NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER-RELATED TOPICS OVERVIEW COMMITTEE

Wednesday, December 9, 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 Duane DeKrey, Curt Hofstad, Jon Nelson, Darrell D. Nottestad

Member absent: Representative Rick Berg

Others present: See Appendix A

It was moved by Representative Nelson, seconded by Representative Nottestad, and carried on a voice vote that the minutes of the August 12, 2009, meeting be approved as distributed.

STATE WATER COMMISSION

Chairman Fischer recognized Mr. Dale Frink, State Engineer. He said the State Water Commission and State Engineer's office had been asked to review a number of items with the committee. He said he as well as State Water Commission and State Engineer's office staff would cover the items listed on the agenda. He introduced Mr. Dave Laschkewitsch, Director, Administrative Services Division, State Water Commission. Mr. Laschkewitsch reviewed State Water Commission expenditures for the 2007-09 biennium from the resources trust fund and municipal, rural, and industrial water supply funds. A copy of the expenditure and funding schedules referred to by Mr. Laschkewitsch in his presentation is attached as Appendix B. Mr. Laschkewitsch said there are three projects owned by the state of North Dakota. He said these are the Northwest Area Water Supply Project, the Southwest Pipeline Project, and the Devils Lake Outlet project. He said that during the 2007-09 period, $26,823,628 was expended on the Northwest Area Water Supply Project. However, he said, this includes $9,895,651 from the city of Minot and $14,521,638 in federal funds. Concerning the Southwest Pipeline Project, he said, a total of $15,905,336 was expended during this period, of which $6,650,910 were federal funds and $3,005,000 were bond proceeds. He said $1,357,552 was expended on the Devils Lake Outlet project during this period which includes $51,837 from political subdivisions. He said total project expenditures during the 2007-09 period were $64,086,525.

In response to a question from Senator Fischer, Mr. Laschkewitsch said the State Engineer has authority to approve projects costing up to $20,000. Projects in excess of that amount, he said, must be approved by the State Water Commission.

In response to a question from Senator Fischer, Mr. Laschkewitsch said the State Water Commission presents a list of projects to the Legislative Assembly each session. However, he said, the State Water Commission does have authority to shift funds from project to project based upon factors such as which projects are ready for construction.

In response to a question from Representative Hofstad, Mr. Laschkewitsch said the State Water Commission has several funding sources for water projects. He said sources include the water development trust fund, which consists of money from the tobacco settlement. He said the trust fund receives 45 percent of tobacco settlement money which is estimated to be $19 million for the 2009-11 biennium. He said $17 million of the $19 million is obligated for bond repayments, and thus water development trust fund money is almost all allocated for the 2009-11 biennium. He said the other significant source of funds for water projects is the resources trust fund, which is funded from 20 percent of the revenues from the oil extraction tax.

Chairman Fischer recognized Mr. Lee Klapprodt, Director, Planning and Education Division, State Water Commission. He distributed a schedule of water management plans, a letter to water board chairmen requesting assistance in developing plans, a copy of the project information and cost-share planning form, the *2009 State Water Management Plan Executive Summary*, the *2009 State Water Management Plan*, the *North Dakota State Water Commission and Office of the State Engineer Strategic Plan 2009-2011*, and the *North Dakota State Water Commission and Office of the State Engineer Biennial Report* for 2005-07. Copies of these items are on file in the Legislative Council office. He said state law requires the State Water Commission to develop state water management plans. He said the first plan was drafted in 1937 and plans have been issued periodically since then. In more recent years, he said, water development reports have been issued as supplements to the state water management plan. He said the reports and plans provide updated information regarding North Dakota's water development project needs, the ability to fund those needs, and serve as the commission's formal request for funding from the resources trust fund.

Chairman Fischer recognized Mr. Frink. He discussed project authorizations and funding, specifically the criteria the State Water Commission uses to determine whether a project is a state project. He distributed the legislative authorizations Appendix C for the three state projects. Essentially, he said, state projects are those authorized by the Legislative Assembly. Currently, he said, there are three state projects--the Devils Lake Outlet project, the Southwest Pipeline Project, and the Northwest Area Water Supply Project. He said the projects are state-owned and state-constructed, but eventually responsibility for operation and maintenance of the projects will be transferred to a local authority. He said the Southwest Water Authority provides this function for the Southwest Pipeline Project and eventually a northwest authority will be created to manage the Northwest Area Water Supply Project. He said this works well because both projects sell water and generate revenue. However, it will be more difficult to find a local or regional entity for the Devils Lake Outlet, he said, because the outlet does not generate revenue.

Chairman Fischer recognized Mr. John Paczkowski, Director, Regulatory Division, State Water Commission. He reviewed State Water Commission cost-share policy, procedure, and general requirements. A copy of his written comments is attached as Appendix D, a copy of a cost-share participation agreement is attached as Appendix E, and a copy of a drain application is attached as Appendix F.

Chairman Fischer recognized Mr. Bob Shaver, Director, Water Appropriation Division, State Water Commission. He discussed the water permit application process and a copy of his PowerPoint presentation is attached as Appendix G. He said North Dakota is a prior appropriation state. Under the prior appropriation system, he said, an appropriator who first puts water to a beneficial use receives the superior water right. Under North Dakota's water permitting law, he said, any appropriator that uses 12.5 acre-feet of water per year is required to obtain a water permit from the State Engineer. He said this is important because in times of water shortage, junior appropriators are required to cease water use to satisfy senior appropriators. He said irrigators who irrigate more than five acres per year are also required to obtain a water permit. In addition, he said, municipal and industrial users are also required to obtain water permits from the State Engineer.

Chairman Fischer recognized Mr. Frink. He reviewed the timeline of prioritization of projects. A schedule of the timeline of the Southwest Pipeline Project, Northwest Area Water Supply Project, and the timeline or process for drain construction or modification is attached as Appendix H.

Concerning information that is supplied to water commissioners and other interested parties before State Water Commission meetings, Mr. Frink said all materials made available to the commissioners are also made available to the public via the commission's website. He suggested that State Water Commission staff review the materials available on the commission's website at a future meeting.

Mr. Frink introduced Colonel Michael J. Hall, a temporary employee assigned to the commission. He said Mr. Hall will be responsible or act as a liaison between local communities and the commission.

GARRISON DIVERSION CONSERVANCY DISTRICT

Chairman Fischer recognized Mr. David Koland, General Manager, Garrison Diversion Conservancy District, Carrington. He presented a status report of the Red River Valley Water Supply Project; reviewed the 2010 workplan for the Red River Valley Water Supply Project; presented a schedule of expenditures by year for the Red River Valley Water Supply Project; reviewed the joint powers agreement between the State Water Commission and the conservancy district; reviewed the municipal, rural, and industrial 2009 construction report and presented a regional water systems map; presented a project update of the municipal, rural, and industrial water supply program; provided a projects funded-federal funds municipal, rural, and industrial water supply program update; and reviewed the municipal, rural, and industrial water supply program projects funded-State Water Commission contract fund. A copy of Mr. Koland's presentations is attached as Appendix I.

SOUTHWEST WATER AUTHORITY

Chairman Fischer recognized Ms. Mary Massad, Manager/CEO, Southwest Water Authority, Dickinson. She reviewed the history and initial plan of the Southwest Water Authority and current status and future of the authority and authority projects. A copy of her PowerPoint presentation is attached as Appendix J. A copy of the *2009 Southwest Water Authority Progress Report* is attached as Appendix K; a timeline of the Southwest Pipeline Project is attached as Appendix L; a history of Southwest Pipeline Project water rates is attached as Appendix M; a timeline of Southwest Pipeline Project projects, organizations, and funding is attached as Appendix N; a briefing paper on the background of the Southwest Pipeline Project is attached as Appendix O; a project status map is attached as Appendix P; a map of the Southwest Pipeline Project is attached as Appendix Q; a map of the Oliver-Mercer-North-Dunn phase of the project is attached as Appendix R; and an overall system map of the Southwest Pipeline Project is attached as Appendix S. She said the Southwest Water Authority is charged with the management, maintenance, and operation of the Southwest Pipeline Project for the people of the state of North Dakota. She said the authority was created in 1991 to operate and maintain the Southwest Pipeline Project.

In response to a question from Representative Hofstad, Ms. Massad said the Southwest Water

Authority can treat 12 million gallons of water per day. Currently, she said, the authority is using a maximum of 9 million gallons of water per day.

In response to a further question from Representative Hofstad, Ms. Massad said the maximum service unit cost to hook up a new user is $38,000.

In response to a question from Representative Nottestad, Ms. Massad said the Southwest Water Authority has been approached to supply water for fracturing in the western oilfields. She said several municipalities that receive water from the authority are also selling water for fracturing purposes.

In response to a question from Senator Fischer, Ms. Massad said the authority has 35,000 water users.

RED RIVER BASIN DIGITAL ELEVATION MODEL

Chairman Fischer recognized Mr. Kyle Olson, Buxton. He said he wanted to alert the committee concerning the sizing, sloping, and placing of culverts in areas covered by the Red River Basin digital elevation initiative.

No further business appearing, Chairman Fischer adjourned the meeting at 2:20 p.m.

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Jeffrey N. Nelson
Committee Counsel

ATTACH:19