

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**WATER TOPICS OVERVIEW COMMITTEE**

Wednesday, October 1, 2014  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Tony Grindberg, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Tony Grindberg, Ray Holmberg, Gary A. Lee, Larry J. Robinson; Representatives Bill Amerman, Dick Anderson, Ron Guggisberg, Curt Hofstad, Curtiss Kreun, Scott Louser, Naomi Muscha, Jon Nelson, Todd Porter, Jim Schmidt

**Members absent:** Senator Larry Luick; Representative Vicky Steiner

**Others present:** See [Appendix A](#)

**It was moved by Senator Robinson, seconded by Senator Lee, and carried on a voice vote that the minutes of the June 23-24, 2014, meeting be approved as distributed.**

**REPORT ON OPTIONS FOR LANDOWNERS ADJACENT  
TO LAKE SAKAKAWEA AND LAKE OAHE**

Mr. Jim Hauge, Eide Bailly LLP, Bismarck, provided testimony based on a handout ([Appendix B](#)) on the outcome of the study by the Board of University and School Lands of the options to address the concerns of landowners adjacent to land under the control of the Army Corps of Engineers surrounding Lake Sakakawea and Lake Oahe. He said the study resulted from 2013 House Bill No. 1338. He said the board's study provided seven options:

1. Status quo.
2. Return land above the high-water mark to the original owners.
3. Return land above the high-water mark to the state of North Dakota and the state manages the land.
4. Return land above the high-water mark to the state of North Dakota and the tribes owning adjoining land and each would manage their own land.
5. Return the land above the high-water mark to the state of North Dakota and the tribes owning adjoining land and the state, tribal government, or a local government manages the land.
6. Have the Army Corps of Engineers retain ownership of the land above the high-water mark but have the state, tribal government, or a local government manage selected portions of the land, while the corps manages the balance of the land.
7. Transfer the land above the high-water mark to the state of North Dakota and the state would transfer the land to preferential lease holders.

**WESTERN AREA WATER SUPPLY AUTHORITY**

Ms. Karlene Fine, Executive Director, Industrial Commission, provided testimony ([Appendix C](#)) on the payment of debt service on outstanding state guarantee debt from the Western Area Water Supply Authority (WAWS) industrial water sales. She said through August 31, 2014, WAWS has had industrial sales totaling \$32,851,816 and has dispersed \$26,706,557 from these industrial sales revenues to make payments as outlined by law. She said the Industrial Commission has recently approved capital projects that will be paid from industrial sales over the next several months and these projects total \$2,373,917.

In response to a question from Representative Hofstad, Ms. Fine said the Industrial Commission approved as capital project improvements to fill stations and approved the movement of the Crosby depot. She said other expenditures included signage and the designs of water storage in McKenzie County.

In response to a question from Representative Hofstad, Ms. Fine said the WAWS is ahead of schedule and has made prepayments.

In response to a question from Chairman Grindberg, Ms. Fine said the revenue forecast is ahead of projections.

Mr. Eric Hardmeyer, President, Bank of North Dakota, provided a spread sheet ([Appendix D](#)) on the WAWS debt service with prepayments. He said there has been a prepayment of approximately \$8.6 million on the guaranteed loans and all interest is current as well. He said the breakeven for sales is about \$26 million. He said things are going as planned or better than planned.

Mr. Jaret Wirtz, Executive Director, Western Area Water Supply Authority, gave a presentation ([Appendix E](#)) on an overview of the project. He provided a history of the funding requests made by WAWS. He said the total amount that will be requested through 2017 is \$349 million. He said population is increasing and the need for water is increasing. He said in 2011 the projections were for 48,000 in peak population. He said the plan for 2014 is for a peak population of 160,000. He said over time the amount of water for a fracture job has increased 20,000 barrels plus per well. He said there is a great demand for water and he does not see a large change in sales. He said he expects \$30 million to \$34 million in sales next year.

In response to a question from Representative Anderson, Mr. Wirtz said there is some recycling of water and the technology is improving, but the cost and logistics do not make it as feasible for use as freshwater. He said he does not expect any large developments as a result of recycling water.

In response to a question from Representative Hofstad, Mr. Wirtz said the \$30 million loan that will be requested would be from the resources trust fund. He said the information provided assumes an interest rate that is similar to the previous rate. He said the previous rate was 2.5 percent and was agreed through negotiations.

In response to a question from Representative Nelson, Mr. Wirtz said WAWS already has an 80 percent loan-to-grant ratio. He said the requested \$30 million loan may be serviced through industrial sales, but there are only so many sales. He said additional loans would be difficult to service.

In response to a question from Representative Nelson, Mr. Wirtz said the 75 percent grant request next biennium will get WAWS total funding closer to 50 percent loan and 50 percent grant.

Representative Nelson said he wished the cost-share was 75 percent grant and 25 percent loan for all rural water projects.

In response to a question from Representative Porter, Mr. Wirtz said the grants and loans requested by WAWS will be in the Industrial Commission's budget request.

Mr. Mark Owen, Chairman, Western Area Water Supply Authority Board, answered questions by the committee. In response to a question from Representative Porter, Mr. Owen said the WAWS will live within the budget even if it does not total the amount requested.

In response to a question from Representative Porter, Mr. Wirtz said an interconnection between the Southwest Water Authority and the WAWS would be difficult because the systems are unique systems. He said he does not know if it would work or what the cost would be. He said there is the issue of crossing the Little Missouri River. He said the line sizes do not match. He said WAWS is looking to move to the east into the Northwest Area Water Supply (NAWS). He said WAWS is open to providing water to those who need it.

In response to a question from Representative Porter, Mr. Wirtz said WAWS provides water to the doorstep of communities, such as Watford City, but the city still has needs within that city to distribute the water.

In response to a question from Representative Hofstad, Mr. Wirtz said the \$30 million loan requested for next legislative session can be paid because of the prepayment of debt.

In response to a question from Representative Hofstad, Mr. Wirtz said the project was based on industrial sales paying for the project. He said because there is buildout, there may be an opportunity to collect some revenues from residential users. He said WAWS is a wholesaler for residential use. He said a rate study was conducted and WAWS has the highest rates in the state.

In response to a question from Senator Robinson, Mr. Wirtz said projections for 2017-19 are difficult to make because it is difficult to anticipate the need. He said there has been no slow down in the activity in western North Dakota, but there may have been some stability. He said with more wells, there will be an increase in the need for water.

In response to a question from Representative Porter, Mr. Wirtz said originally WAWS was going to run all of the rural water systems within the area. He said WAWS has stayed a wholesaler and the rural water systems have operated and maintained the lines. He said WAWS is building projects and turning over the projects to the rural water system when the projects are complete.

Representative Porter said this may be unfair to other rural water systems because they have a different grant and loan policy.

In response to a question from Representative Porter, Mr. Wirtz said WAWS is a unique system like NAWS and the Southwest Water Authority. He said all three have separate operating models and are working.

In response to a question from Representative Hofstad, Mr. Wirtz said if the state does not guarantee the debt, then there may be a need for residential users to take on the debt.

### **WATER TOPICS OVERVIEW COMMITTEE STUDY DUTIES BILL DRAFT**

Committee Counsel presented a bill draft [[15.0172.01000](#)] to remove areas that already had been studied from the statutory duties of the Water Topics Overview Committee. He said the bill draft provides that the committee may work collaboratively with the State Water Commission and may meet with the State Water Commission.

**It was moved by Representative Porter, seconded by Senator Holmberg, and carried on a roll call vote that the bill draft to update the statutory study duties of the Water Topics Overview Committee be approved and recommended to the Legislative Management.** Senators Grindberg, Holmberg, Lee, and Robinson and Representatives Anderson, Amerman, Guggisberg, Hofstad, Kreun, Louser, Muscha, Nelson, Porter, and Schmidt voted "aye." No negative votes were cast.

### **PROHIBITION OF RESOURCES TRUST FUND FOR STATE WATER COMMISSION OPERATIONS BILL DRAFT**

Committee Counsel presented a bill draft [[15.0215.01000](#)] to prohibit the principal and income from the resources trust fund being available to the State Water Commission, or any employees or appointees of the State Water Commission, for wages, salaries, and operating expenses.

Mr. Dave Laschkewitsch, Director of Administration, State Water Commission, said there are other sections of law that allow salaries and operations to be paid by the resources trust fund for the southwest pipeline, NAWS, and the Devil's Lake outlet. He said the operating expenses for the Devil's Lake outlet include electricity for the outlet. He suggested adding "unless other sections allow" at the end of the new language.

Senator Robinson said he had no problem with the change. He said the bill draft was drafted at his request.

Representative Porter said he suggested adding "except for enterprises operated by the state" at the end of the new language.

Committee Counsel recommended adding "unless otherwise provided by law" at the end of the new language.

**It was moved by Representative Porter, seconded by Senator Robinson, and carried on a voice vote to amend the bill draft to add "unless otherwise authorized by law" to the end of the new language on page 2, line 2.**

**It was moved by Senator Robinson, seconded by Representative Hofstad, and carried on a roll call vote that the bill draft, as amended, to prohibit the use of principal and income from the resources trust fund by the State Water Commission for wages, salaries, and operating expenses be approved and recommended to the Legislative Management.** Senators Grindberg, Holmberg, Lee, and Robinson and Representatives Anderson, Amerman, Guggisberg, Hofstad, Kreun, Louser, Muscha, Nelson, Porter, and Schmidt voted "aye." No negative votes were cast.

### **LEGISLATIVE PROPOSAL FOR POLITICAL SUBDIVISION INFRASTRUCTURE FUNDING**

Committee Counsel distributed a bill draft [[15.0265.01000](#)] prepared for Representative Frantsvog that was drafted in conjunction with the Governor's office and the North Dakota Public Finance Authority to create a capitol infrastructure revolving loan fund of \$100 million from the strategic investment and improvement fund for rapid growth communities to build infrastructure including sewer, storm water, and drinking water supply projects.

In response to a question from Representative Porter, Committee Counsel said a rapid growth community is defined by the percentage of growth rate, which in turn defines the maximum amount of loan.

In response to a question from Senator Holmberg, Committee Counsel said he did not know how the growth rate would be determined.

Senator Holmberg said the bill draft should address how the growth rate is determined.

In response to a question from Representative Kreun, Committee Counsel said the bill draft is a work in progress and needs a few changes, including lengthening the term of the loan.

### STATE WATER COMMISSION UPDATE

Mr. Todd Sando, State Engineer and Chief Engineer-Secretary, State Water Commission, provided information on the State Water Commission project need estimates ([Appendix F](#)), detail on the funding needs ([Appendix G](#)), and 2013-15 State Water Commission water supply approvals through 2014 ([Appendix H](#)). He said there are 188 new projects which are summarized in Appendix F and listed in Appendix G. He reviewed recent activities of the State Water Commission including the request for 5 full-time equivalent (FTE) positions from the Budget Section. He said the new budget forecast has \$1 billion from the resources trust fund. He said the North Dakota Water Coalition gave the State Water Commission project recommendations that closely mirror the provided information. He said the State Water Commission approved the cost-share policy on September 15 with an effective date of October 1. He said most are satisfied with the policy except for some rural water systems and Grand Forks. He said there is a move to consolidate the information technology services of the State Water Commission with the Information Technology Department. He said he was against the consolidation.

In response to a question from Representative Nelson, Mr. Sando said there is a mix of municipal and rural water projects in category four. He said the top 25 percent in the low category four can be given loans because they can pay for the loans.

In response to a question from Representative Anderson, Mr. Sando said there is a 60 percent grant to West Fargo to replace wells.

In response to a question from Representative Anderson, Mr. Sando said West Fargo is in a high-priority category because of the high growth rate over 3 percent. He said high growth is based on population, not in the use of water.

Mr. Sando said Grand Forks has requested \$77,379,000 for a regional water plant. He said the State Water Commission provided a \$9.6 million grant and a \$52 million loan. He said the Grand Forks project is a moderate level priority. He said although Grand Forks is impacted by sulfates from the Devil's Lake outlet when Grand Forks uses Red River water, Grand Forks primary source of water is the Red Lake River. He said there was a higher cost-share with Fargo for the sulfate reduction of a 50 percent grant because Fargo obtains water from the Red River and the Sheyenne River is a backup.

Mr. Sando said any federal nexus needs to be removed for the Red River Valley Water Supply Project. He said the first problem is to indirectly get water out of the Missouri River. He said one solution is for wells near the river.

In response to a question from Chairman Grindberg, Mr. Sando said the United States Highway 200 route is a federal plan and the state cannot get a record decision. He said value engineering is being done to address the issues of building the project without a federal nexus. He said once the issue of finding a source of water is completed, the next issue will be which corridor. He said if the only place that water may be taken out of the Missouri River is near Bismarck, then the United States Highway 200 corridor may not make sense.

In response to a question from Representative Porter, Mr. Sando said the primary purpose of the Red River Water Supply Project is to provide supplemental water to Fargo in times of drought. He said now that the project is being developed as a purely state project, the project may need to be used for providing water to more places in the state. He said the Missouri River is the only source of reliable water supply for cities in the state.

Representative Porter said the project should be looked at to see if there can be an interconnection of water systems across the state. He said there is an enormous need for water in the middle of the state.

In response to a question from Chairman Grindberg, Mr. Sando said the WAWS is a hybrid local and state system. He said it is locally led and the state provides money with some of it being repaid. He said the expenditures for WAWS are consistent with the water policy for rapid growth areas.

In response to a question from Representative Nelson, Mr. Sando said rural water systems are receiving less money this biennium because so much was completed last biennium.

In response to a question from Representative Nelson, Mr. Sando said the Rugby Water Treatment Expansion can still be submitted to the State Water Commission because the State Water Commission has flexibility to look at unique regional projects.

Mr. Sando said the crosshatched areas on Appendix H show projects that received more money than was originally requested during the 2013-15 biennium.

In response to a question from Representative Kreun, Mr. Sando said Jamestown is looking for water for a fertilizer plant and trying to use prior appropriations and recycling water. He said the fertilizer plant wants a guarantee of water. He said they are looking to reuse permitted water and are not asking for more water.

Representative Kreun said the fertilizer plant cannot only use recycled water and will have to use new water. He said the State Water Commission should support economic development.

### **COST-SHARE POLICY**

Mr. Eric Volk, Executive Director, North Dakota Rural Water Systems Association, and Mr. Blake Crosby, Executive Director, North Dakota League of Cities, provided testimony based on a handout ([Appendix I](#)) relating to changes to the cost-share policy. Mr. Volk said all water supply projects should be eligible for up to 75 percent grant and loans should be available from the State Water Commission for the remainder. He said studies, reports, analyses, surveys, models, assessment, mapping projects, and engineering designs and improvements of water supply systems should be considered high-priority projects. He said all project costs should be eligible for reimbursement, except operations and maintenance costs. He said ineligible items lower the grant-to-loan ratio. He said rate comparisons are not a fair way to determine affordability. He said affordability criteria should be used to support project grant funding, not loans. He said water projects for industrial growth should be eligible and considered for high-priority projects.

Mr. Crosby said rural water systems and municipalities have commonalities. He said there is enough money to have a 75-to-25 grant-to-loan ratio.

**It was moved by Senator Robinson, seconded by Representative Nelson, and carried on a voice vote that the Chairman and the Legislative Council staff 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.**

**It was moved by Senator Holmberg, seconded by Senator Robinson, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Grindberg adjourned the meeting sine die at 12:10 p.m.

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Timothy J. Dawson  
Counsel

ATTACH:9