

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### GARRISON DIVERSION OVERVIEW COMMITTEE

Wednesday, October 10, 2001  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator Aaron Krauter, Chairman, called the meeting to order at 1:00 p.m.

**Members present:** Senators Aaron Krauter, Bill Bowman, Randel Christmann, Thomas Fischer, Joel C. Heitkamp, Bob Stenehjem; Representatives Wesley R. Belter, LeRoy G. Bernstein, Merle Boucher, David Monson, Eugene Nicholas, Earl Rennerfeldt

**Members absent:** Senator Terry M. Wanzek; Representative Pam Guleson

**Others present:** See Appendix A

Chairman Krauter announced that he had appointed Representative Pam Guleson to serve as vice chairman of the committee.

At the request of Chairman Krauter, committee counsel reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

At the request of Chairman Krauter, committee counsel presented a background memorandum entitled *Garrison Diversion Issues - Background Memorandum*. The memorandum discusses the statutory duties of the Garrison Diversion Overview Committee, history of the Garrison Diversion Unit Project, Garrison appropriations, the Garrison municipal, rural, and industrial water supply program, the Southwest Pipeline Project, and the Dakota Water Resources Act of 2000.

Chairman Krauter called on Mr. Warren L. Jamison, Manager, Garrison Diversion Conservancy District, Carrington. Mr. Jamison distributed a copy of the Garrison Diversion Conservancy District's annual report for the year 2000, a map showing project features, a copy of the Dakota Water Resources Act of 2000, a summary of the key components of the Dakota Water Resources Act of 2000, a description of the Garrison Diversion Conservancy District, and a summary of the Red River Valley water supply study. A copy of these materials is on file in the Legislative Council office. He said the Dakota Water Resources Act of 2000 broadened the purposes of the Garrison Diversion Unit Project and shifted the emphasis of the project from irrigation to a multipurpose, interdisciplinary project. He said one significant provision of the Dakota Water Resources Act of 2000 is that it authorizes an additional \$200 million for the Garrison municipal, rural, and industrial water supply program

and \$200 million for Indian municipal, rural, and industrial water supply projects on the state's four Indian reservations.

Concerning Garrison appropriations, Mr. Jamison said it appears the fiscal year 2002 Garrison appropriation will be between \$25 million and \$28 million. However, he cautioned, although this appears to be a significant amount of money, a large portion of the appropriation is consumed by fixed costs that continue to increase.

Concerning the Garrison Diversion Conservancy District's annual report, Mr. Jamison said the district is in sound financial condition. He said the Dakota Water Resources Act of 2000 anticipates that a water delivery structure will be constructed to deliver water to the Red River Valley. Thus, he said, the district is maintaining adequate reserves, anticipating that part of the Red River Valley water delivery project will include a repayment contract to pay the operation and maintenance costs of the project.

As a part of the Dakota Water Resources Act of 2000, Mr. Jamison said, the Garrison Diversion Conservancy District is also reviewing the structure and purpose of the district. Since creation of the district, he said, the project benefits have been shifting from the original 26 counties to the entire state. He said the Garrison Diversion Conservancy District is currently undergoing a review of its purpose and statutory authority and may bring a proposal for legislation before the committee later in the interim.

Concerning the Red River Valley water supply study, Mr. Jamison said the Garrison Diversion Conservancy District, state, and Bureau of Reclamation are at a point where a critical decision must be made concerning the delivery of water to the Red River Valley. Also, he said, the district is proposing that the criteria for how future Garrison municipal, rural, and industrial water supply projects are funded be revised. He said the district is proposing that preference be given to projects that meet water supply problems rather than projects designed to solve water quality problems relating to new regulations or new legislation; that preference be given to projects that are regional in nature; and that projects be funded using 70 percent municipal, rural, and industrial water supply funds as the general rule while recognizing that under special circumstances an additional

amount may be authorized in order to make a system viable.

In response to a question from Senator Krauter, Mr. Jamison said the drafters of the Dakota Water Resources Act of 2000 realized that the one-year deadlines for completion of the draft and final environmental impact statements for the Red River Valley water supply study were unrealistic and that is why the annual reporting requirements to Congress were included. He said this approach was preferable to mandating a study with no specific time for a final statement.

In response to a question from Senator Bowman, Mr. Jamison said the state and the Garrison Diversion Conservancy District have not given up on irrigation but are trying to work within existing political realities to achieve as much water development, including irrigation, for the state as possible.

In response to a further question from Senator Bowman, Mr. Jamison said approximately \$250 million has been spent on construction of the McClusky and New Rockford Canals with no return in the form of irrigation. However, he reminded the committee that the canals will play an important role in any water delivery project to deliver water to the Red River Valley and if the canals did not exist, the delivery of Missouri River water to the Red River Valley would be much more difficult and costly.

Chairman Krauter recognized Mr. Dale L. Frink, State Engineer and Secretary, State Water Commission. A copy of Mr. Frink's presentation is attached as Appendix B. He 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 by the state, the Southwest Pipeline Project, the Devils Lake outlet projects, and revision of the *Missouri River Master Water Control Manual*.

In response to a question from Representative Boucher, Mr. Frink said the state uses stream gauge monitors on the rivers entering the state from Canada to monitor water quantity and water quality.

In response to a question from Senator Christmann, Mr. Frink said the intake for the proposed emergency or temporary outlet to Devils Lake is on the west bay of Devils Lake. He said the outlet would enter the Sheyenne River near the Peterson Coulee. He said the capacity of the emergency or temporary outlet is 300 cubic feet per second and would remove one foot of water per year from Devils Lake. He said the outlet is designed to meet downstream water quality standards in the Sheyenne and Red Rivers and would not be operated when flooding is occurring on the Sheyenne and Red Rivers.

In response to a question from Senator Krauter, Mr. Frink said the intake for the proposed permanent outlet to Devils Lake is north of Highway 19 in the Pelican Lake area of Devils Lake.

In response to a question from Senator Christmann, Mr. Frink said removing water from the west end of Devils Lake does remove some salts from the lake and the State Department of Health and Game and Fish Department have indicated that the impact of removing water from the west end of Devils Lake on water quality in the lake will be minimal.

In response to a question from Representative Monson, Mr. Frink said it is the intent of the State Water Commission to use the emergency or temporary outlet to maintain the current level of Devils Lake and not to decrease the level of Devils Lake.

In response to a question from Senator Stenehjem, Mr. Frink said there is approximately 400,000 cubic feet of storage available in the Stump Lake system which is approximately one year of inflows at 1997 levels. He said Devils Lake will overflow into the Sheyenne River at 1,459 feet mean sea level.

Chairman Krauter recognized Mr. Greg Gere, Deputy Area Manager, Dakotas Areas Office, Bureau of Reclamation. Mr. Gere distributed a packet of briefing material for the Garrison Diversion Unit Pick-Sloan Missouri Basin Program, a copy of which is on file in the Legislative Council office; a history of Garrison Unit funding and tracking information for the fiscal year 2002 Garrison appropriation, a copy of which is attached as Appendix C; and a status report on the Garrison Diversion Unit Project, a copy of which is attached as Appendix D. The briefing material contains information relating to the early history of the Missouri River Basin, the Flood Control Act of 1944, the 1965 Garrison Unit authorization, the Garrison Reformulation Act of 1986, the Dakota Water Resources Act of 2000, a comparison of project plans and features, an overview of water requirements, repayment and financial matters, the Northwest Area Water Supply Project consultation process, the Red River Valley water supply study environmental impact statement process, and various authorizations. The Garrison Diversion Unit funding history contains a schedule of appropriations and expenditures for fiscal years 1966 through 2002 and budget tracking information for various projects in the Great Plains region. The status report on Garrison Diversion Unit Project activities reviews the status of the Dakota Water Resources Act of 2000; the operation and maintenance of the principal supply works for fiscal year 2001; the Oakes Test Area; the Garrison municipal, rural, and industrial water supply program; the Northwest Area Water Supply Project; the Red River Valley water supply study; fish and wildlife mitigation and enhancement activities; the Natural Resources Trust; the Indian municipal, rural, and industrial water supply program; the Standing Rock irrigation project; and the recreation component of the project.

Chairman Krauter recognized Attorney General Wayne Stenehjem. Attorney General Stenehjem

reviewed the *Spirit Lake Tribe v. State of North Dakota, United States of America, et al.* litigation. A copy of his written comments is attached as Appendix E. He outlined a history of the litigation concerning the ownership of the bed of Devils Lake. He said the litigation began in 1986 when the Spirit Lake Tribe sued the state seeking title to Devils Lake. He said the state is currently waiting to hear whether the full United States Court of Appeals for the Eighth Circuit will rehear a decision of a panel of that court affirming a decision of the district court dismissing suit against the United States and, because the United States is an indispensable party, dismissing the suit against the other defendants, including the state.

### COMMITTEE DIRECTIVES

Senator Bowman requested that the Legislative Council staff arrange for the presentation of information concerning the economic impact to the state of the inundation of approximately 550,000 acres of land

in North Dakota for construction of the Garrison Diversion Unit Project.

Senator Christmann requested that the Legislative Council staff arrange for the presentation of information concerning the impact of construction of a west end outlet on the water quality of Devils Lake.

Senator Krauter requested that the State Water Commission provide a schedule of Garrison municipal, rural, and industrial supply projects to the committee.

No further business appearing, Chairman Krauter adjourned the meeting at 3:45 p.m.

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Jeffrey N. Nelson  
Committee Counsel

ATTACH:5