

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Thursday, August 1, 2019
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, Tracy Boe, Chuck Damschen, Ron Guggisberg, Michael Howe, Bob Martinson, Jon O. Nelson, Mark Sanford, Denton Zubke; Senators David Hogue, Curt Kreun, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, Ronald Sorvaag

Member absent: Representative Todd Porter

Others present: Senator Ray Holmberg, Grand Forks, member of the Legislative Management
Lieutenant Governor Brent Sanford
See [Appendix A](#) for additional persons present.

SUPPLEMENTARY RULES OF OPERATION AND PROCEDURE OF THE NORTH DAKOTA LEGISLATIVE MANAGEMENT

Chairman Schmidt called on the Legislative Council staff to review the memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

BACKGROUND MEMORANDUM FOR BASINWIDE JOINT WATER RESOURCE BOARD STUDY

Chairman Schmidt called on the Legislative Council staff to review the memorandum entitled [Water Topics Overview Committee - Basinwide Joint Water Resource Boards](#) providing background information on the study the Legislative Management directed the committee to undertake pursuant to Senate Concurrent Resolution No. 4009 (2019).

STATE WATER COMMISSION UPDATE

Chairman Schmidt called on Mr. Richard Johnson, Commissioner, State Water Commission, for a presentation regarding the State Water Commission's (SWC) June allocation meeting and the Northwest Area Water Supply (NAWS) Project. Mr. Johnson said the commission's mission is to approve projects and see that the projects are initiated. He said the commission gave authority to the state engineer to approve the lowest responsible bidder for work on the NAWS Project to ensure the project could begin timely. He said the commission moved forward with approvals of projects worth \$111 million due to the emergency clause added to the SWC budget through the Office of Management and Budget appropriation bill. He said the emergency clause was important and could be used in future appropriations to ensure timely starts to projects during construction season.

Chairman Schmidt called on Ms. Heide Delorme, Director, Administrative Services Division, State Water Commission, for a presentation ([Appendix B](#)) regarding the SWC's project status summary.

In response to a question from Chairman Schmidt, Ms. Delorme said the 2017-19 operating funds not expended were carried over and are "sitting in the buckets."

MOUSE RIVER FLOOD CONTROL

Chairman Schmidt called on Mr. Dan Jonasson, Member, Souris River Joint Board, for a presentation ([Appendix C](#)) regarding plans and funding for the Mouse River flood control project for the 2019-21 biennium and watershed planning within the Mouse River Basin.

In response to questions from Chairman Schmidt, Mr. Jonasson said with SWC approval, \$39 million above and beyond the \$89 million appropriation can be used outside Minot city limits for Mouse River flood control. He said the project has not used United States Department of Agriculture (USDA) funds because the project sponsors have not found a part of the project that meets the USDA funding requirements. He said rural communities outside Minot do

not have sufficient population or tax revenues to help fund the projects. He said Minot may have to increase property taxes to offset the increased allocation of sales tax to the flood control project. He said the Maple diversion part of the project may receive federal funding through the Army Corps of Engineers. He said if the federal funding is authorized the cost of that part of the project should be approximately \$58 million.

In response to a question from Senator Sorvaag, Mr. Jonasson said the additional \$39 million appropriation is new.

In response to questions from Senator Lee, Mr. Jonasson said local sales tax money is being used for the project. He said sales tax collections were lower than anticipated but have increased lately. He said the city approved a half-cent sales tax for the project but increased that to a seven-tenths of one cent sales tax recently. He said the city is looking at bonding options, but lenders want 200 percent coverage rather than the usual 100 percent. He said the city also has applied for a Better Utilizing Investments to Leverage Development (BUILD) grant through the United States Department of Transportation and has used other federal funds for portions of the project.

In response to questions from Senator Robinson, Mr. Jonasson said Minot has not bonded for the project but anticipates it will need to bond. He said the city is wrapping up Phases 2 and 3 of the project while Phase 1 will continue through 2020. He said there are 9 or 10 separate phases of the project in Minot and more phases outside Minot. He said if the funding is available all the phases could be completed in about 15 years.

In response to questions from Senator Kreun, Mr. Jonasson said one reason the 200 percent coverage would be required for bonding is because repayment would depend on sales tax collections. He said the 200 percent requirement would reduce the amount of bonding that could be offered.

RURAL WATER SUPPLY

Chairman Schmidt called on Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, for a presentation ([Appendix D](#)) regarding plans and funding for the 2019-21 biennium.

In response to questions from Chairman Schmidt, Mr. Volk said the Walsh rural water project may serve the residents of Drayton in furtherance of regionalization, and other projects on the presentation handout will involve hookups to rural water systems. He said only about 90 cities have their own system, and some of them cooperate with other systems. He said Benedict's water supply system needs a costly upgrade, although a rural water system can hook up each account in the city for about half of the cost of the upgrade. He said the city has not decided how to proceed. He said he has not seen a rural community using the SWC's life cycle analysis.

In response to a question from Senator Luick, Mr. Volk said Beulah has its own water supply system.

WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT PROGRAM

Chairman Schmidt called on Ms. Tami Norgard, Attorney, Vogel Law Firm, for a presentation ([Appendix E](#)) regarding the federal Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) loan program.

In response to a question from Senator Sorvaag, Ms. Norgard said flood control projects fit within the project criteria for WIFIA funding, and sponsors of flood control projects can submit letters of interest to the United States Environmental Protection Agency (EPA).

In response to a question from Senator Hogue, Ms. Norgard said the EPA would consider information from a political subdivision applying for a WIFIA loan which indicates a state may help the political subdivision repay the requested loan.

In response to a question from Senator Lee, Ms. Norgard said the \$5 billion of EPA funding for WIFIA loans must be appropriated each year.

In response to a question from Chairman Schmidt, Ms. Norgard said the application process may take a year once an applicant has been asked by the EPA to apply. She said the EPA has indicated it will not ask entities to apply unless the EPA believes the entity can be approved.

In response to a question from Representative Howe, Ms. Norgard said she did not know the amount for which the FM Area Diversion Project applied.

REVENUE FORECAST

Chairman Schmidt called on the Legislative Council staff for a presentation ([Appendix F](#)) regarding the revenue forecast and available funding for water projects.

In response to a question from Chairman Schmidt, the Legislative Council staff said at the end of the 2019 legislative session, the SWC had issued \$23.5 million in outstanding loans.

Ms. Delorme confirmed this number and said the SWC has an additional \$2.5 million to loan.

STATE ENGINEER UPDATE

Chairman Schmidt called on Mr. Garland G. Erbele, State Engineer, State Water Commission, for a presentation regarding NAWS, use of the life cycle analysis, plans for use of the cost analysis, weather modification funding and accomplishments, Devils Lake outlet operations, Missouri River levels and runoff, Pembina Dike Task Force, and the International Joint Commission and International Souris River Board reservoir study, Governor's request for a national disaster declaration, development in inundation zones, and floodplain mapping in Ward County.

Northwest Area Water Supply Project

Mr. Erbele provided a map ([Appendix G](#)) and information regarding the status of the NAWS pipeline construction. He said Minot's new water treatment plant will increase the capacity of Minot's water supply system to provide water to other areas. He said electrical needs for the plant will be generated by the water flow in the system. He said the SWC should receive the application for the biota treatment plant in 2020, and it will take approximately 2 years to complete that project. He said the Lansford reservoir system will be initiated next year, and construction will begin once the design is completed. He said a raw water treatment plant will be constructed in South Prairie. He said the pipeline south of Minot going to Snake Creek needs to be tested.

Life Cycle Analysis

Mr. Erbele said the model for the life cycle analysis is ready to use. He said several projects will require the life cycle analysis, and the SWC will decide how to use data from the analyses. He said the life cycle analysis will increase transparency of costs for projects. He said an economist from his office will walk the committee through one or two real examples of use of the analysis at the committee's next meeting.

Devils Lake Outlets

Mr. Erbele said Devils Lake continues to be impacted by the high water levels in 2011. He said Devils Lake connects to Stump Lake through the Jerusalem Coulee. He said Devils Lake began using the first pump in 2005, and the second pump was added in 2012. He said the pumps have pumped about 5.5 feet off the lake. He said operation of the pumps started in early June this year and will continue through the fall. He said the Devils Lake Outlet Management Advisory Group meets each spring to decide when to begin operation and then meets as needed to determine when to shut the pumps down.

In response to a question from Senator Luick, Mr. Erbele said the Canadian representative on the advisory group has expressed a concern regarding the quality of water pumped out of the lake.

Missouri River Levels

Mr. Erbele presented data and maps ([Appendix H](#)) regarding water levels on the Missouri River.

Pembina Dike Task Force

Mr. Erbele presented a photograph ([Appendix I](#)) regarding the Pembina Dike Task Force. He said the task force was put on hold while Pembina County litigated a flooding issue with Manitoba. He said a Canadian judge ruled in favor of Manitoba. He said now that the lawsuit is finished, the Governor of North Dakota and the Premier of Manitoba agreed to reconvene the task force.

In response to a question from Representative Damschen, Mr. Erbele said no road or dike has been placed in the flooded area.

International Joint Commission and International Souris River Board Reservoir Study

Mr. Erbele said the report from the International Joint Commission and International Souris River Board Reservoir Study is anticipated by the end of 2020.

Governor's request for Federal Disaster Declaration

Mr. Erbele presented a map of areas impacted by 2019 flooding ([Appendix J](#)) and said a statewide flood emergency was declared by the governor in March 2019. He said the Governor requested a federal disaster declaration in May 2019, and the request was approved. He said federal funds are available for projects related to the disaster but require a 75 percent local cost-share. He said the loans are available through the North Dakota Department of Emergency Services. He said he does not know whether any projects have applied for the federal funds.

Development in Dam Inundation Zones

Mr. Aaron J. Carranza, Director, Regulatory Division, State Water Commission, said the SWC is developing a policy for hazard classification of dams and will establish design requirements for development in the dams' inundation zones based on the classification.

Ward County Floodplain Mapping

Mr. Erbele said the new floodplain mapping in Ward County resulted in reducing the number of structures identified by the Federal Emergency Management Agency as having a high risk of flooding by 42 percent. He said the new maps will be open to public comment in November 2019, and are anticipated to go into effect in early 2021.

Weather Modification

Mr. Darin W. Langerud, Director, Atmospheric Resources Board, State Water Commission, presented information regarding the SWC's weather modification work. He said of \$914,000 allocated to the program, approximately \$300,000 are state funds. He said the SWC approved the weather modification program at its June 19, 2019, meeting. He said North Dakota State University recently finished an economic evaluation of the program and provided a report on the evaluation. He said the report updated a 2009 study and relied on the 2009 estimates of benefits from the program. He said the top eight crops in state and alfalfa were included in the study. He said the study found \$6.9 million in hail losses were prevented by weather modification, and up to \$49 million in increases in crops were due to increased rainfall from weather modification.

USDA RURAL DEVELOPMENT

Chairman Schmidt called on Mr. Clare Carlson, State Director, Rural Development, United States Department of Agriculture, for a presentation ([Appendix K](#)) regarding funding levels and the status of funded projects.

In response to questions from Chairman Schmidt, Mr. Carlson said a Special Evaluation Assistance for Rural Communities and Households (SEARCH) grant allows communities, such as those facing water supply problems, to identify and evaluate solutions to problems. He said the office gives out three to four SEARCH grants per year. He said the office has recommended guidelines for engineering fees ([Appendix L](#)) for communities to consider when hiring engineering firms and evaluating proposals. He said the Office of Rural Development's water and waste program could help populations in the area surrounding Minot.

FARGO-MOORHEAD AREA DIVERSION

Chairman Schmidt called on Mr. John Shockley, General Counsel, FM Area Diversion Authority, and Mr. Martin Nicholson, Vice President, Jacobs Engineering Group, for a presentation ([Appendix M](#)) regarding the FM Area Diversion Project plans for the 2019-21 biennium, status of Minnesota funding for the project, status of federal funding for the project, and status of public-private partnership funding for the project.

In response to questions from Chairman Schmidt, Mr. Nicholson said if federal funds are not appropriated for the project, the project will continue with the other funding available. He said the Army Corps of Engineers is very intent on receiving the appropriation from Congress, and Senator John Hoeven has focused his attention on the appropriation. He said he did not think there would be stranded assets from the project. He said there is independent utility for the channel, which would provide some flood protection even if the remainder of the project is incomplete.

In response to a question from Senator Hogue, Mr. Nicholson said a former landowner's right of first refusal to buy back land purchased for the project would require the landowner to match the highest bid for the land. He said the former landowner would not be able to buy back the land automatically.

In response to a question from Senator Luick, Mr. Shockley said he would find out whether the right of first refusal applies to land taken by eminent domain.

In response to a question from Senator Lee, Mr. Shockley said each member entity of the FM Area Diversion Authority has responsibility to purchase property for certain parts of the project and is reimbursed for the acquisition cost by the FM Area Diversion Authority.

In response to a question from Chairman Schmidt, Mr. Shockley said the financial plan for the project is a long-term plan. He said the plan anticipates the amount of Minnesota funding will be provided over multiple legislative sessions, so receiving only half of the funding in the coming year would not slow the project. He said if the project receives only a small amount next year from Minnesota, work on the Minnesota side would slow. He said he anticipates the interest rate on the WIFIA loan for the project will be based on United States Treasury rates, so the exact rate is unknown. He said the interest rate likely will be about 3 percent if things continue as they are. He said

bond proceeds may be drawn as needed rather than all at once, so the project sponsors only pay interest on what they need to draw. He said Congressional funding for WIFIA loans is for the credit subsidy for the cost of issuing the debt only. He said the Army Corps of Engineers likely will issue its WIFIA rules next year, and the FM Area Diversion Authority will take advantage of that program as well as the EPA WIFIA program. He said the FM Area Diversion Authority is attempting to use state revolving fund loans and private activity bonds through the BUILD program for parts of the project.

In response to a question from Senator Luick, Dr. Tim Mahoney, Mayor, Fargo, said the Minnesota Legislature appropriated \$6 million to the Minnesota Department of Natural Resources, which can approve the funds for the project subject to a cost-share agreement that would need to be put in place.

In response to a question from Representative Martinson, Dr. Mahoney said he will follow up with more information confirming the Minnesota appropriation.

In response to a question from Senator Hogue, Mr. Shockley said informal discussions with the EPA regarding the WIFIA application occurred. He said the program lead and staffers expressed interest in the project and said the project likely qualified for funding. He said there is a statutory scoring system for applications, and he does not know whether other projects will score higher.

In response to a question from Senator Lee, Mr. Shockley said an administrative law judge in Minnesota will hold a hearing in June 2020 in the the Buffalo-Red River Watershed District litigation. He said if the hearing is delayed, there is a federal court opinion allowing certain project elements to continue. He said the Minnesota Department of Natural Resources permit is defensible, but the permit is being contested in the administrative law litigation.

In response to a question from Chairman Schmidt, Mr. Nicholson said the \$122 million carryover may not be current. He said the FM Area Diversion Authority will have updated information available for the next meeting.

RED RIVER VALLEY WATER SUPPLY PROJECT

Chairman Schmidt called on Ms. Merri Mooridian, Administrative Officer/Deputy Program Manager for the Red River Valley Water Supply Project Administration, and the Garrison Diversion Conservancy District, and Dr. Mahoney for a presentation ([Appendix N](#)) regarding Red River Valley Water Supply Project plans, status, and funding.

In response to a question from Chairman Schmidt, Ms. Mooridian said the Garrison Diversion Conservancy District anticipates going to the SWC this fall for project approval and determination whether the Legislative Assembly's conditions on the project have been satisfied. She said any litigation over the project would involve the level of water treatment provided and would not impact the construction of the pipeline or routing.

In response to a question from Senator Hogue, Ms. Mooridian said a contingent from North Dakota traveled to Missouri to discuss the project with Missouri state officials and to ensure the project will continue.

In response to questions from Representative Nelson, Ms. Mooridian said the 28-mile stretch of pipeline to be constructed first was chosen to be first because the design of that stretch is the most complete and that stretch has the most easements obtained. She said improving the level of water treatment to safe drinking levels rather than a lower standard will be more costly, but she will have to provide the exact dollar amount at a later date. She said the difference is roughly \$200 million.

VALLEY CITY FLOOD CONTROL

Chairman Schmidt called on Mr. Dave Carlsrud, Mayor, Valley City, for a presentation ([Appendix O](#)) regarding plans and funding for the Valley City flood control project for the 2019-21 biennium.

In response to a question from Chairman Schmidt, Mr. Carlsrud and Mr. Chad Petersen, Office Manager and Engineer, KLJ, said they understand they will need to work with the SWC for approval of the \$11 million for the flood control project. They said they will utilize the \$7 million carryover this biennium.

In response to a question from Senator Hogue, Mr. David Schelkoph, City Administrator, Valley City, said Valley City voted for a one-half cent sales tax for 30 years to fund the local share of the project.

REGIONALIZATION AND CITY OF STREETER WATER SUPPLY SYSTEM

Chairman Schmidt called on Mr. Blake Crosby, Executive Director, North Dakota League of Cities, for a presentation ([Appendix P](#)) regarding the Streeter water supply system.

In response to questions from Chairman Schmidt, Mr. Crosby said the city has not undertaken a life cycle or cost analysis of the proposed project. He said the repair to the water tank should be feasible with the Community Development Block Grant funds. He said Stutsman Rural Water would have to put in a booster station to serve Streeter, and that would increase the residents' water costs.

In response to questions from Representative Nelson, Mr. Crosby said he was unaware of any conversations regarding whether a repaired water tank in Streeter could be useful to Stutsman Rural Water.

Representative Nelson said Streeter likely would not be able to find a water treatment operator after the current one no longer serves, so there is additional incentive to join a regional water system.

Mr. Crosby said the current plan for Streeter may be delaying the inevitable.

MUNICIPAL WATER PROJECTS

Chairman Schmidt called on Mr. Crosby for a presentation ([Appendix Q](#)) regarding plans and funding for municipal water projects for the 2019-21 biennium.

In response to a question from Chairman Schmidt, Mr. Erbele said Mandan submitted a project application in the 2017-19 biennium. He said the SWC approved the project, but the funding is from 2019-21 appropriations. He said there were carryover funds from 2017-19. He said the funds for Mandan are available and will be disbursed for that project.

In response to a question from Senator Robinson, Mr. Crosby said he did not know whether the arsenic problem in Leonard and the Cass Rural Water District was ameliorated.

In response to a question from Representative Nelson, Mr. Erbele said water main projects are eligible for SWC funding.

WESTERN AREA WATER SUPPLY AUTHORITY

Chairman Schmidt called on Mr. Curtis Wilson, Executive Director, Western Area Water Supply Authority, for a presentation ([Appendix R](#)) on the Western Area Water Supply Authority's plans and funding for the 2019-21 biennium.

In response to a question from Senator Hogue, Mr. Wilson said the increased cost of installing pipeline in southwest North Dakota compared to other parts of the state results from the Western Area Water Supply Authority's experience with good contractors who have bid projects. He said the contractors had to include the costs of moving their crews to Williston.

In response to a question from Chairman Schmidt, Mr. Wilson said project closeouts are underway, and the unexpended funds that have been approved will be requested from SWC when the closeouts are complete.

SOUTHWEST WATER AUTHORITY

Chairman Schmidt called on Mr. Steve Schneider, Secretary/Treasurer, Southwest Water Authority Board of Directors, for a presentation ([Appendix S](#)) regarding the authority's plans and funding for the 2019-21 biennium.

In response to questions from Chairman Schmidt, Mr. Schneider said the board is focused on using funds approved for the Southwest Water Authority's projects and not holding on to money. He said the authority has looked at moving pasture taps to different pastures, and they have a waiting list for pasture taps.

In response to a question from Senator Lee, Mr. Schneider said the repayment is a fixed amount based on water sales and was established by an agreement with the state.

LOWER HEART RIVER WATER RESOURCE DISTRICT

Chairman Schmidt called on Mr. Tim Helbling, Mayor, City of Mandan, and Mr. Ryan Jockers, Vice Chairman, Lower Heart River Water Resource District, for a presentation ([Appendix T](#)) regarding plans and funding for the 2019-21 biennium.

FUTURE MEETING DATES

Chairman Schmidt said the committee will meet twice outside Bismarck. He said the committee will meet in Minot on August 19-20, 2020, and in Fargo on September 23-24, 2020.

No further business appearing, Chairman Schmidt adjourned the meeting at 4:00 p.m.

Claire Ness
Counsel

ATTACH:20