

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

### WATER TOPICS OVERVIEW COMMITTEE

Tuesday, July 25, 2017  
Coteau A and B Room, State Capitol  
Bismarck, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Jim Schmidt, Dick Anderson, Tracy Boe, Chuck Damschen, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Roscoe Streyle, Senators Jonathan Casper, Curt Kreun, Gary A. Lee, Donald Schaible, Ronald Sorvaag

**Members absent:** Representative Denton Zubke; Senator Larry J. Robinson

**Others present:** Senator Ray Holmberg, Grand Forks, and Representative Scott Louser, Minot, members of the Legislative Management

See [Appendix A](#) for additional persons present.

#### SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT

Chairman Schmidt called on the Legislative Council staff to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

#### FM AREA DIVERSION PROJECT

Chairman Schmidt called on Dr. Tim Mahoney, Mayor, Fargo, for a presentation ([Appendix B](#)) regarding an update on the FM Area Diversion Project.

In response to a question from Senator Lee, Dr. Mahoney said the rerouting of County Road 17 should be completed in time for the fall harvest.

In response to a question from Senator Sorvaag, Dr. Mahoney said emergency measures to protect Fargo and the surrounding area would be required if the area experiences a flood before the intake structure is completed. He said work on the intake valve is underway and anticipated to be complete in 2018.

In response to a question from Chairman Schmidt, Dr. Mahoney said there would be an appeal if a judge rules the diversion project must be halted.

#### RED RIVER VALLEY WATER SUPPLY PROJECT

Chairman Schmidt called on Dr. Mahoney and Mr. Ken Vein, Second Vice Chairman, Garrison Diversion Conservancy District Board of Governors, for a presentation ([Appendix C](#)) on the Lake Agassiz Water Authority and 2017-2019 Red River Valley Water Supply Project (RRVWSP) Work Plan.

In response to a question from Chairman Schmidt, Dr. Mahoney said the Lake Agassiz Water Authority hired a Washington, D.C. law firm to draft agreements ensuring continuity on the project regardless of any changes in administrations.

Chairman Schmidt said the two federal agencies involved in the project (the Army Corps of Engineers and the Department of Interior) may provide different guidance and conflicting decisions regarding the project.

In response to a question from Chairman Schmidt, Mr. Vein said no easements required for the project would become unnecessary if the project ends up utilizing the McClusky Canal.

Chairman Schmidt said 2017 House Bill No. 1020 authorized \$30 million for the project, but specified that only \$17 million of that amount is available for planning and design work. He said the remaining \$13 million may be used for construction only if the State Water Commission and Governor approve the project design and plan.

In response to a question from Representative Streyle, Mr. Vein said the Department of Interior indicated it may issue a decision on whether it approves the project this fall. He said he will keep the committee apprised of the cashflow and spend rate for the project. He said the preliminary design for the project will be completed this fall, and the goal is to complete engineering and construction by the end of the biennium.

Representative Streyle said the Legislative Assembly's intent was not to cap the project funding at \$30 million if the project receives the necessary approvals, is ready to proceed, and needs additional money to do so.

Mr. Vein said the board would return to the committee to discuss a need for additional funding if it expends the \$30 million appropriated.

Chairman Schmidt said the Legislative Assembly would control how and when to move forward with additional funding requests.

In response to questions from Senator Casper, Mr. Vein said the McClusky Canal would need to accommodate another 140 cubic feet per second of water for the project, but no significant changes to the canal would be needed. He said the Lake Agassiz Water Authority would revert to using the Missouri River/Sheyenne River option for carrying water to the eastern part of the state if federal authorities do not approve the use of the McClusky Canal for the project. He said reverting to that option would require an additional \$170 million of funding. He said the authority is looking at the issue of increased population growth in the eastern part of the state to ensure the plans are sufficient to accommodate that growth. He said the authority incorporated 40 to 50 year population projections.

In response to a question from Representative Anderson, Mr. Vein said using the McClusky Canal would save approximately \$4 million annually and would reduce the need for certain water treatment processes.

In response to a question from Representative Nelson, Ms. Merri Mooridian, Administrative Officer/Deputy Program Manager RRVWSP for Administration, Garrison Diversion Conservancy District, said they did not yet know what residents will have to pay for water from the project.

Representative Nelson said the committee wants to know the projections and the authority will need to bring pricing models to the committee before pricing is set.

Ms. Mooridian agreed and said they hoped to have the models in 2018.

Chairman Schmidt said 2017 House Bill No. 1020 requires the authority to develop funding options as part of the planning that requires approval before the authority may obtain the \$13 million approved by the Legislative Assembly for construction.

Representative Streyle said the local share of the project's cost should be bonded through the Bank of North Dakota.

In response to questions from Senator Lee, Mr. Vein said the 40-year contract for the water permit begins when the contract is signed. He also said the authority is working with a law firm in Washington, D.C., to ensure the project is grandfathered under the current federal regulations.

In response to a question Chairman Schmidt, Mr. Vein said the United States Bureau of Reclamation is finishing its environmental review of the project. He said the review is expected to be complete in August 2017 and will be followed by a 30-day comment period. If the review shows the project will have a significant environmental impact, he said, the bureau will have to undertake an environmental impact study.

Chairman Schmidt said the Authority should ensure its contractors do not go onto planted fields without owners' permission.

### **TEMPORARY WATER PERMITS**

Chairman Schmidt called on Mr. Garland Erbele, State Engineer, regarding temporary water permits on the Little Missouri River. Mr. Erbele introduced Mr. Jon Patch, Division Director, Water Appropriations, State Water Commission, to give the presentation ([Appendix D](#)).

In response to a question from Chairman Schmidt, Mr. Patch said the maximum period for a temporary permit under state law is 12 months, although most permits are for shorter periods tailored to their need.

## **WATER LEVELS OF LAKE SAKAKAWEA AND LAKE AUDUBON**

Chairman Schmidt called on Mr. Vein for a presentation ([Appendix E](#)) regarding the Army Corps of Engineers management of water levels in Lake Sakakawea and Lake Audubon. Mr. Duane DeKrey, General Manager, Garrison Diversion Conservancy District, gave the presentation.

In response to a question from Representative Nelson, Mr. DeKrey said lowering Lake Audubon will restrict the amount of water that will flow to the McClusky Canal and potentially impact the ability to use the canal for irrigation.

In response to a question from Chairman Schmidt, Mr. DeKrey said any issue of dam safety trumps any use of water from the lakes. He said there is an agreement among the United State Fish and Wildlife Service, the Garrison Diversion Conservancy District, and the Army Corps of Engineers regarding the priority of water uses in the lake, and wildlife is the last priority.

Mr. Erbele said his July 13, 2017, letter ([Appendix F](#)) to Kellie Bergman, Chief, Water Control and Water Quality Section, United States Army Corps of Engineers, stated that drawing down the level of Lake Audubon jeopardizes the water supply to the McClusky Canal and is unacceptable to North Dakota.

In response to a question from Representative Boe, Mr. Erbele said he does not know what priority irrigation has relative to other uses of the water in the canal.

Senator Kreun stated each community that hooks up to the RRVWSP will have a drought mitigation plan, and most water for the water supply will not be used for irrigation. He said the project is not a replacement for all water use in the Red River Valley.

## **STUDY OF POSSIBLE PRIVATIZATION OF WESTERN AREA WATER SUPPLY EQUIPMENT**

Chairman Schmidt called on Mr. Erbele regarding the request for proposal to study privatization of Western Area Water Supply Authority (WAWS) equipment. He said 2017 House Bill No. 1020 mandates studying whether the sale of the WAWS industrial components to a third party makes financial sense. He said at its June meeting, the Industrial Commission voted to form an advisory committee comprised of Pam Sharp, Director, Office of Management and Budget; Karlene Fine, Executive Director and Secretary, Industrial Commission; Brent Sanford, Lieutenant Governor; Lynn Helms, Director, Department of Mineral Resources; and Mr. Erbele, to develop a request for proposal for the study and to review proposal received. He said the Industrial Commission approved the advisory committee's request for proposal in July 2017 and the request will be advertised for 30 days. He said the advisory committee plans to make a recommendation on a proposal to the Industrial Commission in August 2017. He said the Industrial Commission hopes to complete the mandated study by March 2018.

In response to a question from Chairman Schmidt, Mr. Erbele said the request for proposal was based on the relevant language from 2017 House Bill No. 1020 and asked respondents to propose methodologies for the study.

## **DEVELOPMENT OF COST-BENEFIT ANALYSIS FORMULA**

Chairman Schmidt called on Mr. Erbele regarding his progress on developing a cost-benefit analysis formula as required under 2017 House Bill No. 1374. He said his office drafted a request for proposal and will advertise it for 30 days. He said he plans to select a vendor and start the contract in late September with the aim of having a formula by December 2017.

Chairman Schmidt said the Legislative Assembly required the development of the formula, in part, to help small, rural communities determine whether to connect to rural water systems instead of developing municipal water systems. He said the formula also is intended to help the Legislative Assembly determine whether public funding of drainage projects is the best use of public funds. He said the formula will provide a standard process for performing lifetime cost analyses.

## **STATE FUNDING OF CLOUD SEEDING**

Chairman Schmidt called on Mr. Erbele for information on state funding of cloud seeding and the cloud modification project. Mr. Erbele invited Mr. Darin Langerud, Director, Atmospheric Resource Division, State Water Commission, to give the presentation ([Appendix G](#)).

Representative Streytle said there is a lot of skepticism about the benefits of cloud seeding in North Dakota. He said it should be halted in Ward County because the county commissioners voted to stop it.

In response to a question from Representative Streyle, Mr. Langerud said the State Water Commission's contract for cloud seeding in Ward County is with the county's Weather Modification Authority, not the county commissioners. He said Ward County paid for a year's worth of cloud seeding in June, and the State Water Commission does not want to breach the contract.

Mr. Langerud said research data show the benefits of cloud seeding persist downwind, but any effect of bringing more water to the Devils Lake area, which is already too wet, would be limited.

Chairman Schmidt questioned whether the state should fund cloud seeding when the data Mr. Langerud presented show the benefit ratios to be 16 to 1 and 26 to 1. Based on those benefit ratios, he said, farmers and others presumably would fund cloud seeding themselves.

### **ENTRY ON LAND FOR EMINENT DOMAIN EXAMINATIONS**

At the request of Chairman Schmidt, the Legislative Council staff presented a memorandum entitled [Entering Private Land for Precondemnation Examinations](#) regarding the legal authority for certain entities to conduct precondemnation examinations on private property without the property owners' permission.

### **MOUSE RIVER FLOOD CONTROL PROJECT**

Chairman Schmidt called on Mr. Ryan Ackerman, President and Chief Executive Officer, Ackerman-Estvold, for a presentation ([Appendix H](#)) regarding progress on the Mouse River flood control project.

In response to a question from Chairman Schmidt, Mr. Ackerman said he is mindful of the fact the Army Corps of Engineers will not pay for the Maple Diversion if work on the diversion begins before the Corps approves the project. He said he believes the project sponsors can enter a memorandum of understanding with the Corps and receive credit for the work performed as work-in-kind on the project.

Chairman Schmidt said the \$193 million in state funding for the project is based on a 65 percent cost-share estimate. He said, under 2017 House Bill No. 1020, the \$193 million will not increase even if it ends up amounting to less than 65 percent of the project cost.

### **LIGHT DETECTION AND RANGING MAPPING STUDY**

Chairman Schmidt called on Representative Louser for information on a light detection and ranging (LiDAR) mapping study that the Legislative Management assigned to the State Engineer under 2017 House Bill No. 1020. He provided a history of federal flood relief. He said, as discussed in a background memorandum entitled [Water Topics Overview Committee - Ward County Floodplain Mapping Study](#) presented by the Legislative Council staff, residents who live in floodplains may be able to reduce or eliminate the need for flood insurance if they can access combined LiDAR and geographic information system (GIS) data of their homes to show the homes are sufficiently elevated. He said this type of LiDAR mapping is not available to all North Dakota residents. Without the LiDAR and GIS data, he said, homeowners in floodplains have to pay about \$1,500 for an elevation certification to show they do not need flood insurance.

Representative Streyle said a Ward County commissioner stated the State Water Commission and State Engineer's office are attempting to stop the LiDAR study.

In response to a question from Representative Streyle, Representative Louser said he has not been contacted by the State Water Commission about the study.

Representative Streyle stated the State Engineer's office should stop opposing this study.

Chairman Schmidt said the State Engineer's office should provide a response and update on this issue at the Thursday, October 12, 2017, meeting of the committee.

In response to a question from Chairman Schmidt, Representative Louser said, to his knowledge, the type of mapping using LiDAR and GIS data that he is describing is not being done in Ward County. He said that type of mapping has been done for the entire state of North Carolina.

### **STATE WATER COMMISSION PROJECT SUMMARY**

Chairman Schmidt called on Mr. Dave Laschkewitsch, Division Director, Administrative Services, State Water Commission, to present the State Water Commission's May 2017 Project Summary ([Appendix I](#)).

In response to a question from Chairman Schmidt, Mr. Laschkewitsch said there may be \$65 million more in carryover funds than anticipated, but he did not know why.

In response to a question from Representative Mitskog, Mr. Laschkewitsch said 2017 House Bill No. 1374 requires the State Water Commission to include a 4-year deadline in contracts with project sponsors.

Representative Nelson said he has heard projects have been delayed because the State Water Commission has delayed project approval until after the construction season.

### **STATE WATER COMMISSION DRAINAGE PROJECT STATUS UPDATE**

Chairman Schmidt called on Mr. Laschkewitsch to present a status update ([Appendix J](#)) on drainage projects the State Water Commission has approved.

In response to a question from Representative Anderson, Mr. Laschkewitsch said the majority of the projects are in the Red River Valley because that is where most funding requests are from.

Chairman Schmidt said North Dakota should review funding for drainage projects in the context of managing the entire watershed. He said the state uses tax funds to temporarily flood land, then uses tax funds for diversion projects in the same area, and then uses additional tax funds to dike or dam the water. He said the state should review the economics of managing water this way.

### **RURAL WATER SYSTEMS**

Chairman Schmidt called on Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, for an update ([Appendix K](#)) on rural water system projects and issues.

In response to questions from Senator Lee, Mr. Volk said it would be hard for some small communities to participate in RRWSP because some do not have water treatment plants or have a water treatment facility that lacks the appropriate processes to treat the water from the project.

In response to a question from Chairman Schmidt, Mr. Volk said some rural water systems have to pay large fees to place pipelines under railroad tracks. He said railroads and their third-party contractors charge these fees in North Dakota, but other states limit these types of fees. He said because the State Water Commission does not reimburse rural water systems for these fees, the costs are borne by the water users.

### **MUNICIPAL WATER SYSTEMS**

Chairman Schmidt called on Mr. Blake Crosby, Executive Director, North Dakota League of Cities, for an update ([Appendix L](#)) on municipal water projects and issues.

In response to a question from Chairman Schmidt, Mr. Crosby said some municipalities lack financial reserves to fix water systems, and this creates problems for operation and maintenance. He said major repairs should be eligible for some state funding.

### **WESTERN AREA WATER SUPPLY AUTHORITY DEBT REFINANCE**

Chairman Schmidt called on Mr. Eric Hardmeyer, President and Chief Executive Officer, Bank of North Dakota, for a presentation ([Appendix M](#)) on refinancing the WAWS debt. He said the Bank has issued a request for proposal for a vendor to conduct the study.

In response to a question from Senator Casper, Mr. Hardmeyer said the \$88 million in the Bank's spreadsheet is from the deposit bases of the Bank.

### **RESOURCES TRUST FUND**

At the request of Chairman Schmidt, the Legislative Council staff presented a memorandum entitled [Resources Trust Fund - 2015-17 Biennium Revenue Comparison and Analysis](#).

### **INDUSTRIAL USE OF WATER STUDY**

At the request of Chairman Schmidt, the Legislative Council staff reviewed a background memorandum entitled [Water Topic Overview Committee - Industrial Use of Water](#).

### **DROUGHT FUNDING**

Chairman Schmidt called on Mr. Erbele for a presentation ([Appendix N](#)) on drought funding requests. He said the Drought Disaster Livestock Water Supply Assistance Project has received applications from 156 applicants who may submit applications for up to three projects each. He said the program has approved 202 projects with an average cost of \$3,110 per project. He said the program will cover up to 50 percent of a project's cost subject to a cap.

### **PUBLIC COMMENTS**

Mr. Gary Thompson, Chairman, Red River Joint Water Resource District, asked to be included in the next meeting's agenda to discuss rural flood control.

Mr. Geoff Simon, Executive Director, Western Dakota Energy Association, reviewed a letter ([Appendix O](#)) addressed to Governor Doug Burgum from the Dunn County Board of Commissioners regarding concerns about the increased truck traffic that would result from restrictions on the sale and use of Little Missouri River water for fracking.

### **FUTURE MEETINGS**

Chairman Schmidt said the next meeting will be a joint meeting with the State Water Commission on Thursday, October 12, 2017.

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

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Claire Ness  
Counsel

ATTACH:15