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June 25, 2008

**VIA Overnight Delivery**

Ms. Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
State Capitol  
Bismarck, ND 58505-0480

**RE: PSC Case No. PU-08-194, In the Matter of the Application for Certificate of Public Convenience and Necessity of NuStar Pipeline Operating Partnership L.P.**

Dear Ms. Jeffcoat-Sacco:

Attached for filing in the above-captioned matter, please find the City of Fargo's:

- Petition to Intervene to Appear as a Party and Comments
- Request for Hearing.

Thank you for your assistance.

Sincerely,

**DUNCAN OSTRANDER & DINGESS P.C.**

By:



John M. Dingess  
[jdingess@dodpc.com](mailto:jdingess@dodpc.com)

JMD:pm  
Attachments

Illona Jeffcoat-Sacco  
June 25, 2008  
Page 2

cc: William W. Binek, Esq.  
Al Wahl, Administrative Law Judge  
Erik R. Johnson, Esq.  
Joe Graham, Tarriffs & Regulatory Planning Director, NuStar  
Mary F. Morgan, Senior Vice President, NuStar

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**NuSTAR PIPELINE OPERATING PARTNERSHIP L.P.     )**  
**NORTHERN PRODUCT SYSTEM                             )**  
**PUBLIC CONVENIENCE AND NECESSITY                     )**

**Case No. PU-08-194**

**REQUEST FOR HEARING**

**APPEARANCES**

Commissioners Susan E. Wefald, Tony Clark, and Kevin Cramer

Joe Graham, Tarriffs & Regulatory Planning Director, NuStar Pipeline Operating Partnership, LP, PO Box 781609, San Antonio, TX 78278

Mary F. Morgan, Senior Vice President, NuStar Pipeline Operating Partnership, LP, PO Box 781609, San Antonio, TX 78278

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, ND 58505, on behalf of the Public Service Commission

Al Wahl, Office of Administrative Hearings, 1707 North 9<sup>th</sup> Street, Bismarck, ND 58501  
As Procedural Hearing Officer

Erik R. Johnson, Erik R. Johnson & Assoc, Ltd., 505 Broadway, Suite 206, Fargo, ND 58102, as Fargo City Attorney

John M. Dingess, Duncan Ostrander & Dingess, P.C., 3600 S Yosemite St, Suite 500, Denver, CO 80237-1829, as Special Counsel to the City of Fargo

**INTRODUCTION**

The City of Fargo, North Dakota, through its undersigned counsel, respectfully requests a hearing pursuant to the Notice of Opportunity for Hearing published in the *Fargo Forum* on or about the 21st day of May, 2008. This Request for Hearing is submitted together with a Petition to Intervene and Comments concerning the Commission's consideration of the above-captioned matter relating to the requests of NuStar Pipeline Operating Partnership L.P. ("NuStar POP") (formerly Kaneb Pipe Line Operating Partnership L.P.) for a certificate of public convenience and necessity for operation of the Northern Product System ("System"). According to the

application filed herein, the System is a 50-year-old pipeline to transport petroleum products from Mandan to the eastern boundary of the state of North Dakota, thence to Minnesota. On information and belief, the System is also known as the Center North System, *see* <http://www.nustarenergy.com/Pipeline%20Data%20Sheets/CentralNorthSystem.pdf> and the North Refined Products Pipeline Systems, *see* [http://www.nustarenergy.com/company/Operations%20Images/LPOperations\\_Map101006.jpg](http://www.nustarenergy.com/company/Operations%20Images/LPOperations_Map101006.jpg) and the North Pipeline, *see* first attachment to Application (Exhibit B, 10-K filing) at page 13.

The City of Fargo respectfully submits the operation of the System petroleum pipeline along the existing route presents potential public health and safety risks that may adversely affect the welfare of a substantial number of the citizens of North Dakota due to undesirable impacts upon the water supply of the City of Fargo and other North Dakota communities who will rely on water resources that either arise in or flow through Lake Ashtabula, the Sheyenne River Basin, and the Red River Basin, both now and in the future. Soil contamination within the City of Fargo is also a risk from leaks or spills. If adequate protection of these resources is not made part of applicant's operation of the System petroleum pipeline, Fargo respectfully requests the Commission deny any certification of public convenience and necessity. In order to present its concerns, the City of Fargo therefore respectfully requests the Public Service Commission conduct a hearing.

### **REASONS FOR HEARING**

1. The City of Fargo has both legal interests and public health interests that may be substantially affected by the operation of the System petroleum pipeline. The System pipeline may cross sources of public water supply, to-wit: Sheyenne River near the outlet of Lake Ashtabula, the Red River, and tributaries to said rivers.

2. The map published with the Commission's public notice stops in Barnes County, State of North Dakota, but the predecessor Kaneb Pipe Line Operating Partnership L.P., operated a line similarly situated which continued through the Fargo area, across the Red River into Minnesota. The application indicates that the structure formerly known as the Kaneb Pipe Line is the same structure now denominated the Northern Product System, and that said structure extends through Cass County at or near the City of Fargo and under the Red River.

3. Pursuant to the Commission's published Notice, among the issues to be considered include, among others:

- a. fitness and ability of the applicant to provide the service,
- b. adequacy of the proposed service, and
- c. technical, financial and managerial ability of the applicant to provide the service.

4. On information and belief, NuStar POP acquired the Kanab pipeline recently and thus has only a short history of operating this particular pipeline. NuStar POP may itself be a new entity with little or no significant history operating pipelines containing hazardous liquids; the application and its appended 182 pages of exhibits evidence many changes of hands and new entity formation. Given its recent formation, NuStar POP also appears to lack significant history operating pipelines which are at, near, or past the end of their projected useful life. The Commission must determine whether NuStar POP is fit and able to operate the 50-year-old pipeline in a manner which secures the safety of Fargo's water resources and soils.

5. On information and belief, NuStar Logistics, an entity closely related to NuStar POP, recently incurred substantial debt in the form of bonds with a very low rating, such that this Commission should require applicant to make a public record of its financial ability to fund the potential adverse consequences of operating an aged hazardous liquid pipeline.

6. Fargo incorporates as though fully set forth herein the statements contained in its accompanying Petition to Intervene and Comments.

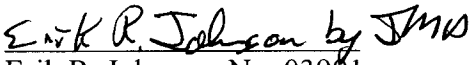
#### **AUTHORITY OF THE COMMISSION**

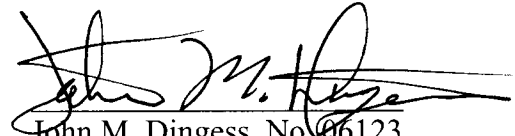
The power of this Commission includes authority to fix safety conditions by order after hearing is set forth at NDCC § 49-02-04. The Commission is authorized to hold hearings at NDCC 49-02-02-5.

#### **CONCLUSION**

Applicant's North Product System petroleum pipeline crosses the Sheyenne River near the outlet of Lake Ashtabula as well as the Red River. As set forth in the foregoing sections, and in the accompanying Petition to Intervene, the location of the aged pipeline on this course presents real dangers to the water supply of Fargo and other North Dakotans. Therefore, this Commission should hold public hearings so that the evidence supplied to the Commission may be tested by cross examination, and met with additional outside information.

Respectfully submitted this 25th day of June, 2008.

  
Erik R. Johnson, No. 03901  
Erik R. Johnson & Assoc, Ltd.  
505 Broadway, Suite 206  
Fargo, ND 58102  
Phone: 701-280-1901  
ejohnson@lawfargo.com  
**Fargo City Attorney**



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Duncan Ostrander & Dingess, P.C.  
3600 S Yosemite St, Suite 500  
Denver, CO 80237-1829  
Phone 303-779-0200  
jdingess@dodpc.com  
**Special Counsel**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

NuSTAR PIPELINE OPERATING PARTNERSHIP L.P.     )  
NORTHERN PRODUCT SYSTEM                     )     **Case No. PU-08-194**  
PUBLIC CONVENIENCE AND NECESSITY         )

**PETITION TO INTERVENE TO APPEAR AS A PARTY  
and  
COMMENTS**

**APPEARANCES**

Commissioners Susan E. Wefald, Tony Clark, and Kevin Cramer

Joe Graham, Tarriffs & Regulatory Planning Director, NuStar Pipeline Operating Partnership, LP, PO Box 781609, San Antonio, TX 78278

Mary F. Morgan, Senior Vice President, NuStar Pipeline Operating Partnership, LP, PO Box 781609, San Antonio, TX 78278

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, ND 58505, on behalf of the Public Service Commission

Al Wahl, Office of Administrative Hearings, 1707 North 9<sup>th</sup> Street, Bismarck, ND 58501  
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John M. Dingess, Duncan Ostrander & Dingess, P.C., 3600 S Yosemite St, Suite 500, Denver, CO 80237-1829, as Special Counsel to the City of Fargo

**INTRODUCTION**

Pursuant to NDAC 62-02-02-05, the City of Fargo, North Dakota, through its undersigned counsel, respectfully submits the Petition contained herein and attached materials to the North Dakota Public Service Commission concerning the Commission's consideration of the

above-captioned matter relating to the requests of NuStar Pipeline Operating Partnership L.P. (“Applicant”) (formerly Kaneb Pipe Line Operating Partnership L.P.) for a certificate of public convenience and necessity for operation of the Northern Product System (“System”). According to the Application filed herein, the System is a common carrier pipeline for the transport of refined petroleum from Mandan to the eastern boundary of the state of North Dakota, thence to Minnesota. On information and belief, the System is also known as the Center North System, *see* <http://www.nustarenergy.com/Pipeline%20Data%20Sheets/CentralNorthSystem.pdf>, the North Refined Products Pipeline Systems, *see* [http://www.nustarenergy.com/company/Operations%20Images/LPOperations\\_Map101006.jpg](http://www.nustarenergy.com/company/Operations%20Images/LPOperations_Map101006.jpg) and the North Pipeline, *see* first attachment to Application (Exhibit B, 10-K filing) at page 13.

#### **A. GROUNDS FOR INTERVENTION**

The City of Fargo respectfully submits that the operation of Applicant’s petroleum pipeline along the existing route presents potential public health and safety risks that may adversely affect the welfare of a substantial number of the citizens of North Dakota due to undesirable impacts upon the water supply of the City of Fargo and other North Dakota communities who will rely on water resources that either arise in or flow through Lake Ashtabula, the Sheyenne River Basin, and the Red River Basin, both now and in the future. If adequate protection of these water resources is not made part of Applicant’s operation of the System petroleum pipeline, Fargo respectfully requests the Commission deny any certification of public convenience and necessity. In order to present its concerns, the City of Fargo therefore respectfully requests the Public Service Commission grant Fargo leave to appear as a party in these matters in accordance with N.D.A.C. 69-02-02-05.

#### **B. POSITION AND INTEREST OF THE CITY OF FARGO AND OTHER MUNICIPALITIES**

1. The City of Fargo has both legal interests and public health interests that may be substantially affected by these proceedings.

2. The System pipeline crosses sources of public water supply, to-wit: Sheyenne River near the outlet of Lake Ashtabula, the Red River, and tributary streams to both Rivers. The published map stops in Barnes County but the application indicates that the petroleum pipeline continues through Barnes County across Cass County to the Minnesota border.

3. Fargo maintains a municipal water treatment and distribution system that presently provides potable water service to a population in excess of 100,000 people. Fargo reasonably expects this service obligation to increase and a service population as high as 250,000 people in the next 50 years may be expected.

4. Presently the City of Fargo operates and maintains water intake facilities on both the Red River of the North and the Sheyenne River. The Red River has historically provided the majority of Fargo’s water supply, and the resources of the Sheyenne River are used on a regular basis, as well, having most recently supplied water to the City’s inhabitants in the summer of

2007. The supply of water in surface streams is variable. Public health and safety require, and prudence dictates, that whenever possible a major water supplier should diversify its portfolio of water sources. The water resources of the Sheyenne River and the Red River are critical to Fargo's ability to provide a dependable supply of potable water to its inhabitants and those relying on its system for water service. Copies of the North Dakota water permits for Fargo's intake facilities are attached as Exhibit A (Sheyenne River) and Exhibit B (Red River).<sup>1</sup>

5. In addition to Fargo's permits to make direct withdrawals from the Sheyenne River and the Red River, Fargo also is the owner of a North Dakota water permit for water stored within Lake Ashtabula. Lake Ashtabula is the name given to the water impoundment that lies behind the U.S. Army Corps of Engineers Baldhill Dam that is located northeast of Valley City, North Dakota, in Barnes County. A copy of Fargo's perfected Lake Ashtabula's water storage permit is enclosed as Exhibit C.

6. The North Dakota communities of Grand Forks, Valley City, West Fargo, and Lisbon also hold valid Lake Ashtabula water storage permits which when combined with Fargo's storage permit total 63,916 Acre-Feet of water for the provision of water for their municipal needs.<sup>2</sup> (One Acre-Foot equals 325,851 gallons.) These permits reflect not only the critical importance to public health and safety played by Lake Ashtabula, the Sheyenne River Basin, and the Red River in much of North Dakota but also the monetary contributions made by these communities to the construction of the Baldhill facility. Thus, Fargo and several other municipalities within the state of North Dakota have both a public health and a financial interest in the present water resources of Lake Ashtabula, the Sheyenne River Basin, and the Red River.

7. In addition to the present resources of Lake Ashtabula, the Sheyenne River, and the Red River, Fargo, along with nearly the entire eastern third of the state of North Dakota and three municipalities within the state of Minnesota, are members of the Lake Agassiz Water Authority ("LAWA"). LAWA, in connection with the Garrison Water Conservancy District and

<sup>1</sup> The conditional permit as modified and Fargo's 2007 request to make the water right absolute compose Exhibit A; the Application and conditional permit comprise Exhibit B.

<sup>2</sup>

Permit No.	City	Acre-Feet
1091	Fargo	35,880
835A	Grand Forks	20,023
1096	Valley City	6,686
921	West Fargo	954
3588	Lisbon	373
<b>Total</b>		<b>63,916</b>

other entities, are in the final steps of an EIS process for the Red River Valley Water Supply Project (“RRVWSP”). The RRVWSP in most of the proposed alternative forms would transport water from the Missouri River Basin through existing facilities of the Garrison Water Conservancy District to treatment and pipeline facilities to be constructed that would bring the water to the Sheyenne River above Lake Ashtabula. From that location, the water transported would be placed into the Sheyenne River for purposes of both storage in Lake Ashtabula and for the use of Fargo and other downstream LAWA members. Fargo and the other LAWA members have already expended substantial sums on the RRVWSP. The final EIS issued in December 2007. Ultimately, it is expected that construction costs for the RRVWSP will approximate \$400 million. Accordingly, Fargo and the other members of LAWA have both a public health and a financial interest in the future status of the water resources of Lake Ashtabula, the Sheyenne River Basin, and the Red River Basin.

8. The critical importance of these water resources to Fargo and other areas of North Dakota served by Fargo’s water system makes it vital for Fargo to know the exact location of the System petroleum pipeline vis-à-vis the Sheyenne River and the Red River, as well as the details of the pipeline, including, by way of example, depth beneath the river, the nature of the terrain in which the pipeline is located, emergency response measures in the areas which may affect Fargo’s water supply, nature of the hazardous liquids to be transported through the pipeline, prospective volumes and pressures of the hazardous liquids.

9. Fargo has met the appropriate legal standards for its Petition required by NDCC § 28-32-25 and NDPSC Rule 69-02-02-05 by showing legal interests which may be substantially affected by the proceeding. Fargo’s intervention will not unduly broaden the issues or delay the proceeding. In recognition of Fargo’s legal interests and in the interests of public health and safety, the Public Service Commission should therefore allow Fargo the opportunity to present evidence for inclusion in the record, and to cross-examine witnesses presented by the Applicant at hearing, if hearing is granted.

### **C. AUTHORITY OF THE COMMISSION**

Authority to fix safety conditions by order after hearing is among the powers of this Commission, as set forth at NDCC § 49-02-04.

### **D. PETITIONER’S COMMENTS AND PROPOSED CONTRIBUTIONS TO HEARING**

Fargo respectfully requests this Commission consider the following comments, concerning which Fargo would present general and technical information, if permitted:

1. According to the application filed herein, the pipeline in issue, now called the North Product System, was built by Amoco in 1958. Applicant calculates depreciation over a maximum period of 40 years, and bases its calculations on the expected useful life of the depreciated asset. [Exhibit B

to Application, page 61] At 50 years of age, the System pipeline is apparently 10 years past the end of its useful life.

2. As a pipeline ages, the probability of failure increases.
3. The economic life of a pipeline is affected by the initial construction methods, protective coating systems and their erosion in use, cathodic protection, the environment in which the pipeline is buried, operating conditions, and the quality and frequency of maintenance.
4. The alignment of the petroleum pipeline across the Sheyenne River at or near Lake Ashtabula, and across the Red River, should be reviewed for protection against potential contamination of the water supply in the event of a leak or rupture of the pipeline. Materials submitted by Applicant indicate that it is a successor in interest to various Kanab entities which have been held responsible for groundwater pollution, *see* Exhibit B, pp. 34-36. This Commission should investigate whether the threshold of risk to the municipal water supplies and soils is acceptable, and, if not, what terms and conditions would provide sufficient safety.
5. Lake Ashtabula, the direct drainage areas leading to Lake Ashtabula, the Sheyenne River, and the Red River are priority sensitive receptors and High Consequence Areas. The proposed petroleum pipeline route traverses the Sheyenne River, the Red River, and tributary streams. Any spill is likely to result in the immediate introduction of petroleum contaminants into these water resources that are the water supply for the city of Fargo and other North Dakota communities, as well as the soils in Fargo.
6. The City of Fargo has not been advised what methods of risk assessment and analysis, if any, have been used by Applicant to determine the range of failure risks and potential spill volumes. This information is essential for Fargo to assess the risk to water resources and that are the water supply for the City of Fargo and other North Dakota communities, as well as risks to soils.
7. The likelihood and volume of a spill event is based upon historical information. The City of Fargo is not in possession of historical information for the North Product System over its 50 year history.
8. The likelihood of failure is, in part, based upon the geologic and other conditions that reflect actual design and construction at and near the place where the pipeline intersects with waterways. Assessing the risks depends on complete and accurate information about these conditions.

9. The City of Fargo does not have information concerning detecting leaks and spills, estimated response times, and proposed response methods in the area where the pipeline interacts with the water supply source.
10. Design standards should be reviewed and modern protections should be put in place by the Public Service Commission as terms of any certificate issued to Applicant.

**E. SUPPORT OR OPPOSITION**

The City of Fargo at this time lacks sufficient information about either the applicant or the System to know whether support for the application is consistent with the health and safety of its citizens, and therefore submits this petition in opposition to the application.

**F. NOTICE ISSUES**

1. Fargo respectfully suggests that a due process issue is present in this matter, in that the map published at the request of applicant as part of the notice of application and opportunity for hearing did not provide adequate notice to all persons potentially affected by the application. Although the application itself states that the pipeline ends in Cass County at North Dakota's border with Minnesota (for this Commission's regulatory purposes), the published map ends in western Barnes County. Persons in Cass County and eastern Barnes County are not placed on notice by this map that their interests may be affected by the application.

2. Publication of a map which omits part of the pipeline in issue is not reasonable notice relative to the nature, scope, and importance of the application. *See* NDCC 49-02-02-5.

3. Publication of a misleading or inaccurate map may be worse than no map at all, in that it could cause an observer to affirmatively conclude the pipeline ends where the map ends, and thus that there is no need to obtain and closely read the application. Petitioner realized the import of the notice only because it was alerted to the full extent of this pipeline incidentally, in the course of its last appearance before this Commission on an unrelated matter.

**CONCLUSION**

Applicant's North Product System transports hazardous liquids across the Sheyenne River Basin and the Red River. As set forth in the foregoing sections, the location of the pipeline on this course presents real dangers to the water supply and soils of Fargo and other North Dakotans. This danger will exist with any leak, either small or catastrophic, if such leak is not promptly closed. Accordingly, Fargo respectfully requests the Public Service Commission to:

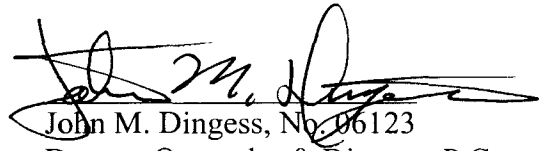
- 1) Grant Fargo leave to appear as a party in these matters,
- 2) Receive the materials submitted herewith and any other materials and testimony that may be presented during the proceedings, and

3) Republish notice with a map showing the entire area of North Dakota traversed by the Applicant's North Product System.

Respectfully submitted this 25th day of June, 2008.

*Erik R. Johnson by JMV*

Erik R. Johnson, No. 03901  
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Denver, CO 80237-1829  
Phone 303-779-0200  
jdingess@dodpc.com  
**Special Counsel**

Permit No. 4718



### STATE OF NORTH DAKOTA CONDITIONAL WATER PERMIT

This conditional water permit authorizes permittee to construct the necessary diversion facilities and to appropriate the water specified below.

1. Name of Applicant City of Fargo  
Mailing Address 200 North 3rd Street  
City Fargo State North Dakota Zip 58102

2. Source of Water Supply: Ground Water  Surface Water   
If Surface Water: 1) Stream Sheyenne River A Tributary of Red River of the North

3. (a) Point of Diversion:  
(1) NW 1/4 of Section 5 Township 138 N., Range 49 W., Cass County

Additional Points of Diversion, if any:

(2) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County

(3) \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ N., Range \_\_\_\_\_ W., \_\_\_\_\_ County

(b) If water is not consumed, estimated quantity of water returned \_\_\_\_\_,  
name of receiving body of water \_\_\_\_\_

and location of discharge point: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 Sec. \_\_\_\_\_, TWP. \_\_\_\_\_, Rge. \_\_\_\_\_

4. Amount of water authorized, rate at which it may be diverted at the points listed and period of use:

(1) 7,000.0 Acre-feet at 25 cfs from January 1 to December 31 inclusive  
(AMOUNT) (RATE) (gpm) (MONTH-DAY) (MONTH-DAY)

(2) \_\_\_\_\_ Acre-feet at \_\_\_\_\_ cfs from \_\_\_\_\_ to \_\_\_\_\_ inclusive  
(AMOUNT) (RATE) (gpm) (MONTH-DAY) (MONTH-DAY)

(3) \_\_\_\_\_ Acre-feet at \_\_\_\_\_ cfs from \_\_\_\_\_ to \_\_\_\_\_ inclusive  
(AMOUNT) (RATE) (gpm) (MONTH-DAY) (MONTH-DAY)

Total amount authorized: 7,000.0 acre-feet at a maximum rate of 25 cfs  
(A total of 5,500.0 acre-feet of water initially applied for shall hereby be held in abeyance.

5. Priority date: August 27, 1993

A total of 5,600.0 acre-feet of water initially applied for shall hereby be denied.)

6. Nature of use:

Municipal X

Rural-Domestic \_\_\_\_\_

Industrial \_\_\_\_\_

Irrigation \_\_\_\_\_

Recreation \_\_\_\_\_

Fish and Wildlife \_\_\_\_\_

Other, Please Specify \_\_\_\_\_



STATE OF NORTH DAKOTA

CONDITIONAL WATER PERMIT NO. 04718

ATTACHMENT "A"

Modification of Condition No. 2

On November 1, 1994, Conditional Water Permit No. 4718 was approved for the annual appropriation of 7,000 acre-feet of water from the Sheyenne River at a pumping rate of 25 cfs for municipal purposes. A total of 5,500 acre-feet is held in abeyance and a total of 5,600 acre-feet was denied.

A condition was placed on Conditional Water Permit No. 4718, which states as follows:

Condition No. 2: No withdrawals are authorized unless the discharge measured at the USGS Gaging Station No. 05059300, Sheyenne River Above Sheyenne River Diversion Near Horace, ND, is at least 50 cubic feet per second (cfs). The State Engineer reserves the right to adjust the minimum flow required.

On July 31, 2006, Condition No. 2 was modified to read as follows:

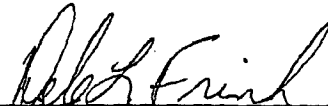
Withdrawals of water from the Sheyenne River are authorized in accordance with the conditions attached to this water permit. The discharge will be measured at the USGS Gaging Station No. 05059300, Sheyenne River Above Sheyenne River Diversion Near Horace, ND. The following table lists various discharges at the gage and the authorized rate at which water may be withdrawn. The State Engineer reserves the right to adjust the minimum flow required.

<u>Flow at gage (cfs)</u>	<u>Pumping Rate (cfs)</u>	<u>Flow at gage (cfs)</u>	<u>Pumping Rate (cfs)</u>
Above 50 cfs	25	37	12
50	25	36	11
49	24	35	10
48	23	34	9
47	22	33	8
46	21	32	7
45	20	31	6
44	19	30	5
43	18	29	4
42	17	28	3
41	16	27	2
40	15	26	1
39	14	25 and below	0
38	13		

On August 3, 2006, the State Engineer hereby approves the modification of Condition No. 2 as stated above. All other provisions and conditions stipulated on Conditional Water Permit No. 4718 remain unchanged.

SEAL



  
Dale L. Frink  
State Engineer

Date: August 3, 2006



Fargo Water Treatment Plant  
435 14th Avenue South  
Fargo, North Dakota 58103  
Phone (701) 241-1469  
FAX (701) 241-8110

March 5, 2007

Mr. Dale Frink, Sate Engineer  
North Dakota State Water Commission  
900 East Boulevard Avenue  
Bismarck, ND 58505-0850

Re: Perfection of Conditional Water Permit No. 4718

Dear Mr. Frink:

Attached, please find daily usage records for calendar year 2006 under Conditional Water Permit No. 4718. This information is submitted in support of the City of Fargo's request for perfection of Permit No. 4718. As you can see, the total Shyenne River withdrawals for beneficial use was 6,969.15 acre-feet.

Your consideration in this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bruce P. Grubb".

Bruce P. Grubb  
Enterprise Director

CC: Dennis Walaker, Mayor  
Pat Zavoral, city Administrator  
Ron Hendrickson, Water Plant Superintendent  
Erik Johnson, City Attorney  
John Dingess, Duncan, Ostrander & Dingess P. C.

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for Jan (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 472,335,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	7,900,000		480,235,000
2				24	7,867,000		488,102,000
3				24	7,760,000		495,862,000
4				24	7,799,000		503,661,000
5				24	7,905,000		511,566,000
6				24	8,034,000		519,600,000
7				24	7,762,000		527,362,000
8				24	7,804,000		535,166,000
9				24	7,861,000		543,027,000
10				24	7,886,000		550,913,000
11				24	7,872,000		558,785,000
12				24	7,819,000		566,604,000
13				24	7,804,000		574,408,000
14				24	7,791,000		582,199,000
15				24	7,813,000		590,012,000
16				24	7,805,000		597,817,000
17				24	7,763,000		605,580,000
18				24	7,683,000		613,263,000
19				24	7,783,000		621,046,000
20				24	7,659,000		628,705,000
21				24	7,814,000		636,519,000
22				24	7,837,000		644,356,000
23				24	7,745,000		652,101,000
24				24	7,903,000		660,004,000
25				24	7,755,000		667,759,000
26				24	7,878,000		675,637,000
27				24	8,004,000		683,641,000
28				24	7,816,000		691,457,000
29				24	8,044,000		699,501,000
30				24	7,982,000		707,483,000
31				24	7,937,000		715,420,000
<b>Totals</b>					<b>243,085,000</b>		<b>746.00 Acre-Feet</b>

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for Feb (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 715,420,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	8,101,000		723,521,000
2				24	8,066,000		731,587,000
3				24	8,037,000		739,624,000
4				24	8,148,000		747,772,000
5				24	8,213,000		755,985,000
6				24	8,307,000		764,292,000
7			9:00 AM	9	3,140,000		767,432,000
8							
9							
10							
11							
12							
13							
14		11:00 AM		13	4,236,000		771,668,000
15				24	7,713,000		779,381,000
16				24	8,139,000		787,520,000
17				24	7,713,000		795,233,000
18				24	7,906,000		803,139,000
19				24	8,163,000		811,302,000
20				24	8,515,000		819,817,000
21				24	7,507,000		827,324,000
22				24	8,141,000		835,465,000
23				24	8,167,000		843,632,000
24			11:00 AM	11	3,881,000		847,513,000
25							
26							
27							
28							
29							
30							
31							
<b>Totals</b>					<b>132,093,000</b>		<b>405.38 Acre-feet</b>

2006 Total 1,151.38 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for March (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 847,513,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1							
2							
3							
4							
5							
6							
7							
8							
9		11:00 AM		13	4,304,000		851,817,000
10				24	7,713,000		859,530,000
11				24	7,804,000		867,334,000
12				24	7,941,000		875,275,000
13				24	8,223,000		883,498,000
14				24	8,110,000		891,608,000
15				24	7,979,000		899,587,000
16				24	8,033,000		907,620,000
17				24	8,586,000		916,206,000
18				24	8,207,000		924,413,000
19				24	8,144,000		932,557,000
20				24	8,261,000		940,818,000
21				24	7,992,000		948,810,000
22				24	8,129,000		956,939,000
23				24	8,199,000		965,138,000
24				24	7,991,000		973,129,000
25				24	8,181,000		981,310,000
26				24	8,130,000		989,440,000
27				24	8,199,000		997,639,000
28				24	8,335,000		5,974,000
29				24	8,083,000		14,057,000
30				24	8,288,000		22,345,000
31				24	7,970,000		30,315,000
<b>Totals</b>					<b>182,802,000</b>		<b>561.00</b> Acre-feet

2006 Total 1,712.38 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for April (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No  
4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 30,315,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	7,829,000		38,144,000
2				24	7,565,000		45,709,000
3				24	8,289,000		53,998,000
4				24	8,309,000		62,307,000
5				24	8,400,000		70,707,000
6				24	8,328,000		79,035,000
7				24	8,254,000		87,289,000
8				24	8,226,000		95,515,000
9				24	8,111,000		103,626,000
10				24	8,274,000		111,900,000
11				24	8,137,000		120,037,000
12				24	8,224,000		128,261,000
13				24	8,216,000		136,477,000
14				24	8,129,000		144,606,000
15				24	7,944,000		152,550,000
16				24	7,577,000		160,127,000
17				24	7,477,000		167,604,000
18				24	7,774,000		175,378,000
19				24	7,663,000		183,041,000
20				24	7,483,000		190,524,000
21				24	7,851,000		198,375,000
22				24	8,509,000		206,884,000
23				24	8,781,000		215,665,000
24				24	8,682,000		224,347,000
25				24	8,648,000		232,995,000
26				24	8,680,000		241,675,000
27				24	8,798,000		250,473,000
28				24	8,521,000		258,994,000
29				24	8,709,000		267,703,000
30				24	8,339,000		276,042,000
31							
<b>Totals</b>					<b>245,727,000</b>		<b>754.11</b>

2006 Total 2,466.49 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for May (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 276,042,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	8,322,000		284,364,000
2				24	8,130,000		292,494,000
3				24	7,451,000		299,945,000
4				24	8,262,000		308,207,000
5				24	8,344,000		316,551,000
6				24	8,104,000		324,655,000
7				24	7,947,000		332,602,000
8				24	8,010,000		340,612,000
9				24	8,804,000		349,416,000
10				24	6,410,000		355,826,000
11				24	5,382,000		361,208,000
12				24	8,171,000		369,379,000
13				24	8,388,000		377,767,000
14				24	8,151,000		385,918,000
15				24	8,460,000		394,378,000
16				24	8,291,000		402,669,000
17				24	8,353,000		411,022,000
18				24	7,306,000		418,328,000
19				24	2,924,000		421,252,000
20				24	4,876,000		426,128,000
21				24	6,587,000		432,715,000
22	Pipeline leak @ I 29 & I 94			11	3,767,000		436,482,000
23							
24						Flushing	439,255,000
25						Pipeline	2,773,000 Gallons
26		1:00 PM		11	4,313,000		443,568,000
27					9,046,000		452,614,000
28					8,643,000		461,257,000
29					8,586,000		469,843,000
30					8,757,000		478,600,000
31					8,743,000		487,343,000
<b>Totals</b>					<b>208,528,000</b>		<b>639.95</b>

2006 Total 3106.44 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for June (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 487,343,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	8,666,000		496,009,000
2				24	8,610,000		504,619,000
3				24	8,752,000		513,371,000
4				24	8,618,000		521,989,000
5				24	8,799,000		530,788,000
6				24	8,824,000		539,612,000
7				24	8,534,000		548,146,000
8				24	8,792,000		556,938,000
9				24	9,014,000		565,952,000
10				24	8,912,000		574,864,000
11				24	8,903,000		583,767,000
12				24	8,682,000		592,449,000
13				24	8,937,000		601,386,000
14				24	9,032,000		610,418,000
15				24	8,952,000		619,370,000
16				24	8,956,000		628,326,000
17				24	8,410,000		636,736,000
18			1:30 AM	24	464,000		637,200,000
19							
20							
21		9:00 AM		15	9,649,000		646,849,000
22				24	15,366,000		662,215,000
23				24	14,135,000		676,350,000
24				24	9,518,000		685,868,000
25				24	9,379,000		695,247,000
26				24	9,317,000		704,564,000
27				24	9,390,000		713,954,000
28				24	9,209,000		723,163,000
29				24	9,236,000		732,399,000
30				24	9,251,000		741,650,000
31							
<b>Totals</b>					<b>254,307,000</b>		<b>780.44</b>

2006 Total

3886.88 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for  July  (Month)  2006  (Year)

River  Sheyenne  User  City of Fargo  Water Permit No  4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 741,650,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	9,197,000		750,847,000
2				24	9,097,000		759,944,000
3				24	9,111,000		769,055,000
4				24	9,026,000		778,081,000
5				24	9,161,000		787,242,000
6				24	9,026,000		796,268,000
7			9:00 AM	9	3,249,000		799,517,000
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
<b>Totals</b>					<b>57,867,000</b>		<b>177.59</b>

2006 Total 4,064.47 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for  Aug  (Month)  2006  (Year)

River  Sheyenne

User  City of Fargo

Water Permit No  
 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 799,517,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1							
2							
3							
4							
5							
6							801,227,000
7							
8							1,710,000 used flushing pipeline
9							
10							
11							
12							
13							
14							
15		1:30 PM		10.5	4,355,000		805,582,000
16				24	9,021,000		814,603,000
17				24	9,405,000		824,008,000
18				24	9,059,000		833,067,000
19				24	9,162,000		842,229,000
20				24	9,095,000		851,324,000
21				24	8,981,000		860,305,000
22				24	7,176,000		867,481,000
23				24	9,069,000		876,550,000
24				24	9,081,000		885,631,000
25				24	8,861,000		894,492,000
26				24	9,154,000		903,646,000
27				24	8,911,000		912,557,000
28				24	9,039,000		921,596,000
29				24	9,016,000		930,612,000
30				24	9,045,000		939,657,000
31				24	8,774,000		948,431,000
<b>Totals</b>					<b>147,204,000</b>		<b>451.75</b>

2006 Total

4516.22 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for Sept (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 948,431,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	8,797,000		957,228,000
2				24	8,581,000		965,809,000
3				24	8,713,000		974,522,000
4				24	8,508,000		983,030,000
5				24	8,850,000		991,880,000
6				24	8,607,000		1,000,487,000
7				24	8,697,000		9,184,000
8				24	9,010,000		18,194,000
9				24	8,807,000		27,001,000
10				24	8,779,000		35,780,000
11				24	8,472,000		44,252,000
12				24	8,999,000		53,251,000
13				24	8,891,000		62,142,000
14				24	8,811,000		70,953,000
15				24	8,542,000		79,495,000
16				24	8,799,000		88,294,000
17				24	8,761,000		97,055,000
18				24	8,930,000		105,985,000
19				24	8,755,000		114,740,000
20				24	8,508,000		123,248,000
21				24	8,812,000		132,060,000
22				24	8,649,000		140,709,000
23				24	8,559,000		149,268,000
24				24	8,205,000		157,473,000
25				24	8,426,000		165,899,000
26				24	8,880,000		174,779,000
27				24	9,248,000		184,027,000
28				24	8,920,000		192,947,000
29				24	8,835,000		201,782,000
30				24	8,908,000		210,690,000
31							
<b>Totals</b>					<b>262,259,000</b>		<b>804.84</b>

2006 Total

5,321.06 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for Oct (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No  
4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 210,690,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	8,831,000		219,521,000
2				24	9,273,000		228,794,000
3				24	8,824,000		237,618,000
4				24	8,944,000		246,562,000
5				24	8,874,000		255,436,000
6				24	8,927,000		264,363,000
7				24	8,812,000		273,175,000
8				24	8,854,000		282,029,000
9				24	8,522,000		290,551,000
10				24	8,811,000		299,362,000
11				24	8,862,000		308,224,000
12				24	8,833,000		317,057,000
13				24	8,958,000		326,015,000
14				24	8,752,000		334,767,000
15				24	8,920,000		343,687,000
16				24	8,795,000		352,482,000
17				24	8,841,000		361,323,000
18				24	8,856,000		370,179,000
19				24	8,996,000		379,175,000
20				24	8,854,000		388,029,000
21				24	8,971,000		397,000,000
22				24	8,885,000		405,885,000
23				24	8,935,000		414,820,000
24				24	8,976,000		423,796,000
25				24	8,748,000		432,544,000
26				24	8,861,000		441,405,000
27				24	9,073,000		450,478,000
28				24	8,960,000		459,438,000
29				24	9,222,000		468,660,000
30				24	8,906,000		477,566,000
31				24	8,933,000		486,499,000
<b>Totals</b>					<b>275,809,000</b>		<b>846.43</b>

2006 Total 6,167.49 Acre-feet

**NORTH DAKOTA STATE WATER COMMISSION**

Appropriation Use Data Sheet for Nov (Month) 2006 (Year)

River Sheyenne User City of Fargo Water Permit No 4718

Note: Please return this form to the Sate Water Commission (900 East Boulevard, Bismarck, ND 58505) even if no water is used.

Meter- 486,499,000

Date	Pumping Rate (gpm)	Time Pump On	Time Pump Off	Total Pumping Time (Hrs)	Volume Water Pumped (Gallons)	Number of Acres Irrigated	Comments
1				24	8,495,000		494,994,000
2				24	9,106,000		504,100,000
3				24	8,956,000		513,056,000
4				24	8,803,000		521,859,000
5				24	8,854,000		530,713,000
6				24	8,825,000		539,538,000
7				24	8,863,000		548,401,000
8				24	8,925,000		557,326,000
9				24	8,814,000		566,140,000
10				24	8,900,000		575,040,000
11				24	8,737,000		583,777,000
12				24	8,992,000		592,769,000
13				24	7,169,000		599,938,000
14				24	5,057,000		604,995,000
15				24	5,040,000		610,035,000
16				24	5,140,000		615,175,000
17				24	5,086,000		620,261,000
18				24	5,049,000		625,310,000
19				24	5,074,000		630,384,000
20				24	5,006,000		635,390,000
21				24	5,059,000		640,449,000
22				24	5,131,000		645,580,000
23				24	4,985,000		650,565,000
24				24	5,072,000		655,637,000
25			8:00 AM	8	1,686,000		657,323,000
26							
27		10:00 AM		14	4,667,000		661,990,000
28				24	7,957,000		669,947,000
29				24	8,371,000		678,318,000
30				24	8,193,000		686,511,000
31							
<b>Totals</b>					<b>200,012,000</b>		<b>613.81</b>

2006 Total

6,781.3 Acre-feet



OFFICE OF STATE ENGINEER  
STATE OF NORTH DAKOTA



Perfected Water Permit No. 1091

Conditional Permit No. 1091 Priority Date June 27, 1963

Name of Conditional Permit Holder City of Fargo

Address Fargo, North Dakota 58102

Source of Water Stored water from Lake Ashtabula, Sheyenne River, trib. to Red River of the North

Quantity of Water Approved in Conditional Permit 35,880.0 acre-feet Nature of Use Municipal

Date Application Approved and Conditional Permit Issued July 31, 1963

Date Water Beneficially Used 1963

This is to certify that the holder(s) of the conditional permit to divert and appropriate water as indicated above has completed construction of the works as set forth therein. And that the holder(s) of said conditional permit did, on the 20th day of July, 1972 and 19th day of September, 1972, submit proof of the application to beneficial use of 35,880.0 acre feet of water for the following purpose Municipal

Now, therefore, by virtue of the authority vested in me by the laws of the State of North Dakota, I hereby grant and confirm to the City of Fargo of Fargo, North Dakota

holder(s) of said Conditional Permit No. 1091, a right dating from June 27, 1963 to appropriate and divert from at a point located in the NW 1/4 Sec 5, Twp 138, Rge 49; or NW 1/4 Sec 32, Twp 139, Rge 49

a quantity of water limited to the amount that can be beneficially used herein, but not to exceed 35,880.0 acre feet annually for Municipal Use

(Purpose)

and if purpose is irrigation, water is to be applied to the following lands to which this Water Permit is appurtenant:

Sec.	Twp.	Rge.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTAL	
			NEK	NWK	SWK	SEK	NEK	NWK	SWK	SEK	NEK	NWK	SWK	SEK	NEK	NWK	SWK	SEK		
			N/A																	

Estimated return flow to stream 40-50%

This Water Permit is subject to the limitation on the use of water as set forth in the laws of this State and to the rights of prior claimants recognized under the laws of North Dakota, and to the following additional limitations

The right to use water for irrigation set forth herein is limited to the above described lands and is subject to cancellation for nonuse.

WITNESS my hand and seal at Bismarck, North Dakota, this 5th day of July, 1973

(SEAL)

W. C. Emerson  
State Engineer - State of North Dakota

STATE OF NORTH DAKOTA, }  
COUNTY OF BURLEIGH } ss.

On this 5th day of July, 1973, before me a notary public, personally appeared Walter Peterson known to me to be the same person who executed the Perfected Water Permit and acknowledged to me that he executed the same.

W. C. Emerson  
Notary Public



THE STATE OF NORTH DAKOTA, }  
State Engineer's Office } ss.

THIS IS TO CERTIFY that I have examined the foregoing application and have rejected same for the following reason: .....

Witness my hand this ..... day of ....., A. D. 19....

N. B. Sixty Days will be allowed for refiling the application.

.....  
State Engineer.

THE STATE OF NORTH DAKOTA, }  
State Engineer's Office } ss.

THIS IS TO CERTIFY THAT I have examined the foregoing application and do hereby grant the same subject on the basis of the following information and conditions: The prior right of all persons who by compliance with the laws of the State of North Dakota have acquired a right to the use of water must not be injuriously affected by this appropriation.

Date of priority is ..... January 30, 1957 ..... 19....

Proof of publication was received..... October 23, 1957 ..... 19....

Public hearing was held ..... November 4, 1957 ..... 19....  
..... July 1st

The time for completing the work shall terminate on ~~December 31, 1962~~....., and application of water to beneficial use shall terminate within four years thereafter.

The amount of appropriation shall be limited to one cubic foot per second of time for each eighty acres of land reclaimed.

Witness my hand this ..... 26th ..... day of ..... December ..... A. D. 19<sup>57</sup>.....

.....  
*Milo W. Howsen*  
State Engineer.

Approved by the North Dakota State Water Conservation Commission per minutes of meeting held on the ..... 20th ..... day of ..... December ..... 1957.....

.....  
*Milo W. Howsen*  
Sec'y. of N. D State Water Conservation Commission

Permit No. .... 749 .....

APPLICATION FOR A PERMIT TO  
DIVERT AND APPROPRIATE THE  
WATER OF THE STATE OF NORTH  
DAKOTA.

Applicant City of Fargo

Address Fargo, North Dakota

Division in NW <sup>1/4</sup> NE <sup>1/4</sup>

of Sec. 18 T. 139 N. R. 48 W

Source Red River of the North

Acres 109,500 Acre Feet

The State of North Dakota }  
State Engineer's Office } ss.

This instrument was received  
and filed for record on the ..... 30th  
day of January ..... A.D. 19<sup>57</sup>.....  
at ..... 9:00 ..... o'clock ..... A. M.

.....  
*Milo W. Howsen*  
State Engineer

.....  
Bismarck Print. Co.