

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

GARRISON DIVERSON OVERVIEW COMMITTEE

Thursday, February 19, 1998
Room 222, Armed Forces Reserve Center
3920 31st Street North
Fargo, North Dakota

Representative Pam Gulleeson, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Pam Gulleeson, John Dorso, Tom D. Freier; Senator Gary J. Nelson

Members absent: Representatives Merle Boucher, Eugene Nicholas, Alice Olson, Mike Timm; Senators Aaron Krauter, Tim Mathern, David E. Nething, John T. Traynor, Terry M. Wanzek

Others present: See Appendix A

WATERSHED DISTRICTS STUDY

At the request of Chairman Gulleeson, Mr. David Sprynczynatyk, State Engineer and Secretary, State Water Commission, addressed the committee. A copy of his written comments is attached as Appendix B. He discussed complaints received by the State Water Commission which involve problems across water resource district boundaries. He said the commission does not have a total compilation of cross district complaints because these complaints must be filed with local water resource districts and not the commission or the State Engineer. He said the commission only becomes aware of a complaint if the local water resource district requests assistance from the commission or the complaint is inadvertently filed with the Water Commission or, in limited instances, appealed to the State Engineer. He said cross district complaints usually involve a downstream landowner who is complaining about drainage undertaken by an upstream landowner.

In response to a question from Representative Gulleeson, Mr. Sprynczynatyk said the State Water Commission only becomes involved if the local water resource district requests technical assistance and the commission does not have the authority to implement a decision as the usual recourse is for the dissatisfied party to appeal the decision of the water resource district to the district court in which the affected property is located.

At the request of Chairman Gulleeson, committee counsel presented a memorandum entitled *Minnesota Watershed Districts - Structure, Powers, and Duties* and distributed a brochure entitled *Watershed Districts in Minnesota* published by the Minnesota Association of Watershed Districts. A copy of the brochure is on file in the Legislative Council office.

In response to a question from Representative Gulleeson, committee counsel said Nebraska natural resource districts are similar to but have broader powers than Minnesota watershed districts. He said these powers include the duties performed by soil conservation districts in North Dakota and the management of solid waste.

At the request of Chairman Gulleeson, Mr. Don Ogaard, Executive Director, Red River Watershed Management Board, Ada, Minnesota, addressed the committee. He distributed a copy of Chapter 103D of the Minnesota Statutes Annotated which governs watershed districts in Minnesota. A copy of this chapter is on file in the Legislative Council office. He described the operation of watershed districts in Minnesota. He said one of the first districts was formed in the Red River Valley to address flooding in the valley and 90 percent of the land in the Red River Valley portion of Minnesota is within a watershed district. He said the watershed districts in the Red River Valley raise approximately \$1.6 million per year, one-half of which is retained by the local watershed districts and one-half of which is remitted to the Red River Watershed Management Board. He said the Red River Watershed Management Board invests this money and uses it to match federal and state funds on regionwide water projects. One problem that Minnesota has, he said, is that not all land in Minnesota is required to be within a watershed district and some land is still governed by the old water resource district law. He said either all land should be included in a watershed district or the old or, in North Dakota, present system should be retained. Concerning boundaries of watershed districts, he said, they are based upon hydrologic boundaries with 40-acre increments.

In response to a question from Representative Gulleeson, Mr. Ogaard said one or two watershed districts are formed each year and as water problems arise watershed districts are being formed to deal with the specific problem.

In response to a question from Senator Nelson, Mr. Ogaard said the most common method of forming watershed districts is for a county to petition the board of water and soil resources to form a watershed district. If a majority of the counties in a watershed district wish to form a district, he said, the district is formed and counties opposing the formation cannot block the establishment of the district.

Mr. Ogaard said he is a proponent of watershed districts and this system works well in Minnesota. The only drawback, he said, is that not all land is required to be within a watershed district and if North Dakota is to establish watershed districts, the Legislative Assembly should provide that all land in the state must be included within a district.

In response to a question from Representative Gulleeson, Mr. Ogaard said all district levies are collected by the county. However, he said, the watershed district determines the amount of the levy and forwards this information to the county in order that the county may levy and collect the required taxes.

In response to a question from Representative Dorso, Mr. Ogaard said the county is required to levy whatever the watershed district asks the county to levy for watershed district purposes.

In response to a question from Representative Gulleeson, Mr. Ogaard said watershed district directors or managers are appointed by the board of county commissioners of the county that manager represents.

At the request of Chairman Gulleeson, Mr. Gary Peterson, Traill County Water Resource District, Hillsboro, addressed the committee. He said the current water resource district system works well and the committee should not revise water resource districts along watershed boundaries.

At the request of Chairman Gulleeson, Ms. Pat Owens, Mayor, Grand Forks, addressed the committee. She said it is important that water be managed on a basinwide system in North Dakota. She said water problems within a basin affect everyone living within that basin and cities, counties, and water resource districts should be forced to work together in a basinwide manner to resolve water problems.

At the request of Chairman Gulleeson, Mr. Ken Vein, City Engineer and Director of Public Works, Grand Forks, addressed the committee. He agreed with Mayor Owens that water in the Red River Valley should be managed in a basinwide manner. For example, he said, while Grand Forks is struggling with postflood rebuilding and developing a levee system, drains are being opened or cleared in other areas of the Red River Valley which will only exacerbate problems in Grand Forks.

At the request of Chairman Gulleeson, Mr. Michael A. Dwyer, Executive Secretary, North Dakota Water Resource Districts Association, addressed the committee. Concerning steps water resource districts are taking to address cross boundary water management problems and complaints, he said, water resource districts have formed joint districts in order to address cross political boundary problems.

In response to a question from Representative Gulleeson, Mr. Dwyer said the problems on the Goose River in Traill County are not the result of water resource districts being formed along political boundaries but result due to an inability to raise sufficient funds to finance larger water resource projects. He said the North Dakota Water Resource Districts Association is working with local water

resource district boards to develop proposed legislation to address these problems.

In response to a further question from Representative Gulleeson, Mr. Dwyer agreed that in an ideal situation the establishment of watershed districts and the management of water along watershed boundaries may be an improvement on the current system. However, he said, because water resource districts were originally formed along political boundaries, a body of law and experience has evolved based upon the governance of water resource districts along political boundaries which would make it difficult to reformulate water resource districts along watershed boundaries. For example, he said, changing the boundaries would not solve the largest problem facing water resource districts, i.e., funding of water projects, as it would be unlikely that the Legislative Assembly would appropriate any more money for water districts formed along watershed boundaries than it does for water districts formed along political boundaries.

GARRISON DIVERSION UNIT PROJECT

At the request of Chairman Gulleeson, Mr. Sprynczynatyk addressed the committee concerning recent Missouri River Basin Association activities. He distributed a copy of the planning recommendations developed by the Missouri River Basin Association and representatives of Missouri River users throughout the basin. A copy of the recommendations is attached as Appendix C. He said one item that is significant concerning the recommendations is that downstream interests have recognized that water conservation in the upper basin is an important aspect of Missouri River management. In summary, he said, the upper basin states are making progress in developing a management plan acceptable to the upper basin states.

In response to a question from Representative Gulleeson, Mr. Sprynczynatyk said the definition of a navigable body of water is a legal rather than a technical or engineering definition. Generally, he said, the determination of whether a body of water is navigable depends upon whether the body of water or stream was navigable or could have been navigable at the time the state entered the union. He said courts often look to historical evidence such as early reports of trade or stream commerce in determining whether a body of water is navigable.

At the request of Chairman Gulleeson, Mr. Sprynczynatyk presented an update of the recent Missouri lawsuit against the United States Army Corps of Engineers, *Missouri v. Craig*. His comments are included in Appendix B.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the State Water Commission has conducted an inventory of bank erosion problems and damage between Garrison Dam and Lake Oahe. He said the commission has identified 34 or 35 hot spots and estimates it would cost approximately \$13 million to address these bank erosion areas. He said that riparian landowners are still

losing between 80 and 100 acres of land a year along the Missouri River between Garrison Dam and Lake Oahe from bank erosion.

At the request of Chairman Gulleson, Mr. Sprynczynatyk presented an update on Devils Lake flooding. He distributed a packet of material on Devils Lake flooding facts, including a publication entitled *The Devils Lake Flood "Managing the Problem,"* a Devils Lake flood fact sheet dated February 1998, an excerpt from the Energy and Water Development Appropriations Act of 1998 related to Devils Lake, a copy of 1997 Senate Concurrent Resolution No. 4058, a copy of 1997 House Bill No. 1482, and a copy of 1997 Senate Bill No. 2239. The publication, fact sheet, and excerpt from the Energy and Water Development Appropriations Act are attached as Appendices D through F, respectively, and the remainder of the packet is on file in the Legislative Council office. He said the level of Devils Lake is at 1,442.7 feet mean sea level or four inches below its 1997 peak. He said the most recent Devils Lake forecast is for the lake to rise between 8 and 15 inches this year to elevation 1,443.5 to 1,444 feet mean sea level. He said this would place the lake one foot higher than last year and cause an additional \$20 to \$30 million in damage in the Devils Lake Basin.

At the request of Chairman Gulleson, Mr. Timothy Longie, Fort Totten District Representative, Tribal Council, Spirit Lake Nation, addressed the committee. He said the flooding of Devils Lake has significantly impacted the Spirit Lake Nation. He said the Spirit Lake Nation has adopted a resolution opposing the Peterson Coulee route for the Devils Lake outlet. He said the tribe must be assured that all environmental laws are complied with and historical and cultural damage to tribal land is minimized. Finally, he noted, that based upon language in the Act establishing the Fort Totten Reservation, if a line is drawn from the west end of Devils Lake to the nearest point on the Sheyenne River, then the entire Peterson Coulee route would be within the boundaries of the Spirit Lake Nation.

In response to a question from Representative Gulleson, Mr. Sprynczynatyk said the current litigation involving the Spirit Lake Nation concerns ownership of the bed of Devils Lake and thus construction of the proposed outlet does not hinge on resolution of the lawsuit.

In conclusion, Mr. Longie said, the proposed outlet would only remove between 6 and 12 inches of water a year from Devils Lake because of capacity limitations on the Sheyenne River and thus an alternative route, one that does not impact the reservation, should be explored. One possibility, he said, would be to construct an outlet on the north side of Devils Lake because most of the flooding in the Devils Lake Basin is caused by drainage from north of the lake and not from reservation lands on the south side of the lake.

At the request of Chairman Gulleson, Mr. Michael A. Dwyer, Executive Vice President, North Dakota Water Users Association, addressed the committee. A copy of

his presentation concerning wetlands is attached as Appendix G.

At the request of Chairman Gulleson, Mr. Warren Jamison, Manager, Garrison Diversion Conservancy District, Carrington, addressed the committee. He distributed a pamphlet summarizing the Dakota Water Resources Act of 1997, a copy of which is on file in the Legislative Council office. He said the administration's fiscal year 1999 budget contains \$945 million for the Bureau of Reclamation which is an increase of \$67 million over 1998. He said the budget includes \$80 million for wildlife programs in the central valley of California, \$50 million for the Central Arizona Project, \$27 million for the Mni Sose Project in South Dakota, \$20.4 million for the Garrison Diversion Unit Project, \$36.6 million for water reuse projects, \$13.1 million for salmon recovery on the Columbia River, \$25 million for Colorado River salinity control, and \$143.3 million for the Cal-Fed Project designed to restore the San Francisco Bay delta. He said another bill appropriating approximately \$1 billion for Mono Lake and the Salton Sea recovery program is also making its way through Congress. He said the administration's budget also includes \$826 million for the United States Fish and Wildlife Service, an increase of \$81 million over 1998. He said the \$20.4 million contained in the budget for the Garrison Diversion Unit Project is the same as 1998 but that a writein of \$5 million was included by Congress for a total of \$25.4 million for fiscal year 1998. Of the \$20.4 million, he said, \$2.9 million is intended for Indian municipal, rural, and industrial water supply programs; \$8.5 million for Garrison municipal, rural, and industrial water supply programs, a decrease of \$12.5 million from 1998; \$3.3 million for maintenance; and \$5.7 million for refuge mitigation. He said the refuge mitigation funds would be spent at Arrowwood and Audubon national wildlife refuges.

At the request of Chairman Gulleson, Mr. David Koland, Executive Director, North Dakota Rural Water Systems Association, addressed the committee. He reviewed the promised payment plan. He said the promised payment plan would allow water projects to be commenced and funded in a more timely manner. In addition to the promised payment plan, he said, the North Dakota Rural Water Systems Association is exploring other interim financing arrangements for rural water projects. One arrangement, he said, is for private investment companies to provide interim financing for rural water projects similar to the promised payment plan. He said these plans would allow a rural water system borrower to obtain interim financing moneys at very favorable interest rates.

No further business appearing, Chairman Gulleson adjourned the meeting at 11:50 a.m.

Jeffrey N. Nelson
Counsel

ATTACH:7