



North Dakota Legislative Council

Prepared for the Water Topics Overview Committee
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NORTHWEST AREA WATER SUPPLY PROJECT STUDY - BACKGROUND MEMORANDUM

Section 14 of House Bill No. 1020 (2021) ([appendix](#)) provides for a study of the Northwest Area Water Supply Project (NAWS). The study must include input from the State Water Commission and consideration of an entity, other than the state, to own, manage, and operate NAWS.

BACKGROUND

The Northwest Area Water Supply Project is a joint state and federal project to provide water to northwestern North Dakota from the Missouri River basin. Approximately 81,000 residents live in the NAWS service area, which includes parts of Burke, Ward, Renville, Bottineau, and McHenry Counties. Before NAWS, there were significant concerns about the quality and quantity of the residents' water supply. In some communities, the water failed to meet drinking water standards. As a temporary solution, Minot began providing drinking water to several communities in the service area, but the Minot aquifer is insufficient to supply the communities on a permanent basis. The Northwest Area Water Supply Project is intended to provide a long-term solution by treating and supplying water from the Missouri River basin to Minot and the affected communities.

The federal Garrison Diversion Reformulation Act of 1986 provided the initial authorization for NAWS. In 1991, the Legislative Assembly passed a bill creating the NAWS Advisory Committee and granted the State Water Commission authority to construct, operate, and manage the project. In 2000, the federal Dakota Water Resources Act reauthorized the project with funding from the United States Bureau of Reclamation's Municipal, Rural, and Industrial Grant Program. The Bureau of Reclamation is part of the United States Department of the Interior.

Construction of NAWS began in 2002, but soon became delayed by lawsuits initiated by Manitoba and Missouri. Manitoba objected to the project moving water across the Continental Divide and into Canada because of the risk that harmful biota would be introduced into Canadian waters. Manitoba filed a lawsuit in United States federal court seeking to stop construction of the project and alleging the Environmental Assessment conducted for the project under the National Environmental Policy Act (NEPA) was inadequate. In 2005, the court ordered the Bureau of Reclamation to conduct additional environmental analyses but allowed portions of the project to continue development.

Pursuant to the court order, the Bureau of Reclamation issued a final Environmental Impact Statement (EIS) at the end of 2008. However, Manitoba filed a supplemental complaint in early 2009 alleging the final EIS was inadequate under NEPA. Missouri also filed a lawsuit in the same federal court against the Department of the Interior and the United States Army Corps of Engineers (Corps) over NAWS. Like Manitoba, Missouri alleged the final EIS was inadequate. Missouri also argued the Corps should have completed a separate environmental analysis under NEPA. Unlike Manitoba, Missouri was concerned NAWS would deplete the Missouri River and negatively impact Missouri's ability to use water from the river.

In 2010, the court ordered the Bureau of Reclamation to analyze the environmental impact of NAWS further. In 2013, the court stopped construction of the project until the analysis was completed. A final supplemental EIS was issued in 2015. As part of the supplemental analysis, the Department of the Interior determined full treatment of the water before it crosses the Continental Divide was the preferred method for addressing environmental concerns. In 2017, the federal court issued a ruling for the Department of the Interior and North Dakota which allowed construction on NAWS to recommence. Although Manitoba and Missouri appealed the ruling, the appellate court reaffirmed the ruling in 2019. Construction of the project is ongoing.

Throughout the litigation, the Water Topics Overview Committee received updates on the lawsuits and the construction of NAWS. The committee discussed concerns about the condition of some of the project's physical assets that lay dormant through the litigation. The committee was informed the statutorily created NAWS Advisory

Council has not been holding meetings, and the committee expressed concern regarding the lack of meetings. The committee also received regular status reports of the funding for the project, which comes from the Bureau of Reclamation's Municipal, Rural, and Industrial grants; state appropriations; and a cost-share provided by Minot through collection of a 1 percent city sales tax. The total cost of the project is not known because contracts for some phases of the project have not been bid. According to figures provided by the State Water Commission, the estimated cost of the contracts awarded to date is roughly \$171 million. Future contracts will be necessary to construct booster pump stations and water treatment plants for the project. Approximately \$91 million of the \$171 million for existing contracts will come from federal funds, and approximately \$22 million will come from Minot. State funds are expected to cover the remaining \$58 million. Due to the delayed receipt of federal grant funds, the state also appropriated a \$75 million line of credit from the Bank of North Dakota to be reimbursed by federal grants. The line of credit has not yet been accessed.

SUGGESTED STUDY APPROACH

The assigned study will require the committee to consider whether an entity other than the state should assume ownership, management, and operational responsibility for NAWS. The committee may wish to:

- Identify the project's revenue sources and quantify potential revenue;
- Identify the project's operational requirements and quantify potential operational costs;
- Identify the benefits and disadvantages of state ownership and management of the project; and
- Identify entities with the capability to own, manage, and operate the project.

The committee is required to receive input from the State Water Commission for the study and may wish to receive testimony from representatives of Minot and other communities in the NAWS service district. The committee also may want to receive testimony from operators of other water supply systems in the state for comparison purposes.

ATTACH:1