

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### AGRICULTURE AND NATURAL RESOURCES COMMITTEE

Thursday, September 21, 2006  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Chet Pollert, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Chet Pollert, LeRoy G. Bernstein, Michael D. Brandenburg, Chuck Damschen, Lyle Hanson, Craig Headland, Joyce Kingsbury, Matthew M. Klein, Jon O. Nelson, Mike Norland, Dorvan Solberg, Gerald Uglem; Senators Bill L. Bowman, David O'Connell, Herb Urlacher

**Members absent:** Representatives Tom Brusegaard, Rod Froelich, Scot Kelsh, Keith Kempenich Eugene Nicholas; Senators Joel C. Heitkamp, Stanley W. Lyson

**Others present:** See Appendix A

**It was moved by Senator O'Connell, seconded by Senator Urlacher, and carried on a voice vote that the minutes of the August 3, 2006, meeting be approved as distributed.**

#### GRAIN QUALITY ISSUES AND AGRICULTURE RESEARCH ACTIVITIES

Chairman Pollert recognized Dr. Ken Grafton, Dean, College of Agriculture, Food Systems, and Natural Resources, North Dakota State University, and Director, North Dakota Agricultural Experiment Station, Fargo. Dr. Grafton discussed grain quality issues. He distributed a report entitled *Fusarium Head Blight Observations in Wheat, 2006*, prepared by Dr. Marcia McMullen, North Dakota State University Extension Plant Pathologist, and a chart showing the interaction of weather and cultivar resistance level to cause fusarium head blight. Copies of these documents are attached as Appendices B and C, respectively. He said the fusarium head blight or scab epidemic in 2005 caused \$157 million in direct losses to North Dakota farmers. He said scab has been prevalent since 1993 and has caused over \$5 billion in economic losses to the state. In 2006, he said, because of the current dry conditions, very little scab has been reported. However, he said, scab is still present and because of the wheat varieties used, weather conditions, and the presence of fusarium head blight, scab will be a problem in the future. He said the key to fusarium head blight or scab control is the use of resistant wheat varieties, crop rotation, and fungicides.

In summary, Dr. Grafton said North Dakota State University places a very high priority on scab research and North Dakota State University scientists are working with other researchers across the country

through the United States Wheat and Barley Scab Initiative, funded by the United States Department of Agriculture. He said it is clear that one season of dry weather is not the solution to the scab problem.

In response to a question from Representative Uglem, Dr. Grafton said the prevalence of Glenn wheat, accounting for nearly 38 percent of wheat planted in North Dakota, is always a concern to plant breeders from a genetic standpoint. However, he said, plant breeders are working on new varieties and at the present time the qualities contained in the Glenn wheat variety make it a superior variety and, depending upon local conditions, should be planted until new varieties are developed.

Chairman Pollert recognized Mr. Duane Hauck, Director, North Dakota State University Extension Service, Fargo. Mr. Hauck distributed a sheet published by the NDSU Extension Service showing the estimated crop and livestock production losses in North Dakota due to 2006 drought conditions. A copy of this sheet is attached as Appendix D. He said \$50 million in federal aid has been identified to support agricultural producers, of which \$81.8 million is directed toward North Dakota. He said North Dakota has 26 counties meeting the criteria for the livestock assistance grant program. He said the North Dakota State University Department of Agribusiness and Applied Economics is estimating \$58,435,000 of net direct losses due to drought conditions in 2006 in North Dakota. He said the impact to livestock was \$31,135,000 and the impact to crops was \$320,138,000, with \$292,873,000 of crop insurance and indemnity payments, leaving a net estimated direct loss of \$58,435,000.

Chairman Pollert recognized Dr. D. C. Coston, Vice President, Agriculture and University Extension, North Dakota State University, Fargo. Dr. Coston reviewed budget issues concerning the Agricultural Experiment Station and College of Agriculture, Food Systems, and Natural Resources for the 2007 legislative session. He distributed a schedule of the 2007-09 ranked general fund major projects, a copy of which is attached as Appendix E; a summary of the *GROW 21: Enhancing North Dakota's Economy Through Agriculture* program, a copy of which is attached as Appendix F; and a summary of initiatives to develop and expand existing enterprises and to give rise to entirely new ones, a copy of which is attached as Appendix G. He also distributed budget change narratives for the NDSU University Extension

Service, Main Research Center, and the Agricultural Experiment Station, which are on file in the Legislative Council office.

Chairman Pollert recognized Mr. Jerry S. Effertz, State Board for Agricultural Research and Education, Velva. Mr. Effertz said the farmers and ranchers of North Dakota are deeply appreciative of the research being conducted by the Extension Service and North Dakota State University. He said an extra \$10 million in funds does not go very far to alleviate problems or losses caused by crop diseases and drought. However, he said, an additional \$10 million placed in research will have a huge impact and be very beneficial to the farmers and ranchers of North Dakota.

### **GARRISON DIVERSION PROJECT**

Chairman Pollert recognized Mr. Dave Koland, General Manager, Garrison Diversion Conservancy District, Carrington. Mr. Koland presented an overview of the Garrison Diversion Project and related matters. A copy of his written comments is attached as Appendix H, and a copy of the *Status Report on the Red River Valley Water Supply Project Studies* is attached as Appendix I. Mr. Koland distributed the 2005 Garrison Diversion annual report, a copy of the Garrison Diversion mission statement, a copy of the *Lake Agassiz Water Authority Bulletin* for July and August 2006, and a copy of a brochure concerning North Dakota's preferred alternative for supplying water to the Red River Valley published by the Lake Agassiz Water Authority, copies of which are on file in the Legislative Council office.

In response to a question from Senator Bowman, Mr. Koland said Devils Lake is not a good source of water for the Red River Valley because during dry periods, Devils Lake has become nearly dry. He said the preferred alternative study examined doing nothing, utilizing water within the Red River Valley, obtaining water from Northern Minnesota, and obtaining water from the Missouri River.

In response to a further question from Senator Bowman, Mr. Koland said the amount of water diverted from the Missouri River to the Red River Valley under the preferred alternative will average approximately two inches from the level of Lake Sakakawea per year. In addition, he said, North Dakota must put Missouri River water to a beneficial use to preserve its right to use the water and if North Dakota does not use the water, it will be used by downstream interests and North Dakota will lose the option to divert Missouri River water in the future.

In response to a question from Representative Nelson, Mr. Koland said under a best-case scenario, the Garrison Diversion Conservancy District is six years away from delivering Missouri River water to the Red River Valley. If the Red River goes dry, he said, the city of Fargo will soon exhaust available water in Lake Ashtabula held by Bald Hill Dam on the Sheyenne River. He said it would take 1,000 truckloads of water a day to provide water for

Fargo under such a scenario. He said piping water along I-94 from Bismarck to Fargo would cost approximately \$1 billion. He said constructing an underground pipeline from the McClusky Canal to Lake Ashtabula would cost approximately \$600 million and the project would be able to use the manmade control features of the Bald Hill Dam to regulate the flow of water on the Sheyenne River.

In response to a question from Senator Urlacher, Mr. Koland said the length of the pipeline under the preferred alternative is approximately 125 miles.

In response to a further question from Senator Urlacher, Mr. Koland said the Oakes test area is being turned over to local control from federal control. He said the Oakes test area was originally designed for flood irrigation but now focuses on sprinkler irrigation. He said one of the problems at the Oakes test area is that there is no assured supply of water as the conservancy district's project does not put any water into the James River. Thus, he said, irrigators for the Oakes test area are exploring ground water options. He said emphasis at the Oakes test area is switching from vegetable farming to irrigating major crops, such as corn and soybeans.

In response to a question from Representative Uglem, Mr. Koland said if water from the Missouri River was only transported to the headwaters of the Sheyenne River, there would be significant loss of water in the Sheyenne River due to aquifer depletion, whereas if the water is piped to Lake Ashtabula, it can be stored for future use.

In response to a question from Representative Pollert, Mr. Koland said the McClusky Canal will continue to operate and will provide wildlife and recreational benefits. Also, he said, the McClusky Canal will be the delivery mechanism from Lake Audubon to the pipeline to Lake Ashtabula.

### **RAIL RATE CASE AND RENEWABLE ENERGY INITIATIVES**

Chairman Pollert recognized Mr. Tony Clark, President, Public Service Commission, who presented information concerning the rail rate case and efforts to amend the city of Fargo and the city of Grand Forks home rule charters to provide that 20 percent of each city's electricity comes from renewable sources by 2020 and 30 percent of each city's electricity comes from renewable sources by 2030. A copy of Mr. Clark's testimony regarding the rail rate case is attached as Appendix J, and a copy of the letter to Chairman Pollert answering a number of questions concerning the Fargo and Grand Forks initiatives is attached as Appendix K.

### **RESERVED WATER RIGHTS STUDY**

At the request of Chairman Pollert, committee counsel reviewed a bill draft [\[70063.0300\]](#) to authorize the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes.

In response to a question from Representative Nelson, committee counsel said the bill draft anticipates separate negotiations between the state and each Indian tribe or the federal government for non-Indian reserved water rights claimed by the federal government.

In response to a question from Representative Pollert, committee counsel said if the agreement is not approved by the Legislative Assembly, then there is no agreement.

Chairman Pollert recognized Mr. Jon Patch, Assistant Division Director, Water Appropriation Division, State Water Commission. A copy of Mr. Patch's comments concerning the bill draft is attached as Appendix L.

Chairman Pollert recognized Mr. Robert Shaver, Director, Water Appropriation Division, State Water Commission. A copy of Mr. Shaver's comments concerning the bill draft is attached as Appendix M.

Chairman Pollert recognized Mr. Duane Houdek, Counsel, Governor's office, who discussed the authority of the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes. A copy of Mr. Houdek's written comments is attached as Appendix N. He said the procedures and authority that are subjects of the bill draft are already in place and are working well.

In response to a question from Senator Bowman, Mr. Houdek said the Legislative Assembly does not have approval authority of agreements negotiated under current law. However, he said, the Legislative Assembly does play a part through the appropriation process as well as other oversight responsibilities.

Mr. Houdek said requiring legislative approval of reserved water rights agreements may cause a delay because the Legislative Assembly only meets once every two years. Also, he said, if the negotiators know that legislative approval is required, it may discourage serious negotiations.

Chairman Pollert recognized Mr. Charles Carvell, Assistant Attorney General, who discussed authority of the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes. A copy of his written comments is attached as Appendix O.

In response to a question from Representative Damschen, Mr. Carvell said if the Governor uses the authority under North Dakota Century Code Chapter 51-40.2 or Chapter 61-02 to negotiate reserved water rights agreements, then the Legislative Assembly could amend the statutes to require legislative approval. However, he said, if the Governor is relying on the authority contained in Article V, Section 7, of the Constitution of North Dakota that the Governor as Chief Executive Officer of the state has authority to transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state, then requiring legislative oversight may violate the separation of powers contained in the state constitution.

Chairman Pollert recognized Mr. Thomas D. Davis, Water Resource Director, Turtle Mountain Band of Chippewa Indians, Belcourt. A copy of Mr. Davis's written comments concerning the bill draft is attached as Appendix P. Mr. Davis said the Turtle Mountain Band of Chippewa Indians prefer the bill draft be revised to make the bill tribe-specific and the Governor may negotiate with the Turtle Mountain Band of Chippewa Indians to negotiate the tribe's reserved water rights.

In response to Mr. Davis's comments, Senator Bowman said the bill draft should not be limited to a single tribe but as drafted is discretionary and allows those tribes that wish to negotiate their reserved water rights an opportunity to do so but does not force any tribe to enter into negotiations with the state to quantify its water rights.

**It was moved by Senator O'Connell, seconded by Representative Klein, and defeated on a roll call vote that the Legislative Council staff be requested to redraft the bill draft authorizing the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes to make it only applicable to the Turtle Mountain Band of Chippewa Indians.**

Representatives Bernstein, Nelson, Solberg, and Uglem and Senator O'Connell voted "aye." Representatives Pollert, Brandenburg, Damschen, Hanson, Headland, Kingsbury, and Klein and Senators Bowman and Urlacher voted "nay."

Chairman Pollert recognized Representative Nelson. Representative Nelson said if the committee does not recommend the bill draft to the Legislative Council for submission to the Legislative Assembly, then the committee is saying that the Legislative Assembly should not be involved in approving reserved water rights agreements. However, he said, if the committee forwards a bill draft to the Legislative Council, it is making a strong statement that it believes the Legislative Assembly should have final approval over any reserved water rights agreement negotiated between the state and a tribe.

Chairman Pollert recognized Senator Bowman. Senator Bowman said based upon testimony received by the committee, it is clear the Governor has authority to negotiate reserved water rights agreements under current law. However, he said, if the Legislative Assembly is to have a voice in the process by requiring that an agreement be submitted to the Legislative Assembly for approval, then the bill draft before the committee should be approved and recommended to the Legislative Council.

**It was moved by Senator O'Connell, seconded by Representative Hanson, and carried on a roll call vote that the bill draft relating to authority of the Governor to negotiate reserved water rights of the United States and federally recognized Indian tribes be approved and recommended to the Legislative Council.** Representatives Pollert, Hanson, Klein, Nelson, Solberg, and Uglem and Senators Bowman, O'Connell, and Urlacher voted

"aye." Representatives Bernstein, Brandenburg, Damschen, Headland, and Kingsbury voted "nay."

Chairman Pollert recognized Representative Headland who said the committee should consider recommending a bill draft to require negotiations conducted under North Dakota Century Code Chapter 54-40.2 or Chapter 61-02 be approved by the Legislative Assembly as well.

In response to Representative Headland's comments, Senator Bowman said rather than recommending an additional bill draft, the Legislative Assembly could amend the bill recommended to the Legislative Council to include legislative approval for negotiations conducted under North Dakota Century Code Chapter 54-40.2 or Chapter 61-02.

**It was moved by Representative Hanson, seconded by Representative Kingsbury, and carried that the chairman and the staff of the**

**Legislative Council be requested to prepare a report and the bill draft recommended by the committee and to present the report and the recommended bill draft to the Legislative Council.**

**It was moved by Representative Nelson, seconded by Representative Hanson, and carried that the meeting be adjourned sine die.**

Chairman Pollert adjourned the meeting at 2:30 p.m.

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Jeffery N. Nelson  
Counsel

[ATTACH:16](#)