

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Monday, November 18, 2013

Strom Center, Dickinson State University, 1679 Sixth Avenue West
Dickinson, North Dakota

Senator Tony Grindberg, Chairman, called the meeting to order at 9:30 a.m. CST.

Members present: Senators Tony Grindberg, Ray Holmberg, Gary A. Lee, Larry Luick, Larry J. Robinson; Representatives Ron Guggisberg, Curt Hofstad, Curtiss Kreun, Scott Louser, Naomi Muscha, Jon Nelson, Jim Schmidt, Vicky Steiner

Members absent: Representatives Bill Amerman, Dick Anderson, Todd Porter

Others present: Senator Rich Wardner, member of the Legislative Management, was also in attendance. See [Appendix A](#) for additional persons present.

It was moved by Senator Robinson, seconded by Senator Lee, and carried on a voice vote that the minutes of the September 5, 2013, meeting be approved as distributed.

Dr. D. C. Coston, President, Dickinson State University, welcomed the committee to Dickinson State University and the city of Dickinson.

ECONOMIC DEVELOPMENT

Mr. Gaylon Baker, Executive Vice President, Stark Development Corporation, provided testimony on the effect of water development on economic development. He said the growth in the area is directly tied to the southwest pipeline. He said housing developments need good roads and water. He said the area has poor quality well water. He said every small town in the area is growing--e.g., Richardton, Belfield, Gladstone, and New England. He said this creates a demand for water. He said workforce development comes from people living in homes, and homes need water. He said the production of barley has moved west, but there will never be a malting plant in the west because there is not enough water. He said the main water needs in the area are for personal water needs.

WESTERN AREA WATER SUPPLY AUTHORITY ISSUES

Ms. Karlene Fine, Executive Director, Industrial Commission, provided written testimony ([Appendix B](#)) on the Industrial Commission's responsibilities relating to the Western Area Water Supply Authority. She said the commission has oversight of the money earned from industrial water sales by having reporting on a monthly basis. She said the commission approves water rates for industrial sales, generally on an annual basis. She said the commission approves additional debt that may form the basis of a claim for territorial or franchise protection for industrial water sales. She said the commission may revise loan payments, if cashflow is insufficient to meet debt requirements. She said the commission will provide for the reimbursement of the authority for industrial water depot capital improvements and the costs of delivery of potable water sold at industrial water depots and lateral lines at a cost no greater than the participating member or submember entity rate at the location of the depot or lateral line. She said the commission has reviewed and adopted a rate schedule that was developed and proposed by the Western Area Water Supply Authority. She said these rates will be adjusted at the end of the year.

In response to a question from Senator Holmberg, Ms. Fine said the determination of rates is determined by looking at cost and is not a comparison to other rates in other parts of the state.

Mr. Eric Hardmeyer, President, Bank of North Dakota, provided testimony based on a handout ([Appendix C](#)) on the Western Area Water Supply Authority's debt service with a break-even analysis. He said the level of priority of debt starts with the highest priority of Public Finance Authority state revolving fund loans, then goes to participating members other debt, then goes to baseline 2010 industrial water sales revenue requirements, and then to

state-guaranteed loans. He said the state-guaranteed loans are repaid in the order of Bank of North Dakota loans first, followed by the general fund loan, and followed by the resources trust fund loans. He said the state-guaranteed loans total \$150 million. He said the total debt is \$190,220,825. He said annual break-even sales based on a 79.9 percent profit margin with the remainder going for operation and maintenance begin with approximately \$16 million in 2014. He said the first big year of debt service is in 2015 with annual payments of \$23,370,796 needed with sales of \$29,250,058 needed to meet the payments. He said the annual payments remain near \$21 million until 2020, and the break-even sales remain near \$26 million until 2020.

Mr. Michael Hove, Water Resource Senior Manager, State Engineer's office, gave a presentation ([Appendix D](#)) on water depot use, real-time water use monitoring, and water rates. He said there are 9 operational Western Area Water Supply Authority depots, 2 planned, and 1 available for a total of 12. He said water depot use rapidly increased from 2010 to 2012 and is leveling off in 2013. He said water use in the Bakken is not increasing as much as in the past and appears to be leveling off at 18,000 acre-feet to 20,000 acre-feet per year. He said the average acre-feet of water used per frac is leveling off at seven acre-feet. He said an acre-foot is 325,851 gallons. He said the first depot to use telemetry was the Dodge depot and has measured water use from 2012 to present. He said there is a tremendous variability on the amount of water used each day from 900,000 gallons to zero gallons per day. He said the water depot use can be driven by external factors like the number of rigs and the condition of roads. He said water usage levels off between March and June and increases dramatically after June. He said the leveling off from March to June is due to load restrictions. He said most load restrictions are removed by June. He said all industrial water sales are metered.

Mr. Hove said rates are dynamic and vary from \$12 to \$20 per thousand gallons. He said the price varies from location to location based on proximity and access. He said there is reasonable variability, and the rate may vary based upon whether the water is ground water or surface water, heated or not heated.

Mr. Hove said the real-time water use telemetry service has been completed within existing budgets and is working well.

In response to a question from Representative Hofstad, Mr. Hove said the use of the Second and Sixth Street depot sites in Williston is declining because they are difficult to get to. He said the Watford City depot uses most of the permit for industrial sales.

In response to a question from Representative Schmidt, Mr. Hove said he did not know the percentage of depot water being replaced by recycled water.

Mr. Dan Farrell, Hydrologist Manager, Surface Water, Missouri River Basin, State Engineer's office, answered questions for the committee. In response to a question from Senator Luick, Mr. Farrell said there is a permit for 40,000-acre feet for Williston. He said there is an application in for 20,000 acre-feet for industrial use. He said the State Engineer does not set rates.

Representative Hofstad said loan repayment is on industrial sales only.

Mr. Jaret Wirtz, Executive Director, Western Area Water Supply Authority, provided testimony on the Western Area Water Supply Authority. He provided a number of handouts ([Appendix E](#)) on which his testimony was based. He said in the 2011 legislative session, the legislature provided \$110 million. He said this money was used to build transmission lines, reservoirs, pump stations, and depots. He said the \$119 million for the 2013-15 biennium was for water treatment plant upgrades and water to rural residents. He said the plant in Williston was at 10 million gallons per day and was brought up to 14 million gallons per day. He said it will be at 21 million gallons per day by November 2014.

In response to a question from Senator Wardner, Mr. Wirtz said the depot at Keene was obtained through a member entity. He said the majority of pipeline obtained from member entities was around Williston and from Ray to Stanley. He said there were numerous depots being used by members and in place before the creation of the Western Area Water Supply Authority. He said the costs incurred to date are approximately \$368.9 million.

In response to a question from Representative Hofstad, Mr. Wirtz said the state has provided \$229 million. He said \$110 million was provided in loans in 2011. He said \$119 million was provided in 2013. He said of this

\$119 million, \$40 million was loans, and \$79 million came from the State Water Commission--\$39 million through grants and \$40 million through a loan. He said the Western Area Water Supply Authority did not use the whole \$79 million from the State Water Commission because it did not want to over commit. He said a majority of this money was used for traditional users. He said the Western Area Water Supply Authority sets domestic rates to member entities. He said the rates for industrial sales need to be approved by the Industrial Commission. He said 20 percent of the rate is used to get the water out to the depot. If industrial rates are \$20 per thousand gallons, then \$4 of that is used for the operation and maintenance.

Mr. Wirtz said sales were large in March, but there was a slowdown in June because of the high turbidity in the river. He said some depots needed to be shut down. He said there was a slowdown in July because of domestic needs for more water.

In response to a question from Representative Nelson, Mr. Wirtz said the levels of turbidity were the highest levels seen in recorded history at the water treatment plant. He said some of the \$119 million is being used to provide pretreatment for the water treatment plant to reduce turbidity.

In response to a question from Representative Nelson, Mr. Wirtz said the Missouri River at Williston is dirty in the spring because of the water entering from the Yellowstone River.

In response to a question from Representative Hofstad, Mr. Wirtz said there is storage in the system of 10 million gallons per day right now. He said based on housing studies, the 21 million gallons per day in the future may have to be used for domestic use and industrial sales will have to slow. He said determining what can be used for domestic and industrial is determined on a day-to-day basis.

In response to a question from Senator Luick, Mr. Wirtz said during the first round, 400 users to 500 users signed up for domestic water, most in McKenzie County. He said near 1,000 users will be hooked up next year. He said a number of developments are being built by the pipelines. He said in 2015 there will be a request for more money for the remaining potential domestic users without water. He said there should be enough sales to service debt. He said more depots are being built, and sales are increasing.

In response to a question from Senator Grindberg, Mr. Wirtz said the sales numbers are consistent with the numbers provided during the legislative session. He said the debt is slightly over the previous numbers because of additional debt. He said the additional debt was taken on due to population increases.

In response to a question from Senator Lee, Mr. Wirtz said industrial sales include oil production, exploration, and fracturing. He said maintenance water will be needed for the next 30 years. He said this amount of water is small at present but is consistent. He said frac water usage and maintenance water usage are inversely proportional over time.

Mr. Wirtz said Western Area Water Supply Authority's contracting partners include Continental, Oasis, and SM Energy. He said the Western Area Water Supply Authority has long-term contracts to provide water through pipelines to these entities. He said the water is provided to these entities at no cost to the authority because the facilities are built by the partner. He said the partner has priority to industrial water over other users.

In response to a question from Representative Hofstad, Mr. Wirtz said not as many depots have been built as were planned because the Western Area Water Supply Authority is waiting on need. In addition, he said, the Western Area Water Supply Authority has been working with the Independent Water Providers. He said the Western Area Water Supply Authority did not build a depot at the 29 Mile Corner because the area was being served by Independent Water Providers. He said it is difficult to build the Ray and Tioga depot because people do not want a water depot near their property. He said the depot will be built next summer after zoning is approved. He said water is not available at the Ross depot. He said the Crosby depot needs to be moved out of town. He said the Second Street depot in Williston is in a bad location and may need to be replaced. He said there are 9 depots operating, and there was a plan for 12. He said the authority is trying to maximize potential, and companies are looking at pipeline sales instead of depots.

In response to a question from Senator Robinson, Mr. Wirtz said depot maintenance is a constant issue, especially due to wet conditions. He said upkeep is constantly needed. He said the cost to build a six-lane depot is approximately \$1 million. He said the depots' cash flows well.

Mr. Wirtz said the Western Area Water Supply Project is one of the top 100 North American infrastructure projects.

Mr. Robert Harms, lobbyist, Independent Water Providers, presented testimony on the terms of 2013 Senate Bill No. 2233, changes in the market, and the future of water sales. He provided a handout ([Appendix F](#)) on changes in the market from 2011 to today. He said the Western Area Water Supply Authority was created in 2011, and the funding mechanism was \$150 million with \$40 million coming later. He said the project was paid for by depots. He said the Independent Water Providers objected because of government competing with the private sector. He said the model was risky at that time because 70 to 80 percent of the water was being provided by the private sector with the remainder provided from communities with water depots. He said 9,400 acre-feet were being used, and 20,000 acre-feet had been permitted. He said presently 46,000 acre-feet are permitted, and that is four times what is being used. He said the project has grown to a \$350 million project. He said last legislative session, the Independent Water Providers thought that a Western Area Water Supply Authority was going to focus on people instead of growing industrial sales. He said Senate Bill No. 2233 did this by requiring the Industrial Commission to manage the cashflow and requiring any expansion to go through the State Water Commission. He said the State Water Commission was to monitor the growth of industrial sales. He said the State Water Commission automatically approves expansion and does not act as a gatekeeper as it should. He said the Independent Water Providers want the State Water Commission to give expansion a critical examination.

Mr. Harms said the Western Area Water Supply Authority has grown from 12 percent of the market in 2011 to 21 percent today. He said the Western Area Water Supply Authority is concentrated in Williams and McKenzie Counties and has 41 percent of the market in those locations. He said the Western Area Water Supply Authority in the past has suggested that 20 percent of the market is what is needed. He said the oil industry is beginning to recycle water, and some companies are reusing up to 90 percent of the water.

Mr. Harms said he has an issue with the engineering firm for the Western Area Water Supply Authority also being the engineer for Continental Resources. He said collaboration is good, and the Western Area Water Supply Authority should work with the State Water Commission and the Industrial Commission. He said he has heard the water depots are expensive to operate, and the Western Area Water Supply Authority is going to ask for a 15 percent administration fee. He said he supports the buildout for rural water supply as long as it is not subterfuge for bringing water to the oil industry. He said the State Water Commission should attend the Western Area Water Supply Authority meetings even though it is not a member. He said the Western Area Water Supply Authority needs to be audited and needs to use value engineering. He said the model needs to be changed, and the Western Area Water Supply Authority needs to get out of the public sector providing water to industrial users business in competition with private business.

Mr. Steve Mortenson, President, Independent Water Providers, provided testimony to the committee. He said there are 109 depots. He said counting permits and not locations, 17 are Western Area Water Supply Authority and the others are private depots. He said the private depots have lost 30 to 40 percent of market share. He said the public sector has taken business from the private sector. He said the Western Area Water Supply Authority is getting larger at the expense of private business. He said he does not see any cap on the expansion of the Western Area Water Supply Authority. He said he personally has had reduced water sales of 30 to 40 percent because of the Western Area Water Supply Authority depots. He said his sales went up 100 percent when the Western Area Water Supply Authority was closed because of the turbidity of the water. He said he is not located near a Western Area Water Supply Authority depot.

SOUTHWEST WATER AUTHORITY

Ms. Mary Massad, Manager/CEO, Southwest Water Authority, gave a presentation ([Appendix G](#)) on the history of the Southwest Water Project. In addition, she provided a handout ([Appendix H](#)) on information on the Southwest Pipeline Project.

In response to a question from Senator Luick, Ms. Massad said the Southwest Water Authority covers 12 counties and works with Perkins County in South Dakota to provide rural water. She said the territory goes

south to the South Dakota line and west to the Montana border and includes every county in the west river area except Sioux County. She said the Southwest Water Authority provides 5,332 rural residents water. She said the city of Killdeer is not connected but will be connected this year.

In response to a question from Representative Steiner, Ms. Massad said at one time, Bowman was to have water from the Southwest Water Authority but has been allowed to be removed from the project. She said water is provided to the New England area, and Amidon is served as rural users, not as a public system.

In response to a question from Senator Robinson, Ms. Massad said the Southwest Water Authority has a rehabilitation fund that is funded from 40 cents per thousand gallons of water which is included in the rate. She said this is going to be increased to 50 cents per thousand gallons. She said the fund is at \$10.5 million. She said it will require an additional 6 million gallons per day in treatment capacity in Dickinson, pump upgrades, and parallel pipelines to address growth in the area. She said the pipeline is well-maintained through a maintenance schedule.

In response to a question from Senator Robinson, Ms. Massad said the Southwest Water Authority has 38 employees and needs 10 more. She said the vacant positions are in treatment and distribution. She said there has been an increase in capital improvements due to oil sales.

Senator Holmberg said the legislature has been criticized in the past for being forward-looking, for example when the legislature invested in the Southwest Water Project and made Highway 2 four lanes to the Montana border. He said both examples were good ideas and forward-thinking.

In response to a question from Representative Nelson, Ms. Massad said the municipal, rural, and industrial (MRI) funding had a huge impact on the Southwest Water Project. She said without it, construction would have slowed or stopped. She said the resources trust fund has also been a major source of funding. She said in 1998 there was no money from the resources trust fund or the federal MRI program, so other sources were used.

Representative Nelson said the Southwest Water Authority was a hybrid in matters of funding for rural water projects. He said the major hurdle is to provide water that is affordable to a few customers. He said the funding needs to be equitable and include a system of grants, loans, and other repayment options.

In response to a question from Representative Schmidt, Ms. Massad said the Southwest Water Authority receives \$4 million in income from water depots for industrial use. She said there is not any concern with competing with the private sector because there is no competition because the naturally occurring water is of such poor quality.

STATE WATER COMMISSION UPDATE

Mr. Todd Sando, State Engineer, State Water Commission, provided information on the recent activities of the State Water Commission. His testimony was based on three handouts ([Appendix I](#)) on the State Water Commission's cost-share policy, procedure, and general requirements; the draft prioritization guidance concept; and State Water Commission hosted meetings.

In response to a question from Senator Grindberg, Mr. Sando said the policy is for the 2015-17 biennium. He said he would like to get the policy more formalized by April or May so that it is in the plan for the next legislative session.

In response to a question from Senator Holmberg, Mr. Sando said the current policy is being used at present. He said the 50 percent cost-share for replacement was changed this year. He said the new policy is needed so the State Water Commission has a handle on projects and percentages. He reviewed projects funded by the State Water Commission, including the Devils Lake Outlet project, the Fargo flood control project, the Mouse River flood control project, the Sheyenne River flood control project, irrigation projects, the Fargo water supply project, the Northwest Water System project, the Red River Valley water supply project, the state water supply project, and the Western Area Water Supply Project.

Senator Grindberg said it was attributed to him that he was nudging the state to make the Red River Valley water supply project a state project. He said at some point, the state needs to declare the project a state project and start the project.

In response to a question from Senator Grindberg, Mr. Sando said the project needs to be studied more to avoid legal issues. He said there are important legal issues anytime water crosses the Continental Divide. He said there is a request for proposals for an engineering firm to look at the preferred alternative. He said the amount of the study will be negotiated but will be under \$11 million.

In response to a question from Representative Nelson, Mr. Sando said the Northwest Water Authority is an empty pipeline from Lake Sakakawea to Minot. He said biota and depletion are the major issues. He said downstream states do not like depletion. He said the state has not been successful since the 1930s in taking water across the Continental Divide.

In response to a question from Representative Nelson, Mr. Sando said treating water at the beginning of the project would, on a technical basis, address biota concerns.

In response to a question from Representative Schmidt, Mr. Sando said the requests for the 2013-15 biennium in the rural water supply project were at the maximum of 75 percent. He said the actual amount of funding is going to be 50 percent. He said rehabilitation is cost-shared at a lower percentage. He said some of the projects should have been at zero, but the State Water Commission decided on 50 percent for all. He said this is a grant. He said the MRI standards have been used in the past but not anymore. He said local water supply entities have a funding source locally, which is water rates. He said local water supply entities say water rates are too high. He said the 50 percent rate was an attempt to be equitable.

In response to a question from Senator Luick, Mr. Sando said the percentages for some projects are up and some are down. He said the goal is to be equitable.

ARMY CORPS OF ENGINEERS

Mr. Michael Swenson and Mr. Larry Janis, Army Corps of Engineers, Omaha, Nebraska, presented information based on handouts ([Appendix J](#)) on surplus water reports and rulemaking and potential transfers of Garrison Dam project lands to the Mandan, Hidatsa, and Arikara Nation. In addition, the handouts included a presentation on the planned operation of water management for the Garrison Dam.

In response to a question from Representative Steiner, Mr. Swenson said there are no significant changes that affect North Dakota this year from the annual plan last year.

Mr. Wade Spooner, Army Corps of Engineers, North Dakota, presented information on access to docks and recreational sites. He said there are 26 access points--11 are open, 10 are closed due to water levels, and 5 are removed because of abuse and conditions. He said there are 73 access points for ice fishing in the winter. He said there are 79 boat ramps, and 49 are usable because of the water level. He said the shore use plan will be updated in 2017. He said handicap access through wildlife management areas is governed by the Game and Fish Department. He said handicap accessibility is allowed on existing roads and trails open to vehicles. He said there are 1,391 campsites. He said 75 to 100 percent are booked. He said there are 1,100 total docks. He said 801 are allowed for the Garrison project and 707 are issued. He said the 94 remaining are at different locations around the lake. He said there are 39 limited development areas with 801 permits. He said the number of docks is dictated by a formula that requires 25 feet of shoreline on each side of the dock and 5 feet for the dock. In short, he said, shoreline divided by 55 feet equals the number of docks available within a limited development area. He said some areas are full, and there is a waiting list.

Representative Steiner said Lake Sakakawea is the main recreation area in western North Dakota. She said 100,000 people to 200,000 people are moving into the area, and their need for recreation needs to be accommodated. She said doing everything the same way as it has been done since the 1940s will not work with this influx of population. She said the corps needs to work with the state and should transfer campgrounds to the state.

In response to a question from Representative Steiner, Mr. Spooner said there are four recreational sites, and he has been trying to schedule meetings with the Governor or Lieutenant Governor to discuss the transfer to the state. He said the last master plan was done before oil activity and will be updated in the future.

DRINKING WATER STATE REVOLVING LOAN FUND

Mr. Dave Bruschwein, Program Manager, Drinking Water State Revolving Loan Fund, State Department of Health, gave a presentation ([Appendix K](#)) on the drinking water state revolving loan fund. He provided a priority list of projects, which is information that may help estimate the need for municipal water projects.

In response to a question from Senator Grindberg, Mr. Bruschwein said the priority list contains 168 projects with a total cost of approximately \$680 million. He said the average loan is from \$20,000 to \$66,000. He said the repayment of previous loans and bonding provides funds for the fund. He said the revolving loan fund could provide \$700 million in loans for five years.

In response to a question from Senator Luick, Mr. Bruschwein said entities on the list update the cost of the project every year and stay on the list in the same order after an update.

In response to a question from Senator Luick, Mr. Bruschwein said the list is an estimate of costs and is not a list of projects that are ready to be built.

No further business appearing, Chairman Grindberg adjourned the meeting at 3:00 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:11