



North Dakota Legislative Council

Prepared for the Water Topics Overview Committee
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WATER TOPICS OVERVIEW COMMITTEE - BACKGROUND MEMORANDUM

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management during each interim to appoint a Water Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees, and to designate a Chairman. The committee initially was named the Water-Related Topics Overview Committee when the statute first was enacted in 2009 and was later renamed as the Water Topics Overview Committee in 2013.

The committee is required to meet quarterly and operate according to the statutes and procedure governing the operation of other Legislative Management interim committees. The committee is responsible for legislative overview of water topics and related matters; the Garrison Diversion Project; and for any necessary discussions with adjacent states on water topics. The committee must work collaboratively with the State Water Commission (SWC), report on the committee's project prioritization process, provide updates on allocated program expenditures, and report on the fund balances of projects, grants, and contracts.

In addition to its statutory duties, the committee was assigned the duty to receive:

- A report from the Department of Water Resources (DWR) by October 1, 2024, regarding the department's research, in coordination with the Garrison Diversion Conservancy District, into identifying options for the use of the Missouri River intake constructed near Washburn, pursuant to Section 19 of Senate Bill No. 2020 (2023).
- Quarterly reports from SWC on each project SWC has designated as a carryover project that has had a cost-share agreement in place for at least 4 years. The committee may make a recommendation to SWC that a carryover project included in a report be terminated under Section 61-02-14.3 and any funds remaining for the carryover project be reallocated and made available for projects with the same general purpose as the carryover project.
- Both regular and quarterly reports from the Garrison Diversion Conservancy District on the Red River Valley Water Supply Project (RRVWSP).

WATER IN NORTH DAKOTA

North Dakota is located in a region of central North America which bridges the divide between "too wet" and "too dry." The 100th meridian line of longitude roughly splits the state in half. East of this line, there generally is more precipitation in the form of snow and rain than west of the 100th meridian. North Dakota's extreme climate largely is driven by air masses from three areas--the Rocky Mountains, where the mountains block much of the Pacific moisture; the polar region, which brings much of the state's cold weather; and the Gulf of Mexico, which brings much of the state's precipitation. Several studies of lake sediment in North Dakota have demonstrated the state is subject to long-term climatic variation, alternating between extended wet and dry cycles.

Surface Water Resources

North Dakota is separated into two major drainage basins by a continental divide running from the northwest to the southeast corners of the state. The northeastern portion of the state falls generally within the Hudson Bay drainage, while the southwestern part is drained by the Missouri River to the Gulf of Mexico. For planning purposes, DWR has divided the state into five major watersheds--the Missouri River Basin, James River Basin, Mouse River Basin, Red River Basin, and Devils Lake Basin.

The Missouri River drainage system includes the major subbasins of the Missouri and James Rivers. The tributaries on the south and west sides of the Missouri River typically occupy small but sharply defined valleys. This area is well-drained with few natural lakes. The topography is characterized by rolling, hilly plains with numerous flat-topped, steep-sided buttes. The most prominent are located in the Badlands along the Little

Missouri River. Areas east of the Missouri River include glaciated areas that are characterized by many small lakes and wetlands.

The James River, which is a major tributary of the Missouri River, begins in the drift prairie of central North Dakota but does not join the Missouri River until it reaches Yankton, South Dakota. The James River system is poorly to moderately drained with a large number of wetlands.

The Hudson Bay drainage includes the Mouse River and Red River systems and the Devils Lake Basin. The Mouse River originates in Saskatchewan and then loops through North Dakota before it reenters Canada west of the Turtle Mountains. The topography is varied within the basin with hilly terrain in the southwest, a flat glacial lake plain in the east, and forested hills of the Turtle Mountains in the northeast.

The Red River winds northward almost 400 miles, forming the border between North Dakota and Minnesota. From the international boundary with Canada, the Red River flows another 155 river miles to Lake Winnipeg in Manitoba. The valley through which the river flows is the former bed of glacial Lake Agassiz. The ancient lakebed is extremely flat and is home to some of the most productive farmland in the world.

The Devils Lake Basin is a noncontributing subbasin of the Red River Basin. The drainage system is formed by chains of waterways and connecting lakes, many of which ultimately terminate in Devils Lake itself.

The flow in all North Dakota streams and rivers is seasonably variable. Runoff is greatest in early spring as a result of snowmelt water and spring rainfall. Many smaller streams experience little or no flow for extended periods during summer months, although dramatic flow variations in river discharges can be caused by changes in weather patterns, isolated storm events, evaporation rates, and snowpack conditions.

As of 2015, according to information in North Dakota's assessment database provided by the State Department of Health to the federal Environmental Protection Agency (EPA), the state contains 138 manmade reservoirs, 109 natural lakes, and an estimated 59,607 miles of rivers and streams.

Although this memorandum focuses on state involvement in water management and projects, one area in which there is bottom-up control is the draining of surface water. The Legislative Assembly enacted authority to establish legal drain boards in 1895. In 1935, the Legislative Assembly established water control and conservation districts separate from legal drain boards. In 1973, the Legislative Assembly determined each county should have a water conservation and resource district and also changed the name of these districts to water management districts. In 1977, the Legislative Assembly authorized joint boards under which authority two or more water management districts could do what one board could do alone. The first joint board was the Red River Joint Board, which was created in 1979.

During the 1979-80 interim, the Legislative Council studied water organizations. At that time, there were drain boards, water management districts, and joint boards, all of which were designed to manage water. The Legislative Council reviewed the Nebraska system under which one district undertakes all of the functions undertaken by separate water organizations and which are organized on watershed boundaries as opposed to political boundaries. The study resulted in changing the term for water management districts to water resource districts and changing the term for legal drains to assessment drains. The study also resulted in abolishing legal drain boards and transferring the authority over drainage to water resource districts.

Ground Water Resources

Ground water underlies the land surface throughout the state. Ground water generally occurs in two major types of rock--unconsolidated deposits and bedrock. Unconsolidated deposits are loose beds of gravel, sand, silt, or clay of glacial origin. Bedrock consists primarily of shale and sandstone.

Aquifers of glacial origin generally are more productive to wells than aquifers found in the underlying bedrock. Bedrock aquifers underlie the entire state and tend to be more continuous and widespread than aquifers in the unconsolidated deposits. It is estimated 60 million acre-feet of water is stored in the major unconsolidated aquifers in the state. The amount of water available in the major bedrock aquifers is estimated to be approximately 435 million acre-feet.

Garrison Diversion Conservancy District

The Pick-Sloan Missouri Basin Program

On December 22, 1944, the United States Congress authorized the Flood Control Act of 1944, later renamed the Pick-Sloan Missouri Basin Program. The primary purpose of the program was for flood control, navigation,

irrigation, and hydropower, which would be facilitated by the construction of dams on the main stem of the Missouri River. These dams include Fort Peck, Garrison, Oahe, Big Bend, Fort Randall, and Gavins Point.

Under the plan, North Dakota originally was to receive its irrigation from water diverted from the Fort Peck Dam in eastern Montana. Originally known as the "Missouri-Souris Project," the project included 1.275 million acres of irrigation.

Between 1944 and 1965, soil surveys and studies were conducted to assess the feasibility of irrigating the 1.275 million acres originally planned for North Dakota. The studies indicated the soil in northwestern North Dakota was not suitable for irrigation according to federal irrigation standards. Drainage problems caused by the unusual high density of glacial subsoil were a primary factor. As a result, the Bureau of Reclamation revised the diversion plan proposing instead to take water from the Garrison Dam and Reservoir and irrigate other lands to the east. With the new name "Garrison Diversion," the Bureau of Reclamation 1957 feasibility study on the redesigned project recommended irrigation of 1.007 million acres and other water development in central and eastern North Dakota.

Garrison Diversion Unit

Due to changes to the original plan and the language in the 1964 appropriations Act requiring specific reauthorization for all units of the Pick-Sloan Missouri Basin Program, the Bureau of Reclamation returned to Congress for reauthorization. During the process of reauthorization, supporters of the project identified the many benefits for North Dakota and the need to compensate the state for land inundated by the construction of the Garrison Dam and Reservoir. Opponents criticized the large cost of even the scaled-down project, the conflict with federal farm policies, and the relatively small amount of money to be repaid by water users.

On August 5, 1965, Congress addressed these concerns by enacting legislation for the Garrison Diversion Unit. The primary focus of the plan was to include in the initial stage municipal and industrial water, fish and wildlife development, recreation, and flood control along with irrigation of 250,000 acres. Between 1968 and 1984, construction and preparatory activities progressed on many features.

Garrison Diversion Unit Reformulation Act

As a provision of the fiscal year 1986 appropriation, Congress stipulated that new construction contracts not be awarded, or additional land acquired, unless the project was reauthorized by March 31, 1986. The state and the Garrison Diversion Conservancy District subsequently elected to support reauthorization of the project. The Garrison Diversion Unit Reformulation Act of 1986 was signed into law May 12, 1986, to authorize the recommendations of the Garrison Diversion Unit Commission's final report. In conjunction with the new Act, a "statement of principles" was signed by all the primary stakeholders in the previous project conflicts.

Following the 1986 Act, activities began on municipal, rural, and industrial water supply projects and mitigation of wildlife habitat. Construction continued on some of the water delivery features. The continuing evaluation of a smaller Lonetree Reservoir as a project feature and further analysis of the recommended Sykeston Canal deferred progress with construction of the principal water delivery facilities. In 1990, the President failed to include any funding for the Garrison Diversion Project in his submitted fiscal year 1991 budget.

In connection with the administration's decision to terminate Garrison Diversion funding in fiscal year 1991, the Secretary of the Interior established a task group to develop a policy on support for future funding of the authorized project. The task group's decision was to continue funding only those features of the reformulated project which are consistent with the contemporary water needs, national priorities, and the history of Garrison Diversion but not to fund features which would be used for mitigation. The recommendations also included continuation of the municipal, rural, and industrial water supply grant program; Indian municipal, rural, and industrial water supply programs; irrigation development on 17,580 acres to include two Indian reservations; continued operation of the Oakes Test Area research activities; recreation, fish, wildlife mitigation, and enhancement initiatives; and a minimum level of operation and maintenance on the already constructed main supply system facilities. Funding for these features would be considered by the administration within the context of national priorities.

Red River Valley Water Supply Project

Communities in the Red River Valley have experienced unreliable supplies of water due to the fluctuations in the Red River water levels and increased population growth in the valley. Although the river is known to flood, it also has experienced drought conditions that jeopardize residents' access to drinking water and industrial water. To ensure residents in the Red River Valley have access to a reliable water supply, the federal Dakota Water Resources Act of 2000 authorized the RRVWSP.

The Dakota Water Resources Act required North Dakota and the United States Bureau of Reclamation within the United States Department of the Interior to prepare an Environmental Impact Statement (EIS) assessing alternative methods to accomplish the goals of the RRVWSP. The Garrison Diversion Conservancy District was tasked with representing North Dakota in this effort and entered a memorandum of understanding with the Bureau of Reclamation. A draft EIS identifying eight alternatives for the project was released in 2005 and supplemented in 2007 after the comments on the draft statement were considered. The final EIS was released later in 2007 and identified a preferred alternative called the Garrison Diversion Unit for the project. The Garrison Diversion Unit was intended to transport water through the McClusky Canal and utilize a buried pipeline from a biota treatment facility to the Sheyenne River north of Lake Ashtabula. The lake would act as a regulating reservoir, and water would flow from the lake into the Red River. The final EIS also included responses to public comments received on the prior iterations of the document, a final biological assessment prepared in compliance with the federal Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature.

Although Congress was briefed on the Garrison Diversion Unit, the federal government has not authorized construction of the project. As a result, in 2013 the RRVWSP's local stakeholders began work to identify ways to implement the project without federal participation. The stakeholders conducted additional studies and determined the best option for the project would be to bring water from the Missouri River to the Sheyenne River via a buried pipeline running close to Highway 200. The new plan included an intake facility located on the Missouri River close to Washburn and kept Lake Ashtabula as a reservoir. Under the new plan, water will be treated before it crosses the Continental Divide. Due to state legislation passed in 2015, the project was expanded to serve users along the pipeline route in central North Dakota. The Garrison Diversion Conservancy District continues to serve as the state representative on the project, and the Lake Agassiz Water Authority serves as the representative of the local water users to be served by the project.

The concept for the state and local project was completed in 2016, and the preliminary design report was completed in 2018. As the project has progressed, changes have been made to the design. For example, the original plan was intended to avoid a nexus with federal agencies and utilize horizontal collector wells above the ordinary high water mark of the Missouri River, but in 2020 the Garrison Diversion Conservancy District asked the Bureau of Reclamation to provide 145 cubic feet per second of water from the McClusky Canal, in addition to 20 cubic feet per second already authorized, as an alternate water supply for the RRVWSP. The Garrison Diversion Conservancy District indicated the alternate water supply will result in savings for the state and local water users. The Bureau of Reclamation conducted the required EIS regarding the allocation of water, and a Record of Decision effectively authorizing the alternate water supply was signed in January 2021. Construction on the project's pipeline and the discharge structure six miles south of Cooperstown is ongoing. According to project sponsors, construction on the intake screen structure and tunnel is contingent on the receipt of funding from SWC.

DEPARTMENT OF WATER RESOURCES

The State Water Commission was created in 1937 in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately \$500,000 to \$2 million appropriated per biennium. This changed with the creation of the resources trust fund in 1981. When the resources trust fund was created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project (SWPP), which was the first state water project. Since then, the number and scope of water projects overseen and regulated by the commission increased dramatically. The commission now serves many functions, including allocating the state's waters, overseeing dam safety, managing sovereign lands, and approving and funding water projects throughout the state.

The Department of Water Resources, previously called the State Engineer's office, was created by House Bill No. 1353 (2021). The bill restructured the agency, required the Governor to appoint the Director of DWR, subject to the approval of SWC, and required the Director to hire a State Engineer.

The department has the authority to investigate, plan, construct, and develop water-related projects, and serves as a mechanism to financially support those efforts throughout the state. The department is comprised of seven divisions--Administration, Atmospheric Resources, Planning and Education, Regulatory, State Engineer, Water Appropriation, and Water Development.

The department's mission is to responsibly manage the state's water needs and risks for the people's benefit. The department sustainably manages and develops the state's water resources for the health, safety, and prosperity of the state's people, businesses, agriculture, energy, industry, recreation, and natural resources.

WATER FUNDING

Resources Trust Fund

The resources trust fund was created pursuant to passage of Measure No. 6 in the November 1980 general election. Measure No. 6 created a 6.5 percent oil extraction tax, 10 percent of which was to be allocated to the resources trust fund. In June 1990, the Constitution of North Dakota was amended to establish the resources trust fund as a constitutional trust fund and provide the principal and income of the fund could be spent only upon legislative appropriations for constructing water-related projects, including rural water systems, and energy conservation programs. In November 1994, the voters of North Dakota approved a constitutional amendment, which is now Section 24 of Article X of the Constitution of North Dakota, to provide 20 percent of oil extraction taxes be allocated 50 percent to the common schools trust fund and 50 percent to the foundation aid stabilization fund. Section 57-51.1-07 provides oil extraction tax revenues be distributed as follows:

- 20 percent to the resources trust fund;
- An additional 0.5 percent to the resources trust fund until \$128,740,000 has been allocated pursuant to the 0.5 percent allocation;
- 20 percent to the common schools trust fund and foundation aid stabilization fund as provided in Section 24 of Article X of the Constitution of North Dakota;
- 30 percent to the legacy fund as provided in Section 26 of Article X of the Constitution of North Dakota; and
- The remainder to the general fund.

The 2023 Legislative Assembly estimated the resources trust fund would receive \$462.4 million of revenue during the 2023-25 biennium, including \$449.9 million from the oil extraction tax allocation and \$12.5 million from repayments, reimbursements, investment earnings, and other miscellaneous income.

Water Projects Stabilization Fund

In 2021, the Legislative Assembly created the water projects stabilization fund with a transfer of \$1 million from the resources trust fund. In Senate Bill No. 2345 (2021), the Legislative Assembly provided any oil extraction tax revenues deposited in the resources trust fund that exceed the amount included in the 2021 legislative forecast during the period beginning August 1, 2021, and ending February 28, 2023, must be transferred quarterly from the resources trust fund to the water projects stabilization fund. The water projects stabilization fund 2021-23 biennium revenue totaled \$153.4 million, of which \$30 million was appropriated in Senate Bill No. 2020 (2023) to DWR to repay loans issued by the Bank of North Dakota to the Western Area Water Supply (WAWS) Authority and the remainder appropriated to water supply grants. In Section 6 of Senate Bill No. 2020 (2023), the Legislative Assembly continued the transfer of excess resources trust fund revenue to the water projects stabilization fund for the 2023-25 biennium.

Water Infrastructure Revolving Loan Fund

In 1977, the Legislative Assembly created the community water facility loan fund to provide loans to supplement United States Department of Agriculture Rural Development financing for community water projects for the development, storage, treatment, purification, and distribution of water. The fund was established with a ceiling of \$10 million, which was subsequently increased to \$25 million by the 2013 Legislative Assembly, from Bank of North Dakota profits. The Bank was responsible for investigating and considering approval of loan applications, in cooperation with the United States Department of Agriculture Rural Development.

In 2013, the Legislative Assembly created the infrastructure revolving loan fund to begin in 2015 to provide loans for water supply, flood protection, and other water projects. Money in the fund came from 10 percent of the oil extraction revenue deposited in the resources trust fund. The State Water Commission approved projects and loans from the fund and the Bank of North Dakota managed and administered the loans.

The balances and outstanding loans from the community water facility loan fund and the infrastructure revolving loan fund were transferred to a newly created water infrastructure revolving loan fund by the 2021 Legislative Assembly. The State Water Commission approved projects and loans from the fund and the Bank of North Dakota managed and administered the loans. In Section 5 of Senate Bill No. 2020 (2023), the Legislative Assembly provided for the transfer of \$100 million of Bank profits to the water infrastructure revolving loan fund, as requested by the Director of DWR.

Bonding

Section 61-02-46 authorizes SWC to issue revenue bonds of up to \$2 million per project. The Legislative Assembly must authorize revenue bond authority beyond \$2 million per project. In 1991, the Legislative Assembly authorized full revenue bond authority for the Northwest Area Water Supply (NAWS) Project. In 1997, the

Legislative Assembly authorized \$15 million of revenue bonds for the SWPP. In 2001, the Legislative Assembly raised the SWPP bonding authority to \$25 million.

In 1999, SWC was authorized to issue up to \$84.8 million in appropriation bonds under the provisions of Senate Bill No. 2188. The Legislative Assembly's intent was to partially fund flood control projects at Grand Forks, Devils Lake, Wahpeton, and Grafton and to continue funding for the SWPP. In March 2000, the commission issued bonds generating \$27.5 million, thus reducing available bonding authority to \$57.3 million. Recognizing the need for water development projects in addition to those identified in Senate Bill No. 2188, the 2003 Legislative Assembly allowed authority for the unissued \$57.3 million to expire but then authorized \$60 million of bonding authority for statewide water development projects. In June 2005, the commission issued bonds generating \$60 million.

House Bill No. 1020 (2013) provided funding for the purpose of paying off or defeasing all of SWC's bond issues during the 2013-15 biennium. Senate Bill No. 2020 (2015) directed SWC to refinance the bonds through a loan with the Bank of North Dakota. The commission borrowed \$45,840,222 to pay off the last outstanding bonds. The loan payments will be funded for the 15-year term with revenues from the resources trust fund.

House Bill No. 1431 (2021) provided bonding authority to the public finance authority to fund the remaining \$435.5 million of the state's intended share of \$850 million for the Fargo diversion project.

Drinking Water State Revolving Loan Fund

An additional source of funding for water supply development projects is the drinking water state revolving loan fund, established in Section 61-28.1-11. Under this program, funding is distributed in the form of a loan program through the EPA and administered by the North Dakota Department of Environmental Quality (DEQ). The fund provides below market rate interest loans of 2 percent to public water systems for capital improvements aimed at increasing public health protection and compliance under the federal Safe Drinking Water Act. The repayment of previous loans and bonding is deposited in the fund. The average loan is from \$20,000 to \$66,000.

The Department of Water Resources' involvement with the fund is twofold. The Department of Environmental Quality must administer and disburse funds with the approval of DWR. The Department of Environmental Quality must establish assistance priorities and expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund after consulting with and obtaining approval from DWR. The process of prioritizing newer modified projects is completed on an annual basis. Each year DEQ provides an intended use plan, which contains a comprehensive project priority list and a fundable project list. The entities on the list update the cost of the project every year and stay on the list in the same order after an update.

PREVIOUS WATER TOPICS OVERVIEW COMMITTEE STUDIES

In the 2017-18 interim, the committee studied:

- Garrison Diversion Project with a focus on the RR/VWSP.
- Collaboration with SWC.
- Operation of SWC.
- Statewide flood hazard risk management.
- Industrial water usage.
- The Fargo flood control projects.
- FM Area Diversion Project.
- WAWS Authority's industrial water supply assets.
- Regulations of sediments and dredging operations from beds of reservoirs.
- WAWS Authority consolidation loan.
- Souris River Basin flood control projects.
- SWPP.
- NAWS Project.
- Cloud seeding.
- Lake Sakakawea and Lake Audubon.

In the 2019-20 interim, the committee studied:

- RRVWSP.
- A basinwide joint water resource district.
- Life cycle cost analysis and economic analyses of SWC.
- Fargo flood control project.
- FM Area Diversion Project.
- Souris River Basin flood control project.
- NAWS Project.
- Federal alternative funding for water projects.
- Tribal interests in water-related projects.
- WAWS Project.
- SWPP.
- Municipal and rural water supply projects.

In the 2021-22 interim, the committee studied:

- NAWS Project.
- RRVWSP.
- Missouri River water usage.
- Fargo flood control projects.
- FM Area Diversion Project.
- Souris River Basin flood control.
- WAWS Authority.
- SWPP.
- Water development on North Dakota trust lands.
- DEQ and state drinking water program.
- Upper Sheyenne River Joint Water Resource Board.

The committee has studied a number of subjects continually throughout each interim. The studied subjects include the RRVWSP, WAWS, Souris River Basin flood control, Fargo flood control, and NAWS. The following briefly reviews this committee's work relating to these subjects.

RED RIVER VALLEY WATER SUPPLY PROJECT

During the 2017-18 interim, the committee reviewed the status of the RRVWSP and was informed the necessary permits and approvals for the project were on track. The United States Department of the Interior issued a "finding of no significant impact" for the 20 cubic feet of water per second to flow through the McClusky Canal after conducting the department's final environmental assessment. Property acquisitions for the project was continuing with the anticipation of obtaining a water service contract and special use permit from the United States Bureau of Reclamation. Representatives of the Garrison Diversion Conservancy District informed the committee they will be seeking a \$150 million appropriation during the next legislative session. After due consideration and evaluation of technical hydrologic, design aspects, and water permitting and environmental impacts, the state and the United States Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative. However, the federal government did not approve the project. As a result, the project became a state and local project, led by the Garrison Diversion Conservancy District.

During the 2019-20 interim, the committee reviewed several conditions of the 66th Legislative Assembly before providing additional funds and initiating construction on Phase 1 of the project. Four state permits for the RRVWSP were received, half the necessary easements were secured for the project corridor, and construction

was anticipated to be completed by 2023. Additionally, the Garrison Diversion Conservancy District met all four conditions of the Legislative Assembly, and the Budget Section approved the certification from SWC and the State Engineer to begin the project. The commission had received a request for \$16.4 million for the RRVWSP costs associated with the Missouri River intake, transmission pipeline, Sheyenne River discharge structure, property acquisition, and planning, and the remainder of the \$43 million available for the project. The committee anticipated the RRVWSP sponsors would request \$50 million in the 2021-23 biennium for construction costs. Missouri initiated litigation regarding the project on February 4, 2020, by claiming the Bureau of Reclamation's environmental review of the project was flawed. On August 25, 2021, the district court dismissed the lawsuit and on July 10, 2023, the order to dismiss was affirmed by the Eighth Circuit Court of Appeals.

During the 2021-22 interim, the Garrison Diversion Conservancy District proposed an accelerated timeline for construction of the project that would decrease project costs by \$20 million for each biennium. An alternative plan regarding the intake location for the RRVWSP named the eastern North Dakota water alternative supply (ENDAWS) project was proposed. Under the alternative plan, the RRVWSP would receive water out of the McClusky Canal, rather than directly from the Missouri River in Washburn. The committee was informed using the ENDAWS project alternative to the Washburn intake structure may save up to \$200 million in overall construction costs. The committee was informed a decision to move forward on portions of the project dependent on ENDAWS will need to be made within the next 2 years. The state had not set a maximum appropriation amount for the project with an anticipated life cycle of 100 years. Construction was progressing four miles south of Washburn on an intake wet well, cofferdam, and the screens and piping connecting the wet well to the Missouri River. The committee anticipated a funding request of \$255 million for the 2023-25 biennium. As of June 2022, the state has allocated \$86 million to the RRVWSP and political subdivisions had provided \$26 million. Only 8.2 percent of the \$1.36 billion in necessary project funds had been secured. The committee also received information from landowners affected by the RRVWSP. Landowners expressed a preference for easement negotiations as opposed to eminent domain proceedings. Additionally, landowners expressed concerns related to project ownership, the uncertain completion date, federal and international cooperation, and abandonment procedures at the end of the project's life cycle.

WESTERN AREA WATER SUPPLY

During the 2017-18 interim, the committee reviewed several reports on the status of the Industrial Commission's study of the feasibility and desirability of the sale or lease of the industrial water supply assets of the WAWS Authority. The study concluded few of the industrial water supply assets were owned wholly by the WAWS Authority, and the value of the assets depended heavily on long-term water supply contracts. The committee was informed it was unlikely any private entity would be willing to purchase the assets without a contract.

During the 2019-20 interim, the committee received information from the WAWS Authority regarding the status of the WAWS Project. The committee learned the sponsor planned to use \$22 million of the \$40 million to be received from the state during the biennium to expand supply, treatment, and transmission capabilities over the next 4 years.

During the 2021-22 interim, the committee was informed the total connections of the WAWS Project has increased by 193 percent since 2011, serving roughly 5,000 customers. This increase is consistent with population growth in northwest North Dakota. Some WAWS debt was restructured, which has given the authority more flexibility from an accounting standpoint. Legislation to move WAWS from the Industrial Commission to DWR occurred during the 2023 legislative session.

SOURIS RIVER BASIN FLOOD CONTROL

During the 2017-18 interim, the committee received information regarding the status of flood protection in rural areas around Minot, including the rural structure acquisition, relocation, or ring dike (StARR) program which helps rural landowners pay for flood protection efforts. The committee was informed Phases 1 through 3 of the Minot flood control project had been completed or were under construction, with a continued focus on acquiring properties for and designing Phases 4 and 5. The committee learned the available funding for the project was sufficient to advance Phase 4 to a 50 percent design level, but an additional \$8 million was needed to match federal funds for property acquisitions to proceed to Phase 5. Project savings of \$20 million was returned to SWC but was reallocated to property acquisitions and other parts of the project. The total project will require the acquisition of approximately 650 homes, businesses, and lots, and will result in removing 60 percent of the residents from the Federal Emergency Management Agency regulatory floodplain.

During the 2019-20 interim, construction on Phase 1 of the project continued while Phases 2 and 3 were nearing completion. The committee learned all 10 phases of the project could be completed in 15 years if sufficient funding is available for construction. Of the \$82.5 million appropriated for the project during the biennium, \$46 million would be used inside Minot, and the remaining \$36 million would be used outside Minot. The committee was informed that Minot may need to issue bonds to pay for the local cost-share for the project. In June 2020, the committee received information the funding request for the project for the biennium could be reduced to \$49.5 million in light of the SWC budget shortfall.

During the 2021-22 interim, the project received \$84.5 million throughout the 2021-23 biennium. House Bill No. 1431 (2021) appropriated \$74.5 million to the project and \$10 million to SWC. Of the total funds appropriated, \$71.35 million was allocated to the Souris River Joint Board for the construction and engineering throughout the Souris River Basin. The remaining \$13.15 million was allocated to the City of Minot for acquisition activities within Minot city limits. The first milestone of the project was nearing completion.

FARGO FLOOD CONTROL PROJECTS

During the 2017-18 interim, the anticipated cost of the project was increased from \$1.8 billion to \$2.2 billion, and one-half of that sum was anticipated to come from federal and state funds. During the 2019 session, the Legislative Assembly appropriated \$65.5 million for the Fargo area flood control project and expressed the legislative intent to provide no more than \$750 million for the project in total. Of the \$750 million, \$371 million had been made available for the project in previous bienniums. Of the remaining \$379 million, \$66.5 million was to be provided in each of the bienniums through the 2027-29 biennium, and \$47 million was to be provided in the 2029-31 biennium.

During the 2019-20 interim, the committee learned the diversion authority plans to request the Legislative Assembly commit to providing \$870 million in total for the project rather than the \$750 million the 2019 Legislative Assembly intended as the total amount of state funding to provide for the project. The committee received information the diversion authority anticipates receiving a total of \$900 million from the federal government for the project over several years, but the federal funds are not guaranteed.

During the 2021-22 interim, the committee was informed of material and market concerns due to the large quantity of materials needed for the project and the possible impacts on the market for those materials in the state. Project sponsors outlined these concerns to ensure local companies do not face material shortages as a result of the project. Project sponsors acquired approximately 700 parcels for the project, at least 90 of which were acquired through eminent domain. Minnesota appropriated \$4 million to \$5 million, out of an anticipated total of \$17 million, for the project during the last legislative session. The Minnesota Legislature will be able to appropriate the remaining amounts for Minnesota's project components before the scheduled construction period of 2026-27. North Dakota's and Minnesota's federal delegation secured \$437 million for the project under the federal Infrastructure Investment and Jobs Act.

NORTHWEST AREA WATER SUPPLY PROJECT

During the 2017-18 interim, the committee was updated on the NAWS Project, which provides water to approximately 81,000 people in Burke, Ward, Renville, Bottineau, and McHenry Counties. In 2002, Manitoba filed a lawsuit to halt construction of the NAWS Project due to environmental concerns. In 2005, a court ordered the United States Bureau of Reclamation to conduct additional environmental studies of the project, and in 2009, a final EIS and Record Decision were issued by the bureau. However, Missouri initiated a lawsuit claiming the bureau's conclusions and decisions were insufficient to fully analyze the environmental impacts of the project. The court ordered the bureau to conduct further studies, and a new decision was issued in 2015. In August 2017, the court ruled in favor of the bureau and North Dakota, and construction on the NAWS Project was allowed to continue pending an appeal by Manitoba and Missouri.

During the 2019-20 interim, the committee received an update regarding the continued construction and awarded contracts for the project. The project is funded by the Municipal, Rural, and Industrial Water Supply Program, which is a federal grant program administered by SWC; a local cost-share from Minot; and state funds. The committee learned the statutorily created NAWS Advisory Council had not been holding meetings, and the committee expressed concern regarding the lack of meetings.

During the 2021-22 interim, the committee was assigned the responsibility to receive a report from the NAWS Advisory Committee regarding recommendations for the transition of the long-term operation and management of the NAWS Project and was directed to study, with input from SWC, consideration an entity, other than the state, to own, manage, and operate the project.

At the conclusion of the study, the committee was informed the NAWS Project must continue to operate as a state-owned project and all existing contracts must be honored due to numerous water service, finance, and interim water supply contracts that have been in place for several decades. Based on the information provided during the interim, the committee determined the state should continue to own, manage, and operate the NAWS Project until the project's completion.

The total cost of the project is unknown as contracts for some phases of the project have not been bid. According to figures provided by SWC, the estimated cost of the contracts awarded through July 2021 was roughly \$171 million. Much of that amount was needed to complete the Biota Plant near Max. Although the federal government is responsible for the cost of the Biota Plant pursuant to the federal Dakota Water Resources Act, the only federal funding available for the project is through the Municipal, Rural, and Industrial Water Supply Program, which is limited to \$200 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. In February 2022, SWC approved \$750,000 in cost-share for an additional well in the Sundre Aquifer to maintain raw water capacity for the city of Minot and the NAWS Project. The new well will ensure NAWS can meet interim water demands until Lake Sakakawea water can be delivered to Minot. The intake system will be located at the Snake Creek Pumping Plant. Internal and external work is necessary to ensure the facility can operate at its required capacity. Internal modifications do not require permits for the Army Corps of Engineers; however, external modification will require a section 408 permit for the Corps. The project is slated to be completed by 2030, dependent on the receipt of adequate federal, state, and local funding.

NOTABLE WATER-RELATED LEGISLATION ENACTED IN 2023

House Bill No. 1073 updates regulations relating to water storage reservoirs by eliminating the requirement for an operator of a water storage reservoir with a capacity of more than 1,000 acre-feet to submit an annual operating plan to DWR. The bill also removes the emergency interim operating plan procedures and removes a reference to the cancellation of water use permits from Section 61-03-21. The bill requires all water storage reservoirs to maintain adequate structures.

House Bill No. 1075 updates the process for cancellation of water rights by allowing DWR to provide notice of cancellation to affected landowners other than the water permitholder through publication rather than by certified mail and by replacing the notice of cancellation hearing with a public comment period.

House Bill No. 1076 classifies dams as low-hazard, medium-hazard, or high-hazard in regard to permitting requirements and provides a construction permit must be secured for an agriculture dike capable of protecting more than 80 acres of land area or a dike capable of protecting an occupied residence or structure or public infrastructure. The bill also eliminates the requirement for a professional engineer to design an agricultural dike of any height or a farmstead ring dike.

House Bill No. 1077 requires a federal agency that engages in discussions with an entity for a water storage contract from a reservoir within the state to notify DWR and copy the department on any communications regarding the water storage contract. The bill also requires the federal agency to provide the department with an executed copy of any resulting water storage contract.

House Bill No. 1089 removes a requirement for DEQ to obtain approval from SWC to disperse money from the drinking water treatment revolving loan fund. The bill also allows the Governor to appoint a designee to approve transfers between the water pollution control revolving loan fund and the drinking water treatment revolving loan fund.

House Bill No. 1098 removes a community's eligibility to obtain relief under the national flood insurance program on insurable structures within the Federal Emergency Management Agency's identified flood hazard areas if the community fails to adopt floodplain management ordinances required under the national flood insurance program.

House Bill No. 1218 replaces the NAWS Advisory Committee with the NAWS Authority and outlines the authority's elected and appointed members, duties, and powers under SWC.

House Bill No. 1239 codifies in a new section of law the language in former Section 61-32-03.2, which expired on December 31, 2022, relating to smaller subsurface water management systems. The section requires a person

to provide notice to the appropriate water resource district board before installing a subsurface water management system on agricultural farmland of less than 80 acres.

House Bill No. 1385 adds federally recognized Indian tribes to the list of political subdivisions and entities with which SWC may enter contracts. The change allows a contracting tribe to be an eligible sponsor under the DWR's cost-share program.

House Bill No. 1391 requires water resource boards to publish the unofficial meeting minutes in the official county newspaper, on the water resource board website, or on the official county website within 10 days of a meeting of the board.

Senate Bill No. 2015 removes the mandatory requirement for the board of county commissioners of a member district to approve a levy of tax after forming a joint water resource board under Section 61-16.1-11.

Senate Bill No. 2020 increases the maximum line of credit the Bank of North Dakota extends to DWR from \$50 million to \$100 million; applies the prevailing interest rate charged to North Dakota government entities to the line of credit; and sets the maximum amount DWR may provide to the NAWS Project and SWPP at \$50 million each during the biennium.

Senate Bill No. 2036 creates a uniform procedure for all water resource boards regarding water-related projects by repealing Chapter 61-21 and creating a uniform procedure under Chapter 61-16.1 relating to definitions, general powers of water resource boards, project petitions, assessments, notification, hearings, appeals, warrants, and drain construction, repair, maintenance, and closure.

Senate Bill No. 2097 requires a political subdivision to provide notice to state agencies, local water boards, legislators, county commissions, and other stakeholders before engaging in meetings with any federal agency relating to the designation of a waterbody in the state as a wild, scenic, or recreational river under the Wild and Scenic Rivers Act. The bill requires a political subdivision to share copies of any written communication between the federal agency and hold public hearings regarding a potential designation. The bill also requires the written support of the Governor and the county commission of any county impacted before a waterbody may be designated a wild, scenic, or recreational river under the Wild and Scenic Rivers Act.

Senate Bill No. 2196 changes the oversight authority over the WAWS Authority from the Industrial Commission to SWC. The bill refinances certain WAWS Authority's debt into the infrastructure revolving loan fund at a fixed interest rate of 2 percent with a final maturity date of July 1, 2053. The bill provides guidelines for the Bank of North Dakota and SWC for payments if the WAWS Authority incurs a debt or defaults on its principal or interest payment on a loan from the infrastructure revolving loan fund. The bill also transfers to the general fund any accrued and unpaid interest on the \$25 million loan granted to the WAWS Authority from the general fund and requires forgiveness of the accrued and unpaid interest on the \$10 million, \$20 million, and \$19.5 million loans to the WAWS Authority from the resource trust fund.

Senate Bill No. 2364 restricts the Garrison Diversion Conservancy District's use of permanent easement properties to the construction, operation, and maintenance of facilities authorized by law. The bill prohibits the Garrison Diversion Conservancy District from renting, selling, or assigning the rights to a permanent easement to anyone except the State of North Dakota for the operation and maintenance of a public water pipeline. The bill also provides for the transfer of easements if the Garrison Diversion Conservancy District ceases operation.

Senate Bill No. 2372 mandates all county water boards within the Red River, James River, Mouse River, Missouri River, and Devils Lake drainage basins to form and remain a member of a joint water resource board to collaborate on water-related projects. The bill expands the service requirement for project resolutions by requiring the board to serve any applicable school district, park district, or political subdivision benefiting from a water-related project under Section 61-16.1-15.1. The bill also requires joint boards follow all procedures required by county boards when constructing, assigning, and assessing a project.