across the state. On the basis of the information that is being compiled by the various agencies, Governor Link indicated that this week he would be issuing a State Disaster Emergency Declaration. He said that the next phase will be to request a Presidential Disaster Declaration, or a Presidential Emergency Declaration depending on the extent of the findings and the programs that are available upon the Declaration that the state would request.

Secretary Fahy then presented APPENDIX "B" to the Commission members for their consideration, which represents the water permit agenda.

After review, it was moved by Commissioner Kramer, seconded by Commissioner Just, and unanimously carried, that the actions of the State Engineer be approved.
SEE APPENDIX "B"

The following water permit applications were approved subject to the conditions as stipulated on each individual permit:
No. 3235 - Drees Farming Association, Grand Forks (this application was approved by State Engineer on May 23, 1980); No. 3240 - Timothy Mutchler, Northwood; No. 2785 - Julius Ferch, LaMoure (this application was approved by State Engineer on April 18, 1980); No. 3071 - Russell Larson, Oakes (this application was approved by the State Engineer on April 18, 1980); No. 3072 - Jim Meehl, Oakes (this application was approved by State Engineer on April 18, 1980); No. 3128 - Chester A. Anderson, Oakes (this application was approved by State Engineer on April 18, 1980); No. 3171 - City of Lehr; No. 3193 - James Kuchera, Wyndmere; No. 3139 - Patterson Land Co., Bismarck; No. 2915 - Florence M. Flatla, Bergen; No. 1232P - City of Steele (this was a request for change in point of

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diversion and increase in pumping rate); No. 3245 - Tenneco Oil Company, Denver, Col.; No. 3248 - Joe Sonsalla, Marmarth (this application was approved by State Engineer on May 29, 1980); No. 2941 - Ervin E. Martin, Fairview, Montana; No. 2467 - William Fortier, Wildrose (this application was approved by State Engineer on May 8, 1980); No. 3155 - Monroe Gilbertson, Binford; No. 2453 - Paul H. Rode, Adrian (this request was approved by State Engineer on May 20, 1980); No. 3069 - Grosz Brothers, Turtle Lake; and No. 2965 - Emil Birst, Turtle Lake.

The following applications were deferred at this time: No. 3243 - Traill County Rural Water Users, Inc., Portland; No. 3229 - Daryl D. Nelson, Driscoll; No. 2064 - Bruce Salzsieder, Edgeley (this is a request for a change in point of diversion); No. 2060 - Robert Kylo, McCanna (this is a request for a change in point of diversion); No. 2222 - Robert Kylo, McCanna (this is a request for a change in point of diversion); No. 3244 - Goldsberry Ranch, Trotters; No. 3249 - Gilbert Knopp, Hebron; No. 3239 - Joe Kralicek, Jr., Dickinson; No. 3236 - Jim and Warren Lyons, Lisbon; No. 2209 - Lyons Brothers, Lisbon (this is a request for a change in point of diversion); No. 3234 - Thomas C. Shockman, LaMoure; No. 2406 - Art Trautmann, Robinson (this is a request for a change in point of diversion); No. 3246 - Mark and Connie Krebsbach, Warwick; No. 1181 - Hardy Salt Company, Williston (this is a request for a change in point of diversion, an increase in appropriation of water, and an increase in withdrawal rate); and No. 2116 - Robert and Dennis Sletten, Ryder (this is a request for a change in point of diversion).

The following water permit applications were "Void - Application Incomplete": No. 2254 - Francis H. Simmers, Jamestown; No. 2255 - Robert H. Simmers, Jamestown; No. 2748 - Robert Brown, Crary; No. 2809 - Northwest Nursery Company, Inc., Valley City; No. 3022 - City of Beulah; No. 3091 - Patrick Carroll, Moffit; No. 3185 - Roger L. Leininger, Binford; and No. 2906 - Arley Running, Harvey.

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The following application for a water permit was withdrawn by the applicant: No. 3221 - Donald D. Helm, Fairview, Montana.

The following application for a water permit was denied: No. 2707 - Wilmer Moen, Galesburg.

CONTINUED DISCUSSION OF
HEARING ON APPROPRIATION
OF WATER FROM PAGE AQUIFER
(SWC Project No. 1703)

At the Commission's last meeting, it was agreed that those applications appearing on the water permit agenda requesting to appropriate water from the Page Aquifer be deferred and that a public hearing be held in that area so that the State Water Commission and the State Engineer may be fully informed and advised of the public interest factors which must be taken into account in determining whether to grant water permit applications from the Page Aquifer. The Legal Counsel for the Water Commission was directed to prepare an appropriate notice of hearing for the Commission's review and consideration at its next meeting.

Mike Dwyer presented a proposed notice of hearing for the Commission's consideration, see APPENDIX "C". The date of July 14 was selected as the date of the hearing and will be held at the Page School (the date of the hearing has since been changed to July 15). It was suggested, and agreed by the Commission members, that news stories in addition to the legal notice be published and that each applicant who has applied for a permit to appropriate water from the Page Aquifer receive a personal notice of the hearing.

Mr. Dwyer also stated that an invitation has been extended to the Commission members from the local water management district to tour the Page Aquifer area prior to the hearing. The Commission members were in favor of taking a tour and suggested that staff members present a short briefing prior to the tour and the hearing.

PRESENTATION BY REPRESENTATIVES
OF BURLEIGH COUNTY WMD TO DISCUSS
FLOOD REDUCTION PROGRAM FOR
APPLE CREEK WATERSHED
(SWC Project No. 1597)

Mr. Jim Eastgate, Secretary-Treasurer of the Burleigh County Water Management District, extended an invitation to the Commission members to tour the McDowell Dam and Recreation Area at one of its future meetings. He also indicated that an invitation has been extended to the Missouri River Basin Commission members and its staff to tour the area when it meets in Bismarck in July.

Milo Hoisveen, consultant for the Water Management District, explained in a very detailed presentation, a proposal for a flood reduction project for the east branch of Apple Creek. The proposal and summary as presented by Mr. Hoisveen are attached hereto as APPENDIX "D".

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A request has been received from the Burleigh County Water Management District asking the State Water Commission to consider sharing the costs of a detailed investigation for the initial phase of the flood reduction program and also to participate in future cost sharing in the construction costs on a 50-50 basis with the water management district. Mr. Eastgate indicated that the estimated cost for implementation and construction of the first phase of the flood reduction program would be about \$200,000 each year for the 1982-1983 biennium.

Secretary Fahy indicated that this request would have to be included in the agency's 1982-1983 biennium budget.

Dave Sprynczynatyk stated that the staff has looked at the watershed area along with the request from the water management district, and the proposal is to conduct 1) a hydrologic investigation of the watershed to determine exactly what the feasibility is of storing water in small impoundment sites in the upper reaches of the watershed; and 2) to select the most feasible site and conduct a more thorough engineering investigation to include surveys and soils borings so that the preliminary design could be completed if the investigation proved feasible. Project construction could then possibly be undertaken the next year. Mr. Sprynczynatyk also noted this is only for one site, rather than two sites as requested, due to a lack of manpower to conduct an investigation of two sites.

The investigation would cost \$6,000 and the water management district would be required to deposit an amount equal to 50 percent of the estimated field costs.

It was recommended by the State Engineer that the Water Commission honor the request to enter into an agreement with the Burleigh County Water Management District to conduct a hydrologic investigation of the Apple Creek watershed as described by Mr. Sprynczynatyk. He also recommended that the Commission consider favorably the water management district's request to provide \$3,000 toward the investigation.

It was moved by Commissioner Gallagher, seconded by Commission Just, and unanimously carried, that the Water Commission conduct a hydrologic investigation of the Apple Creek watershed and that cost sharing be approved in an amount not to exceed \$3,000 for such investigation, contingent upon the availability of funds.

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STATUS REPORT ON
EPPING DAM
(SWC Project No. 346)

Builders, Inc. from Fargo with a bid of \$306,091. He said that it is hoped that the contractor will be at the job site in approximately two weeks and it is anticipated that the project will be completed by late October, 1980.

Dave Sprynczynatyk reported that the bids were opened last week for the reconstruction of the spillway for Epping Dam. The low bidder was Industrial

STATUS REPORT ON
OGALLALA AQUIFER
STUDY
(SWC Project No. 1706)

suggested that the Commission should consider as an agenda item in the near future, inviting Mr. Banks to their meeting to make a detailed presentation to them relative to this study. He also said that in the fall, the High Plains Council will be holding their next meeting and if arrangements can be made, as many of the Commission members as possible should plan to attend the meeting.

Secretary Fahy indicated that he has received word that Mr. Harvey Banks who is the consultant in charge of the Ogallala Aquifer Study will be in North Dakota on June 12 to meet with him. He

STATUS REPORT ON REVISION
OF FEDERAL RECLAMATION
ACT OF 1902

Miller and referred to the House Interior and Insular Affairs Committee and the Water and Power Resources Subcommittee. The Miller Bill was abandoned and substituted by the Udall/Ullman (HR 5845) Bill. The key elements of the Udall/Ullman Bill were to abolish residency with a qualifying land holding provision for land acquired after the effective date of the Act; and set a maximum farm size of 960 acres, with an equivalency concept for areas where the growing season and climate differs from the base concept in the more water-rich areas. Secretary Fahy also said that the Subcommittee is considering the lengthy Patterson amendment which authorizes the delivery of water for additional acreage over and above the basic quantity at an increased price; and the Corps of Engineers exemption.

Secretary Fahy updated the Commission members on the revision of the Federal Reclamation Act of 1902. He said that HR 5783 was introduced by Rep. George

DISCUSSION OF TOUR HELD TO VIEW
A WETLAND AREA NEAR WILTON WHICH
IS PROPOSED TO BE DRAINED BY MR.
WARREN ADAMS

Section 11, Township 142 North, Range 80 West, all in the Burleigh County Water Management District. The surface area of the wetland is approximately 41 acres with a watershed of approximately 600 acres (the wetland has been classified as a Type III inland shallow fresh marsh). The purpose of the drainage project is to place new land into agricultural production (cropland and/or pasture).

Cary Backstrand, Drainage Engineer for the State Water Commission, indicated that the State Engineer received an application to drain from Warren Adams on October 24, 1979. The application covers the $S\frac{1}{2}$ of

The Commissioner of the State Game and Fish Department made the following comments by letter dated December 10, 1979:

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"We have reviewed the drainage application of Warren Adams, Wilton #1302, and our comments are as follows:

1. The Water Commission's field inspection revealed that the slough intended to be drained is a type III inland shallow fresh marsh, where the soil is usually water-logged during the growing season and is often covered with as much as six inches or more of water. Mr. Adams, in his application, states that the maximum surface area is 41 acres. This slough has a recognized wildlife value, and the loss of that type of wetland in this area where there are very few acres of that type of wildlife habitat, concerns us.
2. The cumulative effect of wetland drainage, which results in both habitat loss and on land water storage loss, coupled with the potential degradation of aquatic habitat and the aggravation of downstream flooding, which may cause increased habitat loss to solve the artificially created problem, is a major concern of the Game and Fish.
3. Can the proposed area intended to be drained ever become productive cropland?

We hope our comments are of assistance to you in making your decision. Thank you for the opportunity to comment."

Mr. Backstrand said that a public hearing was held on March 26, 1980 and that a downstream landowner expressed concern over the additional water being added to what he felt was an overburdened system. He felt he was being adversely affected by periodic releases of water from the Wilton City lagoon. It was his opinion that added water from artificial drainage would further aggravate his problem.

It was also noted that runoff from the wetland would drain to a 30-inch culvert under the Soo Line railroad track east of the slough area. A letter, that was made part of the public hearing transcript, from the Chief Engineer of the Soo Line Railroad Company expressed opposition to the drainage. He indicated that high water in Burnt Creek has caused considerable damage to the tracks in past years. The railroad's concern was that additional runoff quantities from the drain may result in damage or washouts to the tracks.

Testimony at the public hearing presented by Ecklund Township officials indicated that the culverts between Sections 13 and 24, Ecklund Township, were too small at the present time and should be increased. It was also noted that the natural outlet for the wetland is Burnt Creek, which has a drainage area of approximately 135 square miles, and that flooding is frequent along the Creek, especially during spring runoff and during periods of heavy rains. The proposed drain would empty into the headwaters of Burnt Creek.

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At a regular meeting of the Burleigh County Water Management District, the Board took under consideration application to drain No. 1302. A letter to the State Engineer contained their approval subject to certain conditions:

"The Burleigh County Water Management District recommends approval of the above application to drain subject to the following conditions:

1. Inclusion of a controlled release structure at the outlet of the constructed drain on Mr. Adams's land.
2. Drainage to enter Soo Line right-of-way at an angle and in low enough velocity so as not to cause erosion of railroad embankment or ditch.
3. All releases to be regulated by the Burleigh County Water Management District. This is important so as not to overburden existing culverts or natural waterways.
4. Unless the State Water Commission shall require flowage easements be obtained by the City of Wilton for sewage effluent, and release times and rates subject to approval by the Burleigh County Water Management District, such easements shall not be required to be obtained by Mr. Adams.
5. The State Engineer to establish maximum and minimum specifications for the control structure.
6. General:

With the Water Management District in control of times and rates of all releases, there will be no adverse effects. More, the Water Management District will be able to coordinate releases of sewage by the City of Wilton with releases from Mr. Adams's land most of the time. This will dilute the sewage and reduce both water and air pollution along the watercourse.

It was agreed by the Commission members that further discussion be tabled until the following day's meeting on the application to drain submitted by Warren Adams.

DISCUSSION OF GENERAL
DRAINAGE POLICY
(SWC Project No. 1053)

Mr. Dwyer distributed a memorandum for the Commission's review on general drainage policy. Discussion was deferred until the next day.

The meeting was recessed at 5:05 p.m.; reconvened at 9:00 a.m. on June 3, 1980.

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CONSIDERATION OF REQUEST
FOR FUNDS FOR BANK
STABILIZATION ON THE
PEMBINA RIVER AT NECHE
(SWC Project No. 8714)

Secretary Fahy presented a request from the City of Neche, North Dakota, for cost participation for emergency stabilization of the Pembina River bank within the city of Neche. The estimated cost of the project is \$2,500 and the city has

requested that the State Water Commission contribute \$500 for the project. Based on an inspection of the area, it was evident that if something is not done soon, the dike protecting the school may be eroded away by the river. The Corps of Engineers has been requested to provide permanent protection for the area, but this may not happen for at least three years.

It was recommended by the State Engineer that the Water Commission honor this request and participate with the City of Neche in the emergency stabilization project in an amount of \$500. This type of emergency stabilization would be considered an emergency measure to protect public property, namely the flood control dike and the city school.

It was moved by Commissioner Gray, seconded by Commissioner Wilhelm, and unanimously carried, that the Water Commission approve cost participation with the City of Neche in the emergency stabilization project not to exceed \$500, contingent upon the availability of funds.

CONTINUED DISCUSSION OF
WATER MANAGEMENT DISTRICTS
BILL DRAFT - HCR 3022

Mike Dwyer presented the second bill draft of the Water Management Districts reorganization. He discussed four changes which have been recommended

by the Advisory Committee. Explanation of the four changes are attached as APPENDIX "E".

Mr. Dwyer indicated that the current bill draft and the supporting testimony has been presented to the Natural Resources Interim Committee for their review and action. The NRIC did pass a motion to accept the draft. If the bill draft is approved by the NRIC, it will be recommended to the entire Legislative Council for consideration and then to the Legislature.

He indicated that it is important for the Water Commission to consider taking a position on the general aspects of the bill draft relatively soon so as to enable the Water Commission to work closely with the Committee in the final adoption.

CONTINUED DISCUSSION OF
NORTH DAKOTA FLOODPLAIN
MANAGEMENT ACT - HCR 304

Mike Dwyer presented the third bill draft relative to the Floodplain Management Act. He discussed several changes which have been recommended, and an explanation of those changes are attached hereto as APPENDIX "F". He noted that the Natural

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Resources Interim Committee has accepted the draft and will be taking action on the bill draft at their next meeting. He suggested that the Water Commission should take a position on the general aspects of the bill draft at their earliest convenience.

CONTINUED DISCUSSION OF
SECTION 404 BILL DRAFT -
HCR 4012

dredge and fill. Section 404 is presently being handled by the Corps of Engineers. The guidelines have been received which indicate that EPA shall dictate and that EPA has the right to over-rule the state's changes or regulations at any time.

Secretary Fahy stated that there is still a tremendous amount of confusion at the federal level relative to the states taking over Section 404 permits pertaining to

Mike Dwyer presented a draft bill which he reviewed with the Commission members, and is attached as APPENDIX "G". He noted that the draft has been presented to the Natural Resources Interim Committee. Mr. Dwyer indicated that it was his feeling from discussing the matter with the Committee that unless it is necessary they would just as soon not assume jurisdiction of Section 404 at this time. Secretary Fahy indicated that it still hasn't been decided whether or not the state should assume Section 404, which will require a substantial increase in work force.

It was suggested by the Commission members that the Legal Counsel prepare for the next meeting a statement setting out the advantages and disadvantages pertaining to Section 404 for the Commission's review.

STATUS REPORT ON
DROUGHT CONDITIONS
IN NORTH DAKOTA

Dale Frink presented to the Commission members a report on the general drought situation in North Dakota.

REPORT RELATIVE TO
BORDER DRAINAGE PROBLEMS
IN PEMBINA COUNTY
(SWC Project No. 1401)

Secretary Fahy recalled that in 1976, an Ad Hoc Committee formed by the United States, State of North Dakota, and the Province of Manitoba, met to try to resolve the very serious problems that exist across the border where a dike has been built that impounds water during Pembina River spills on the North Dakota side and floods up to about 40,000 acres of land in North Dakota.

An agreement was completed that would

call for modification of structures across the dike that would accommodate all agricultural drainage. This agreement was reached on both sides of the border and was forwarded to the State Department. The agreement has been in the State Department and recently a representative from the Corps of Engineers met with the State Department to discuss where to go with the agreement. The contention has been that we could immediately proceed with the necessary draining works in the Buffalo Creek area which is not impacted by Pembilier Dam. The Canadian position is that they would like to see Pembilier Dam more clearly formulated before they make any decisions as to cost sharing or proceeding with the project.

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Secretary Fahy indicated that recently a request was received from the State Department to help them respond to the Canadian position. This was done restating the language used in the agreement that states Canada and the United States agrees at the Ad Hoc level that we should proceed immediately with the Buffalo Creek and certain portions of the Aux Marias projects, leaving the Pembina River overflow problem to be addressed in connection with the construction and planning of the Pembillier Dam. Ultimately, if this language is not accepted, we will have to have a negotiation agreement.

REPORT ON REQUEST FROM
TURTLE MOUNTAIN BAND OF
CHIPPEWA INDIANS FOR MORATORIUM
ON ISSUING WATER PERMITS FOR
IRRIGATION FROM SHELL VALLEY
AQUIFER
(SWC Project No. 1400)

Mike Dwyer recalled that at the last meeting of the State Water Commission, a request was received from the Turtle Mountain Band of Chippewa Indians requesting a moratorium on issuing water permits for irrigation from the Shell Valley Aquifer. The Water Commission passed a motion directing the Legal

Counsel for the Water Commission and the Legal Counsel for the Tribe to meet and develop a proposal which will recognize the concern and needs of the Turtle Mountain Indians as presented to the State Water Commission at that meeting. Mr. Dwyer reported that he has written letters to Mr. Cletus Poitra and Mr. Vance Gillette, but the parties have not met as of this date to try to develop a compromise which is acceptable to all parties concerned.

Mr. Dwyer reported that Milton Lindvig, Director of the Hydrology Division for the Water Commission, has indicated that his division will not be recommending any further pending permits to be approved for irrigation from the Shell Valley Aquifer this season primarily due to the lack of information on the aquifer.

DISCUSSION CONCERNING
DEVILS LAKE BASIN
(SWC Project No. 416)

Dave Sprynczynatyk reported that the Corps of Engineers has finalized a reconnaissance report on what can be done to alleviate the flooding problems

in and around the city of Devils Lake. In the report they addressed eight alternatives to reduce the flooding problems if Devils Lake would continue to rise. Six of the alternatives deal with providing an outlet from Devils Lake to the Sheyenne River. The cost estimate for these alternatives ranges from \$6 million to \$12 million. The Corps also looked at the possibility of diverting the high flows that come into Devils Lake directly into Stump Lake at a cost estimate for that alternative of approximately \$5 million. This is considered to be a temporary solution.

The Corps also looked at the problem at Devils Lake near the sewer lagoon where Creel Bay backs up to the sewage lagoon. Emergency protection had to be provided last year during the spring runoff. The Corps looked at what would be required to raise the road to provide protection. The cost estimate was approximately \$1.5 million.

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Since the Corps prepared the report, they submitted the report to their division office in Chicago and have received approval to do a detailed project study on raising of the dump ground/ sewage lagoon road. This work has been assigned to an engineer in St. Paul, and Mr. Sprynczynatyk indicated that hopefully within about 24 months there will be a report available on the detailed engineering for raising the road to provide protection for Devils Lake.

Mr. Sprynczynatyk also mentioned that in the Corps' report, it notes that if Devils Lake were to rise to its meandered level there would be about \$8 million damage in and around the city itself.

Mr. Sprynczynatyk stated that the Water Commission staff is working with the Corps in St. Paul in developing the information for the detailed engineering report and also the Corps is working with the task force that was appointed by the Devils Lake Joint Water Management Board for studying this problem.

At a recent Commission meeting, Commissioner Gray requested that the staff prepare information on the storage capacity at Main Devils Lake and Stump Lake. Dale Frink presented to the Commission members a report relative to this request.

**DISCUSSION OF RESOLUTIONS
ADOPTED BY THE NORTH DAKOTA
IRRIGATION ASSOCIATION**

Secretary Fahy reported that at the last annual meeting of the North Dakota Irrigation Association, they adopted several resolutions relative to water resource development in

North Dakota. The resolutions are quoted as follows: 1) we support the continuation of the Inter Agency Irrigation Task Force composed of representatives from North Dakota University Extension Service and Experiment Station, Soil Conservation Service, State Water Commission, State Health Department, Water and Power Resources Service, Science and Education Administration Agricultural Research and the task force's work with soil and water compatibility guidelines and coordinating irrigation efforts between state and federal agencies; 2) we support a three-year development time for irrigation from the time of issuance of a conditional water permit to the time that permit is developed and the water put to beneficial use; 3) we oppose the theory of limiting by acreage, age, or residency requirement the amount of land a single property owner can irrigate as contrary to the historic right of land ownership and believe that ground and surface water resources should be beneficially utilized to the ultimate limit within the capacity of the water supply to renew itself. However, we would encourage orderly development through limitations on the number of acres that any individual may apply for within a given period of time; and 4) we oppose the United States or the State of North Dakota imposing water use charges for water being appropriated except for those charges necessary to cover construction repayment and operation and maintenance costs where public projects are involved in the water delivery system.

It was suggested by Secretary Fahy, and unanimously agreed by the Commission members, that his staff develop a general

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background paper up to the present legislation on phasing of irrigation permits for the Commission's review.

**CONSIDERATION OF
FINANCIAL STATEMENT**

Matt Emerson discussed the financial status of the agency with the Commission members, and distributed the following

reports: projects authorized and incomplete listing; the organization revenue/expenditure report; and the 1979-81 adjusted appropriation and program budget expenditures. He noted that the accounts are consistent with the amount of the biennium that has elapsed, except restrictions will have to be made on activities requiring funds from the Fees and Services account.

**STATE WATER COMMISSION
PROPOSED PROJECT CONSTRUCTION
AND REPAIR
(SWC Project No. 1)**

Dave Sprynczynatyk reviewed briefly construction and repair projects which the Water Commission will be involved in the next year. This report is attached hereto as APPENDIX "H".

The meeting was recessed at 12:00 noon; reconvened at 1:30 p.m.

**CONSIDERATION OF REQUEST FOR
FUNDS FOR THE CONSTRUCTION OF
A CONTROL STRUCTURE FOR RANEY
SLOUGH IN LAMOURE COUNTY
(SWC Project No. 1718)**

Secretary Fahy presented a request from the LaMoure County Water Management District requesting cost participation for the construction of a control structure on Raney Slough in LaMoure County. The total cost of the project is

estimated to be \$14,630. Forty percent of the eligible project costs would amount of \$6,000 for the state share of the costs.

Dave Sprynczynatyk stated that a preliminary engineering report for a control structure at the outlet of Raney Slough was completed by the Commission staff in January, 1980. The report covered two alternate outlet structures, one utilizing a 48-inch corrugated metal pipe and the other a 60-inch corrugated metal pipe. The LaMoure County Water Management District has now completed their review of this report and decided to proceed with a project using the 60-inch corrugated metal pipe and a control gate. A control structure would limit the amount of discharge from the slough during runoff periods to help reduce flood damages downstream and to reduce erosion damages. By utilizing a control gate on the structure, the Water Management Board will be able to operate and limit the discharges.

It was the recommendation of the State Engineer that the Commission act favorably on this request approving cost participation in the amount of \$6,000, contingent upon the availability of funds and contingent that the LaMoure County Water Management District establish a water management plan for the Raney Slough watershed to include an operation plan for the proposed project and submit the plan to the State Engineer for approval.

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Mr. Jim Toay, representing the LaMoure County Water Management District, explained through the use of maps, the location of the slough and the problems that are being caused. He indicated that one farmer in particular has been flooded out several times. The flooding has also created stress on some of the existing roads. By installing a control structure, the flow of the water would be slowed down. He indicated that the water management district does have some funds available for this project and if the Water Commission would act favorably on the request, the project could then proceed. He also indicated that if this was a new drain, the Board would probably not allow it to be drained. However, since it has been in existence for many years, they would like to correct the problem that is being caused.

Cary Backstrand, staff engineer, explained that the slough is located in LaMoure County near Jud, North Dakota, and the slough outlets into Cottonwood Creek. The farmer downstream that has been experiencing problems lives near the confluence of the drainway from Raney Slough and Cottonwood Creek. Mr. Backstrand stated that there is a large cut, well over 20 feet, on the eastern end of the slough which was constructed in about 1951. Since the cut, which has been in existence for nearly 30 years, is deep and narrow, it fills with snow and ice forming a dam that holds water in the slough area. When this ice and snow dam finally thaws, water comes into the drainage system in one large wave causing flooding problems. The project that is being proposed is to construct a ditch block across the mouth of the channel with a 60-inch gated pipe to hold back the water. The water will then be released when conditions warrant. He indicated that the proposal also includes an emergency spillway.

It was moved by Commissioner Just, seconded by Commissioner Gray, and unanimously carried, that the Water Commission participate with the LaMoure County Water Management District for the construction of a control structure for Raney Slough in LaMoure County in an amount not to exceed \$6,000, contingent upon the availability of funds; and contingent that the LaMoure County Water Management District establish a water management plan for the Raney Slough watershed and to include an operation plan for the proposed project and submit the plan to the State Engineer for approval.

CONSIDERATION OF REQUEST FOR
MODIFICATION OF FUNDING
APPROVED FOR ROCKY RUN CREEK
PROJECT
(SWC Project No. 1633)

Dave Sprynczynatyk recalled that at the Commission's February 29, 1980 meeting, the Commission approved funds for the Oak Creek Drain, Emrick Drain and improvements to the lower end of Rocky Run Creek. Conditions in approving the state funds included a successful vote

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by the majority of the landowners in the assessed areas and that all three projects be considered as one. Mr. Sprynczynatyk stated that because these conditions have not and will not be met, the Joint Board has been notified that cost participation approved by the State Water Commission is now null and void. This was made necessary because the Oak Creek drainage project was voted down. The Emrick drain was approved and the Wells County Water Management District wishes to proceed with the project. Because the proposed project is much smaller than originally proposed, the staff has reviewed the downstream improvements which they feel necessary before the drainage permit can be considered. It has been concluded that improvements should consist of: 1) a farm crossing known as Kittelson crossing be removed; and 2) the capacity of the structures through the roadway located one mile east of Highway 281 be increased. It is also recommended that the Joint Board seriously consider completion of all or part of the Phase I improvements described in the 1978 Preliminary Engineering Report. The Wells County Board has agreed to the above recommendations. They have also decided to install an additional 95-inch x 67-inch CMP arch culvert through the roadway located approximately two miles east of Highway 281 and to complete Phase I improvements from the James River to a point approximately nearly one mile west of Highway 281.

Mr. Sprynczynatyk said that the cost of the Emrick Drain is \$116,500, and under present guidelines, eligible items for possible State Water Commission cost participation would amount to \$42,500 of which 40 percent would be \$17,000. The proposed improvements to the lower end of Rocky Run has been estimated to cost approximately \$34,700, of which \$10,700 would be eligible for 40 percent cost participation amounting to \$4,300.

Mr. Irvin Driesner, Fessenden, and a farmer from the Emrick area, indicated the severity of the problems and stated that on his own farm alone last year he had 160 acres of summer fallow and he was only able to seed 40 acres; the rest was flooded. He noted that in a wet year the water remains there for about two months before it recedes. He said farmers are experiencing saline seeps on their land, and that the good farmland is being damaged. When the vote was taken on the project, 90 percent of the landowners were in favor of a controlled drainage project to help relieve the problems. Mr. Driesner also stated that the people in the area do not feel that there are any wetlands, noting there are ducks in the spring that nest in the summer fallow but their eggs are destroyed during spring's work before they are hatched. Mr. Driesner requested that the Commission favorably consider their request.

Mr. Phil Arnold, Pingree, North Dakota, U.S. Fish and Wildlife Service, Arrowwood National Wildlife Refuge, appeared before the Commission to express some concerns of the Fish and Wildlife Service. He noted there are presently an estimated 1,070 acres of wetlands within the Emrick watershed, of which the majority are Type III wetlands and the rest are Type IV wetlands. These wetlands provide water storage on the land and do not contribute to flows in the James River. He said that unless some type of wetland preservation is implemented as part of the project, a

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new outlet for pothole drainage will be provided. This will result in a large area, presently noncontributing, being added to the James River. Mr. Arnold stated that the additional flows to the James River will aggravate existing problems of water quality and flooding. Even though flows will be temporarily held back by means of a water control structure, the project will increase the total volume and prolong flooding conditions either within the subwatershed, on the James River and Rocky Run, or both.

Mike Dwyer stated that next week he will be attending a trial in Aberdeen, South Dakota, where the Oahe Conservancy Subdistrict of South Dakota, has sued the Corps of Engineers. North Dakota intervened as a party defendant to protect North Dakota's interest in the Jamestown and Pipestem Dams. The basis of the lawsuit is whether the Corps of Engineers has operated the Jamestown and Pipestem Dams in an arbitrary or capricious manner, causing unnecessary aggravated flooding in South Dakota. The dams were authorized for the primary benefit of North Dakota citizens.

Because of the concern expressed by the U.S. Fish and Wildlife Service and concerns that the proposed project may have an impact on the operation of Jamestown Dam, Governor Link asked if the Corps of Engineers has been contacted regarding the compatibility of releasing this water into the system.

Dave Sprynczynatyk replied that the Water Commission has not yet made contact with the Corps of Engineers nor did he think that the water management district had made contact with the Corps. It was agreed that when reviewing the application for drainage and the possibility for controlled releases that contacts with the Corps would be desirable.

It was suggested, and was the unanimous consensus of the Commission members, that the Water Commission contact the Omaha District Corps of Engineers requesting their comments concerning impacts the proposed project may or may not have on the operation of the Jamestown Dam prior to the Commission's next meeting.

It was moved by Commissioner Gallagher, seconded by Commissioner Wilhelm, and unanimously carried, that the Water Commission defer action on the request for cost participation of the Emrick Drain and for proposed improvements to the lower end of Rocky Run, pending comments from the Corps of Engineers.

CONTINUED DISCUSSION
ON APPLICATION TO DRAIN
SUBMITTED BY WARREN ADAMS

Discussion was re-opened on the application to drain submitted by Mr. Warren Adams of Wilton, North Dakota.

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Secretary Fahy reviewed the specifics of the application to drain, and indicated that this particular request for drainage was brought before the Commission specifically to generate discussion towards the development of a drainage policy that would include more than just downstream adverse impacts. He said that the law deals primarily with adverse impacts downstream. This application has been declared of statewide significance which requires the approval of the State Engineer before the drainage ditch can be constructed. Secretary Fahy indicated the application to drain requires assurance of coordination of runoff from the slough with the lagoon releases from the city of Wilton. It is a matter which the water management district can control.

The Commission turned to a brief discussion on general drainage policy. Mike Dwyer briefly reviewed the memorandum on general drainage policy which was distributed at yesterday's meeting. He noted that one of the recommendations contained in the memorandum was that the Water Commission adopt cost sharing guidelines for drainage projects which are cost-shared by the State Water Commission. One of the components of the proposed cost-sharing guidelines was that a drainage permit must first be secured so that the Water Commission would then have an opportunity to see the kinds of conditions relating to non-contributing areas. The procedure is now that the locals hold an election to see if the project is favorable and then an application is submitted for a permit. The procedure would be reversed, requiring a permit first and then an election.

Mr. Dwyer also pointed out that existing drainage law (61-01-22, North Dakota Century Code) states that a permit shall not be granted until an investigation shall disclose that the quantity of water which will be drained from the pond, slough or lake will not flood or adversely affect lands of lower proprietors. The drainage permit statute implies that a decision on whether or not to grant a drainage application must be based primarily, if not exclusively, on downstream impacts. To clarify this issue, Mr. Dwyer explained that new language could be included in the statute to clarify that the State Engineer is to consider all water management factors when making his determination whether or not to approve an application to drain. He noted that the proposed amendment to Section 61-02-22 has been approved by the Advisory Committee and the Natural Resources Interim Committee.

Mr. Dwyer also explained the third recommendation of the memo, which suggested that a general statewide drainage policy be developed.

It was unanimously agreed that the Legal Counsel be directed to prepare for the Commission's consideration at its next meeting a draft of guidelines for a general drainage policy.

In further discussing the application to drain submitted by Mr. Warren Adams -

It was moved by Commissioner Kramer that the Water Commission defer action on this application

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to drain until the Commission's next meeting. It was also moved that the Commission staff prepare guidelines for a general drainage policy for the Commission's review at its next meeting. The motion received a second from Commissioner Wilhelm. All members voted aye; the motion unanimously carried.

Mr. Jim Eastgate, Secretary-Treasurer of the Burleigh County Water Management District, reminded the Commission that his Board had approved the application and that he felt the conditions imposed were indicative of his Board's willingness to attempt to manage water for everyone's benefit.

**CHANNEL "A" LITIGATION
(SWC Project No. 842)**

Mike Dwyer indicated that a request has been received from the Cavalier County Water Management District for legal assistance in an attempt to enforce alleged illegal drainage. Mr. Dwyer explained that the drainage problem was located in the Channel "A" basin. The state paid for \$600,000 of funds for the Channel "A" project and it was agreed by the state and local water officials that any illegal drainage within that basin would be vigorously enforced. Thus, Mr. Dwyer indicated that he felt it would be appropriate for the Water Commission to provide the legal assistance requested by the county. In discussions with the local water management district attorney, it was stated that the county had requested that the Water Commission provide legal assistance by intervening rather than by filing an amicus brief. Mr. Dwyer did indicate that Water Commission staff had conducted an investigation of the area so as to have full knowledge of all of the facts pertaining to this particular litigation. Mr. Dwyer finally indicated that if it is the wishes of the Water Commission that legal assistance be provided to the county, it would be contingent upon the approval of the Attorney General.

It was moved by Commissioner Kramer, seconded by Commissioner Lanz, and unanimously carried, that the Water Commission honor the request from the Cavalier County Water Management District to provide legal assistance as requested, contingent upon the approval of the Attorney General.

**RED RIVER DRAINAGE
(SWC Project No. 1638)**

Secretary Fahy distributed copies of communication that had been received from Mr. John Rasmussen, Chairman of the Red River Flood Control Association, in which he recommends a total and complete moratorium on drainage in the Red River Valley. Mr. Rasmussen also expressed opposition to any projects that involved snagging and clearing, legal drains, or assessment districts in the entire Red River Valley drainage area.

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Secretary Fahy also distributed a letter which was distributed at the last meeting of the Advisory Committee from Mr. Robert Thompson, Page, North Dakota, and Chairman of the Red River Valley Joint Board, relative to recommendations for the State Water Commission make-up, representation, etc.

The meeting was adjourned at 3:40 p.m.



Arthur A. Link
Governor-Chairman

ATTEST:



Vernon Fahy
State Engineer and Secretary

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A BILL for an Act to provide the state water commission with authority to borrow money and issue interim notes to provide rural water systems with tax exempt construction period financing.

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

Alternative 1.

SECTION 1. AMENDMENT.) Section 61-02-02 of the North Dakota Century Code is hereby amended (by adding the following definitions) and reenacted to read as follows:

61-02-02. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" shall mean the state water conservation commission;
2. "Works" shall be deemed to include:
 - a. All property, rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation;
 - b. All water rights acquired and exercised by the commission in connection with such works;
 - c. All means of conserving and distributing water, including without limiting the generality of the foregoing two subdivisions, reservoirs, dams, diversion canals, distributing canals, channels, lateral ditches, pumping units,

mains, pipelines, treatment plants, and waterworks systems; and

- d. All works for the conservation, development, storage, treatment, distribution, and utilization of water including, without limiting the generality of the foregoing subdivisions, works for the purpose of irrigation, watering stock, supplying water for public, domestic, industrial, and recreational use, fire protection, and the draining of lands injured or in danger of injury as a result of such water utilization;

3. "Cost of works" shall include:

- a. The cost of construction, the cost of all lands, property rights, water rights, easements, and franchises acquired which are deemed necessary for such construction;
- b. The cost of all water rights acquired or exercised by the commission in connection with such works;
- c. The cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three years after the completion of construction;
- d. The cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident

- to determining the feasibility or practicability of any project;
- e. Administrative expenses;
 - f. The construction of the works and the placing of the same in operation; and
 - g. Such other expenses as may be necessary or incident to the financing authorized in this chapter;
4. "Owner" shall include all individuals, associations, corporations, districts, municipalities, and other political subdivisions of this state having any title or interest in any properties, rights, water rights, easements, or franchises to be acquired;
 5. "Project" shall mean any one of the works defined in subsection 2 of this section, or any combination of such works, which are physically connected or jointly managed and operated as a single unit.
 6. "Rural water entity" means the owner or owners of water supply systems and related works, as defined in subsection 2 of this section, which provide water for domestic, municipal, light industrial, livestock and other similar uses to rural areas, including cities with a population of not more than 10,000 inhabitants.
 7. "Rural water system" means any works, as defined in subsection 2 of this section, for the development, storage, treatment, purification, and distribution of water by a rural water entity.

Alternative 2.

*SECTION 1.)

*Under this alternative, there would be no need for any new definitions under section 61-02-02 of the North Dakota Century Code. The first alternative would limit the construction period financing to rural water entities. The second alternative, by using the present definition of works and owner as found in section 61-02-02, would allow the state water commission to provide the construction period financing to all projects. I have provided the two alternatives for the Commission's review.

SECTION 2.) A new section to Chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

BORROWING ON INTERIM NOTES -- EXPENSES PAID AND LOANS MADE FROM PROCEEDS -- ISSUANCE OF NOTES.) The state water commission may borrow money and issue interim notes in evidence thereof in order to provide (rural water entities) (owners) with tax-exempt construction period financing, including the making of loans authorized by Section 3, the funding of debt service reserves and capitalized interest and the payment of the costs of issuance. (The commission may from time to time, and pursuant to appropriate resolution, issue interim notes to evidence such borrowings including interest on such borrowings and all necessary and incidental expenses in connection with any of the purposes provided for by this chapter until the date of the permanent financing).

SECTION 3.) A new section to Chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES GUARANTEED BY UNITED STATES AGENCY OR INSTRUMENTALITY -- LIMITATIONS.) In addition to its other powers, the state water commission may enter into loan agreements with any (rural water entity) (owner or owners) to loan the proceeds of the commission's interim notes to any (rural water entity) (owner or owners) for a (rural water system) (project) anywhere within this state and to adopt the necessary resolution therefor, without regard to the limitations, provisions or requirements of any other law except chapter 61-02. Before any such agreement can be entered into, an agency or instrumentality of the United States government, including, but not limited to, the farmers home administration or the old west regional commission, must have committed itself to make a grant or loan to such (rural water entity) (owner or owners) to provide not less than ninety per cent of the permanent financing of such (rural water system) (project). Under this section the commission may only provide interim financing less than or equal to the federal grant or loan commitment on each (rural water system) (project) and may not apply the proceeds of such interim notes and financing to any purpose other than expenses allowed by Section 2 and the (rural water system) (project) for which the loan agreement is made. The (rural water entity) (owner or owners) receiving this interim financing shall have the authority and power to apply the

proceeds of the commission's interim notes to the (rural water system) (project) without specific authorization of such (rural water system) (project) by the legislative assembly.

SECTION 4.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING -- PROPER AUTHORITY REQUIRED.)

Before entering into any loan agreement under Section 3, the commission shall be satisfied by opinion of the attorney general, by an examination of relevant charters, resolutions, minutes and other documents, or by other sufficient means that the (rural water entity) (owner or owners) receiving such interim financing has the authority and power to construct the (rural water system) (project), borrow these funds, and enter into the loan agreement. The commission shall also be so satisfied that all procedures, resolutions, and other things necessary to exercise such authority and power have been properly performed.

SECTION 5.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING -- INDEPENDENT REVIEW OF FEASIBILITY OF PROJECT.) Before issuing any interim notes pursuant to (Section 3), the state water commission shall conduct a review of the feasibility of the (rural water system) (project) to ensure that projected water consumption, operation costs, construction costs, revenues and other statistics are reliable

and that the (rural water system) (project) will be able to pay its expenses. The commission shall state the findings of its review in a motion entered in the minutes of its proceedings.

SECTION 6.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM FINANCING -- PROCEEDS PLEDGED AS SECURITY -- ASSIGNMENT TO STATE WATER COMMISSION OF RIGHTS TO PROCEEDS.) Any interim financing agreement pursuant to Section 3 shall provide that the (rural water entity) (owner or owners) receiving the proceeds of such interim financing shall pledge and dedicate the proceeds of its loan or grant from the United States as security for the interim notes issued pursuant to the loan agreement. In addition, the execution of any loan agreement under Section 3 shall constitute an assignment to the state water commission of the right to receive the proceeds of the federal loan or grant so far as is necessary to secure the interim notes issued pursuant to the agreement and in preference to any other obligation whatsoever of the (rural water entity) (owner or owners) receiving the interim financing.

SECTION 7.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

TERMS OF INTERIM NOTES -- EXTENSION OF MATURITY DATES.) Any resolution authorizing the issuance of such notes shall specify the principal amount, rate of interest and maturity

date, but not to exceed _____ years from date of issue, and such other terms as may be specified in such resolutions. Time of payment of any such notes may be extended for a period of not exceeding _____ years from the maturity date thereof.

SECTION 8.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

PLEDGE OF REVENUES TO SECURE INTERIM NOTES.) All such notes and the interest thereon must be secured by a pledge of, and payable from, any grant or loan to be made by an agency or instrumentality of the United States government, including, but not limited to, the farmers home administration or the old west regional commission, in connection with such (rural water system) (project).

SECTION 9.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

ADDITIONAL COVENANTS AND CONDITIONS TO SECURE INTERIM NOTES.) The state water commission, in order to further secure the payment of the interim notes, is authorized and empowered to make any other or additional covenants, terms and conditions, and to do and perform such acts as may be necessary, convenient, or desirable in order to secure payment of its interim notes, and to make the interim notes more acceptable to lenders. Exercise of authority pursuant to this section shall be consistent with the provisions of this Act.

SECTION 10.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

REGISTRATION OF INTERIM NOTES -- INTEREST PAYMENT -- REDEMPTION PRIOR TO MATURITY.) The state water commission may provide for the registration of the notes in the name of the owner either as to principal alone, or as to both principal and interest, on such terms and conditions as the commission may determine by the resolution authorizing their issue. Interest on the notes may be made payable semi-annually, annually, or at maturity. The notes may be made redeemable, prior to maturity, at the option of the commission, in the manner and upon the terms fixed by the resolution authorizing their issuance.

SECTION 11.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

EXECUTION AND ATTESTATION OF INTERIM NOTES -- SALE.) The notes shall be executed by the chairman of the commission and shall be attested by the State Engineer. The notes shall be sold in such manner and at such price as the commission shall by resolution determine.

SECTION 12.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

BOND PROVISIONS APPLICABLE TO INTERIM FINANCING.) The provisions of section 61-02-49, section 61-02-50, sections 61-02-59 to 61-02-62, inclusive, and section 61-02-65,

relating to bonds shall also apply to notes issued pursuant to section 3 of this Act.

SECTION 13.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES NOT A STATE OBLIGATION -- PAYMENT RESTRICTED TO REVENUES -- NOTES NOT A LIEN.) Interim notes issued by the state water commission under this chapter shall not be in any way a debt or liability of the state and shall not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities on behalf of the state, or be or constitute a pledge of the faith and credit of the state, but all such notes shall be payable solely from funds pledged or available for their payment as authorized in this chapter. Such notes shall not constitute a charge, lien nor encumbrance, legal or equitable, upon any property of the state water commission.

Each note issued under this chapter shall recite in substance that the note, including interest thereon, is payable solely from a loan or grant to be made by an agency or instrumentality of the United States government, and that the note does not constitute a debt of the commission within the meaning of any constitutional or statutory limit.

SECTION 14.) A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

INTERIM NOTES AS LEGAL INVESTMENTS AND SECURITY.)
Notwithstanding any restrictions contained in any other law,

the state and all public officers, boards and agencies, and political subdivisions and agencies thereof, all national banking associations, state banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries, may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any notes issues by the state water commission pursuant to this chapter, and such notes shall be authorized security for any and all public deposits.

* INDICATES PRIOR
PERMIT STATUS

WATER PERMIT AGENDA FOR JUNE 2 AND 3, 1980 MEETING

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3235	Drees Farming Association - Grand Forks (Grand Forks County) Priority: 3- 6-80 Hearing: 4-21-80	Ground Water	Irrigation	465.0 acre-feet 310.1 acres	424.0 acre-feet 445.1 acres (Remainder of original request shall be denied.) (This request was approved by the State Engineer on May 23, 1980.)
				* #2846 (Priority Date: 2-8-77) Granted 135.0 acres	
3240	Mutchler, Timothy - Northwood (Grand Forks County) Priority: 3-25-80 Hearing: 4-21-80	Ground Water	Irrigation	224.0 acre-feet 149.6 acres	Recommend for approval: 20.0 acre-feet 149.6 acres (Remainder of original request shall be held in abeyance)
				* NO PRIOR PERMITS	
3243	Trail County Rural Water Users, Inc. - Portland (Trail County) Priority: 2-22-80 Hearing: 4-21-80	GROUND WATER	Municipal - (Rural Domestic)	600.0 acre-feet	It is recommended that action be deferred at this time.
				* #1954 (Priority Date: 8-8-73) Granted 644.0 acre-feet	
3229	Nelson, Daryl D. - Driscoll (Kidder County) Priority: 2-19-80 Hearing: 4-21-80	Ground Water	Irrigation	1200.0 acre-feet 760.5 acres	It is recommended that action be deferred at this time.
				* NO PRIOR PERMITS	

APPENDIX "B"

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2064	Salzsieder, Bruce - Edgeley (LaMoure County)	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
	Priority: 1-30-74 Hearing for Amendment: 4-21-80				
2060	Kyllo, Robert - McCanna (Grand Forks Co.)	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
	Priority: 2-25-74 Hearing for Amendment: 4-21-80				
2222	Kyllo, Robert - McCanna (Grand Forks Co.)	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
	Priority: 2-14-75 Hearing for Amendment: 4-21-80				
2785	Ferch, Julius - LaMoure (LaMoure County)	Ground Water (Spiritwood Aqulfer)	Irrigation	640.0 acre-feet 320.0 acres	450.0 acre-feet 300.0 acres (The remainder of the original application shall be denied.) (This request was approved by State Engineer on April 18, 1980.)
	Priority: 3-16-77 Hearing: 6- 7-77 Deferred: 7- 8-77	* #2815 (Priority Date: 4-13-77) Requested 160.0 acres; In deferred status at present time.			127

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3071	Larson, Russell - Oakes (Dickey County)	Ground Water (Spiritwood Aquifer)	Irrigation	720.0 acre-feet 410.1 acres	<p>Recommend for approval: 225.0 acre-feet 150.0 acres</p> <p>(Remainder of original request shall be held in abeyance.)</p> <p>This request was approved by the State Engineer on April 18, 1980.</p>
	Priority: 10-27-78 Hearing: 11-20-78 Deferred: 12- 5-78	* NO PRIOR PERMITS			
3072	Meehl, Jim - Oakes (Dickey County)	Ground Water (Spiritwood Aquifer)	Irrigation	240.0 acre-feet 155.4 acres	<p>225.0 acre-feet 150.0 acres</p> <p>(Remainder of original request shall be denied.)</p> <p>This request was approved by the State Engineer on April 18, 1980.</p>
	Priority: 4-16-79 Hearing: 5-14-79 Deferred: 6-25-79	* NO PRIOR PERMITS			
3128	Anderson, Chester A. - Oakes (Dickey County)	Ground Water (Spiritwood Aquifer)	Irrigation	210.0 acre-feet 140.0 acres	<p>210.0 acre-feet 140.0 acres</p> <p>This request was approved by the State Engineer on April 18, 1980.</p>
	Priority: 9-13-78 Hearing: 10-23-78 Deferred: 11-14-78	* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3171	Lehr, City of - Lehr (Logan County) Priority: 2-20-80 Hearing: 3-24-80 Deferred: 4- 3-80	Ground Water (Unnamed Aquifer)	Municipal	60.0 acre-feet	60.0 acre-feet * NO PRIOR PERMITS
3193	Kuchera, James - Wyndmere (Richland County) Priority: 7-30-79 Hearing: 10- 8-79 Deferred: 12-12-79	Ground Water (Sheyenne Delta Aquifer)	Irrigation	357.6 acre-feet 238.4 acres	Recommend for approval: 202.5 acre-feet 135.0 acres (Remainder of original request shall be held in abeyance)
3139	Patterson Land Co. - Bismarck (Kidder County) Priority: 10- 4-78 Hearing: 1-29-79 Deferred: 2-20-79	Ground Water (Marstonmoor Aquifer)	Irrigation	458.0 acre-feet 229.0 acres	343.5 acre-feet 229.0 acres (Remainder of original request to be denied)
				* # 799 (Priority Date: 5-22-59) Granted 221.24 acres #2881 (Priority Date: 6-15-77) Granted 145.0 acres	
2915	Flatla, Florence M. - Bergen (McHenry County) Priority: 2-15-80 Hearing: 3-24-80 Deferred: 4- 3-80	Ground Water (Voltaire Aquifer)	Irrigation	640.0 acre-feet 295.0 acres	Recommend for approval: 202.5 acre-feet 135.0 acres (Remainder of request shall be held in abeyance)
				* NO PRIOR PERMITS	

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
1232P	Steele, City of - Steele (Kidder County) Priority: 7-1-36 for 46.0 acre-feet; 5-21-64 for 524.0 acre-feet Hearing on Amendment: 4-9-79	Ground Water (Unnamed Aquifer)	Municipal	This is a request for a change in point of diversion and to increase pumping rate from 100 gpm to 250 gpm.	It is recommended that this request for a change in point of diversion and to increase the pumping rate be approved.
3244	Goldsberry Ranch - Trotters (Billings County) Priority: 3-27-80 Hearing: 5-12-80	Little Missouri River, trib. to Missouri River * NO PRIOR PERMITS	Irrigation	202.0 acre-feet 135.0 acres	It is recommended that action be deferred at this time.
3249	Knopp, Gilbert - Hebron (Mercer County) Priority: 3-28-80 Hearing: 5-12-80	Unnamed Stream, trib. to Little Knife River * NO PRIOR PERMITS	Irrigation- Waterspreading	75.0 acre-feet 50.0 acres	It is recommended that action be deferred at this time.
3245	Tenneco Oil Company - Denver, Col. (Williams County) Priority: 3-31-80 Hearing: 5-12-80	Ground Water * NO PRIOR PERMITS	Industrial (Dissolve salt accumulations in oil producing well)	7.06 acre-feet	7.06 acre-feet

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3239	Kralicek, Joe Jr. - Dickinson (Stark County) Priority: 3-24-80 Hearing: 5-12-80	Ground Water	Municipal- (Rural Domestic)	40.0 acre-feet	It is recommended that action be deferred at this time. * #827 (Priority Date: 1-27-60) Granted 31.8 acres
3236	Lyons, Jim and Warren - Lisbon (Ransom County) Priority: 3-20-80 Hearing: 5-12-80	Ground Water	Irrigation	240.0 acre-feet 160.0 acres	It is recommended that action be deferred at this time. * #2209 (Priority Date: 3-7-75) Granted 135.0 acres)Granted to #2622 (Priority Date: 11-18-76) Granted 135.0 acres)Lyons Bros.
2209	Lyons Brothers - Lisbon (Ransom County) Priority: 3- 7-75 Hearing for Amendment: 5-12-80	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time. * See #3236 above.
3234	Shockman, Thomas C. - LaMoure (LaMoure County) Priority: 3- 3-80 Hearing: 5-19-80	Ground Water	Irrigation	325.0 acre-feet 216.7 acres	It is recommended that action be deferred at this time. * NO PRIOR PERMITS

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2406	Trautmann, Art - Robinson (Kidder County) Priority: 3-15-76 Hearing for Amendment: 5-19-80	Ground Water	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
3246	Krebsbach, Mark and Connie - Warwick (Eddy County) Priority: 3-31-80 Hearing: 5-19-80	Sheyenne River, trib. to Red River	Irrigation	25.0 acre-feet 86.0 acres * #2206 (Priority Date: 1-23-75) Granted 82.0 acres	It is recommended that action be deferred at this time.
1181	Hardy Salt Company - Williston (Williams County) Priority: 6-11-74 Hearing on Amendment: 5-19-80	Ground Water	Industrial	This is a request for a change in point of diversion; an increase in water appropriation; and an increase in withdrawal rate.	It is recommended that action be deferred at this time.
2254	Simmers, Francis H. - Jamestown (Stutsman County) Priority: 4- 3-75	James River	Irrigation	671.0 acre-feet 305.8 acres * NO PRIOR PERMITS	The applicant has not expressed any further desire to complete the application; he has been notified several times of what is necessary to complete application; therefore, this application has been "Void-Application Incomplete".

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2255	Simmers, Robert H. - Jamestown (Stutsman County) Priority: 4- 3-75	James River	Irrigation	300.0 acre-feet 152.8 acres	The applicant has not expressed any further desire to complete application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
		* #2326 (Priority Date: 5-12-76) Granted 46.5 acre-foot storage plus 24.6 acre-feet annual use for recreational purposes			
2748	Brown, Robert - Crary (Ramsey County) Priority: 3- 1-77	Ground Water	Irrigation	75.0 acre-feet 51.0 acres	The applicant has not expressed any further desire to complete application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
		* NO PRIOR PERMITS			
2809	Northwest Nursery Company, Inc. - Valley City (Barnes County) Priority: 3-31-77	Ground Water	Irrigation	3.0 acre-feet 3.0 acres	The applicant has not expressed any further desire to complete application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
		* #448 (Priority Date: 6-20-52) Granted 103.0 acres			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3022	Beulah, City of - Beulah (Mercer County) Priority: 1- 5-78	Ground Water; and/or the Knife River	Irrigation (Golf Course)	160.0 acre-feet 82.0 acres	The applicant has not expressed any further desire to complete application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
		* # 968 (Priority Date: 2-10-62) Granted 226.0 acre-feet for Municipal Use #2488 (Priority Date: 12-16-76) Granted 260.0 acre-feet for Municipal Use #1405 (Priority Date: 11-14-66) Granted 75.0 acre-feet for recreational use			
3091	Carroll, Patrick - Moffit (Burleigh County) Priority: 4-21-78	Ground Water	Irrigation	340.8 acre-feet 227.2 acres	The applicant has not expressed any further desire to complete application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
		* #1962 (Priority Date: 8-28-73) Granted 334.4 acres			
3185	Leininger, Roger L. - Binford (Griggs County) Priority: 5-16-79	Ground Water	Irrigation	640.0 acre-feet 320.0 acres	The applicant has not expressed any further desire to complete application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
		* NO PRIOR PERMITS			

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
3248	Sonsalla, Joe - Marmarth (Slope County) Priority: 4- 1-80 Hearing: 5-19-80	Little Beaver Creek, trib. of Little Missouri River * NO PRIOR PERMITS	Irrigation- Waterspreading	161.2 acre-feet 83.0 acres	65.0 acre-feet 65.0 acres (The remainder of the original application to be denied.) This request was approved by the State Engineer on May 29, 1980.
2116	Sletten, Robert and Dennis - Ryder (Ward County) Priority: 8-12-74 Hearing for Amendment: 5-19-80	Ground Water * NO PRIOR PERMITS	Irrigation	This is a request for a change in point of diversion.	It is recommended that action be deferred at this time.
2906	Running, Arley - Harvey (Wells County) Priority: 6- 7-77	Ground Water * NO PRIOR PERMITS	Irrigation	640.0 acre-feet 312.0 acres	The applicant has not expressed any further desire to complete the application; has been notified several times of what is necessary to complete the application; therefore, this application has been "Void-Application Incomplete".
2941	Martin, Ervin E. - Fairview, Mont. (McKenzie County) Priority: 9- 6-78 Hearing: 10- 2-78 Deferred: 10-20-78	Four-Mile Creek, trib. to Missouri River * NO PRIOR PERMITS	Irrigation	160.0 acre-feet 80.0 acres	80.0 acre-feet 80.0 acres (Remainder of original request shall be denied)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2467	Fortier, William - Wildrose (Divide County) Priority: 2-19-80 Hearing: 3-24-80 Deferred: 4-3-80	Unnamed Lake, Non- Contributing to Missouri River Watershed * NO PRIOR PERMITS	Irrigation	120.0 acre-feet 79.8 acres	120.0 acre-feet 79.8 acres (This request was approved by the State Engineer on May 8, 1980.)
3221	Helm, Donald D. - Fairview, Mont. (McKenzie County) Priority: 1-18-80	Spring-fed drainage ditch, trib. to Yellowstone River	Irrigation	320.0 acre-feet 160.0 acres	The applicant has requested that this application be withdrawn because his land is located within the Lower Yellowstone Irrigation District.
2707	Moen, Wilmer - Galesburg (Cass and Traill Cos.) Priority: 1-26-77 Hearing: 4-4-77 Deferred: 4-15-77	Ground Water (Page Aquifer) * NO PRIOR PERMITS	Irrigation	1440.0 acre-feet 960.0 acres	The applicant's widow was contacted by phone and she indicated that she was not interested in irriga- tion; therefore, it is recommended that this application be denied.
3155	Gilbertson, Monroe - Binford (Griggs County) Priority: 10-17-78 Hearing: 2-26-79 Deferred: 4-18-79	Unnamed Stream, trib. of Bald Hill Creek and Sheyenne River * NO PRIOR PERMITS	Fish and Wildlife, Livestock and Fire Protection	84.7 acre-feet (58.0 acre-feet storage 26.7 acre-feet annual use)	84.7 acre-feet (58.0 acre-feet storage 26.7 acre-feet annual use)

NO.	NAME AND ADDRESS	SOURCE	PURPOSE	AMOUNTS REQUESTED	COMMENTS & RECOMMENDATIONS
2453	Rode, Paul H. - Adrian (LaMoure County)	James River	Irrigation	494.2 acre-feet 247.1 acres	Recommend for approval: 100.0 acre-feet 100.0 acres (51.2 acre-feet and 51.2 acres to be held in abeyance; remainder of original request to be denied.) This request was approved by the State Engineer on May 20, 1980)
	Priority: 5-17-76 Hearing: 6-28-76 Deferred: 7-20-76	* NO PRIOR PERMITS			
3069	Grosz Brothers - Turtle Lake (McLean County)	Ground Water (Lake Nettle Aquifer)	Irrigation	520.0 acre-feet 312.0 acres	450.0 acre-feet 300.0 acres (The remainder of the original application shall be denied.)
	Priority: 4- 6-79 Hearing: 5- 7-79 Deferred: 6-25-79	* NO PRIOR PERMITS			
2965	Birst, Emil - Turtle Lake (McLean County)	Ground Water (Lake Nettle Aquifer)	Irrigation	237.0 acre-feet 158.0 acres	225.0 acre-feet 150.0 acres (The remainder of the original application shall be denied.)
	Priority: 9- 2-77 Hearing: 10-31-77 Deferred: 12- 7-77	* NO PRIOR PERMITS			

In the Matter Of)
Water Permit)
Applications from)
the Page Aquifer)

NOTICE OF HEARING

Notice is hereby given that the North Dakota State Water Commission and the North Dakota State Engineer will conduct a public hearing on the day of _____, 1980, at Page, North Dakota, at the Page High School auditorium, beginning at _____ o'clock.

During the last several years, there have been many water permit applications for water from the Page Aquifer, primarily for irrigation but also for other uses. Section 61-04-06 of the North Dakota Century Code requires that the State Engineer hold a separate hearing on each water permit application, and states that the State Engineer shall issue a permit if he finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
 - a. The benefit to the applicant resulting from the proposed appropriation.
 - b. The effect of the economic activity resulting from the proposed appropriation.
 - c. The effect on fish and game resources and public recreational opportunities.
 - d. 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.
 - e. Harm to other persons resulting from the proposed appropriation.
 - f. The intent and ability of the applicant to complete the appropriation.

In order that it can be fully informed and advised of the public interest factors which must be taken into account in determining whether to grant water permit applications from the Page Aquifer, the North Dakota State Water Commission and the North Dakota State Engineer will hold a public hearing at the time and place specified above.

Interested parties may appear in person or through a representative to offer testimony on the following issues:

1. Benefits resulting from appropriation of water from the Page Aquifer, both generally and in specific instances.
2. Effect of economic activity resulting from appropriation of water from the Page Aquifer, both generally and in specific instances.
3. Effect on fish and game resources and public recreational opportunities, resulting from appropriation of water from the Page Aquifer, both generally and in specific instances.
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 appropriation of water from the Page Aquifer, both generally and in specific instances.
5. Harm to other persons resulting from general and specific appropriations of water from the page Aquifer.
6. Intent and ability of any applicant who has an application pending to complete his proposed appropriation.

Written comments on this matter will be considered by the North Dakota State Engineer if received within 30 days after the hearing.
DATED this _____ day of _____, 1980.

Vern Fahy
State Engineer

SUMMARY

PROPOSED APPLE CREEK
FLOOD REDUCTION PROJECT

By Milo W. Hoisveen
Consulting Engineer

Much of the data used in this study, in determining the run-off from the Apple Creek Basin, was obtained from the Menoken gaging station, which is a cooperative station maintained by the North Dakota State Water Commission and the U. S. Geological Survey.

A considerable difference exists between the size of the contributing drainage areas, as computed by the U.S.G.S. and the U.S. Soil Conservation Service, applicable to the Apple Creek Basin. The U.S.G.S. made their evaluation before the U.S.G.S. topographic maps became available. A later delineation of the sub-basins was made by the U.S.G.S. after the topography maps were available. The new delineation possesses a high degree of refinement and is being used in this study.

The water yield information is identified in cubic feet per second and acre feet is the most important element in determining the hydrologic functions of the basin. It is used in structural design to size the spillways, channel capacities, reservoir storage, flood frequencies, water yields related to the surface area and other hydrologic characteristics of the basin. This information is implemented by the historic records and data gathered from the gaging station. These records reveal that the record flood on Apple Creek occurred on April 18, 1950, when an instantaneous peak flow of 6750 c.f.s. was recorded from a contributing drainage area which was revised and is approximately 986 square miles. This amounts to a yield of 6.84 c.f.s. per square mile or 13.28 acre feet per square mile per 24 hour period.

Some hydrologists are of the opinion that neither the flood of 1950 or the flood of 1979 attained the magnitude of a 100 year frequency flood. (The hundred year flood has a one chance in a hundred of occurring in one year.)

It is suggested on page one of this study that without the diversion into McKenzie Slough the 1979 flood may have peaked at 8700 c.f.s. at the Menoken gaging station. However, the hydrologists who do not believe the 100 year frequency flood has been recorded, compute it to be 11,000 c.f.s. Should this be accepted as factual, then our flood reduction program becomes an immense one and will require a number of years to accomplish. It can be done.

If this project is to be accomplished, the interest of the Burleigh County Water Management District and the State Water Commission must be activated at an early date. The East Branch of Apple Creek does, at this time, appear to be the logical branch in which to start the flood reduction program and implement it with flood irrigation and irrigation through stream diversion. As indicated in the study, the program should be commenced on the basis of constructing one structure a year, which, at present costs would approximate \$200,000 per annum.

The impoundment and diversion structures should have detention capabilities of 2100 acre feet, prior to downstream release, to better meet the 100 year criteria which computations indicate would have an instantaneous peak run-off of 11.15 c.f.s. and a possible 21.64 acre feet per day per square mile. Consequently, each structure should provide adequate capacity to safely pass all the run-off from a 10 square mile area. Larger structures should be used where favorable conditions exist. Such possibilities may be located in both the East and West branches of Apple Creek as more information becomes available.

Drainage maps on file in the Office of the Commission indicate that Long Lake has a direct contributing area of 218,560 acres or 341.5 square miles. With proper controls it is very possible the entire 341.5 square mile area could be controlled. Should this be accomplished, and should the East and West Branches of Apple Creek be controlled, a total of 642 square miles of the Apple Creek Basin would have a positive regulation, leaving 346 square miles uncontrolled. The peak run-off on the remaining area would, under the 100 year criteria, amount to the following discharges:

$$346 \text{ sq. mi.} \times 11.15 \text{ cfs} = 3859.5 \text{ cfs (instantaneous)}$$

$$3859.5 \text{ cfs} \times 1.94 \text{ (ac.ft./day)} = 7487.4 \text{ ac.ft. in a 24 hour period}$$

The modified discharge of Apple Creek would be 3859.5 cfs, not sufficient to cause much distress in the lower basin. However, there is still an opportunity for further modification through diversion and detention storage in the McKenzie Slough. A considerable portion of the uncontrolled Apple Creek water could be diverted into the slough through the construction of a bifurcation structure in Apple Creek with a complimentary channel.

Flood reduction can be accomplished through this procedure should the County, the State, and the Fish and Wildlife Service desire to cooperate. However, the County and the State must take the initiative. It is very possible the Fish and Wildlife Service may desire to cooperate as they could be jeopardizing their water permit by not developing complete water management at the Long Lake Refuge.

Flood reduction in the Basin, when accomplished, could result in reducing the size of culverts, bridges, and the magnitude of the proposed Apple Creek flood plain. It is also possible that reservoir regulation could aid in maintaining the creek as a seasonal live stream.

APPLE CREEK FLOOD REDUCTION EAST BRANCH PROPOSAL

Flood Reduction - General

As a result of the floods that occurred in many North Dakota areas during 1979, there appears to be a new awareness as to developing methods of flood reduction at the State and local level. Too frequently, the particular watershed, contributing to serious flooding do not meet the hydrological and benefit-cost ratio constraints placed upon the U.S. Corps of Engineers and the Soil Conservation Service. This situation is particularly true as it applies to sparsely populated areas which become victims of the B-C ratio philosophy. This philosophy penalizes rural states and enhances further development in those that are already developed.

Burleigh County Flood Damages 1979

Several areas in Burleigh County were subjected to severe flooding in 1979. The damages to bridges, roads and water facility projects exceeded one million dollars. Much human suffering also occurred which cannot be measured in dollars and cents. The Burleigh County Water Management District recognizes the fact that, in many instances, floodwater can be stored and put to beneficial use. The rugged terrain in the upper reaches of Apple Creek are adaptable to the storage of water during periods of high runoff. Thus, the floodwater when stored can be released for beneficial uses through a system of properly regulated reservoirs.

Reservoir Sites Useage

The problem of compensating the landowner for the land required for dam and reservoir sites has been given considerable thought by the Water Board members. Fortunately, all the members of the Board are well experienced

in the basic fundamentals of agriculture. They believe the land acquisition problem can be resolved on a compensatory basis. The landowner will be required to donate the use of his land for the increased yield he will receive from flood irrigation. It is anticipated that high yielding water tolerant grasses will be planted in the reservoir sites. Reed Canary grass has a proven record for maintaining its life underwater for long periods of inundation and is high yielding. This permits the landowner the opportunity of harvesting a lush stand of grass after the water has been released for downstream uses.

Two landowners of proposed dam and reservoir sites, have been contacted in regards to compensatory land swaps and have indicated a desire to cooperate in the proposed flood reduction program of the nature. Thus, a project with these objectives could become multi-purpose in scope. The results would be flood reduction, flood irrigation, water releases for downstream irrigators and possible ground-water recharge in some areas. The Board recognizes that a project of this type will be expensive and will result in slow development. For this reason it appears the logical development should be limited to one sub-basin at a time. The East Branch of Apple Creek was selected by the Board to be the recipient of the first phase of the program.

Sub-District Possibilities

This program, although confined to one county, does appear to be commensurated with the proposed water resource district legislation. It is possible that this type of a project could serve as a criterion for other districts confronted with similar problems. It is rumored that landowners in East Branch area are petitioning the Burleigh District Board to proceed with a study of their watershed in order to determine the feasibility of

developing a flood reduction program.

Water Management Pattern

Should the project become a reality it is recognized that the timing of water releases from some reservoirs may be somewhat intricate under some conditions. It will be necessary to develop a system of schedules to meet various conditions that may occur in the basin. Experience will, no doubt, dictate the best system of water programming. Nature seldom provides farmers and ranchers with the preferred amount of water at the exact time a specific crop needs it. The topographic maps, resulting from the cooperative mapping program conducted by the State Water Commission and the U.S. Geological Survey are extremely valuable in this and similar water development programs. They have provided the Burleigh County Water Board the capability of delineating drainage basins, selecting dam sites, computing reservoir storage and the ability to determine the contributing drainage areas to a proposed reservoir.

Preliminary Cost Estimate

The preliminary estimate included in this report was derived through the use of U.S. Geological Survey's topography and is by no means a final cost estimate. It will, however, furnish a basis for requesting appropriations at both the county and State level.

The two structures envisioned in this study would have the capability of reducing floods to the extent of their storage which would approximate 4900 acre-feet. Six hundred acres of land would be subjected to flood irrigation during high water periods. Water, through slow releases, would be available to a undetermined number of acres. A drainage area of 22.6 square miles would be controlled.

Future Possibilities

The affects of adding storage to Rice Lake which is in the East Branch Basin is worthy of study. The Rice Lake drainage basin is 29.2 square miles and if properly controlled could make a significant decrease in the East Branch Flood Reduction Program.

A Continuing Program

According to the boundaries of the tributaries to the East Branch, there are numerous sites which should be studied in the program. Several such tributaries could, through the use of diversion channels, contribute to the program. Under present conditions it is suggested that efforts should be focused on the construction of at least one control structure per year. This should be within the financial constraints of the State and the County. A significant reduction in the floods that now harass the Lincoln and lower Bismarck areas could be affected if the East Branch is controlled and if a similar program is followed in the West Branch area. It is very possible that the full development of the Apple Creek Basin could result in Apple Creek becoming a live stream which would provide the county with many beneficial results.

The second site receiving consideration in the flood reduction program is located in Section 22, Township 142 North, Range 77 West. The height of the embankment would be approximately 25' compared to 35' for site #1. The embankment would be about 700' longer than at site #1, consequently the earthwork involved in building the two structures would be about the same. The pipe and structural work would be similar. However, both sites will require additional foundation and survey work to formulate a final cost estimate.

From the information now availale, the cost for the surveys, foundation

explorations, design and construction would be approximately \$400,000. Ground-water recharge should be correlated with the present ground-water studies which are now being conducted by the State Water Commission in the Apple Creek area.

BURLEIGH COUNTY WATER DISTRICT FLOOD-
REDUCTION ESTIMATE

SITE NO 1

Site Location. East Branch Apple Creek - Dam site location
Section 4, T 141 R 76 W.

Affected Land
By Reservoir:

S 1/2, Sec 4, NW 1/4 Sec 4, N 1/2, N 1/2 Sec 5
all in Twp 141, R. 76 W, - Sec E 1/4, Sec 32 &
S W 1/4 Sec 33 all in Twp 142 R. 76 W

Drainage Area

12.9 sq mi U.S.G.S. 10' Interval Topog.
Computed by planimeter.

Surface Area
In Acres.

212 Acres at Elev. 1920

Storage Ac. Ft.

2500 Ac ft " " "

Max. Depth

Elev. 1920 - 1885 msl = 35.0'

SUMMARY & CONCLUSIONS.

Accuracy -

Information obtained from U.S.G.S
Quads, which should be implemented
by 2.0' interval topog survey within
the proposed limits of the reservoir.
Greater refinement in the way of the
dam site will be required. The site
will also require additional borings
for use in foundation studies.
Two foot interval topog. is necessary for
determining the quantity of water to be
released through the controls at the
desired frequency and for flood control
and crop tolerance if crops are planted
within the storage area.

Conclusions &
Recommendations

It is anticipated that this proposed
structure will be the number one
structure of a series of flood
reduction and irrigation structures
to be built on the East Branch of
Apple Creek. It is recommended
that the initial structures be located
in the headwaters of this branch to
afford better operation and regulation.
If so located it will provide a better
opportunity size the controls of structures
to be constructed in the lower reaches
of the E. Branch. At this time the W.M.D.

is hopeful the S.W.C. will be in a position to make the preliminary surveys and design to inaugurate the program. The S.W.C. has available a capable design, construction and survey parties to initiate the program.

The W.M.D. should through contacts with cooperating land owners determine what crops may be grown in the reservoir sites. The tolerance of the crops to inundation and "wet feet" will determine the length of time water can be stored in the reservoir sites. The quantity of water required for downstream users will also be a factor in reservoir draw down. Land owner being benefited by such structures should be requested to furnish the necessary land without cost. It may also be desirable to form a association to assist the W.M.D. and cooperating agencies in the various phases of the program. A informed public is usually a cooperative public.

Contact Work.

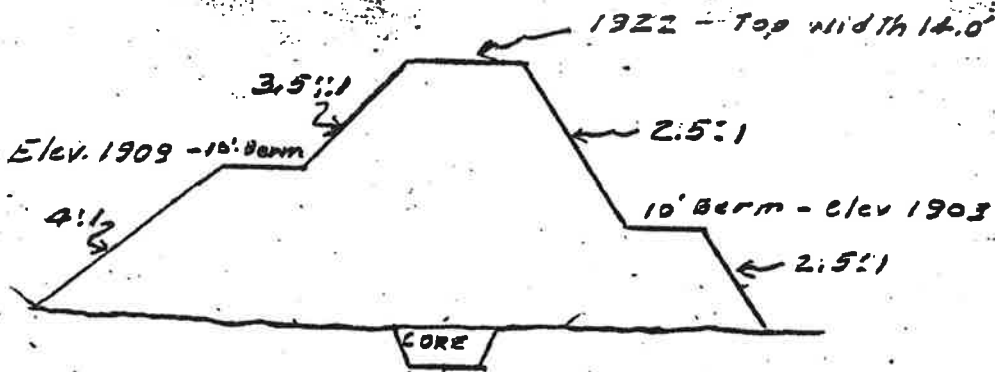
Contact work on Site #1 has advanced sufficiently to warrant making a preliminary cost estimate. One cooperater has indicated a willingness to furnish, without cost, the dam site and the major portion of the reservoir site. The major land owner at Site No. 2 has indicate an extreme interest in the project.

Cost Estimate

A preliminary cost estimate of developing Site No 1. approximates \$178,000 without engineering cost which would raise the total cost to \$195,000 exclusive land which is expected to be donated.

As of this date no estimate of cost has been made of site No 2 but it does have many similarities to site No 1 but will require a longer embankment and could cost \$200,000. exclusive of land. From the information obtained it would appear that \$400,000 will be required in a bienium period to advance the program.

Embankment Quantities - Rough profile - U.S.G.S.



Embankment
 Station 8+00 - 17+10 = $\frac{4948450}{54} = 91,638$ c.yds.

Excavation
 Core excavation $\frac{910 \times 75}{27} = 2528$ " "

Pipe trench 553 " "

Stilling basin 600 " "

Outlet channel 2000 " "

Total excavation 5686 c.yds.

Estimated Total fill + excavation 97,000 c.yds.

Stripping

$97,000 \times 1.75 = 169,750$ \$169,750

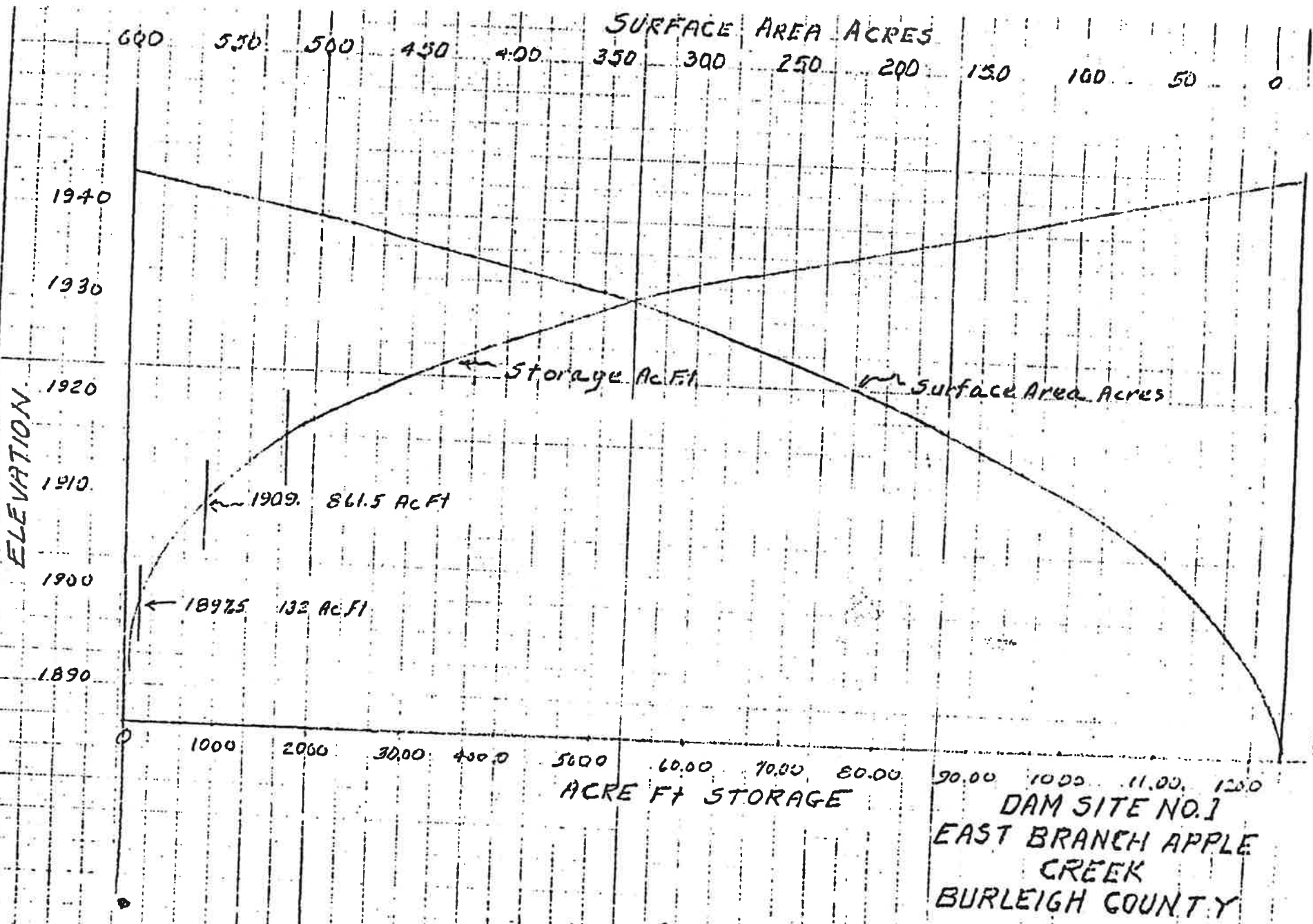
Spillway + Appurtenances.

(170' length Lock joint pipe 24" diameter } \$8250
 12' riser with stub
 conc. base cradde, supports.
 Gates, etc. lbs steel

Engineering and misc. 17,000

Reservoir & dam site, and channel donated. \$195,000

Total 8,000
 \$203,000



PROPOSED GUIDELINES

FOR FLOOD REDUCTION AND FLOOD IRRIGATION THROUGH FLOODWATER STORAGE

I. Locating Dam Sites

- A. Use 10 foot contour maps (U.S.G.S. topography maps) for delineating watershed boundaries and selecting dam sites.
 1. Drainage area must be of sufficient area for effective use in storing water for a integrated system.
 - a. Topography at site should minimize the movement of earth for use in embankments.
 - b. Determine reasonably close the storage area behind each site through the use of ten foot contours.
 - c. Establish the affected owners through the Burleigh County atlas.
- B. Work with the landowners of designated sites to determine their interest in the development of specific sites which could be a part of a integrated system.
 - a. If a sufficient number of landowners express a interest meetings with groups should be held to explain the program as it applies to their specific watershed. This practice should be followed to avoid doing a lot of unnecessary engineering work.
 - b. In all instances consideration must be given to the downstream water users with making Apple Creek a live stream.
 - c. Water permits should be obtained by the individuals owning the property on which the dam and reservoirs are located or by the Water Management District.

II. Site Surveys and studies.

- A. If and when it has been determined that there exists sufficient landowner interest in a watershed area foundation studies and site surveys can proceed
 1. Foundation studies will be needed to determine the stability and porosity of the soil at the dam site.
 - a. The foundation studies may be integrated with the present and future groundwater studies to ascertain the possibility of entraining water into ground-

water aquifers for recharge purposes.

2. Dam site surveys will be needed for use in computing earth quantities for embankments and the borrow areas for construction.
3. Field surveys will be required to establish right-of-way and property lines.
 - a. Some survey work may be required to implement the ten foot contour lines which is the interval used in the presently available U.S.G.S. topographic maps.

III Structural Design

- A. Structural design should be made with the over-riding thought that the flood reduction project is being constructed for the purpose of using floodwaters to enhance our agricultural production through the systematic release and control of stored water.
 1. In view of the large structures required to store and care for the high discharges on the mainstem of East and West Branches of Apple Creek it is recommended that field studies be limited to the tributaries and the upper reaches of the two branches. Upon completion of the above mentioned studies and floodwater reduction evaluations show that a substantial reduction in flows can be accomplished by the upstream structures. Surveys in the mainstem should be made. This does not preclude the fact that the mainstem will be in a position to receive controlled releases from the upstream structures.

Milo Hovsveen

TESTIMONY TO NATURAL RESOURCES INTERIM COMMITTEE
ON SECOND BILL DRAFT OF WATER MANAGEMENT
REORGANIZATION ACT OF 1981

This testimony will discuss certain sections of the second bill draft which the advisory committee believes should be amended.

1. Section 61-16.1-08 of the second bill draft provides as follows:

NUMBER OF MANAGERS.) Beginning on January 1, 1983, each district shall be governed by a water resource board of five, seven, or nine managers, 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.

- a.) The advisory committee believes that the option of three water resource district managers should be available.
- b.) It is recognized that there must be gradual transition from water management districts to water resource districts. The following addition to §61-16.1-08 was adopted by the advisory committee to accomplish this suggestion:

In addition to the 5, 7, or 9 managers elected to a water resource board, beginning on January 1, 1983, and terminating on December 31, 1984, water management district commissioners not elected to water resource boards shall serve as ex-officio non-voting members on the water resource board of the water resource district in which they reside. These additional members shall receive compensation and expenses for their service as provided in §61-16.1-13.

2. Section 61-16.1-20 of the second bill draft provides for unlimited revenue bond authority. The revenue bond authority was included by the advisory committee primarily for the benefit of rural water system development. However, since certain large projects, in addition to rural water systems, involve social and economic impacts, the advisory committee has adopted the following limit to the revenue bond authority:

61-16.1-20. REVENUE BONDS.) Each district shall have the power and authority to issue revenue bonds not exceeding a total of twenty million dollars, for the purpose of financing construction of projects and incidental facilities authorized by this Act. A district may, upon authorization by the legislative assembly issue revenue bonds in excess of twenty million dollars as provided in this section. 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.

3. The advisory committee requested, through the Executive Director of the State Association of Counties, that county auditors provide detailed input into the county administrative problems that will be caused by the proposed legislation. After the meeting with the county auditors, the advisory committee proposes that special elections be adopted for water resource district elections. The following section provides for special elections, and would replace §61-16.1-10 of the second bill draft. First, however, Ralph Christensen, advisory committee chairman, can give you a report of the meeting with the county auditors.

Special Elections.

61-16.1-10. ELECTION OF MANAGERS.)

1. An election of water resource district managers shall be held on the first Tuesday in October of each even-numbered year. At each bi-annual election members of the Water Resource District Board shall be elected to fill all vacancies therein caused by the expiration of terms of office or otherwise. District managers shall be elected for four-year terms, except when elected to serve an unexpired term. Regular terms shall commence on January 1 following the regular election.

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 secretary of the district not less than thirty days before the bi-annual election at which managers of the district are to be elected. Qualified 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 electors residing within the district, 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 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. Each water resource district shall be divided into subdistricts pursuant to this Act. 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. Qualified 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. Notice of the bi-annual district election shall be given by the secretary of the district by publishing, in the official county newspaper in each county which is located wholly or partially in the district, and in newspapers of general circulation in the district, notice that the bi-annual election will be held on the first Tuesday in October in the water resource district. Such notice shall be published for two consecutive weeks, not more than twenty or less than ten days before the election.
6. The notice of election shall be in substantially the following form:

Notice is hereby given that on the first Tuesday, the _____ day of October, _____, an election will be held for the purpose of electing managers of water resource districts, and the polls will be open at ten o'clock a.m. _____ (insert time standard) and will close at seven o'clock p.m. _____ (insert time standard) of that day.

7. At all elections held in a water resource district, the polls shall be opened at ten o'clock a.m. and shall remain open until seven o'clock p.m. on the day of election. The water resource board shall designate in the notice of election the time standard to be used for polling hours.
8. At least twenty days before the election, the secretary of the district shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all persons who have filed as herein provided. The arrangement of the names of the candidates upon the ballot shall be determined by lot by such secretary in the presence of the candidates or their representatives. The ballot shall be headed "official ballot", shall be nonpartisan in form, and shall contain the following:
 1. The name of the district;
 2. The date of the election;
 3. The number of persons to be elected to each office;
 4. A list of each nomination subdistrict;
 5. The candidates for each subdistrict and any at-large candidates; and
 6. Blank spaces below the names listed as candidates for each office in which names not stated on the ballot may be written.
9. At least twenty-one days prior to the first Tuesday in October in each even-numbered year, the water resource board shall designate one or more precincts and polling places for the district election. Such precincts shall be arranged in accordance with subdistricts, however, there may be more than one polling place for each subdistrict. The polling places established in such precincts shall be located as conveniently as possible for the voters in each subdistrict, and a polling place once established by the board shall remain the polling place for the precinct until it is changed by subsequent action of the board. The board shall appoint two persons to act as judges and two persons to act as clerks of the election in each precinct. Before opening the polls, each of the judges and clerks shall take an oath or affirmation that he will perform the duties as judge or clerk, as the case may be, according to law and to the best of his ability. The oath or affirmation may be administered by any officer authorized to administer oaths, or by any of the judges or clerks to the others.
10. Election officials at water resource district elections shall receive the same compensation and expenses as water resource district managers pursuant to section 61-16.1-13.

11. The provisions of sections 16-12-04, 16-12-05, 16-12-11, 16-12-15, 16-13-01, 16-13-04, 16-20-01, 16-20-06, 16-20-07, 16-20-08, 16-20-14, 16-20-15, 16-20-17, 16-20-19, 16-20-20*, 16-20-21*, 16-20-22, 16-20-23, and 16-20-24 shall apply to elections held under the provisions of this section. After the votes are canvassed, and within twenty-four hours after the polls are closed, the judges shall make their returns to the secretary of the district. All expenses of elections held by a water resource district, shall be paid by the district.
12. 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.
13. 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.
14. 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.

4. Section 61-16.1-69 is currently §61-01-22 of the North Dakota Century Code, and is the section which requires a permit for drains greater than eighty acres. It provides, in part:

A permit shall not be granted until an investigation shall disclose that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect lands of lower proprietors.

As you can see, the Legislature very specifically limited review of drainage permit applications to downstream impacts. The policy statement of the State Engineer recognizes the importance of water conservation

and storage of water on the land. However, §61-01-22 does not allow the State Engineer nor water management districts to carry out that policy unless it coincides with downstream considerations.

The advisory committee has adopted the following language to §61-01-22 (61-16.1-69) to allow consideration of conservation of water resources in processing drainage applications:

61-16.1-69. PERMIT TO DRAIN WATERS REQUIRED - PENALTY.) Any person, before draining water from a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more into a watercourse, as defined by section 61-01-06, shall first secure a permit to do so. The permit application shall be submitted to the state engineer. The state engineer shall refer the application to the board of commissioners of the water management district or districts within which is found a majority of the watershed or drainage area of the pond, slough, or lake for consideration and approval, but the state engineer may require that applications proposing drainage of statewide or interdistrict significance be returned to him for final approval. A permit shall not be granted until an investigation shall disclose that the quantity of water which will be drained from the pond, slough, or lake, or any series thereof, will not flood or adversely affect lands of lower proprietors. In addition, consideration shall be given to the state water resources policy set forth in section 61-01-26. If the investigation shall show that the proposed drainage will flood or adversely affect lands of lower landowners, the board of commissioners of the water management district shall not issue a permit until flowage easements are obtained. Such flowage easements shall be filed for record in the office of the register of deeds of the county or counties in which such lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. The provisions of this section shall not be construed to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency.

Any person draining, or causing to be drained, water of a pond, slough, or lake, or any series thereof, which drains an area comprising eighty acres [32.37 hectares] or more, into a watercourse, without first securing a permit to do so, as provided by this section, shall be liable for all damage sustained by any person caused by such draining, and shall be guilty of an infraction. When temporary ponding of water occurs due to spring runoff or heavy rains, an area not in excess of eighty acres [32.27 hectares] may be drained without the necessity of securing a permit.

That concludes the substantive changes to the second bill draft adopted by the advisory committee.

TESTIMONY TO NATURAL RESOURCES INTERIM COMMITTEE
ON THIRD DRAFT FLOODPLAIN MANAGEMENT ACT

This testimony will only summarize the changes which have been made to the second bill draft since the last meeting of the Natural Resources Interim Committee. Some minor context and grammar changes have been made throughout the bill, but they are not mentioned since they do not change the intent or meaning of the provisions of the bill. Changes will be explained section by section.

Section 3. Definitions. Two new definitions, "total encroachment" and "structure" are added to Section 3, as requested by the interim committee on March 20.

Section 6. Delineation of Flood Plains and Floodways.) Section 6 of the second bill draft provided that Water Resource Districts would be responsible for delineating floodplains and floodways. After receiving recommendations from the State Engineer, each district would consult with local governmental units and then delineate the floodplain and floodway. Section 6 of the second bill draft is quoted below:

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 deliberation 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.

We have taken the liberty to propose that the Commission be responsible for delineation of flood plains and floodways. The reasons for this proposal are as follows:

1. It is impractical for the State Water Commission to recommend floodways and flood plains without the benefit of pertinent data concerning flood hazards, flood experiences, local plans, etc.

2. Delineation of floodways and flood plains is largely a technical, engineering problem. Most districts do not have the expertise for a comprehensive floodway and floodplain delineation.
3. Delineation of floodways by the Commission would be more efficient.
4. If the Water Management Reorganization Act is approved by the 1981 Legislature, Water Resource Districts will not become fully operational until 1983, and additional time beyond 1983 will be required before Water Resource Districts are fully effective. If the Water Management Act is not passed, Water Management Districts will remain on county lines. Under both situations, we believe the State Water Commission would more efficiently and expeditiously delineate floodways and flood plains.

Section 11. The Natural Resources Interim Committee adopted Alternative 2 of the second bill draft, but deleted the provisions for variances in the floodway. It is requested that the interim committee reconsider its action to delete the provisions for variances in the floodway. The alternatives included under Section 11 of the second bill draft are reproduced below:

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.

It is recommended that Alternative 2 be re-adopted, including the last three lines. This alternative provides guidance as to the kind of permissible uses in the floodway envisioned by the Legislature, without closing the door to other similar uses. In addition, the last three lines of Alternative 2 provide for variances in the floodway. The variance provision provides greater discretion and responsibility in the hands of the executive branch, in this case the State Water Commission. Without a variance provision, the resulting inflexibility will either cause violation of this Act because it is unworkable, or result in requests for legislative exemptions each legislative session.

For example, recently adopted dike criteria between Minnesota and North Dakota for agricultural dikes along the Red River would be void unless a variance authority existed. Farmers on the North Dakota side of the Red River would be at a great disadvantage to Minnesota farmers as a result.

Section 12. Subparagraph 2 of Section 12 of the second bill draft, provided as follows:

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.

Under the third bill draft this subparagraph has been deleted. We have realized that the provision is so restrictive as to prevent the construction of bridges, ring dikes, farm dikes, roads, and almost all other things in the floodway, even if they would not cause any rise in the base flood elevation. Again, it is our opinion that this would render the floodplain act unworkable, and thus we recommend it be deleted.

Section 13. The Natural Resources Committee adopted alternative 2 of Section 13 of the second bill draft, providing for floodproofing of structures so that the lowest floor elevation is one foot above the base flood elevation. Three alternatives for Section 13 were presented at the March 20 meeting. They are reproduced below:

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.
Alternative 3.
 - b. Residential structures are constructed on fill such that the lowest floor including basements is one foot above the floodway 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 floodway elevation.
3. Such floodproofing shall be in accordance with the standards adopted by the local governmental unit or of this Act, whichever are more restrictive.

Alternative 1 is the federal standard. Development of the flood fringe under this standard would result in buildings under one foot of water.

Alternative 2 would put the lowest floor of a building equal with the water level, and wave action would thus cause damage to the building.

Alternative 3 is the strictest standard, but is recommended because if permissible development in the flood fringe took place, the lowest floor elevation of buildings would still be one foot above flood levels of the 100-year flood, and would be protected even from wave action.

Section 18. The interim committee adopted Alternative 3 of the second bill draft.

That concludes the changes which have been made to the second bill draft.

In addition, the Natural Resources Interim Committee may want to consider three other matters relating to the Floodplain Management Act at this time.

1.) First, we would like to present a question to you for your consideration. Under current law, the State Water Commission is responsible for the setting of policy and development of water resource projects, while the State Engineer is responsible for the various regulatory programs. The State Engineer is the chief engineer of the State Water Commission, but is a separate state agency in and of himself as well. Does the interim committee prefer to delegate the duties and responsibilities of the Floodplain Management Act to the State Water Commission or the State Engineer. We have no recommendations concerning this matter, but felt that it warranted your consideration.

2.) It should be absolutely clear that all state property and structures and buildings thereon are subject to the provisions of this Act. To accomplish this, the following paragraph is proposed.

Notwithstanding any other statutes or regulations, all state property and structures thereon shall be subject to the provisions of this Act and any ordinances adopted by any governmental unit pursuant to this Act.

3.) Finally, if the Legislature approves the proposed Floodplain Management Act, an appropriation will be required.

APPROPRIATION.) There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of _____ or so much thereof as may be necessary, to the state water commission for the purpose of administering this Act for the biennium beginning July 1, 1981, and ending June 30, 1983.

That concludes my comments on the third bill draft. Thank you.

Michael Dwyer

MD:pw

A Bill for an act to create and establish to regulate the disposal of dredged and fill material in certain waters of the state of North Dakota.

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

SECTION 1. DEFINITIONS.)

1. "Person" means any person, firm, partnership, association or corporation.
2. "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.
3. "Waters of North Dakota" means all waters of the state of North Dakota, including watercourses, lakes, and wetlands.

SECTION 2. PERMITS.) A permit shall be required from the state engineer, after notice and opportunity for public hearing, for the discharge of any dredged or fill material into the waters of North Dakota at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the state engineer shall publish the notice required by this subsection.

SECTION 3. EPA GUIDELINES.) Subject to section 4 of this Act, each such disposal site shall be specified for

each such permit by the state engineer through the application of guidelines developed by the EPA.

SECTION 4. DISPOSAL SITES.) The state engineer is authorized to prohibit the specification (including the withdrawal of specification) of any defined areas as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the state engineer shall consult with the EPA. The state engineer shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

SECTION 5. GENERAL PERMITS.) In carrying out his functions relating to the discharge of dredged or fill material under this section, the state engineer may, after notice and opportunity for public hearing, issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the state engineer determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and

will have only minimal cumulative adverse effect on the environment. Any general permit issued under this section shall be based on the guidelines described in section 3 of this Act, and set forth the requirements and standards which shall apply to any activity authorized by such general permit.

No general permit issued under this section shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the state engineer if, after opportunity for public hearing, the state engineer determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

SECTION 6. EXEMPTIONS.) Except as provided in paragraph 2 of this section, the discharge of dredge or fill material:

1. From normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
2. For the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

3. For the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
4. For the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;
5. For the purpose of construction or maintenance of farmroads or forest roads, or temporary roads for moving mining equipment where such roads are constructed and maintained in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;
6. Resulting from any activity with respect to which a state has an approved program under section 208(b)(4), of the Clean Water Act;

is not prohibited by or otherwise subject to regulation under this Act.

Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a

permit under this section.

SECTION 7. ENFORCEMENT.) Whenever on the basis of any information available to him the state engineer finds that any person is in violation of of this Act or of any condition or limitation set forth in a permit issued by the state engineer under this Act, the state engineer shall issue an order requiring such persons to comply with such condition or limitation, or the state engineer shall bring a civil action in accordance with paragraph 3 of this section.

A copy of any order issued under this section shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the state engineer determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

The state engineer is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph 1 of this section. Any action under this paragraph may be brought in district court, and such court shall have jurisdiction to restrain such violation and to require compliance.

SECTION 8. PENALTY.) Any person who willfully or negligently violates this Act or any condition or limitation

in a permit issued by the state engineer under this Act shall be guilty of a class A misdemeanor.



NORTH DAKOTA

STATE WATER COMMISSION

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north dakota

MEMO TO: Vern Fahy, State Engineer
FROM: Arland Grunseth, Construction Engineer
SUBJECT: Proposed Construction & Repair - SWC Project #1
DATE: May 20, 1980

NORTHGATE DAM MODIFICATION - SWC PROJECT #667, BURKE COUNTY--

Project work began the first week of September, 1979, with the excavation of the embankment to remove the corrugated metal pipe and the inlet and outlet concrete structures. The metal pipe was replaced by a 48" \emptyset R.C.P., supported for its entire length on a cast in place reinforced concrete cradle. The new intake structure is a double box low level (hypolimnetic) water control structure. The pipe discharges into a rock plunge pool. Project work should be completed by June 1, 1980.

PEPPING DAM MODIFICATION - SWC PROJECT #346, WILLIAMS COUNTY--Bids

will be opened at 11:00 a.m., CDT, May 27, 1980. Hopefully project work can begin by the middle of June and be finished by December, 1980. Project work will involve the demolition and removal of the old rubble-masonry spillway structure and construction of a new reinforced concrete open chute spillway and bridge, plus associated earthwork and rock riprap features.

EDMORE WATER SUPPLY DAM - SWC PROJECT #927, RAMSEY COUNTY--Repair

and modification of Edmore Dam will start about May 20th and is scheduled

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Secretary & State Engineer

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for completion in approximately three to four weeks. Major work will involve the removal of the existing damaged radial gate; construction of two new reinforced concrete gate towers; installation of a modified gate that was salvaged from the Minot Water Supply Dam and associated earthwork repairs.

LONG CREEK DAM - SWC PROJECT #993, DIVIDE COUNTY--Project repair work will involve restoration with "pneumatically applied mortar" (gunite) to those areas of the weir face and downstream apron where spalling concrete has exposed the reinforcing mesh and interior cavitation is threatened. "Gunite" is a trade name designating a proportioned combination of sand and Portland cement which is mixed and pneumatically conveyed in a dry state to a nozzle where hydration takes place immediately prior to expulsion. Work at this project is tentatively scheduled for the month of June, with completion by the 1st of July.

COTTONWOOD CREEK DAM (LAKE LAMOURE) - SWC PROJECT #1515, LAMOURE COUNTY--The North Dakota State Game and Fish Department has requested State Water Commission participation in the installation of a low level draw-down pipe at referenced project. This will involve the installation of 400 L.F. of 12" diameter plastic pipe underwater by a diving crew. The State Water Commission will provide the surface labor and equipment necessary. Work is scheduled for the month of July.

SHEEP CREEK DAM - SWC PROJECT #1358, GRANT COUNTY--The State Water Commission has been requested by the State Game and Fish Department to make improvements to the low level pipe at referenced project. This

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will involve the installation of a drain valve to release water that seeps into the manhole and freezes during the winter. Also, a valve stem addition will be added to the existing stem. This will allow operation of the control valve at ground surface at the top of the manhole. Work is scheduled for the month of July.

FORNESS DAM - SWC PROJECT #535, RICHLAND COUNTY--The State Water Commission has been requested by the Richland County Water Management District to demolish the remaining portion of referenced dam. The dam is not repairable and is causing damage to adjacent property. Demolition work by either equipment or blasting or the combination of both is tentatively scheduled for the month of July.

GRAND FORKS RIVERSIDE PARK DAM - SWC PROJECT #520, GRAND FORKS COUNTY--Partial failure of the downstream apron has been reported. It is expected that the city will again request the State Water Commission to make necessary repairs. Repair work would undoubtedly consist of replacement of the downstream apron sections and a structural sheet piling cutoff wall at the downstream end of the apron.


Arland Grunseth
Construction Engineer

AG:sh