

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

### WATER TOPICS OVERVIEW COMMITTEE

Thursday, October 12, 2017  
Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

Representative Jim Schmidt, Chairman, called the joint meeting of the Water Topics Overview Committee and State Water Commission (SWC) to order at 9:00 a.m.

**Members present:** Representatives Jim Schmidt, Dick Anderson, Tracy Boe, Chuck Damschen, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Roscoe Streytle, Denton Zubke; Senators Jonathan Casper, Curt Kreun, Larry J. Robinson, Donald Schaible, Ronald Sorvaag

**Member absent:** Senator Gary A. Lee

**State Water Commission members present:** Governor Doug Burgum, Katie Andersen, Michael Anderson, Richard Johnson, Leander "Russ" McDonald, Mark Owan, Matthew Pedersen, and Jason Zimmerman

**State Water Commission member absent:** Doug Goehring

**Others present:** Lieutenant Governor Brent Sanford  
Senators Ray Holmberg, Grand Forks, and Rich Wardner, Dickinson, members of the Legislative Management  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Nelson, seconded by Senator Schaible, and carried on a voice vote that the minutes of the July 25, 2017, meeting be approved as distributed.**

Governor Burgum and Chairman Schmidt each gave opening remarks and discussed the importance of communication between the Water Topics Overview Committee and SWC.

#### STATE FUNDING OPTIONS FOR WATER PROJECTS

Chairman Schmidt called on Mr. Kelvin Hullet, Market Manager, Economic Development and Government Programs, Bank of North Dakota, for a presentation ([Appendix B](#)) on funding options for water projects.

In response to a question from Chairman Schmidt, Ms. DeAnn Ament, Executive Director, North Dakota Public Finance Authority, said the authority receives annual federal capitalization grants for the clean water revolving fund and drinking water revolving fund programs. She said North Dakota has to meet a threshold match to obtain the grants, and the state has issued \$700 million of bonds to satisfy its match obligation. She said the programs provide loans at 2 percent interest to communities in the state, and there are about 400 outstanding loans. She said borrowers must show an ability to repay the loan, and the largest loan was a \$125 million loan to Watford City for a water treatment plant.

In response to a question from Chairman Schmidt, Mr. Hullet said he agrees the Bank of North Dakota's 60/20/20 rule is due for reconsideration.

#### UNITED STATES BUREAU OF RECLAMATION'S MUNICIPAL, RURAL, AND INDUSTRIAL WATER PROJECT FUNDING

Chairman Schmidt called on Mr. Dean Karsky, Rural Water Division Manager, United States Bureau of Reclamation, for a presentation ([Appendix C](#)) on the bureau's municipal, rural, and industrial water project funding.

In response to a question from Chairman Schmidt, Mr. Karsky said the state has about \$25 million of carryover, which is about the same amount of carryover North Dakota Indian tribes have. He said the bureau allows an entity to carry over funds indefinitely as long as the entity has an ongoing agreement with the bureau. He said the cap on funding is determined by how much Congress appropriates to the program each year.

In response to a question from Representative Nelson, Mr. Karsky said the state must provide a 25 percent match for funding under the program, but Indian tribes do not have to provide a match.

In response to a question from Chairman Schmidt, Mr. Karsky said the bureau receives a list of projects for funding from the Garrison Conservancy District and SWC each year. He said he does not know how many projects are rejected by those entities.

In response to a question from Representative Mitskog, Mr. Karsky said the bureau recognizes the timing of the bureau's project approvals has been an issue in the past, but the process has been streamlined to make payments available to communities earlier.

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

Chairman Schmidt called on Mr. Jaret Wirtz, Executive Director, Western Area Water Supply Authority, for an update ([Appendix D](#)) on the Western Area Water Supply Project.

In response to a question from Chairman Schmidt, Mr. Wirtz said he has not seen much use of water for refracking, but the energy industry foresees it happening. He said up to 17 million gallons of water per well is used for fracking.

### **SOUTHWEST PIPELINE PROJECT**

Chairman Schmidt called on Mr. Larry Bares, Chairman, Southwest Water Authority Board of Directors, for an update ([Appendix E](#)) on the Southwest Pipeline Project.

In response to a question from Chairman Schmidt, Ms. Mary Massad, Manager/CEO, Southwest Water Authority, said the Bureau of Reclamation is providing \$3 million for the project, and the project is exceeding its cost-share requirements. She said future funding will be needed for intake structures, pumping stations, reservoirs, and pipelines to rural communities.

In response to a question from Representative Streyle, Mr. Bares said Mandan receives a benefit in exchange for the one mill levy it pays for the project. He said the benefit is the ability to expand when water systems reach rural areas around the city.

### **NORTHWEST AREA WATER SUPPLY PROJECT**

Chairman Schmidt called on Mr. Tim Freije, NAWSP/SWPP Section Chief, State Water Commission, for an update ([Appendix F](#)) on the Northwest Area Water Supply Project (NAWSP). Mr. Freije said the district court in the District of Columbia recently granted a motion for summary judgment in favor of NAWSP. He said the court's ruling was being appealed, and he expects a ruling on the appeal in about a year. In the meantime, he said, the court has allowed some work on the project to continue, including designing the water treatment plant in Max and placing softening basins.

In response to a question from Chairman Schmidt, Mr. Freije said the project carried over \$12.4 million in funding from last biennium, and will need an additional \$10 million in the future.

In response to questions from Representative Streyle, Mr. Freije said construction on the pipeline from Minot to Bottineau was enjoined by the court. He said the water supply agreement with Minot will expire next year. He said he expects the agreement will be renewed. Because Minot's water treatment plant is at capacity, he said, the renewal will not be for a greater water supply than in the current agreement. He said the \$22.5 million requested by NAWSP will cover ongoing projects, not new ones.

Representative Streyle said SWC should approve more money for NAWSP.

In response to questions from Representative Nelson, Mr. Freije said the objective is to obtain a 10- to 15-year renewal of the contract with Minot. He said NAWSP is testing the pipeline to ensure the pipeline remains intact even if water is not running through it.

### **FARGO FLOOD CONTROL PROJECT**

Chairman Schmidt called on Dr. Tim Mahoney, Mayor, City of Fargo, for a presentation ([Appendix G](#)) on the Fargo flood control project and the \$66.5 million cost-share request for the project. Dr. Mahoney said a preliminary injunction issued on September 7, 2017, halted most work on the project. As a result, he said, a working group of eight North Dakotans and eight Minnesotans is being formed to work out a mutually-acceptable plan for the project.

In response to a question from Representative Streyle, Dr. Mahoney said the FM Diversion Authority can use the \$66.5 million for land acquisitions while the project is halted, and the court indicated it would drop the injunction if the 16-person working group agrees on a plan.

In response to questions from Representative Mitskog, Dr. Mahoney said the project can continue work on the Cass County Road 16 and 17 bypass, and the bypass should be completed this fall. He said \$70 million of the \$120 million appropriated for in-town work has been spent.

In response to a question from Chairman Schmidt, Dr. Mahoney said the FM Diversion Authority is continuing work on the interior part of the project, negotiating the acquisition of 11 homes, and working on in-town levees.

In response to a question from Representative Nelson, Dr. Mahoney said the Federal Emergency Management Agency (FEMA) remapped the Fargo-Moorhead area and adjusted the level for the 100-year flood plain from about 40 feet to about 41 feet. He said the FM Diversion Authority will have to determine how many structures will not be protected at that new level because FEMA will not certify those structures. Without FEMA certification, he said, the owners of the structures will need to buy flood insurance.

### **RED RIVER VALLEY WATER SUPPLY PROJECT**

Chairman Schmidt called on Dr. Mahoney and Mr. Ken Royse, Chairman, Garrison Conservancy District, for a presentation ([Appendix H](#)) on the Red River Valley Water Supply Project.

In response to a question from Representative Anderson, Mr. Royse said Manitoba's government may raise concerns about a potential transfer of biota resulting from the project, but those concerns would not lead to a lengthy National Environmental Protection Act challenge like the one delaying NAWSP because, unlike NAWSP, the Red River Valley Water Supply Project is not a federal project.

In response to a question from Representative Nelson, Dr. Mahoney said he declined to agree with legislators who believe the state funding for the project for this biennium was intended to be a 90/10 cost-share between the state and local communities. He said the funding is a grant with no cost-share.

Chairman Schmidt discussed the detailed history and legislative intent behind the funding provision. He said, even though the word "grant" is used in the provision, the agreement among all parties involved was that the funding would be contingent on a 90/10 cost-share.

In response to a question from Representative Nelson, Ms. Merri Mooridian, Administrative Officer/Deputy Program Manager RRVWSP for Administration, Garrison Diversion Conservancy District, said the conservancy district received initial commitments from several communities to obtain water from the project, but must return to those communities to obtain long-term commitments so the project sponsors can determine how much water the project will need. She said the diversion authority is developing financial models for the cost of the water to help communities decide whether to enter the long-term commitments.

Representative Nelson said the committee will want information about the cost and commitments before construction is initiated because legislators do not want a pipeline that goes nowhere.

Mr. Richard Johnson, State Water Commission, said the option of using the Upper Sheyenne River needs further investigation and quantification to see whether it may have more benefit to more people than using the McClusky Canal.

### **ECONOMIC ANALYSIS AND LIFE CYCLE COST ANALYSIS**

Chairman Schmidt called on Mr. Garland Erbele, State Engineer, State Water Commission, for an update on the development of an economic analysis and life cycle cost analysis to be used in evaluating requests for SWC funding. Mr. Erbele said the engineering firm, HDR, was selected to develop both analyses, and December 31, 2017, is the deadline for completing both of the analyses.

### **DROUGHT DISASTER RELIEF**

Chairman Schmidt called on Mr. Erbele for a presentation ([Appendix I](#)) on drought disaster funding. Mr. Erbele said SWC provided \$1,325,000 to the drought disaster program, which provides a 50 percent cost-share, up to \$3,500, per project. He said each producer is eligible to receive a cost-share for up to three projects. He said the program does not provide funding for operation and maintenance.

## DEVILS LAKE

Chairman Schmidt called on Mr. Erbele for an update on Devils Lake water levels. Mr. Erbele said SWC operates two outlets in Devils Lake, and there are no major problems with the outlets this year. He said the lake level is at about 1,450 feet.

In response to a question from Representative Anderson, Mr. Erbele said the Devils Lake Outlet Advisory Committee meets each spring. Once the lake level hits 1,448 feet, he said, the committee starts to seriously discuss operating the pumps.

## WESTERN AREA WATER SUPPLY INDUSTRIAL ASSETS STUDY

Chairman Schmidt called on Mr. Erbele for an update on the study examining whether the Western Area Water Supply Authority should sell its industrial assets. Mr. Erbele said the Industrial Commission selected Stantec as the vendor to partner with Houston Engineering Inc. on the project and is negotiating the vendor contract.

## WARD COUNTY LIGHT DETECTION AND RANGING STUDY

Chairman Schmidt called on Mr. Erbele for an update on the Ward County light detection and ranging (LiDAR) study. Mr. Erbele said his office started discussions with the State of North Carolina to understand how North Carolina used LiDAR to develop a flood map and what is needed for the proof of concept. He also said his office provided North Carolina's third-party contractor with some data to see what the contractor might be able to provide for the \$30,000 allocated to the proof of concept.

In response to a question from Representative Streyle, Mr. Erbele said the fact that most homes in North Dakota have basements is a complicating factor, and that basements are much rarer in North Carolina.

## MOUSE RIVER FLOOD CONTROL PROJECT

Chairman Schmidt called on Mr. Ryan Ackerman, President and CEO, Ackerman-Estvold, for a presentation ([Appendix J](#)) regarding progress on the Mouse River flood control project.

In response to a question from Representative Nelson, Mr. Ackerman said the project will need approximately \$60 million more to leverage the federal funds that require a cost-share.

Representative Streyle said SWC should use funds that are being held for stalled projects to provide the cost-share.

## STATE WATER COMMISSION PROJECT SUMMARY

Chairman Schmidt called on Mr. Dave Laschkewitsch, Director, Administrative Services, State Water Commission, for a presentation ([Appendix K](#)) regarding purpose funding budget information and balances.

In response to questions from Chairman Schmidt, Mr. Laschkewitsch said the resources trust fund has about \$280 million, which is approximately \$18 million under projections for this period, and, if revenues do not pick up, SWC will need to consider how to use money that has been dedicated to projects that are stalled. He said the annual amount of tobacco settlement funds SWC will receive is about \$18 million. He said the revolving loan fund was capped at \$26 million, and that fund is almost completely used.

In response to a question from Representative Mitskog, Mr. Laschkewitsch said SWC does not have a process spelled out for halting projects if the commission's funds run out. He said the commission will curtail project approvals if revenues do not increase.

Senator Sorvaag said the commission needs to keep in mind stalled projects may pick up quickly.

## RURAL WATER SYSTEMS

Chairman Schmidt called on Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, for a presentation ([Appendix L](#)) on rural water systems and railroad crossing fees. Mr. Volk said he agreed with Senator Sorvaag and Chairman Schmidt that representatives of railroads need to explain the fees to the committee.

## INDUSTRIAL WATER STUDY

Chairman Schmidt called on Ms. Bethany Kurz, Principal Hydrogeologist and Laboratory Analysis Group Lead, Energy and Environmental Research Center, for a presentation ([Appendix M](#)) on industrial water treatment technologies.

In response to a question from Representative Anderson, Ms. Kurz said the goal of the project is to demonstrate the concept of freeing up storage space for carbon dioxide injection and to see if there are existing technologies to effectively and economically treat brines.

In response to a question from Ms. Katie Andersen, State Water Commission, Ms. Kurz said the project was funded primarily by the United States Department of Energy and cost-sharing from vendors.

### **FISH AND WILDLIFE SERVICE EASEMENTS**

Chairman Schmidt called on Mr. Matt Sprenger, Project Leader, Devils Lake Wetlands Management District, United States Fish and Wildlife Service, for a presentation ([Appendix N](#)) regarding United States Fish and Wildlife Service easements.

In response to a question from Chairman Schmidt, Mr. Sprenger said a landowner may farm, graze, and hay on wetlands if conditions are determined to be appropriate.

Mr. Sprenger said each landowner with a wetland should have received a map of the wetlands easement on the individual's land. He said an easement document contains a summary acreage description of the wetland, but does not contain GPS coordinates for the wetland because outlines of wetlands fluctuate. He said the Fish and Wildlife Service is entitled to payment for the number of acres in the summary acreage description for wetlands on a landowner's land, even if the size or shape of the wetlands change.

In response to a question from Representative Boe, Mr. Sprenger said he is not aware of any setbacks for windmills from wetland easements.

### **WEATHER MODIFICATION**

Chairman Schmidt called on Mr. Darin Langerud, Division Director, Atmospheric Resources, State Water Commission, for a presentation ([Appendix O](#)) regarding weather modification expenditures and benefits.

In response to a question from Governor Burgum, Mr. Langerud said a new experiment regarding the benefits of weather modification would have value, but would be expensive.

Governor Burgum said weather modification data show a benefit, but many people's experiences make them feel weather modification does not provide a benefit. He said policymakers need to think about ways to give downwind areas a voice in decisions on whether to use weather modification.

Chairman Schmidt called on Mr. Roger Neshem, Ward County Weather Modification Board, for a presentation regarding weather modification issues. Mr. Neshem said he wants to see an end to the Ward County weather modification project, and data concerning weather modification results are easily manipulated. He said his farm has been damaged by hail storms caused by weather modification.

In response to a question from Representative Anderson, Mr. Neshem said the Ward County Weather Modification Board has a mill levy to help pay for its program.

In response to a question from Senator Wardner, Mr. Neshem said county commissioners appoint the weather modification board members.

### **MUNICIPAL WATER PROJECT FUNDING**

Chairman Schmidt called on Mr. Blake Crosby, Executive Director, North Dakota League of Cities, for a presentation ([Appendix P](#)) regarding water project funding. Mr. Crosby said the state needs to have a cost-share policy that accommodates new technology and certain emergency situations in which cities have to fund projects quickly and seek reimbursement from the state.

### **RURAL FLOOD CONTROL**

Chairman Schmidt called on Mr. Gary Thompson, Chairman, Red River Joint Water Resource District, for a presentation ([Appendix Q](#)) regarding rural flood control. Mr. Thompson presented jointly with Mr. Chad Engels, North Dakota Water Resource Districts Association Board of Directors.

In response to a question from Governor Burgum, Mr. Thompson said there are 300 drain projects in North Dakota.

Chairman Schmidt said he agrees with a comprehensive approach to water management. He said there are many organizations dealing with water issues in the Red River Valley, and they need to look at managing water at the basin level. He said the new organization of SWC on a basin basis provides an opportunity to do this.

Representative Damschen said he disagrees and prefers the current approach to water management.

No further business appearing, Chairman Schmidt adjourned the meeting at 4:15 p.m.

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Claire Ness  
Counsel

ATTACH:17