

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

GARRISON DIVERSION OVERVIEW COMMITTEE

Tuesday, June 9, 1998
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Pam Gulleon, Chairman, called the meeting to order at 2:30 p.m.

Members present: Representatives Pam Gulleon, Merle Boucher, John Dorso, Eugene Nicholas, Mike Timm; Senators Aaron Krauter, Tim Mathern, Gary J. Nelson, David E. Nething, John T. Traynor, Terry M. Wanzek

Member absent: Representative Alice Olson

Others present: See Appendix A

It was moved by Senator Mathern, seconded by Senator Nelson, and carried that the minutes of the February 19, 1998, meeting be approved as distributed.

GARRISON DIVERSION UNIT PROJECT

At the request of Chairman Gulleon, Mr. Warren L. Jamison, Manager, Garrison Diversion Conservancy District, Carrington, addressed the committee. Concerning the fiscal year 1999 Garrison appropriation, he said, the administration's executive budget included \$24 million for the Garrison Diversion Unit Project. He said the Senate has added \$6 million to this amount for a total of \$30 million. Of this additional amount, he said, \$2 million is allocated for Indian municipal, rural, and industrial water supply projects with the remaining \$4 million available for allocation elsewhere on the Garrison Diversion Unit Project. Although this amount would increase the ceiling for Indian municipal, rural, and industrial water supply projects, he said, this amount is far short of the water needs identified on the state's Indian reservations.

Concerning the Dakota Water Resources Act, Mr. Jamison said the conservancy district is proposing three adjustments to the Act. First, he said, the conservancy district is proposing to increase the state's cost share from 15 percent to 25 percent. He said the Garrison Diversion Unit Reformulation Act of 1986 has a 25 percent state cost-share figure and thus 25 percent may be a more appropriate figure. He noted that the state has increased its matching requirement to 35 percent under the Garrison municipal, rural, and industrial water supply program, and that if the state were to voluntarily increase its matching requirement, it could extend municipal, rural, and industrial water supply funds under the Dakota Water Resources Act.

The second adjustment, Mr. Jamison said, relates to the entity that is to make decisions on meeting Red River Valley water supply needs. He said the Department of the Interior takes the position that if federal moneys are involved in the project, then the decision on meeting Red River Valley water supply needs must be made by a federal official. He said the conservancy district is taking the position that North Dakota be at least a coleader in assessing the water supply needs of the Red River Valley and that nothing be finalized without North Dakota agreeing to it. Similarly, he said, the conservancy district is advocating that the state be at least a coleader in any environmental assessments required to deliver water to the Red River Valley.

Another adjustment that has been made, Mr. Jamison said, is to provide that if the cost of meeting the Red River Valley's water supply needs exceeds the \$200 million authorized in the Dakota Water Resources Act of 1997, the state could use a portion of the \$300 million authorized by the Act for municipal, rural, and industrial water supply programs to supplement Red River Valley water supply needs.

The final adjustment or change to the Dakota Water Resources Act, Mr. Jamison said, concerns the Oakes Test Area. He said it is not only bad public policy but costly to abandon the Oakes Test Area. He said the conservancy district is proposing that the Act authorize the Secretary of the Interior to enter into an agreement with the state to transfer the Oakes Test Area facilities to the state. He said the Act would include a provision allowing the Secretary of the Interior to make an equitable settlement to avoid costs that the federal government would otherwise incur in abandoning the Oakes Test Area. He said the Dakota Water Resources Act of 1997, as introduced, provides that the decision on the Oakes Test Area must be made one year after passage of the Act. However, he said, the conservancy district is advocating that the Oakes Test Area decision should be tied to delivery of water to the Red River Valley. He said if water were to be delivered to the New Rockford Canal and subsequently to the Oakes Test Area, it would significantly change the economics of the Oakes Test Area, and thus transfer of the Oakes Test Area should be tied to delivery of water to the Red

River Valley and not to an arbitrary passage of time after passage of the Act.

In response to a question from Representative Boucher, Mr. Jamison said 60 feet per second of water would provide enough water in the Jamestown Reservoir to operate the Oakes Test Area at 5,000 acres in perpetuity.

In response to a question from Representative Gulleason, Mr. Jamison said it may be difficult for the Dakota Water Resources Act to pass on its own. Thus, he said, the conservancy district is closely monitoring water legislation in Congress to see if there is an appropriate bill that the Dakota Water Resources Act could be attached to. One candidate, he said, is legislation being sponsored by California interests to freshen the Salton Sea in southern California. He said this legislation stands a good chance of passing because it was promoted by the late Representative Sonny Bono, and it has received a lot of support as a memorial to Representative Bono. He said there would be approximately an interval of five years from passage of the Act to commencement of construction. He said this time period would be used to define the respective roles of the state and federal governments and to negotiate repayment contracts.

In response to Mr. Jamison's comments, Representative Dorso reiterated that the state will not take possession of the Oakes Test Area without an assured water supply, which means delivery of water to the Red River Valley.

In response to a question from Senator Wanzek, Mr. Jamison said it costs approximately \$51 to \$52 per acre foot per year for water in the Oakes Test Area. He says the water is provided to the quarter section at zero pressure, and irrigators must pay to pressurize the water and pump the water for delivery.

At the request of Chairman Gulleason, Mr. David Sprynczynatyk, State Engineer, and Secretary, State Water Commission, addressed the committee. Concerning the Garrison municipal, rural, and industrial water supply program, he said, approximately \$13 million was made available for the program in fiscal year 1998. He said there are currently nine projects underway including the Ransom Sargent Rural Water Project in the southeast corner of the state to the North Valley Project in the northern Red River Valley; the Burleigh Rural Water Project, Dickey Rural Water Project, and the All Seasons Rural Water Project near Minot in the central region of the state; and the Northwest Area Water Supply Project and Southwest Pipeline Project in the western part of the state. He said the State Water Commission is hopeful that the Garrison municipal, rural, and industrial water supply program will receive between \$11 and \$12 million in fiscal year 1999. Concerning the Northwest Area Water Supply Project, he said, construction commenced on Phase 1 or the Rugby phase on May 27. Although this phase is a part of the Northwest Area Water Supply Project, he said, it does not

receive water from Lake Sakakawea or Lake Audubon but that a separate source of water is being developed to supply this phase of the project. Phase 2, he said, will be construction of a pipeline from Lake Sakakawea to Minot, and Phase 3 will consist of delivering water to 15 communities in north-west North Dakota. He said one issue that affects the Northwest Area Water Supply Project is compliance with the Boundary Waters Treaty of 1909. In 1994, he said, the state and Canada had agreed that if pretreated Missouri River water was treated to meet the disinfection standards then in effect, Canada would allow Missouri River water to be introduced into the Hudson Bay drainage system. However, he said, since then Canada has reconsidered its position and raised objections to pretreated Missouri River water being introduced into the Hudson Bay drainage system. He said North Dakota takes the position that pretreatment of Missouri River water is sufficient for the water to be delivered for final treatment at Minot and then distributed throughout the northwest area water supply system.

Concerning the Southwest Pipeline Project, Mr. Sprynczynatyk said the project is currently serving 17 communities in southwestern North Dakota. He said the State Water Commission has \$13 million in contracts underway this year. When these contracts are completed, he said, Hebron and Glen Ullin will be added to the system, and approximately 110 rural water users will be added to the 1,200 already being served. He said the \$13 million includes approximately \$9 million in bonds issued by the Water Commission in the past year. Other sources, he said, include the public bond market, the United States Department of Agriculture's Rural Development Agency, and grant funds. He said money to retire these bonds is coming from users of the pipeline. He said the city of Lemmon, South Dakota, has approved joining the Southwest Pipeline, and upon receipt of a \$4 million payment to connect the pipeline to South Dakota water users, the pipeline will be extended into South Dakota. He said the city of Bowman is voting today on whether to join the Southwest Pipeline.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the intake for the Northwest Area Water Supply Project has not been determined. He said the State Water Commission is completing several technical studies to determine which source, Lake Sakakawea or Lake Audubon, is the least costly for users of the Northwest Area Water Supply Project. He said the Bureau of Reclamation has indicated that it is ready to commence negotiations concerning the intake. In response to another question from Representative Dorso, Mr. Sprynczynatyk said the repayment issues are unresolved and hinge on whether the intake is located on Lake Audubon which would trigger repayment or on Lake Sakakawea which would not.

In response to a question from Senator Traynor, Mr. Sprynczynatyk said several Canadian communities have expressed an informal interest in receiving Missouri River water. However, he said, these communities are cautious because of the interbasin transfer issues. However, he said, there is also interest in communities west of the Red River in Manitoba receiving water from the Red River.

Concerning Devils Lake, Mr. Sprynczynatyk said, the lake, at least for the time being, has peaked at 1,444.69 feet mean sea level. However, he said, it was forecasted earlier that the lake would reach 1,445 feet mean sea level this year. Also, he said, the lake has dropped approximately 2.5 inches since its peak two weeks ago. He said the State Water Commission, Governor's office, and Congressional Delegation are still promoting the three-part solution to Devils Lake flooding. He said these include upper basin storage, work at the lake, and development of an outlet. He said a report is being prepared to address the technical, environmental, economic, and feasibility aspects of a west end outlet. He said these studies are slated to be completed in late July. He said the State Water Commission is also conducting a survey on whether to build a channel from east Devils Lake to west Stump Lake. He said this would allow the state to take advantage of potential storage in the Stump Lake system before the system fills naturally.

In response to a question from Senator Krauter, Mr. Sprynczynatyk said upper basin water storage figures do not include any storage as a result of water bank agreements entered into with funding provided by the 1997 Legislative Assembly. He said that although the water bank funds may indirectly benefit the Devils Lake Basin by holding water in the upper basin, the primary purpose of these funds is to provide upland habitat. He said the State Water Commission is emphasizing programs to encourage landowners to hold back additional water and not compensate them for water they are already holding back.

In response to a question from Senator Traynor, Mr. Sprynczynatyk said the estimated cost of the western outlet using the Peterson Coulee route was \$50 million, but the cost has been decreasing as progress is made on the design of the outlet. He said the annual operating expense is estimated to be between \$700,000 and \$1.3 million per year.

In response to a question from Representative Gulleeson, Mr. Sprynczynatyk said North Dakota has been granted permission to file an amicus brief in support of the federal government in the *Missouri v. Craig* litigation.

At the request of Chairman Gulleeson, Mr. Francis Schwindt, Chief, Environmental Health Section, State Department of Health, addressed the committee. He briefed the committee on the Safe Drinking Water Act state revolving loan fund. He said the state has submitted its drinking water revolving loan program to

the Environmental Protection Agency for its approval, and approval is expected shortly. Once approval is received, he said, the State Department of Health can move forward on funding projects. He said the state has also applied to the Environmental Protection Agency for federal funds, and approximately \$20 million is available for this purpose. He said the federal funds require a 20 percent state match which will be raised through the Municipal Bond Bank. He said the Safe Drinking Water Act revolving loan fund will be used to provide loans to municipal drinking water systems to meet the requirements of the Safe Drinking Water Act.

At the request of Chairman Gulleeson, Mr. Dave Koland, Executive Director, North Dakota Rural Water Systems Association, addressed the committee. He reviewed the promised payment plan. He said delays in approving the federal budget have resulted in delays in planning for rural water system projects and, as a result, construction delays have occurred. To solve this problem, he said, the promised payment plan would allow a state entity to establish a five-year plan of \$15 million a year for municipal, rural, and industrial water supply projects into the future. Assuming the federal government would provide between \$12 and \$18 million per year in Garrison municipal, rural, and industrial water supply funds, he said, the state share requirement would be approximately \$4 million in 2002 and \$1.7 million in 2003. He distributed a forecast of account balances for June 2001 through May 2003, a copy of which is attached as Appendix B. If federal payments were to decrease to as little as \$2 million in 2003, he said, the state could reassess the promised payment plan and slow development of municipal, rural, and industrial water supply programs. He said the promised payment plan will succeed because of the large current cash balance and the fact that all of the money will be allocated and spent by 2003. In sum, he said, the promised payment plan will save the state taxpayers money because water projects will be able to be planned and constructed in a more timely fashion.

In response to a question from Representative Gulleeson, Mr. Koland said the State Water Commission has informed him that it has the authority to implement the promised payment plan under its existing statutory authority.

In response to a question from Senator Nelson, Mr. Sprynczynatyk said the State Water Commission believes that it has the statutory authority to implement the promised payment program as envisioned by the North Dakota Rural Water Systems Association. However, he said, the commission will not go forward without approval of the legislative leadership.

Senator Nelson requested that the Legislative Council staff research whether the State Water Commission has the statutory authority to implement the promised payment plan as envisioned by the

North Dakota Rural Water Systems Association and whether any statutory changes are necessary to implement the plan. In addition, he requested that the Legislative Council staff explore whether any alternatives to the promised payment plan may be feasible.

In response to a question from Representative Boucher, Mr. Sprynczynatyk said that in the event of a default by the federal government of Garrison municipal, rural, and industrial water supply moneys, the project sponsor would be required to repay the money to the state. However, he said, the repayment may be lessened in that the state could require repayment under lower interest rates or base repayment upon ability to pay similarly to what is being done with repayment on the Southwest Pipeline Project.

In response to a question from Senator Mathern, Mr. Sprynczynatyk said the State Water Commission will prepare a memorandum of understanding for use by the State Water Commission with local project sponsors, including loan repayment provisions and provide this information to the committee at a future meeting.

At the request of Chairman Gulleeson, Ms. Dana Bohn, North Dakota Water Education Foundation, reviewed the schedule of water tours being sponsored by the Water Education Foundation. She said the foundation is planning to hold tours of Garrison Diversion Unit features, Devils Lake, and the Oakes Test Area.

WATERSHED DISTRICTS STUDY

At the request of Chairman Gulleeson, Mr. Tom Moe, Mayville, addressed the committee. He said he represents both the Traill and Griggs County water resource district boards and the North Dakota Township Officers Association. He said it is not the intent of the watershed districts study resolution sponsors to abolish existing water resource districts but to establish watershed districts to deal with development and maintenance of water projects on a watershed basis. He said this would allow water interests to undertake larger projects, such as clearing and snagging river channels in eastern North Dakota. He said local water resource districts do not have the resources to deal with these problems. He said county water resource district boards have the jurisdiction, especially if a joint board is formed, but do not have the necessary resources to undertake these types of projects.

In response to a question from Senator Nelson, Mr. Moe said the water resource district boards that he represents would not support abolishing water resource districts but would support creating watershed districts to work with water resource districts to solve water problems.

In response to a question from Senator Nething, Mr. Moe said it may be possible for the National Guard to clear channels if it had permission to go onto private land and liability issues were addressed.

Senator Nething requested that a representative of the National Guard be invited to appear at the committee's next meeting to address under what situations it may be able to engage in clearing and snagging operations on the state's river channels.

In response to a question from Representative Boucher, Mr. Moe said under the proposal he and Representative Aarsvold envision, county water boards would each have a representative on a watershed board. Watershed boards would have specific responsibility and authority to deal with clearing and snagging, maintain water channels, and pool resources to conduct projects on all the lands in a watershed that contribute to a problem.

At the request of Chairman Gulleeson, Mr. James McLaughlin, Chairman, Southeast Cass Water Resource District, Fargo, and Chairman, Joint Cass County Water Resource District, Vice Chairman, Red River Water Resource Board, and Alternate, Sheyenne River Joint Water Resource District, addressed the committee. He said these boards are addressing water issues on a watershed basis and the creation of joint boards works well to solve the problems being discussed by the committee. He said water managers are hard-pressed to deal with water concerns in their own districts, much less worrying about problems on a watershed basis. He said his local water resource district board works with adjacent boards, the Natural Resource Conservation Service, and the State Water Commission to ensure that water problems are being addressed on a watershed basis. Finally, he said, it was his understanding that the Associated General Contractors of North Dakota has an agreement with the National Guard that the National Guard will not undertake projects that the contractors would otherwise be able to perform. In sum, he said, joint water resource district boards are taking care of watershed problems within the state of North Dakota.

At the request of Chairman Gulleeson, Representative Ole Aarsvold, District 20, addressed the committee. He agreed there is a need to maintain a county entity for water management, but, he said, there also needs to be an entity to address problems on a watershed basis. He said Traill County has never received any benefit from contributing to the Red River Joint Water Resource District Board. He said taxpayers in his county have contributed to projects on the English Coulee and Sheyenne River Diversion but have not received any help with problems in their county.

In response to a question from Representative Timm, Representative Aarsvold said under his proposal, watershed districts would not replace water resource districts but would supplement the districts. He said local water resource district boards would still be responsible for drains and their maintenance.

In response to Senator Nething's request concerning the National Guard, Mr. Sprynczynatyk said the National Guard only becomes involved in

clearing and snagging operations on a limited basis. He said any project must fall within the training mission of the National Guard and be approved by the Associated General Contractors. Also, he said, the scope of clearing and snagging problems in the state would be too large for the National Guard to combat on a weekend or training basis.

Mr. Sprynczynatyk said much has been done to address the management of water on a watershed basis since the passage of the study resolution. He said the Red River Basin Board was created less than a year ago by entities in North Dakota, South Dakota, Minnesota, and Manitoba to address water problems on a regionwide basis. Although the Red River Basin Board does not have the authority of local individual boards, he said, it is a step in the right direction to managing water on a watershed or regionwide basis.

At the request of Chairman Gulleeson, Mr. Gary Peterson, President, Traill County Water Resource District, addressed the committee. He clarified that he was opposed to watershed districts based on the Minnesota model, but, he said, there may be a place for watershed districts in North Dakota. However, he said, a greater problem is funding for water projects, and he proposed a 50-cent per acre assessment per year to finance water projects in a water resource district. He said once water resource districts "caught up" with their maintenance and clearing and snagging projects, then the assessment could be terminated.

At the request of Chairman Gulleeson, Mr. Mike Dwyer, Executive Secretary, North Dakota Water

Resource Districts Association, addressed the committee. He said the resolution was introduced to address clearing and snagging problems and not to replace water resource districts with watershed districts. He said both water resource districts and county commissions are opposed to the establishment of watershed districts, and the Legislative Assembly should let joint boards address these problems. He said joint boards were authorized by the Legislative Assembly to address these very issues and are effective in doing so.

In response to a question from Representative Gulleeson, Mr. Dwyer said the North Dakota Water Resource Districts Association is considering several proposals to address the Traill County problem and, if approved by the association, will be introduced in the 1999 Legislative Assembly. He said county water resource districts are entities that the citizens of North Dakota want to retain, and the authorization of joint boards was accomplished to address the very problems that resulted in the earlier study and this study.

No further business appearing, Chairman Gulleeson adjourned the meeting at 5:40 p.m.

Jeffrey N. Nelson
Counsel

ATTACH:2