

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

WATER TOPICS OVERVIEW COMMITTEE

Tuesday and Wednesday, September 25-26, 2018
City Commission Room, 200 Third Street North
Fargo, North Dakota

Representative Jim Schmidt, Chairman, called the meeting to order at 8:00 a.m.

Members present: Representatives Jim Schmidt, Tracy Boe, Chuck Damschen, Michael Howe, Bob Martinson, Alisa Mitskog, Jon O. Nelson, Mark Sanford, Roscoe Streyle, Denton Zubke; Senators Jonathan Casper, Curt Kreun, Gary A. Lee, Larry J. Robinson, Donald Schaible, Ronald Sorvaag

Member absent: Representative Dick Anderson

State Water Commission members present: Governor Doug Burgum, Katie Andersen, Richard Johnson, Mark Owan, Matthew Pedersen

Others present: Lieutenant Governor Brent Sanford
Representative Al Carlson, Fargo, member of the Legislative Management
Senator Larry Luick, Fairmount
Chris Kadrmas, Legislative Council, Bismarck
See [Appendix A](#) for other persons present.

It was moved by Senator Robinson, seconded by Representative Mitskog, and carried on a voice vote that the minutes of the August 13-14, 2018, meeting be approved as distributed.

GARRISON DIVERSION PROJECT

Chairman Schmidt said Mr. Ken Royse, Chairman, Garrison Diversion Conservancy District, was unable to attend the meeting, so Chairman Schmidt called on Mr. Duane DeKrey, General Manager, Garrison Diversion Conservancy District, and Dr. Tim Mahoney, Mayor, City of Fargo, for a presentation ([Appendix B](#)) regarding the Garrison Diversion Authority project.

In response to a question from Representative Streyle, Mr. DeKrey said changing the discharge location of the project to Devils Lake from the Sheyenne River was discussed during a State Water Commission meeting. He said a white paper was developed regarding the potential change, and an engineering study was performed. He said the life cycle analysis of the potential change showed difficulties concerning water flow and no cost-savings. He said it is considered a dead issue. He also said with sufficient funds, the diversion project could be completed in 6 years.

In response to a question from Representative Nelson, Mr. DeKrey said studies of the cost to local communities to hook up to the system remain in progress, in part because the customer base is unknown.

Representative Nelson said, for projects like this, the customer base usually is identified first and costs are derived from that base. He said he is concerned the state will be left on the hook for the majority of costs for the project.

In response to a question from Representative Mitskog, Mr. DeKrey said it is realistic to assume some systems will drop out of the project once the costs are known. He said the state will be able to use any water freed up as a result.

Dr. Mahoney said the FM Area Diversion is a more important project for the Fargo area than the Garrison Diversion project. He said he will work with the Lake Agassiz Water Authority to determine how best to prioritize resources for that project and the Garrison Diversion project.

In response to a question from Representative Howe, Mr. DeKrey said the Garrison Diversion project is on track to obtain the necessary State Department of Health permit. He said the Canadian stance on the necessary water treatment requirements has softened. He said Canadian officials recently provided a definitive list of organisms that need to be treated to satisfy their concerns.

Governor Burgum said in his conversation with the Premier of Manitoba recently, the Premier agreed to future meetings regarding the Garrison Diversion project.

In response to a question from Senator Sorvaag, Mr. DeKrey said the two types of future users are larger cities like Fargo and Grand Forks that lack sufficient water, and smaller cities that want extra water. He said the large cities are on board with the project and make it financially feasible.

In response to a question from Mr. Richard Johnson, Commissioner, State Water Commission, Mr. DeKrey said the Garrison Diversion Conservancy District supports the northeast part of the state proposing options for their water supply.

FM AREA DIVERSION PROJECT

Chairman Schmidt called on Dr. Mahoney and Ms. Del Rae Williams, Mayor, City of Moorhead, and Chair, FM Area Diversion Board of Authority, for a presentation ([Appendix C](#)) on the FM Area Diversion Project, Fargo interior flood control project, Lake Agassiz Water Authority project, and Minnesota Department of Natural Resources permit and environmental review status.

In response to a question from Representative Nelson, Ms. Williams said the current plan, "Plan B," is the only option that would meet the Minnesota Department of Natural Resources criteria. She said any problems with the permit would result in at least a 1-year delay and much additional expense.

Chairman Schmidt called on Colonel Sam Calkins, Commander, St. Paul District, Army Corps of Engineers, for a presentation ([Appendix D](#)) regarding an update on the Army Corps of Engineers work on the Fargo-Moorhead area flood control project.

Chairman Schmidt called on Mr. Tony Grindberg, Finance Committee Chair, FM Area Diversion Board of Authority, for a presentation ([Appendix E](#)) regarding a financial update on the project.

In response to a question from Representative Streyle, Mr. Grindberg said the FM Area Diversion Board of Authority is still calculating the financial shortfall for the project.

Chairman Schmidt called on Mr. John Shockley, Shareholder, Ohnstad Twichell, P.C., for a presentation ([Appendix F](#)) regarding the public-private partnership (P3) for the FM Area Diversion Project.

In response to a question from Chairman Schmidt, Mr. Shockley said the allocation of risk of delays due to regulatory reasons is negotiated in the P3 contract. He said most of the risk was shifted to the private contractor. He said risk of design changes due to design flaws is allocated to the designer, who is a private contractor in this project.

In response to a question from Representative Mitskog, Mr. Shockley said the downsides of a P3 can vary. He said good contracts for P3 projects allocate risks to the entities best able to minimize them. He said in this project, maintenance will be performed by the private contractor.

In response to a question from Ms. Katie Andersen, Commissioner, State Water Commission, Mr. Shockley said the cost-savings in P3 projects are due to a faster construction timeline. He said P3 project teams often try to use special bonds for financing. He said the public entity acquires private activity bond allocation. He said this allows tax-exempt bonds to appear on the private entity's books rather than the public entity's books.

In response to a question from Representative Boe, Mr. Shockley said some private entities can use depreciation for equipment used in P3 projects.

Governor Burgum said the P3 project was discussed at President Trump's White House Infrastructure Day because of the project's low level of federal cost-share. He said the project model has a lot of appeal for future projects.

Chairman Schmidt called on Ms. Mary Scherling, Vice Chair, FM Area Diversion Board of Authority, and Commissioner, Cass County Commission, for a presentation ([Appendix G](#)) regarding the land acquisition and property mitigation plan for Fargo area flood control projects.

STATE WATER COMMISSION UPDATE ON FARGO AREA FLOOD CONTROL PROJECTS

Chairman Schmidt called on Mr. Matthew Pedersen, Commissioner, State Water Commission, for a State Water Commission update ([Appendix H](#)) on the Fargo area flood control projects.

In response to a question from Chairman Schmidt, Mr. Mark Owan, Commissioner, State Water Commission said the State Water Commission will present a document regarding the commission's 10-year needs at its next meeting.

Chairman Schmidt said the use of an emergency clause on House Bill No. 1020 (2017) was intended to encourage fast reviews, approvals, and initiations of projects, and to encourage reallocation of released money from projects that will not proceed or never got off the ground.

Governor Burgum said the State Water Commission is on the same page with Chairman Schmidt.

In response to a question from Representative Streyle, Mr. Chris Kadrmaz, Fiscal Analyst, Legislative Council, said additional revenue in the Resources Trust Fund can be allocated based on Budget Section approval.

Representative Nelson said, in the past, when it was this close to a legislative session and there was additional revenue in the fund, legislators would develop a bill draft to allocate that revenue.

Governor Burgum said the State Water Commission and legislators should work together on a bill draft and fast-track the bill to allocate the money to where it is needed.

Representative Carlson said it is important to try to get an estimate of the amount of additional revenue there will be.

Mr. Dave Laschkewitsch, Director, Administrative Services, State Water Commission, said the amount of budgeted revenue is \$267.1 million. He said the fund, which contains \$192 million, \$38 million ahead of the amount projected for this time. He said the fund is collecting between \$8.8 million and \$19 million per month.

RED RIVER VALLEY WATER SUPPLY PROJECT

Chairman Schmidt called on Ms. Tami Norgard, Counsel, for a presentation ([Appendix I](#)) regarding permits for the Red River Valley Water Supply Project.

In response to a question from Chairman Schmidt, Ms. Norgard said there is not a solid number on the amount of water claimed by the tribes in North Dakota. She said the allocation of water rights to the tribes depends on each tribe's "reasonable needs."

In response to a question from Ms. Andersen, Ms. Norgard said having a permit and putting water to beneficial use puts the state in a good position if litigation ensues.

In response to a question from Representative Nelson, Ms. Norgard said the flooding of land to create Lake Sakakawea would benefit the state's position regarding its water rights. She said the Pick-Sloan plan would be central to the argument the state should be allowed to develop and use water from the Missouri River. She said it would be helpful for the state to develop a ledger showing the lost revenue and costs of flooding resulting from that plan.

Chairman Schmidt said Mr. Gary Thompson, Co-Chairman, Red River Retention Authority, was unavailable. Chairman Schmidt called on Mr. Keith Weston, Executive Director, Red River Retention Authority; Mr. Gregg Thielman, Vice President, Houston Engineering, Inc.; and Mr. Chad Engels, Senior Project Manager, Moore Engineering, Inc., for a presentation ([Appendix J](#)) regarding Red River flood control projects.

In response to a question from Chairman Schmidt, Mr. Thielman said the potential exists for federal funds for the project if state funding is not provided.

In response to a question from Chairman Schmidt, Mr. Engels said most dams addressed by projects in the area are classified as "moderate hazard." He said he has not seen development in the flood impact area which raised the classification level of a dam. He said the "waffle plan" from the 1990s was not implemented, even though \$5 million was appropriated to the Energy and Environmental Research Center for the plan.

In response to a question from Senator Kreun, Mr. Engels said many of the projects will reduce the water flow to Grand Forks. He said all water resource district projects need to include consideration of downstream impacts.

In response to a question from Representative Mitskog, Mr. Weston said upstream impacts are considered during project planning.

Mr. Jason Benson, Engineer, Cass County, said the FM Area Diversion Authority set aside \$25 million for upstream projects years ago, and there have been a few requests for those funds. He said the requests primarily have been from Minnesota.

In response to a question from Representative Nelson, Mr. Engels said each flowage easement for a rural impoundment includes a one-time payment to the landowner for a permanent easement. He said the landowner can use the land at the landowner's risk when there is a flowage easement. He said the compensation amount for the easement is determined by an appraiser. He said, if agricultural land is flooded due to a flood control project, the land is no longer eligible for flood insurance payments. He said the FM Area Diversion Authority provides insurance for crops impacted by the project.

In response to a question from Governor Burgum, Mr. Thielman discussed the measures being taken to gauge the need for water distribution storage.

Mr. Engels said the Red River Joint Water Resource District Board spends about \$140,000 per year on data collection, and other entities are supplementing that amount. He said data are critical, and the project may need more funding for data collection.

AIRBORNE ELECTROMAGNETIC SURVEY RESULTS

Chairman Schmidt called on Mr. Scott Parkin, Hydrologist, Water Appropriations Division, State Water Commission, for a presentation ([Appendix K](#)) regarding airborne electromagnetic survey results of the Wahpeton to Fargo ground water resources.

In response to a question from Senator Robinson, Mr. Parkin said electromagnetic data have been used for about 20 years around the world.

In response to a question from Governor Burgum, Mr. Parkin said remote sensing is more cost-efficient than drilling.

In response to a question from Ms. Andersen, Mr. Parkin said this type of remote sensing is the only way to gather data on ground water resources in some aquifers.

In response to a question from Representative Mitskog, Mr. Parkin said his team has developed a survey from the South Dakota border to the Oakes aquifer and a survey to better define the Spiritwood aquifer.

CASS RURAL WATER DISTRICT

Chairman Schmidt called on Mr. Jerry Blomeke, General Manager, Cass Rural Water District, and Mr. Charlie Vein, President, AE2S, for a presentation ([Appendix L](#)) regarding Cass Rural Water District activities and regionalization of water supply systems in the Fargo and West Fargo area.

RED RIVER BASIN COMMISSION

Chairman Schmidt called on Mr. Ted Preister, Executive Director, Red River Basin Commission, for a presentation ([Appendix M](#)) regarding Red River Basin Commission projects between Minnesota, Manitoba, and North Dakota.

In response to a question from Chairman Schmidt, Mr. Preister said the commission is performing water quality sampling and monitoring.

In response to a question from Governor Burgum, Mr. Preister said the control group for the studies will depend on the area tested, and soil health and salinity will be part of the testing.

GRAFTON FLOOD CONTROL PROJECT

Chairman Schmidt called on Mr. Chris West, Mayor, City of Grafton, for a presentation ([Appendix N](#)) regarding the Grafton flood control project.

In response to a question from Chairman Schmidt, Mr. West said the project expenditures are on track.

MNDAK UPSTREAM COALITION

Chairman Schmidt called on Mr. Craig Hertsgaard, Director, MNDAK Upstream Coalition Board of Directors, for a presentation ([Appendix O](#)) regarding the impacts of area flood control projects.

STATUS OF COMMITTEE RESPONSIBILITIES

Chairman Schmidt called on the Legislative Council staff for a presentation on the status of studies and other responsibilities assigned to the committee. The Legislative Council staff said the committee completed all its required work.

COMMENTS BY INTERESTED PERSONS

Dr. Delore Zimmerman, President, Praxis Strategy Group, and Acting Executive Director, Valley Prosperity Partnership provided testimony ([Appendix P](#)) regarding economic development in the Red River Valley region. He thanked the Legislative Assembly and State Water Commission for supporting of the Red River Valley Water Supply Project.

Senator Luick provided testimony regarding his concerns about the FM Area Diversion Project and its negative impacts on his district.

The Traill County Highway Department provided testimony ([Appendix Q](#)).

Mr. Terry Savejo said he is a farmer affected by the FM Area Diversion Project. He said an inlet structure for the project is on property he used to own, and 44 acres of his land was taken for the project through eminent domain. He said he will lose his farmstead and 320 additional acres to benefit people who live in the Fargo floodplain. He said his land lies above 100-year floodplain, and his family has farmed there for three generations. He said the project is very upsetting to him and his neighbors.

Mr. Marcus Larson, a representative of the Bakke subdivision near Oxbow, said the reason there are many flood insurance policies in effect in Fargo is because there is a lot of development in the floodplain. He said Fargo needs to stop building in flood areas, and the state should not spend more money on development in floodplains. He said the Oxbow project is 98 percent over budget, and there are similar overages for projects in Wahpeton and other locations.

Representative Nelson said the issue of expensive railroad easements for water supply lines is ongoing. He said the concerns of residents have not been resolved.

It was moved by Senator Robinson, seconded by Senator Casper, and carried on a voice vote that the Chairman and the staff of the Legislative Council be requested to prepare and present a report to the Legislative Management.

It was moved by Representative Nelson, seconded by Senator Kreun, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Schmidt adjourned the committee sine die at 2:45 p.m.

Claire Ness
Counsel

ATTACH:17