

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Thursday, September 5, 2013
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Tony Grindberg, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Tony Grindberg, Gary A. Lee, Larry Luick, Larry J. Robinson; Representatives Bill Amerman, Dick Anderson, Ron Guggisberg, Curt Hofstad, Curtiss Kreun, Scott Louser, Naomi Muscha, Jon Nelson, Todd Porter, Jim Schmidt, Vicky Steiner

Member absent: Senator Ray Holmberg

Others present: Lonnie J. Laffen, State Senator, Grand Forks

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

At the request of Chairman Grindberg, Committee Counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Grindberg said one of his goals for the committee is to bring in business leaders to provide testimony on water. He said water should be tied to an economic development strategy. He reviewed a document entitled [Tentative Meeting Schedule and Topics for the Water Topics Overview Committee](#).

Representative Hofstad said a collaborative process is important. He said this state has been challenged because of floods, but there are many opportunities because of the funds available for water projects. He said Devils Lake has been rebuilt because of state involvement, and the same thing can be done in other communities, for example, Fargo.

Representative Steiner said Lake Sakakawea is used by the people in the western part of this state for recreation and is used for oil industry development. She said there is a great opportunity to use Lake Sakakawea, which has been lost due to federal management of lands surrounding the lake. She said there is not a hotel on Lake Sakakawea.

BACKGROUND INFORMATION

Committee Counsel presented a background memorandum entitled [Water Topics Overview Committee - Background Memorandum](#).

STATE WATER COMMISSION

Mr. Todd Sando, State Engineer, and Chief Engineer-Secretary, State Water Commission, gave a presentation ([Appendix B](#)) on regulation by the State Engineer, water development by the State Water Commission, the development of water project priorities, the Red River Valley Water Supply Project, the Southwest Pipeline Project, flood control, and other areas of water development. He said water is the key to development of the Bakken, the coal industry, and the agriculture industry in North Dakota. He said the commission has information technology services housed within the agency. He said it is important to keep information technology services within the agency because of the very technical, hydroengineering services needed. He said the present system has provided great data that is considered advanced among the states.

In response to a question from Representative Porter, Mr. Sando said the civil penalty for over-appropriation was raised from \$5,000 a day to \$25,000 a day. He said the purpose of the civil penalty is to try to take profit out of the over-appropriation. He said the consent agreements take the amount of over-appropriation from the next year's appropriation. He said one company--Power Fuels--paid a civil penalty of about \$800,000 through a consent agreement. He said permits will be pulled for future offenses after a consent agreement. He said once the agency went after profits, there has been a substantial effect on over-appropriation.

In response to a question from Representative Porter, Mr. Sando said there have not been any criminal actions taken against over-appropriators. He said every violator has signed a consent agreement.

In response to a question from Representative Porter, Ms. Jennifer L. Verleger, Assistant Attorney General, Attorney General's office, said the state's attorney would have to prosecute a criminal violation. She said most of the state's attorneys in northwest North Dakota are overloaded with work and may not have the scientific background needed to prosecute an over-appropriation case.

In response to a question from Representative Porter, Mr. Sando said his agency will be conducting continuing education for law enforcement to enforce over-appropriation laws.

Representative Schmidt said 40 projects for rural water systems have been prioritized for \$42 million; however, only 6 projects have been approved. He said the bill providing for funding had an emergency clause, and the delay for projects will result in increased costs for rural water systems.

In response to a question from Representative Schmidt, Mr. Sando said the prioritization process focuses on those that do not have water and regional systems. He said the agency is working on a policy for water supply systems. He said water supply funding used to be all federal funding, but now there is state funding. He said the prioritization process does not provide priority for rehabilitation but does for expansion. He said within 30 days the policy will be reviewed. He said every need cannot be met, and there needs to be some criteria to limit projects. He said these criteria will be evaluated, but the agency needs time to conduct the evaluation. He said there is a difference between the needs list that is a collection of what political subdivisions want and the list after the application of eligibility requirements.

In response to a question from Representative Kreun, Mr. Sando said it may be a good idea to use carryover money that was meant to be used for other projects that have not been started for projects that are ready at present.

In response to a question from Representative Kreun, Mr. David Laschkewitsch, Director of Administrative Services, State Water Commission, said all of the money is in the same account, and the issue is a cashflow issue. He said small projects could be moved up in time.

In response to a question from Representative Kreun, Mr. Laschkewitsch said there is a difference between the cash balance in the resources trust fund, which comes in on a monthly basis, and the authority for a project to begin. He said the State Water Commission may authorize a project and the sponsor may commit to the project, but the money is not available at that time. However, the money becomes available as the project moves along.

In response to a question from Representative Kreun, Mr. Sando said the State Water Commission does not work that closely with the Board of University and School Lands in relation to oil impact grants for water-related projects.

In response to a question from Representative Kreun, Mr. Sando said regional water supply authorities and municipalities want to base funding on needs and wants of the authority or municipality, and the State Water Commission wants to base on eligibility and when the money is available. He said the commission cannot commit all the money it may have this biennium at the present time because of the chance of flooding or other emergencies.

Mr. Patrick Fridgen, Director of Planning and Education, State Water Commission, provided information ([Appendix C](#)) to the committee on the commission's project planning and budgeting task timeline and on a draft water project prioritization concept. He said the hearings by the commission in different drainage basins will occur in two rounds. He said the first round will be the commission sharing what the commission wants for projects and policy. He said he expects additional information from project sponsors as to the prioritization process. He said the second round of hearings will be receiving information from sponsors.

In response to a question from Senator Robinson, Mr. Sando said there is a subcommittee on policy of the State Water Commission. He said the policy of the subcommittee will be provided to the commission, and there will be a meeting of the commission with stakeholders. He said engineering is not eligible for cost reimbursement. He said the share for water projects is 75 percent, except for water supply projects. He said the policy may adjust who receives money and at what percentage. He said in the past the commission wanted bricks and mortar and not studies and engineering, but it is not fair these costs are treated differently for water supply projects. He said the commission has 50 times the money as in the past, and this creates issues as to the policy.

In response to a question from Senator Robinson, Mr. Sando said he expects to stay with the current policy through the biennium and have the new policy be effective for the next biennium. He said changing the policy will take time.

In response to a question from Representative Nelson, Mr. Sando said there have been lengthy discussions regarding the tribes. He said the tribes have relied on federal funding for water projects and that funding has included operation and maintenance. He said the State Water Commission can cost-share with political subdivisions but not tribes, unless the tribe is tied into a current system the commission does cost-share. He said the commission does not pay for operation and maintenance.

In response to a question from Representative Nelson, Mr. Sando said there is \$8 million for fiscal year 2014 from the Bureau of Reclamation, and only \$4 million goes to the tribes.

In response to a question from Representative Anderson, Mr. Sando said the State Water Commission works with Canada through the International Joint Commission and the State Department. He said the State Water Commission is trying to open the agreement with Canada because of changing hydrology. He said this will take time because it is a large undertaking and has international protocol that needs to be followed.

In response to a question from Representative Anderson, Mr. Sando said the plan with Canada was opened up when the Rafferty and Alameda Dams were built. He said the plan is to provide a 100-year protection for snowmelt events. He said, in the last flood, the catastrophic rains overwhelmed the flood control structures for the Mouse River.

In response to a question from Senator Robinson, Mr. Sando said the municipal water supply infrastructure is aging, and cities cannot pay for the rehabilitation. He said there may need to be more state money for rehabilitation.

In response to a question from Representative Nelson, Mr. Sando said the State Water Commission is studying downstream Mouse River interests. He said 2013 is worse than 2011 for downstream interests. He said the Mouse River downstream has been above flood stage all summer. He said international agreements limit opening the flow through the wildlife refuge.

In response to a question from Representative Schmidt, Mr. Sando said it is important to the State Water Commission to maintain independent information technology.

WESTERN AREA WATER SUPPLY

Mr. Robert Harms, lobbyist, Independent Water Providers, presented testimony to the committee on the Western Area Water Supply Authority. He said the Western Area Water Supply Project was intended to be a \$150 million project, and today is headed toward being a \$349 million project. He said the Independent Water Providers opposed the Western Area Water Supply Project for three reasons. First, the market already fully served the water needs through the private sector and some political subdivisions. Second, he said, there is more competition as time goes forward. He said in 2011 there were 9,400 acre-feet of permits for oil and gas development. He said there is 100,000 acre-feet approved and commencing. Third, he said, the oil and gas industry would find a new way of managing water.

Mr. Harms said, last session, Senate Bill No. 2233 provided \$120 million. He said the Western Area Water Supply Authority was to build a trunk line, but the trunk line turned into a spiderweb. He provided a map ([Appendix D](#)) of the pipelines. He said the Independent Water Providers objected to this expansion. He said the Independent Water Providers thought Section 19 of Senate Bill No. 2233 would limit industrial growth. He said the language which provides "[t]he state water commission shall approve the planning, location, and water supply contracts of any authority depots, laterals, taps, turnouts, and risers for industrial sales for oil and gas exploration and production" was making the State Water Commission the gatekeeper. He said the commission has delegated this duty to the State Engineer, and the State Engineer reads the section to require approval, instead of evaluating for approval or disapproval, the expansion of industrial water sales to the oil and gas industry. He said the Independent Water Providers want the Water Topics Overview Committee to address these issues. He said the Independent Water Providers want the Water Topics Overview Committee to write to the commission, supporting the Independent Water Providers. He said the Independent Water Providers want a collaborative process.

GARRISON DIVERSION

Mr. Ken Vein, Chairman, Garrison Diversion Conservancy District, gave a presentation ([Appendix E](#)) on the history and vision for water development as it relates to the Garrison Diversion Conservancy District, including the Red River Valley Water Supply Project.

In response to a question from Senator Robinson, Mr. Vein said 3,372 acres are irrigated out of the canal and about 5,000 acres are irrigated through the Oakes Test Area.

In response to a question from Representative Kreun, Mr. Vein said some updating of the environmental impact statement will be needed when the Red River Valley Water Supply Project is commenced.

In response to a question from Senator Grindberg, Mr. Sando said the \$11 million in the State Water Commission budget for the Red River Valley Water Supply Project most likely will be used for easements for the pipeline. He said easements at the tail end of the project are appropriate to fund at present. He said there has not been a record decision by the federal level. He said the executive leadership of this state will need to determine whether to construct the project without federal involvement.

In response to a question from Senator Luick, Mr. Vein said Canada and Missouri are against the project, and sometimes, Minnesota is against the project.

Senator Luick said some Canadian legislators are concerned about water supply. In response to a question from Senator Luick, Mr. Vein said this could be perceived as a benefit to the Canadians.

In response to a question from Senator Luick, Mr. Sando said the Northwest Water Supply Project is in court with Canada. He said Canada is against Missouri River water going to Canada. He said there will always be big issues with Canada if Missouri River water will end up in the Hudson Bay.

Senator Grindberg said it appears that a Red River Valley Water Supply Project will have to depend upon state and local funding.

RED RIVER VALLEY WATER SUPPLY PROJECT

Mr. Barry Wilfahrt, President/CEO, Grand Forks - East Grand Forks Chamber of Commerce, gave a presentation ([Appendix F](#)) entitled *Importance of Grand Forks Water Supply to Regional Industry and Commerce*. He said flood protection for Grand Forks was funded through \$135 million from the federal government, \$52 million from the state, and \$83 million from the city of Grand Forks. He said the \$83 million was the highest allowed for bonding under state law.

Mr. Keith Lund, Vice President, Grand Forks Regional Economic Development Corporation, provided information on the Northern Plains Nitrogen Project. He said the project will require 7.5 million gallons of water per day. He said it is anticipated two-thirds of the water in Grand Forks will be used for wet industry. He said there will need to be the reuse of water.

Mr. Wilfahrt said affordability is the main issue. He said a Red River Valley Water Supply Project may raise bills from \$1.8 million to \$4.3 million for value-added agriculture industry in 2018.

Representative Kreun said the affordability for residents is important as well. He said if the project went forward with 100 percent local funding, it would raise water rates by \$10 per 1,000 gallons. He said if there is a 50/50 split, the water rates would be raised to approximately \$7.50 per 1,000 gallons.

Mr. Tom Dawson, Fargo Moorhead West Fargo Chamber of Commerce, gave a presentation ([Appendix G](#)) on water supply needs in eastern North Dakota. He said Fargo uses 20 acre-feet per year, and this is projected to double by 2050. He said Fargo is good at conservation because water use is well below the average national use.

In response to a question from Senator Luick, Mr. Dawson said all water for Fargo comes from the Red and Sheyenne Rivers. He said there are no wells.

Ms. RaeAnn G. Kelsch, lobbyist, MnDak Upstream Coalition, provided three handouts ([Appendix H](#)) on concerns of landowners south of Fargo with the Fargo diversion plan. The handouts included a lawsuit complaint between the Richland/Wilkin Joint Powers Authority and the United States Army Corps of Engineers, a press

release on the suit, and a map of the phased implementation. She said the coalition brought the lawsuit because the coalition was left no other option because other parties in the Fargo diversion are not willing to compromise. She said some farmers have received letters their land will be seized for the diversion project. She said there is no authorization and no money coming from the federal government.

Mr. Keith Berndt, County Administrator, Cass County, provided testimony for the committee. He said the diversion authority reached out to the upstream coalition. He said the authority is trying to accommodate concerns. He said the project includes storage, diversion, and levees. He said the corps needs to enter landowners' property for soil studies, and landowners would not allow this, so there has been a legal action. He said there has not been any condemnation.

COMMITTEE DISCUSSION

Senator Grindberg encouraged the State Water Commission to engage the North Dakota League of Cities for cooperation in developing a possible policy for municipal water project funding.

Representative Anderson said a major problem with water projects is getting along with the Canadian government.

No further business appearing, Chairman Grindberg adjourned the meeting at 3:05 p.m.

Timothy J. Dawson
Committee Counsel

ATTACH:8