

## MINUTES

North Dakota State Water Commission  
Bismarck, North Dakota

December 3, 1986

The North Dakota State Water Commission held a meeting on December 3, 1986, at Kirkwood Motor Inn, Bismarck, North Dakota. Acting Chairman, Kent Jones, called the meeting to order at 9:00 a.m., and requested Acting State Engineer-Secretary, David Sprynczynatyk, to call the roll and present the agenda.

MEMBERS PRESENT:

Kent Jones, Commissioner, Department of Agriculture, Bismarck  
Richard Backes, Member from Glenburn  
Joyce Byerly, Member from Watford City  
Jacob Gust, Member from West Fargo  
William Guy, Member from Bismarck  
Ray Hutton, Member from Oslo, MN  
William Lardy, Member from Dickinson  
Jerome Spaeth, Member from Bismarck

ABSENT:

Governor George A. Sinner, Chairman  
Vernon Fahy, State Engineer and Secretary, North Dakota  
State Water Commission, Bismarck

OTHERS PRESENT:

State Water Commission Staff Members  
Approximately 20 persons interested in agenda items

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

The meeting was recorded to assist in compilation of the minutes.

CONSIDERATION OF MINUTES  
OF NOVEMBER 19, 1986 MEETING -  
ACTION DEFERRED

and will be finalized for the Commission's consideration at its next meeting.

David Sprynczynatyk informed the Commission members the minutes of the November 19, 1986 meeting are in the process of being compiled

STATUS REPORT ON NEGOTIATIONS  
ON GARRISON DIVERSION MR&I  
PROGRAM  
(SWC Project No. 237-3)

The State Water Commission members were informed at their November 19, 1986 meeting that federal funds for the Garrison Diversion MR&I Program for fiscal year 1987 had been reduced to approximately \$5 million. Mr. Sprynczynatyk briefed the Commission members relative to negotiations to restore some of the federal funds which have been authorized. Mr. Sprynczynatyk reported that the \$33 million authorized for the Garrison Diversion Project has been adjusted and an additional \$900,000 has been made available for the Garrison Diversion MR&I Program for FY 1987. Federal funds of \$6.2 million are now available for FY 1987 for the Garrison Diversion MR&I Program. Mr. Sprynczynatyk indicated negotiations will continue in an attempt to get additional money for this program for FY 1987 and said there have been preliminary discussions with the Congressional Delegation and the representatives of the State of Utah about the possibility of requesting a supplemental appropriation.

Mr. Sprynczynatyk stated he has met with C. Emerson Murry, Manager of the Garrison Diversion Conservancy District, to discuss the allocation of \$6.2 million federal funds for the Garrison Diversion MR&I Program for projects in North Dakota for 1987. Mr. Sprynczynatyk presented the following budget for the Commission's consideration:

|                              |              |
|------------------------------|--------------|
| Needs Assessment             | \$ 300,000   |
| McLean-Sheridan Water Supply | 100,000      |
| Southwest Pipeline Project   | 5,300,000    |
| Grand Forks Water Supply     | 500,000      |
|                              | <hr/>        |
| Total                        | \$ 6,200,000 |

Mr. Murry indicated the Board of Directors of the Garrison Diversion Conservancy District will consider this proposed budget at its January, 1987 meeting.

Commissioner Guy inquired if the Governor and the Office of Management and Budget have approved this proposed allocation of Garrison Diversion MR&I funds.

Mr. Sprynczynatyk responded that this proposal has been discussed with the Governor and OMB and no objections were expressed in regard to this budget allocation.

It was moved by Commissioner Guy and seconded by Commissioner Lardy that the State Water Commission approve the following budget allocation of \$6.2 million of federal funds for the Garrison Diversion MR&I Program for fiscal year 1987, pending the approval of this budget allocation by the Governor and the Office of Management and Budget:

December 3, 1986

|                                  |              |
|----------------------------------|--------------|
| Needs Assessment                 | \$ 300,000   |
| McLean-Sheridan Water Supply     | 100,000      |
| Southwest Water Pipeline Project | 5,300,000    |
| Grand Forks Water Supply         | 500,000      |
|                                  | <hr/>        |
| Total                            | \$ 6,200,000 |

In discussion of the motion, Mr. Sprynczynatyk commented that a request has been made to the Emergency Commission for approval to spend the federal money.

Commissioners Backes, Byerly, Gust, Guy, Hutton, Lardy, Spaeth and Chairman Jones voted aye. There were no nay votes. The Chairman declared the motion carried unanimously.

STATUS REPORT ON  
SOUTHWEST PIPELINE  
PROJECT  
(SWC Project No. 1736)

Dale Frink, Manager for the Southwest Pipeline Project, provided the Commission members with copies of a progress report on the Southwest Pipeline Project that covers the

period from July 1, 1985 to December 1, 1986. Mr. Frink did not comment on the information contained in the progress report because he said all of the items have been discussed at previous Water Commission meetings.

Mr. Frink briefly discussed Senate Bill No. 2902 that has been introduced in the Special Session of the Legislature. S.B. 2902 relates to repealing the state's five percent preference clause for North Dakota contractors (NDCC Section 61-24.3-03.1) and, if passed, would take effect December 8, 1986. This legislation is necessary because of the involvement of federal money. The Federal Government does not allow this type of a preference in bidding for construction.

Mr. Frink also distributed copies of the legislation relating to the extent and type of water treatment and the location for water treatment plants for the Southwest Pipeline Project which will be introduced in the General Session of the Legislature.

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

Mr. Sprynczynatyk informed the Commission members that the work has been substantially completed in North Dakota relative to modifying the dikes along the Red River to comply with the Federal District Court order.

Relative to the Minnesota efforts to bring the dikes also into compliance with the Court order in that

December 3, 1986

state, Mr. Sprynczynatyk indicated some work has been done but the extent of the work done cannot be determined. Staff members are scheduled to fly the area to try and determine what has been done.

Mr. Sprynczynatyk indicated that at the last meeting of the Water Commission, approximately \$50,000 had been expended in efforts to modify the dikes in North Dakota by the individual landowners and by contractors hired by the State Water Commission. Staff members have been working with the Grand Forks and Walsh Counties Water Resource Boards to obtain all of the information relative to expenses incurred in these efforts. Mr. Sprynczynatyk stated it is anticipated the Water Resource Boards will be formally requesting cost sharing from the State Water Commission for the work that has been done.

Mr. Sprynczynatyk explained that although the total cost of the work done by the State Water Commission was approximately \$27,000, no more than \$5,000 of work was incurred by any one landowner. Since individual orders were issued, and since the contractor will be paid separately for each landowner, this would not violate the \$10,000 limit policy of the State Water Commission for payments authorized by the State Engineer. Also, landowners will be billed for this work as per the administrative orders.

Rosellen Sand, Director of Legal Services for the State Water Commission, commented that an Attorney General's opinion will be requested concerning the use of state funds to indirectly, through water resource districts, reimburse landowners for modification of unauthorized and unsafe structures pursuant to orders issued by the State Engineer.

Ms. Sand informed the Commission members that a draft brief has been presented to the North Dakota Attorney General for review. The brief requests that a contempt order against Minnesota defendants for failing to comply with the Federal District Court order to lower the dikes along the Red River on the Minnesota side. Ms. Sand briefed the Commission members on the contents of the draft brief and said the filing date of the brief will be contingent upon the Attorney General's review.

Commissioner Hutton discussed with the Commission members complaints he has received from landowners in the area relative to damages that occurred during the dike modification process. He added some of the complaints are from landowners who were not a part of the original agreement. Commissioner Hutton said he has not personally viewed the damages, but the State Water Commission has been requested to hold a meeting in the area. Commissioner Hutton indicated the importance of the landowners concerns and strongly urged the Commission to consider holding a meeting in the area.

Chairman Jones requested that the Water Commission staff make an assessment of the damage complaints that Commissioner Hutton has referred to.

December 3, 1986

Commissioner Guy stated he feels the State Water Commission needs to be on record as addressing these complaints.

It was moved by Commissioner Guy and seconded by Commissioner Hutton that the State Water Commission direct staff to contact all of the landowners in the dike modification area to assess completion and any damages that may have occurred during the process of lowering the dikes on the North Dakota side of the Red River.

Commissioners Backes, Byerly, Gust, Guy, Hutton, Lardy, Spaeth, and Chairman Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Commissioner Hutton indicated the landowners are very concerned that the Minnesota dikes will not be in compliance by spring when flooding occurs. Ms. Sand responded that there are several alternatives that could be pursued for any flood damages that may occur to North Dakota landowners.

John Galegher and C. W. Ekness, Grand Forks County Water Resource Board, read a letter to the State Engineer, dated December 2, 1986, which stated:

"This is a request by the Walsh and Grand Forks County Water Resource Districts, asking the State Water Commission to begin a study of the Red River of the North to reduce flooding in this area.

Some of the problems are caused by the Highway #17 and Soo Line Railway bridges. Others by debris, ice jams and trees in channel during spring runoff. Also, trees growing on the restrictive banks of the Red River.

Since the farmers in the area have had their protective dikes removed or lowered, we urge the State Water Commission to approve this study and hope that something can be done to lower the flooding damages in the area.

/S/ Charles Zahradka, Walsh County WRD  
John Galegher, Grand Forks Co. WRD  
Vincent Reed, Grand Forks Co. WRD"

Mr. Galegher commented further on the problems and urged the State Water Commission to take immediate action on their request for a study.

Mr. Sprynczynatyk indicated these problems have been discussed at previous meetings and to date no formal action has been taken because both North Dakota and Minnesota have

December 3, 1986

indicated that as soon as the diking issue has been resolved the two states will begin addressing other problems. Mr. Sprynczynatyk said he felt that since the diking issue is essentially completed this would be an appropriate time to initiate the study that has been requested.

It was moved by Commissioner Lardy and seconded by Commissioner Hutton that the State Water Commission support the request to initiate a study of the Red River of the North to reduce flooding in the area, and that staff be directed to proceed with the study.

Commissioners Backes, Byerly, Gust, Guy, Hutton, Lardy, Spaeth, and Chairman Jones voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

STATUS REPORT ON INTER-BASIN BIOTA TRANSFER STUDY (SWC Project No. 1828)

Commissioner Guy presented the background information on the Inter-Basin Biota Transfer Study, and concluded his comments by introducing Eugene Krenz, Director of Planning for the State Water Commission, who has been appointed by the Governor as the Program Coordinator for the Inter-Basin Biota Transfer Study.

Mr. Krenz briefly discussed the responsibilities of the Program Coordinator, and some of the goals and objectives of the study. Mr. Krenz indicated he is in the process of naming a technical research team that will examine the question of exactly what needs to be done in regard to this study. Mr. Krenz said he will be presenting periodical reports to the Water Commission on the progress of the study.

DISCUSSION RELATIVE TO NORTH DAKOTA - U.S. FISH AND WILDLIFE SERVICE PROPOSED AGREEMENTS

Mr. Sprynczynatyk stated that at the Commission's last meeting, Governor Sinner briefed them on negotiations between North Dakota and the United States Fish and Wildlife Service relative to how the Fish and Wildlife Service will do business in North Dakota in the future. The Governor also stated that when he approved the Habitat Acquisition Plan in August, 1985, he conditioned his approval upon the negotiations and completion of agreements to resolve issues of controversy between the Fish and Wildlife Service and North Dakota. The Governor had indicated to the Water Commission members at their last meeting that before any subsequent agreements on the controversial issues were signed he would bring them before the State Water Commission for its review.

The Commission was provided copies of draft agreements on the controversial issues and discussed at length each of the agreements. The General Provisions Agreement and 13 agreements relative to controversial issues, dated November, 1986, are attached hereto as Appendix "A". The comments and suggestions provided by the State Water

December 3, 1986

Commission in regard to these agreements are attached hereto as Appendix "B".

The Commission concluded its discussion relative to the North Dakota - U.S. Fish and Wildlife Service proposed agreements by directing staff to compile the comments and suggestions and forward copies to each of the Commission members.

CONSIDERATION OF AGENCY  
FINANCIAL STATEMENT

Matt Emerson, Director of Administration for the State Water Commission, presented and discussed the

projects authorized report and the program budget expenditures through November 30, 1986. Mr. Emerson responded to questions relative to the agency's requested budget for the 1987-1989 biennium.

CONTINUED DISCUSSION ON  
SHEYENNE FLOOD CONTROL  
PROJECT  
(SWC Project No. 1344)

Mr. Sprynczynatyk stated a request has been received from the Corps of Engineers asking that we provide assurances to them of what the State non-federal sponsorship for

the project will be. Mr. Sprynczynatyk said this item will be on the agenda for the Commission's next meeting and the Commission will then have an opportunity to take formal action that will allow us to respond to the Corps's letter.

CONTINUED DISCUSSION ON  
SOURIS RIVER FLOOD  
CONTROL PROJECT  
(SWC Project No. 1408)

Mr. Sprynczynatyk updated the Commission members on the status of the Souris River Flood Control project indicating that negotiations will continue on the project between

Canada and the United States. He said there was a temporary delay in negotiations prior to the election in Saskatchewan, but they will resume on December 18 and 19 in Regina.

FURTHER CONSIDERATION OF  
RULES GOVERNING STATE WATER  
COMMISSION REVIEW OF REQUESTS  
FOR MONEY FROM RESOURCES TRUST  
FUND

Ms. Sand indicated that at the Commission's September 10, 1986 meeting a preliminary draft of proposed rules governing the State Water Commission's review of requests for money from the Resources Trust Fund

was approved by the Commission and that staff was directed to proceed with public hearings on the proposed rules.

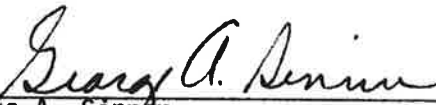
Ms. Sand said a public hearing was held on November 24, 1986 and no objections or comments have been filed relative to the rules. The rules will be finalized and submitted to the Attorney General for approval.

December 3, 1986

INTRODUCTION OF STATE  
WATER COMMISSION REGIONAL  
OFFICE ENGINEER

Mr. Sprynczynatyk introduced Randy Gjestvang, Water Resource Engineer for the Commission's Regional office located in West Fargo.

It was moved by Commissioner Backes, seconded by Commissioner Byerly, and unanimously carried, that the State Water Commission meeting adjourn at 12:10 p.m.

  
\_\_\_\_\_  
George A. Sinner  
Governor-Chairman

ATTEST:

  
\_\_\_\_\_  
Vernon Fahy  
State Engineer-Secretary

December 3, 1986



NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE December 3, 1986 PLACE Bismarck, ND

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

| Your Name              | Your Address                                   | Who do you Represent?<br>(Or Occupation)                |
|------------------------|--|---|
| <i>Lyell Degeen</i>    | <i>Wahpeton, ND</i>                            | <i>Secretary<br/>Richland Co. Water Resource</i>        |
| <i>C EMERSON MURRY</i> | <i>BISMARCK, ND 58501</i>                      | <i>GDCD</i>   |
| <i>Burley Stone</i>    | <i>Barney, N.D.<br/>N.D. State W.R.D. Area</i> | <i>Richland Co. W.R.B.</i>                              |
| <i>Jorgen Haugen</i>   | <i>McLeod N. Dak.</i>                          | <i>Richland Co. W.R.D.</i>                              |
| <i>Bernie Rydell</i>   | <i>Wahpeton N.D.</i>                           | <i>Richland Co. W.R.D.</i>                              |
| <i>Dorothy Zepher</i>  | <i>Wahpeton N.D.</i>                           |   |
| <i>Randy Gjestvang</i> | <i>west Fargo, ND</i>                          | <i>ND SWC</i>   |
| <i>Dale Frink</i>      | <i>Bismarck</i>                                | <i>ND SWC</i>   |
| <i>Howard Joyce</i>    | <i>Bismarck</i>                                | <i>Office of Intergovernmental<br/>Assistance - OMB</i> |
| <i>John S. Halpern</i> | <i>Thompson ND</i>                             | <i>Grand Forks County Water Resource</i>                |
| <i>Melvin Lund</i>     | <i>Dev.</i>                                    | <i>SWC</i>  |
| <i>Joseph Harbyke</i>  | <i>Page, N.D.</i>                              | <i>Maple River W.R.B.</i>                               |
| <i>Carol Habel</i>     | <i>Fargo, ND</i>                               | <i>Cass County W.R.D.'s</i>                             |
| <i>Lloyd Jones</i>     | <i>Bismarck, ND</i>                            | <i>U.S. Fish &amp; Wildlife Service</i>                 |
| <i>Allen Frisk</i>     | <i>" "</i>                                     | <i>Ret.</i>   |



November, 1986

AGREEMENT

BETWEEN THE GOVERNOR OF NORTH DAKOTA AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, FOR THE PURPOSE OF ESTABLISHING A COOPERATIVE APPROACH TO RESOLVE CERTAIN ISSUES RELATING TO ACQUISITIONS OF LAND AND INTERESTS IN LAND, AND LAND MANAGEMENT ACTIVITIES, BY THE U.S. FISH AND WILDLIFE SERVICE, AND FOR THE PURPOSE OF ESTABLISHING A COOPERATIVE AND MUTUALLY SUPPORTIVE RELATIONSHIP TO FURTHER THE RESPECTIVE OBJECTIVES OF THE PARTIES TO THIS AGREEMENT.

This Agreement, between the Governor of North Dakota and the Department of the Interior, supplements the November 1, 1985 Agreement between the same parties. The 1985 Agreement established the terms and conditions for the Governor's approval of the North Dakota Migratory Bird Habitat Acquisition Plan, and provided that implementation of the approved North Dakota Migratory Bird Habitat Acquisition Plan would be in accordance with the 1985 Agreement. The 1985 Agreement provided that various management issues, including weed control, emergency haying, depredation, water level management on river refuges, and related issues would be jointly addressed in subsequent agreements. The 1985 Agreement further provided that issues relating to wetland easements, including length, payment provisions, state authority affecting wetland easements, classification of wetlands, and related issues, would also be jointly addressed in subsequent agreements. The subsequent agreements for the various issues relating to wetland easements and/or lands owned in fee are referred to as wetland acquisition and management agreements. The 1985 Agreement also specifically provided that the Governor and the U.S. Fish and Wildlife Service (hereinafter referred to as FWS) would deve-

November, 1986

lop a cooperative program for the enhancement of existing wetland easements, and that an agreement for the delineation of pre-1976 wetland easements would be developed.

This agreement is intended to launch a new partnership between North Dakota and the FWS to improve the development, management and protection of water and wetland resources within North Dakota. This agreement signifies a good faith and vigorous effort to end the institutional and political conflicts over wetland acquisition and management programs. This agreement attempts to resolve specific wetland acquisition and management issues which have been in conflict, so that future wetland acquisition and management programs can proceed with mutual support. This agreement represents the Wetland Acquisition and Management Agreements called for in the 1985 Agreement.

This agreement also recognizes that water development and wetland preservation activities must be balanced to protect North Dakota's agricultural, water, and wildlife resources. This agreement, therefore, is intended to establish the terms, conditions and mechanisms by which mutual cooperation can be established and respective wetland, farm, and water objectives and interests can be accommodated.

#### GENERAL TERMS

State Law. This agreement, and the terms and provisions herein, shall not be construed to satisfy or eliminate any of the requirements of North Dakota law, unless otherwise specifically stated herein. All requirements of North Dakota law which are not specifically and expressly fulfilled by this Agreement must be complied with, separately and in addition to the terms and requirements of this Agreement.

November, 1986

1985 Agreement. This Agreement does not supersede or in any way revoke the provisions of the 1985 Agreement. All terms of the 1985 Agreement shall continue to be in effect, except as may be specifically revised or changed by reference in this Agreement.

Future Review and Modifications. The North Dakota Migratory Bird Habitat Acquisition Plan, the 1985 Agreement, and this Agreement shall be effective for a period of ten years, at which time these agreements shall be reviewed and re-executed, as appropriate. Any modification or amendment to this Agreement or the 1985 Agreement must be agreed to by the Governor of North Dakota and the FWS and must be reduced to writing in order to be effective. Any modification of fee and/or easement acquisition objectives in the North Dakota Migratory Bird Habitat Acquisition Plan must be agreed to by the Governor of North Dakota and the Department of the Interior and must be incorporated into the Habitat Acquisition Plan in order to be considered effective.

Wetland Acquisition and Management Agreements. This agreement includes thirteen separate Wetland Acquisition and Management Agreements, which may be amended or modified without affecting the terms or validity of any of the other agreements. The general terms stated herein shall apply to all of the thirteen separate agreements contained in the following sections.

Notice to Landowners. It is agreed that a copy of these Wetland Acquisition and Management Agreements will be provided by the FWS to all landowners prior to the execution of an easement contract, where

November, 1986

known to subsequent purchasers of land which is subject to existing easement contracts, and to landowners prior to the conveyance of fee title by a landowner to the FWS. It is further agreed that a copy of these Wetland Acquisition and Management Agreements will be provided, upon request, to any person.

\_\_\_\_\_  
George A. Sinner  
Governor of North Dakota

Date: \_\_\_\_\_

\_\_\_\_\_  
Galen Buterbaugh  
Regional Director, U.S. Fish and  
Wildlife Service,  
Department of the Interior

Date: \_\_\_\_\_

November, 1986

I. COORDINATION AND COMMUNICATION BETWEEN  
NORTH DAKOTA AND FWS

A. Statement of Intent. It is intended by this Agreement to establish a formal mechanism through which issues can be discussed, information can be distributed, and a central process for filtering, focusing on issues, consensus building, review of proposals, and continued dialogue can take place. It is intended that farm groups, water groups, wildlife groups, and sportsman organizations should be represented on a formal wetlands management committee to provide coordination and communication concerning wetland issues.

B. North Dakota Wetlands Management Advisory Committee. The Governor agrees that he will establish, by executive order, the North Dakota Wetlands Management Committee.

It is further agreed that the Governor and the FWS will jointly support the function and purpose of the North Dakota Wetlands Management Committee, and that the FWS will appoint one representative to serve on the Wetlands Management Committee.

November, 1986

II. RESOLUTION OF DISPUTES AND CONFLICTS THROUGH MEDIATION

A. Statement of Intent. It is the intent of this Agreement to provide a mechanism to mediate disputes and conflicts which arise between the FWS and the State of North Dakota, its state agencies, political subdivisions, and/or individuals. This Agreement will facilitate the immediate and successful resolution of disputes and will facilitate compromise between the various parties in disputes. However, it is not the intent of this Agreement to allow parties to a dispute to ignore or bypass normal administrative processes.

B. Wetlands Mediation Panel. The FWS and the Governor each agree to appoint two persons to serve on the Wetlands Mediation Panel. The appointees of the Governor and the FWS shall jointly select one additional person to serve on the Wetlands Mediation Panel.

C. Review of Disputes by Wetlands Mediation Panel. At the request of either the Governor or the Regional Director of the FWS, a dispute between the State of North Dakota, one of its agencies, political subdivisions, or individuals, and the FWS, shall be submitted to the Wetlands Mediation Panel for review. It is agreed that disputes or conflicts will be submitted to the Wetlands Mediation Panel only after all attempts for resolution at the local or other appropriate level have been exhausted. The Wetlands Mediation Panel shall examine the issue and within 30 days make a recommendation to the Governor and the Regional Director for resolution of the dispute. The Mediation Panel may hold a hearing for the purpose of receiving evidence from all parties involved in the dispute.

D. Recommendation of Panel. It is agreed by the Governor and the FWS that any recommendation of the Wetlands Mediation Panel to resolve a dispute will be followed and implemented to the extent possible. If any recommendation of the Wetlands Mediation Panel is not followed and implemented by either the Governor or the FWS, this agreement shall be further negotiated and modified.



III. EXERCISE OF STATE LAW BY THE STATE OF NORTH DAKOTA  
AFFECTING FEE AND EASEMENT INTERESTS OF THE  
U.S. FISH AND WILDLIFE SERVICE

A. Statement of Intent. It is intended by this Agreement to establish a consistent mechanism by which the State of North Dakota, by or through one of its agencies, may exercise authority pursuant to the state law, even though the exercise of such law may adversely impact land owned in fee by the Fish and Wildlife Service, or wetlands controlled by easement, or other land interests held by the FWS. It is intended that this mechanism apply to the exercise of authority under state law by the State, by or through one of its agencies, for certain projects approved by the appropriate state agency, including road construction, building construction, maintenance of pre-existing channels or natural watercourses, or other state activities that may affect fee or easement wetland areas owned or controlled by the Fish and Wildlife Service. It is recognized that interests in land and protection of resources in certain situations of unique quality or irreplaceable habitat must be preserved, consistent with statutory authorities of the FWS. Finally, it is intended that the Fish and Wildlife Service will receive appropriate compensation to replace its proprietary interest. It is recognized that the National Wildlife Refuge Administration Act currently requires compensation of monetary and biological values. It is further recognized that FWS policy is to replace wetlands with acre for acre restored wetlands of ecological equivalency. Finally, it is understood that the Governor will seek Congressional support and action for securing the state's right of eminent domain over certain federal lands.

B. Wetland Easements. Any wetland easement acquired by the Fish and Wildlife Service, including all easements acquired in the past and in the future, shall be subject to the following provisions:

1. It is agreed that if the exercise of the state authority under state law by the State of North Dakota, by or through one of its state agencies, on land owned or under easement to the FWS, causes an adverse impact to wetlands within a tract of land owned or controlled by the Fish and Wildlife Service for wetland purposes, such impacted wetlands will be appropriately compensated by the appropriate state agency. The FWS will initially determine if replacement lands are suitable for exchange and are immediately available for transfer to the FWS. Transfer of suitable replacement lands, or other appropriate compensation, will take place prior to or concurrently with the exercise of state authority under this agreement. If North Dakota and the FWS cannot agree that adverse impact exists, or that lands are suitable for disposition, or to the appropriate compensation or the value or ecological equivalency of any impacted wetland easement, the dispute will be referred to the Wetlands Mediation Panel.

November, 1986

C. Post-1976 Easements. It is agreed that any wetland easement acquired after 1976 shall be subject to the additional following provision. This provision shall not in any way be construed to mean that North Dakota gives up any existing rights.

1. Only those wetland areas identified on Exhibit A of the easement document are subject to the terms of the easement. Natural watercourses or wetlands not identified on Exhibit A are not subject to the terms of the easement and can be maintained, or channelized or drained if such activity does not effect identified wetlands and shall not be a violation of the terms of the easement. All other activity on the easement that does not effect identified wetlands will not be a violation of the easement agreement.

D. Existing Fee Acquisitions. It is agreed by the FWS that any fee acquisition, including fee title acquisitions in the past and in the future, shall be subject to the following provision:

1. It is agreed that if the exercise of the state authority under state law by the State of North Dakota, by or through one of its state agencies, on land owned or under easement to the FWS, causes an adverse impact to wetlands within a tract of land owned or controlled by the Fish and Wildlife Service for wetland purposes, such impacted wetlands will be appropriately compensated by the appropriate state agency. Transfer of suitable replacement lands, or other appropriate compensation, will take place prior to or concurrently with the exercise of state authority under this agreement. The FWS will initially determine if replacement lands are suitable for exchange and are immediately available for transfer to the FWS. If North Dakota and the FWS cannot agree that adverse impact exists, or that lands are suitable for disposition, or to the appropriate compensation or the value or ecological equivalency of any impacted wetland easement, the dispute will be referred to the Wetlands Mediation Panel.

November, 1986

IV. LENGTH OF EASEMENT REQUIRED UNDER THE  
SMALL WETLANDS ACQUISITION PROGRAM

A. Statement of Intent. It is intended to develop a series of alternatives for acquiring wetland easements, in addition to perpetual easements, which can be offered to and considered by landowners.

B. Easement Alternative. The FWS agrees to implement a 2-year pilot program for 50-year wetland easements renewable at the option of the FWS at re-appraised market value at the time of renewal. An evaluation of the pilot program will be conducted by December 1, 1988, and the program adjusted if necessary.

C. Investigation of Additional Alternatives. The FWS hereby agrees that it will continue to investigate additional alternatives for acquiring wetland easements, and that additional alternatives will be evaluated for implementation. The Governor will seek Congressional alternatives for the length of wetland easements.

November, 1986

V. DELINEATION OF PRE-1976 WETLAND EASEMENTS  
TAKEN UNDER THE SMALL WETLANDS ACQUISITION PROGRAM

A. Statement of Intent. It is intended by this Agreement to provide a mechanism by which certain wetland easements taken under the small wetlands acquisitions program prior to 1976 will be delineated by the FWS to provide certainty and clarity for the landowner as to the wetland easement.

B. Delineation. It is agreed by North Dakota and the FWS that the FWS will delineate pre-1976 wetland easements on a case by case basis, if requested to do so by the landowner or the Governor. It is further agreed that if requests by individuals or the Governor exceed the administrative capability of the FWS, the FWS will provide for delineation of wetland easements in accordance with a priority based on need and availability of funds. The following factors should be considered in prioritizing delineation requests:

1. Clarification for the state or a landowner or landowners of a water management or any other project.
2. Certainty for landowners relating to the location of wetlands.
3. Additional factors which may be applicable on a case by case basis.

C. Acquisition Goals. It is agreed that if delineation of wetland easements for an entire easement tract results in more or less wetland acres than was credited against previous gubernatorial authorizations and FWS acquisition goals, then previous computations of wetland acres for accomplishment towards the acquisition goals for such county shall be adjusted accordingly.

D. Change in Ownership. The FWS agrees that it will send a certified letter to new landowners when any land subject to a FWS wetland easement is conveyed from the previous owner to the new landowner. This requirement is limited to the extent the FWS is able to obtain notification of transfer of ownership.

November, 1986

VI. ENHANCEMENT OF UPLAND HABITAT AROUND  
WETLANDS UNDER EASEMENT

A. Statement of Intent. The wildlife habitat value of wetlands under easement is limited when the land around wetlands are farmed or hayed to the waters edge of the wetland. It is the intent of this Agreement to provide a new program for enhancement of wildlife habitat around wetlands under easement, and thereby increase the value of easement wetlands.

B. Wetland Habitat Enhancement Program. It is agreed by the Fish and Wildlife Service that the FWS develop a program by which it will offer to landowners who have signed perpetual easements under the small wetlands acquisition program a 10-year lease agreement for upland around existing wetlands. It is further agreed that the 10-year lease will be paid for by annual payments based on rental values.

C. Funding for Enhancement Program. North Dakota and the FWS agree that it will support appropriate legislation if needed in the Congress to allow the FWS to use duck stamp money or other appropriate funds for the wetland habitat enhancement program agreed to in this section.

D. Implementation Schedule. The FWS agrees that it will establish a wetland habitat enhancement program as a demonstration project. It is further agreed that a complete program will be established for wetland habitat enhancement as provided in this section. It is agreed that development and continuation of this program is contingent upon funding.

E. Other Enhancement Programs. The Governor and the FWS agree to support other wetland enhancement programs, including North Dakota waterbank, USDA waterbank, and North Dakota Game & Fish Habitat, and to promote landowner participation in the Conservation Reserve program with the 1985 Farm Bill.

November, 1986

VII. REVENUE SHARING PAYMENTS BY FWS TO  
POLITICAL SUBDIVISIONS

A. Statement of Intent. It is intended by this Agreement to alleviate the tax revenue loss to local political subdivisions when land in fee title is acquired by the FWS, and to ensure maximum full entitlement revenue sharing payments are made.

B. Funding. It is agreed that the FWS will formally request maximum revenue sharing payments to political subdivisions under present law. It is further agreed that an amendment to present law will be supported to require maximum revenue sharing payment. It is also agreed that use of other funding sources to meet deficiencies in full entitlement payments will be investigated, which may include allowing duck stamp funds to be used for payments, allowing operating revenues from the Department of Interior to be used for such payments, and other sources of funds.

C. Terminology. It is agreed that the consistent terminology should be used in correspondence, meetings, and other instances concerning revenue sharing payments to replace lost taxes. The following terms mean:

1. "Full Entitlement" means 3/4 of 1% of the appraised land value. Each tract is appraised by the FWS once every 5 years.
2. "Maximum Payment" means the same as full entitlement.
3. "Revenue Sharing" means the payment by the FWS to local political subdivisions to replace lost taxes.
4. "Actual Payment" means the amount that is actually paid to local political subdivisions.

November, 1986

VIII. METHOD OF PAYMENT FOR EASEMENT AGREEMENTS

A. Statement of Intent. It is intended by this Agreement to provide an additional method to landowners for receiving payments for wetland easement agreements.

B. Investigation of Alternatives. The FWS hereby agrees that it will investigate the necessary mechanism to establish the administrative capability to provide landowners with more than one option for receiving payment for wetland easement agreements. The Governor and the FWS will negotiate an agreement by December 1, 1988, concerning such additional options for receiving payments upon completion of investigation of alternatives by the FWS.

November, 1986

IX. DEPREDATION CONTROL

A. Statement of Intent. It is the intent of this Agreement to improve methods to control and reduce damage to farmers' unharvested crops caused by blackbirds, and/or waterfowl. This Agreement applies only to those activities under the control of the FWS, since the animal damage control program is under the jurisdiction of the U.S. Department of Agriculture.

B. Depredation Control. It is agreed by the FWS that it will review wetland and refuge management programs and will provide modifications to such management programs to control and to the extent possible avoid future depredations. It is further agreed that the FWS will continue to address the management of large monotypic stands of cattail on FWS lands to the extent possible with money and man power restrictions, but consistent with refuge objectives.



November, 1986

X. WEED CONTROL

A. Statement of Intent. It is the intent of this Agreement to continue the established and consistent method and procedure by which the FWS controls weeds on FWS lands. The provisions of this Agreement will assure that the FWS is taking appropriate action to control weeds on FWS lands, and will alleviate the perception or the real fact that weeds are not properly controlled on FWS lands.

B. State Weed Laws. The FWS agrees to control weeds and respond to weed control complaints and requests on FWS lands in accordance with the North Dakota State Noxious Weed Laws, subject to availability of funds and applicable federal law.

C. Public Information. It is agreed by the Governor and the FWS that joint efforts will be made to overcome any incorrect public perception that the FWS does not control weeds on FWS lands. Specifically, the FWS will report annually to county commissioners, water resource districts, and the North Dakota Agriculture Commission on all noxious weed control efforts in each county. Such annual reports will include the location of weed control efforts, weed control methods, and other pertinent information relating to the effort of the FWS to control weeds on FWS lands.

XI. EMERGENCY HAYING ON FWS LANDS

A. Statement of Intent. It is the intent of this Agreement to provide a consistent mechanism to allow haying of FWS fee lands during drought or emergency conditions.

B. Land Inventory. The FWS agrees to prepare an inventory of all FWS fee lands which are available for haying at the request of the Governor. The Governor will request the FWS to prepare such inventory if drought conditions appear to be imminent.

C. Guidelines for Haying. A declaration of drought disaster by the Governor in any county will trigger the opening of FWS fee lands in such county, listed in the inventory, for haying. Lands will be offered for haying first to the previous landowner, and thereafter by lottery. FWS fee lands will not be open for haying prior to July 15 of any given year. It is the intent of this Agreement to provide hay to ranchers in the area of FWS lands, at fair market value as determined by the FWS, and therefore, the final recipient of the hay must be identified and must be part of the arrangement for haying of FWS lands.

D. The FWS will report annually to county commissioner, water resource districts, and the North Dakota Agriculture Commissioner of FWS fee lands which were hayed that year. Such reports shall include the amount of land provided for haying, recipients of hay, and other appropriate information. The Governor agrees to assist in dissemination of public information concerning emergency haying of FWS fee lands.

XII. WETLAND CLASSIFICATION

A. Statement of Intent. It is the intent of this Agreement to provide a uniform Wetland Classification System for joint use by federal, state, and local governments, and individuals.

B. Uniform Classification System. It is agreed that the North Dakota Game and Fish Commissioner, the State Engineer, and FWS will develop a uniform classification system for wetlands. Representatives of various federal, state, and local agencies may have input into the development of the uniform classification system. It is further agreed that Circular 39, and soils and aerial photo data, will be considered in the development of a uniform classification system. Before implementation, the uniform classification system shall be agreed to by the Game and Fish Department, State Engineer, Fish & Wildlife Service, and Governor.

C. Implementation of Uniform Classification System. It is agreed that the FWS, the North Dakota Game and Fish Department, the State Water Commission, and the Governor's office will incorporate the uniform system into various rules and regulations, forms, policy statements, and other documents. It is also agreed that a pamphlet will be jointly developed for use by all interested persons concerning wetland classification. Finally, it is agreed that a training session or sessions will be held to understand and utilize the uniform classification system. The FWS may continue to use other systems in wetland matters dealing with agencies or groups not party to to this agreement.

D. Wetland Classification Disagreements. It is agreed that disagreements over wetland classification will be submitted to the wetlands mediation panel for resolution.

November, 1986

XIII. WATER LEVEL AND RIVER MANAGEMENT ON  
NATIONAL WILDLIFE REFUGES ON NORTH DAKOTA RIVERS

A. Statement of Intent. The FWS has national wildlife refuges on several of North Dakota's rivers, and the management of these refuges are sometimes in conflict with other uses and desired water levels for a river, either upstream or downstream. It is the intent of this Agreement to identify different objectives and problems, determine potential management plans and practices, and provide a coordinated manner of resolving any conflicts.

B. Management Plans for Rivers. It is agreed by the Governor and the FWS that the following actions will be taken under this agreement:

1. The FWS, State Engineer, and appropriate water resource districts will jointly develop management plans and practices for each river system in North Dakota on which there is a national wildlife refuge or refuges.
2. After a management plan for a river system has been developed, the FWS, State Engineer, and appropriate local water resource districts shall jointly review such management plan and implementing practices for a particular river and national wildlife refuge system by June 1 of each year.
3. Unresolved conflicts over management plans and practices between a national wildlife refuge and other uses and desired water levels on a river shall be submitted to the Wetlands Mediation Panel for resolution.

THE FOLLOWING IS A SUMMARY OF THE COMMENTS OFFERED BY STATE WATER COMMISSION MEMBERS AT THEIR MEETING ON DECEMBER 3, 1986, RELATIVE TO NORTH DAKOTA - UNITED STATES FISH AND WILDLIFE SERVICE PROPOSED AGREEMENTS, DATED NOVEMBER, 1986:

Page 1

Proposed Agreement: Introductory Paragraph

BETWEEN THE GOVERNOR OF NORTH DAKOTA AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, FOR THE PURPOSE OF ESTABLISHING A COOPERATIVE APPROACH TO RESOLVE CERTAIN ISSUES RELATING TO ACQUISITIONS OF LAND AND INTERESTS IN LAND, AND LAND MANAGEMENT ACTIVITIES, BY THE U.S. FISH AND WILDLIFE SERVICE, AND FOR THE PURPOSE OF ESTABLISHING A COOPERATIVE AND MUTUALLY SUPPORTIVE RELATIONSHIP TO FURTHER THE RESPECTIVE OBJECTIVES OF THE PARTIES TO THIS AGREEMENT.

Commissioner William Guy: Suggested the word "OBJECTIVES" be defined. Commissioner Guy suggested language be included to the effect - "In North Dakota there is a need for balance between water resource development and consumption and water resource preservation ..."

Comment by Commissioner Guy: On the one hand there is a need for water resource development to expand the North Dakota economic base, provide jobs, generate tax revenues, foster swimming, fishing and other water-based recreation, and the need to control flooding, to contribute to aquifer recharge, water pollution abatement, and the need to supply water for domestic and industrial consumption.

While on the other hand there is a need to preserve migratory waterfowl production habitat for central fly-way hunting.

North Dakota has ample surface water resources to provide for that balance and there is no justification why proponents of the two off-setting needs can't assist one another in reaching reasonable accommodations as both goals are pursued.

\* \* \* \* \*

Page 2

Proposed Agreement: 2nd line from top of page

"... and that an agreement for the delineation of pre-1976 wetland easements would be developed."

Commissioner William Guy: Suggested the word "delineation" be defined.

Comment by Commissioner Guy: The word "delineation" needs to be defined and expanded on so that anyone reading the Agreements will understand exactly the definition of "delineation".

\* \* \* \* \*

Page 3

Proposed Agreement: Future Review and Modification:

"... and this Agreement shall be effective for a period of ten years, ..."

Commissioner William Guy: Suggested the length of these Agreements should not be ten-year Agreements, but that instead it be limited to the Governor's term.

\* \* \* \* \*

Page 3

Proposed Agreement: Notice to Landowner

Commissioner Richard Backes: Suggested a provision be included whereby the Notice to Landowner would be broadened to include a thirty-day Notice to the Public prior to the execution of an easement contract.

Commissioner Backes also suggested language be included that would provide a form of counseling to the landowner prior to approval of any lease or purchase.

Comment by Commissioner Backes: In many cases in the past, the Fish and Wildlife Service has purchased easements only negotiating with the landowner. Allowing a thirty-day Notice to the Public in the official county newspaper of Fish and Wildlife Service's intent would allow for counseling to the landowner regarding possible effects of the easement.

\* \* \* \* \*

Page 4

Proposed Agreement: Signature Page

Commissioner William Guy: Suggested the Commissioner of the United States Fish and Wildlife Service likewise execute the Agreements.

Comment by Commissioner Guy: Even though the Commissioner of the U.S. Fish and Wildlife Service has delegated all authority with respect to this issue to the Regional Director, the Commissioner's signature would validate the Regional Director's signature.

\* \* \* \* \*

Page 5

Proposed Agreement: I. B. North Dakota  
Wetlands Management Advisory Committee.

Commissioner William Guy: Suggested that the term of the Advisory Committee members coincide with the term of the Governor.

Comment by Commissioner Guy: Each time there is an election of the Governor, the incoming Governor shall appoint the North Dakota Wetlands Management Advisory Committee.

\* \* \* \* \*

Page 6

Proposed Agreement: II. B. Wetlands  
Mediation Panel

Commissioner William Guy: Suggested the term of the Mediation Panel members coincide with the term of the Governor.

Comment by Commissioner Guy: Establishment of a Wetlands Mediation Panel is good. Each time there is an election of the Governor, the incoming Governor should appoint the members to this panel.

\* \* \* \* \*

Page 6

Proposed Agreement: II. C. Review of  
Disputes by Wetlands Mediation Panel

"... The Wetlands Mediation Panel shall examine the issue and within 30 days make a recommendation to the Governor and the Regional Director for resolution of the dispute. ..."

Commissioner Jerome Spaeth: Suggested that following the Wetlands Mediation Panel's recommendation to the Governor and the Regional Director regarding resolution of a dispute, a time limitation should be prescribed on a case-by-case basis depending on whatever the issue is.

\* \* \* \* \*

Page 7

Proposed Agreement: III. A. Statement  
of Intent

"... It is further recognized that FWS policy is to replace wetlands with acre for acre restored wetlands of ecological equivalency. ..."

Commissioner William Guy: Suggested that sentence be clarified as follows: "Finally, it is further

understood, but not agreed to by the Governor, that Fish and Wildlife Service policy is to replace wetlands with acre for acre restored wetlands of ecological equivalency."

Comment by Commissioner Guy: Relative to the word "restored" in that sentence, Commissioner Guy said we are not talking about mitigating by acquiring acre for acre wetlands that are not now under Fish and Wildlife Service easement or fee title purchase, we are talking about flooding an acre of dryland that is farmland that will replace an acre of the waterfowl habitat which had been taken.

\* \* \* \* \*

Page 8

Proposed Agreement: C. I.

"... Natural watercourses or wetlands not identified on Exhibit A are not subject to the terms of the easement and can be maintained, or channelized or drained, if such activity does not effect identified wetlands and shall not be a violation of the terms of the easement. ..."

Commissioner Jerome Spaeth: Suggested the following portion of above sentence be deleted: "... if such activity does not effect identified wetlands and shall not be a violation of the terms of the easement."

Comment by Commissioner Spaeth: Suggested deleting this language because he feels wetlands that are close to channels should not be able to be subject to easements.

Comment by Commissioner Guy: An easement should not be used to block the natural drain of water.

Suggestion by Commissioner Guy: In that same sentence, suggested Exhibit A be explained.

\* \* \* \* \*

Page 9

Proposed Agreement: IV. A. Statement of Intent

"It is intended to develop a series of alternatives for acquiring wetland easements, in addition to perpetual easements, which can be offered to and considered by landowners."

Commissioner Richard Backes: We, as a State, should not agree to perpetual easements as being



one of the alternatives. We should continue to negotiate alternatives to the perpetual easements.

\* \* \* \* \*

Page 9

Proposed Agreement. IV. C. Investigation of Additional Alternatives

Commissioner Jerome Spaeth: Suggested the following additional alternatives:

- 1) Waterfowl production area easements should terminate at the death of the landowner or at change of ownership (but not less than five years).

Comment: This was enacted into law in 1977, but the U.S. Supreme Court rules that the law could not apply to existing easements. The law has been repealed.

- 2) There should be no easements on section lines.

Comment: One could argue that waterfowl easements are subordinate to the section line easements, but the real problem involves projects using federal funds.

- 3) Waterfowl production area easements should not exceed 50 years or, if required as mitigation, should not exceed the life of the project. There should be an automatic renewal for an indefinite period.
- 4) Waterfowl production area easements should not be permitted where they would obstruct drainage.
- 5) The U.S. Fish and Wildlife Service should acquire fee title, rather than easements, whenever possible, subject to payments to the State equal to, had it been taxed.

Comment: Federal fee acquisition removes land from production and removes land from tax rolls. However, the U.S. does make some payments in lieu of taxes.

- 6) There should be flexibility to move easements within an area to accommodate farm programs and land purchases.
- 7) Payments should be made every two years, adjusted to reflect land costs, agricultural production, inflation, and taxes. Payments should be equivalent to surrounding agricultural production.

Comment: Annual payments would be made under a lease.

- 8) A board should be established to mediate or arbitrate disputes concerning waterfowl production area easements. The board would consist of: one wildlife representative, one farmer, and one businessperson. Decisions of the board would be binding.
- 9) Waterfowl production areas should be described by metes and bounds, or traditional description (e.g. NW¼NW¼NW¼ of Section ...).
- 10) All easements must be recorded with the State Water Commission so that a statewide inventory may be maintained.
- 11) The Fish and Wildlife Service should be required to act within a specific period so that the FWS cannot drag out (and kill) a project.
- 12) Prior to approval of any lease or purchase, it would be advisable that a form of counseling be made available to the farmer and/or (owner, seller). A 30-day public notice should be given prior to approval.

\* \* \* \* \*

Page 10

Proposed Agreement: V. DELINEATION OF PRE-1976 WETLAND EASEMENTS TAKEN UNDER THE SMALL WETLANDS ACQUISITION PROGRAM

Commissioner William Guy: Suggested the word "DELINEATION" be defined.

\* \* \* \* \*

Page 10

Proposed Agreement: V. B. Delineation

"It is agreed by North Dakota and the FWS that the FWS will delineate pre-1976 wetland easements on a case-by-case basis, if requested to do so by the landowner or the Governor. ..."

Commissioner Kent Jones: Suggested the Governor appoint a representative of the State of North Dakota to consider the delineation of pre-1976 wetland easements on a case-by-case basis.

\* \* \* \* \*

Page 10

Proposed Agreement: V. D. Change in Ownership

Commissioner Richard Backes: Suggested that Notice to the Public apply in a change of ownership.

\* \* \* \* \*

Page 11

Proposed Agreement: VI. B. Wetland Habitat Enhancement Program

"... It is agreed by the Fish and Wildlife Service that the FWS develop a program by which it will offer to landowners who have signed perpetual easements under the small wetlands acquisition program a 10-year lease agreement for upland around existing wetlands. ..."

Commissioner Jerome Spaeth: Questioned why it is necessary to limit it to perpetual easements? Commissioner Spaeth suggested deleting "perpetual" and have this same agreement with all easements.

Commissioner Spaeth suggested language be included in VI. B. as follows: "If the Fish and Wildlife Service do not make their payments thirty days when due this would nullify any or all agreements."

\* \* \* \* \*

Page 12

No comment.

Page 13

No comment.

Page 14

Proposed Agreement: IX. B. DEPREDATION CONTROL

Commissioner Richard Backes: Suggested Fish and Wildlife Service file an annual depredation report to county commissioners, water resource districts, and the North Dakota Agriculture Commission on depredation efforts in each county.

\* \* \* \* \*

Page 15

Proposed Agreement: X. WEED CONTROL

Comment by Richard Moun (in audience): Suggested a definition of the word "weeds" be included. A specific definition of "weeds" would avoid any confusion in the definition

between the landowner and the Fish and Wildlife Service.

\* \* \* \* \*

Page 16

Proposed Agreement: XI. B. Land Inventory

"... The Governor will request the FWS to prepare such inventory if drought conditions appear to be imminent. ..."

Commissioner William Guy: Suggested that the Governor request the Fish and Wildlife Service to maintain a constant inventory so that it can be called upon if drought conditions appear to be imminent.

Comment by Commissioner Guy: If the Governor requests them to prepare an inventory it may be too late to apply to haying in a drought condition.

\* \* \* \* \*

Page 16

Proposed Agreement: XI. C. Guidelines For Haying

"... FWS fee lands will not be open for haying prior to July 15 of any given year. ..."

Commissioner William Guy: Suggested the July 15 date be reconsidered to an earlier date.

Commissioner William Guy In a very dry year hay, especially alfalfa, loses almost all of its nutritional value by July 15. Even though migratory birds require that much time to mature, the welfare of a farmer living next to the Fish and Wildlife fee land must be considered.

Comment by Commissioner Backes: Stated he thinks migratory birds leave those areas sooner in a dry year than in a wet year and supported Commissioner Guy's suggestion to reconsider the July 15 date to July 1.

\* \* \* \* \*

Page 17

Proposed Agreement: XII. B. Uniform Classification System

"... It is agreed that the North Dakota Game and Fish Commissioner, the State Engineer, and FWS

will develop a uniform classification system for wetlands. ..."

Commissioner Jerome Spaeth: Suggested the Soil Conservation Service be included to develop a uniform classification system for wetlands.

Comment by Commissioner Spaeth: The Soil Conservation Service already has a system. This system should concur with the SCS system because they are experts in this field and if at all possible both of the systems should work together.

\* \* \* \* \*

Page 18

No comment.