



WATER TOPICS OVERVIEW COMMITTEE

Monday, September 19, 2022

Bus Tour, Minot, North Dakota

Tuesday, September 20, 2022

Sleep Inn and Suites Conference Center, Minot, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 12:46 p.m.

Members present: Representatives Jim Schmidt, Jay Fisher, Michael Howe, Bob Martinson, Jon O. Nelson, Marvin E. Nelson, Matthew Ruby; Senators Joan Heckaman, Jason G. Heitkamp, David Hogue, Jordan Kannianen, Jim P. Roers, Ronald Sorvaag, Mark F. Weber

Members absent: Representatives Tracy Boe, Chuck Damschen, Todd Porter, Denton Zubke; Senator Michael Dwyer

Others present: Senator Donald Schaible, Mott, member of Legislative Management
Adam Mathiak, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

PUBLIC BUS TOUR

The committee participated in a tour of flood control projects ([Appendix B](#)) on the Des Lacs and Mouse Rivers within Burlington and Minot.

PRESENTATIONS AND MOTIONS

It was moved by Senator Sorvaag, seconded by Representative Howe, and carried on a voice vote that the minutes of the June 23, 2022, meeting be approved as distributed.

Mr. Tom Ross, Mayor, City of Minot, and Mr. David Ashley, Chairman, Souris River Joint Board, presented an update ([Appendix C](#)) on the flood control plan in the Mouse River Basin, funds expended during the biennium, and requests for the 2023-2025 biennium.

In response to questions from committee members, Mr. Ashley noted:

- If the timeline for the area flood control project is accelerated, the Minot will have sufficient funds to cover the local cost-share for the project.
- Minot has sufficient funds for operation and maintenance of flood control structures if structural damage occurs.

Mr. Ashley presented an update on the activities of the Souris River Joint Board. He noted:

- The Souris River Joint Board consists of five members from the Souris River Basin.
- Four of the members are from Ward, McHenry, Bottineau, and Renville Counties, respectively.
- The remaining member is an individual employed by the City of Minot.
- The Souris River Joint Board has been instrumental in planning and conducting flood protection projects in and around Minot.

Mr. Adam Mathiak, Senior Fiscal Analyst, Legislative Council, presented a memorandum regarding the status of the resources trust fund entitled [Resources Trust Fund - 2019-21 and 2021-23 Biennium Update](#).

In response to questions from committee members, Mr. Mathiak noted:

- Additional revenue will be placed in the resources trust fund due to the 1 percent oil extraction tax rate increase resulting from the trigger language in North Dakota Century Code Section 57-51.1-02. The additional revenue will be realized in August 2022 due to the 2-month lag between the imposition and distribution of the tax.
- The trigger provisions take effect when the price per barrel of West Texas Intermediate exceeds \$94.69 for 3 consecutive months.
- The trigger price is adjusted every calendar year to account for inflation.
- Revenues from oil production are higher than forecasted due to the elevated price per barrel.

Mr. Chris J. Kadrmaz, Director, Finance and Administration Division, Department of Water Resources, presented information ([Appendix D](#)) regarding the budget of the Department of Water Resources.

Ms. Andrea Travnicek, Director, Department of Water Resources, and Mr. Dan Jonasson, Public Works Director, City of Minot, presented an update ([Appendix E](#)) on the Northwest Area Water Supply Project.

In response to questions from committee members, Ms. Travnicek noted:

- The Department of Water Resources is having meaningful discussions with North Dakota's federal delegation to secure additional funding for the biota water treatment plant in Max.
- Funds from the federal American Rescue Plan Act could be used to supplement costs associated with the Department of Water Resources.
- For the time being, the Northwest Area Water Supply needs to be owned by the State of North Dakota.

In response to questions from committee members, Mr. Jonasson noted:

- Minot has hired new operators to manage and maintain the biota water treatment plant in Max.
- Minot is committed to providing funding for the local cost-share of 35 percent.
- An additional city-wide sales tax is in place to offset the local cost-share.

Ms. Jen Murray, Manager and Chief Executive Officer, Southwest Water Authority, presented information ([Appendix F](#)) regarding reserve funds for replacement and extraordinary maintenance of water systems.

In response to questions from committee members, Ms. Murray noted:

- The percent charged to customers to cover replacement and extraordinary maintenance is based on findings from studies conducted in 1998 and 2013.
- No specific formula is followed to determine the requisite amount of funds the Southwest Water Authority sets aside for replacement and extraordinary maintenance within the system.
- Due to rising costs and scarcity of food grade carbon dioxide, water suppliers are being forced to pass this expense on to consumers.
- If the Legislative Assembly appropriates less than \$104 million, strategic improvements within Southwest Water Authority likely would be delayed until the 2025-27 biennium.
- The capacity of the Dickinson water treatment plant is 12 million gallons.
- The new Dickinson water treatment plant will have a capacity of 18 million gallons.
- During peak consumption in 2022, customers consumed 11 million gallons of water per day.

Ms. Tami Madsen, Chief Executive Officer, Western Area Water Supply Authority, presented an update ([Appendix G](#)) on the authority's recent activities.

In response to questions from committee members, Ms. Madsen noted legislation will be introduced in the upcoming session to move the Western Area Water Supply Authority from the Industrial Commission to the Department of Water Resources.

Mr. Wade Bachmeier, Chairman, Missouri River Joint Water Board, presented an update ([Appendix H](#)) on Missouri River Joint Water Board activities.

In response to questions from committee members, Mr. Bachmeier noted:

- The western United States is in a severe drought.
- North Dakota needs to begin using more water from the Missouri River before other states begin to deplete the river.

Ms. Sheila Newman, Chief, Operations Division, Omaha District, Army Corps of Engineers, presented information ([Appendix I](#)) regarding Section 404 and 408 permits and other projects along the Missouri River.

In response to questions from committee members, Ms. Newman noted, on average, approval for a nationwide 404 permit is 60 days, and approval for an individual 404 permit is 120 days.

Ms. Travnicek presented an update ([Appendix J](#)) on the activities of the Department of Water Resources, allocation of remaining funds received from the American Rescue Plan Act, and projected needs for the 2023-25 biennium.

In response to questions from committee members, Ms. Travnicek noted the proposed Northwest Area Water Supply Authority needs to be collaborative and must include stakeholders from all affected regions.

Mr. Duane DeKrey, General Manager, Garrison Diversion Conservancy District, presented information ([Appendix K](#)) regarding the intake structure for the Red River Valley Water Supply Project.

In response to questions from committee members, Mr. DeKrey noted:

- The Garrison Diversion Conservancy District is working with landowners in Griggs and Wells Counties to obtain critical easements for the Red River Valley Water Supply Project.
- Some landowners already have granted easements for the project, while others are attempting to negotiate a new price for the easement.
- The pipeline is not comparable to an oil and gas pipeline because the risks for property damage are significantly lower.
- The Garrison Diversion Conservancy District has hired soil scientists to responsibly reclaim easement acres.

Dr. Duane Pool, Natural Resource Economist, Planning and Education Division, Department of Water Resources, presented information ([Appendix L](#)) regarding the economic analysis process for projects authorized by the Department of Water Resources.

In response to questions from committee members, Dr. Pool noted:

- 25 percent of proposed water projects are subject to additional scrutiny by the Department of Water Resources.
- Under North Dakota law, cost-benefit analyses exist on a parcel by parcel basis, water district basis, and a project basis.

Ms. DeAnn Ament, Executive Director, Public Finance Authority, presented information ([Appendix M](#)) regarding the bonding process for water projects within the state.

In response to questions from committee members, Ms. Ament noted bonding is not impossible in the current economic climate; however, interests rates likely will continue to rise through the end of 2023.

Mr. Eric Volk, Executive Director, Rural Water Systems Association, presented an update ([Appendix N](#)) on the rural water systems in the state.

In response to questions from committee members, Mr. Volk noted:

- Title 7, Section 1926(b) of the United States Code is a federal territorial protection law for rural water systems indebted to the federal government.

- Representative Nelson is willing to sponsor legislation that modifies the state's version of 1926(b).
- Each water resource system in North Dakota has cash reserves.
- Some rural water systems have "glued pipes" within their systems that may be susceptible to damage and failure.

Senator Sorvaag presented bill drafts [[23.0024.03000](#) and [23.0025.03000](#)] recommended by the interim Water Drainage Committee.

Mr. Aaron Carranza, Director, Regulatory Division, Department of Water Resources, presented information ([Appendix O](#)) regarding changes to the administrative rules related to dam safety and criteria for hazard risk classification.

Ms. Mary Podoll, State Conservationist, Natural Resources Conservation Service of North Dakota, presented information ([Appendix P](#)) regarding dam safety from the perspective of the agency.

In response to questions from committee members, Ms. Podoll noted:

- When applying for federal funds for dam rehabilitation, the local counties are not only competing against other jurisdictions within North Dakota for these funds, but also all other applicants from around the United States.
- Dams built between 1957 and 1970 have an estimated lifespan of 50 years.
- Dams built after 1970 have an estimated lifespan of 100 years.

Mr. Tom Schimelfenig, Chairman, Onsite Wastewater Recycling Technical Committee, presented a report ([Appendix Q](#)) on the status of the statewide technical guide and the committee's recommendations.

In response to questions from committee members, Mr. Schimelfenig noted:

- The Onsite Wastewater Recycling Technical Committee has been creating a statewide technical guide for local health units.
- If not dissolved, the Onsite Wastewater Recycling Technical Committee would prefer to move from the State Plumbing Board to a new licensing board.

Mr. Richard Johnson, Commissioner, State Water Commission, presented an update on the commission's activities. He noted:

- Stakeholders are adamant at keeping the 75 percent cost-share for rural water projects.
- The State Water Commission can allocate up to 75 percent of the cost of a rural water project.
- North Dakota law provides the State Water Commission with discretion, thus not all rural water projects will receive the full 75 percent cost-share.
- The State Water Commission allocated \$1.1 million to the Upper Sheyenne Joint Water Resource Board for a pilot project ([Appendix R](#)) related to managing water drainage on a basin perspective.
- Drain projects and snagging and clearing projects are the most time consuming projects the State Water Commission faces.
- The cost-share for water conveyance projects is 50 percent.
- Carryover funds for the State Water Commission are \$250 million, which is consistent with prior years.
- His gratitude of Chairman Schmidt for his years of service in making water policy better in North Dakota.

Mr. Derrick Braaten, Attorney, Braaten Law Firm, presented information ([Appendix S](#)) on behalf of his clients regarding eminent domain proceedings related to the the Garrison Diversion Conservancy District's project known as the Red River Valley Water Supply Project. He noted:

- The proposed pipeline is a 72-inch steel pipeline that will be buried seven feet underground.
- The Garrison Diversion Conservancy District's fair market offer is \$1,350 per acre.

- The Garrison Diversion Conservancy District has served a summons and complaint upon the parties, thus eminent domain proceedings formally have been commenced.
- Other pipeline easements in the area must be considered when determining just compensation.
- Typically, just compensation for other pipeline easements is higher than the fair market value for agriculture use.
- The landowners have not been provided any plans for abandonment of the pipeline at the end of the project's life cycle.
- The landowners want to have the ability to negotiate in good faith without proceeding forward with eminent domain proceedings.

Mr. Fred Richter, Sykeston, offered testimony opposing the eminent domain proceedings related to the the Garrison Conservancy District's project known as the Red River Valley Water Supply Project. He noted his concerns related to project ownership, the uncertain completion date, eminent domain proceedings, federal and international cooperation, and abandonment procedures at the end of the project's life cycle.

Chairman Schmidt expressed his gratitude to the committee members for their engagement related to major water issues throughout the 2021-22 interim.

Senator Sorvaag expressed his gratitude to Chairman Schmidt for his continuous efforts to make meaningful water policies that positively affected residents throughout the entire state.

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

It was moved by Senator Hogue, seconded by Representative Howe, and carried on a voice vote that the committee be adjourned sine die upon receiving the report from the Onsite Wastewater Recycling Technical Committee by November 1, 2022.

The committee received the required report ([Appendix T](#)) from the Onsite Wastewater Recycling Technical Committee on October 28, 2022. The report was distributed to the Chairman and all members of the committee.

No further business appearing, Chairman Schmidt adjourned the meeting at 3:36 p.m.

Dustin A. Richard
Counsel

ATTACH:20