

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Monday and Tuesday, March 7-8, 2016

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, Marvin E. Nelson, Jon O. Nelson, Todd Porter, Mark Sanford, Roscoe Streyle, Denton Zubke; Senators Jonathan Casper, Ray Holmberg, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, George Sinner, Ronald Sorvaag, Jessica Unruh

Others present: Representative Al Carlson, Fargo, Senator Joan Heckaman, New Rockford, and Senator Rich Wardner, Dickinson, members of the Legislative Management

Jeff Delzer, State Representative, Underwood

Chris Kadrmass, Fiscal Analyst, Legislative Council

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

Chairman Schmidt invited consideration for approval of the November 4-5, 2015, meeting minutes. Chairman Schmidt said he has one change to make to the minutes of the previous meeting. He said in the seventh paragraph from the bottom, on page 10, the content "Chairman Schmidt said he did not think the cities will ever grow at 3 percent and do not have taxing ability," is incorrect. He requested the language be replaced with "Chairman Schmidt said the relevant cities that do not have 3 percent growth may not have taxing ability for projects." He said the discussion was that some of the communities are so small that the ability to raise revenues via taxing probably would not be sufficient to pay for projects.

It was moved by Senator Robinson, seconded by Representative J. Nelson, and carried on a voice vote that the minutes of the November 4-5, 2015, meeting, as amended by the requested changes, be approved.

OFFICE OF THE STATE ENGINEER - PURPOSE FUNDING

Chairman Schmidt called on Mr. David Laschkewitsch, Director of Administration, Office of the State Engineer, for a presentation ([Appendix B](#)) regarding purpose funding and the balance sheet. Mr. Laschkewitsch said the handout in his presentation shows the summary of the contract fund for the current biennium. He said the handout shows every project that the State Water Commission and the Office of the State Engineer has funded and the status of those projects in each district. He said the projects have been grouped by types of projects. He said the budget column on the first page includes both new project funding and carryover funding. He said the second column represents what the State Water Commission has taken action on at this point. He said the third column is the project expenditures to date during the biennium. He said the "Remaining Unobligated" column simply represents the difference between the planned budget for a project and what has been spent to date. He said the final column represents the difference between what the State Water Commission has approved and what it has paid during the biennium.

Mr. Laschkewitsch said the following pages list each of the individual projects and their current status. He said the third page shows the general water projects, which are the vast majority of the current projects. He said the "Initial Approved Date" column shows the first time the State Water Commission approved money on a particular project. He said the "Total Approved" column shows only unspent money carried over from the previous biennium plus new money approved during the current biennium. The column does not show money approved during previous bienniums that has already been spent. He said the "Total Payments" column only tracks payments made during the current biennium. He said any amount of money left in the "Balance" column in July represents money that is carried over to the next biennium for those projects. He said the money is only automatically carried over if the project is less than 3 years old. He said an inquiry is conducted if the project is more than 3 years old and the money has not been used. He said the handout includes all projects that were approved prior to 2012 that still have balances, except flood control projects. He said there are currently only 25 projects that are 3 years old or older, and those projects only have a combined balance remaining of \$4.1 million out of the \$1 billion budgeted for water projects during the current biennium.

In response to questions from Chairman Schmidt, Mr. Laschkewitsch said if there is still a balance remaining after a project is completed, the unused funds are released back into an unobligated fund to be used for other projects. He said examples of this can be found on the first page of the handout which shows unobligated funds under both the general water management and the state water supply categories. He said there is no end date placed on projects. He said when end dates were placed on projects in the past, the State Water Commission was required to write hundreds of project modifications as they were carried over to new bienniums.

In response to a question from Senator Schaible, Mr. Laschkewitsch said typically if an end date is placed on a project, the end of the biennium is a reasonable end date. He said if available funding for a project is withdrawn, then the project ends.

NORTH DAKOTA RURAL WATER SYSTEMS ASSOCIATION

Chairman Schmidt called on Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, for a presentation (Appendices [C](#), [D](#), [E](#), and [F](#)) regarding the project status of rural water systems, a list of all of the incorporated cities in the state and their water sources, tracking the funding of each project over the current biennium, and showing the funding information of projects that are over 3 years old.

In response to questions from Chairman Schmidt, Mr. Volk said Cass County will be utilizing the entire \$3 million balance they have remaining during this construction season. Mr. Volk said there are approximately 248 incorporated cities in the state which are served by rural water. He said they do a good job of working with the cities in their water districts to regionalize.

NORTH DAKOTA LEAGUE OF CITIES

Chairman Schmidt called on Mr. Blake Crosby, Executive Director, North Dakota League of Cities, for a presentation (Appendices [G](#) and [H](#)) regarding the project status of municipal water systems. Mr. Crosby said one of the problems in trying to track funds is that there has been a lot of turnover of city auditors. He said there is some loss of institutional knowledge with each turnover. He said that explains certain situations where there are unexpended funds that no one knows about.

In response to questions from Representative J. Nelson, Mr. Crosby said regionalization is a critical component to a long-term water vision for the state. Mr. Crosby said he talks numbers with the cities when discussing water projects. He said he informs cities what water projects they can afford based on the taxable evaluation and the annual budget of the city. He said he emphasizes looking at a variety of projects for each city to determine the best way to budget and maximize efficiency. He said it would be good business practice for cities to bring forth more than one option to the Legislative Assembly when attempting to secure funding for a water project. He said there is a difference between repairs and maintenance when funding water projects. He said repair involves emergencies that need to be addressed immediately such as a water line breaking, while maintenance is the ongoing cost to attempt and prevent the need for major repairs. He said maintenance should be the responsibility of the local political subdivision, while repairs may require funding through the Legislative Assembly.

In response to a question from Representative Hofstad, Mr. Crosby said it is important to understand who is receiving water, where it is coming from, the size of the pipeline, the amount of water storage infrastructure available, and the size and availability of a water treatment plant. Mr. Crosby said knowing the answers to those questions is the first step to determining the barriers to regionalization. He said the demographics of the smaller communities is another critical component. He said some small communities can be a part of a regional water treatment plant without requiring their own plant.

In response to a question from Representative Streyle, Chairman Schmidt requested Mr. Crosby from the League of Cities and Mr. Volk from the Rural Water Systems Association to research information regarding how close the water lines are to some of the rural communities in the state to determine if they could regionalize their water source without requiring their own water treatment plant. He also requested them to research information regarding barriers to regionalization, such as engineering, design, or financial, and present their findings at the next committee meeting.

In response to a question from Representative J. Nelson, Mr. Crosby said it would potentially make sense for the state to prioritize regionalization by tying state funding for water projects to regionalization incentives. Mr. Crosby said return on investment needs to be a part of the equation.

In response to a question from Representative M. Nelson, Mr. Crosby said he does not have much information regarding water treatment plant operators in the state. Mr. Crosby said he would be willing to look at how many operators there are in the state, what type of licenses they have, and how much turnover there is regarding operators. He said he would be willing to present the information at the next committee meeting.

NORTH DAKOTA WATER RESOURCE DISTRICTS ASSOCIATION

Chairman Schmidt called on Mr. Mike Dwyer, Executive Director, North Dakota Water Resource Districts Association, for a presentation ([Appendix I](#)) regarding the project status of water resource districts. Mr. Dwyer said most of the projects undertaken by water resource districts are primarily recreation or flood control dams, levies, and agriculture improvement projects such as drainage. He said many of those projects are local in nature. He said the purpose of his handout is to show all of the different entities that work on some of the projects. He said often regardless of whether a project is a county project or a regional project, there will be local, regional, state, and federal involvement.

Mr. Dwyer said the North Dakota Water Resource Districts Association would be agreeable to stricter accountability standards when determining the status and funding of water projects that are more than 3 years old. He said the process for water resource districts projects can be very lengthy. He said the projects require a majority vote of the people who will be paying the local assessments on the projects.

In response to a question from Chairman Schmidt, Mr. Dwyer said the North Dakota Water Education Foundation received a grant of \$36,800 on February 22, 2010. He said the money was intended to be used to fund a history book project detailing the status of water in the state from 1889 to 2000. He said they contracted with two authors who subsequently quit which delayed the project. He said they now have a completed final manuscript and the project will be finished this year.

OFFICE OF THE STATE ENGINEER

Chairman Schmidt called on Mr. Todd Sando, State Engineer, State Water Commission and Office of the State Engineer, for a presentation regarding the policy of the state on repair versus maintenance, Missouri River stakeholder issues, and other water topics. Mr. Sando said a major topic that will be discussed on day two of the meeting is the cost-share policy when making modifications to match 2015 Senate Bill No. 2020. He said the policy of the State Water Commission is that there is no cost sharing for maintenance projects unless it is extraordinary maintenance that extends the useful life of a project. He said the State Water Commission has always prioritized providing high-quality water and water to people who do not have it, over going back and repairing water projects that already serve people with water. He said the commission has never historically been in the business of providing funding for improvements and reconstruction projects until recently. He said Senate Bill No. 2020 states that the State Water Commission needs to start cost sharing more projects than just new systems. He said the State Water Commission will provide a loan of up to 60 percent for the cost of a water project that includes reconstruction and improvements, unless the community is experiencing rapid growth.

Mr. Sando said the State Water Commission currently has \$664 million in the resources trust fund for new projects. He said conditions are changing but the commission is sitting in a relatively good position with money that has come in over the last several years. He said based on the appropriations bill, the Legislative Assembly wanted to see more cost sharing and making more of the money eligible for rural water and municipal water projects. He said the State Water Commission has started expanding the eligibility requirements for funding water projects. He said opening the eligibility to make more projects eligible for funding will also result in the projects taking longer to complete with resources being spread in more places.

Mr. Sando said 96 to 97 percent of all of the state's water and surface water is in the Missouri River. He said the Missouri River is a major topic of discussion currently. He said the State Water Commission is assembling an advisory group of stakeholders to help come up with recommendations and address issues with the federal government, international issues, and interstate issues regarding water. He said the group is called the Missouri River Advisory Council.

In response to a question from Chairman Schmidt, Mr. Sando said the State Water Commission's definition of "extraordinary maintenance" is that it includes the repair or replacement of portions of facilities or components that extends the overall life of a system or components that are above and beyond regular or normal maintenance. Extraordinary maintenance activities extend the asset's useful life beyond its originally predicted useful life. He said the definition for "regular maintenance" is normal repairs and general upkeep of facilities to allow facilities to continue proper operation and function--these maintenance items occur on a regular or annual basis. He said regular maintenance activities help ensure that the asset will remain serviceable throughout its originally predicted useful life. He said the definitions are included in the cost-share policy of the State Water Commission.

In response to a question from Senator Robinson, Mr. Sando said the State Water Commission is going to start requiring capital improvement funds. Mr. Sando said one of the issues is that some cities do not currently have reserve funding set up to contribute to a capital improvement fund balance. He said some cities are saving a good amount of money for future repairs and improvements on their water systems while others are not. He said 2015 Senate Bill No. 2020 requires capital improvement funds be set aside for extraordinary maintenance. He said the

State Water Commission has taken it further and requires funding be set aside for reconstructions, improvements, and brand new projects.

In response to questions from Chairman Schmidt, Mr. Sando said there is a fine line between maintenance, reconstruction, repairs, and improvements. Mr. Sando said the State Water Commission has the policy that sediment being removed from a legal drain is not a cost-sharing project. However, he said, the State Water Commission will cost share repairing damage to a drain, such as situations where the drain has lost channel capacity and needs to be reconstructed. He said the State Water Commission has a policy that states reconstruction of a legal drain is eligible for cost sharing. He said the State Water Commission does not typically get into the realm of doing economic analysis or impact studies to determine if projects are worth the expense. He said the State Water Commission prefers to do cost sharing instead. He said the State Water Commission attempts to help people if they have the money to do so. He said the State Water Commission does not consider economics when deciding whether to provide a basic human necessity to people, such as good quality water.

In response to a question from Representative J. Nelson, Mr. Sando said 2013 House Bill No. 1440 was passed to address territorial disputes between cities and rural water districts. Mr. Sando said the language of that bill does not address issues and disputes between two rural water systems.

GARRISON DIVERSION CONSERVANCY DISTRICT

Chairman Schmidt called on Mr. Ken Vein, Grand Forks County Representative, Garrison Diversion Conservancy District Board of Directors, for a presentation ([Appendix J](#)) regarding an update of the Red River Valley Water Supply Project, the status of the United States Bureau of Reclamation's municipal, rural, and industrial water project funding, and an update on the Grand Forks Water Treatment Plant. Mr. Vein said the Lake Agassiz Water Authority represents 13 counties. He said as of this year the Lake Agassiz Water Authority Technical Advisory Committee was reconstituted. He said the idea is to have the committee review technical issues and then give recommendations to the full Lake Agassiz Water Authority Board or the Garrison Diversion Conservancy District.

Mr. Vein said the water supply project can be simplified into the intake, the pipeline, the outlet, and water treatment. He said one of the biggest defining issues the project has faced is the pipeline alignment itself. He said the basic premise is to collect water in horizontal collector wells above the high-water line of the Missouri River in the western portion of the state and transport it to the eastern part of the state. He said a study has just been completed which validates that there is enough volume of water in the system of wells to service the whole project. He said the system overview shows a cross section of what the project will look like. He said there will be an elevation change of 381 feet to get the water over the highest point. He said after that the water will flow downhill at an elevation drop of 637 feet to the destination. He said there will be a significant operational cost to pumping the water up and over the continental divide. He said if the project chooses to use a 120 cubic feet per second supply, then they will likely need nine collector wells to make the project feasible. He said if the project alternatively opts for 180 cubic feet per second to supply central North Dakota in addition to the eastern part of the state, then the project will require 14 wells.

Mr. Vein said the total current estimate of the project is more than what has been appropriated for the current biennium. He said the estimates and project costs will be revised down in order to stay on budget. He said the final design of the project is likely going to be a \$50 million cost by itself.

In response to questions from Chairman Schmidt, Mr. Vein said the project started out as a 90/10 cost-share split between the State Water Commission and the Lake Agassiz Water Authority approximately 4 to 5 years ago. Mr. Vein said the cost-share agreement is not in legislation. He said the Legislative Assembly allocated the funds, but there was no requirement for a cost share. He said the water treatment plant for this project could be placed near the intake at the Missouri River, at the McClusky Canal, or at the continental divide as the water crosses the highest elevation point. He said the project is still attempting to determine the pros and cons of each potential option. He said there are also four or five potential turnout locations which are not currently included on the map.

In response to a question from Representative Hofstad, Mr. Vein said increased usage will require increased size of wells, pipelines, and costs. Mr. Vein said the project is still trying to determine what the added cost will be if the project is expanded beyond the original plan to accommodate increased usage. He said the project is currently in the process of putting together agreements with all potential users.

In response to a question from Senator Luick, Mr. Vein said in determining the \$50 million cost of the final design of the project, the Garrison Diversion Conservancy District did a consultant selection process for the final design phase of the project. Mr. Vein said the engineering firm that was selected to do the project has done the majority of the engineering work. He said the project has used several other firms for smaller portions of the project.

In response to questions from Representative Streyle, Mr. Vein said at this point the project is proceeding under a 90/10 cost-sharing split with the State Water Commission.

Representative Streyle commented that a 90/10 cost-share split is fine for the predesign phase, but he does not think it will be feasible for the state to pay for 90 percent of the entire project. He said if that is the case, the state should be running the project.

In response to a question from Chairman Schmidt, Mr. Vein said at this point the project has not found the extra money they require above and beyond what was allocated by the state for the current biennium. Mr. Vein said it is likely that the money will need to be found either at the local level or the State Water Commission.

Mr. Vein said regarding the United States Bureau of Reclamation's municipal, rural, and industrial water project funding, the State Water Commission has approved 13 projects. He said from 2015 to 2016 they are still waiting for the bureau to approve the release of funds for those projects.

Chairman Schmidt commented that it is important to note that these projects are forwarded by the Office of the State Engineer and there is a systematic process to coordinate the projects with state activities in order to get the projects built.

In response to questions from Representative Streyle, Mr. Vein said the last slide details a list of new funds for projects that were recently made available. Mr. Vein said the \$10.9 million was not on any of the project lists previously. He said the new projects are still pending approval. He said the projects only make the list after collaboration with the State Water Commission, the cities, and the rural systems on the priorities of projects. He said most of the projects on this list were picked because they enhance existing systems and have a short federal National Environmental Policy Act process.

In response to questions from Representative J. Nelson, Mr. Vein said the Lake Agassiz Water Authority Technical Advisory Committee does not sit down with the individual systems to determine what to do with the federal money that has been allocated. Mr. Vein said the Lake Agassiz Water Authority Technical Advisory Committee would sit down with the State Water Commission, the cities, and the rural systems together to develop a plan that makes the most sense for the money available and the vetting process to get the funds approved. He said the purpose of the collaboration is to develop the most efficient plan possible to use the allocated funds for water projects. He said they would be open to suggestions from the Legislative Assembly as to how the Lake Agassiz Water Authority Technical Advisory Committee could collaborate better to maximize efficiency.

In response to a question from Chairman Schmidt, Mr. Vein said the 90/10 cost sharing is only for the planning of the project currently, it does not currently apply to the implementation of the project and it is not required in any legislation.

Mr. Vein presented written testimony ([Appendix K](#)) regarding the Grand Forks Water Treatment Plant.

In response to a question from Representative Streyle, Mr. Vein said the plan to fund the project is increased water rates. He said some of the infrastructure to serve properties will be funded through special assessments, but that will not be used to fund the specific facility itself. He said the City of Grand Forks has also discussed increasing sales tax, but that option is not currently on the table.

In response to a question from Chairman Schmidt, Mr. Vein said Northern Plains Nitrogen is a fertilizer plant that has cleared all of the environmental hurdles to receive water as part of this plan. He said the plant is still working on their financing plan for the project.

WATERS OF THE UNITED STATES RULES UNDER THE ENVIRONMENTAL PROTECTION AGENCY

Chairman Schmidt called on Mr. Chris Marohl, Legislative Director for Congressman Kevin Cramer, for testimony ([Appendix L](#)) regarding the status of waters of the United States rules under federal Environmental Protection Agency consideration.

In response to a question from Chairman Schmidt, Mr. Marohl said the United States Supreme Court will eventually weigh in on the topic.

LEGISLATIVE COUNCIL - FUNDING SOURCES FOR WATER PROJECTS

At the request of Chairman Schmidt, Mr. Chris Kadrmaz, Fiscal Analyst, Legislative Council, presented a memorandum entitled [Select Water Projects - Funding Review](#). Mr. Kadrmaz said the memorandum provides

information regarding the total project cost, the completion date, and the sources of revenues for selected water projects receiving funding from the State Water Commission. He said the information included in the memorandum for each project was provided by the project sponsors. He said of the projects he reviewed, most of the funding is a mix of state and local funds.

In response to a question from Senator Holmberg, Mr. Kadrmas said the memorandum is correct in stating that the project completion date for the Horace Diversion is calendar year 2012. Mr. Kadrmas said that is likely because they are still listed on the contracts and not all of the reimbursements have come through at this point.

In response to a question from Representative J. Nelson, Mr. Kadrmas said when a project lists the local share as the remainder of all costs, it is likely because there are some additional costs to the project that they are going to have to account for.

WESTERN AREA WATER SUPPLY AUTHORITY PROJECT

Chairman Schmidt called on Mr. Mark Owan, Chairman of the Board of Directors, Western Area Water Supply Authority, for testimony (Appendices [M](#) and [N](#)) regarding an update of the Western Area Water Supply project.

In response to questions from Representative Anderson, Mr. Owan said there is a discussion with landowners regarding the easement process. Mr. Owan said the original easement is through the preliminary design. He said occasionally they have to discuss realigning the easements. He said if a physical structure needs to be placed on the land, the landowner is paid for the above-ground appurtenance. He said there are times when an appurtenance has to be placed in a particular location.

In response to a question from Representative Amerman, Mr. Owan said the peak of the Western Area Water Supply Authority market share was 19.64 percent in 2014.

In response to a question from Representative M. Nelson, Mr. Owan said if there are adequate funds, the total amount in baseline reimbursements is \$4.8 million. Mr. Owan said originally those payments were only to be made if funds were available. He said with 2015 Senate Bill No. 2233 the member reimbursements were above the loan and interest payments. He said the board has voluntarily chosen to not pay the reimbursements until after the loans and interest have been accounted for. He said the reimbursements were an incentive to get individual member entities to turn over their industrial sales to help pay for the project when the project first began. He said the member entity was guaranteed its 2010 baseline industrial sales of water.

In response to a question from Representative Hofstad, Mr. Owan said in 2014 there was approximately a \$150 million market. He said because the market has come down since then, he is unsure what their current market share is based on dollars as opposed to volume.

Representative Hofstad requested that the figures be provided to the committee in the future. Mr. Jaret Wirtz, Executive Director, Western Area Water Supply Authority, said he believed the market share in 2013 was approximately \$28 million worth of sales. Mr. Wirtz said 2014 was approximately \$35.5 million. He said 2015 was approximately \$23 million.

In response to a question from Senator Sorvaag, Mr. Owan said when projecting Western Area Water Supply Authority's budget for 2016, they used two million gallons of water per day in sales as an estimate. Mr. Owan said right now it is closer to 1.1 million gallons per day, which is about \$20,000 to \$30,000 per day in sales.

BANK OF NORTH DAKOTA

Chairman Schmidt called on Mr. Eric Hardmeyer, President, Bank of North Dakota, for a presentation (Appendices [O](#) and [P](#)) regarding a status update on the Western Area Water Supply Project funding and community water facility loan fund. Mr. Hardmeyer said the spreadsheet displays all of the debt associated with the Western Area Water Supply Project. He said the top handout shows public SRF loans, who they are to, the amount, and the balance, other debt, the baseline sales that were referenced by the previous presenter, and the state guaranteed loans. He said for calendar year 2016 there are total annual payments due of \$8.262 million plus an additional 21 percent to cover operating expenses. He said in order to make the payments there needs to be a grand total of \$10.458 million in payments annually. He said that equates to \$871,000 in monthly sales. He said to get back on the full payment schedule when accounting for baseline sales is \$2.3 million in monthly sales.

In response to questions from Representative Streyle, Mr. Hardmeyer said the sales for February was a little over \$800,000.

Mr. Hardmeyer said in regards to the community water facility loan debt, the handout details the current amount of loans that were outstanding. He said in 2014 there was \$9.2 million committed to loans.

In response to a question from Representative Streyle, Mr. Hardmeyer said there was \$150 million approved for infrastructure financing. He said \$100 million of that came from Bank of North Dakota capital. He said cities and counties that received surge funding were not eligible to use any of that money during the first biennium. He said they had one round of applications which started in October. He said there were five loans requested for \$34.5 million. He said round two started in February. He said the statute allows for that funding to be used for water treatment plants and sewers. He said he believes most of the applications so far have been for road construction.

In response to a question from Representative Hofstad, Mr. Hardmeyer said state guaranteed loan #1 on the first handout is the only loan that has principal reduction.

In response to questions from Representative Porter, Mr. Hardmeyer said the Bank of North Dakota keeps the spreadsheet current monthly. He said they will email it to the committee members periodically to keep them apprised of the current status of the finances.

Representative Porter requested that the revenues on the residential side of Western Area Water be tracked and reported to the committee as well. Chairman Schmidt requested Mr. Owan of the Western Area Water Supply Authority to provide the requested information at the next committee meeting.

PUBLIC COMMENTS

Mr. Steven Mortenson, Chairman, Independent Water Providers, provided written testimony ([Appendix Q](#)).

Representative Zubke said it is fair to say that the Bank of North Dakota does not enjoy reworking these loans. He said the Industrial Commission does not enjoy having to change water rates. He said the Water Topics Overview Committee does not enjoy these discussions either. He said everyone would enjoy a solution for all the parties involved if the Independent Water Providers can come up with one.

Mr. Mortenson said there is a history of a time when the Independent Water Providers were profitable. He said it is going to be hard for everyone to survive the current down market. He said he would like to see something on paper for when the market does start to return to determine lines for the Western Area Water Supply Authority and the Independent Water Providers.

Representative Zubke commented that the playing field needs to be level for all parties involved. He said creating areas for certain entities is not going to be a possibility.

Chairman Schmidt commented that in the past the Western Area Water Supply Authority and the Independent Water Providers said they did not want the Legislative Assembly to get involved in resolving this issue. He said there has been adequate time given for the parties to resolve the issue. He said the Legislative Assembly is now going to do what it needs to in order to pay for the system and the debt.

In response to a question from Representative Streyle, Mr. Mortenson said the average rate of a barrel of water at their depot is currently 65 cents per barrel. Mr. Mortenson said they have offered a lower rate at times depending on what the market will bear. He said the Independent Water Providers also have loan payments that they cannot forego. He said they also do not have the right of eminent domain when they put a pipeline in the ground. He said they have to pay \$100 to \$200 per rod to place a pipeline in the ground.

Mr. Pat Wheeler, Independent Water Provider, McKenzie County, said he helped build and invested in a water depot. He said he lobbied in vain during each of the last three sessions to protect his investment. He said his water depot was shut down by the State Engineer in December. He said they were providing water before the Western Area Water Supply Authority came into existence. He said the Western Area Water Supply Authority placed water depots just north and south of his depot. He said that had an adverse affect on his sales. He said when an irrigation allocation is converted to industrial water permit, the permit only allows for half of the amount of the irrigation permit. He said he expected the Environmental Protection Agency and the Army Corps of Engineers to be an adversary to his business, but he never thought the state would be an adversary. He said he was appalled to hear that the Western Area Water Supply Authority requested an increase in rates at a time when the current market conditions are unfavorable to everyone. He said that KLJ reduced their engineering rates as the market took a down swing. He said the priority has not been getting water to the rural communities, it has been to build water depots. He said that the Western Area Water Supply Authority's 14 percent market share is not an accurate representation of their footprint. He said that number represents their market share statewide. He said their percentage of frac water that they provide in the area where they are located is probably over 30 percent of the

market share. He said he questions whether 650 miles of pipeline projected for this year is money spent wisely. He said he thinks that ultimately there needs to be more oversight.

Representative Zubke commented that Advanced Engineering and Environmental Services never had a market premium on their wages when the project was started. He said they charged North Dakota the same as some of the other states they operated in. He said the rate increase that they asked for was simply a cost-of-living increase of a small percentage. He said because the Western Area Water Supply Authority Board did not approve the increase, they will do different billing. He said the engineering firm has been very fair and judicious when dealing with the state of North Dakota. He said that irrigation in lieu of a permit was against the law. He said everyone knew it was against the law, but it was an emergency situation. He said the private providers should have also known that the conversion of the irrigation permit was against the law. He said the bottom line is that there are \$165 million in industrial loans that need to be paid off.

Dustin Gawrylow, Managing Director, North Dakota Watchdog Network, said if there is a problem in need of a solution, it usually means that the government created the problem. He said expecting the private sector to formulate a solution is a discrepancy. He said it is his perception that the Western Area Water Supply Authority was a get rich quick scheme by riding high oil prices. He said in 2015 Senate Bill No. 2020 created a process for the Independent Water Providers to be involved and have a seat at the table. He said he believes the Industrial Commission may have bypassed the law that was passed when making their rate decision.

Chairman Schmidt said he wrote the section of the bill that is being referred to, and he just reviewed it recently with the Attorney General. He said the intent of the section was not to review the decisions of the Industrial Commission regarding the Western Area Water Supply Authority. He said the intent was merely to communicate those decisions. He said that bill does not require the Industrial Commission to ask permission before making its decisions. He said the Attorney General indicated that there was no violation of that law. He said the Industrial Commission had the authority to do what they did under 2013 Senate Bill No. 2233.

In response to a question from Representative Streyle, Mr. Wirtz said the last water depot was built between 2012 and 2013 and cost \$1.3 million.

STATE DEPARTMENT OF HEALTH

Chairman Schmidt called on Mr. David Bruschwein, Program Manager, State Department of Health, for a presentation ([Appendix R](#)) regarding the drinking water state revolving loan fund. Mr. Bruschwein said leveraging as a source of funding means that if demand exceeds the capacity of the state revolving loan fund to give loans, the fund can sell revenue bonds. He said some of the congressional requirements include environmental and historical review of the projects.

In response to a question from Representative Streyle, Mr. Bruschwein said the program funds every project that is requested and is on the priority list. He said on average they fund 11 projects totaling \$25 million per year.

In response to a question from Chairman Schmidt, Mr. Bruschwein said the program does not have any delinquent loans.

In response to a question from Senator Sinner, Mr. Bruschwein said most projects attempt to find additional funding or grants before approaching the state revolving loan fund. Mr. Bruschwein said because the funding is through bonds all projects are required to have a consulting engineer and a bond attorney. He said the projects are required to go through a review process.

In response to a question from Representative J. Nelson, Mr. Bruschwein said there is capacity for additional loans on the wastewater side of the loan funding program. Mr. Bruschwein said demand used to be much higher on the drinking water side as opposed to the wastewater side. He said now it has switched with more demand on the wastewater side.

OFFICE OF THE STATE ENGINEER - NORTHWEST AREA WATER SUPPLY PROJECT

Chairman Schmidt called on Mr. Tim Freije, Project Manager, Northwest Area Water Supply Project, State Water Commission, for a presentation ([Appendix S](#)) regarding an update of the Northwest Area Water Supply Project. Mr. Freije said his handout contains background and summary information for the project. He said the project has been under construction, litigation, and a federal injunction for a long time. He said the entire time that litigation was ongoing, the project continued construction. He said the court injunction was modified multiple times to allow construction to progress. He said the green items on page two of his handout show completed construction, while the red shows incomplete construction. He said this time of year the project is averaging 2.5 million gallons of usage per day. He said that water serves approximately 25,000 people. He said the average of 100 gallons per

capita per day is standard usage in the winter. He said there has been \$120 million spent on the project since it began. He said 44 percent of that funding has been reimbursed by the federal government. He said another 36 percent has been paid for by the City of Minot. He said the only benefit to Minot in funding part of the project is helping others in the region. He said pending the results of litigation, the project is likely looking at several construction seasons before the project is complete. He said on the supply side, the project still needs a biota water treatment plant, an intake, and a reservoir and control structure. He said it does no good unless the project gets all three.

In response to a question from Representative J. Nelson, Mr. Freije said the agreement with the City of Minot expires in 2018. Mr. Freije said there are possibilities to extend the agreement or terminate the agreement early. He said what the project decides to do depends on the progress of the litigation. He said Minot has been great to work with and they have done a lot to help many of their neighbors.

In response to a question from Chairman Schmidt, Mr. Freije said in addition to the \$10 million that was appropriated to the project during the current biennium, there was also \$5.5 million that was carried over from the previous biennium. Mr. Freije said he estimates the project has \$12 million remaining in design costs to be completed. He said some of the remaining funding may be used for additional work on the water treatment plant in Minot.

PUBLIC COMMENTS

Mr. Duane Wadeson, who farmed near Leonard, provided written testimony ([Appendix T](#)) regarding discovery of arsenic at high levels in his well water and the effects on his health.

Chairman Schmidt requested Legislative Council staff check with the State Department of Health regarding their policy on transparency of test well results and determine what the current regulations are.

In response to a question from Senator Luick, Mr. Wadeson said the State Department of Health did not have much of a response when he notified them of the test results of his water well. Mr. Wadeson said arsenic poisoning is very uncommon. He said the State Health official asked him to release his medical records to them, which he did. He said the state health official said the results were inconclusive even though all of his medical records show arsenic poisoning as a likely contributor to his health issues. He said arsenic slowly builds up in your system, so a body can eventually have a higher concentration of arsenic than the well water where it originated.

In response to a question from Representative J. Nelson, Jerry Blomeke, General Manager, Cass Rural Water District, said most of the arsenic is naturally occurring. Mr. Blomeke said there were reports that many years ago in the 1930s, leftover arsenic used to kill grasshoppers was buried in the region. He said some people in the region have normal arsenic levels and others have high arsenic levels. He said it is very hit or miss.

Mr. Wadeson said courthouse records do reference arsenic being buried in the region. He said the records do not reference where it was buried.

Chairman Schmidt said there are a number of information requests for the next meeting. He said Mr. Volk and Mr. Crosby are going to do some research into potential barriers to regionalization, and potential solutions to the barriers. He said the Western Area Water Supply Authority will provide the committee with information regarding residential revenues.

Chairman Schmidt recessed the meeting at 3:45 p.m. and reconvened the meeting at 9 a.m. on March 8, 2016.

UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT

Chairman Schmidt called on Mr. Ryan Taylor, State Director, and Mr. Mark Wax, Community Programs Director, United States Department of Agriculture Rural Development, for a presentation ([Appendix U](#)) regarding the United States Department of Agriculture Rural Development Water Program. Mr. Taylor said the handouts include the most recent progress report and the fact sheet regarding the water programs. He said water and waste is 1 of 40 programs of the Rural Development Department. He said the program typically does \$11.3 million in direct loans in an average year. He said the program has about \$6.9 million in grants. He said the grants have a tier system. He said if the median household income in a community is below \$39,000 then the community is eligible for a 75 percent grant at a 1.87 percent interest rate. He said if the income is \$39,000 to \$49,000 the eligibility is for a 45 percent grant at a 2.5 percent interest rate. He said if the income is above \$49,000 then there is no grant eligibility, but the community is eligible for a loan at 3.12 percent interest.

In response to a question from Chairman Schmidt, Mr. Taylor said the funding is on a static budget for this year and is the same as the amount from last year. Mr. Taylor said the program is willing to work with the state as they attempt to regionalize.

COST-SHARE POLICY MODIFICATIONS

Chairman Schmidt called on Mr. George Nodland, State Water Commission, for a presentation ([Appendix V](#)) regarding an update of the water project cost-share policy.

In response to a question from Representative J. Nelson, Mr. Nodland said he believes the loan fund is starting to be utilized more than it has been in the past.

In response to questions from Representative Streyle, Mr. Nodland said there is approximately \$100 million laid out for flood protection projects in various areas. Mr. Nodland said if the Legislative Assembly would like a different amount, it should be the responsibility of the Legislative Assembly to change it, not the State Water Commission. He said the cost-share policy for flood control projects is 60 percent.

SOUTHWEST WATER AUTHORITY

Chairman Schmidt called on Mr. Larry Bares, Representative, Southwest Water Authority Board of Directors, for a presentation ([Appendix W](#)) regarding an update of the Southwest Water Authority project. Mr. Bares requested that Mr. Steve Schneider, Representative of Stark County, Southwest Water Authority Board of Directors, be allowed to give the presentation to the committee. Mr. Schneider said the project currently serves over 58,000 people, including over 6,200 rural customers. He said the project has paid back over \$48 million to date, and the payments are perpetual in nature and will continue forever.

In response to a question from Chairman Schmidt, Mr. Schneider said the project receives approximately \$500,000 per year from their mill levies. Mr. Schneider said those funds are used for employee and administrative costs.

In response to a question from Representative Porter, Mr. Schneider said the "dividends" from the extraordinary maintenance fund are interest income.

In response to a question from Representative J. Nelson, Mr. Schneider said when the Southwest Water Authority pipeline was first put in place, they were planning the capacity so that they could also serve the city of Beulah. He said the city opted to not be hooked up to the Southwest Water Authority pipeline. He said Southwest Water Authority changed their plan so that they were not accounting for capacity to serve Beulah. He said as a result, Southwest Water Authority does not currently have enough capacity to serve the city of Beulah. He said he understands the state's desire for regionalization, but it is now cheaper for the City of Beulah to build its own water treatment plant than it would be for Southwest Water Authority to increase their capacity to serve the city of Beulah.

In response to a question from Representative Porter, Ms. Mary Massad, Chief Executive Officer, Southwest Water Authority, said the "dividends" are income into the fund. Ms. Massad said income is coming from investments from the trust department on behalf of the Southwest Water Authority. She said Southwest Water Authority writes a check every month to the trust department based on water sales.

In response to a question from Chairman Schmidt, Mr. Schneider said Southwest Water Authority currently has over 350 potential customers who have applications on file to get water from Southwest Water Authority. Mr. Schneider said Southwest Water Authority currently does not have the capacity to serve them.

In response to a question from Senator Luick, Mr. Schneider said Southwest Water Authority having a "lack of capacity" means that the line going past the house of the customer waiting to be served is not big enough to adequately accommodate that home. Mr. Schneider said if Southwest Water Authority places too many homes on the current pipelines, then no one is going to have adequate water pressure.

QUICK TAKE AUTHORITY AND PUBLIC COMMENTS

At the request of Chairman Schmidt, the Legislative Council staff presented a memorandum entitled [Eminent Domain "Quick Take" Authority for Water Resource Districts](#). The Legislative Council staff said the memorandum lays out some of the history regarding quick take authority.

In response to a question from Representative Hofstad, the Legislative Council staff said the State Water Commission has quick take authority only in specific and restricted situations.

In response to a question from Representative Kading, the Legislative Council staff said if quick take is not used, the property owner can challenge both the adequacy of the compensation offered and the necessity of the taking for the public good. The Legislative Council staff said if quick take authority is used, then the challenge to the necessity of the taking may be moot. He said the property may have already have been used for the purpose of the taking. He said at that point only the adequacy of the compensation remains.

Chairman Schmidt said Mr. William Brudvik was unable to attend the meeting but submitted written testimony ([Appendix X](#)) supporting water resource district quick take authority for committee consideration.

Mr. Gary Thompson, Chairman, Red River Joint Water Resource Board, presented written testimony ([Appendix Y](#)).

In response to a question from Representative Hofstad, Mr. Thompson said prior to 2009 water resource boards did not have quick take authority, they still had eminent domain. However, Mr. Thompson said, the problem with eminent domain without quick take authority is that the negotiation could be an extremely long process. He said if that happens, the contingencies could become too expensive and the project could be ended. He said the water resource boards do not like to use quick take authority unless it is absolutely necessary.

In response to a question from Senator Luick, Mr. Thompson said the landowners are the ones who vote to determine whether there is a majority to move forward with the project. Mr. Thompson said people who rent do not have a vote. He said for a project to come before the water board, there needs to be a petition, a study, bond money, and a vote of the landowners of the benefited area.

In response to a question from Representative Hofstad, Mr. Thompson said a petition for a project comes from members of the public who believe the project is for the public good. Mr. Thompson said the water resource board moves forward at that point. He said the public who are involved are the benefited parties.

Representative Streyle commented that eminent domain is already a tool for acquiring property. He said it should be hard to take a person's property. He said the length of time required to negotiate an agreement should not be a factor in the equation. He said quick take authority is a dangerous tool. He said he believes quick take needs to go away.

In response to a question from Representative Amerman, Mr. Thompson said majority vote does not require a majority of all the landowners who could potentially be affected by a project. Mr. Thompson said the vote only needs to include a majority of the landowners who participate in the voting process in order for a project to move forward.

In response to a question from Senator Luick, Mr. Thompson said when a project, such as a drain, affects farmers and cities, residents of the city can also be assessed for the project based on per acre formulas. Mr. Thompson said the residents of the city have a qualifying vote in the project.

In response to a question from Senator Sinner, the Legislative Council staff said the background memorandum presented earlier lists the entities that have been granted statutory authority to use quick take.

Mr. Sean Fredricks, Attorney, representing the Red River Joint Water Resource District, gave a presentation ([Appendices Z](#) and [AA](#)). Mr. Fredricks said his handouts compare regular eminent domain and quick take authority. He said the handouts also discuss why quick take authority is important. He said water resource districts have had regular eminent domain authority for over 100 years. He said he does not believe there is any evidence of abuse of that power. He said even in a quick take situation, landowners still have the opportunity to question the necessity of the taking. He said the negotiation period typically lasts several months, even in a quick take situation. He said quick take can only occur if a landowner refuses the appraised amount of the land by the water resource district. He said a water resource district may not have access to the property until it is granted by a judge. He said the landowner has the opportunity to challenge the necessity of the quick take action prior to the judge making a decision.

Mr. Fredricks said there are only two main differences between regular eminent domain authority and quick take. He said the first difference is that there is different timing involved in the process. He said the second difference is the type of property that can be acquired. He said through regular eminent domain the water resource district can take ownership of the property. He said quick take only allows for a right of way to be taken, which is similar to an easement.

In response to a question from Representative Hofstad, Mr. Fredricks said it is difficult to say whether certain projects will be able to move forward without quick take authority. Mr. Fredricks said holdout landowners can delay a project for years, which can potentially result in the project being terminated despite a majority of the affected landowners being in favor of the project. He said most projects would still likely be able to move forward without quick take authority, but at significant delay and expense.

In response to questions from Representative Porter, Mr. Fredricks said the assessment vote only determines whether there will be an assessment district created to finance and fund construction of the project. Mr. Fredricks said the standard for determining if a water resource board has quick take authority is whether there are federal or

state cost-share dollars involved. He said there was a bill introduced last session that would have taken quick take authority from the water resource districts and given the authority to county commissioners. He said water resource districts are not the only entities with appointed members who have quick take authority. He said every county commission he has spoken with has indicated that they have appointed members of the water resource districts to make decisions like the use of quick take authority on water projects. He said the county commissioners have indicated that they do not want the responsibility of determining when the use of quick take authority is proper.

Representative Hofstad commented that even though the vote threshold for assessment districts is 50 percent, it is not always a fair vote. He said landowners can be affected differently and can receive differing amounts of benefit from a project.

In response to a question from Representative Hofstad, Mr. Fredricks said water resource districts have to assess projects based on benefit. Mr. Fredricks said he would be open to discussing alternative options for use of quick take authority outside of the authority being given to the water resource districts or the county commissioners.

Mr. David Lokken, Chairman, Dickey-Sargent Irrigation District, presented testimony. He said he is one of two people that is supposedly against the Dickey-Sargent drainage project. He said he actually put money down to help design the project. He said the problem with the project is that instead of following the natural flow of the water to the river, it was decided to design the drain to go through his district's ditch. He said the citizens of the city of Oakes pay half the taxes on the ditch. He said those people have not been given any voice in the project. He said part of his property was assessed for the project. He said the project is going to raise the water table for the city of Oakes and cause them a loss of drainage capacity in order to accommodate others. He said his only contact with the water resources board has been through the formal offer he received in the mail.

In response to a question from Chairman Schmidt, Mr. Lokken said he believes the quick take process short circuits the natural negotiation and planning process for the acquisition of property. Mr. Lokken said he is not an opponent of the project, but the correct process is not being followed in this case.

Mr. Thomas Wheeler, Vice Chairman, Northwest Landowners Association, presented testimony. He said he is a farmer near Ray. He said he is in the Western Area Water District. He said people sometimes feel threatened into agreeing to projects. He said the mentality is that there is no use resisting a project because the project can just use the quick take authority to acquire the land anyway. He said landowners cannot prevent oil pads from being placed on their property, but they have some leverage because they can prevent oil pipelines being put in due to the fact that there is no quick take authority for those projects. He said eminent domain is difficult to use.

Mr. Larry Wilcox, landowner, Oakes, presented testimony. He said he is the other holdout landowner on the Oakes Pilot Drain project. He said he was only contacted twice by engineers on the project and there was no negotiation. He said he had no input on the project whatsoever. He said the project only plans to take a small amount of his land. He said he would donate the land if it was a viable project, but it is not. He said he stands to lose 40 acres of lost farm production from the rise in the water table as a result of the project.

FM AREA DIVERSION AUTHORITY PROJECT

Chairman Schmidt called on Dr. Tim Mahoney, Mayor, Fargo, and Col. Daniel C. Koprowski, St. Paul District Commander, Army Corps of Engineers, for testimony ([Appendix BB](#)) regarding the FM Area Diversion Authority Project. Dr. Mahoney said there was quite a bit of competition for the FM Area Diversion Authority Project to become one of the six new start projects in the country. He said there were 60 new starts competing for those six project positions. He said the Minnesota Department of Natural Resources Environmental Impact Statement should be completed by May or June of this year.

Col. Koprowski said regarding slide two of his presentation, the Army Corps of Engineers looked at many potential alternative plans prior to deciding on this one. He said the St. Paul District received two of the six new start projects nationwide, and the FM Area Diversion Authority Project is one of those two. He said that demonstrates a federal commitment to this project. He said he does not see the restrictive language put in place by the Office of Management and Budget as an insurmountable hurdle. He said the Army Corps of Engineers is confident that they can be assessed by the Assistant Secretary of the Army, Civil Works, as likely to resolve any regulatory issues. He said the Diversion Inlet Control Structure part of the project will be entirely within the state of North Dakota. He said that means permits for this part of the project will only be required in North Dakota. He said a split delivery plan allows for both ends of the project to be addressed simultaneously. He said using this plan allows for progress on both the diversion channel and the southern embankment at the same time. He said this will cut in half the amount of time needed to see benefits on this project. He said this reduces the potential for cost growth over time. He said despite the fact that the project is a public-private partnership, it is a federal project and the entirety of the project is subject to federal standards, not just the Army Corps of Engineers' portion of the project.

In response to a question from Dr. Mahoney, Col. Koprowski said he is uncertain when the rest of the federal funding, beyond the \$5 million already given, will arrive. He said the FM Area Diversion Authority Project would not have received one of the six new start projects in the entire country unless the federal government meant to follow the project through to completion.

In response to a question from Senator Unruh, Col. Koprowski said the split delivery plan has not been used by the Army Corps of Engineers on a project of this magnitude in the past, but they are attempting to use the FM Area Diversion Authority Project to demonstrate proof of concept. Dr. Mahoney indicated that the packet includes examples of split delivery plans being used successfully elsewhere in the country.

In response to questions from Senator Luick, Dr. Mahoney said the to-date estimated cost of the project is \$1.8 billion. Dr. Mahoney said that may go up slightly with inflation but they will not know for sure until the end of the month. He said he anticipates extending sales tax to help pay for the upfront cost of the project. He said at this point the project does not anticipate requiring any more funding from the state. Mr. Martin Nicholson, CHMM, said he is helping to advise the diversion authority on the implementation of the project. He said the project is working with Ernst & Young, LLP, financial advisors to determine a financial model for the project that includes both public and private sector financing. He said the public-private partnership also has a 30-year anticipated operating term. He said the absence of approximately \$400 million in federal funding will have to be financed upfront. Dr. Mahoney said he has reached out to the upstream coalition to meet. He said the response of the coalition is that they are willing to mediate, but they do not wish to sit down and talk directly.

Senator Luick commented that it did not seem like local sales tax will be able to cover the interest rate on that amount of money.

In response to a question from Senator Sorvaag, Col. Koprowski said the entire project is considered a federal project because it was federally authorized. Col. Koprowski said a single appropriation for the full federal amount was never expected. He said phased funding was expected. He said the construction of the project was split in half, but the project was authorized by Congress and is still subject to federal standards. Mr. Nicholson said the private-public partnership is being used as a project implementation tool and is a method to bring the financing of the private sector, along with the bundling of design, construction, and operations, in a way that balances capital and operations and management costs.

In response to a question from Senator Sorvaag, Col. Koprowski said the Army Corps of Engineers will be involved throughout the duration of the project, not just the private-public partnership portion of the project.

In response to a question from Senator Lee, Col. Koprowski said he did not believe the initial \$5 million has been delivered to the diversion authority to begin construction. Dr. Mahoney said he anticipates a joint partnership agreement will be signed with Minnesota in July and then the exchange of money will be completed moving forward and construction will begin on the project this fall. Col. Koprowski said the permit applications have been filed for the diversion inlet structure.

Representative Carlson commented that the state's general policy on funding projects has been to pay 50 percent of the local share. He said if we assume a \$1.8 billion projected cost of the project, that is \$450 million share for the state to cover after the federal government assumes \$900 million. He said to date the state has set aside \$244 million for the project. He said the plan is to pay an additional \$69 million per biennium until the \$450 million is paid off. He said the state is fulfilling its commitment on this project. He said there were guidelines put in place in 2013 House Bill No. 1020 which lay out five things that need to happen for the project to continue. He said not all of those things have been accomplished yet, but they are in the process of being completed.

In response to a question from Representative Streyle, Dr. Mahoney said it is correct that the \$5 million federal appropriation is one of the requirements that unlocks the state funds for the project.

In response to a question from Senator Luick, Col. Koprowski said he anticipates that by July the Army Corps of Engineers will be in a position where they will be assessed to be likely to resolve any regulatory issues by the Assistant Secretary of the Army, Civil Works, which is one of the restrictive requirements placed on it.

In response to a question from Representative Kading, Dr. Mahoney said that the Army Corps of Engineers determined the path of the diversion and potential growth or development did not have any impact on that path.

In response to questions from Chairman Schmidt, Mr. Eric Dobbs, Consultant to the diversion authority, Advanced Engineering Environmental Services, said it is true that several years ago several landowners approached the diversion authority and offered to sell land. He said the price for most of the land they have purchased has been

based on appraisals. He said it is true that the diversion authority has purchased more land than what is necessary for the footprint of the project. He said some of the land will be used for construction staging.

Chairman Schmidt said that he hopes the diversion authority is not planning to use quick take authority because they have more than enough time to go through the other processes of property acquisition. Dr. Mahoney said he is unaware of any diversion authority plan to acquire property through the use of quick take.

In response to a question from Representative Carlson, Dr. Mahoney said Ernst & Young, LLP, financial advisors are going to determine a financial plan for dealing with the interim financing of the project.

In response to a question from Senator Luick, Dr. Mahoney said Cass County and the City of Fargo have each taken out a \$50 million loan to help finance the project short term.

UPSTREAM IMPACT STUDY

Chairman Schmidt called on Mr. Dean Bangsund, Research Scientist, Department of Agribusiness and Applied Economics, North Dakota State University, for testimony ([Appendix CC](#)) regarding a North Dakota State University Red River upstream impact study. Mr. Bangsund said the study looks at how the temporary water storage for the FM Area Diversion Authority Project will affect producer revenues.

In response to a question from Senator Luick, Mr. Bangsund said each of the studies is dependent on a hydrology study for data. Mr. Bangsund said they have received all of the hydrology study data that they require both outside and inside of the staging area.

In response to a question from Representative Anderson, Mr. Bangsund said they have not studied the effect on asset values in their study at this point.

COMMITTEE DISCUSSION

Chairman Schmidt said a committee meeting will be held on Wednesday and Thursday, June 15-16, 2016, in Minot and Velva. He said that meeting will include testimony that was to be given at the Devil's Lake meeting, which the committee had to relinquish. He said a meeting will be held on Wednesday and Thursday, August 17-18, 2016, in Watford City. He said the last meeting of the interim will be held on Wednesday and Thursday, September 21-22, 2016, in Bismarck. He said the final meeting will be held jointly with the State Water Commission.

Representative Porter requested background information regarding the ability of water resource districts to be able to move into another approved project without a vote of the affected assessment district. He said he would like information about when those projects can add themselves, through the Office of the State Engineer, into another project without the approval of that project. Chairman Schmidt requested the Legislative Council staff research the request regarding the Oakes Pilot Drain Project for the next committee meeting.

Representative Porter requested the Legislative Council staff draft a bill regarding the state's expected share of the Red River Valley Water Supply Project at 60 percent. Chairman Schmidt requested the Legislative Council staff draft the bill as requested.

Chairman Schmidt said with respect to the 90/10 split on the planning and engineering, the state is at 35 percent on the planning and engineering of water supply systems. He said the committee should consider altering the 90/10 split.

Representative Hofstad presented written testimony ([Appendix DD](#)) submitted by Mr. Paul Mathews, landowner, Southeast North Dakota.

No further business appearing, Chairman Schmidt adjourned the meeting at 12:30 p.m.

Dustin Assel
Counsel

John Walstad
Legal Division Director

ATTACH:30