

MINUTES

North Dakota State Water Commission
Bismarck, North Dakota

March 15, 1983

The North Dakota State Water Commission held a meeting in the Lower Level Conference Room of the State Office Building, Bismarck, North Dakota, on March 15, 1983. Governor-Chairman, Allen I. Olson, called the meeting to order at 9:30 a.m., and requested Secretary, Vernon Fahy, to present the agenda.

MEMBERS PRESENT:

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

OTHERS PRESENT:

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

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

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

CONSIDERATION OF MINUTES
OF FEBRUARY 11, 1983 MEETING -
APPROVED

The minutes of the February 11, 1983 meeting were not reviewed. The minutes were approved by the following motion:

It was moved by Commissioner Larson, seconded by Commissioner Bjornson, and unanimously carried, that the minutes of February 11, 1983 be approved as presented.

CONTINUED DISCUSSION OF THE
NOKOTA COMPANY APPLICATION
FOR A WATER PERMIT FOR
INDUSTRIAL USE
(SWC Water Permit No. 3508)

Secretary Fahy read the following recommendation of the State Engineer for consideration by the State Water Commission in its deliberations of the application filed by The Nokota Company for a

water permit for industrial use appropriating 16,800 acre-feet of water from Lake Sakakawea:

- 1) Conditions are written to provide protection when a plant begins its development which is usually several years in the future. Language used is deliberately general in order to provide maximum flexibility to the State in the protection of its interests.
- 2) Several major permits have already been approved with these conditions and we believe consistency in the application of conditions is important.
- 3) Applicants are not precluded from seeking an amendment in their permits if conditions warrant change due to unforeseeable change in technology, legislation or method of operation.
- 4) We have made changes where necessary to recognize the difference in status between Nokota and the existing utility-type permit holders.
- 5) We have considered the detailed testimony of the applicant and we do not believe all of the revisions recommended merit further consideration.
- 6) The conditions recommended for inclusion in the contract with The Nokota Company by the State Engineer are in conformance with State law and are in accordance with the policies and practices of the State Water Commission and the State Engineer.
- 7) I recommend approval of The Nokota Company application with the conditions as recommended by the State Engineer.

The Commission members then heard a statement made by former Governor, Arthur Link, indicating that his appearance before the Commission is made in the interest of the State and relative to discussion of the proposed conditions under consideration for the Basin Electric and The Nokota Company's water permit applications. He stated that he is pleased that the recommendation of the State Engineer, and hopefully supported by the Commission, includes the continuance of the conditions. He noted that the basic conditions that became a part of the

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conditional water permits for gasification purposes were the result of extensive and deliberate research and development. The conditions were developed when the State was very much concerned about the use of its water and the impacts on the land and the environment that the energy development would have. The conditions were a culmination of the best thinking and the attitudes of both the developers and those in State Government. He indicated that the basic conditions are sound and essential and have resulted in a good relationship between the State of North Dakota and those Companies who are already operating. Mr. Link said it would be unfortunate if these basic conditions were modified today. He concluded by saying he could not encourage the Commission too strongly to support and maintain the proposed conditions, and if a conditional water permit is granted to Basin Electric and The Nokota Company, that the conditions be required to be a part of the permit.

Mr. Galen Andersen, President of The Nokota Company, stated that his Company does not object to the proposed conditions being considered for attachment if the application is approved. His main concern is that there have been a number of legal and legislative changes since the basic conditions were first attached to conditional water permits in 1976 and wanted to point these changes out to the Commission when they were considering conditions to attach to The Nokota application.

Secretary Fahy stated that The Nokota Company had initially applied for a permit to produce methanol, but in later discussions they requested to have this expanded to include the production of synthetic natural gas. This request was included in the conditions. He said we need to be specific in the use, but if in the future the Company wishes to produce other products, it would be necessary to apply for an amendemnt to the permit which would be acted on at that time. He noted there is a request for an amendment of this same nature from ANG pending before the Commission for their consideration at this meeting.

The Commission then entered into a brief discussion relative to the State Engineer's recommendation that "Applicants are not precluded from seeking an amendment in their permits if conditions warrant change due to unforeseeable change in technology, legislation or method of operation." Governor Olson indicated that, if in the future, the Company desires an amendment to their permit, that such request would be considered upon receipt of a request. He said he could see no reason why this Commission, or any Commission that would succeed it, would have any rigid position. He said the concern is that the water resource is a public resource and that through the State Water Commission the public has an interest in the type of use to which the water will be put.

Mr. Andersen commented in the discussion that his Company has discussed the possibility of becoming a commodity producer in the future, although the type of plant and the water use would remain the same.

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It was moved by Commissioner Kramer and seconded by Commissioners Schank and Vculek that The Nokota Company be granted a conditional water permit to appropriate 16,800 acre-feet of water annually from Lake Sakakawea for industrial use, subject to the approved Contract and thirteen (13) Conditions which shall become a part of such conditional water permit.

In discussion of the motion, Commissioner Larson expressed concern that if these conditions are attached to this permit, there should be an understanding between the Company and the Water Commission that if some emergency situation arises where they have to go into a wider variety of products and request an amendment to their permit that the State Water Commission would expedite their request for permission for these additional products.

Governor Olson replied that a request has been received from the ANG Company for an amendment to their permit which the Commission will be considering at this meeting, and assured The Nokota Company, and any other Company, that they could expect the same expeditious consideration if they would submit a request for an amendment to their permits.

Commissioner Bjornson requested the minutes to reflect that at the February 11, 1983 meeting in Killdeer, testimony was received from the Bjornson Land Company in Bismarck and she indicated this Company is no relation to her, and that she is not acquainted with nor had any part of the presentation that was made.

The Chairman called the question on the motion; all members voted aye.
The motion unanimously carried.

CONSIDERATION OF REQUEST
FROM ANG COAL GASIFICATION
COMPANY FOR AMENDMENT TO
WATER PERMIT
(SWC Water Permit No. 1901A)

Secretary Fahy presented a request for the Commission's consideration from Mr. Noel Mermer of the ANG Coal Gasification Company in which the intent is expressed to file a request for an amendment to allow

that plant to produce methanol. The letter indicated that at this time a request is not being made for the change but rather to receive concurrence that such a change can be made.

It was the consensus of the Commission members that the State Engineer be directed to respond to Mr. Mermer's letter that in the event a request for an amendment is filed, such request is within the parameters outlined by the State Water Commission and will be considered at the time of request.

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

Rosellen Sand, Assistant Attorney General for the State Water Commission, reported that the Red River dikes litigation case was filed in June, 1982, and we have

been in Federal Court since that time trying to get back to State Court. In January, 1983, a motion was argued in Federal Court to bring the case back to State Court and are expecting the Judge to make his decision in the near future. Depending upon the Judge's decision, it is anticipated the trial could begin sometime during 1984-1986.

REPORT ON EFFECTS OF
RESCISSION OF ORDER
ON DRAINAGE IN RED
RIVER VALLEY
(SWC Project No. 1053)

On June 16, 1982, the State Water Commission approved Administrative Order No. 82-1. That order rescinded Order No. 78-1, which declared that all proposed drainage projects within the Red River

Watershed of statewide significance. A further requirement of that action was that the State Engineer report back to the Commission regarding the effects of the order.

Secretary Fahy stated that overall the effect of the rescission has been positive and there has not been a dramatic increase or decrease in the number of applications to drain. The local water resource districts are evaluating the applications in accordance with the State Engineer's drainage rules, and as they were intended by the Legislature. Drainage projects not of statewide and interdistrict significance fall under their jurisdiction and are processed by local water resource districts with minimum interference from the State Engineer. He said that we have given and continue to give local resource districts technical assistance on request. We do not make decisions for the local resource districts, however, upon request we recommend a course of action along with the reasoning for our recommendations.

CONSIDERATION OF AGENCY
FINANCIAL STATEMENT

Matt Emerson, Assistant Secretary for the State Water Commission, presented and discussed the

agency's financial statement. He indicated that the funds that have been expended thus far in the biennium in the various accounts are in line with the percentage of time that has elapsed. In discussion of the projects authorized report, Dave Sprynczynatyk updated the Commission members on the progress of Dead Colt Creek project, English Coulee, Apple Creek and Beulah Dam projects.

LEGISLATIVE REPORT

Secretary Fahy updated the Commission members on legislation that affects the State Water Commission and the State Engineer. The Commission entered into a brief discussion relative to the Southwest

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Pipeline Project legislation. Bob Dorothy, Project Manager for the Project, indicated the three bills relating to this project were heard in the Senate Appropriations and Natural Resources Committees, amended, and passed the Senate 52-0. The bills, as amended, are: S.B. 2251, which is the authorization of the project, was amended to provide that if industrial water was sold from the pipeline that the minimum payment that any industry would have to make would be at least the proportionate cost based on the users proportionate share of the water that passed through the pipeline. S.B. 2032 allows for a \$6 million appropriation for final design and right-of-way acquisition and other necessary things to prepare for the construction of the project. This bill was amended to provide that 40 percent of the engineering is to be awarded to North Dakota engineers who have maintained a principal office in North Dakota for at least a period of five years. S.B. 2342 would provide for the bonding of the Project and increasing the allocation of oil extraction tax revenues to the Resources Trust Fund from 10 to 25 percent. This bill was amended to provide for 15 percent of the oil extraction tax to go into the Resources Trust Fund.

Mr. Dorothy reported that hearings were held on the three bills in the House Appropriations and Natural Resource Committees on March 3, but to date no action has been taken on the bills.

The Commission recessed their meeting at 12:00 noon; meeting reconvened at 1:00 P.M.

PRESENTATION OF RECOGNITION
AWARD FROM FEDERAL EMERGENCY
MANAGEMENT AGENCY

Secretary Fahy stated that the North Dakota State Water Commission has recently completed its second full project performance period for the State Assistance Program and a review of the work products for this period has indicated that this agency has matched or exceeded Regional expectations in promoting responsible floodplain management. He presented a Certificate of Appreciation from the Federal Emergency Management Agency which states "For exceptional achievement in the implementation of Floodplain Management during Year II of the State Assistance Program and the National Flood Insurance Program. Through the Community Services element, the State has matched or exceeded Regional expectations and has made significant accomplishments in the areas of Hazard Mitigation and Floodplain Management. The assistance provided the Local Officials has been highly beneficial in promoting reduction of flood losses and potential life threats to the people of North Dakota and FEMA Region VIII."

Secretary Fahy also indicated that Mary Fran Myers of his staff has received an award for her outstanding and significant contribution to the overall goals of both the National Flood Insurance Program and the State Assistance Program.

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CONTINUED CONSIDERATION OF
WATER PERMIT APPLICATION
FILED BY BASIN ELECTRIC
POWER COOPERATIVE
(SWC Water Permit No. 3370)

Secretary Fahy indicated that since the Commission's last meeting in February, he and members of his staff and representatives of Basin Electric Power Cooperative have met on several occasions to discuss conditions which could be attached if a permit were granted.

Mr. Jim Grahl, Michael Hinman and David Coon of Basin Electric were introduced. Mr. Hinman updated the Commission members on changes that have been made in the proposed project since the hearing, and reported on the status of construction on the first two units. The first unit is now 98.9 percent complete and the second unit is 45.2 percent complete. In January, 1983, there were 825 workers at the construction site, of which about 60 percent were North Dakota residents and about 10.8 percent were from Mercer County. On January 13, 1983, the State Health Department granted the Company a construction permit for Unit 3.

Mr. Hinman indicated that it has now been determined that construction may not be completed until 1991 or 1992 and in the proposed conditions it allows the Company a period of six years to apply the water to beneficial use. For this reason, that completion of the construction of the project may be delayed, it was requested that a period of ten years be considered to apply the water to beneficial use. Mr. Hinman indicated that the proposed conditions have been discussed at some length with Commission staff and have found them acceptable and consistent with conditions attached to permits for Units 1 and 2.

Mr. Coon discussed the accumulative effects of water withdrawals for Unit 3. He indicated that based upon the work that was conducted in the late 1970's and based upon the design and location of the structure, it is felt there will be no additional accumulative impacts to the aquatic resources within the bay.

It was recommended by the State Engineer that Basin Electric's request to extend the beneficial use date to a period of ten years be approved, and recommended approval of the application with the amended conditions as recommended by the State Engineer.

It was moved by Commissioner Larson, seconded by Commissioner Jacobson, and unanimously carried, that a conditional water permit be granted to Basin Electric Power Cooperative to appropriate 9,000 acre-feet of water annually from Lake Sakakawea for industrial use, subject to the Contract and amended thirteen (13)

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Conditions which shall hereby be made
a part of this Conditional Water Permit.

There being no further business to
come before the Commission, the meeting was adjourned at 1:30 p.m.


Allen I. Olson
Governor-Chairman

ATTEST:


Vernon Fahy
State Engineer and Secretary

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