

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Wednesday, February 21, 2018
Roughrider 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, Chuck Damschen, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Denton Zubke; Senators Jonathan Casper, Curt Kreun, Gary A. Lee, Larry J. Robinson, Donald Schaible, Ronald Sorvaag

Members absent: Representatives Tracy Boe and Roscoe Streyle

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

It was moved by Senator Kreun, seconded by Representative Martinson, and carried on a voice vote that the minutes of the October 12, 2017, meeting be approved as distributed.

RED RIVER RETENTION AUTHORITY AND WATERSHED MANAGEMENT

Chairman Schmidt called on Mr. Gary Thompson, Co-Chair, Red River Retention Authority, and Mr. Chad Engels, Senior Project Manager, Moore Engineering, Inc., for a presentation ([Appendix B](#)) regarding the Red River Retention Authority and water management projects for retention, detention, and drainage. Mr. Thompson said in 2010 the Red River Retention Authority was formed through a joint powers agreement between the Red River Joint Water Resource Board in North Dakota and the Red River Watershed Management Board in Minnesota to obtain federal funding for water projects in the Red River Valley and to ensure coordination of water retention projects in the valley.

In response to a question from Chairman Schmidt, Mr. Thompson said one use of the federal funding obtained by the Red River Retention Authority is the development of light detection and ranging data to provide the public information about flood risk.

Mr. Engels said the Red River Retention Authority also has used federal funds to coordinate the studying and planning of water projects, including distributive storage projects and main stem modeling to reduce flooding, among various entities in the Red River Basin. He said joint boards in the Red River Basin work together to solve flooding and drainage on a watershed basis. He said one goal of the Red River Retention Authority is a 20 percent flow reduction of the Red River, and Minnesota is on board with that goal.

In response to a question from Senator Lee, Mr. Engels said the FM Area Diversion Authority was interested in the Red River Retention Authority's modeling of distributive storage because distributive storage was raised as an alternative to the diversion process at one point.

In response to a question from Representative Nelson, Mr. Engels said the Red River Retention Authority's primary goal is to solve local problems, and the 20 percent flow reduction of the Red River is a secondary, long-term goal. He said the 20 percent flow reduction of the river was not a viable alternative to the diversion plan because it did not provide enough protection to Fargo.

In response to a question from Chairman Schmidt, Mr. Keith Weston, Executive Director, Red River Retention Authority, said the Red River Retention Authority uses a watershed management system so it can track water "from top to bottom."

Chairman Schmidt called on Ms. Mary Podoll, State Conservationist, Natural Resources Conservation Service, United States Department of Agriculture, for a presentation regarding an Natural Resources Conservation Service (NRCS) funding agreement with the Red River Retention Authority. Under that agreement, she said, NRCS provided the Red River Retention Authority \$12 million through the Regional Conservation Partnership Program to

implement watershed protection projects in the Red River Basin. She said NRCS also allocated \$50 million to the Red River Retention Authority under the 2014 farm bill to assist landowners and water districts in implementing flood damage reduction practices. She said NRCS does almost no work without local partnerships, and the NRCS partnership with the Red River Retention Authority is one of seven projects NRCS has in North Dakota.

In response to a question from Chairman Schmidt, Ms. Podoll said NRCS acquired 30-year leases for land in North Dakota and has considered using the land for water storage. However, she said, legal and logistical issues have precluded that.

In response to a question from Representative Nelson, Ms. Podoll said the Red River Retention Authority has 2 years left to spend the \$50 million allocated under the 2014 farm bill. She said the authority has spent \$15 million to date.

Representative Nelson said the money should be used to benefit flood control, and NRCS should be able to measure water retention from its projects.

In response to a question from Chairman Schmidt, Ms. Podoll said the Souris River Basin stakeholders agreed they could benefit from the \$50 million. She said NRCS has met with members of the Minot community and will meet with agriculture producers in that area soon.

STATE WATER COMMISSION

Chairman Schmidt called on Mr. Richard Johnson, Commissioner, State Water Commission, for an update on the State Water Commission. Mr. Johnson said the new commissioners are diligently investing their time and energy to learn more about water issues in the state and they are concerned with being good stewards of the funds appropriated to the State Water Commission. He said the commissioners want to be more engaged in projects and plan to create subcommittees to work on governance and other issues. He said the commission may begin meeting monthly to help speed up project review and approval times which would help ensure projects are approved in time for the construction season. He said the commission's new cost-share policy and life cycle analysis are in development. He said commission contractors and staff attended two workshops to develop the life cycle analysis, but commissioners were not invited. He said the analysis most likely will be presented to the commissioners at the April 2018 meeting of the commission. He said the commissioners wish to have a good relationship with the Water Topics Overview Committee.

In response to a question from Representative Anderson, Mr. Johnson said the commission has not focused on educating the public about the new formula or policies, but will look into doing so.

In response to a question from Senator Schaible, Mr. Johnson said he added an agenda item to the next commission meeting for staff members to educate commissioners on the timeline for project proposals from submission to approval.

Chairman Schmidt said he likes the idea of subcommittees for the State Water Commission and said the commissioners should challenge project sponsors and get involved in budgeting.

STUDY ON INDUSTRIAL USE OF WATER

Chairman Schmidt called on Dr. Zhulu Lin, Assistant Professor, North Dakota State University, for a presentation (Appendices [C](#) and [D](#)) regarding industrial use of water in North Dakota. Dr. Lin said he has another research paper regarding North Dakota's adaptive water management strategies which is currently under review.

In response to a question from Senator Robinson, Dr. Lin said he is researching what would have happened if the state had experienced reduced precipitation during the oil boom rather than the increased precipitation it received during that time. He said there is little potential to reuse fracking wastewater in the Bakken because the state has the worst quality fracking wastewater in the country.

Chairman Schmidt called on Mr. Jon Patch, Director, Water Appropriation Division, State Water Commission, for a presentation regarding industrial water use in the state. Mr. Patch said since 2014 more water is being used "per frack" because oil companies are using less chemical volume when fracking. He said increased water volume is compensating for the reduced chemical volume. He said up to 25 acre feet of water are used per frack now, compared to around 13 acre feet per frack before 2014. He said the State Water Commission does not know how much water will be required to maintain wells, and the amount of maintenance water may increase over time as the number and age of wells increase. He said because ground water systems will not be able to meet the increased needs, water from the Missouri River and Lake Sakakawea will need to be used.

RAILROAD RIGHT-OF-WAY CROSSING FEES

Chairman Schmidt called on Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, for a presentation ([Appendix E](#)) on railroad right-of-way crossing fees for rural water lines.

WESTERN AREA WATER SUPPLY AUTHORITY INDUSTRIAL SALES STUDY

Chairman Schmidt called on Mr. Kevin Martin, Senior Project Manager, Houston Engineering, Inc., for a presentation ([Appendix F](#)) on the status of the Western Area Water Supply Authority (WAWS) industrial sales study.

In response to a question from Representative Anderson, Mr. Martin said WAWS water use has never exceeded 20 percent of the industrial water capacity in the Bakken.

STATE WATER COMMISSION FORMULAE DEVELOPMENT

Chairman Schmidt called on Mr. Dennis Reep, Managing Principal, HDR Engineering, and Mr. Patrick Fridgen, Director, Planning and Education Division, State Water Commission, for a presentation ([Appendix G](#)) on the development of the life cycle cost analysis and economic analysis formulae for the State Water Commission as required by 2017 House Bill No. 1374.

In response to a question from Representative Nelson, Mr. Reep said the life cycle cost analysis does not take into account the source of the funds.

FM AREA DIVERSION PROJECT

Chairman Schmidt called on Dr. Tim Mahoney, Mayor, Fargo, for a presentation ([Appendix H](#)) regarding the FM Area Diversion Project and the Fargo interior flood protection project. Dr. Mahoney said media reports indicating the total cost of the project has risen to more than \$4 billion were incorrect, and that figure includes interest that will accrue on loans for the project.

In response to questions from Senator Sorvaag, Dr. Mahoney said the FM Area Diversion Authority is trying not to let any changes resulting from the Governors' task force recommendations impact more people outside Fargo city limits than are impacted already by the current plan. He said the Army Corps of Engineers is involved in the technical and policy meetings for the project and has communicated its concern the project will require new approval from the Corps if it strays too far from the project already approved.

In response to a question from Representative Nelson, Dr. Mahoney said Governor Mark Dayton of Minnesota said Minnesota will pay close to \$100 million to cover its share of the project costs, and Governor Dayton included those funds in his state budget. He said Minnesota representatives have committed to a 3- to 6-month review period for permitting.

In response to a question from Representative Mitskog, Dr. Mahoney said the project will apply for a permit on March 9, 2018, but the permitting process may be "phased" if there is a need for an environmental assessment or other work. He said he committed to going to Wilkin County and Richland County to ask residents in those counties how the project may be improved to help them. He said less than 600 acres of land in those counties will be affected, and that land is not tillable.

In response to a question from Senator Lee, Dr. Mahoney said the Minnesota Department of Natural Resources said the project will be "permissible" if it follows Minnesota law.

RED RIVER VALLEY WATER SUPPLY PROJECT

Chairman Schmidt called on Mr. Ken Royse, Chairman, Garrison Diversion Conservancy District, and Tami Norgard, Attorney, Vogel Law Firm, for a presentation ([Appendix I](#)) regarding the Red River Valley Water Supply Project.

Representative Nelson said the proposed plant in Spiritwood was not canceled due to water supply concerns.

Ms. Norgard said the Red River Valley Water Supply Project needs to obtain a permit within 2 years to be grandfathered under the current Waters of the United States regulations. She provided an update on the litigation over the Waters of the United States regulations.

In response to a question from Chairman Schmidt, Ms. Merri Mooridian, Administrative Officer/Deputy Program Manager RRVWSP for Administration, Garrison Diversion Conservancy District, said they do not yet know how much the project will cost, but she hopes to present that information to the State Water Commission and Budget Section early next year.

Chairman Schmidt said the Legislative Assembly will be in session in 2019, and the information would have to be presented as part of a delayed bill.

Ms. Mooridian said they plan to ask for an appropriation of \$150 million.

In response to a question from Senator Lee, Mr. Royse said the project will be ongoing for at least 10 years.

Dr. Mahoney said they can work with their accountants at Ernst & Young to try to develop financial plans to speed it up.

In response to questions from Representative Nelson, Ms. Mooridian said they still do not know how much users will have to pay for water from the project and cannot provide estimates yet.

Dr. Mahoney said a model to calculate those costs will be provided at the next committee meeting.

In response to a question from Representative Mitskog, Ms. Mooridian said all water supply systems up and down the Red River have contingency plans for drought years.

MOUSE RIVER FLOOD CONTROL PROJECT

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

In response to a question from Senator Kreun, Mr. Ackerman said he could provide information on the federal, regional, international, and local cost shares at the next committee meeting.

In response to a question from Senator Lee, Mr. Ackerman said state regulators are using a phased permitting approach for the project, but this project, unlike the Fargo project, does not have upstream or downstream impacts of more than six inches of water. He said that means there is no need to obtain upstream or downstream property rights.

In response to a question from Chairman Schmidt, Mr. Ackerman said they will break ground in March 2018, Phases 2 and 3 should be complete by the end of 2019, and Phase 1 should be complete by 2020. He said the project may take 20 years to complete due to the need to raise funds. He said the project would take only 6 to 7 years to complete if the funding were immediately available. He said they have secured State Water Commission authorization for about \$63 million this biennium, and the majority of those funds will be spent in Minot.

STATE WATER COMMISSION PROJECT SUMMARY

Chairman Schmidt called on Mr. Dave Laschkewitsch, Director, Administrative Services, State Water Commission, for a presentation ([Appendix K](#)) on the January 2018 State Water Commission Project Summary.

In response to a question from Chairman Schmidt, Mr. Laschkewitsch said the Northwest Area Water Supply Project is no longer under injunction, but an appeal in the litigation regarding the project was filed by Missouri and Canada. He said money has been allocated to design the water treatment plant in Max and to expand the water treatment plant in Minot.

RESOURCES TRUST FUND

Chairman Schmidt called on the Legislative Council staff for a presentation of a memorandum entitled [Resources Trust Fund - 2015-17 and 2017-19 Biennium Update](#).

COMMENTS BY INTERESTED PERSONS

Chairman Schmidt invited comments to the committee.

Senator Robinson requested some time be set aside at the next meeting to discuss developing a budget for the next biennium.

REPORT ON HISTORY OF NORTH DAKOTA WATER

Chairman Schmidt said he received the report from Mr. Mike Dwyer for which funds had been appropriated in an earlier biennium. The report is titled *North Dakota Water: Century of Challenge*.

No further business appearing, Chairman Schmidt adjourned the meeting at 3:15 p.m.

Claire Ness
Counsel

ATTACH:11