

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Wednesday and Thursday, August 24-25, 2016
 Grand Ranch Room, Teddy's Residential Suites, 113 9th Avenue SE
 Watford City, 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, Naomi Muscha, Jon O. Nelson, Mark Sanford, Roscoe Streyle, Greg Westlind, Denton Zubke; Senators Jonathan Casper, Ray Holmberg, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, Ronald Sorvaag, Jessica Unruh

Members absent: Representatives Tom Kading, Marvin E. Nelson, Todd Porter; Senator George Sinner

Others present: Brad Bekkedahl, State Senator, Williston
 Chris Kadrmas, Legislative Council, Bismarck
 See [Appendix A](#) for additional persons present.

Chairman Schmidt recommended two changes to the June 14-15, 2016, meeting minutes. He said the bill mentioned on page 6 of the minutes was House Bill No. 1206 (2013), which passed. He said the amount of uncommitted funds for rural water projects mentioned on page 7 was \$1.1 million.

It was moved by Senator Robinson, seconded by Senator Holmberg, and carried on a voice vote that the minutes of the June 14-15, 2016, meeting be approved, with the changes recommended, by Chairman Schmidt.

WESTERN AREA WATER SUPPLY AUTHORITY

Chairman Schmidt called on Mr. Jaret Wirtz, Executive Director, Western Area Water Supply Authority, for a presentation ([Appendix B](#)) on the Western Area Water Supply Authority (WAWSA) project construction report.

In response to a question from Chairman Schmidt, Mr. Wirtz said WAWSA worked with communities that were reluctant to enter agreements with regional water suppliers to address the communities' concerns about losing direct control over their water supply and prices. He said WAWSA is a wholesaler and does not set prices for end users. He said some communities in the WAWSA service area did not sign up to receive water through WAWSA and may face delays in getting service if they sign up late.

In response to a question from Senator Robinson, Mr. Wirtz said WAWSA is serving about 60,000 people, and served up to 70,000 in the past.

In response to a question from Chairman Schmidt, Mr. Wirtz said WAWSA did not have problems when laying pipe over state land, and the state ensured WAWSA conducted proper reclamation of the land.

In response to a question from Representative Anderson, Mr. Wirtz said WAWSA paid for a permit to lay pipe over state land and paid the cost of the necessary survey of that land. He said WAWSA often incurs the survey costs when it lays pipe over private land.

In response to a question from Representative Zubke, Mr. Wirtz said WAWSA has 14 employees, including himself, 4 operators who manage transmission lines and depots, 2 office staff, a chief financial officer, an operations manager, 2 land people, and 3 people who work on land reclamation.

In response to questions from Representative Streyle, Mr. Wirtz said most of WAWSA's income is derived from domestic water demand, but the income level is below the projected amount. He said WAWSA keeps its industrial account separate from its domestic account.

In response to a question from Chairman Schmidt, Mr. Wirtz said WAWSA has not had conflicts with other providers regarding who will provide water to rural residents.

Representative Streyle said Minot pays 60 percent more for water than communities served by WAWSA, and WAWSA rates are too low considering that state money supplements WAWSA.

In response to a question from Chairman Schmidt, Mr. Wirtz said comparisons of one system's rates to another's are complicated because there may be different variables included in the water rates.

Representative Streyle said the state is subsidizing WAWSA more than any other system, and it is not right that the primary entity, Williston, is paying less than any city in the state for water.

Mr. Wirtz said the state is subsidizing WAWSA, not Williston, and it is cheaper to get water to Williston because it is close to the river.

Representative Streyle said the state is subsidizing water rates for Williston because state funds were used to build the water treatment plant.

In the absence of Mr. Mark Owan, Chairman, Western Area Water Supply Authority, Chairman Schmidt called on Mr. Wirtz for a presentation ([Appendix C](#)) regarding WAWSA landowner policy issues.

In response to a question from Representative Amerman, Mr. Wirtz said WAWSA pays a brokerage firm a flat fee per half day or per day for working to obtain easements.

In response to a question from Representative Anderson, Mr. Wirtz said about one-third of landowners who object to easements on their land do so because of disagreements over compensation for the easements. He said WAWSA offers about \$250 per acre for easements for rural water pipelines and about \$1,066 per acre for easements for main transmission lines.

In response to a question from Senator Robinson, Mr. Wirtz said WAWSA keeps a portion of each contingency bond for up to 1 year after the warranty starts.

In response to questions from Senator Luick, Mr. Wirtz said pipelines are a minimum of seven and one-half feet under ground, and setbacks from utilities vary due to the type of utility. He said water pressure for high pressure needs can go to about 100 pounds per square inch.

Chairman Schmidt called on Ms. Karlene Fine, Executive Director and Secretary, Industrial Commission, for a presentation ([Appendix D](#)) on the Industrial Commission's *Western Area Water Supply Industrial Financial Report*.

In response to a question from Representative Streyle, Ms. Fine said the state picks up responsibilities for the baseline sales for WAWSA's member entities' debts, including public finance authority debt for a number of entities. She said operation and maintenance costs are based on a WAWSA presentation to the Industrial Commission each year, and those payments increase as the cost of getting water to different areas increases.

Chairman Schmidt called on Mr. Eric Hardmeyer, President, Bank of North Dakota, for a presentation ([Appendix E](#)) regarding repayment by WAWSA of loans guaranteed by the state.

In response to a question from Representative Streyle, Mr. Hardmeyer said the Legislative Assembly would have to work through restructuring the debt with the WAWSA Board during the next legislative session. He said the Bank of North Dakota is monitoring how the economic downturn will impact the WAWSA payments on the loans.

WATFORD CITY, MCKENZIE COUNTY, AND WILLISTON SURGE FUNDING

Chairman Schmidt called on Mr. Brent Sanford, Mayor, Watford City, for a presentation ([Appendix F](#)) regarding Watford City surge funding and future projects.

In response to a question from Chairman Schmidt, Mr. Sanford said Watford City has approximately 6,500 residents in the city limits, and there are about 12,000 residents including the surrounding area.

In response to a question from Representative Streyle, Mr. Sanford said he does not believe Watford City overbuilt and said the slides in his presentation included some projects that have not yet been bid and some that are in progress.

In response to a question from Senator Casper, Mr. Sanford said \$4.2 million of surge funding will help fund trunk lines.

Chairman Schmidt called on Ms. Linda Svihovec, Auditor/Treasurer, McKenzie County, for a presentation ([Appendix G](#)) on McKenzie County surge funding and future projects.

Chairman Schmidt called on Mr. Wirtz for a presentation ([Appendix H](#)) regarding the WAWSA industrial sales report.

In response to a question from Chairman Schmidt, Mr. Wirtz said debt from the WAWSA industrial account would not be allocated to the domestic account, but any new loans would burden residential users.

In response to questions from Representative Streyle, Mr. Wirtz said WAWSA has approximately \$189.5 million in principal plus interest (roughly \$240 million in total) in outstanding industrial debt. He said about \$6 million was spent on industrial equipment and the rest was spent on infrastructure that also services domestic users.

In response to a question from Senator Casper, Mr. Wirtz said the state requires WAWSA to use its industrial revenue to repay its industrial debt. He said excess revenue is being used to pay back the loan, and the depots that were built for industrial use have been paid off. Although WAWSA is not cashflowing, he said, WAWSA prepaid interest and principal when revenues were higher. He said WAWSA does not need to make full payments at the current time.

In response to a question from Representative Zubke, Mr. Wirtz said the private pipelines laid after 2013 Senate Bill No. 2233 and the loss of franchise protections for WAWSA do not provide residential water except for an occasional tap set up for a pasture.

In response to a question from Representative Amerman, Mr. Wirtz said anyone can obtain a permit to sell water from their own land if the State Water Commission approves the permit. He said there are fewer than 10 large private providers of industrial water.

In response to a question from Representative Streyle, Mr. Wirtz said there have been discussions about eliminating revenue sharing arrangements with cities, and some cities are not taking their share of revenues so that WAWSA can make its loan payments.

Chairman Schmidt called on Senator Brad Bekkedahl, Vice President and Finance Commissioner, Williston City Commission, for a presentation ([Appendix I](#)) regarding City of Williston surge funding and future projects.

Chairman Schmidt called on Mr. Dave Laschkewitsch, Division Director, Administrative Services Division, State Water Commission, for a presentation ([Appendix J](#)) on the State Water Commission's June 30, 2016, project summary spreadsheet.

In response to a question from Chairman Schmidt, Mr. Laschkewitsch said at the next State Water Commission meeting, the State Water Commission will discuss Minot's request to change the cost share from 60 to 75 percent.

In response to a question from Representative Streyle, Mr. Laschkewitsch said he believes a lack of requests for funds from the State Water Commission is due to a lack of demand rather than onerous loan terms. He said he believes the loan guidelines are not too stringent, and the loan rate is only 1.5 percent.

In response to a question from Chairman Schmidt, Mr. Laschkewitsch said there were several communities that sought funds from other sources.

Chairman Schmidt said there is a need to incentivize regionalization.

Chairman Schmidt recessed the meeting at 2:45 p.m. and reconvened the meeting at 9:00 a.m. on Thursday, August 25, 2016.

SOUTHWEST WATER AUTHORITY

Chairman Schmidt called on Mr. Steve Schneider, Director, Southwest Water Authority, for a presentation ([Appendix K](#)) regarding Southwest Water Authority (SWA) projects.

In response to a question from Representative Streyle, Mr. Schneider said the state owns the SWA project, and SWA will repay the loan with no interest. He said payments are adjusted by the consumer price index.

In response to a question from Chairman Schmidt, Mr. Schneider said because he anticipates low sales from industrial depots going forward, SWA is budgeting accordingly. He said the depots' sales help pay for buildings and keep water rates down.

In response to questions from Representative J. Nelson, Mr. Schneider said SWA is constructing a treatment plant in Dickinson which will cost around \$36 million. He said it will serve the area in and around Dickinson and will increase SWA's capacity from 12 million to 18 million gallons of water per day. He said Beulah chose not to join SWA.

Representative J. Nelson said there is a need to incentivize regionalization.

Chairman Schmidt said regionalization will be an agenda topic at the next committee meeting.

In response to a question from Chairman Schmidt, Mr. Schneider said change orders increase the cost of a project, and change orders often occur when people sign up for a water supply project late. He said because construction prices seem to be dropping, there may be a cost decrease in the new bids.

In response to a question from Representative J. Nelson, Mr. Schneider said SWA obtains permits from the State Water Commission and has not had complaints or problems from other states' regulatory bodies.

DEVILS LAKE

Chairman Schmidt read an excerpt of the Legislative Management mandate for the committee to study the impact on landowners of rising levels of Devils Lake and Stump Lake. He said public testimony indicated the landowners do not want compensation for inundated land but wanted roads to be rebuilt. He said the committee does not have jurisdiction over roads. He invited committee discussion on this issue.

Representative Westlind said he does not anticipate the level of Devils Lake will drop this year. He said some road building should be put on hold until the lake level is stabilized.

Representative J. Nelson said the Legislative Assembly did not provide funding for road construction, and road construction issues are outside the purview of the committee.

Senator Holmberg said the committee could recommend the Legislative Assembly continue to monitor the situation in and around Devils Lake.

Committee members generally agreed to recommend continued monitoring of the Devils Lake Basin flooding.

INDEPENDENT WATER PROVIDERS

Chairman Schmidt called on Mr. Mike McBride, Vice President, Business Development, Upstream Oil and Gas Operations, Savage Services, for a presentation ([Appendix L](#)) on independent water providers.

In response to a question from Representative Anderson, Mr. McBride said he does not know why WAWSA testified their market share is decreasing, and it is hard to gauge market share in the Bakken Formation. He said most of Savage's markets are north of the river.

In response to a question from Representative Streyle, Mr. McBride said he is not prepared to comment on whether Savage is interested in buying part of WAWSA.

Representative Streyle said water is the property of the people of North Dakota and Savage receives it for free.

Chairman Schmidt said the intent of the Legislative Assembly is to use the state's water to facilitate development of the state's oil.

QUICK TAKE EMINENT DOMAIN

Chairman Schmidt asked the Legislative Council staff to provide information regarding the committee's study of quick take eminent domain, including the Legislative Council memorandum entitled [Eminent Domain "Quick Take" Authority for Water Resource Districts](#), three recent court orders in two quick take cases (Appendices [M](#), [N](#) and [O](#)), three bill drafts [[17.0223.01000](#)], [[17.0224.01000](#)], and [[17.0259.01000](#)] regarding quick take eminent domain that the committee had requested, and written comments (Appendices [P](#), [Q](#), [R](#), [S](#), and [T](#)) received by the committee.

The Legislative Council staff was asked to provide additional information on quick take eminent domain laws in other states at the next meeting.

Chairman Schmidt invited the public to comment on the bill drafts and quick take eminent domain.

Mr. Mike Dwyer, Executive Secretary, North Dakota Water Resource Districts Association, said the association supports the changes in lines 16 through 19 of page 1 of the bill draft [[17.0224.01000](#)], and would support adding more requirements for water resource districts to meet prior to taking ownership of property by quick take eminent domain. He suggested requiring a water resource district to provide to the court written confirmation that the district provided a written offer of compensation and an offer to meet with the landowner to discuss the compensation. He said members of water resource boards are landowners and proceed with quick take eminent domain judiciously. He said water resource boards need quick take eminent domain authority because they need to move projects forward. He said that authority is used rarely.

In response to questions from Senator Schaible, Mr. Dwyer said good faith negotiations would include numerous communications and requests for meetings. He said a boards' ability to take property through quick take eminent domain hampers negotiations, but that situation also exists with regular eminent domain takings.

No further business appearing, Chairman Schmidt adjourned the meeting at 12:35 p.m.

Claire Ness
Counsel

ATTACH:20