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## WATER TOPICS OVERVIEW COMMITTEE

Thursday, June 23, 2022  
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, Chuck Damschen, Jay Fisher, Michael Howe, Bob Martinson, Marvin E. Nelson, Jon O. Nelson, Matthew Ruby, Denton Zubke; Senators Michael Dwyer, Joan Heckaman, Jason G. Heitkamp, David Hogue, Jordan Kannianen, Jim P. Roers, Ronald Sorvaag, Mark F. Weber

**Members absent:** Representatives Tracy Boe, Todd Porter

**Others present:** Representative Chet Pollert, Carrington, and Senator Donald Schaible, Mott, members of the Legislative Management

Representative David Monson, Osnabrock

Chris J. Kadrmas, Legislative Council, Bismarck\*

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

*\*Attended remotely*

**It was moved by Representative Howe, seconded by Representative Ruby, and carried on a voice vote that the minutes of the March 22, 2022, meeting be approved as distributed.**

Mr. Chris J. Kadrmas, Senior Fiscal Analyst, Legislative Council, presented a memorandum entitled [Resources Trust Fund - 2019-21 and 2021-23 Biennium Update](#).

Ms. Heide Delorme, Director, Administrative Services Division, and Ms. Andrea Travnicek, Director, Department of Water Resources, presented testimony ([Appendix B](#)) regarding the federal American Rescue Plan Act funds and the Department of Water Resources project status summary.

In response to questions from committee members, Ms. Delorme noted:

- Funds received from the American Rescue Plan Act are kept separate from other funds, a breakdown of which is attached to the presentation ([Appendix B](#));
- The Blue Flint project is covering planning and design costs with funds from Rainbow Energy, rather than funds approved by the State Water Commission;
- The State Water Commission approved approximately \$390,000 for the Blue Flint project; and
- Additional revenue will be placed in the resources trust fund due to the 1 percent oil extraction tax rate increase resulting from the trigger language in North Dakota Century Code Section 57-51.1-02. The additional revenue will be realized in August 2022 due to the 2-month lag between the imposition and distribution of the tax.

In response to questions from committee members, Ms. Travnicek noted:

- Approved funds do not equate to spent funds because the Department of Water Resources reimburses entities after costs are incurred; and
- All approved funds not officially spent can be returned to the originating funding source within the Department of Water Resources.

Senator Roers and Ms. Dani Quissell, Executive Director, North Dakota Irrigation Association, presented testimony ([Appendix C](#)) regarding the status of irrigation in North Dakota and the measures needed to improve irrigation throughout the state.

In response to questions from committee members, Ms. Quissell noted:

- Expanded irrigation is supported by most major commodity groups within the state and the North Dakota Association of Rural Electric Cooperatives;
- Current federal legislation seeks to resolve ambiguities and misinterpretations by the Bureau of Reclamation within the Dakota Water Resources Act; and
- Irrigation out of the McClusky Canal was not previously an option, but is possible now.

Mr. Chris Bader, Director, Water Appropriation Division, Department of Water Resources, presented testimony ([Appendix D](#)) regarding current water permitting procedures.

In response to questions from committee members, Mr. Bader noted:

- A temporary water permit does not establish a water right;
- Conditional permits are granted based on estimated water usage;
- The Department of Water Resources will perfect the permit for the amount of water actually used in irrigation operations;
- Municipalities and rural water systems operate under different sets of permitting rules to anticipate growth;
- The Department of Water Resources is working to improve the permitting process and is collaborating with the University of North Dakota to study snowpack and its effects on water supply;
- Permitting procedures have become more efficient, with the majority of the delays occurring during the hydrological review, which is performed by a hydrologist employed by the Department of Water Resources;
- No ground water systems are over appropriated, under stress, or subject to litigation; and
- The Department of Water Resources is aware of the permitting backlog and is using every resource available, including technology and staff, to eliminate the backlog.

Ms. Travnicek presented an update ([Appendix E](#)) of the department's activities.

In response to questions from committee members, Ms. Travnicek noted:

- The data for the proposed cost-share analysis was collected from the strategic governance study, North Dakota League of Cities, and rural water districts for long-term sustainability;
- The proposed cost-share percentages are not final and are designed to be a starting point for further discussion with stakeholders;
- The Northwest Area Water Supply (NAWS) advisory board does not have authority to place the biota treatment plant in Max;
- However, the NAWS advisory board finds Max to be a permissible site for the biota treatment plant; and
- Any agreement to place, operate, and maintain the biota treatment plant must be executed by the Bureau of Reclamation on behalf of the United States, the State Water Commission on behalf of the state, and the City of Minot.

Mr. Wade Bachmeier, Chairman, and Mr. Ken Royse, Program Manager, Missouri River Joint Water Board, presented an update ([Appendix F](#)) on the Missouri River Joint Water Board activities.

In response to questions from committee members, Mr. Royse noted it is difficult to compare permitted acres between North Dakota and Montana because Montana issues permits differently than North Dakota.

Mr. Terry Fleck, North Dakota Recreational Representative, Missouri River Recovery Implementation Committee, and Chairman, Friends of Lake Sakakawea, presented testimony regarding an overview of activities by the Army Corps of Engineers on the Missouri River in North Dakota.

Mr. Fleck noted:

- The Missouri River Recovery Implementation Committee is a collaborative forum to develop a shared vision and comprehensive plan for the restoration of the Missouri River ecosystem;
- The committee provides recommendations to federal, tribal, state, local, and private entities in the Missouri River Basin on efforts to restore threatened and endangered species and their habitats, while sustaining the river's many uses;
- Congress authorized the Secretary of the Army to create the committee;
- Federal agencies do not participate in determining the committee's recommendations;
- The committee has helped the upper basin of the Missouri River become better represented among downstream states;
- Committee members must reach a consensus before the committee can implement a plan; and
- The need for North Dakota to utilize its fair share of Missouri River water.

Ms. Jen Murray, Manager and Chief Executive Officer, Southwest Water Authority, and Ms. Sindhuja S. Pillai-Grinolds, Project Manager, Southwest Pipeline Project, presented testimony ([Appendix G](#)) regarding reserve funds for replacement and extraordinary maintenance of water systems in the Southwest Water Authority.

In response to questions from committee members, Ms. Murray and Ms. Pillai-Grinolds noted:

- The balance of the replacement and extraordinary maintenance fund is taken into account when determining rates and future needs; and
- The type of conveyance pipe installed depends on the water pressure at a given point of a pipeline.

Mr. Dave Carlsrud, Mayor, and Ms. Gwen Crawford, City Administrator, Valley City, provided an update ([Appendix H](#)) on the Valley City area flood.

In response to questions from committee members, Mr. Carlsrud and Ms. Crawford noted:

- The amount of clay needed for temporary flood protection was 220,000 cubic yards in 2011 and 28,000 cubic yards in 2022;
- Flood protection cleanup costs were roughly \$170,000 in 2011 and \$7,000 in 2022;
- Cleanup costs decreased due to less clay needing to be moved as a result of permanent flood protection funded by the state;
- A conditional letter of map revision study, as required by the Federal Emergency Management Administration (FEMA), will be finished by this fall; and
- Additional funds may be needed in future bienniums to finish permanent flood protection in Valley City.

Mr. Daryl Campbell, Chairman, and Mr. Larry Tanke, Vice-Chairman, Walsh County Water Resource Board, and Mr. Zach Herrmann, City Engineer, Houston Engineering, provided testimony ([Appendix I](#)) regarding recent flooding issues in northeast North Dakota.

In response to questions from committee members, Mr. Campbell, Mr. Tanke, and Mr. Herrmann noted:

- 10 dams in Walsh County were built by the United States Department of Agriculture and National Resource Conservation Service;
- Dams undergoing dam rehabilitation, including Matajeck Dam, are classified as medium-hazard dams, but are being upgraded to high-hazard dams due to elevated risk;
- Federal criteria for a high-hazard dam classification is the potential for any loss of life downstream of the structure;
- Other than routine operation and maintenance, Matajeck Dam has not undergone any major renovations or refurbishments since its construction in 1966; and
- The Forest River area needs additional drainage.

Mr. Duane DeKrey, General Manager, and Ms. Merri Mooridian, Administrative Officer, Garrison Diversion Conservancy District, provided testimony ([Appendix J](#)) regarding the intake structure for the Red River Valley Water Supply Project.

In response to questions from committee members, Mr. DeKrey and Ms. Mooridian noted:

- The anticipated life cycle of the Red River Valley Water Supply Project is 100 years;
- The pricing system per city is tiered based on the projected amount of water expected to be used;
- The pricing projection for Fargo extends through 2075 and takes into account anticipated population growth combined with a 1930s style drought in the Red River Valley;
- The requested funding is contingent on an acceleration construction timeline for the project; and
- Additional funds will be needed if the timeline for construction cannot be accelerated.

Mr. Richard Johnson, Commissioner, State Water Commission, provided testimony regarding the State Water Commission's recent activities.

In response to questions from committee members, Mr. Johnson noted:

- Constituents and stakeholders have indicated a decreased cost-share figure is not sustainable for smaller cities and rural communities; and
- Snagging and clearing is now an allowable action that qualifies for cost-sharing.

Mr. Joseph Heringer, Land Commissioner, and Mr. Joseph Stegmiller, Surface Director, Department of Trust Lands, provided testimony ([Appendix K](#)) regarding water development on state trust lands and the department's relationship and cooperation with the Department of Water Resources.

In response to questions from committee members, Mr. Heringer and Mr. Stegmiller noted:

- A rental abatement is not available to lessees on lands that cannot be used due to extreme weather, such as drought;
- Field inspectors examine trust lands to determine suitability for production under leases with the Department of Trust Lands;
- Lands not suitable for production are placed on an improvement plan to rehabilitate the land; and
- The grassland enhancement project on school trust lands was funded in part by the Department of Trust Lands, Ducks Unlimited, and the recipients of the improvements.

Mr. Tim Helbling, Mayor, and Mr. Jim Neubauer, City Administrator, City of Mandan; and Mr. Bill Robinson, Chairman, Lower Heart River Water Resource District, provided testimony ([Appendix L](#)) regarding dike structures situated in and owned by the City of Mandan.

In response to questions from committee members, Mr. Helbling, Mr. Neubauer, and Mr. Robinson, noted:

- If necessary improvements are not made to existing dike structures, FEMA will not recertify the structures because the structures would fail to comply with FEMA requirements;
- If FEMA does not recertify the dike structures, residents in Mandan will be required to purchase flood insurance; and
- Flood insurance requirements decrease property values and the threat of flooding poses a risk to the community.

Mr. Dan Cox, Audit Manager, State Auditor's office, provided testimony regarding audits of water resource districts.

In response to questions from committee members, Mr. Cox noted:

- The State Auditor's office is attempting to foster improved communication with water boards that have failed to submit required audit paperwork;
- A citizen complaint does not generally trigger a new financial audit;

- A citizen complaint is taken into account on subsequent audits completed on an entity that has received a complaint;
- According to the lists provided to the State Auditor's office by the State Water Commission and the Rural Water Districts Association, 117 water districts exist in North Dakota;
- Of the 117 water districts, 27 are rural water districts and the remaining 90 are water resource districts;
- The State Auditor's office asserts statutory authority exists to allow the office to audit water districts in addition to water resource districts; and
- The majority of complaints filed with the State Auditor's office relate to water drainage issues.

Senator Sorvaag noted:

- The past two sessions have been dedicated to providing funding for smaller projects out of the resources trust fund;
- The resources trust fund is a viable funding source as long as oil production remains steady; and
- Alternate financing should be considered for larger projects, such as the Red River Valley Water Supply Project, estimated at \$400 million for the next biennium.

No further business appearing, Chairman Schmidt adjourned the meeting at 3:57 p.m.

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Dustin A. Richard  
Counsel

ATTACH:12