NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER-RELATED TOPICS OVERVIEW COMMITTEE

Monday, September 20, 2010
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, Darrell D. Nottestad

Members absent: Representatives Duane DeKrey, Jon Nelson

Others present: Kent Conrad, United States Senator

See Appendix A for additional persons present.

It was moved by Representative Hofstad, seconded by Senator Lee, and carried on a voice vote that the minutes of the June 14-15, 2010, meeting be approved as distributed.

STATE WATER COMMISSION

Chairman Fischer recognized Mr. Todd Sando, State Engineer, State Water Commission. Mr. Sando presented an update (Appendix B) concerning Devils Lake flooding. He said the No. 1 priority for relief from Devils Lake flooding is relaxation of federal water quality standards on the Sheyenne River. He said relaxation of these standards would allow the state to divert more water into the Sheyenne River from the Devils Lake Basin.

In response to a question from Representative Hofstad, Mr. Sando distributed a letter (Appendix C) from Mr. L. David Glatt, Chief, Environmental Health Section, State Department of Health, to Mr. Brian M. Frazer, Chief, Wetlands & Aquatic Resources Regulatory Branch, Office of Wetlands Oceans & Watersheds, United States Environmental Protection Agency. He said the state is requesting that the Environmental Protection Agency allow the state to amend stream standards for sulfate downstream of the Baldhill Dam and along the Red River. He said the Environmental Protection Agency has granted primacy for enforcement of the Safe Drinking Water Act to the State Department of Health. He said that, if in the estimation of the Environmental Protection Agency the state fails to properly administer the Act, the state would be in danger of losing primacy for enforcement of the Act and it would be enforced by the Environmental Protection Agency at the federal level.

In response to a further question from Representative Hofstad, Mr. Sando agreed that the state must move water now to prevent a potential disaster.

In response to a question from Senator Lee, Mr. Sando said the state cannot construct a gravity outlet without federal approval as it would violate federal water quality standards.

In response to a question from Senator Heckaman, Mr. Sando said the state is exploring increasing stream capacity standards on the Sheyenne River. He said this may entail purchasing flood easements in certain spots if the Sheyenne River were to overflow its banks as a result.

In response to a question from Representative Hofstad, Mr. Sando said the State Engineer's office has determined that the level of the Jerusalem Outlet at statehood was 1,458 feet mean sea level and thus the City of Devils Lake may lower the outlet to 1,458 feet mean sea level without a permit as this is determined to be drain maintenance. He said if the city were to lower the outlet below 1,458 feet mean sea level, it would require a drainage permit.

In response to a question from Representative Berg, Mr. Sando said it would require relaxation of federal water quality standards to allow the outlet to operate year round. He agreed that operating the outlet at 250 cubic feet per second year round would remove one acre-foot of water per year from the lake.

In response to a question from Senator Fischer, Mr. Lee Klapprodt, Director, Planning and Education Division, State Water Commission, said the United States Fish and Wildlife Service would need to cooperate in reducing the delineation of easements to allow additional storage of water in the Devils Lake Basin. He said the United States Fish and Wildlife Service has not given any indication that this would be possible, especially in the Devils Lake Basin.

In response to a question from Senator Anderson, Mr. Sando said winterization of the outlet would require pipelines to avoid ice on open channels.

In response to a question from Representative Hofstad, Mr. Sando said if the sulfate standard on the Red River was increased from 250 milligrams per liter to 500 milligrams per liter and on the lower Sheyenne River from 450 milligrams per liter to 750 milligrams per liter, the state would be able to keep up with the inflows to Devils Lake. He said this position has been submitted to the federal government.

In response to a question from Senator Fischer, Mr. Sando said hydraulic fracturing in the western oilfields requires a tremendous amount of water. He

said each well requires approximately four million gallons of water, and it is estimated that approximately 1,800 wells per year will be drilled. He said ground water resources in the western portion of the state are limited, and thus, the state is looking for surface water resources. One obstacle, he said, is getting access across federal land to Lake Sakakawea to access Lake Sakakawea water. One area the state is exploring, he said, is constructing an intake at Williston or on the Garrison to Lake Oahe reach of the Missouri River where the state has access to Missouri River water without having to cross federal land.

In response to a question from Representative Hofstad, Mr. Sando said hydraulic fracturing requires consistent quality water, not necessarily treated water.

In response to a question from Representative Nottestad, Mr. Sando agreed that the state cost-sharing with the oil and gas industry on water development for hydraulic fracturing in the western oilfields is a possibility.

In response to a question from Representative Berg, Mr. Sando said an outlet across the Spirit Lake Nation from East Devils Lake would cost approximately $32 million to $40 million. If the reservation were avoided, he said, an outlet would cost approximately $75 million to $80 million.

In response to a question from Representative Berg, Mr. Sando said there are not sufficient accessible power resources to lift water from the east end of Devils Lake over the divide allowing it to flow to the Sheyenne River by gravity. He said this type of project would cost approximately $20 million to $30 million in electricity costs and thus would not save money from an overall project viewpoint.

In response to a question from Senator Heckaman, Mr. Sando said if Devils Lake water were routed to the James River, it would engender biota transfer issues as it would be transferring water from the Hudson Bay drainage basin to the Missouri River drainage basin. Also, he said, the James River has limited channel capacity.

MAJOR WATER PROJECTS

Chairman Fischer recognized Mr. Sando. Mr. Sando said the primary or major state water project for the 2009-11 biennium has been the Fargo flood control project. He said the state will spend approximately $45 million on the project this biennium. He said the state is planning to allocate approximately $30 million for Fargo flood control for the 2011-13 biennium. He said the project may be delayed up to a year to study downstream impacts.

Mr. Sando said Devils Lake continues to be an area of need, both the Devils Lake Basin infrastructure as well as downstream impacts. He said Valley City also has a number of needs, including $6 million for water treatment in Valley City.

Mr. Sando said water supply and water infrastructure needs in western North Dakota are also major needs. He said these needs include infrastructure development for oil and gas development, the Northwest Area Water Supply Project, and the Southwest Pipeline Project. With the decrease in federal funds, he said, there will be a greater request for state funds to provide funds for state water projects.

In response to a question from Representative Nottestad, Mr. Sando said the State Water Commission is cost-sharing in a larger number of ring dikes as a result of recent Red River Valley flooding. He said the issue of ring dikes may also arise when Fargo addresses and mitigates downstream impacts as a result of the Fargo flood control project.

In response to a question from Representative Hofstad, Mr. Sando said the Northwest Area Water Supply Project has been in court since 2002. He said the federal government cost-shares with the state at a 65 percent federal-35 percent state level on the project. He said the project has constructed a pipeline from Lake Sakakawea to the City of Minot. He said the court has determined that the environmental impact statement must look at impacts in Canada. Also, he said, downstream depletion issues must be examined.

Chairman Fischer recognized Ms. Mary Massad, Manager and Chief Executive Officer, Southwest Water Authority, Dickinson. Ms. Massad updated the committee on progress concerning the Southwest Pipeline Project. She said it has been a challenge to meet the needs of everyone in the region, as well as industry.

Chairman Fischer recognized Mr. Dave Koland, General Manager, Garrison Diversion Conservancy District, Carrington. Mr. Koland said the conservancy district is working on several issues. He noted that federal funding is problematical, and there may be federal reductions in fiscal years 2012 and 2013. He said the conservancy district is in prefinal design for the Red River Valley Water Supply Project. He said the district is waiting on a record of decision for this project.

In response to a question from Senator Fischer, Mr. Koland said the district has spent $20 million on the current environmental impact statement, and it is critical that any future study be a supplemental environmental impact statement and not a completely new environmental impact statement. He said the district would like to benefit from the funds it has already invested in the environmental impact statement.

DEVILS LAKE FLOODING

Senator Fischer recognized United States Senator Kent Conrad. Senator Conrad reviewed developments concerning the Devils Lake Basin and said the state's Congressional Delegation has presented the consensus view of North Dakota leadership to the Devils Lake Basin federal interagency working group. He said this position includes moving more water through the west end outlet by increasing the capacity of the west end outlet, adjusting water quality standards downstream,

construction of an east end control structure to prevent an uncontrolled release of water coupled with an east end outlet that can move additional water from the east end of the lake to be blended with water from the west end outlet, a partial relocation of Minnewaukan, compensation for farmers whose land has been submerged, infrastructure reconstruction, and extension of programs to maximize upper basin storage. He said there have been two key developments since these meetings. First, he said, the Department of Education has allocated $6 million for relocation of the school in Minnewaukan. Second, he said, the Environmental Protection Agency has approved a permanent increase in the sulfate standard from 450 milligrams per liter to 750 milligrams per liter on the upper Sheyenne River.

Senator Conrad said it would be very helpful to the efforts to resolve Devils Lake flooding if the committee were to advance the bill draft before the committee calling for construction of a Devils Lake east end flood control structure. He said recommending the bill draft would be a positive step and assist the state and Congressional Delegation in negotiations involving Devils Lake.

In response to a question from Representative Berg, Senator Conrad distributed a letter (Appendix D) from the Congressional Delegation to the Honorable Robert Nabors, Acting Director, Office of Management and Budget, concerning flooding in the Devils Lake Basin.

Chairman Fischer recognized Mr. Joe Belford, Chairman, Ramsey County Board of Commissioners, Devils Lake. A copy of Mr. Belford's written comments is attached as Appendix E, and a map of the Devils Lake Basin used by Mr. Belford in his presentation is attached as Appendix F.

At the request of Chairman Fischer, committee counsel reviewed a bill draft to authorize construction of a Devils Lake east end flood control structure [10218.0100]. Committee counsel said the bill draft provides that in order to protect the health, safety, and general welfare of the people of the Devils Lake Basin, Sheyenne River drainage basin, and Red River drainage basin, the State Water Commission shall design and construct a structure on the east end of Devils Lake to prevent a catastrophic, uncontrolled release of water from Devils Lake. He said the bill draft contains an appropriation, but the appropriation clause amount and source of funding are blank. Finally, he said, the bill draft is declared to be an emergency measure.

Chairman Fischer recognized Representative Berg. Representative Berg suggested that the appropriate source of funding would be the resources trust fund, and the amount of the appropriation should be $5 million.

It was moved by Representative Berg, seconded by Representative Nottestad, and carried on a roll call vote that the bill draft to authorize construction of a Devils Lake east end flood control structure be amended to appropriate $5 million from the resources trust fund. Senators Fischer, Anderson, Heckaman, and Lee and Representatives Berg, Hofstad and Nottestad voted "aye." No negative votes were cast.

It was moved by Representative Berg, seconded by Senator Heckaman, and carried on a roll call vote that the bill draft, as amended, relating to authorization of construction of a Devils Lake east end flood control structure be approved and recommended to the Legislative Management. Senators Fischer, Anderson, Heckaman, and Lee and Representatives Berg, Hofstad, and Nottestad voted "aye." No negative votes were cast.

Chairman Fischer recognized Mr. Belford. Mr. Belford thanked the committee on behalf of the citizens of the Devils Lake Basin for recommending the bill draft to the Legislative Management.

It was moved by Representative Berg, seconded by Representative Hofstad, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Management.

No further business appearing, Chairman Fischer adjourned the meeting at 1:45 p.m.

Jeffrey N. Nelson
Committee Counsel

ATTACH:6