

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Wednesday, November 4, 2015

Brynhild Haugland Room, State Capitol, Bismarck, North Dakota

Thursday, November 5, 2015

Roughrider Room, State Capitol, Bismarck, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Jim Schmidt, Bill Amerman, Dick Anderson, Curt Hofstad, Tom Kading, Naomi Muscha, Jon O. Nelson, Marvin E. Nelson, Mark Sanford, Roscoe Streytle, Denton Zubke; Senators Jonathan Casper, Ray Holmberg, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, George Sinner, Ronald Sorvaag, Jessica Unruh

Members absent: Representative Todd Porter

State Water Commission Members Present: Governor Jack Dalrymple, Tom Bodine representing Agriculture Commissioner Doug Goehring, Arne Berg, Maurice V. Foley, George Nodland, Harley Swenson, Robert Thompson, Douglas Vosper

Others present: Representative Al Carlson and Senator Rich Wardner, members of the Legislative Management

Jeff Delzer, State Representative, Underwood
Diane Larson, State Representative, Bismarck
Mike Nathe, State Representative, Bismarck
Jim W. Smith and Chris Kadrmas, Legislative Council
See [Appendix A](#) for additional persons present.

It was moved by Senator Robinson, seconded by Representative Hofstad, and carried on a voice vote that the minutes of the August 12, 2015, meeting be approved as distributed.

Governor Jack Dalrymple called the meeting of the State Water Commission to order at 10:00 a.m.

**JOINT WATER TOPICS OVERVIEW COMMITTEE AND
STATE WATER COMMISSION MEETING
Grand Forks Water Treatment Plant**

Mr. Ken Vein, Ward 7 Council Member, Grand Forks, provided written testimony ([Appendix B](#)) on an interim project update for the regional water treatment plant in Grand Forks. He said since the 2015 legislative session the city project team has completed 60 percent of the engineering design, awarded the construction manager at risk contract, and commenced planning of the offsite utility and road infrastructure. He said the local share is financed through utility rates. He said the rates will be a bit on the high side but reasonable, especially for industrial rates. He said the water treatment plant is expected to be finished in 2019 and fully functioning in 2020.

Missouri River Correctional Center and Fox Island Flood Control Projects

Mr. Greg Larson, Manager, Burleigh County Water Resource Board, provided written testimony ([Appendix C](#)) on the Missouri River Correctional Center Flood Control Project and the Fox Island Flood Control Project.

Red River Valley Water Supply Project

Mr. Ken Vein, Chairman, Garrison Diversion Conservancy District, and Vice Chairman, Lake Agassiz Water Authority, and Dr. Tim Mahoney, Mayor, Fargo, and Chairman, Lake Agassiz Water Authority, provided written testimony ([Appendix D](#)) on the Red River Valley Water Supply Project.

In response to a question from Senator Sorvaag, Dr. Mahoney said the Red River Valley Water Supply Project is needed regardless of growth. He said the population of Fargo and West Fargo is between 150,000 and 160,000.

In response to a question from Representative Carlson, Mr. Vein said the project has received \$18 million in federal municipal, rural, and industrial water supply program funding.

Ms. Merri Meridian, Administrative Officer, Garrison Diversion Conservancy District, said a total of \$338 million in federal municipal, rural, and industrial water supply program funding has been received, \$18 million of that was used for water supply studies.

In response to a question from Representative Anderson, Mr. Vein said the water in the pipeline will have to constantly flow to keep the water fresh. He said there will need to be a use of that water. He said he is working on operation and maintenance funding as well as how to pay for capital costs. Dr. Mahoney said users would be asked to cover the operation and maintenance. He said an assessment is being done to see what the demand of users would be.

Mr. Steve Burian, Chief Executive Officer, Advanced Engineering and Environmental Services, Inc., presented information on the Red River Valley Water Supply Project. He reviewed the six studies already completed on the project: three done by the Garrison Diversion Conservancy District and three done by the State Water Commission. He said the north route from Washburn east appears to be the best route. He said horizontal collector wells will be used to avoid a federal nexus. He said the wells will have to be above the ordinary high-water mark of the Missouri River. He said there are three options for the water treatment plant. One option is to have the plant closer to the river and the other two options are closer to the McClusky Canal. He said treatment to address biota will include pretreatment, filtration, and disinfection. He said collector wells naturally do a good job of treatment. He said direct service options through turnouts will have to be built in the pipeline because it is impracticable to "live tap" a pipeline of that size.

In response to a question from Senator Luick, Mr. Vein said the project is in the study phase and the Lake Agassiz Water Authority is working with an attorney toward a solution of avoiding a federal nexus. Dr. Mahoney said the project will need a firm answer before spending \$840 million.

In response to a question from Senator Sinner, Mr. Vein said 94 percent of the surface water in this state is from the Missouri River. He said it is a reliable source of water even in a drought. He said the Red River Valley Water Supply Project uses a very minimal amount of the water from the Missouri River.

In response to a question from Senator Wardner, Mr. Vein said the project is being studied in phases and a future phase will be determining the best discharge plan. He said there is storage capacity in Baldhill Dam. Mr. Burian said if the discharge is above the ordinary high-water mark of a wetland then it can be discharged on the surface of the ground.

Commissioner Berg said Devils Lake has enough water to supply Fargo in a drought.

In response to a question from Representative J. Nelson, Mr. Burian said the McClusky Canal is being used for irrigation and has good integrity. He said there have been some slides and partial blockage but there is a federal commitment to fix these issues.

In response to a question from Representative Streyle, Commissioner Berg said it is not the duty of the State Water Commission to establish the level of Devils Lake. He said the level is established through the Devils Lake Outlet Management Advisory Committee. He said historically the county flood stage was 1,428, which is 22 feet lower than the present level. He said the pumps are at approximately 1,446. Mr. Burian said Lake Ashtabula is being replenished from Devils Lake. He said there would be one to three years of water for Fargo if the State Water Commission pumped down Devils Lake. He said there is one to two years of water for Fargo from Lake Ashtabula without Devils Lake. Dr. Mahoney said Fargo used a lot of water out of Devils Lake this summer.

In response to a question from Representative Kading, Mr. Burian said the project is cheaper by avoiding a federal nexus because the federal nexus requires additional costs and without a federal nexus there is a guarantee of implementation.

Representative Carlson said providing water is a priority. He said he hopes the Red River Valley Water Supply Project will bring water to everyone who needs it along the way. He said the project needs to be sized right. He said this is a project not just for Fargo, but for all of the central and eastern part of the state.

Cost-Share Policy

Mr. Todd Sando, State Engineer, made a presentation ([Appendix E](#)) on the State Water Commission cost-share policy. He said the State Water Commission met on September 23, 2015, to address the changes needed to the

cost-share policy as directed by 2015 Senate Bill No. 2020. He said crop damages were not previously eligible but are a big component of most projects. He said crop damages are now eligible.

In response to a question from Chairman Schmidt, Mr. Sando said North Dakota State University (NDSU) information is not used for crop damages and the level of crop damages is left up to each local entity to evaluate and negotiate with the land owner.

Representative Anderson said crop damages should be based on the actual production history for crop insurance purposes.

Commissioner Nodland said the actual production history is just one of the factors. He said water districts use a local appraiser to evaluate crops in that particular area. He said this way the appraisal is based on value.

Mr. Sando said up to 75 percent of funding is provided for water supply projects to meet water standards and for expansions. He said most projects are for improvements, not expansions. He said rural water systems want replacement of pipeline and antiquated water treatment plants to be cost shared at 75 percent.

Representative Streyle said the reimbursement should be at 75 percent so it is clear and concise and so projects can move ahead.

Commissioner Swenson said simplification is good but ignores the merit of the projects. He said some projects have more merit or more ability to pay. He said some small communities are made up of elderly people and people who earn low wages and some large cities have the ability to raise rates.

Representative Streyle said he has heard a common theme that there has been a lost construction season because projects have not been approved quickly enough. He said there needs to be a clear cost share so those planning projects have a clear idea and certainty as to the future of their project.

Commissioner Nodland said at its most recent meeting the State Water Commission approved \$646 million for projects. He said 41 percent of the money appropriated has been spent. He said the reason projects are not done is not the fault of the State Water Commission. He said there are a multitude of reasons projects are not ready, including high bids from construction contractors.

Representative Streyle said there was six months from the time the appropriation was approved until a large portion of the funding was approved. He said the State Water Commission should meet more often and approve projects as soon as possible.

Representative J. Nelson said approving projects is not an easy undertaking and the State Water Commission needs flexibility to address different situations. He said changes last session raised the percentage of the projects eligible for water supply projects to up to 75 percent and now the State Water Commission is allowing crop damages. He said he is comfortable giving flexibility to the State Water Commission. He said every qualified project needs a seat at the table and needs to be considered.

In response to a question from Representative J. Nelson, Mr. Sando said the State Water Commission followed the legislative intent.

In response to a question from Representative Zubke, Mr. Sando said the reason there is a 35 percent cost share for engineering is that the goal is to fund bricks and mortar, not study building water projects. He said having the locals pay for the initial engineering makes sure the locals are serious about the project.

Representative Zubke said the engineering costs for large projects are substantial. He said these costs can prohibit the design of projects and the projects being completed. He said engineering costs are legitimate and substantial project costs and the State Water Commission should consider changing the 35 percent cost share to a higher rate.

Commissioner Swenson said the reason for not having higher cost share on engineering, legal work, and administration is because these costs are negotiated by the local entity and are not open to public bid. He said this ensures that the local entity has skin in the game. He said state money is used for construction after an actual competitive bid.

Representative Streyle said the cost-share policy should be clear on actual costs for project costs.

Commissioner Nodland said pre-engineering is at 35 percent, but final engineering is the same as the final project, up to 75 percent.

Representative J. Nelson said the locals have skin in the game because the locals pay at least 25 percent of the project.

Representative Carlson said the Legislative Assembly passes laws and appropriates money. He said an emergency clause means to give priority to the authorized spending. He said the State Water Commission and the Legislative Assembly need to be on the same team and have a clear cost-share policy.

Governor Dalrymple said all rural water projects this biennium were approved at 75 percent. He said this cost share is intended for a project with some element of expansion. He said the State Water Commission is working on the policy for a second tier at a slightly lower level for simple capacity improvements. He said all rural water money will be spent but there is a process. He said first the local entity must apply for the cost share, then the project must be evaluated and there is a response as to eligibility. He said once the project is approved the State Water Commission sends money when costs are incurred. He said an invoice is required to be reimbursed. He said the State Water Commission does not slow down the distribution of funds and the State Water Commission is eager to get money out the door. He said this is the correct attitude.

Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, provided information on the cost-share policy. He suggested expanding the up to 75 percent grant for water expansion and safe drinking water to include capacity issues where there is low pressure, not typical maintenance, and the need for cost share. He said rural water systems have had traditionally high rates.

In response to a question from Representative Zubke, Mr. Volk said all rural water districts have a boundary and Greater Ramsey Water District and the city of Devils Lake have duplicative services.

Mr. Blake Crosby, Executive Director, North Dakota League of Cities, said there have to be new customers for there to be priority, not eligibility. He said this requires population growth. He said the cities missed the last construction season and need a definitive decision soon so that bids may be let in January for next year.

Mr. Sando said he disagrees that there was a lost construction season. He said the State Water Commission approves projects throughout the biennium. He said most projects don't get moving until the second year and therefore do not get funding until the second year. He said the project prioritization and funding system takes time.

Representative Streyle said the money was available in early summer and now it is November. He said the construction will begin next year and a season was lost.

Commissioner Swenson said projects are approved this December and next December so there isn't a missed construction season. He said there is funding provided and available 24 months of the biennium and there is usually money left at the end of the biennium. He said the timing of funding is not a big issue. He said the State Water Commission does not know how much money it will receive before May 1.

Representative Streyle said the State Water Commission should have been taking action in May or June.

Commissioner Swenson said the State Water Commission only received applications in March and April.

Mr. Sando said the State Water Commission acts on applications when they are received. He said some projects may only receive loans. He said the State Water Commission did not receive any applications for loans, only projects.

Representative M. Nelson said with a shrinking resources trust fund either there can be a larger cost share with less projects or a lower cost share with more projects.

Mr. Crosby said there needs to be a water management vision that lasts longer than two to four years. He said there should be a 5 to 10 year plan so the Legislative Assembly knows what the funding requests will be.

Representative J. Nelson said to be fair to the State Water Commission, they are sensitive to the timing of funding. He said in years past the State Water Commission had received more funding and wanted to move projects along earlier through the Budget Section. He said the Legislative Assembly made the State Water Commission wait until the legislative session.

Representative Streyle said the State Water Commission should meet monthly. He said for a project to be on the agenda it must be presented 30 days before a State Water Commission hearing.

Commissioner Nodland said he requested monthly meetings last year. He said the State Water Commission has tried to do more meetings by telephone. He said maybe the process for prioritization needs to be changed.

Commissioner Berg said funding for city projects is a recent development. He said projects used to use federal municipal, rural, and industrial water supply program funding and not the State Water Commission. He said the State Water Commission used to provide help to the local entity with the local share. He said a lot has changed in a short period of time.

Mr. Sando said for cost share and funding for cities the State Water Commission approved all \$40 million except Dickinson. He said the line of credit has been used and the only additional money for cities would have to come from other projects. Commissioner Swenson said the State Water Commission has to prioritize because the funds are not unlimited. He said this creates difficult issues. He said if there isn't any flexibility, then these issues become worse. He said if there is 75 percent cost share, there are more unmet projects than if there were a 60 percent cost share. He said if the Legislative Assembly wants something, it needs to tell the State Water Commission. He said if water lines should be replaced and water towers replaced, then the Legislative Assembly needs to say that.

Representative M. Nelson said cities are disgusted that they are not on the high-priority list when there is a bunch of money going to oil country. He said cities in oil country have no special assessments and other cities have large special assessments and no extra money from oil. These cities cannot fund projects. He said water projects in western North Dakota are a separate category of projects.

Mr. Sando said today was the first time he had heard the request for 75 percent from Minot instead of 60 percent. He said this is 15 percent higher than the policy and is not in the budget. He said the State Water Commission does not have the money. Representative Streyle said Minot could bond.

Governor Dalrymple said the State Water Commission will take up the cost-share policy this month. He said the commission will take as much action as possible in December. He said in the past the State Water Commission was hesitant to fund municipalities because of opening a can of worms. He said at that time it was thought to not be fair to consider cities when there were funding needs for rural water systems. He said if there is any specific project or constituency that thinks the State Water Commission is not responsive, it should contact the commission.

Chairman Schmidt said the Legislative Assembly needs a closer relationship with the State Water Commission. He said a \$1.1 billion budget cannot be managed like a \$20 million budget.

Fargo Flood Control

Dr. Mahoney provided written testimony ([Appendix F](#)) regarding the ongoing flood control work in Fargo. In addition, he provided a presentation and maps ([Appendix G](#)) on the projects completed since 2009, flood parcel buyouts, flood mitigation projects in progress, and flood mitigation projects planned for 2016. He said mitigation is required for water above the 0.1 foot limit as required by the State Water Commission. He said the 0.5 limit is used elsewhere and is better. He said a 0.5 limit lowers the cost by \$60 million. He said \$10 million of the \$60 million in Senate Bill No. 2020 has been spent. He said the city is trying to get funding from the federal government and the Army Corps of Engineers has stated that the Fargo Flood Control Project is the number one project for flood control in the United States.

In response to a question from Senator Lee, Dr. Mahoney said Minnesota has a 0.5 limit and the State Water Commission has the authority to change the 0.1 limit to the 0.5 limit.

Ms. April Walker, Engineer, City of Fargo, explained the presentation slides relating to flood mitigation at the 0.1 foot level and the 0.5 foot level. As a representation on the map, she provided a designated area of 2,000 acres that would have to be dug down 10 feet to address the 0.1 foot level. She said these areas would be south of Walmart and would have to be vacated and kept empty for storage. She said these spots were representations and not exact spots.

In response to a question from Senator Casper, Ms. Walker said if these retention areas are built and not needed, these holding areas cannot be filled back in and built on.

In response to a question from Chairman Schmidt, Ms. Walker said the city will continue to build the flood control but it will not take people out of the hundred-year flood plain. Dr. Mahoney said mitigation is needed to take houses out of the hundred-year flood plain.

In response to a question from Chairman Schmidt, Dr. Mahoney said the \$180 million needed does not presently exist.

In response to a question from Senator Sorvaag, Ms. Walker said the city was planning for mitigation but more is needed than was anticipated. She said if the water was allowed to go where it would naturally go, there would be 29,000 cubic feet per second over the city. She said 24,500 cubic feet per second would go through the channel and the remainder would go over the bank. She said the mitigation requires the storage of the water between the 29,000 cubic feet per second and 24,500 cubic feet per second. She said the city did not expect this type of mitigation.

In response to a question from Representative Streyle, Mr. Sando said if flood control is built and there are levies, there are impacts and the impacts need to be mitigated. He said the State Water Commission applies the 0.1 foot level to other projects.

In response to a question from Mr. Sando, Ms. Walker said the 0.5 foot level is used in Minnesota when there is bare land. She said under this level the project would not need to get an easement. She said North Dakota requires a 0.1 foot level whether or not there are structures impacted.

In response to a question from Representative M. Nelson, Mr. Sando said the diversion is at the 0.1 foot level. Ms. Walker said current diversion plans take into account down to the 0.5 foot level and the 0.1 foot level could impact the diversion.

In response to a question from Representative M. Nelson, Ms. Walker said there will need to be easements to store water. She said there will need to be land owners' permission to flood and even if the risk is 0 percent, it will cost a lot of money.

Mr. Sando said instead of raising the level to 0.5 foot the other option is to get an easement from the land owner. He said the State Engineer has given temporary permits during flood fights but this Fargo flood control is permanent. He said the 0.1 level is for projects all around the state including ring dikes around farms in the past.

Representative Streyle said if this level is used for the Mouse River, it could have a substantial impact.

Fargo-Moorhead Diversion Project

Mr. Darrell Vanyo, Chairman, F-M Area Diversion Authority, presented written testimony ([Appendix H](#)) on federal support for the diversion project, the Minnesota Draft Environmental Impact Statement, and the NDSU agricultural impact study. As part of this testimony he provided a document entitled *Initial Assessment of the Agricultural Risk of Temporary Water Storage for FM Diversion by the Department of Agribusiness and Applied Economics, North Dakota State University, October, 2015*. He said the NDSU study states that there is an 85 percent chance that the diversion project will not operate in any one year.

In response to a question from Chairman Schmidt, Mr. Vanyo said the NDSU study started before the passage of 2015 Senate Bill No. 2020 and so the study meets the needs of the F-M Area Diversion Authority and some of the requirements of the bill.

Mr. Keith Berndt, Cass County Administrator, answered questions for the committee. He said the NDSU study went outside the corridor and comes close to meeting the requirements of 2015 Senate Bill No. 2020 but there may need to be future study.

Recreational Opportunities on Sovereign Lands

Mr. Mark Zimmerman, Director, Parks and Recreation Department, presented written testimony ([Appendix I](#)) on the \$1 million grant for developing recreational opportunities on sovereign lands in this state.

In response to a question to a question from Representative J. Nelson, Mr. Zimmerman said \$25,000 has been used for the work of Houston Engineering and the remainder of the \$1 million is for development of recreational opportunities. He said the Missouri River was evaluated as a first priority because of interest in the use of the Missouri River across the state. He said the Mouse River, Sheyenne River, and other rivers will be looked at in the future.

Central Dakota Water Supply

Mr. Sando made a presentation ([Appendix J](#)) on the Central Dakota Water Supply Project. He said there was \$70 million in contingent designated funding for a water reuse facility and a Central Dakota Water Supply Project. He said the funding was contingent upon an agreement that has not come about and the \$70 million is viewed as

uncommitted funds. He said there are a lot of people eyeing these funds. He said there may not be enough funding to cover legislative earmarks so the present plan is to keep the \$70 million.

Chairman Schmidt said the \$70 million was within the \$200 million line of credit.

In response to a question from Chairman Schmidt, Legislative Council staff said the contingency for the designated funding had failed and the \$70 million is uncommitted funds. He said the uncommitted funds may be spent by the State Water Commission as other uncommitted funds. He said if a interim legislative committee wanted to make a communication as to how the State Water Commission may spend that \$70 million, the communication must be approved by the Chairman of the Legislative Management. Because there are multiple committees that could send directions to the State Water Commission, it is important that the legislature speak with one voice and coordinate that through the Chairman of the Legislative Management.

Senator Holmberg said there was a study of the functions of the Budget Section assigned to the interim Government Finance Committee. He said he will ask the Chairman, Representative Jeff Delzer, to use this situation as a case in point study instead of rushing to sign a letter with directions to the State Water Commission. He said he will wait for the Government Finance Committee to decide if the Budget Section should take any action on this matter. He said he would draft a letter instructing the Government Finance Committee to review this matter.

Ms. Geneva Kaiser, Managers' Representative, Stutsman Rural Water District, said the Cenex Harvest States fertilizer plant will not be moving forward and Cenex Harvest States has reimbursed the district for the work done by the district. She said the district could use \$12 million to do the preliminary work for a possible waste water treatment facility. She said a reuse facility would be dependent upon a pipeline to the area. She said these efforts would entice businesses into the area.

Project Funding

Mr. Sando provided testimony based upon two spreadsheets ([Appendix K](#)) on water project earmarks and water commission actions for the 2015-17 biennium.

In response to a question from Representative J. Nelson, Mr. Sando said there are two big rural water projects. He said one project is in the northeast which provides drought proofing and water supply in the Langdon area and the other project is the improvement projects to the All Seasons Rural Water District. He said he is working with the North Dakota League of Cities and the North Dakota Rural Water Systems Association on the other projects.

Commissioner Swenson said the State Water Commission wants to carry out the Legislative Assembly's intent. He said the question arises whether a broken pipe or pump is a replacement or maintenance. He said there are a lot of pipes at the end of the lifespan for the pipe or are undersized and if the Legislative Assembly wants the State Water Commission to fund these projects like new construction then the Legislative Assembly needs to provide clear intent. He said it is argued that these items are a replacement instead of a repair or maintenance to receive higher funding.

Governor Dalrymple said the State Water Commission may exclude operation and maintenance. He said the State Water Commission defines improvements to not include replacement. He said this is a judgment call. He said the Legislative Assembly has given the State Water Commission some discretion in this area.

Representative J. Nelson said a capital improvement fund is now required by law. He said whether something is an improvement or maintenance is best left for the State Water Commission staff. He said rural water supply projects are vetted through the managers before going to the State Water Commission and this helps prioritize the projects.

Representative Streyle said purpose funding is a good way of distributing funds. He said if a project is not ready, do not give the project money.

Chairman Schmidt explained that purpose funding is a method the Legislative Assembly employs that identifies a certain dollar amount for a certain purpose. He said entities can prioritize like projects within the purpose. He said the rural water systems have one bucket and a purpose. He said they meet and determine a project list and work with the State Engineer's office, then the State Water Commission. He said rural water systems do not have taxing authority and if rural water systems do not negotiate effectively, the system pays more. He said flood control projects should be prioritized by those doing the projects through purpose funding. He said this would minimize earmarks.

In response to a question from Representative J. Nelson, Chairman Schmidt said the North Dakota Water Coalition would not have the same role as in the past because the funding would be done by purpose, not projects. He said a water group should not have to pay a membership fee to have a seat at the prioritization table. He said prioritizing by purpose instead of project would give equal footing.

Representative Streyle said rural water came with a list to the State Engineer's office which in turn provided a list to the State Water Commission. He said municipalities did the same. He said the North Dakota Water Coalition is not needed. He said flood groups do not need an entity because there are not that many projects.

Governor Dalrymple said the State Water Commission recognizes the flexibility within categories and appreciates the flexibility. He said the money can be changed from category to category if there are changes in the environment.

Mr. Sando said with funding by purpose there is \$664 million of new money and \$378 million is flexible. He said if the project is not ready, the money can be used elsewhere.

Mr. Sando provided a handout ([Appendix L](#)) of funding sources. He said there are many ways to fund water projects.

Mr. Sando said the State Water Commission supports regionalization. He said regionalization of water systems will eliminate the need for small water treatment plants in every small town. He said there is no specific policy. He said the federal municipal, rural, and industrial water supply program policy was used in the past and it did rank and score projects with regionalization with a preference. He said regionalization removes redundancy but can create conflicts between cities and rural water systems.

Representative J. Nelson said he was surprised regionalization was not in the policy and it might be a good idea to have it in the policy to encourage the most efficient model for rural areas. Mr. Sando said regionalization is part of the prioritization process.

Representative Streyle said regionalization makes sense and small towns should not be given money to repair lines that could be replaced by a rural water system.

Commissioner Nodland said he agreed with Representative Streyle and that a few towns did not want Southwest Water Authority water but now want money for improvements.

Representative Hofstad said the State Water Commission should promote regionalization and draw boundaries. He said there are redundancies that should be removed.

Representative Carlson said there was \$2 million in the resources trust fund his first session. He said the present funding could shrink. He said a revolving loan fund would pay for projects in the future with the repayment from projects in the present. He said this model was used for the Western Area Water Supply Authority (WAWS) and works well.

Representative Anderson said rates in some small cities have not been raised in years.

Senator Sinner said there should be a 5, 10, and 15-year plan for maintenance for water systems.

In response to a question from Senator Sinner, Mr. Sando said a long-term plan is being looked at and a request for information was sent out this fall. He said the rates charged are all over the map, but the local entities receive the same grant percentage.

Senator Sinner said a long-term plan and regionalization would be useful.

Mr. Sando said the cost-share policy has evolved and the State Water Commission has not been involved in these matters until there were meaningful amounts of money in the resources trust fund.

Commissioner Nodland said Southwest Water Authority is paying back \$5 million per year.

Commissioner Berg said people coming to the State Water Commission want a grant because they can get loans anywhere.

Representative Carlson said the infrastructure loan fund works well for other infrastructure by providing low-interest loans and the same concept should work for water.

Mouse River Enhanced Flood Protection

Mr. Dan Jonasson, Public Works Director, Minot, provided written testimony ([Appendix M](#)) on the the Mouse River enhanced flood protection project.

In response to a question from Chairman Schmidt, Mr. Jonasson said Minot uses the federal property acquisition process.

Municipal, Rural, and Industrial Water Supply Program Funding

Mr. Arden Freitag, Department Area Manager, Bureau of Reclamation, provided information to the committee. He said there are six rural water projects in the United States and one in North Dakota--the Garrison Diversion Project. He said it will take \$1.4 billion to complete. He said Congress has been providing \$48 million per year and the Bureau of Reclamation gives that out based on criteria. He said because the Garrison Diversion Project is ranked number one it receives 40 percent of rural water funding. He said as part of allocating funding the Bureau of Reclamation looks at progress on projects and carryover and there is \$55 million available but not spent at the end of last year. He said this amount is growing \$1 million to \$3 million per year. He said the Bureau of Reclamation met with the stakeholders on October 29, and said if there isn't a demonstrated capability to spend the money, the money may go to other projects. He said to retain federal funding there needs to be a reason for the carryover. He said a few reasons are considered reasonable. For example, he said a multimillion dollar multiyear project may require carryover. He said other projects only start planning when they have the money. He said this year the plan is better and more timely. He said there is a chance for additional funding from Congress.

In response to a question from Chairman Schmidt, Mr. Freitag said of the \$55 million carryover, \$42 million is for tribal projects and \$13 million is for state municipal, rural, and industrial water supply program projects.

In response to a question from Chairman Schmidt, Mr. Freitag said the Garrison Diversion Project ranks high because of the tribal component. He said if there is a steady carryover there may be a different allocation.

Governor Dalrymple said if the Bureau of Reclamation needs a project, he will find a shovel-ready project for the Bureau of Reclamation.

In response to a question from Representative J. Nelson, Mr. Freitag said there is some flexibility to move money between projects, but once money is obligated with the tribe it can only be moved through a bilateral decision. He said tribal projects take time because of different types of property ownership, which makes right-of-way acquisitions difficult.

In response to a question from Representative J. Nelson, Mr. Freitag said easements are donated as part of receiving water under some projects, but the Bureau of Reclamation pays for transmission right-of-way.

Governor Dalrymple said the State Water Commission can participate with a tribal government if the tribal government participates with a political subdivision of this state.

Chairman Schmidt recessed the meeting at 4:20 p.m. and called the meeting to order at 9:00 a.m. Thursday, November 5, 2015, in the Roughrider Room, State Capitol, Bismarck. He said Representative M. Nelson and Representative Porter were not present. He said the Governor had joined the committee.

Zebra Mussels

Mr. Terry Steinwand, Director, Game and Fish Department, provided written testimony, a handout, and a presentation ([Appendix N](#)) on the recently enacted emergency administrative rule regarding aquatic nuisance species resulting from the finding of adult zebra mussels in the Red River.

In response to a question from Senator Sinner, Mr. Steinwand said the aquatic nuisance penalties were noncriminal up to the emergency rule. It is only a matter of time before there are zebra mussels in Devils Lake. He said the the timing and the impacts cannot be predicted. He said zebra mussels close water intakes. He said the city of Chicago spends \$16 million a year dealing with zebra mussels. He said there are five municipal intakes on the Red River. He said NDSU wants to do polymer testing for pipe coatings that do not allow zebra mussels to affix. He said the Game and Fish Department is going to allow NDSU to conduct this study in this state.

In response to a question from Senator Sinner, Mr. Steinwand said there is research on eradication of zebra mussels. He said a small bay in Canada used pot ash, but it only killed 95 percent.

In response to a question from Senator Sinner, Mr. Steinwand said zebra mussels have not collapsed sport fishing, but have impacts. In Devils Lake the primary food source is scud which feeds on algae, which is filtered out by small animals that big fish feed on. He said the zebra mussels could filter the algae and cause an impact.

In response to a question from Senator Luick, Mr. Steinwand said there are natural predators in the Caspian Sea. He said black carp is a natural predator and is a relative to the silver carp. He said there is also a diving duck species.

Mr. Jeff Frith, Board Manager, Devils Lake Basin Joint Water Resource Board, provided information to the committee. He said the state needs to prevent the spread of zebra mussels to Devils Lake. He said there will be lots of problems as zebra mussels move westward. He said they are not good for fisheries or recreation.

Prioritization Process

Mr. Crosby provided written testimony ([Appendix O](#)) on the prioritization process. He said about 60 percent of the cities within the North Dakota League of Cities receive water from rural water systems. He reviewed the list of prioritized city projects and expressed hope that \$20 million could be found for the nonprioritized cities. He said smaller cities do not have engineers and governing bodies only meet once a month. He said it takes time to get projects going. He said he would like to see some flexibility for the 12 cities that were not prioritized.

In response to a question from Senator Sorvaag, Mr. Crosby said the \$20 million for the projects could come as grant funding through the line of credit.

Mr. Dave Laschkewitsch, Administration, State Engineer's office said the \$20 million from the line of credit has already been used. He said the \$664 million in approved projects needs the \$200 million from the line of credit. He said grant money to new cities would take the money from another project.

In response to a question from Chairman Schmidt, Mr. Laschkewitsch said instead of being \$200 million in the red, the undesignated \$70 million from the failed contingent designation could be used so that the state is only \$130 million in the red. He said the resources trust fund balance is going in the wrong direction. He said if the tax rate drops from 6.5 percent, that will create a \$63.8 million shortfall.

Representative J. Nelson said some of the cities that did not receive prioritization are in his district. He said these cities are frustrated from the last legislative session because of the money disbursed to western North Dakota. He said western North Dakota has a number of funding sources to which other cities do not have access. He said the cities in his district only have one state-funding source.

Representative Zubke said cities in the western portion of the state have a litany of problems, including water. He said the cities spend the money judiciously and although oil prices are down, the activity in western North Dakota persists. He said the funds going into the resources trust fund come from western North Dakota and western North Dakota needs should be addressed.

In response to a question from Chairman Schmidt, Mr. Sando said the factor that put some cities in low priority was no rapid growth and not serving new customers. He said they are not growing at a 3 percent rate.

Chairman Schmidt said he did not think the cities will ever grow at 3 percent and do not have taxing ability.

Mr. Sando said the cities are eligible, but not prioritized.

Chairman Schmidt said the State Water Commission is following 2015 Senate Bill No. 2020.

Mr. Crosby said water supply projects may be funded up to 75 percent. He said cities could do 60 percent because of taxing authority. He said it is very early in the biennium and \$20 million can be found for the 12 cities. He said it will cost more in the future.

Mr. Volk reviewed the prioritization process for rural water systems with a spreadsheet ([Appendix P](#)).

Chairman Schmidt said the Northeast Regional Water District received \$13 million and the city of Langdon will receive \$8 million. This seems like an example when regionalization would work.

In response to a question from Chairman Schmidt, Mr. Volk said regionalization is a great concept, but has a lot of moving parts. He said there are two sides to every story.

Mr. Gordon Johnson, Manager, Northeast Regional Water District, provided information to the committee. He said the system and Langdon need to work together. He said with the 75 percent grant temptation, there are meetings with Langdon to work toward a joint effort. He said regionalization is a good concept. He said Devils Lake is opposed to being another regional supplier.

Chairman Schmidt said the Legislative Assembly will have to take a serious look at regionalization.

Mr. Russell Duppong, City Coordinator/Building Official, Beulah, said the Beulah Water Treatment Plant was not on the list distributed at the meeting and he did not know why. He said Beulah needs an updated water treatment plant to address growth and economic development. He said Beulah does not know how big it will be in 30 years and it would be hard to size the line if combined with Southwest Water Authority. He said Beulah is completely surrounded except for two miles by Southwest Water Authority. He said Beulah has done its due diligence and studies and needs the money to contract for the work.

Mr. Sando said the Beulah project is on the State Water Commission list.

Mr. Larry Barnes, Director, Southwest Water Authority, answered questions for the committee. In response to a question from Representative Streyle, Mr. Barnes said there is not enough supply from Southwest Water Authority to supply 100 percent of Beulah because the line is not big enough. He said a new line could be brought from Zap.

Representative Streyle said the rural water system should take care of Beulah.

Representative J. Nelson said more public input is needed at State Water Commission meetings.

Mr. Duppong said the water treatment project at Beulah is to make the plant a reverse osmosis plant. He said now it is a lagoon system. He said they are retrofitting the old plant. He said it would offer redundancy with Southwest Water Authority.

In response to a question from Senator Luick, Mr. Duppong said although the city of Beulah provided water to Zap up until 2012, the pumping station does not allow water to come back from Zap to the plant.

In response to a question from Senator Luick, Mr. Duppong said bringing water from Zap is not feasible because of the quality of water.

Red River Valley Water Groups

Legislative Council staff presented a memorandum entitled [North Dakota's Red River Valley Water Groups](#). He said the Red River Valley is defined as entities in the Devils Lake - Sheyenne River Basin and the Red River Basin.

Sheyenne River Valley

Ms. Mary Lee Nielson, City Commissioner, Valley City, and Mr. Jerry Gemar, City Council Vice President, City of Lisbon, made a joint presentation ([Appendix Q](#)) on the permanent flood protection for the Sheyenne River Valley.

Mr. Chad Peterson, Engineer, KLJ, answered questions for the committee. In response to a question from Senator Luick, Mr. Peterson said bank stabilization with logs is bioengineering. He said it is meant to re-establish growth within the bank.

Chairman Schmidt said this is done a lot in Washington and Oregon and provides regrowth.

In response to a question from Representative J. Nelson, Ms. Nielson said the city quickly spent the money provided by the state. She said spending within the project was prioritized and the plan was based upon contingencies. She said the first priority was human life and the second was Main Street.

Mr. Gemar said the longer you put off a project the more expensive it gets, especially when the project requires lots of concrete.

Western Area Water Supply Authority

Mr. Jaret Wirtz, Executive Director, WAWS, made a presentation ([Appendix R](#)) on WAWS.

In response to a question from Chairman Schmidt, Mr. Wirtz said population projections were based on the NDSU study paid for by the state. He said the number of wells that was projected was based upon the projections of the Department of Mineral Resources. He said industrial water demands are down and domestic use is up. He said the total water demand is down. He said \$29 million has been paid back to the state in four years. He said \$20 million in loans will be paid back this biennium with domestic water rates.

In response to a question from Chairman Schmidt, Mr. Wirtz said the current price is 84 cents and the price may go lower.

Representative Zubke said WAWS is the gold standard for industrial water. He said the price has always been at 84 cents per barrel. He said it is not the most expensive or the cheapest. He said location is more important for water than price. He said major pipeline companies can take water out of the Yellowstone and Missouri Rivers and can take it to the point it is needed. He said WAWS is for domestic water and does not provide pipeline to a particular spot. He said lowering the price may not sell more water. He said it may just lower income. He said WAWS sells industrial water three ways--through depots, direct connections, and long-term pipelines. He said if WAWS drops its price everyone else will lower their price to compete for bids for frac jobs. He said WAWS is current on loans and repayment.

Mr. Wirtz said WAWS market share is under 20 percent of the market and is dropping to 16.4 percent.

In response to a question from Chairman Schmidt, Mr. Wirtz said the market share is determined from all over the WAWS area. He said some areas have more market share and some have less.

In response to a question from Senator Lee, Mr. Wirtz said WAWS has eminent domain power. He said the land acquisition procedure is to get a land consultant to get the right-of-way. If the right of way is not received, then WAWS works in house for a reroute. He said sometimes routing does not work, unless a person is receiving water from WAWS. He said eminent domain had to be used more this summer to get water to people at the end of the line.

In response to a question from Senator Lee, Mr. Wirtz said there are nine depots. He said pipelines are the trend so WAWS is holding off on new depots.

Ms. Karlene Fine, Executive Director, Industrial Commission, provided written testimony ([Appendix S](#)) to the committee. Mr. Eric Hardmeyer, President, Bank of North Dakota, provided a spreadsheet ([Appendix T](#)) on repayments by WAWS to the state of North Dakota. He said WAWS is presently current on repayment and has prepaid by \$12 million or \$13 million.

In response to a question from Senator Casper, Mr. Hardmeyer said all loans except the ones from the Bank of North Dakota are fixed. He said the fixed rates are negotiated rates between WAWS and the Legislative Assembly.

Representative Zubke said in 2013 the industrial sales were transferred to the Industrial Commission. He said the state of North Dakota is charging itself 5 percent on a debt and may want to rethink that.

Representative Streyle said WAWS is barely making payments.

Chairman Schmidt said gross monthly income in the last four months has been substantially lower.

In response to a question from Chairman Schmidt, Mr. Hardmeyer said if needed, the Bank of North Dakota will meet with WAWS and find a way to go forward.

Governor Dalrymple said in finding a way to refinance, it is helpful that WAWS has prepaid. He said WAWS owes the state \$160 million and has paid \$21.5 million. He said \$75 million is owed to the resources trust fund in four notes. He said there is debt service back to the resources trust fund at present because WAWS is repaying the Bank of North Dakota. He said if the situation changes the resources trust fund would appreciate the money. He said WAWS acknowledges that it owes money and expects to pay back the state.

Mr. Steve Mortenson, President, Independent Water Providers, provided written testimony ([Appendix U](#)) to the committee.

In response to a question from Representative Streyle, Mr. Mortenson said he charges 65 cents per barrel and that is close to the average.

In response to a question from Senator Luick, Mr. Mortenson said he is not in the potable water business and is prevented from doing so by statute.

Mr. Mike Ames, Ames Water Solutions, Williston, said he invested a lot of money in turning irrigation into industrial water sales through the in lieu of permits program. He said he was dismayed the state got into business to compete with private industry. He said he wants WAWS to be successful, but wants the opportunity to compete.

He said terminating the in lieu of permits program at the end of this year provides short notice that is unacceptable. He said the water has not been mined or drained.

In response to a question from Senator Lee, Mr. Sando said there are eight aquifers and two will continue to be used in 2016 under the in lieu of permit program. He said the other six will curtail at the end of this year. He said permittees were notified with a letter that went out on October 17, 2015.

In response to a question from Chairman Schmidt, Mr. Jon Patch, Water Appropriations, State Engineer's office, said the State Engineer's office is not denying the permit. He said the irrigation permit was suspended in lieu of a temporary industrial permit for one year and expires at the end of each year naturally. He said there is no notice requirement.

In response to a question from Senator Lee, Mr. Patch said the in lieu of permit program started in late 2010 under emergency authority. He said it has been evaluated on an annual basis from the beginning. He said the emergency conditions are re-evaluated and with the downturn in oil production and new infrastructure there is no longer an emergency. He said it was transitional period when irrigation permits were used for industrial supply.

Representative Streyle said he agreed with getting rid of the permits, but it was done too quickly. He said spring would have been a better time. He said this will have an impact on the oil industry with higher prices to oil companies.

Chairman Schmidt said the committee continues trying to explain the intent of the Legislative Assembly and the intent is something that changes. He said the Legislative Assembly intent needs to be correctly written in the law. He said the Legislative Assembly needs to improve its involvement in water issues and needs to be consistent. He said the State Engineer's office cannot continually be interpreting what the Legislative Assembly meant.

No further business appearing, Chairman Schmidt adjourned the meeting at 12:05 p.m.

Timothy J. Dawson
Counsel

ATTACH:21