

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## WATER-RELATED TOPICS OVERVIEW COMMITTEE

Monday, July 16, 2012

Viking Room, Grand International Inn, 1505 North Broadway

Minot, North Dakota

Tuesday, July 17, 2012

Williston State College, 1410 University Avenue

Williston, North Dakota

The committee toured Minot flood damage and flood mitigation infrastructure development during the morning of Monday, July 16, 2012.

Representative Curt Hofstad, Chairman, called the meeting to order at 1:00 p.m.

**Members present:** Representatives Curt Hofstad, Bill Devlin, Curtiss Kreun, Jon Nelson, Kenton Onstad, Jim Schmidt; Senators Randy Burckhard, Larry Luick, George L. Nodland, Connie Triplett

**Members absent:** Representatives Chuck Damschen, Lee Kaldor; Senator Tony Grindberg

**Others present:** Patrick Hatlestad, State Representative, Williston

Matthew M. Klein, State Representative, Minot

Scott Louser, State Representative, Minot

Andrew Maragos, State Representative, Minot

Roscoe Streytle, State Representative, Minot

Stanley W. Lyson, State Senator, Williston

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

**It was moved by Representative Nelson, seconded by Senator Burckhard, and carried on a voice vote that the minutes of the April 19, 2012, meeting be approved as distributed.**

### MINOT FLOOD DAMAGE AND FLOOD MITIGATION INFRASTRUCTURE DEVELOPMENT

Chairman Hofstad recognized Mr. Dan Jonasson, Director of Public Works, City of Minot. A map of proposed infrastructure development in the Mouse River Valley and a map of the city of Minot used by Mr. Jonasson in his presentation is on file in the Legislative Council office. A study entitled *Mouse River Enhanced Flood Protection Preliminary Engineering Report: Executive Summary* is attached as [Appendix B](#), and a PowerPoint used by Mr. Jonasson in his presentation is attached as [Appendix C](#). Mr. Jonasson said 4,100 structures were damaged by the June 2011 flood. He said 350 to 400 homes will probably need to be demolished as they cannot be made habitable. Another challenge facing the city of Minot, he said, is the increase in solid waste coming in to the Minot landfill. He said this will decrease the working life of the landfill. He said the city is also in the process of developing a

flood hazard mitigation request. He said the goal of this process is to demonstrate to the Federal Emergency Management Agency (FEMA) that the value of project benefits exceeds construction costs. Hazard mitigation project applications and progress, he said, include the Sixth Street SW underpass pump station and storm drain improvements, water treatment plant flood mitigation, elimination of gravity sewer river crossings, consolidation of storm sewer outfalls, improvement in the city's communications network, and upgrading six lift stations with emergency generators.

Mr. Jonasson also reviewed the preliminary engineer's report for the Mouse River enhanced flood protection project. He said the scope of the project is to design a flood risk reduction project from Burlington to Velva and Mouse River Park for the June 2011 flood of record.

Mr. Jonasson also updated the committee concerning the Northwest Area Water Supply Project. He said the State Water Commission is currently working on filter reconstruction at the water treatment plant. He said water service to the Minot Air Force Base, Glenburn, and Lansford is anticipated in 2012, and then the project design work will commence for the northern tier facilities. He said the project will file a supplemental environmental impact statement in the fall of 2012 with a record of decision expected in spring or summer of 2013.

In response to a question from Representative Kreun, Ms. Cindy Hemphill, Director of Finance, City of Minot, said Minot is reviewing the feasibility of paying the entire nonstate cost-share of the flood control project with a potential sales tax. She said if Minot pursues this option, it would like to review the cost-share split between the state and local entities for the project.

In response to a question from Representative Nelson, Mr. Jonasson said current aquifers cannot sustain normal growth much less accelerated growth for the city of Minot. Thus, he said, it is essential that Missouri River water be accessed for domestic water for the city of Minot and northwest North Dakota.

In response to a question from Senator Luick, Mr. Jonasson said the city sewer system has not kept up with growth in the city of Minot.

Chairman Hofstad recognized Mr. Curt Zimbleman, Mayor, Minot. Mr. Zimbleman addressed wastewater, sewer, and landfill issues. Each of these issues, he said, must be addressed by the city of Minot.

### STATE WATER COMMISSION

Chairman Hofstad recognized Mr. Todd Sando, State Engineer, State Water Commission. Mr. Sando addressed the 2011 flood incidents in North Dakota and water project development in North Dakota. He said the state is making great progress addressing the flood incidents of 2011. He said the State Water Commission has put an acquisition process in place for the affected counties. He said the commission has approved a cost-share of 75 percent state and 25 percent nonstate for projects located within the affected counties.

Concerning the Souris River Valley, Mr. Sando said the State Water Commission has established a task force to examine the entire valley to address Mouse River flooding. He said this study will determine at what level flood protection should be provided at various locations in the valley. He said this study will be time-consuming in that it must necessarily involve Canadian concerns as well as North Dakota concerns.

In response to a question from Senator Burckhard, Mr. Sando said the Minot flood control project is more complicated than most in North Dakota because it involves considerations in another country.

In response to a question from Representative Nelson, Mr. Sando said the State Water Commission is working with the North Dakota Water Coalition and the Office of Management and Budget on its recommendations for the 2013-15 executive budget. He said the Minot project will be similar in size and magnitude to the Grand Forks flood control project which took 10 years to complete. He said initial expenditures will be small compared to future expenditures as the project ramps up. He said it appears the initial request will be \$50 million for Minot and \$75 million for other flood control projects for the 2013-15 biennium.

In response to a question from Senator Triplett, Mr. Sando agreed that any levees must be set back far enough to give the river room to pass through the city, and levee alignment is crucial in any flood control project.

In response to a question from Representative Hofstad, Mr. Sando agreed that current assets in the resources trust fund are not adequate to address all of North Dakota's water infrastructure needs. However, he said, although needs far exceed revenues, revenues are strengthening and on a very positive trend. He said the State Water Commission would like to focus on western water needs during 2013-15 and then, as Mouse River and Fargo flood control projects become ready for increased funding, shift the focus to those projects.

Concerning Devils Lake, Mr. Sando said the lake is 18 inches below its peak, and land in the northern

portion of the basin is beginning to reappear. For the first time since 1993, he said, the lake is declining and both outlets are operating. He said construction of the outlets took nine months which was a tremendous engineering achievement. He said the need to blend water from the two outlets to meet water quality standards on the Sheyenne River adds to the complexity of Devils Lake flood relief.

In response to a question from Representative Nelson, Mr. Sando said the State Water Commission is studying constructing a third gravity outlet to address any future emergency at Devils Lake. He said flexibility was the key to the speed with which the Devils Lake Outlet was constructed. He said the ability of the commission to move money where it is needed and projects are ready to be constructed is very beneficial rather than having money allocated or set aside for a specific project which for one reason or another may not be ready for construction.

In response to a question from Senator Luick, Mr. Sando said the west end outlet has an ability to pump water down to a level of 1,445 feet mean sea level. He said the current lake elevation is 1,453 feet mean sea level. At a level of 1,445 feet mean sea level, he said, 100,000 acres could be reclaimed. Also, he reminded the committee that 1,445 feet mean sea level is still above the 1,428-foot mean sea level meander line.

In the north central part of the state, Mr. Sando said the State Water Commission is working to resolve flood issues at Rice Lake. Concerning Valley City, he said, the commission is undertaking an economic feasibility study to build a levee system through the city. He said this is anticipated to be a \$40 million to \$50 million flood control project. He said the commission also is undertaking a feasibility study to provide flood control for Jamestown, LaMoure, and Oakes in the James River system. He said other flood control issues include Burleigh County and Bismarck as well as Fargo, Grafton, and Park River.

Concerning the Western Area Water Supply Project, Mr. Sando said the authority has begun awarding contracts, and the State Water Commission has approved \$100 million for the project. However, he said, bids for expansion of the Williston water treatment plant were deemed to be too high, and the authority is considering how to proceed.

Concerning the Southwest Pipeline Project, Mr. Sando said the Southwest Water Authority is having to curtail industrial usage because of growth and hot weather. He said \$13 million will be expended on the project during the current biennium with \$49 million expected for the 2013-15 biennium as there are major infrastructure needs in the west.

In response to a question from Representative Hofstad, Mr. Sando said the issue of whether a permit is required from the Corps of Engineers to use surplus Missouri River water is of critical concern to North Dakota. He said it is the position of North Dakota that

the state does not need a federal permit to use its portion of the river.

In response to a question from Representative Kreun, Mr. Sando said the policy of the State Water Commission concerning municipal, rural, and industrial water supply development is to provide water to individuals that do not have good sufficient quantity or quality of water.

### **NORTH DAKOTA WATER COALITION**

Chairman Hofstad recognized Ms. Jean Schafer, Executive Director, North Dakota Water Coalition. Ms. Schafer discussed development of funding priorities by the funding priorities subcommittee of the coalition. A draft of *2013-15 Water Coalition Funding Priorities Outline* is attached as [Appendix D](#). She said the draft is based on estimated 2013-15 resources trust fund revenues of \$375 million. She said project submissions totaled \$409 million, and the coalition has prioritized the requests to meet the anticipated \$375 million revenue estimate.

In response to a question from Representative Nelson, Mr. Sando said the State Water Commission can meet all water needs for 2013-15 biennium based upon current cost-share policies because of increased revenues to the resources trust fund.

In response to a question from Representative Nelson, Mr. Tad Torgerson, Analyst, Office of Management and Budget, said the \$375 million resources trust fund estimate is not an official revenue forecast but a preliminary figure based upon currently available information.

### **IRRIGATION**

Chairman Hofstad recognized Mr. Dave Koland, General Manager, Garrison Diversion Conservancy District, Carrington. Mr. Koland said he wanted to clarify a possible misconception concerning the minutes of the previous committee meeting. He said the chairman of the Lake Agassiz Water Authority may have implied that federal approval is required for the alternative Fargo flood control plan when the reason for the plan is that federal approval is not required. He said Plan A is the preferred alternative which obtains water from the Bureau of Reclamation. He said Plan B is an attempt to find a plan that does not involve the Bureau of Reclamation or taking water from the McClusky Canal. He said this option does not require approval of the Bureau of Reclamation or a record of decision. He said this plan will meet Canadian concerns as the water will be treated before it leaves the Missouri River Basin.

Concerning irrigation, Mr. Koland said the North Dakota Irrigation Association, the Garrison Diversion Conservancy District, and the State Engineer's office are reviewing the state's irrigation statutes in an attempt to identify any changes that should be made by the Legislative Assembly. He said the group is not prepared to make a recommendation at this time but

will bring any recommended changes forward at a future committee meeting.

### **COMMITTEE DISCUSSION**

In response to a question from Senator Luick, Mr. Sando said under the municipal, rural, and industrial water supply program, the state cost-share portion is not repaid by the project sponsor. He said this is a grant and not a loan. The only state projects that require repayment, he said, are the Southwest Pipeline Project and Western Area Water Supply Project.

### **WESTERN AREA WATER SUPPLY AUTHORITY**

Chairman Hofstad recognized Mr. Denton Zubke, Chairman, Western Area Water Supply Authority, Watford City. Mr. Zubke updated the committee concerning the progress of the Western Area Water Supply Project. A copy of his written comments is attached as [Appendix E](#). He reviewed the current status of the project, impact of oil production and population growth, and future expansion plans for the project. An information sheet concerning the project is attached as [Appendix F](#) and a map of Western Area Water Supply Project proposed bulk fill depot locations is attached as [Appendix G](#).

In response to a question from Representative Hofstad, Mr. Zubke said all primary contractual agreements concerning the authority are in place, and water users are coming online.

In response to a question from Representative Hofstad, Mr. Cory Chorne, AE2S Engineering, said the original business plan accounted for approximately 400 rural water users. He said there have been approximately 6,000 rural water requests--a tremendous increase. As demands increased, he said, the authority built increased capacity into its transmission lines, reservoirs, and pumps to accommodate the growth. Now, he said, the authority is concentrating on developing a distribution system to serve its potential customers.

In response to a question from Senator Nodland, Mr. Steve Burian, AE2S Engineering, said the authority's business plan is still adequate even with the depot reductions.

In response to a question from Representative Hofstad, Mr. Zubke said the authority has done a good job addressing the concerns of the Independent Water Providers.

In response to a question from Senator Nodland, Mr. Zubke said the authority specifically negotiated a provision prohibiting any prepayment penalties so loans can be repaid earlier if revenues allowed. He said the authority does not have any concerns about repaying its loans on time.

Chairman Hofstad recognized Mr. Robert Harms, Independent Water Providers. Mr. Harms distributed a copy of his formal comments ([Appendix H](#)) and an excerpt ([Appendix I](#)) concerning water ports proposed

by the authority. Mr. Harms presented a review of the Independent Water Providers and history of the organization, its relationship with the Western Area Water Supply Authority and concerns of the Independent Water Providers members, and potential policy considerations the committee may wish to consider for the 2013 legislative session.

To minimize impacts to private water providers, Mr. Harms said any depot constructed by the Western Area Water Supply Authority should be limited to operating only two ports, even though each might be constructed with more than a two-port capacity to take advantage of cost efficiencies, and that prior to operating more than two ports at any site, an objective assessment be made by the State Water Commission, or an independent third party approved by the commission, to verify the need for additional capacity and to verify the current need is not being met by the private sector and Western Area Water Supply Authority capacity under a two-port limit. This policy, he said, would largely resolve the main differences between the two organizations and set the stage for a cooperative relationship going into the 2013 legislative session. Additional policy suggestions, he said, include a change in governance structure and reconsideration of the project's funding mechanism.

In response to a question from Representative Hofstad, Mr. Harms said the concerns of the Independent Water Providers are that because the Western Area Water Supply Project is overdesigned, it will expand and it will take more than the current 15 to 18 percent of water business in the area.

In response to a question from Senator Nodland, Ms. Michelle Klose, Assistant State Engineer, said the State Engineer's office does not approve water depots but does approve water permits. She said water permit applications are likely to be approved if it is determined the water requested is available.

Chairman Hofstad recognized Representative Kreun. Representative Kreun said the Western Area Water Supply Project is a good method to provide potable water to rural systems or areas of the state where it is difficult to provide good quantity and quality water for domestic purposes. Even better, he said, is that the project is essentially being funded by the oil and gas industry, reducing pressure on the resources trust fund, and leaving those assets for use in other areas of the state.

### **BANK OF NORTH DAKOTA**

Chairman Hofstad recognized Mr. Bob Humann, Senior Vice President and Chief Lending Officer, Bank

of North Dakota. Mr. Humann discussed water development loan options and distributed an information sheet ([Appendix J](#)). He said water development loan options include the community water facility revolving loan fund, lending to state agencies, lending to political subdivisions, and participating with a local lender on any type of water project financing.

Chairman Hofstad recognized Ms. Kylee Merkel, Business Manager, Public Finance Authority. Ms. Merkel said the Public Finance Authority has two water finance options--bonds issued by the authority and the state revolving fund program, established in 1990 to enable the state to receive federal capitalization grants as authorized under the Clean Water Act.

### **COMMITTEE DISCUSSION**

Chairman Hofstad said one item the committee may wish to pursue during the remainder of the biennium is alternative methods for funding water projects, including a capital replacement program and revolving loan fund. Another area of study, he said, is prioritization of water projects. He said the North Dakota Water Coalition will present a report at the committee's final meeting of the interim.

Chairman Hofstad recognized Representative Schmidt. If the committee is going to approve a list of proposed projects submitted by the North Dakota Water Coalition, Representative Schmidt said he would find it difficult to support the process. An example, he said, is that the locally preferred alternative for Fargo flood control is not the Corps of Engineers' preferred proposal. He said he would find it difficult to support a more expensive project than the preferred project developed by the corps.

Chairman Hofstad recognized Representative Kreun. Representative Kreun said it is possible that the Legislative Assembly could prioritize or approve projects and yet give the State Water Commission flexibility to move forward on projects as they are ready for funding.

No further business appearing, Chairman Hofstad adjourned the meeting at 2:00 p.m.

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:10