

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

GARRISON DIVERSION OVERVIEW COMMITTEE

Monday, September 16, 2002
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Aaron Krauter, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Aaron Krauter, Randel Christmann, Thomas Fischer; Representatives Merle Boucher, Earl Rennerfeldt

Members absent: Senators Bill Bowman, Joel C. Heitkamp, Bob Stenehjem, Terry M. Wanzek; Representatives Wesley R. Belter, LeRoy G. Bernstein, Pam Guleson, David Monson, Eugene Nicholas

Others present: Dave Koland, Maria Effertz Hanson; Garrison Diversion Conservancy District, Carrington

Stuart Carlson, North Dakota Rural Water Systems Association, Bismarck

Dennis Breitzman, Greg Gere, Doug Coulter; Bureau of Reclamation, Bismarck

Dale Frink, State Water Commission, Bismarck

It was moved by Representative Boucher, seconded by Senator Fischer, and carried on a voice vote that the minutes of the October 10, 2001, committee meeting be approved as distributed.

Chairman Krauter recognized Mr. Dave Koland, Deputy Manager, Garrison Diversion Conservancy District. Mr. Koland discussed the economic impact to the state of inundation of approximately 550,000 acres of land in North Dakota for construction of the Garrison Diversion Unit Project, the Garrison Diversion Conservancy District reassessment report draft, the fiscal year 2003 Garrison Diversion Unit Project appropriation, and current and future activities of the Garrison Diversion Conservancy District. A copy of his written presentation is attached as Appendix A.

In response to a question from Senator Krauter, Mr. Dennis Breitzman, Area Manager, Dakota's Area Office, Bureau of Reclamation, said the appropriation for the Garrison Diversion Unit Project is contained in the budget of the Bureau of Reclamation and is a part of the energy and water appropriations bill.

Chairman Krauter recognized Mr. Dale Frink, State Engineer and Secretary, State Water Commission. Mr. Frink discussed the Garrison municipal, rural, and industrial water supply program, the Northwest Area Water Supply Project, assumption of the Section 404 program of the Clean Water Act, the Southwest Pipeline Project, and Devils Lake and Missouri River

issues. A copy of his written presentation is attached as Appendix B.

In response to a question from Senator Krauter, Mr. Frink said the \$800,000 appropriated by 2001 Senate Bill No. 2285 for assumption of the Section 404 program has not been expended. He said the Environmental Protection Agency has strongly advocated that the state implement a state wetland regulatory program as an interim step toward assumption of the Section 404 program. Under this interim step, he said, the Corps of Engineers would continue to administer the Section 404 program.

In response to Mr. Frink's statement, Senator Krauter said it was not the intent of the Legislative Assembly that the State Water Commission administer a wetland regulatory program in tandem with the Section 404 permit program and if the Environmental Protection Agency is insisting the state do so in order to gain approval for assumption of the Section 404 program, the state may wish to reassess the assumption.

In response to a question from Senator Fischer, Mr. Frink agreed that even if the state assumed jurisdiction of the Section 404 program, the Environmental Protection Agency will still have oversight over the granting of Section 404 permits and all permits must still be in compliance with the Clean Water Act and all federal environmental laws and regulations.

In response to a question from Senator Krauter, Mr. Frink said the Corps of Engineers notifies the state of changes in lake release rates and the Corps of Engineers is managing the Missouri River system in compliance with the current *Master Manual*. He said the downstream states of Nebraska and Kansas are experiencing a severe drought and thus the Corps of Engineers is having to draft upstream reservoirs more than usual to maintain minimum riverflows in the downstream states.

Chairman Krauter recognized Mr. Breitzman. Mr. Breitzman discussed the Dakota Water Resources Act of 2000; operation and maintenance of the principal Garrison Diversion Unit supply works for fiscal year 2002; the Oakes Test Area; the Garrison municipal, rural, and industrial water supply program; fish and wildlife mitigation and enhancement issues; the natural resources trust; the municipal, rural, and industrial water supply Indian grant program; the

Standing Rock Irrigation Project; the Garrison Diversion Unit recreation program; and investigation of the location of the undesignated 28,000 acres of remaining authorized irrigation. A copy of his written presentation is attached as Appendix C. He said the Bureau of Reclamation has a very close working relationship with the Garrison Diversion Conservancy District and the State Water Commission.

In response to a question from Senator Krauter concerning the Rugby rural water system, Mr. Koland said the difficulty with the project is securing a water permit. He said the city of Rugby and the Rugby rural water system were originally part of the Northwest Area Water Supply Project, but when Towner determined not to participate in the Northwest Area Water Supply Project, it was determined that it would be more economically feasible for Rugby and the Rugby rural water system to use ground water rather than to extend a pipeline from Minot to Rugby for their source of water.

In response to a question from Senator Krauter, Mr. Frink said the original water permit application was denied by the former State Engineer because it was determined it would dewater a national wildlife refuge. Subsequently, he said, the well location in the permit application was moved to a different location which turned out to be subject to a United States Fish and Wildlife Service easement. He said the easement states that the landowner may not drain, burn, or

fill the wetland and thus the location was moved again. He said he then granted the permit, but a nearby affected landowner has appealed the granting of the permit through the administrative hearing process and it is now before the local district court. He said the case illustrates the difficulty in finding large scale good quality water sources in North Dakota. In many western states, he said, water resources are overappropriated and if a new user requires water, the user must purchase that water from a prior user. He said North Dakota is not yet at that stage, but the Rugby case illustrates the problem of acquiring good quality water.

It was moved by Senator Fischer, seconded by Representative Boucher, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and to present the report to the Legislative Council.

No further business appearing, Chairman Krauter adjourned the meeting at 10:20 a.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:3