

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Wednesday, June 13, 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, Tracy Boe, Chuck Damschen, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Roscoe Streyle, Denton Zubke; Senators Jonathan Casper, Curt Kreun, Gary A. Lee, Donald Schaible, Ronald Sorvaag

Member absent: Senator Larry J. Robinson

Others present: Senators Ray Holmberg, Grand Forks, and Rich Wardner, Dickinson, members of the Legislative Management

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

It was moved by Representative Howe, seconded by Representative Zubke, and carried on a voice vote that the minutes of the February 21, 2018, meeting be approved as distributed.

WATER PERMITTING IN THE BAKKEN AREA

Chairman Schmidt called on Mr. Jon Patch, Director, Water Appropriations Division, State Water Commission, for a presentation ([Appendix B](#)) on water permitting in the Bakken area.

In response to a question from Chairman Schmidt, Mr. Patch said the State Water Commission has legal authority to revoke a conditional use permit after 3 years of disuse, but the State Water Commission's policy is to wait 10 years to revoke a license that is not being used, provided no other entity wants to use the water. He said there are no more "in lieu of" permits (also known as ILOPs), which were permits that allowed irrigation permitholders to suspend irrigation activities and use their allocated water for industrial uses. He said the ILOP program was discontinued. He also said fines collected by the commission are put into the general fund and do not fund the commission.

In response to a question from Representative Nelson, Mr. Patch said there is a backlog of permit applications because the necessary scientific studies take a long time. He said some permits are held in deferral or never approved. He said the commission considers a 30-year projection of anticipated use when reviewing municipal water permits.

STATE ENGINEER UPDATE

Chairman Schmidt called on Mr. Garland Erbele, State Engineer, State Water Commission, for a presentation ([Appendix C](#)) on the status of the Northwest Area Water Supply (NAWS) Project, water permitting on the Missouri River, and the development of economic and life cycle analyses.

Mr. Erbele said the United States Bureau of Reclamation was granted a permit from North Dakota in 1967 for 3,145,000 acre feet of water for the Garrison Diversion Conservancy District irrigation project, but that project is only partially complete. He said the permit later was split in two, with 1,900,000 million acre feet going to the state, and the Bureau of Reclamation retaining the remainder. He said North Dakota gave the NAWS Project 15,000 acre feet of the state's allocation of water.

Mr. Erbele said an agreement to resolve the litigation over the NAWS Project was expected to be put in place soon, and it will take about \$200 to \$220 million to complete that project. He said he wants to put as much money toward construction of that project as possible rather than continuing to fund smaller water systems in that part of the state.

In response to a question from Representative Anderson, Mr. Erbele said a transmission line to carry water to Bottineau may be completed in 4 to 6 years.

In response to a question from Representative Streyle, Mr. Erbele said the plan is to lay pipe for the NAWWS Project after the pumps are completed because funds are unavailable for the pipeline work and the Minot water treatment system, which would supply water for the pipelines until the pumps are completed, is operating at capacity.

Representative Streyle and Representative Nelson said pipelines should be laid now to be ready when treated water is available.

In response to a question from Representative Nelson, Mr. Erbele said the biota treatment plant will cost \$80 million, and the state is loaning those funds to the Bureau of Reclamation. He said the Bureau of Reclamation probably will contract with the City of Minot to operate the plant.

Mr. Erbele said the economic and lifecycle analyses required under 2017 House Bill No. 1020 are in progress, and there will be a workshop to teach engineers how to use the analyses later in June.

LAKE BED SEDIMENTATION STUDY

Chairman Schmidt called on Mr. Edward C. Murphy, State Geologist, for a presentation ([Appendix D](#)) on a lake bed sedimentation study conducted by the Industrial Commission in consultation with the Game and Fish Department, State Department of Health, and State Water Commission. He said the study was required by Section 29 of 2017 Senate Bill No. 2014.

STATE WATER COMMISSION

Chairman Schmidt called on Mr. Richard Johnson, Commissioner, State Water Commission, for an update on commission policies. Mr. Johnson said the State Water Commission established the finance and planning, flood control, and water supply subcommittees in April 2018. He said the subcommittees held meetings in May and reviewed 282 commission-funded projects. He said the commissioners are working on a water development plan, have been involved in the development of the economic and lifecycle analyses, and are reviewing projects that are at least 4 years old to determine whether funds for the projects should be made available for other projects. He said the commissioners are focused on long-term planning.

In response to a question from Representative Streyle, Mr. Johnson said the commissioners discussed the need to manage cashflow and put funds to work on projects that are ready to go.

UNITED STATES DEPARTMENT OF AGRICULTURE'S SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS (SEARCH) GRANTS

Chairman Schmidt called on Mr. Clare Carlson, State Director, Rural Development, United States Department of Agriculture, for a presentation ([Appendix E](#)) on SEARCH grants.

In response to questions from Chairman Schmidt, Mr. Carlson said there is \$33 million in loans and \$5 million in grants available under the program. He said the loans have 3.125 percent interest rates for a period of 30 years. He said the state office for North Dakota gives about six SEARCH grants in a 2-year period.

SMALL TOWN WATER SUPPLY

Chairman Schmidt called on Ms. Becky Tebby, Mayor, City of Benedict, for a presentation ([Appendix F](#)) regarding small water supply system concerns.

In response to a question from Representative Nelson, Ms. Tebby said Benedict residents will consider connecting to a rural water system but want to maintain their system as long as they can. She said the city commissioned a water rate study and informed the residents rates will increase either way. She said the mayor and city council members have to perform the maintenance on the city's water system.

Chairman Schmidt said small communities need good clean water and the state needs to help them join regional water systems.

FARGO-MOORHEAD AREA DIVERSION AND FARGO INTERIOR FLOOD CONTROL PROJECTS

Chairman Schmidt called on Mr. Rocky Schneider, Public Affairs Strategist, AE2S, and Mr. Chad Peterson, Commissioner, Cass County Board of Commissioners, for a presentation ([Appendix G](#)) on the FM Area Diversion Project and Fargo interior flood control project.

In response to a question from Chairman Schmidt, Mr. Schneider said two structures in Christine will be impacted by Plan B, which is the revised diversion plan submitted to the Minnesota Department of Natural Resources earlier this year. He said the costs for Plan B will be allocated as follows-- \$1.1 billion from Fargo and Cass County, \$570 million from North Dakota, and \$43 million from Minnesota. He said the diversion authority will seek \$66.5 million from the State Water Commission to continue construction. He said they will need the funds in the next biennium.

Mr. Jason Benson, County Engineer, Cass County, said moving the floodplain due to the change in plans created a lot of complexities.

In response to a question from Representative Nelson, Mr. Schneider said residents of upstream communities said Plan B is better than the original plan but is not the best possible option.

In response to a question from Representative Mitskog, Mr. Benson said the original plan is approximately 50 percent completed. He said the original plan allowed for 35 feet of waterflow through town, but, under Plan B, that increased to 37 feet. He said they are making modifications south of Fargo because they do not have to stage as much water in Richland County under Plan B as under the original plan.

In response to a question from Senator Lee, Mr. Peterson said they are not acquiring properties now because they are waiting for the Minnesota Department of Natural Resources to make a permitting decision on Plan B. He said they are continuing work around Oxbow.

STATE DEPARTMENT OF HEALTH FUNDING FOR WATER PROJECTS

Chairman Schmidt called on Mr. Dave Glatt, Chief, Environmental Health Section, State Department of Health, for a presentation ([Appendix H](#)) on the department's funding for water projects.

In response to a question from Chairman Schmidt, Mr. Glatt said he recommends the most cost-effective option for small communities that request funds for water systems, and his office will consider using the State Water Commission's lifecycle cost analysis.

In response to a question from Representative Nelson, Mr. Glatt said the State Department of Health does not have the authority to require a small community to join a regional water system, but it is very difficult for small communities to comply with Safe Drinking Water Act requirements and to hire trained water treatment plant operators.

In response to a question from Representative Mitskog, Mr. Glatt said the State Department of Health and other agencies are considering a unified application for state funding for water projects. He said this would help the state prioritize funding.

WATERS OF THE UNITED STATES REGULATIONS

Chairman Schmidt called on Mr. Wayne Stenehjem, Attorney General, for a presentation ([Appendix I](#)) on the status of the federal Waters of the United States (WOTUS) regulations. Mr. Stenehjem said a federal district court issued a stay in the federal litigation, but a consortium of states requested the stay be lifted after the recent United States Supreme Court decision in the case. He said the court lifted the stay and litigation is proceeding. He said North Dakota filed a motion for summary judgment on June 1, 2018.

In response to a question from Representative Streyle, Mr. Stenehjem said there is a bill in the United States House of Representatives to repeal the WOTUS law.

RED RIVER VALLEY WATER SUPPLY PROJECT

Chairman Schmidt called on Mr. Duane DeKrey, General Manager, Red River Valley Water Supply project, for a presentation ([Appendix J](#)) on the Red River Valley Water Supply Project status.

In response to a question from Representative Streyle, Mr. DeKrey said the project could be completed in 5 or 6 years if the funds were available.

WESTERN AREA WATER SUPPLY PROJECT

Chairman Schmidt called on Mr. Mark Owan, Board Chairman, Western Area Water Supply Authority, for a presentation ([Appendix K](#)) on the Western Area Water Supply (WAWs) Authority project status.

In response to a question from Chairman Schmidt, Mr. Owan said they are seeking applicants for the WAWS Authority executive director position. He said water supply systems are partnering with the WAWS Authority because the need for water is outpacing the systems' capacity to provide it.

WESTERN AREA WATER SUPPLY INDUSTRIAL SALES STUDY

Chairman Schmidt called on Mr. Kevin Martin, Senior Project Manager, Houston Engineering, Inc., for a presentation and final report ([Appendix L](#)) on the results of the WAWS Authority industrial sales study required by Sections 11 and 12 of House Bill No. 1020.

In response to a question from Representative Zubke, Mr. Martin said the WAWS Authority does not have the capacity to meet the demand for industrial water sales.

SOURIS RIVER JOINT BOARD

Chairman Schmidt called on Mr. Ryan Ackerman, President and CEO, Ackerman-Estvold, for a presentation ([Appendix M](#)) on behalf of Mr. David Ashley, Chairman, Souris River Joint Board, regarding the funding and expenditures of the Souris River Joint Board.

In response to a question from Chairman Schmidt, Mr. Ackerman said the Souris River Joint Board probably has received state funding through the State Water Commission.

In response to a question from Representative Streyle, Mr. Ackerman said \$20 million is required to complete the flood control work around Burlington. He said that work is fully designed.

PUBLIC PRIVATE PARTNERSHIPS

Chairman Schmidt called on the Legislative Council staff for a presentation ([Appendix N](#)) on public private partnerships.

RESOURCES TRUST FUND

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

In response to a question from Representative Streyle, the Legislative Council staff said the fund balance is 12 to 13 percent above projections. He said the State Water Commission is authorized under Section 3 of House Bill No. 1020 to ask the Budget Section for authority to spend additional money. He said the ending balance for the water development trust fund is anticipated to be \$19.5 million, largely due to tobacco settlement money.

In response to a question from Representative Nelson, the Legislative Council staff said the State Water Commission has forwarded projects for funding to the Budget Section, but the Budget Section does not always approve the requests.

Chairman Schmidt said the Legislative Council staff provided a memorandum entitled [State Water Commission - Carryover Funding](#) indicating funds released from discontinued projects may be put to use for other projects in this biennium, as long as the projects are in the same categories or "buckets" as the discontinued projects.

STATE WATER COMMISSION PROJECT STATUS UPDATE

Chairman Schmidt called on Mr. Dave Laschkewitsch, Director of Administration, State Water Commission, for a project status update ([Appendix O](#)).

Chairman Schmidt said funds from projects approved but which did not proceed should be returned to the fund categories from which the funds came. He said the money should not be left in the resources trust fund.

In response to a question from Senator Lee, Mr. Laschkewitsch said the State Water Commission will not provide additional funds for the project until the Minnesota Department of Natural Resources grants the project a permit.

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

Claire Ness
Counsel

ATTACH:15