MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

April 6 and 7, 1982

The North Dakota State Water Commission held a meeting on April 6 and 7, 1982, at the State Office Building, in Bismarck, North Dakota. Governor-Chairman, Allen I. Olson, called the meeting to order on April 6 at 9:30 a.m., and requested Secretary, Vernon Fahy, to present the agenda.

MEMBERS PRESENT:
Allen I. Olson, Governor-Chairman
Kent Jones, Commissioner, Department of Agriculture, Bismarck
Alvin Kramer, Member from Minot
Florenz Bjornson, Member from West Fargo
Ray Hutton, Member from Oslo, Minnesota
Garvin Jacobson, Member from Alexander
Guy Larson, Member from Bismarck
Henry Schank, Member from Dickinson
Bernie Vculek, Member from Crete
Vernon Fahy, State Engineer and Secretary, North Dakota State Water Commission, Bismarck

OTHERS PRESENT:
State Water Commission Staff
Approximately 30 persons interested in 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 JANUARY 29, 1982 MEETING - APPROVED

The minutes of the January 29, 1982 meeting were approved by the following motion:

It was moved by Commissioner Schank, seconded by Commissioner Vculek, and unanimously carried, that the minutes of January 29, 1982 be approved as presented.

CONSIDERATION OF RESOLUTION REQUESTING APPROPRIATE ACTION BY CONGRESS TO PROPOSE AN AMENDMENT TO CLEAN WATER ACT ELIMINATING THE REQUIREMENT OF A NPDES PERMIT FOR WATER RELEASES FROM RESERVOIRS (Resolution No. 82-4-413)

Secretary Fahy explained that on January 29, 1982, U.S. Judge Joyce Hens Greene rendered a decision in the District Court of Columbia that all dams are to be considered sources of pollution under the Clean Water Act and must have a National Pollutant Discharge Elimination System (NPDES) Permit before they can discharge water from any dam. She gave the EPA 90 days within which to comply. Secretary Fahy indicated that there are over two million dams covered by this decision which makes enforcement impossible within the time frame and would require the expenditure of millions of dollars.

Secretary Fahy stated that most western states have supported an appeal of the decision and have joined together to urge the adoption of resolutions by all legislatures in session requesting Congress to consider legislation that would absolve EPA from the requirement to issue permits for any dam release.

Since the North Dakota Legislature is not in session at the present time, Secretary Fahy read a draft resolution for the Commission's consideration which would be forwarded to the North Dakota Congressional delegation for their use in pursuing appropriate action by Congress to change that portion of the statutes dealing with the NPDES permit.

Secretary Fahy indicated that he has visited with Mr. Norman Peterson of the State Health Department, and Mr. Peterson has said he would welcome this kind of action on the part of the State Water Commission.

It was moved by Commissioner Jones, seconded by Commissioner Larson, and unanimously carried, that Resolution No. 82-4-413 (A Resolution Requesting Appropriation Action by Congress to Propose an Amendment to the Clean Water Act (P.L. 92-500) Eliminating the Requirement of a National Pollutant Discharge Elimination System Permit (NPDES Permit) for Water Releases from Reservoirs) be adopted, and that copies of this Resolution be forwarded to the North Dakota Congressional delegation for their use in pursuing appropriate action by the Congress of the United States.
(SEE APPENDIX "A")

STATUS REPORT OF STATE WATER COMMISSION CONSTRUCTION CONTRACT FUND (SWC Project No. 1)

Secretary Fahy indicated that to date, $713,630 has been obligated from the construction contract fund, of which $1,385,000 was appropriated by the last session of the legislature for projects

other than capital improvements for the Commission's shop building and for the English Coulee project. He explained that all of the general fund appropriation for the biennium, $653,000, has been granted towards projects, and that $60,630 of the estimated collections for projects has also been granted. To date, $103,122 has been collected and it is expected that an additional $250,000 will be collected. With these estimated collections, the total amount of money available from the contract fund would be approximately $1,006,000. Thus, $292,370 should be available for future distribution from the contract fund. He said that although approximately $292,370 is available, it is still estimated that approximately $50,000 will have to be obligated for completion of the State Water Plan in view of the reduced Title III funding for planning.

Secretary Fahy said that in view of the current fiscal condition of the State's finances, and the budgetary constraints being imposed due to the projected general fund shortfall, the State Water Commission should be very cautious in granting additional funds. In view of the mandated five percent reduction of expenditures and the requested further reduction of five percent, it was proposed by Secretary Fahy for the Commission's consideration that $100,000 (ten percent of the total expected expenditure of $1 million) be set aside. This would further reduce the amount of money available for projects to approximately $140,000.

It was moved by Commissioner Larson, seconded by Commissioner Bjornson, and unanimously carried, that the State Water Commission support the State Engineer's recommendation to reduce the construction contract fund by $100,000 as explained previously.

CONSIDERATION OF REQUEST FROM MCLEAN COUNTY WATER RESOURCE DISTRICT FOR COST SHARING IN COAL LAKE COULEE DRAIN (SWC Project No. 1739)

Secretary Fahy stated that a request has been received from the McLean County Water Resource District for cost participation in the Coal Lake Coulee Drain Project. He indicated that the proposed project would help considerably to reduce the water management problems that have developed as a result of the coal mining and energy development in McLean County. The request for the project is only for cost participation in the outlet control structure that is required at the end of the project as it will help to prevent erosion at the outlet of the project in the Missouri River. The structure is estimated to cost $145,610.

It was the recommendation of the State Engineer that the State Water Commission consider participating in 40 percent of the actual costs, not to exceed $60,000, based on the availability of funds.

Mr. Ken Doepke, Chairman of the McLean County Water Resource District, indicated they have been working on this proposed project for several years and everything is in order except to obtain some

easements for the project. He expressed appreciation to the State Water Commission staff for their efforts and urged favorable consideration for cost sharing. He noted that they have had a good working relationship with the power company, and that the farmers are very much in favor of this project.

It was moved by Commissioner Jacobson, seconded by Commissioner Jones, and unanimously carried, that the State Water Commission participate in 40 percent of the actual costs, not to exceed $60,000, for the outlet control structure that is required for the Coal Lake Coulee Drain in McLean County. This motion is contingent upon the availability of funds.

PRESENTATION BY KENT JONES, COMMISSIONER OF AGRICULTURE, ON UPDATE OF SMALL IRRIGATION PROJECTS (SWC Project No. 1400)

Mr. Kent Jones, Commissioner of Agriculture, distributed copies indicating the results of research that has been done cooperatively with the Extension Service on the interest of irrigation in the southwestern part of North Dakota. The results were very favorable for irrigation in this area.

Mr. Jones then presented a statement relating to small irrigation projects in North Dakota and the promotion of efforts regarding irrigation development. This statement is attached hereto as APPENDIX "B".

CONSIDERATION OF REQUEST FROM DUNN COUNTY WATER RESOURCE DISTRICT FOR COST SHARING IN IRRIGATION STUDY (SWC Project No. 1275)

Secretary Fahy presented a request from the Dunn County Water Resource District to cost participate in an investigation of the irrigation potential within Dunn County. The estimated cost to do this study is $20,000, and would be complete by July 31, 1982. The proposed study would determine the potential for irrigation on four streams in Dunn County: North Coyote Creek, Crooked Creek, Great Deep Creek, and Spring Creek. The feasibility of diverting Lake Sakakawea water into Spring Creek for irrigation would also be studied. The first phase of the study would be a pre-preliminary feasibility study. If the pre-preliminary costs are reasonable and land is available for storage and irrigation, then the proposed study would continue onto the preliminary phase, resulting in a report identifying features of a proposed project to include determination of irrigable acres and an overall project evaluation. The request from the Dunn County Water Resource District was for 40 percent cost sharing, in the amount of $8,000.

Secretary Fahy explained that to date requests of this type for general investigations have not been received by the Commission, thus, no policy has been established. He noted that the request does go along with the stated position of the Governor and the Commissioner of

Agriculture in the development of the state's water resources, which was the primary purpose that the State Water Commission was created in 1937. It was the recommendation of the State Engineer that the State Water Commission consider cost sharing in this request in the amount of $8,000 as a pilot project to assist in determining future policies for cost sharing for preliminary investigative studies of this nature.

Mr. Jim West, Consulting Engineer with KBM, Inc., further explained the proposal through the use of a map.

Michael Dwyer, Commission Legal Counsel, advised the Commission that a joint board has been created in the West River area, consisting of 12 of the 14 county water resource districts in the southwest area. The joint board adopted the Southwest Pipeline Project as their top priority, and is also actively supporting the promotion of irrigation and other kinds of water development. The joint board is currently in the process of reviewing the old West River Diversion Study and will be making recommendations for water development to be included in the updated State Water Comprehensive Plan.

It was moved by Commissioner Jones, seconded by Commissioner Larson, and unanimously carried, that the State Water Commission approve cost participation in 40 percent of the costs for a pilot project study in Dunn County to investigate the irrigation potential within that county, in an amount not to exceed $8,000. This motion is contingent upon the availability of funds.

Secretary Fahy explained that the manner in which local projects should be brought to the Legislature is through the State Water Commission. He said the planning process should be the foundation for project development in North Dakota, and through this process projects will be prioritized with respect to other projects. The State Water Comprehensive Plan will not be completed until January, 1983, and at that time the priorities will have been established. Since the planning process has not been completed and the priorities have not been established, the State Engineer recommended that the Dunn County irrigation study request be considered only as a pilot project.

STATUS REPORT ON RED RIVER DIKES (SWC Project No. 1638)

At its January 29, 1982 meeting, the Commission adopted Resolution No. 82-1-412 requesting the North Dakota Attorney General to bring legal action against Minnesota to resolve the Red River dike controversy. Joseph Cichy, Assistant Attorney General for the Water Commission, stated that this request has been approved by the Attorney General, and Mr. Cichy then proceeded to explain the lawsuits. These lawsuits are detailed in APPENDIX "C", attached hereto.

Cary Backstrand, Drainage Engineer for the Water Commission, explained through the use of maps, engineering data regarding some of the damages that have occurred as a result of the 1978 flood.

Commissioner Hutton expressed concern regarding obstructions, such as county roads, railroads, etc., and the impact they have on the flooding situation and how they will be addressed in the lawsuits.

Mr. Cichy indicated that these lawsuits will only address removal of the dikes, and the other issues that have an impact on the flooding situation will continue to be addressed outside of such litigation.

The Commission members were advised that they would continue to be briefed on this matter.

UPDATE ON SOUTHWEST PIPELINE STUDY (SWC Project No. 1736)

Secretary Fahy advised the Commission members that on March 24, 1982, a presentation was made before the Legislative Council for the purpose of briefing the Council on the progress and status of the Southwest Pipeline project and to focus the Council's attention on certain questions which have surfaced during the study. Copies of the briefing paper presented to the Council are on file in the State Water Commission offices.

Mr. Dwyer distributed and discussed proposed objectives for water service contracts, which are attached hereto as APPENDIX "D". Mr. Dwyer indicated that the proposed objectives had not yet been presented to the Advisory Committee for their consideration and input.

Mr. Dwyer explained the following procedures that will be used for water service contracts: 1) agreements of intent; 2) development of contract objectives and principles during the months of April and May and meetings with each potential water user to explain the contract objectives and contract principles; 3) the actual contracts will be developed in June or July of 1982; and 4) after October 1, 1982 when the Commission has submitted a written report and recommendations to the Legislative Council to meet again with the communities and secure execution of the water service contracts prior to the Legislative session based on the project recommended by the Water Commission to the Legislature. The contracts will be contingent upon Legislative approval.

Commissioner Schank expressed concern about the lack of discussion and efforts for local financial support for the project, and urged that at future meetings with the Advisory Committee and the communities that this matter be stressed very strongly. He said that thus far, the locals have refused to even discuss local financial input on the project.

Secretary Fahy introduced Willard Little Owl, who represented the Three Affiliated Tribes. Mr. Little Owl stated that the Three Affiliated Tribes would consider conceding jurisdiction and sovereignty over the pipeline project if the intake and a portion of the pipeline were located on the reservation and if the state would guarantee the Three Affiliated Tribes a water supply from the pipeline project.

Commissioner Schank suggested that the information presented by Mr. Little Owl be pursued as an alternative to the route that is currently being studied.

Secretary Fahy recommended, and it was the consensus of the Commission members, that the Tribal Council respond in writing to the State Water Commision's correspondence concerning this matter.

NORTH DAKOTA WATER USERS ASSOCIATION, INTRODUCTION OF NEW EXECUTIVE VICE PRESIDENT

Mr. Thomas Hanson of Ryder, North Dakota, was introduced as the new Executive Vice President of the North Dakota Water Users Association. The Commission members welcomed Mr. Hanson and expressed that they are looking forward to working with him.

The meeting was recessed at 12:00 noon; reconvened at 1:15 p.m.

CONTINUED DISCUSSION OF WATER EDUCATION: WATER & MAN, INC.

At the Commission's January 29, 1982 meeting, the State Engineer and staff were directed to contact Water & Man, Inc. in Salt Lake City expressing the Commission's interest in water education in the school curriculum, and invited this group to conduct a seminar in Bismarck this summer. Secretary Fahy stated that Water & Man, Inc. has agreed to hold a seminar in June. They have requested that their expenses of approximately $1,200 be reimbursed.

Secretary Fahy requested the Commission's approval to expend approximately $1,200 for representatives of Water & Man, Inc. to conduct a seminar in Bismarck in June. The seminar would include private interest groups and the appropriate school officials.

It was moved by Commissioner Vculek, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission approve the expenditure of funds for expenses of Water & Man, Inc. representatives to conduct a seminar on water education.

CONTINUED DISCUSSION OF COST SHARING GUIDELINES

Secretary Fahy briefed the Commission members of a number of letters that have been received from interested groups requesting the Commission to defer action on the proposed cost sharing guidelines until after the spring workshops of the water resource districts have been held.

Mr. Dwyer distributed copies of the proposed cost sharing guidelines for water-related works and facilities dated February 12, 1982, which contained modifications from the previous draft. The proposed cost sharing guidelines are available at the State Water Commission offices.

It was the consensus of the Commission members to defer action on the proposed cost sharing guidelines.

LEGAL DIRECTOR'S REPORT -

LEGISLATIVE BRIEFING:

SCR 4047 - IRRIGATION DISTRICTS STUDY -

The 1981 Legislative session adopted a resolution to study North Dakota irrigation district laws. The resolution called for an advisory committee consisting primarily of irrigators, who have met several times and have developed a proposed bill draft updating the irrigation district laws adopted in 1917.

HCR 3065 - WATER RESOURCE DISTRICTS STUDY -

The 1981 Legislative session adopted a study resolution to continue to study the reorganization of water resource districts along watershed boundaries.

Mr. Dwyer said that at the last annual meeting of the North Dakota Water Users Association and the North Dakota Water Management Districts Association, a resolution was adopted opposing all proposals except legislation that would strengthen the joint boards. He stated that alternatives are being developed along these lines.

WATER RESOURCE DISTRICTS HANDBOOK:

Mr. Dwyer advised the Commission members that handbooks are being prepared to assist the water managers, which are expected to be completed by early summer of 1982.

DRAINAGE REGULATIONS:

Mr. Cichy advised the Commission members that the State Engineer's drainage regulations are in the process of being amended to reflect the statutory changes that took place in the 1981 Legislature. Mr. Cichy explained that the areas of change include: 1) name change from water management districts to water resource districts; 2) incorporating the state water resources policy into the regulations which requires the State Engineer and the water resource boards to consider the well-being of all the people of the state when evaluating a drainage permit application; and 3) modifying the hearing procedures so as to comply with the Administrative Agencies Practice Act by incorporating the provisions of the Act into his drainage regulations. The regulations require adequate notice be given so that people interested in a drainage project have an opportunity to comment on the project. The regulations will establish procedural safeguards to insure that due process is afforded the people of the state. On drainage applications of statewide or interdistrict significance, the State Engineer will be required to have a public hearing after proper notice is given, transcribe the record of the hearing, and base his decision on the testimony and evidence contained in the record.

Before the revised regulations are adopted, the State Engineer will have a series of public hearings and consider all written and oral testimony. Upon finalizing the amended regulations, but before final adoption, the regulations will be submitted to the Attorney General for an opinion as to their legality. The final step involves filing the regulations as adopted by the agency and the Attorney General's opinion with the office of the Legislative Council for publication in the North Dakota Administrative Code.

WEATHER MODIFICATION REPORT

Secretary Fahy stated that the last session of the Legislature placed the Weather Modification agency under the umbrella of the State Water Commission. Mr. Lynn Rose, Director of that agency was introduced.

Mr. Rose discussed the preparation of plans for the agency's sixth season in the field, and made reference to a research program that is ongoing in conjunction with the history of weather modification in North Dakota.

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

Secretary Fahy stated that the consultant's study for the Ogallala Aquifer will be completed May 1, 1982. The study and recommendations that the High Plains Council develops will then be forwarded to the Commerce Department and then onto Congress sometime in July or August, 1982.

Secretary Fahy said that not all of the Ogallala Aquifer states are in total favor of a system of importing water from the Missouri River. Colorado has recommended that all further considerations

of basin transfer studies have a moratorium of ten years put on them. Kansas has suggested to back away from importation or exportation of water among basins and again take a look at the Parson's Study which surfaced 35 years ago and deals with taking water out of Canada into the Rocky Mountain trench and distributing it throughout the United States.

Secretary Fahy advised the Commission that he will be attending the meeting at which the recommendations will be considered and will keep the members informed.

The meeting recessed at 2:30 p.m.; and reconvened at 9:00 a.m. on April 7, 1982.

UPDATE OF STATE WATER COMPREHENSIVE PLAN (SWC Project No. 322)

Mr. Gene Krenz, Director of Planning for the State Water Commission, reviewed the planning process to date and indicated that 51 public meetings have been held thus far. Attendance at these meetings remains at about the same as when the meetings first began, although attendance of the members of the Citizens Advisory Committees has been excellent. Mr. Krenz said that he is somewhat discouraged by the citizen participation, but is encouraged that the people who started out with the process have continued to remain during the process.

Mr. Krenz stated that the purpose of the last meetings were: 1) to meet with the 17 areas of the state and discuss what they perceive the goals and objectives for their region to be; and 2) to look at the problems and opportunities identification process. He then generally discussed some of the goals, objectives and problems that have been expressed at the meetings in the various areas.

At the present time, the staff is compiling all of the information that has been obtained at the meetings that the Citizens Advisory Committees have been asked to take a look at. The next set of meetings are scheduled to begin June 17 and these meetings will be the first step toward development of recommendations to be presented to the Water Commission for their consideration.

APPEARANCE BY ALLEN FISK

Allen Fisk was introduced, and he advised the Commission members that he has been working with the North Dakota State University for approximately one year on a study that is part of the Clean Water Program. The main thrust of the study is to determine the effects of conservation land treatment on a watershed and the effect that it would have on the quality of the lakes. The report is being completed and will be available sometime in May or June, 1982. Mr. Fisk stated they are in the process of doing more sediment surveys on some of the lakes in North Dakota, and would be glad to present this information to the Commission at a later date.

CONTINUED DISCUSSION OF SOUTHWEST PIPELINE STUDY (APPEARANCE BY AUGUST LITTLE SOLDIER)

Mr. August Little Soldier, Vice Chairman of the Three Affiliated Tribes, was introduced. Mr. Little Soldier filed with the Commission APPENDIX "E".

Mr. Dwyer summarized the meetings and correspondence with representatives of the Three Affiliated Tribes to discuss, among other things, whether or not the Tribal Council would be willing to agree that the State would have sole and complete authority over the Southwest Pipeline Project if an intake structure were located on the reservation. This would include an agreement whereby the tribes would relinquish any rights that they would have over the waters to be appropriated through the intake structure, along with the agreement that such waters would not be a part of the Indian water rights under the Winters Doctrine.

Mr. Dwyer indicated that on November 10, 1981, the Three Affiliated Tribes representatives indicated that this proposal would not be acceptable. Since that meeting, Mr. Dwyer indicated that he had sent a letter to the Chairman of the Three Affiliated Tribes outlining the discussion of the November 10, 1981 meeting and requesting confirmation that this proposal could not be accepted. To date, according to Mr. Dwyer, no response had been received from the Tribal Council.

Resolution No. 81-237, dated November 13, 1981, filed by Mr. Little Soldier, indicates the Tribal Business Council of the Three Affiliated Tribes supports the Southwest Water Pipeline Project at the above Twin Buttes location; provided that any environmental, regulatory or jurisdictional concerns of the Tribes are legally protected.

Mr. Little Soldier also filed a memorandum, dated April 5, 1982, from the Chairman of the Three Affiliated Tribes stating that the Natural Resources Committee of the Tribal Business Council has gone on record in support of the Twin Buttes/Halliday route for the Southwest Water Pipeline Project, and that the Three Affiliated Tribes are amenable to negotiations to see that this project can proceed at its earliest possible date.

Resolution No. 81-238, dated November 13, 1981, filed by Mr. Little Soldier, resolves that the Three Affiliated Tribes are willing to enter into meetings or negotiations with the North Dakota State Water Commission, through a negotiating committee to be appointed by the Tribal Business Council, to explore possible solutions to any existing conflicting areas in Tribal - State water rights.

Secretary Fahy noted that he is very encouraged as this is the first communication in writing by the Tribes indicating a willingness to negotiate water right issues.

Governor Olson suggested that in order to present something to the Tribes for their consideration, a draft agreement be developed which would basically guarantee delivery of a stated amount of water

to the Tribes for their use in return for the State's exclusive control over the intake, pipeline, and the amount of water that is necessary for delivery of design capacity.

It was the consensus of the Commission members that staff members draft a proposed agreement as was suggested by the Governor.

Secretary Fahy stated that it is intended as a part of the Southwest Pipeline Project if there was interest on the part of the Tribes regardless of where the intake structure was located, to serve the needs on the reservation to the extent possible and to the extent that they were needed. The Tribal Council has been asked to survey the area south of the reservation to determine if there is an interest in rural water delivery. To date, this survey has not been completed.

ERIE DAM
(SWC Project No. 1471)

Dave Sprynczynatyk advised the Commission members of a problem that has occurred recently at Erie Dam, a recreational project that was built in 1970 in northwest Cass County. Frost heave has caused the 24-inch concrete pipe to be sheered near the inlet and as a result there is a two-inch differential at the crack. Mr. Sprynczynatyk said that immediate steps were taken, which were successful, to draw down the reservoir to avoid water flowing through the pipe. He said alternatives are being considered for repair of the spillway at an estimated cost of up to $30,000. The local project sponsor is the Rush River Water Resource District and they have indicated they would assist in whatever way they could to work with the Water Commission.

Since this is an emergency action, no specific amount was requested for approval. State Water Commission policy has been to allow the expenditure necessary to correct an emergency situation.

HURRICANE LAKE PROJECT
(SWC Project No. 559)

Dave Sprynczynatyk indicated that in 1975 a request had been received from the Pierce County Water Management District to drain Hurricane Lake. Hearings were held on the drainage request and in 1976 the State Engineer issued an Administrative Order that allowed for the partial drainage of the lake. The level that was set on the lake at that time was elevation 1548.5, allowing for about 2.5 feet of the lake to be drained.

In 1977, the local project sponsors began to work on this project installing a control structure on the lake. The State Water Commission did participate in the costs of the control structure. When the State Engineer approved the request for the project, he indicated that the concept was approved for controlling the lake at elevation 1548.5 and that additional work must be done on the channel downstream in order to allow for the efficient movement of the flows of the waters down to the lower end of Little Coulee and Lake Ibsen.

Work had actually begun on the Hurricane Lake project when they were notified that the project may be in violation of a Section 404 permit. The Corps of Engineers then issued an order which forced them to discontinue work on the project.

Mr. Sprynczynatyk stated that this issue has been resolved with the Corps, and the work that has been proposed and has been approved for the rest of the channel does not require a Section 404 permit.

Mr. Sprynczynatyk stated that the boards of Towner, Pierce, Benson and Rolette have joined together and have created the Hurricane Lake Joint Water Resources Board. This board provides a mechanism to undertake the project as well as to ensure future operation and maintenance of the project. A request has been received from the Joint Board for State Water Commission cost sharing in the channelization project in the amount of $69,250. When the request was received, the State Engineer responded that he still supported the project, but indicated that the policy of the State Water Commission has been that when there is pending litigation, the Commission would not act upon the request.

Mr. Murray Sagsveen reported that last summer he met with the Joint Board and it was agreed to try one final step-by-step effort to resolve the issues and complete the project. Mr. Sagsveen was collectively employed by the Joint Board as their legal representative, and Mr. Steve Hoetzer was collectively employed as their Project Engineer and Consultant. Mr. Hoetzer prepared the final plans which were submitted to the Corps of Engineers, and Mr. Sagsveen noted that it appears that the Section 404 permit issue may be resolved.

Mr. Sagsveen stated that a lawsuit has been initiated against the Fish and Wildlife Service concerning the waterfowl production area easements because the Fish and Wildlife Service's position is that the easement land is a part of the national wildlife refuge system. He said that he has met with the Justice Department and the Interior Department on numerous occasions and that it is possible that a resolution of that issue may be forthcoming.

Mr. Sagsveen indicated that the major problems have been addressed and it may be possible to complete construction of the outlet on Hurricane Lake in the summer of 1982. If resolution can be reached with the Fish and Wildlife Service, construction can commence in the spring of 1982. It was requested by Mr. Sagsveen that the Commission consider the request by the Joint Board for cost sharing and place a time limit that if pending litigation is not resolved the request will be re-considered.

After discussion, it was the recommendation of the State Engineer that the State Water Commission approve 40 percent cost participation in the Hurricane Lake project, not to exceed $28,000, contingent that pending litigation has been resolved prior to the next State Water Commission meeting which has been scheduled for June 17 and 18, 1982.

It was moved by Commissioner Larson, seconded by Commissioner Schank, and unanimously carried, that the State Water Commission participate in 40 percent of the costs of the Hurricane Lake project, not to exceed $28,000, contingent that all pending litigation has been resolved prior to the next State Water Commission meeting scheduled for June 17 and 18, 1982. If pending litigation has not been resolved prior to these dates, this action approving cost participation shall be re-considered. The motion is also contingent upon the availability of funds.

PRESENTATION BY REPRESENTATIVES OF GREAT PLAINS GASIFICATION ASSOCIATES - STATUS REPORT ON PROJECT DEVELOPMENT (SWC Water Permit No. 1901A)

Secretary Fahy indicated that representatives of Great Plains Gasification Associates are making a presentation before the Commission in order to satisfy some of the requirements of conditions that were imposed upon their permit at the time they applied for water for their plant. He noted that they have kept in close touch with the State Engineer's office since the Water Commission, at the time of the approval of these conditions, charged the State Engineer with the responsibility of seeing that these conditions were met, and if not, to report to the Water Commission reasons why they have not been met. Their appearance will satisfy the following requirements: 1) periodic progress reports to the State Water Commission; and 2) a status report on condition No. 6 relating to the by-products of the plant.

Secretary Fahy introduced Noel Mermer, Jack Parker and Joel Melarvie, representatives of the Great Plains Gasification Associates.

Mr. Noel Mermer advised the Commission members of the following completion percentages at the end of February, 1982: detailed design - 51 percent complete; procurement - 91 percent complete; and, construction - 9 percent complete. He said that spring, 1982 construction plans have been finalized, and at the end of October, 1982, it is anticipated that 38.5 percent of the construction of the project will be completed. He indicated that progress of the project is on schedule.

Mr. Mermer stated that as far as the project schedule, the major emphasis within the next six months is expediting delivery of the equipment. He said the first two gasifiers will leave Japan approximately April 15 with delivery to the plant site by June 15, 1982. All 14 gasifiers will be at the plant site by October 15, 1982 as an early delivery date, and by December 15, 1982 as a late delivery date. Equipment is being purchased world-wide for the project with 7 percent of the equipment being purchased foreign, and 93 percent of the equipment being purchased domestic.

Mr. Mermer said that there will be 60 buildings constructed on the plant site during the 1982 construction season.

As far as the project is concerned, Mr. Mermer indicated that much time is being spent in Detroit recruiting operating people. The administration building on the plant site will be completed by the middle of October, 1982, and will house about 45 operating people. By the end of 1983, this figure will increase to approximately 652.

In October, 1983, the first unit is scheduled to begin and will be producing synthetic gas by July, 1984.

He discussed the present State oil prices as one of the concerns, noting that the economics of this project are tied to the price of oil.

Mr. Joel Melarvie then proceeded to show a series of slides of activities at the Great Plains Coal Gasification plant.

Governor Olson and Commissioner Jones leave meeting; Commissioner Larson assumes chair.

Mr. Mermer indicated that one of the principal interests at this time is to find a market for the sulfur and amonia by-products of the plant. Mr. Jack Parker discussed with the Commission members the marketing and bidding procedures for these by-products. Mr. Parker's statement is attached hereto as APPENDIX "F".

Secretary Fahy introduced Mr. Ed Becker and Mr. Chuck Fine of the Economic Development Commission. The Governor has asked this agency to handle those aspects relating to the by-products disposal from the gasification plant. The agency has researched the possibilities of North Dakota firms being able to bid on these projects and they have agreed that the contract should be short-term so that if in the future a North Dakota firm is developed they will be given an opportunity to avail themselves of the chance to serve this particular commodity in its distribution.

The Commission members indicated a desire to tour the plant site at some future date.

CONSIDERATION OF AGENCY FINANCIAL STATEMENT

Mr. Matt Emerson, Assistant Secretary, presented the agency's financial statement noting that 33 percent of the biennium has elapsed. Secretary Fahy elaborated on the agency's compliance with the Governor's 5 percent reduction of the budget. He said that he felt that with the 5 percent reduction of the budget and the action taken by the Commission at this meeting to reduce the contract fund this does put this agency in line with the overall aims of the Governor in his move to strengthen the state's budgetary position.

SCHEDULING OF NEXT STATE WATER COMMISSION MEETING

The Commission, at a previous meeting, decided to hold the public hearings on the water permit applications filed by Basin Electric Power Cooperative and The Nokota Company in June, 1982. Secretary Fahy advised the Commission members that the dates of June 17 and 18, 1982 have been scheduled for the next meeting, but the Commission should make the decision if they wish to hold the meeting and public hearings in Bismarck or go to the area where the water has been applied for.

It was decided by the Commission members to hold the public hearings in the area where the applicants have applied for water for their plants.

> It was moved by Commissioner Vculek, seconded by Commissioner Bjornson, and unanimously carried, that the public hearings for the water permit applications filed by Basin Electric Power Cooperative and The Nokota Company be held in the county where the applicants have applied for the water for their plants.

Commissioner Vculek invited the Commission members to hold a summer meeting in the Oakes area. The meeting could include a tour of the Oakes test site and irrigation in the area. It was agreed by the members that if time permits, Commissioner Vculek's invitation be acknowledged for a summer meeting.

GARRISON DIVERSION PROJECT UPDATE (SWC Project No. 237)

Mr. Murray Sagsveen updated the Commission members on the status of the Garrison Diversion Project. In January, 1982, the Court of Appeals lifted the injunction that had been ordered by Judge Richie in 1981. A request for bids for construction was issued and bids were received for the Oakes Pumping Plant and were far below the engineering estimates. Mr. Sagsveen stated that it appears that bids will be awarded on the Oakes Project about the end of April, 1982 and construction will resume shortly thereafter.

The Bureau of Reclamation is sending out appraisers to do re-appraising in the New Rockford Canal area and it appears there will be acquisition of the New Rockford Canal area this year.

Mr. Sagsveen stated that the Bureau of Reclamation is working on its construction program and it is hoped that work will be resumed on the McClusky Canal to irrigate next year. It is also hoped that work will begin on the Lone Tree Reservoir.

Mr. Sagsveen said there is still a pending appeal in Washington, D. C. concerning Audubon, but feels that will be resolved

favorably. There is still the challenge on the impact statement by the James River Flood Control Association and the trial is scheduled for June 28, 1982 in Aberdeen, South Dakota.

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

It was moved by Commissioner Bjornson, seconded by Commissioner Kramer, and unanimously carried, that the meeting adjourn at 11:50 a.m.

Allen I. Olson
Governor-Chairman

ATTEST:

Vernon Fahy
State Engineer

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE April 6th, 1982 PLACE Bismarck, N Dak

PROJECT NO.

Your Name	Your Address	Who do you Represent? (Or Occupation)
JIM WEST	1604 S. WASHINGTON GRAND FORKS, ND	KBM, INC DESIGN CONSULTANTS
Clayton Hoffman	2910-E- Broadway Bismarck, N.D.	KBM, Inc.
Skip Lewis	Minot	Minot Daily News
Richard Brown	1604 S. WASHINGTON.	KBM INC.
KENNY DOEPKE	WILTON N DAK	McLean County Water Board
TOM HANSON	RYDER, N.D.	N.D. WATER USERS ASSOC.
Willard Little Owl	Halliday N.D. 670 24th/ST. West	tribal council Rep.
Gary Lipp	Dickinson, ND	Bureau of Land Management
Merle Pritchard	Bismarck	Associated Press
Aaron Hegli	Walcott	Richland Co WRB.
Robert Thompson	Cage	RR Joint WRB.
David Vikor	Bismarck	Basin Elec P.C.
K W Jacobsen	"	"
LAURIE McMERITY	"	ND DEPT. OF AG.
A Richard Mourn	1202 1st ST Bismarck	Consult Eng
AL Austad	ND ASSOC of REC'S MANDAN	

SWC Form No. 83

(500/6-77)

APPENDIX "A"

RESOLUTION NO. 82-4-413

A Resolution Requesting Appropriate Action By Congress To Propose An Amendment To The Clean Water Act (P.L. 92-500) Eliminating The Requirement Of A National Pollutant Discharge Elimination System Permit (NPDES Permit) For Water Releases From Reservoirs

Be It Resolved by the State Water Commission of the State of North Dakota, Governor Allen I. Olson, Chairman:

WHEREAS, the U.S. District Court for the District of Columbia has held that the Environmental Protection Agency must issue regulations covering dams as a point source category under Section 402 of the Clean Water Act (P.L. 92-500); and

WHEREAS, in the opinion in the case of National Wildlife Federation vs. Gorsuch issued on January 29, 1982, Judge Joyce Hens Greene ruled that certain water quality conditions associated with dams and reservoirs should be dealt with as a "discharge" of pollutants prohibited by Section 301 of P.L. 92-500; and

WHEREAS, Judge Greene has rejected EPA's long held position that the National Pollutant Discharge Elimination System does not apply to releases from reservoirs and the Court has held that the EPA has violated a nondiscretionary duty in failing to regulate dams with NPDES permits.

NOW, THEREFORE, BE IT RESOLVED by the members of the North Dakota State Water Commission that Congress be urged to amend P.L. 92-500 to eliminate the application of NPDES permits to discharges from reservoirs; and

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to members of the North Dakota Congressional Delegation in Washington, D. C. for their use in pursuing appropriate action by the Congress of the United States.

Dated this 6th day of April, 1982.

/S/ Allen I. Olson
Allen I. Olson, Chairman
Governor of State of North Dakota

ATTEST:

Vernon Fahy
State Engineer

STATEMENT OF KENT JONES
TO THE STATE WATER COMMISSION

APPENDIX "B"

April 6, 1982

In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. *The public health, safety and general welfare, including, without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depends in large measure upon the optimum protection, management and wise utilization of all of the water and related land resources of the state. (NDCC 61-06-26.1)*

It has been several years since I first heard State Engineer Vern Fahy begin to warn the people of North Dakota of a potential threat to this state's seemingly abundant water resources. Skepticism was the early reaction to Mr. Fahy's prediction that states to the south would soon cast covetous eyes on our mostly-unused water to replenish dwindling supplies in their irrigation regions. Skepticism and apathy. But Mr. Fahy continued to tell his story and warn us of the dangers, and events have proven him to have been correct in his predictions. The order of the day now is "Use it or lose it" as plans go forward to develop systems to divert our water to the Ogallala Aquifer. If these plans are successful, North Dakota stands to lose forever a major portion of its most precious renewable natural resource, our water.

Mr. Fahy, during this time, was also telling us at every opportunity, that there is no shortage of water in North Dakota. What this state lacks is a distribution system to bring the water from where it is to where it is needed. Our Garrison Diversion Project will be a

backbone of that system when it is completed, as will the Southwest Pipeline Project. But, as our State Engineer has also often pointed out, those projects should not be the end of our state's efforts. They should be the major systems which should be accompanied by hosts of related and subsidiary systems which combined together will provide our descendants a prosperous and green North Dakota.

I took Mr. Fahy's lessons to heart and, when I was elected Commissioner of Agriculture, I made the promotion of irrigation development a major goal of my department.

Past studies completed by the State Water Commission staff had identified several large areas of irrigation potential in Southwest North Dakota. This area was of particular concern to agricultural interests because it has the greatest susceptibility to the devastations of drought in North Dakota. Accordingly, last summer my staff and I, with the full cooperation and assistance of North Dakota State University, conducted a series of seminars in that area to discuss the potentials for irrigation with the local landowners. The reaction to those meetings were strongly positive, so I directed that a survey of landowner interest be made. Those survey results are attached to the end of this statement.

Sixty per cent. Sixty per cent of the landowners in Southwest North Dakota would consider irrigation, if sufficient supplies of water were available. That was the major finding of this survey, again conducted with the assistance of NDSU and the local county agents. By anybody's reckoning, sixty per cent is a strong affirmation of support.

Since that time, I and my staff have actively beat the drums for irrigation development. And the response has been overwhelming. The Dunn County Water Resource District, from whom we will hear today, was the first to take the initiative. They made contact with a local engineering firm to assess the feasibility of an irrigation project in their county. From what I have been told, the results of that assessment have been very positive and their proposal for our assistance with furthering those investigations, deserves our consideration.

But Dunn County was only the first to take up the challenge of working for tomorrow. Others have come forward from Morton County, Emmons County, McLean County, Stutsman County, and Nelson County. On Thursday, a member of my staff and I will be in Sioux County, at their invitation, to look at the project down there and the possibilities of expansion. I am confident that more expressions of interest will be coming in from other areas of the state in the future. And I am positive that after a project in any one of these areas has been proven successful, the seeds which we have planted will bloom into a harvest or irrigation systems.

Our efforts have not ended with planting the seeds of interest. Some weeks ago, I requested a number of financial consulting firms consider the potential for utilizing the agri-bond legislation passed by the 1981 Legislature for irrigation. Chiles, Herder and Company, who are also working on the Southwest Pipeline Project, have developed a proposal for using the agri-bond mechanism to assist a project irrigator in financing his irrigation equipment. Without going into

specifics at this time, agri-bonds may be issued for specific projects in cooperation with local banks. The revenues from those bonds would be available for irrigation loans at a rate approximately four per cent below the prime rate.

I cannot over-emphasize the enthusiasm with which people across the state have greeted this push for irrigation development. Farmers and livestock producers, business people, educators, people back from visits in other states with large irrigation developments, all recognize the benefits for the individual, the community and the state which will come from increased irrigation development. For example, just yesterday our office received an offer from the agricultural adult education instructors in one part of the state to make irrigation development a part of their curriculum and to assist with spreading the gospel. That's a group of twenty-nine instructors offering to go out and help our farmers learn what they need to know about irrigation.

The Agriculture Department has other projects in the works. This summer we hope to organize two bus tours to existing irrigation areas to provide on-site exposure to how irrigation works...and pays. We will continue with our irrigation seminars wherever and whenever they are requested. And we will continue to support the efforts of groups such as the Dunn County Water Resource Board when they move forward.

At this time last year, it was believed that there were two and a half million irrigible acres in North Dakota. Dr. Hollis Amend of the NDSU Soils Department has completed the computer run of the soils survey work done in the state and that estimate has now been revised upward to six million acres. We are sitting on a six million acre legacy. I believe we, as the North Dakota State Water Commission,

should move aggressively to develop that legacy for the betterment of all of the people of this state. Water and land are North Dakota's most precious natural resources. Let's put them together.

APPENDIX "C"

North Dakota State Water Commission

MEMO TO: Robert O. Wefald, Attorney General
FROM: Joseph J. Cichy & Michael Dwyer, Assistant Attorneys General
RE: Red River Dike Litigation - SWC Project File #1638
DATE: April 5, 1982

Pursuant to the resolution of the State Water Commission requesting you, as Attorney General, to initiate legal action seeking resolution of the inequitable situation regarding the agricultural levees in the northern Red River Valley, I offer the following as our litigation plan for your approval.

We present the following lawsuits for your approval:

I. State of North Dakota and a North Dakota landowner class v. Minnesota landowners as a class.

The state and the landowners should initiate an action against the Minnesota landowners as party plaintiffs in one action rather than each bringing a separate action. One reason for bringing a single action is that if separate actions were brought, they most likely would be consolidated into one action because the facts and issues are identical. Therefore, in order to avoid unnecessary costs and prevent additional delays by a consolidation motion, it was determined that we initiate a joint action. Another reason is that by having a damage claim in the complaint it will be in the defendants' best interest to appear and should we be granted injunctive relief, the damage issue may be used as a lever to force compliance with that order. In the complaint the state will base its claim separate from that of the landowners and will not be requesting damages, but will only seek equitable relief. Other jurisdictions have addressed the substantive issue of this type of case and there is case law to support our position.

II. State of North Dakota v. State of Minnesota

This action will be brought as an original action in the United States Supreme Court. The motion for leave to file a bill of complaint will seek an order mandating the State of Minnesota to enforce its statutes regarding its dike regulations and its floodplain management act. An equal protection argument will be addressed stating that Minnesota enforces the above statutes when their citizens are adversely affected but that they are not enforcing those same statutes against their citizens where non-residents are adversely impacted. Also, North Dakota will

allege breach of contract with regard to the agreement between the two states with which Minnesota has failed to comply.

III. State Engineer v. North Dakota Landowners.

A major obstacle kept surfacing during our research regarding litigating the Red River dike controversy and that obstacle is the question of how to address the levees on the North Dakota side of the Red River. If we seek equity (against Minnesota landowners) we must do equity. Because we must get our own house in order, it is necessary to seek removal or modification of the North Dakota levees. Discussions have been held with the water resource boards from Walsh and Grand Forks counties regarding the suit and they understand the situation and agree with our approach. That approach is to bring a "friendly" lawsuit against the two boards and the landowners in the two counties with levees along the Red River. We will seek the identical relief that is awarded against Minnesota in suit number one and in this way the North Dakota landowners' position will not be jeopardized. Another meeting will be held in mid-April to personally explain to the landowners the necessity of such an action and how it will proceed. Because of the general ineffectiveness of the North Dakota levees, it does not appear that there will be any local opposition to the lawsuit. This lawsuit will be brought under the North Dakota Environmental Law Enforcement Act, chapter 32-40, NDCC, which requires 30 day notice of intent to sue before the action can be commenced.

IV. Timing of the Suits

The action against the Minnesota landowners will be commenced sometime during the third week in April. In the action against our own landowners notice will be sent to them immediately after our mid-April meeting so that fact can be incorporated into our complaint in the Minnesota landowners' suit. The suit against Minnesota will be filed later this spring. Because it addresses few factual questions, it is not necessary to file it at the same time as the landowners' suits.

JC:ps

Approved By: _____
Joseph J. Cichy
Assistant Attorney General

Approved By: _____
Vern Fahy
State Engineer

Approved By: _____
Robert O. Wefald
North Dakota Attorney General

PROPOSED OBJECTIVES FOR WATER SERVICE CONTRACTS APPENDIX "D"

The following is a brief outline of the objectives that are proposed for water service contracts for the Southwest Pipeline Project.

1. Water Service Contracts will be required. All potential water users who wish to use water from the Southwest Pipeline Project will be required to execute a long-term water service contract, which will establish the terms and conditions for purchase and delivery of water. Potential water users include towns, rural water cooperatives, and other entities who may be interested in purchasing water from the project. These water service contracts will require that water users comply with the rules developed for the Southwest Pipeline Project by the operating entity.

2. Operation & Maintenance Costs. Water users shall be required to pay the entire actual operation and maintenance costs for the Southwest Pipeline Project. Water service contracts must bring in sufficient revenues, either through minimum payments or otherwise, to satisfy operation and maintenance costs. If not, it must be concluded that the Southwest Pipeline Project is not feasible and should not be pursued.

3. Minimum Payments. Water service contracts will require a minimum payment from each water user, regardless of whether or not project water is used. Minimum rates may vary with each community.

4. Water Rates. The cost of water will be determined as follows:

   a. The rate will be based on the water user's ability to pay. Ability to pay is the highest water rate that water users are able to pay, beyond which they could not afford to purchase water.

   b. Capital repayment of project costs by water users shall be maximized to the greatest extent possible.

   Contract principles which are being considered to implement this objective include:

   a. Method of determining ability to pay, i.e. it can be based on "reasonable rates" which is determined primarily by comparison with other water systems, or by computing a percentage of median income. For median income, either an area-wide average can be used or it can be determined individually.

   b. Postage stamp rate, whereby all water users pay the same rate, vs. variable distance rate, where water rate may vary depending on location of water user along the pipeline.

   c. Should water rates escalate according to some type of inflation factor.

5. Unallocated Capacity. It is anticipated that future growth in the southwest area will result in increased demand for water. Therefore, it will be recommended that the Southwest Pipeline Project be constructed with sufficient capacity to meet those needs. The state of North Dakota will retain total control over all water in the Southwest Pipeline Project which is not contracted for initially, and will enter into future contracts to sell such unallocated water at its discretion.

6. Contract Principles. Contract principles to implement these objectives shall be as simple as possible.

APPENDIX "E"

THREE AFFILIATED TRIBES • FORT BERTHOLD RESERVATION

Mandan, Hidatsa and Arikara Tribes

TRIBAL BUSINESS COUNCIL

P.O. Box 220 • New Town, North Dakota 58763 • (701)627-4781

STATE WATER COMMISSION
REFER TO

For Your Inf.
Draft A Reply
Respond Directly
Comments?
Let's Discuss
Return to State Eng.
File

MEMORANDUM

TO : Mr. Vern Fahy, North Dakota State Water Commission

FROM: Mr. Austin H. Gillette, Chairman, Three Affiliated Tribes

Austin H Gillette

DATE: April 5, 1982

SUBJ: Southwest Water Pipeline Project

Please be advised that the Natural Resources Committee of the Tribal Business Council has gone on record in support of the Twin Buttes/ Halliday route for the Southwest Water Pipeline Project, and the Three Affiliated Tribes are amenable to negotiation to see that this project can proceed at its earliest possible date.

August Little Soldier, Vice Chairman, and Willard Little Owl, Council member, are authorized to begin preliminary inquiry and follow up regarding this matter.

Resolution No. 81-233

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution and By-laws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the tribes and tribal members; and

WHEREAS, The Three Affiliated Tribes recognize the value of Tribal water rights for present and future use; and

WHEREAS, The nature and extent of Tribal water rights in the Missouri River is in need of clarification; and

WHEREAS, Meetings with the North Dakota State Water Commission can be steps to resolve any potential conflicts between the Tribes and the State of North Dakota, through the North Dakota State Water Commission.

NOW THEREFORE BE IT RESOLVED, That the Three Affiliated Tribes are willing to enter into meetings or negotiations with the North Dakota State Water Commission, through a negotiating committee to be appointed by the Tribal Business Council to explore possible solutions to any existing conflicting areas in Tribal - State water rights.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Busines Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constituting a quorum, 11 were present at a Special Meeting; thereof duly called, noticed, convened and held on the 13 day of March, 1981; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 9 members, 0 members opposed, 0 members abstaining, 2 members not voting, and that said resolution has not been rescinded or amended in any way. Chairman (voting) ~~(not voting)~~.

DATED THIS 13 DAY OF March, 1981.

Secretary, Tribal Business Council

ATTEST:

Chairman, Tribal Business Council

Resolution #81-237

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution and By-laws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the Tribes and Tribal members; and

WHEREAS, The State of North Dakota has chosen three (3) tentative sites for construction of the Southwest Water Pipeline Project, coordinated by the State Water Commission, including a site near the Twin Buttes area of the Fort Berthold Reservation; and

WHEREAS, The project could provide certain benefits to the Twin Buttes and surrounding areas; and

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes supports the Southwest Water Pipeline Project at the above Twin Buttes location; provided that any environmental, regulatory or jurisdictional concerns of the Tribes are legally protected.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitutes a quorum, 11 were present at a Special Meeting, thereof duly called, noticed, convened and held on the 13th day of November, 1981; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 9 members, 0 members opposed, 0 members abstained, 2 members not voting, and that said resolution has not been rescinded or amended in any way.

Chairman (Voting) ~~(Not Voting)~~.

DATED THIS 13th DAY OF NOVEMBER, 1981.

SECRETARY, TRIBAL BUSINESS COUNCIL

ATTEST:

CHAIRMAN, TRIBAL BUSINESS COUNCIL

APPENDIX "F"

PRESENTATION TO THE NORTH DAKOTA STATE WATER COMMISSION IN REGARD TO THE MARKETING AND BIDDING PROCEDURES FOR SULFUR AND AMMONIA BY-PRODUCTS FROM THE GREAT PLAINS COAL GASIFICATION PLANT APRIL 7, 1982

IT IS INDEED A PLEASURE TO BE PART OF THE NORTH DAKOTA STATE WATER COMMISSION MEETING TODAY AND HAVE THE OPPORTUNITY TO PROVIDE YOU WITH AN OVERVIEW AS TO ANG'S ACTIVITIES AND BIDDING PROCEDURES RELATIVE TO THE MARKETING OF CERTAIN OF OUR PLANT BY-PRODUCTS.

AS YOU ARE PROBABLY AWARE, ANG IS PRESENTLY ACTIVE IN REGARD TO THE SALE OF OUR SULFUR AND ANHYDROUS AMMONIA FERTILIZER PRODUCTION FROM THE GREAT PLAINS COAL GASIFICATION PLANT. OUR CURRENT SCHEDULE CALLS FOR NEAR FULL DELIVERIES OF THESE BY-PRODUCTS TO COMMENCE IN DECEMBER OF 1984, AND WITH SOME PARTIAL DELIVERIES OCCURRING PRIOR TO THIS DATE DURING OUR 62 WEEK PLANT START-UP PERIOD. ALTHOUGH THE ACTUAL DELIVERY DATE FOR THESE PARTICULAR BY-PRODUCTS IS SEVERAL YEARS INTO THE FUTURE, ADEQUATE TIME MUST BE HAD FOR THE BUYER TO INTEGRATE THE ADDITIONAL BY-PRODUCT INTO THEIR MANUFACTURING/DISTRIBUTION PLANS AND SCHEDULES, PLUS MAKE ARRANGEMENTS FOR THE NECESSARY RAIL CARS. IN ADDITION, GREAT PLAINS MUST BE ASSURED THAT ANY PLANT BY-PRODUCTS PRODUCED IN THE FUTURE CAN BE SATISFACTORILY MARKETED IN AN ORDERLY FASHION.

IN PROCEEDING WITH THE DEVELOPMENT AND IMPLEMENTATION OF OUR MARKETING PLAN AND BIDDING PROCEDURES FOR SULFUR AND AMMONIA, THE FOLLOWING MAJOR EVENTS HAVE OCCURRED TO DATE.

A SURVEY AND INITIAL CONTACTS WERE MADE EARLY ON WITH VARIOUS COMPANIES BOTH IN NORTH DAKOTA AND THROUGHOUT VARIOUS AREAS OF THE COUNTRY IN AN ATTEMPT TO OBTAIN AN EXPRESSION OF INTEREST FROM POSSIBLE FUTURE POTENTIAL BUYERS. SUBSEQUENTLY, A PRELIMINARY BIDDERS LIST WAS DEVELOPED FOR BOTH OF THESE BY-PRODUCTS.

FOLLOWING THIS A REPORT TITLED THE "STATUS AND PLANS FOR THE MARKETING OF GREAT PLAINS BY-PRODUCTS" WAS PRESENTED TO VARIOUS STATE OFFICIALS IN A PUBLIC MEETING THAT TOOK PLACE ON NOVEMBER 13, 1981 IN BISMARCK. DURING THIS MEETING AND PRESENTATION, ALL THE VARIOUS BY-PRODUCTS THAT WOULD BE AVAILABLE FROM THE PLANT WERE IDENTIFIED, ALONG WITH SOME INFORMATION AS TO QUANTITY, QUALITY AND GENERAL USES, ETC. DETAIL HANDOUTS OF THE PRESENTATION WERE MADE AVAILABLE DURING THE MEETING TO VARIOUS STATE OFFICIALS, THE PUBLIC AND THE LOCAL MEDIA. DURING THE PRESENTATION IT ALSO WAS STRESSED THAT IN MOVING FORWARD WITH THE DEVELOPMENT OF OUR BY-PRODUCT MARKETING PROGRAM, IT WOULD BE NECESSARY FOR ANG TO SOLICIT INPUT AND SUGGESTIONS FROM VARIOUS STATE AGENCIES KNOWLEDGEABLE IN THESE PARTICULAR AREAS. IN ADDITION, IT WAS STATED THAT ANG IS DESIROUS OF WORKING WITH NORTH DAKOTA BUSINESSES, WHERE POSSIBLE, THAT HAVE BOTH THE EXPERTISE AND INTEREST IN THE UTILIZATION OF THE PLANT BY-PRODUCTS.

FOLLOWING THIS PRESENTATION A MEETING WAS LATER HELD WITH REPRESENTATIVES FROM THE NORTH DAKOTA ECONOMIC DEVELOPMENT COMMISSION ON DECEMBER 1, 1981 TO DISCUSS OUR MARKETING PLANS IN DETAIL AND ALSO TO SOLICIT THEIR INPUT IN REGARD TO SULFUR AND AMMONIA BASICALLY TO DETERMINE AND IDENTIFY POTENTIAL BIDDERS IN THE STATE OF NORTH DAKOTA. SHORTLY AFTER THIS MEETING A LETTER WAS RECEIVED FROM THE STATE ECONOMIC DEVELOPMENT COMMISSION OUTLINING THE NAMES AND ADDRESSES OF THE HEAD OFFICES OF EIGHT POTENTIAL BIDDERS WHO CURRENTLY HAVE WHOLESALE FERTILIZER OUTLETS IN THE STATE OF NORTH DAKOTA. EACH OF THESE PARTICULAR PROSPECTS WAS CONTACTED AND ALL EIGHT REQUESTED THAT THEY RECEIVE COPIES OF THE BID DOCUMENTS. SUBSEQUENTLY, EACH OF THESE BIDDERS WAS QUALIFIED AND THEIR NAMES WERE PLACED ON THE APPROVED BIDDERS LIST.

DURING THIS SAME TIME FRAME, SEVERAL DISCUSSIONS WERE ALSO HELD WITH MR. VERNE FAHY IN ORDER TO ARRIVE AT MUTUALLY AGREED-TO PROCEDURES ANG WOULD FOLLOW IN MARKETING OUR PLANT BY-PRODUCTS SO AS TO MAKE CERTAIN THAT WE FULLY MET THE INTENT OF CONDITION #6 OF OUR STATE WATER PERMIT.

ANG'S UNDERSTANDING OF THESE ACCEPTABLE BIDDING PROCEDURES WHICH WE HAVE FOLLOWED IN DETAIL REGARDING THE MARKETING OF OUR SULFUR AND AMMONIA ARE AS FOLLOWS:

1. ANG IS TO ESTABLISH AND MAINTAIN A SATISFACTORY WORKING RELATIONSHIP WITH REPRESENTATIVES FROM VARIOUS STATE AGENCIES INCLUDING THE N. D. STATE WATER COMMISSION AND THE N. D. ECONOMIC DEVELOPMENT COMMISSION. THESE AGENCIES WOULD BE KEPT INFORMED ON A CONTINUING BASIS AS TO OUR PLANS AND ACTIVITIES FOR BY-PRODUCT MARKETING. IN ADDITION, THIS WOULD ALSO INCLUDE ATTENDING VARIOUS STATE WATER COMMISSION MEETINGS FROM TIME TO TIME, WHICH WE ARE DOING TODAY.

2. WHERE PRACTICAL, ANG WOULD REQUEST ASSISTANCE FROM THE NORTH DAKOTA ECONOMIC DEVELOPMENT COMMISSION TO IDENTIFY PROSPECTIVE BIDDERS AND USERS OF OUR BY-PRODUCTS WITHIN THE STATE OF NORTH DAKOTA.

3. AFTER DISCUSSIONS WITH STATE OFFICIALS AND WHERE IT IS FOUND THAT THERE IS REASONABLE INTEREST WITHIN THE STATE IN REGARD TO THE POSSIBLE LOCAL PURCHASE OF A PARTICULAR BY-PRODUCT THAT IS BEING MARKETED, SUCH AS AMMONIA AND SULFUR, THEN ANG WOULD PROCEED TO ADVERTISE IN VARIOUS LOCAL NEWSPAPERS TO ALLOW ANY OTHER BIDDERS THAT HAVE BEEN MISSED THE OPPORTUNITY TO PARTICIPATE IN THE BIDDING PROCESS.

4. IT IS ALSO AGREED THAT THE TERM OF A TYPICAL PURCHASE AGREEMENT WITH THE BUYER OF A BY-PRODUCT WOULD TYPICALLY BE FOR A THREE (3) YEAR PERIOD. THIS PARTICULAR ARRANGEMENT WOULD THEN PROVIDE AMPLE OPPORTUNITY FOR NORTH DAKOTANS TO PURCHASE THESE BY-PRODUCTS IN THE FUTURE. WHERE THE CONTRACT TERM MUST BE LONGER TO PERMIT MAJOR PROJECT FINANCING TO COVER THE RELATED FACILITIES, E.G. PIPELINES, REFINERY OIL PROCESSING, (SUCH AS IN THE CASE OF OUR CARBON DIOXIDE) LONGER TERM SALES CONTRACTS WILL BE EXECUTED.

5. IT HAS BEEN AGREED THAT AS PART OF KEEPING THE STATE FULLY INFORMED THE FINAL BID ANALYSES AND RECOMMENDATIONS WOULD BE REVIEWED WITH THE STATE ENGINEER OF THE STATE WATER COMMISSION AND THE DIRECTOR OF THE ECONOMIC DEVELOPMENT COMMISSION.

ONCE OUR BASIC MARKETING PLAN AND BIDDING PROCEDURES WERE ESTABLISHED, IN MID-FEBRUARY BIDDING DOCUMENTS WERE MAILED TO A TOTAL OF TWELVE (12) ANHYDROUS AMMONIA FERTILIZER BIDDERS AND EIGHT (8) SULFUR BIDDERS, WHICH INCLUDED THE EIGHT (8) RECOMMENDED BY THE NORTH DAKOTA ECONOMIC DEVELOPMENT COMMISSION. IN ADDITION, NINE (9) OTHER BIDDERS WERE PICKED UP AS A RESULT OF ADVERTISING IN NORTH DAKOTA AND IN SEVERAL OTHER MAJOR AREAS OF THE COUNTRY.

OVERALL, A TOTAL OF EIGHT (8) REPLIES FOR AMMONIA AND SIX (6) REPLIES FOR SULFUR WERE RECEIVED. FURTHER, THE BID DUE DATE WAS EXTENDED TWICE TO ACCOMMODATE SEVERAL LATE BIDDERS WHO WERE HAVING DIFFICULTIES IN FINALIZING THEIR PROPOSALS.

CURRENTLY OUR INITIAL BID ANALYSIS HAS BEEN COMPLETED INTERNALLY AND AS A RESULT WE PLAN ON HOLDING MEETINGS WITH SEVERAL OF THE BIDDERS THAT HAVE SUBMITTED THE MOST INTERESTING PROPOSALS PRIOR TO OUR BEING READY TO MAKE THE FINAL AWARD. AS PREVIOUSLY DISCUSSED, IT IS OUR INTENT TO MEET ONCE AGAIN WITH THE STATE OFFICIALS IN THIS REGARD PRIOR TO OUR FINALIZING THE AMMONIA AND SULFUR SALES.

THIS SUMMARIZES OUR CURRENT ACTIVITIES AND BIDDING PROCEDURES TO DATE REGARDING SULFUR AND AMMONIA. WE ARE DEEPLY APPRECIATIVE OF THE ASSISTANCE AND GUIDANCE RECEIVED BY YOUR STAFF AND THE ECONOMIC DEVELOPMENT COMMISSION IN FORMULATING THESE PROCEDURES.

NOW, IF THERE ARE ANY PARTICULAR QUESTIONS IN REGARD TO EITHER THE PROJECT OR BY-PRODUCT MARKETING, WE WOULD BE PLEASED TO ANSWER THEM.