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## **WATER TOPICS OVERVIEW COMMITTEE**

Wednesday, September 23, 2020

Bus Tour, Fargo, North Dakota

Thursday, September 24, 2020

Fargo City Commission Room, Fargo, North Dakota

Representative Jim Schmidt, Chairman, called the joint meeting of the Water Topics Overview Committee and State Water Commission to order at 8:00 a.m.

**Members present:** Representatives Jim Schmidt, Chuck Damschen, Ron Guggisberg, Michael Howe, Bob Martinson, Jon O. Nelson, Mark Sanford, Denton Zubke; Senators David Hogue, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, Ronald Sorvaag

**Members absent:** Representatives Tracy Boe and Todd Porter and Senator Curt Kreun

**State Water Commission members present:** Lieutenant Governor Brent Sanford (Governor Burgum's designee) Michael Anderson, Doug Goehring, Katie Hemmer, Richard Johnson, Mark Owan, Matthew Pedersen, Steven Schneider, Jay Volk

**State Water Commission member absent:** Jason Zimmerman

**Others present:** Senators Ray Holmberg, Grand Forks; Rich Wardner, Dickinson; and Representative Chet Pollert, Carrington; members of the Legislative Management  
Chris J. Kadrmas, Legislative Council, Bismarck  
See [appendix](#) for additional persons present.

**It was moved by Senator Sorvaag, seconded by Representative Nelson, and carried on a voice vote that the minutes of the June 4, 2020, meeting be approved as distributed.**

### **DRAINAGE**

Chairman Schmidt called on Mr. Michael Anderson, Commissioner, State Water Commission, for a presentation regarding drainage issues. Mr. Anderson said the state needs a clear, transparent, and predictable way to manage drainage. He said he spoke to many individuals across the state to identify concerns regarding the system of regulating drainage. He said the conflicts between North Dakota Century Code Chapters 61-16 and 61-21, both of which govern drainage, create problems.

### **RESOURCES TRUST FUND**

Chairman Schmidt called on Mr. Chris J. Kadrmas, Fiscal Analyst, Legislative Council, to present a memorandum entitled [Resources Trust Fund - 2017-19 and 2019-21 Biennium Update](#).

### **STATE WATER COMMISSION BUDGET**

Chairman Schmidt called on Ms. Heide Delorme, Director, Administrative Services Division, State Water Commission, for a presentation regarding the commission's budget reports and project summary reports. Ms. Delorme said the 2019-21 revenue for the resources trust fund was \$188.3 million through September 2020. She said the projected revenue for the biennium was \$433 million, and the revised forecast for the biennium is \$142 million under the original amount.

In response to questions by Chairman Schmidt, Ms. Delorme said because approximately \$139 million of the allocated funds are not needed right away and \$5 million for the flood control bucket was held back for an emergency, approximately \$144 million in costs could be put off to the next biennium.

Chairman Schmidt said the State Engineer's office told the Appropriations Committees the United States Bureau of Reclamation said the federal government would reimburse \$75 million of a line of credit used for the Northwest Area Water Supply Project's (NAWSP) water treatment plant in Max, but the federal government now will reimburse only about \$20 million. He said the state appropriations for the project were intended to cover other parts of the project. He said legislators clarified the line of credit may be used only for the plant costs that can be reimbursed by the federal government.

Ms. Delorme said when the Budget Section agreed the Red River Valley Water Supply Project (RRVWSP) met the criteria set forth in the 2019 legislation, \$13 million from the previous biennium and \$30 million from this biennium were released for the project, even though the commission does not have \$43 million available for the project and the project has not asked for the total \$43 million.

Chairman Schmidt said any dollars that are released from projects that cannot spend the dollars should be replaced into the original "bucket" from which the dollars came. He said carryover funds that are released can be used for current projects but are limited to original bucket, and permission to move funds to different buckets would have to come from Budget Section.

Ms. Delorme said the FM Area Diversion Project submitted a request to the State Water Commission for \$44 million; the RRVWSP submitted a request for \$16.4 million and indicated an immediate need for about \$5.2 million; and the Southwest Pipeline Project (SPP) has not submitted a request for the biennium.

In response to questions from Senator Sorvaag, Ms. Delorme said \$105 million for major projects which has not yet been approved by the commission includes money for major projects' anticipated funding.

In response to questions from Representative Nelson, Ms. Delorme said the NAWSP line of credit will end June 30, 2021, and the Legislative Assembly will need to include the line of credit in legislation for the 2021 session for the line of credit to continue.

In response to questions from Ms. Katie Hemmer, Commissioner, State Water Commission, Ms. Delorme said the \$105 million figure includes the unrequested \$13 million for the SPP; therefore, total request for the remainder of the biennium is about \$92 million.

## **STATE WATER COMMISSION ACTIVITIES**

Chairman Schmidt called on Mr. Richard Johnson, Commissioner, State Water Commission, for an update on State Water Commission activities. Mr. Johnson said the commission's subcommittees are continuing their work. He said the commission is undertaking a strategic governance and finance study to compare the state-owned SPP to other water projects around the state to determine whether state ownership is a good model. He said the commission confirmed the RRVWSP met the criteria the Legislative Assembly established for the project. He said the commission has not approved any projects since April 2020 other than some small, critical projects, because of the revenue shortfall. He said the commission will need \$668 million for its water development plan for the next biennium but will have only \$269 million based on new projections. He said the commission developed a prioritization policy, a life-cycle analysis, and economic analysis; hired a planning engineer; and has encouraged regionalization of communities' water supplies.

## **STATE WATER COMMISSION WATER DEVELOPMENT PLAN**

Chairman Schmidt called on Mr. Patrick Fridgen, Director of Planning and Education, State Water Commission, for a presentation on the commission's water development plan.

In response to a question from Chairman Schmidt, Mr. Fridgen said the plan includes the project expenditures the sponsors said they could forego this biennium due to the revenue shortfall.

In response to a question from Senator Robinson, Mr. Fridgen said the dollar amounts in the presentation reflect the state share of funding for the projects based on the commission's current cost-share policy.

Ms. Hemmer said the project prioritizations in the presentation may be modified.

## **FM AREA DIVISION PROJECT**

Chairman Schmidt called on Mr. Joel Paulsen, Executive Director, FM Area Diversion Project, for a presentation regarding the project's status and budget.

In response to questions from Representative Howe, Mr. Paulsen said the project sponsors have been in negotiations with some property owners for more than 2 years, and several owners prefer to sell blocks of their

parcels rather than the actual land the project needs. He said because the project needs to acquire the remaining properties by early spring 2021, six properties are being acquired through quick take eminent domain. He said the project intends to sell any excess property with the right of first refusal from the original property owner.

In response to questions from Senator Sorvaag, Mr. Paulsen said the project will not have to wait for the end of the public-private partnership (P3) project to get rid of excess lands.

In response to questions from Representative Martinson, Mr. Paulsen said there is some ambiguity regarding the value of future development for land acquired for the project, and the value depends on multiple factors, including development potential in some acquisitions. He said, although the expressed legislative intent is to provide \$750 million for the project, he hopes to increase that amount to \$875 million in the next legislative session.

In response to questions from Chairman Schmidt, Mr. Paulsen said the project follows federal requirements for appraisals, federal funds are being used for the project, and audits on the acquisition process have been clean. He said executing the P3 agreement is the primary objective for project sponsors at this time, but circumstances delayed the schedule for doing so. He said he fully understands the problems the delay creates for the House of Representatives.

In response to questions from Senator Holmberg, Mr. Paulsen said the House will not see the P3 cost information until after the bill has been transmitted from the House to the Senate.

### **GARRISON DIVERSION CONSERVANCY DISTRICT**

Chairman Schmidt called on Mr. Duane DeKrey, General Manager, Garrison Diversion Conservancy District, for a presentation regarding the RRWSP's funding and status.

### **OIL PRODUCTION AND REVENUES IN NORTH DAKOTA**

Chairman Schmidt called on Mr. Justin Kringstad, Director, North Dakota Pipeline Authority, for a presentation regarding the potential impact of pipeline litigation on oil production and revenues in North Dakota.

In response to a question from Representative Damschen, Mr. Kringstad said there are only about five "frack crews" working to complete wells at this time.

In response to a question from Senator Luick, Mr. Kringstad said a well's production decreases by about half within the first 7 to 9 months of the well's lifespan. He said a well's lifespan is unknown, but he believes a well in the Bakken oil fields may have an expected lifespan of 30 to 40 years.

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

Chairman Schmidt called on Mr. John Paczkowski, Interim State Engineer, for an update on the NAWSP.

In response to a question from Representative Nelson, Mr. Paczkowski said the new facility near Landsford is considered a pumphouse rather than administrative offices. He said the two offices in the facility are for the pump operators.

Chairman Schmidt said the NAWSP advisory committee has a responsibility to meet and should meet.

### **DIVERSION IMPACTS AND CHALLENGES FOR HORACE**

Chairman Schmidt called on Mr. David Fenelon, Member, Horace City Council, and Mr. Brent Holper, City Administrator, Horace, for a presentation regarding the impacts of the FM Area Diversion Project and growth challenges for future water projects for Horace. Mr. Fenelon said there were intercommunity tensions resulting from the FM Area Diversion Project, but the relationship between Horace and Fargo has improved. He said the cities reached a settlement agreement that provides money for water projects in Horace. He said the cities are working together on other projects to benefit Horace and spur economic development.

In response to a question from Senator Robinson, Mr. Fenelon said Horace's population is about 3,000 and is growing quickly.

In response to a question from Chairman Schmidt, Mr. Fenelon said Horace has two water supplies--Cass Rural Water Supply and the city's own system. He said new development is connecting to the Cass Rural Water Supply.

In response to a question from Representative Howe, Mr. Fenelon said the city's water infrastructure needs to be updated, and the city will need to find funding for the updates.

It was moved by Senator Sorvaag, seconded by Representative Howe, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and to present the report and recommended bill drafts to the Legislative Management.

**It was moved by Representative Nelson, seconded by Representative Zubke, and carried on a voice vote that the committee be adjourned sine die.**

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

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Claire Ness  
Counsel

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