NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER-RELATED TOPICS OVERVIEW COMMITTEE

Wednesday, August 12, 2009
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Tom Fischer, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Tom Fischer, Arden C. Anderson, Joan Heckaman, Gary A. Lee; Representatives Rick Berg, Curt Hofstad, Jon Nelson, Darrell D. Nottestad

Member absent: Representative Duane DeKrey

Others present: See Appendix A

Chairman Fischer addressed the committee. He thanked each member of the committee for serving on the committee and thanked Representative Curt Hofstad for agreeing to serve as vice chairman of the committee. He said he planned to hold a minimum of seven meetings and the committee would meet during the Annual Joint North Dakota Water Convention and Irrigation Expo in December. He said the committee will also travel to Fargo and Grand Forks and perhaps Wahpeton to review flood control projects in those cities. Also, he said, the committee may travel to Dickinson or Williston to study the use of ground water for fracturing to enhance oil and gas production from the Bakken Formation.

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

At the request of Chairman Fischer, committee counsel reviewed a background memorandum entitled *Water-Related Topics Overview Committee - Background Memorandum*. The memorandum reviews water in North Dakota, including the state's surface water resources, ground water resources, water permitting, and water project funding. The memorandum reviews the history and current status of the Garrison Diversion Project and the Garrison Diversion Conservancy District. The memorandum also reviews the Red River Valley Water Supply Project and water-related legislation enacted in 2009.

At the request of Chairman Fischer, committee counsel also distributed copies of the *2009 State Water Management Plan* and the executive summary for the *2009 State Water Management Plan*. Copies of these documents are on file in the Legislative Council office.

STATE WATER COMMISSION

At the request of Chairman Fischer, Mr. Dale Frink, State Engineer, State Water Commission, addressed the committee. A copy of Mr. Frink's PowerPoint presentation is attached as Appendix B; a copy of a schedule of the State Water Commission's project revenues and needs for the 2009-11 biennium is attached as Appendix C; and a memorandum from Mr. Patrick Fridgen, Planning Division, State Water Commission, to Mr. Frink, concerning the status of current flood-related studies is attached as Appendix D. Mr. Frink also distributed a copy of the State Water Commission's and State Engineer's strategic plan for 2009-11, a copy of which is on file in the Legislative Council office.

Mr. Frink said water in North Dakota is governed and regulated by two separate agencies. He said the State Engineer's office was created by the Legislative Assembly in 1905 to regulate and administer matters concerning the allocation of North Dakota's water resources. He said the State Water Commission was created in 1937 by the Legislative Assembly in response to the 1930s drought and for the specific purpose of fostering and promoting water resource development throughout the state. He said the office of the State Engineer is a regulatory agency that regulates drainage, water rights, and the appropriation of water while water development is promoted by the State Water Commission.

Concerning specific projects, Mr. Frink said the current primary project of the State Water Commission is Fargo flood control. He said this is a United States Army Corps of Engineers project to develop a plan for flood damage reduction in the Fargo-Moorhead metropolitan area. He said the State Water Commission is a cooperating agency in the environmental impact statement and National Environmental Policy Act process. He said the Fargo flood control project is actually two projects with a state flood control project in south Fargo and the main project in the center and northern portions of the city. He said the United States Army Corps of Engineers has estimated the total cost of Fargo flood control at between $650 million and $1 billion, depending upon which alternative is selected. He said which plan is selected will be a local decision. He said there are currently two plans under consideration for south Fargo flood control. He said one plan is a diversion plan while the other is a dike project. He said the drawbacks to the diversion plan are the cost of the plan and land acquisition issues.

In response to a question from Representative Berg, Mr. Frink said the State Water Commission will provide a timeline for the two Fargo flood control

projects. In addition, he suggested the committee invite representatives of the city of Fargo, the entity most familiar with the projects, to brief the committee on the projects at a future meeting.

Mr. Frink said the State Water Commission has committed $75 million, $45 million this biennium, for the south Fargo flood control project. He said the Legislative Assembly appropriated $500,000 to the State Water Commission to conduct a Red River Basin long-term solutions study. He said this money is going to the Red River Basin Commission to match money provided by the Minnesota Legislature to conduct the study. He said the Red River Basin Commission is in the process of hiring a facilitator and then will begin the study. He said the study process involves three phases--an inventory of potential solutions, an analysis of solutions and how the solutions might be integrated, and development of an implementation strategy.

In response to a question from Senator G. Lee, Mr. Frink said the Red River Basin Commission is a grassroots advisory organization with a board of 45 members which advises political subdivisions on water issues in the Red River Basin.

In response to a question from Representative Nelson, Mr. Frink said upstream and downstream interests will be protected because the state and the federal government must issue permits for any Fargo flood control project.

In response to a question from Representative Hofstad, Mr. Frink said he does not anticipate any Canadian objections or concerns to the Fargo flood control projects. He said any objection and the solution to the objection will come within Cass and Clay Counties.

In response to a question from Representative Berg, Senator Fischer said the Red River Basin Commission receives $200,000 each from North Dakota, Minnesota, and Manitoba, for a total of $600,000. He said the North Dakota portion is composed of a $100,000 contribution from the State Water Commission and a $100,000 contribution from counties and cities in the Red River Valley.

Concerning the Southwest Pipeline Project, Mr. Frink said the Trotters Pocket, Grassy Butte-Killdeer Mountain, and Fairfield service areas are nearing completion. Up next, he said, is the Oliver-Mercer-North Dunn water treatment plant and construction of a pipeline from the water treatment plant to Hazen.

Concerning the Northwest Area Water Supply Project, Mr. Frink said water was delivered to Berthold, Minot's south hill region, and the North Prairie Rural Water District in 2008. He said water is scheduled to be delivered to the Kenmare-Upper Souris and Mohall-All Seasons area in 2009. However, he noted, Manitoba is still objecting to the project and the case will be scheduled for oral arguments in the near future.

In response to a question from Senator G. Lee, Mr. Frink said Lake Sakakawea water is not being supplied to Minot. He said the city of Berthold is being supplied with water from the city of Minot.

In response to a question from Representative Nelson, Mr. Frink said the two aquifers from which Minot is drawing water are nonsustainable, and thus, the Northwest Area Water Supply Project is necessary. Also, the North Prairie Rural Water District is drawing water from these aquifers which is complicating matters, he said. In response to a further question, Mr. Frink said if the state receives a favorable decision from the courts, it will take approximately three years to design and construct the necessary water treatment and pumping plants. Thus, he said, it will take three years to deliver Lake Sakakawea water to the Northwest Area Water Supply Project once the project is approved.

Concerning Devils Lake, Mr. Frink said the lake rose three feet in 2009 and has caused significant damage.

Concerning Missouri River management, Mr. Frink noted runoff into the two major Missouri River reservoirs in North Dakota--Lake Sakakawea and Lake Oahe--is above normal, the first time in nearly a decade. He said Lake Oahe ended July at 1,612.4 feet mean sea level, 18.5 feet higher than at the same time in 2008, and Lake Sakakawea ended July at 1,842.2 feet mean sea level, 16.6 feet higher than July 31, 2008.

Concerning sovereign land management, Mr. Frink said the State Water Commission has assumed management for the state's sovereign lands from the Board of University and School Lands. He said the commission works with the Game and Fish Department on enforcement issues and with the Land Department on mineral ownership under sovereign lands in northwest North Dakota.

Mr. Frink said another new issue facing the commission is water for oil development in western North Dakota. He said fracturing the Bakken Formation uses a tremendous amount of water.

Mr. Frink said State Water Commission staff spent a great deal of time on emergency response and mitigation relating to the spring floods in North Dakota. He said the State Water Commission provided technical assistance 24 hours a day 7 days a week during spring flooding. As a result of the spring flood efforts, he said, the livestock water supply program has been suspended. Also, he said, the State Water Commission is providing supplemental funds with the Natural Resource Conservation Service to construct ring dikes around farmsteads. He said ring dikes are much more economically feasible than the type of dikes used in Fargo and Grand Forks for flood control.

Concerning State Water Commission project revenues and needs for the 2009-11 biennium, Mr. Frink said the State Water Commission is anticipating revenues of $74 million from the resources trust fund, $20 million from the water development trust fund, and $59.5 million of uncommitted carryover from the contract fund. He said the State Water Commission is anticipating

$25.5 million of bond payments which leaves $128 million for new projects.

WATER RESOURCE DISTRICTS IN NORTH DAKOTA

At the request of Chairman Fischer, Mr. Michael Dwyer, Executive Secretary, North Dakota Water Resource Districts Association, discussed the organization and operation of water resource districts in North Dakota. He distributed a map of water districts-related political subdivisions in North Dakota, a copy of which is on file in the Legislative Council office. He said the Legislative Assembly enacted authority to establish legal drain boards in 1895. In 1935, he said, the Legislative Assembly established water control and conservation districts separate from legal drain boards. In 1973, he said, the Legislative Assembly determined that each county should have a water conservation and resource district and also change the name of these districts to water management districts. In 1977, he said, the Legislative Assembly authorized joint boards under which authority two or more water management districts could do what one board could do alone. He said the first joint board was the Red River Joint Board, which was created in 1979.

Mr. Dwyer said during the 1979-80 interim the Legislative Council studied water organizations. At that time, he said, there were drain boards, water management districts, and joint boards--all of which were designed to manage water. He said the Legislative Council reviewed the Nebraska system under which one district does all of the functions done by separate North Dakota water organizations and which are organized on watershed boundaries as opposed to political boundaries. He said the result of this study was to change the name of water management districts to water resource districts and to change the name of legal drains to assessment drains. Also, he said, legal drain boards were abolished and authority for drainage was placed with water resource districts.

Mr. Dwyer said rural water systems patterned after the rural electrification movement of the 1930s began to be established in the 1970s. He said these systems were developed to supply water to underserved rural areas. Today, he said, there are 31 rural water systems in North Dakota. He said the Legislative Assembly next authorized water districts with additional powers and most rural water systems have converted to water districts.

Mr. Dwyer said the Legislative Assembly also has created two regional water governance entities or water authorities. He said these are the Garrison Diversion Conservancy District and the Southwest Water Authority. He said these entities were patterned after other entities created in other states to partner or be the local sponsor of Bureau of Reclamation projects.

In summary, Mr. Dwyer said North Dakota has water resource districts that operate on water management issues and water districts that supply water. In the early 1990s, he said, Governor Edward T. Schafer noted that the Governor was hearing different recommendations from different water organizations. Governor Schafer recommended that water organizations speak with one voice unless there were clear disagreements among the organizations. Following this recommendation, Mr. Dwyer said North Dakota's water organizations formed the North Dakota Water Coalition to develop a consensus on different water issues and then promote those priorities. During this timeframe, he said, the type of projects also became larger which necessitated large authorities or state involvement. He said the North Dakota Water Education Foundation was also created at this time. He said the North Dakota Water Education Foundation is a nonprofit 501(c)(3) organization designed to provide water education and water information in North Dakota.

Mr. Dwyer said that in his opinion North Dakota has an excellent water management system. He said it is nonduplicative, effective, and serves the people with an emphasis on local governance.

GARRISON DIVERSION CONSERVANCY DISTRICT

At the request of Chairman Fischer, Mr. David Koland, General Manager, Garrison Diversion Conservancy District, Carrington, presented an overview of the Garrison Diversion Conservancy District and its current projects. A copy of Mr. Koland's PowerPoint presentation is attached as Appendix E. He also distributed the mission statement of the Garrison Diversion Conservancy District, a brochure relating to the Red River Valley Water Supply project, and the *2008 Annual Report of the Garrison Diversion Conservancy District*, copies of which are on file in the Legislative Council office.

Mr. Koland said the Garrison Diversion Project was authorized by the federal Flood Control Act of 1944. He said the purposes of the Flood Control Act of 1944 were flood control, navigation, hydropower, and irrigation of 1.2 million acres in North Dakota. Under the Act, he said, 1,275,000 acres were to be irrigated in northwest North Dakota. However, he said, soil surveys conducted between 1944 and 1965 indicated the soil in this area was not suitable for irrigation according to federal irrigation standards, and in 1965 Congress enacted new legislation authorizing 250,000 acres of irrigation in North Dakota. He said the 1965 legislation also provided for municipal, rural, and industrial water supply; fish and wildlife development; and recreation components. From 1968 through 1984, he said, construction of many features occurred. As a result of farm surpluses and environmental concerns, he said, Congress authorized the Garrison Diversion Unit Commission in

1984 to review the project. He said the commission report, issued on December 20, 1984, resulted in the Garrison Diversion Unit Reformulation Act of 1986. Under the 1986 Act, he said, irrigation was reduced to 130,940 acres; a $200 million grant program for a municipal, rural, and industrial water supply program was established; a $200 million grant for tribal irrigation was established; a $12 million wetlands trust was established; and enhancement programs for wildlife lands were also included. In 2000, he said, the Dakota Water Resources Act reauthorized the program and provided additional municipal, rural, and industrial water supply funds. He said the 2000 Act also authorized the Red River Valley Water Supply Project, transfer of the Oakes Test Area, and additional tribal irrigation.

Concerning the Red River Valley Water Supply Project, Mr. Koland said the Garrison Diversion Conservancy District submitted a comprehensive report to Congress in December 2008. He said the report identified selected alternatives, summarized the environmental impact statement, outlined effects on Minnesota-Missouri states, and indicated compliance with the Boundary Waters Treaty of 1909. He said the selected alternative to deliver water to the Red River Valley is the Garrison Diversion import to the Sheyenne River alternative. He said the Garrison Diversion Conservancy District is obtaining right of way for the selected alternative, performing permitting and environmental services, developing an operational plan, and working on the preliminary design. The next steps, he said, are to obtain a record of decision and congressional authorization for use of Missouri River water. In the future, he said, a master repayment contract must be developed as well as a Red River Valley Water Supply Project construction contract.

RED RIVER BASIN MAPPING INITIATIVE

At the request of Chairman Fischer, Mr. Chuck Fritz, Director, International Water Institute, Fargo, reviewed the Red River Basin Mapping Initiative. A copy of Mr. Fritz's PowerPoint presentation is attached as Appendix F. He said the objects of the Red River Basin Mapping Initiative are to collect high-resolution elevation data for the Red River Valley, establish third-party quality assurance and quality control, establish a web-based data archival and dissemination vehicle, and engage in public outreach. The next steps, he said, are to continue data acquisition and continue the development and launch of the light detecting and ranging system. Finally, he said, project completion is anticipated in the spring of 2010.

No further business appearing, Chairman Fischer adjourned the meeting at 2:45 p.m.

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Jeffrey N. Nelson
Committee Counsel

ATTACH:6