

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Thursday, April 10, 2014

North Convention Center, Sleep Inn and Suites, 2400 10th Street SW
Minot, North Dakota

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

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

Members absent: Senator Larry Luick; Representatives Ron Guggisberg, Vicky Steiner

Others present: Roger Brabandt, State Representative, Minot
Robert Frantsvog, State Representative, Minot
Bob Hunskor, State Representative, Newburg
Matthew M. Klein, State Representative, Minot
Karen K. Krebsbach, State Senator, Minot
Oley Larsen, State Senator, Minot
David Monson, State Representative, Osnabrock
David O'Connell, State Senator, Lansford
Roscoe Streyle, State Representative, Minot
Representative Chuck Damschen, member of the Legislative Management, was also in attendance.
See [Appendix A](#) for additional persons present.

It was moved by Senator Robinson, seconded by Representative Nelson, and carried on a voice vote that the minutes of the February 3-4, 2014, meeting be approved as distributed.

FLOOD INSURANCE

Mr. Russell Riggs, Policy Analyst, National Association of Realtors, Washington, D.C., presented information on the federal flood insurance program. He said the national flood insurance program passed in July 2012. He said the bill stabilized the flood insurance program for five years. He said about 20 percent of all policyholders were phased out. He said these properties included second homes, business property, and grandfathered property. He said grandfathered property received the rate that the previous owner had. He said this caused a problem with real estate markets because flood insurance increased at the extremes from \$500 per year to \$25,000 per year. He said homes became unsalable. He said the new legislation passed recently is the Homeowners Flood Insurance Affordability Act. He said it allows the assumption of current policy by the new buyer by reinstating the grandfather procedures. He said rates will increase but will be affordable.

In response to a question from Representative Louser, Mr. Riggs said there have not been any alternatives for federal flood insurance in the past. He said there has not been any private insurance historically, but new legislation has provided mechanisms for a private market and some is available in Florida. He said the new maps are complicated because the old maps are inaccurate in some places. He said if a property is mapped into the flood zone, it creates serious problems. He said maps will require lots of local data.

In response to a question from Representative Kreun, Mr. Riggs said the rates for flood insurance will slowly increase. He said the debts in the program arose from the Katrina and Sandy hurricanes. He said the program is becoming more actuarially sound, and it will take time to pay off the debt.

MINOT FLOOD CONTROL, FLOOD RECOVERY, AND INFRASTRUCTURE NEEDS

Mr. Dan Jonasson, Public Works Director, Minot, gave a presentation ([Appendix B](#)) on the Mouse River enhanced protection plan, the Minot area flood recovery, and Minot infrastructure demands and needs. He said the city looked at the cost-savings of reducing protection from 27,000 cubic feet per second to 10,000 cubic feet per second, and the city only saved 5.6 percent of the project. He said it makes sense to build to the higher level. He said the city looked at phasing in the flood protection. He said the engineers created 14 phases with a priority of

keeping United States Highway 83 open. He said if all the money was available, it would take 11 years or 12 years for the Mouse River enhanced flood protection plan to be completed solely in Minot.

In response to a question from Representative Anderson, Mr. Jonasson said Minot has worked closely with the Souris River Water Resources Joint Board to determine which phase is constructed at which time.

In response to a question from Representative Hofstad, Mr. Jonasson said the flood protection does not affect the Northwest Area Water Supply (NAWS) Project. He said there needs to be a treatment plant update for the NAWS Project.

In response to a question from Representative Nelson, Mr. Jonasson said the water treatment plant is very critical. He said the average water usage in 2010 was 4.5 million gallons per day and now is 6.2 million gallons per day. He said the city cannot take the 12-million-gallon basin out of service to repair because that only leaves a 6-million-gallon basin. He said there needs to be an improvement in the plant in Minot for redundancy when repairs are needed.

In response to a question from Representative Schmidt, Mr. Jonasson said the flood control in Minot will only raise height and not width. He said this would not affect downstream concerns.

Mr. Dave Ashley, Chairman, Souris River Water Resources Joint Board, provided information to the committee. He said from a basin perspective, the urban areas need to have flood control first. He said the flood management plan for the highest recorded flood is better for river management.

In response to a question from Representative Kreun, Mr. Jonasson said there is not an Army Corps of Engineer interest; the project is not viewed as a betterment. He said the project will be designed to the flood of record, and the 100-year level is 10,000 cubic feet per second.

In response to a question from Representative Kreun, Mr. Jonasson said there is a one-half cent sales tax in Minot that raises \$6 million to \$7 million per year for flood protection. He said the current state cost-share is 60/40. He said if the 40 percent is all local, the local entities cannot afford the flood protection. He said 75/25 is preferred.

Mr. Frank Durbian, Project Leader, Souris River Basin National Wildlife Refuge Complex, provided written testimony ([Appendix C](#)) on the history and water management of the Souris River Basin National Wildlife Refuge Complex.

In response to a question from Representative Anderson, Mr. Durbian said there was a sediment study, and the rate of sediment is lower than expected. He said dredging does not negatively affect water storage on the impoundments.

Mr. Chris Augustin, Area Soil Health Specialist, North Central Research Extension Center, North Dakota State University, Minot, provided written testimony ([Appendix D](#)) on the effect of floodwaters on soil.

Representative Anderson provided testimony ([Appendix E](#)) from Ms. Raquel Dugan-Dibble, Extension Agent, McHenry County, on the effects of the flood.

Mr. Chris Nelson, Rancher, north of Towner, presented information to the committee. He said almost all of the hay production in the meadows by the river was lost from 2011 through 2013. He said the water stayed on the land too long. He said if water is received early it is an advantage, but it needs to be removed. He said the flows need to be reduced by late May. He said the concerns of downstream ranchers need to be taken into consideration in flood control projects.

In response to a question from Representative Nelson, Mr. C. Nelson said increased waterflows have helped with flooding but provide too much water for downstream ranchers.

In response to a question from Representative Nelson, Mr. C. Nelson said he is located on the south side of the J. Clark Salyer National Wildlife Refuge. He said there is a four-inch drop in one mile. He said the land is flat. He said the main issue is water not going through quick enough. He said dredging would help, but the United States Fish and Wildlife Service will not dredge.

In response to a question from Chairman Grindberg, Mr. C. Nelson said he has land in the Eaton flood irrigation project, and that group has a voice in increasing flows. He said he would hope the ranchers with hay meadows would have a voice as well.

Mr. Tom Miller, Rancher, Towner area, presented information to the committee. He said in past floods, there still was good hay. He said flood solutions for Minot have resulted in water coming faster which erodes the banks. He said where meadows were drained in the fall of 2011, there was excellent hay in 2012. He said if water is not drained, the ranchers deal with weeds and no hay. He said there needs to be water early, not in the middle of summer, and there should be early releases in the winter.

Mr. Cliff Hanretty, Garrison Diversion Conservancy District and Eaton Irrigation, Towner, provided information to the committee. He said the problem is the land is very flat, and the water does not go through quick enough. He said the 2011 flood caused wormwood.

Mr. Leland Goodman, Rancher, provided information to the committee. He said the 1986 plan allowed for higher levels of water which created more erosion, cattails, sediment, and pools of water. He said the problem is a lack of drainage. He said the old channel needs to be opened up. He said the flooding deprives ranchers of hay and their livelihood. He said ranchers should be compensated for losses because of the flood control. He said the Canadian releases are indiscriminate. He said it would be useful to be told before the release of water so as to remove any hay that is on the land that will be flooded by the release. He said better Canadian forecasting would be helpful.

In response to a question from Representative Anderson, Mr. Goodman said notification of water releases would be especially helpful later in the season. He said there should not be releases in July. He said flood control costs ranchers money.

Mr. Lynn Consly, Rancher, south of Towner, presented information to the committee. He said water levels cannot be managed by dams if the dams are kept full. He said Canada keeps its dams full, and Lake Darling is kept full. He said the dams are not managed for rain events.

Mr. Todd Sando, State Engineer and Chief Engineer-Secretary, State Water Commission, gave a presentation ([Appendix F](#)) on the NAWS Project. He said by the end of the year, there could be a record decision.

In response to a question from Representative Nelson, Mr. Sando said Canada keeps moving the bar for satisfaction with the NAWS Project. He said there is federal involvement with the NAWS Project, so there is the involvement of federal agencies and federal law. He said the Red River Valley Water Supply Project is being studied to see if there can be no federal involvement.

Mr. Dan Schaefer, Manager, All Seasons Rural Water District, provided information on the All Seasons Rural Water District and NAWS Project. He said expansion around Bottineau and Lake Metigoshe will need NAWS Project water. He said there are 1,200 potential customers. He said there will need to be water for oil development northwest of Bottineau. He said there are four rigs working in Bottineau County.

Mr. Bruce Engelhardt, Director, Water Development Division, State Water Commission, gave a presentation ([Appendix G](#)) on the transfer of the Southwest Pipeline Project to the Southwest Water Authority.

In response to a question from Representative Porter, Mr. Engelhardt said the project is still being constructed, and money is being spent more than is being returned on repayment.

In response to a question from Representative Porter, Mr. Engelhardt said the authority makes money through water rates. He said the repayment of capital expenditures, operation and maintenance, and repair and extraordinary expenses are paid for by water rates. In short, he said, the money is used to cover expenses, pay off capital, and save money for the future.

In response to a question from Representative Porter, Mr. Engelhardt said there is approximately \$11 million in reserve for future expenses.

In response to a question from Representative Hofstad, Mr. Engelhardt said there is no expiration of the capital repayment. He said the amount of repayment was based on the ability to pay, not the amount borrowed, so the amount of repayment is forever. He said there was no thought of transfer to the authority when the authority was created. He said the transfer of ownership is a different issue than the capital repayment.

Mr. Patrick Fridgen, Director, Planning and Education Division, State Water Commission, gave a presentation ([Appendix H](#)) on the draft State Water Commission water project prioritization guidance concept. He said as a result of House Bill Nos. 1020 and 1206, the commission began working on a concept of prioritization. He said comments were requested. He said this is the latest version. He said if the project does not meet the cost-share criteria, the prioritization is dropped one category of prioritization.

In response to a question from Representative Kreun, Mr. Fridgen said providing high priority for high-growth areas was meant to tie the prioritization to the cost-share policy.

Mr. Sando gave a presentation ([Appendix I](#)) on the current and proposed cost-share policy.

In response to a question from Senator Lee, Mr. Sando said the loan rates are at a competitive rate that is very attractive. He said the money comes from the resources trust fund and is returned to the fund so it perpetuates the fund.

In response to a question from Representative Hofstad, Mr. Sando said if there is federal money, the state would not add money to the municipal, rural, and industrial program projects. He said federal and state money needs to be kept separate.

In response to a question from Representative Hofstad, Mr. Sando said the reason the loans do not go to 100 percent is that local entities need to have an investment in the outcome of the project. In addition, he said, it is desirable for local entities to use other funding sources besides the resources trust fund.

In response to a question from Representative Kreun, Mr. Sando said providing money for purposes of economic development opens up the floodgates. He said providing money to a city allows the city to pursue economic development and provide water. He said he recognized that as a high priority, economic development is limited to fast-growing areas.

Chairman Grindberg said one of the goals of the committee was to hear the voice of economic development and business at each meeting. He said these groups should be included in the policymaking decisions.

In response to a question from Representative Nelson, Mr. Sando said the most debated topic is rural water systems and the percent of cost-share. He said he is working with the State Water Commission for an amendment as to this issue. He said there is a priority to get water to those people that do not have water.

In response to a question from Representative Nelson, Mr. Sando said the amendment will have to be addressed at a formal State Water Commission meeting, and one is not scheduled in the near future. He said all projects must be submitted to the State Water Commission by the middle of April, and the commission needs to have the policy in place to make the budget.

Representative Nelson said loan funding is not useful because rural water systems can get funds from other sources. He said the level of grant funding in rural areas without service needs to be raised.

In response to a question from Representative Schmidt, Mr. Sando said although a loan may be more like financial assistance than a cost-share because it has to be paid back, all the money comes from the resources trust fund, and the cost-share policy is looked at from that perspective.

In response to a question from Representative Nelson, Mr. Sando said the Rice Lake area could have been looked at as a drainage project or a flood control project. He said because there are many houses around Rice Lake which are permanent, the State Water Commission looked at it as a flood control project with a higher cost-share of 60 percent. He said there are several million dollars set aside for Rice Lake.

In response to a question from Representative Hofstad, Mr. Sando said cities can fall under different prioritization and categories. He said Williston received special consideration because of rapid growth. He said there was a 60 percent grant because the money was used for trunk lines and water towers for new growth. He said cities are expanding so they are like providing a new service through rural water systems.

In response to a question from Representative Hofstad, Mr. Sando said if there is no rapid expansion, then there is a lower priority category for cities. He said the State Water Commission cannot make a policy for every situation.

Mr. Ken Royse, Consulting Engineer, Bartlett & West, provided written testimony ([Appendix J](#)) on behalf of Three Affiliated Tribes, the Standing Rock Sioux Tribe, the Turtle Mountain Tribe, and the Spirit Lake Tribe. He had an issue with the term of local sponsor. He said it does not include a tribal entity and should include the tribes. He said the tribes want their projects to be judged like any other project. He said rural water users have endorsed tribal projects. He provided a list of four tribal projects as examples.

Mr. Kenny Azure, Executive Director, Public Utilities Commission, Turtle Mountain Tribe, provided information to the committee and a map ([Appendix K](#)) of the United States Highway 43 water project. He said the tribe funds its

own operation and maintenance through a user fee. He said the water projects the tribe wants to do are serving both tribal and nontribal members. He said it is unfair not to be able to get state money. He said the tribe is the only group that can provide water in the area of the United States Highway 43 corridor. He said the tribe is looking at serving Rolla, which is two miles off of the reservation.

Ms. Teresa Sundsbak, General Manager, North Prairie Rural Water District, provided information based on two highlighted handouts ([Appendix L](#)). She said the cost-share for rural water supply projects is too low. She said the highlighted areas on the cost-share policy are areas in which there are issues that negatively affect rural water systems. She said her district uses rural development loans because of a longer term--40 years--instead of the loan term from the state resources trust fund of 20 years. She said this is true even though the interest rate may be higher. She said the district is invested in the project through loans because the loans are repaid through rates. She said everyone should have potable water.

In response to a question from Representative Anderson, Ms. Sundsbak said most people are willing to pay \$70 to \$80 for water in rural areas; however, \$100 gets too high.

In response to a question from Representative Nelson, Mr. Sando said for funding to be used on tribal projects, the tribe needs to integrate with a state political subdivision. He said the State Water Commission is required by law to work with political subdivisions.

In response to a question from Representative Nelson, Mr. Sando said Three Affiliated Tribes is working with McKenzie County.

In response to a question from Representative Schmidt, Mr. Sando said the tribes were not negatively affected by the awarding of money to rural water systems because the tribes cannot cost-share with the State Water Commission.

In response to a question from Representative Nelson, Mr. Sando said the cost-share for the federal municipal, rural, and industrial program was 50/50. He said several tribal systems were provided operation and maintenance. He said the state does not want to replace federal funding.

Senator O'Connell provided information to the committee. He said lots of cities in his area do not have good water. He said he hauls in water and lives in Bottineau. He said some areas do not have water. He said the grass downstream on the Mouse River was affected by flooding. He said it takes 2 years to 5 years for the grass to come back. He said there was lost fence, and 80 percent plus of the trees are dead. He said people in the area feel there is not any hope and that no one cares.

COMMITTEE DISCUSSION

Representative Kreun provided written testimony ([Appendix M](#)) on the committee's role in the cost-share policy. He said it is a great time for the State Water Commission and this committee to work together as directed by House Bill No. 1206.

Representative Nelson said he agreed with Representative Kreun, and the committee needs to work with the State Water Commission on the cost-share policy.

Chairman Grindberg said he would work to provide a joint meeting with the State Water Commission in late May or June.

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

Timothy J. Dawson
Committee Counsel

ATTACH:13