

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## WATER-RELATED TOPICS OVERVIEW COMMITTEE

Tuesday, February 28, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Curt Hofstad, Chairman, called the meeting to order at 9:10 a.m.

**Members present:** Representatives Curt Hofstad, Chuck Damschen, Curtiss Kreun, Jon Nelson, Jim Schmidt; Senators Tony Grindberg, Larry Luick, Connie Triplett

**Members absent:** Representatives Bill Devlin, Lee Kaldor, Kenton Onstad; Senators Randy Burckhard, George L. Nodland

**Others present:** Blair Thoreson, State Representative, Fargo

Senator Rich Wardner and Representative Robin Weisz, members of the Legislative Management, were also in attendance.

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

**It was moved by Representative Nelson, seconded by Senator Triplett, and carried on a voice vote that the minutes of the October 10, 2011, meeting be approved as distributed.**

### PRIORITIZATION AND FUNDING OF STATE WATER PROJECTS

Chairman Hofstad recognized Mr. Todd Sando, State Engineer, State Water Commission, who reviewed the status of the projects and grants contract fund for the 2011-13 biennium. A copy of a schedule used in Mr. Sando's presentation is attached as [Appendix B](#). He said the State Water Commission has spent \$104 million during the first seven months of the biennium. He said the State Water Commission spent a total of \$93.6 million last biennium and as recently as 10 years ago spent only \$5 million per biennium. He said the State Water Commission has budgeted \$389,835,582, including \$30,289,000 that will be requested at the March 13, 2012, Budget Section meeting for the 2011-13 biennium. Of this total, he said, the State Water Commission and State Engineer have approved \$341,451,270 in expenditures.

In response to a question from Representative Kreun, Mr. David Laschkewitsch, Director, Administrative Services Division, State Water Commission, said if the Legislative Assembly places limitations on the purposes for which money may be expended or earmarks money for a specific project, it restricts the options the State Water Commission has available as projects are developed for funding.

Chairman Hofstad recognized Mr. Laschkewitsch. Mr. Laschkewitsch reviewed actual and projected

revenues to the resources trust fund for the 2011-13 biennium. A copy of the schedule used in his presentation is attached as [Appendix C](#).

In response to a question from Representative Hofstad, Mr. Sando reviewed the water project prioritization process used by the State Water Commission. First, he said, the State Water Commission sends out an information letter to each stakeholder in the state requesting information on water needs that the stakeholder may have for the 2013-15 biennium. He said this information must be submitted by the end of April 2012. Also during this period, he said, the Office of Management and Budget issues budget guidelines to the various departments, and the State Water Commission will develop its budget request over the summer based upon the budget guidelines and information received from stakeholders. He said all stakeholders from the North Dakota Water Coalition, local project sponsors, State Water Commission, and the Legislative Assembly must work together to prioritize projects. One misperception project sponsors have, he said, is that when they testify before the interim Water-Related Topics Overview Committee and present their needs, those needs will be approved for funding.

### NORTH DAKOTA WATER ORGANIZATIONS STRUCTURE

Chairman Hofstad recognized Mr. Michael Dwyer, Executive Vice President, North Dakota Water Users Association, who reviewed the formation, structure, and history of North Dakota water organizations. Mr. Dwyer distributed an outline ([Appendix D](#)) of water funding and water policy history and water organization governance. He said 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, he said, the Legislative Assembly funded the State Water Commission on a biennium to biennium basis with approximately \$500,000 to \$2 million being appropriated per biennium. He said this changed with creation of the resources trust fund in 1981. When the resources trust fund was first created, he said, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project--the first state water project. During this period, he said, the scope of projects increased dramatically as the Southwest Pipeline Project was a \$100 million project.

Concerning municipal, rural, and industrial water supply funding, he said, important milestones were the Garrison Diversion Unit Reformulation Act of 1986, the Dakota Water Resources Act of 2000, and the establishment of the Joint Municipal, Rural, and Industrial Water Supply Committee between the State Water Commission and the Garrison Diversion Conservancy District. He said the Water Coalition was created in 1994, and as a result of concerns with North Dakota's commitment to deliver water to eastern North Dakota, the Legislative Assembly in 1997 established a state water resources policy, which is codified as North Dakota Century Code Section 61-01-26.2, to deliver water to eastern North Dakota. To increase funding for water projects, he said, the Legislative Assembly created the water development trust fund using tobacco settlement money in 1999. In 1999-2001, he said, priorities included the Southwest Pipeline Project, Northwest Area Water Supply Project, Grand Forks flood control, and Devils Lake flood control. In 2001-03, he said, other priorities identified included delivery of water to eastern North Dakota; municipal, rural, and industrial water supply project funding; and general water management.

In response to a question from Representative Kreun, Mr. Dwyer agreed that the prospects of future federal funding for water projects are dim, and if projects are to be developed, the state will have to play a larger role.

In response to a question from Representative Nelson, Mr. Dwyer said initiated measure No. 2 would have a significant impact on the development of state water projects and is opposed by the North Dakota Water Users Association.

Chairman Hofstad recognized Ms. Jean Schafer, Executive Director, North Dakota Water Coalition. A copy of Ms. Schafer's prepared comments is attached as [Appendix E](#). She discussed the Water Coalition process. She said the Water Coalition was formed in 1994 to implement the Vision 2000 recommendations to help build a stronger economy for the state. The mission of the Water Coalition, she said, is to complete North Dakota's water infrastructure for economic growth and quality of life. She said the Water Coalition brings together nearly 40 water interests and related groups to help build grassroots understanding and support. Each biennium, she said, the Water Coalition works to put together recommended water priorities as the new legislative session approaches. She said the Water Coalition process allows the water community to provide input to the State Water Commission, the Governor's office, and ultimately the Legislative Assembly. The Water Coalition process begins, she said, during the interim at the grassroots level with the development of a funding priorities plan by the funding subcommittee. She said the funding priorities subcommittee identifies major project needs across the state and seeks funding for projects in the next biennium. Once the subcommittee establishes funding needs for the upcoming biennium, she said, the needs are

presented to the full Water Coalition membership. Once a consensus is achieved, she said, funding recommendations can then be used by the State Engineer, who is part of the subcommittee, to establish project needs for the executive budget. She said the Governor's office is also part of the subcommittee. She said the priorities developed are presented in testimony for the State Water Commission budget at Appropriations Committees hearings.

Representative Kreun said legislators, including members from the Budget Section and Appropriations Committees, should be added to the Water Coalition process.

In response to Representative Kreun's comments, Representative Hofstad agreed that it is vitally important for members of the Water-Related Topics Overview Committee to be familiar with the Water Coalition and Water Coalition funding priorities process.

In response to a question from Senator Triplett, Ms. Schafer said Mr. Bruce Furness, former mayor, Fargo, has been asked to represent the Red River Valley Water Supply Project on the funding priorities subcommittee. She said the subcommittee is awaiting a response from Mr. Furness.

Representative Nelson said a member of the Legislative Assembly may bring an important perspective to the funding priorities subcommittee in that the member may have a better perspective on what is possible or realistic for funding.

Senator Triplett requested that the Water Coalition add the members of the Water-Related Topics Overview Committee to e-mail notifications for Water Coalition meetings.

Chairman Hofstad recognized Mr. Robert Harms, Independent Water Providers. Mr. Harms discussed the development of private water depots and water pipelines to serve industrial water needs in northwestern North Dakota and distributed a letter ([Appendix F](#)) from Mr. Steve Mortenson, President, Independent Water Providers.

Chairman Hofstad recognized Mr. Dwyer. Mr. Dwyer said the Water Coalition and the funding priorities subcommittee would appreciate having legislative involvement as it would improve the process of identifying appropriate projects for funding prioritization. He said the water community also would be strongly supportive of establishing standing water committees within the Legislative Assembly.

## IRRIGATION

Chairman Hofstad recognized Mr. Dwyer, Executive Director, North Dakota Irrigation Association. Mr. Dwyer distributed a map ([Appendix G](#)) showing North Dakota's irrigated acreage as of 2010. He said there are approximately 27 million acres of cropland in North Dakota, of which 270,000 or 1 percent, are irrigated. He said total cash receipts are approximately \$7 billion with \$266 million coming from irrigated crops. Thus, he said, there is

an increased return from irrigated acres. The gross return for irrigated land is approximately \$1,000 per acre, he said, while it is \$340 for nonirrigated acres. Thus, he said, the return on an acre that is irrigated is approximately three times that of a nonirrigated acre of cropland.

Mr. Dwyer said there are a number of programs that landowners may access to promote irrigation. He said the State Water Commission has several programs promoting irrigation, and the Bank of North Dakota has an irrigation Ag PACE program that supports irrigation.

In response to a question from Representative Kreun, Mr. Dwyer said North Dakota is a prior appropriation state, whereby the first person to put water to a beneficial use receives priority for the use of that water. He said perfection of the use is measured from a permit received from the State Engineer, and once the landowner receives a permit, the water subject to the permit becomes a private property right. He said the Legislative Assembly considered implementing a \$100 per acre-foot fee for water use in 1975, but the scheme was defeated at that time and has not been reconsidered.

In response to a question from Representative Hofstad, Mr. Dwyer said two areas that should be addressed in any rewrite of the state's irrigation laws are financing of irrigation projects and governance of irrigation districts.

Chairman Hofstad recognized Mr. Dave Koland, General Manager, Garrison Diversion Conservancy District, Carrington. Mr. Koland reviewed the conservancy district's mile marker 7.5 irrigation project and irrigation issues in general. A copy of his PowerPoint presentation is attached as [Appendix H](#), and a packet of material used in his presentation is attached as [Appendix I](#). He said the district is authorized to irrigate 23,700 acres from the McClusky Canal. He said there are five irrigators using the McClusky Canal as a water source for canalside irrigation.

In response to a question from Representative Hofstad, Mr. Koland said the district's projects require 100 percent approval of the people using the project or assessed for the project.

In response to a question from Senator Luick, Mr. Koland said it is his understanding that special assessments will not be affected by initiated measure No. 2.

In response to a question from Representative Damschen, Mr. Koland said the State Water

Commission is participating on a cost-sharing basis in the mile marker 7.5 project. He said the state participated by providing \$1.7 million of the \$3.5 million project costs. He said the project consists of 21 pivots and 10 individual landowners.

In response to a further question from Representative Damschen, Mr. Koland said the growers found positive benefits in the irrigation project--even in very wet years. He said the participation of 10 landowners resulted in an economy of scale that extended the benefits of irrigation to small irrigators who would otherwise not have been financially able to participate in an irrigation project.

In response to a question from Representative Kreun, Mr. Koland said repayments are not required for the State Water Commission portion of the project financing. He said water resource districts assess property based on benefits while irrigation districts assess property based on lands irrigated.

### STAFF DIRECTIVES

Senator Grindberg requested that the Legislative Council staff provide information concerning the estimated 2011-13 biennium ending balance of the resources trust fund.

Senator Triplett requested that the Legislative Council staff provide information on the future effects on the oil extraction tax exemption available to properties with stripper wells on the balance of the resources trust fund.

Representative Nelson requested that the Legislative Council staff request the Tax Department to provide information on the stripper well exemption and its potential impact on the resources trust fund at a future committee meeting.

Senator Grindberg requested that the Legislative Council staff invite representatives of the Western Area Water Supply Project to update the committee on project development at a future committee meeting.

No further business appearing, Chairman Hofstad adjourned the meeting at 2:15 p.m.

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:9