

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GARRISON DIVERSION OVERVIEW COMMITTEE

Thursday, December 11, 1997
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Pam Guleson, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Pam Guleson, John Dorso, Tom D. Freier; Senators Aaron Krauter, Tim Mathern, Gary J. Nelson, Terry M. Wanzek

Members absent: Representatives Merle Boucher, Eugene Nicholas, Alice Olson, Mike Timm; Senators David E. Nething, John T. Traynor

Others present: David Koland, North Dakota Rural Water Systems Association, Bismarck

Connie Sprynczynatyk, North Dakota League of Cities, Bismarck

Warren Jamison, Garrison Diversion Conservancy District, Carrington

Pam Dryer, North Dakota Wetlands Trust, Bismarck

Richard Nelson, Bureau of Reclamation, Bismarck

David Sprynczynatyk, State Water Commission, Bismarck

Deanne Forster, Prairie Public Radio, Bismarck

Randy Bradbury, Grand Forks Herald, Bismarck

Ken Bertsch, North Dakota Farm Bureau, Bismarck

Mike Dwyer, North Dakota Water Users Association, Bismarck

It was moved by Senator Krauter, seconded by Representative Dorso, and carried that the minutes of the October 23, 1997, meeting be approved as mailed.

GARRISON DIVERSION UNIT PROJECT

Committee counsel distributed a summary prepared by the North Dakota Water Education Foundation of the Dakota Water Resources Act of 1997, a statement by Senator Kent Conrad concerning the Act, a copy of the Dakota Water Resources Act of 1997, and a copy of the Dakota Water Resources Act of 1997 as incorporated into the Garrison Diversion Reformulation Act of 1986 as amended by the Reclamation Projects Authorization and Adjustment Act of 1992. Copies of these items are attached as Appendices A through D, respectively.

At the request of Chairman Guleson, Mr. David Sprynczynatyk, State Engineer, and Secretary, State Water Commission, addressed the committee. He said the Dakota Water Resources Act of 1997 includes an additional \$200 million for Indian municipal, rural, and industrial water supply projects in

addition to the approximately \$21 million authorized in the Reformulation Act of 1986. He said these funds are available to each of the state's four Indian tribes, the Standing Rock Sioux Tribe, Three Affiliated Tribes, Spirit Lake Nation, and the Turtle Mountain Band of Chippewa. He said the Dakota Water Resources Act would provide an additional \$300 million for the municipal, rural, and industrial water supply program. Also, he said, the Act includes \$200 million for construction of a system to deliver Missouri River water to the Red River Valley to meet the water needs of eastern North Dakota. He said the Act renames the Wetlands Trust the natural resources trust, broadens its purposes, and includes an additional \$25 million for the trust. He said the \$25 million amount is separated into two payments with the first \$10 million provided on a percentage of the appropriations for the municipal, rural, and industrial water supply program and Red River water supply features. He said the final \$15 million will be provided after the Red River water supply features are constructed and are operational. He said the existing 5,000-acre Oakes Test Area remains authorized and the Act includes provisions for transferring the test area to the state. Concerning hydropower, he said, the Act prohibits the increase of hydropower rates and provides that the repayment of the irrigation components would become consistent with other western reclamation projects. He said irrigation under the 1997 Act would be further reduced from 130,000 acres to approximately 70,000 acres, and he noted that the Act does not change the status of Devils Lake as it exists under the 1986 Act.

In response to a question from Representative Guleson, Mr. Sprynczynatyk said he would apprise the committee of any hearings on the Dakota Water Resources Act of 1997 held in North Dakota.

At the request of Chairman Guleson, Mr. Richard Nelson, Chief, Resource Management Division, Dakotas Area Office, Bureau of Reclamation, addressed the committee. He presented a letter containing information on Garrison Diversion Unit mitigation and enhancement, a copy of which is attached as Appendix E, and a copy of the Garrison Diversion Unit mitigation and enhancement ledger, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Dorso, Mr. Nelson said that although the Bureau of Reclamation is ahead of concurrency with acquiring

land for mitigation of the Garrison Diversion Unit Project, he was uncertain whether the excess would be enough to mitigate any construction required by the Dakota Water Resources Act of 1997 because of the impacts that would need to be mitigated.

In response to a question from Representative Gulleeson, Mr. Nelson said it is the position of the Bureau of Reclamation that the studies required by the Reformulation Act of 1986 at the Oakes Test Area have been completed and the bureau is currently negotiating with the state to transfer the Oakes Test Area to the state.

At the request of Chairman Gulleeson, committee counsel presented a memorandum entitled [North Dakota Wetlands Trust](#). The memorandum discusses the history, funding, and purpose of the North Dakota Wetlands Trust, which was created by Section 9 of the Garrison Diversion Unit Reformulation Act of 1986.

In response to a question from Representative Gulleeson, Ms. Pamela Dryer, Executive Director, North Dakota Wetlands Trust, said the trust is a nonprofit corporation that pays property taxes just like any other landowner. She said the Wetlands Trust has been involved in 62 different wetland conservation projects and owns over 4,000 acres in North Dakota.

In response to a question from Senator Wanzek, Ms. Dryer said lands acquired or managed by the Wetlands Trust are not counted as mitigation acres for the Garrison Diversion Unit Project. She said the legislation establishing the Wetlands Trust provides that acres acquired by the trust are to be over and above mitigation for the Garrison project.

At the request of Chairman Gulleeson, Mr. Warren Jamison, Manager, Garrison Diversion Conservancy District, addressed the committee. Under the 1986 Reformulation Act, he said, the state was required to repay the federal government for the cost of acquiring as well as maintaining and operating mitigation acreages. However, he said, the Dakota Water Resources Act of 1997 provides that these acquisitions will be nonreimbursable.

In response to a question from Representative Gulleeson, Mr. Jamison said opposition to the Dakota Water Resources Act of 1997 may come from environmental groups and from the so-called "green scissors" movement. He said the green scissors movement is comprised of environmental groups and fiscal conservatives who do not want to see money spent on western water projects.

In response to a question from Representative Dorso, Mr. Jamison said the total cost of the Garrison Diversion Unit as envisioned in the 1986 Reformulation Act is \$1.5 billion of which approximately \$600 million has been expended. However, he said, the Dakota Water Resources Act of 1997 calls for the expenditure of an additional \$700 million to address water needs in North Dakota that have been identified since 1986. He said these include \$200 million for Indian municipal, rural, and industrial water supply projects and an additional \$300 million for the municipal, rural, and industrial

water supply program. If this \$500 million sum is added to the original cost estimate of \$1.5 billion, the total cost of the project reaches \$2 billion, he said. However, he said, the Dakota Water Resources Act proposes that an additional \$700 million be expended on the project on which \$600 million has already been expended resulting in the total cost of the project being \$1.3 billion. He said this would result in a \$700 million cost savings for the federal government if the Dakota Water Resources Act of 1997 is enacted.

At the request of Chairman Gulleeson, committee counsel presented a memorandum entitled [Missouri v. Craig - Analysis and Effect on North Dakota](#).

At the request of Chairman Gulleeson, Mr. Sprynczynatyk addressed the committee. He said he has learned that the state of Missouri is planning to appeal the Craig decision and that the Governor is planning to request the Attorney General to file an amicus brief.

At the request of Chairman Gulleeson, Mr. Sprynczynatyk presented an update on Devils Lake flooding. He distributed a hydrograph of Devils Lake for the period October 1, 1996, to October 30, 1997, and a hydrograph showing the period of record lake elevations for Devils Lake. These hydrographs are attached as Appendix F. He said the lake elevation as of October 30 was 1,442.6 feet mean sea level. He said the lake has stabilized since July and during the last four fall and winter periods the lake rose. Thus, he said, it may be possible that the lake is stabilizing and is not going to rise this winter. However, he said, although it appears Devils Lake may be getting a reprieve, there is no reason that the lake could not continue to rise and there is historical evidence that the lake has been higher in the past. He said if the lake rises three more feet, it will begin to gradually spill into Stump Lake and if the lake reaches a level of 1,459 feet it will begin to flow into the Sheyenne River. He said if the same amount of water enters Devils Lake in 1998 that entered the lake in 1997, it will begin to flow into Stump Lake. He said the federal, state, and local governments have incurred over \$200 million in costs in the Devils Lake Basin. He said these costs include relocating homes, raising roads and bridges, protecting sewer and water systems, and protecting other public utility systems. He said the state has undertaken three significant operations to minimize future damage in the Devils Lake Basin. First, he said, the state is continuing to store water in the upper basin. He said \$1.6 million has been spent on upper basin storage and it is anticipated that \$1 million will be spent for upper basin storage next year. Second, he said, the state has undertaken infrastructure protection projects around Devils Lake. He said this includes a 6,000-footbridge on Highway 57 and a \$50 million levee for the city of Devils Lake. He said approximately \$11 million of this cost will be borne by the state and local governments. Finally, he said, an outlet has been approved by Congress and \$10 million has been allocated to the United States Army Corps of Engineers to complete

the design of and to begin construction of the outlet. He said preliminary projections indicate that the outlet could have a capacity of up to 300 cubic feet per second, but that a larger outlet may cause downstream water quality, flooding, and erosion problems. He said the total cost of a 300 cubic feet per second outlet would be approximately \$50 million. He said the Peterson Coulee route has been selected, a pipeline rather than a canal will be used, and construction is slated to begin in August 1998. However, he cautioned, there are several major hurdles before commencing construction in 1998. He said the authorization legislation requires that the Secretary of the Army for Civil Works must declare that an emergency exists, which has been done. Second, he said, the National Environmental Policy Act must be complied with, which is being done. He said a feasibility study must be completed and the Boundary Waters Treaty of 1909 must also be complied with. He said current United States Army Corps of Engineers' guidelines require that there be a local or nonfederal cost share of 35 percent of the cost of the project.

In response to a question from Senator Nelson, Mr. Sprynczynatyk said the State Water Commission is anticipating a seven-month pumping schedule. He said this schedule would remove approximately 1.3 feet from the level of Devils Lake each year.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the appropriate lake level is not a corps decision but a state and local decision. He said the 1997 Legislative Assembly had created the Devils Lake Outlet Management Advisory Committee and one of the responsibilities of this committee is to develop an annual operating plan for the operation of the Devils Lake outlet and to specify the lake elevation at which pumping will take place.

In response to a question from Senator Wanzek, Mr. Sprynczynatyk said the level of Devils Lake has fluctuated greatly since the last ice age and upper basin drainage may have contributed to the current level of Devils Lake but in no way is the cause of the current flooding in the Devils Lake Basin. He said during the last five years the lake has risen 20 feet and even if there had been no drainage in the Devils Lake Basin the lake would still have risen between 17 and 18 feet. Also, he said, the drainage in the Devils Lake Basin is not due to illegal drainage as only approximately 1.5 percent of the drains in the Devils Lake Basin are illegal.

In response to a question from Representative Gulleeson, Mr. Sprynczynatyk said although 1.5 percent of the drains in the Devils Lake Basin are illegal, this does not equate to 1.5 percent of the water being drained into Devils Lake. He said several of the larger drains are illegal drains and thus more than 1.5 percent of the water entering Devils Lake is the result of illegal drainage.

Concerning the Southwest Pipeline Project, Mr. Sprynczynatyk distributed a map of the project and a phased development plan for the project. These

items are attached as Appendix G. He said the state transferred responsibility for operating and maintaining the pipeline to the Southwest Water Authority in 1996 but retains ownership of the pipeline. He noted that water users pay all of the operation and maintenance costs of the pipeline and continue to make payments for the capital costs of the pipeline to the state pursuant to a repayment schedule. He said the pipeline currently serves 17 communities and recently added the communities of Reeder and Hettinger. He said the pipeline also provides water to approximately 1,200 rural farmsteads. He said approximately \$100 million has been expended on the Southwest Pipeline Project to date, of which \$66 million is federal Garrison municipal, rural, and industrial water supply funds. He said the State Water Commission has a contract with a rural water system located in South Dakota to supply water to Lemmon and the surrounding area. He said these water users are required to pay the cost of extending the pipeline into South Dakota and once the water is delivered these users are responsible for a \$4 million payment for pipeline capacity back to the intake at Lake Sakakawea.

Concerning Garrison municipal, rural, and industrial water supply funding, Mr. Sprynczynatyk distributed a schedule of Garrison municipal, rural, and industrial grant funding and a schedule of the proposed allocation and schedule of remaining Garrison municipal, rural, and industrial water supply grant funding of \$88 million. A copy of this schedule is attached as Appendix H. He said this figure is based on figures developed by the North Dakota Water Coalition.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the \$300 million proposed in the Dakota Water Resources Act of 1997 for the municipal, rural, and industrial water supply program is indexed for inflation. He noted that the current \$200 million authorization is not indexed for inflation and, if it was, the state would receive approximately \$230 to \$240 million for the municipal, rural, and industrial water supply program.

At the request of Chairman Gulleeson, Mr. David Koland, Executive Director, North Dakota Rural Water Systems Association, addressed the committee. A copy of his comments is attached as Appendix I. He advocated that a four-year construction schedule and municipal, rural, and industrial water supply budget be developed based on a \$66 million federal municipal, rural, and industrial water supply program commitment. Under this proposal, he said, if in any one year of the proposed budget the federal payment fell short of the budgeted amount for the municipal, rural, and industrial water supply program, the state would promise to cover the shortage until the federal dollars were received.

In response to a question from Representative Dorso, Mr. Koland said the promised payment plan would probably take between \$3 and \$4 million of state funds to finance.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said it is the initial opinion of the State Water Commission and the Attorney General's office that the commission has existing statutory authority to implement the proposed promised payment plan as envisioned by Mr. Koland.

WATERSHED DISTRICTS STUDY

At the request of Chairman Gulleeson, Mr. Sprynczynatyk addressed the committee. Since 1993, he said, the State Water Commission has received 230 drainage complaints. He said the number of complaints increased significantly in 1993 because it was a very wet year. By law, he said, drainage complaints should be submitted to the water resource district board for the district in which the drain is located rather than being submitted directly to the State Water Commission. Thus, he said, since a significant number of complaints are being forwarded directly to the State Water Commission when the complaints should be sent directly to the local water resource district indicates that there are a significant number of complaints being filed. He described a present problem along Bear Creek in Ransom and Sargent Counties, and he distributed a map of the Meadow Lake and Bear Creek drainage systems, a copy of which is attached as Appendix J. In summary, he said, drainage disputes are real, occur throughout the state, and it is very rare that a single drainage system does not cross a political boundary, such as a county line. He also distributed a map of the North Dakota Water Resource Districts Association's regions and various district boundary proposals. A copy of these maps is attached as Appendix K.

In response to a question from Representative Gulleeson, Mr. Sprynczynatyk said one state that has established districts based upon watershed boundaries is Minnesota. In Minnesota, he said, the watershed districts cross county lines. In response to a further question from Representative Gulleeson, Mr. Sprynczynatyk said problems in the districts are not technical problems or taxation-related problems but are based upon where the landowner resides within the watershed district and the type of project being developed. He noted that several types of districts in North Dakota, including fire and school districts, tax across county lines.

As a professional engineer, Mr. Sprynczynatyk said, he believes it makes a great deal of sense to manage water based upon watershed boundaries rather than political boundaries.

At the request of Chairman Gulleeson, committee counsel presented a memorandum entitled [Water Resource Districts - Authority to Enforce Illegal Drainage](#) and a memorandum entitled [Nebraska Natural Resource Districts - History, Organization, and Powers](#).

At the request of Chairman Gulleeson, Mr. Mike Dwyer, Executive Director, North Dakota Water Resource Districts Association, addressed the committee. He said at the most recent annual meeting of the association, approximately 90 percent of the districts voiced opposition to establishing water resource districts based upon watershed boundaries. One thing that has changed since 1981, he said, is that state law now allows the creation of joint water resource boards which allow water resource districts to work together on a watershed basis to solve water problems based upon watershed boundaries. He said the formation of joint boards provides a mechanism by which a water resource district can work with another district on a common water problem.

In response to Mr. Dwyer's comments, Senator Nelson said that although in his experience joint water resource boards, such as the Red River Joint Board, are working well, the committee should continue its study of whether improvements in the structure of water resource districts may be made.

STAFF DIRECTIVES

Representative Dorso requested that the Legislative Council staff and representatives of the State Water Commission and the Attorney General's office keep the committee informed on the status of the Missouri v. Craig litigation.

Representative Gulleeson requested that the Legislative Council staff provide information on the Minnesota water resource district system.

Senator Nelson requested that the Legislative Council staff contact the North Dakota Water Resource Districts Association to provide information on how water resource districts are addressing cross boundary water management problems and complaints as evidenced by the number of complaints the State Water Commission is receiving concerning drainage.

Representative Dorso requested that the State Water Commission provide information on the number of complaints received by the commission that involve problems that cross water resource district boundaries.

Senator Wanzek requested that the North Dakota Water Resource Districts Association provide information on the total number of acres of wetlands in North Dakota.

Chairman Gulleeson adjourned the meeting at 12:30 p.m.

Jeffrey N. Nelson
Counsel

ATTACH:11