

Red River Valley Water Supply Project Ownership

Requested by Rep. Jim Schmidt

January 26, 2021

Representative Jim Schmidt requested this fact sheet to analyze the advantages and disadvantages of various entities owning the Red River Valley Water Supply Project (RRVWSP or Project). The three parties analyzed are Garrison Diversion Conservancy District (Garrison Diversion), which is the currently authorized party, as well as the Lake Agassiz Water Authority (LAWA) and the State Water Commission (SWC).

Garrison Diversion

Advantages:

- * ND Century Code authorizes Garrison Diversion as the party authorized to own and operate the RRVWSP.
- * Garrison Diversion was created in 1965 to assist in the planning, design, construction, management, operation and maintenance of the Garrison Diversion Unit (GDU) facilities, including the investigation and creation of a water supply project for eastern North Dakota.
- * Garrison Diversion successfully brought the Project to construction after decades of hurdles. Construction contracts are signed and construction is on-going. Final engineering continues. Easements and land use agreements are in place. It would be difficult, time consuming and expensive to transition to a new owner, construction manager and/or operator at this point.
- * Given the decades of Project development, Garrison Diversion is a wealth of institutional knowledge of the RRVWSP and important Project history.
- * As the prospective owner and operator of the Project, Garrison Diversion invested over \$4.2 million in cash since 2000, exclusive of staff and director time, equipment and expenses.
- * Garrison Diversion's experienced management, engineering, financial and administrative staff is already successfully working on the Project. Garrison Diversion's large professional O&M staff currently operates the Snake Creek Pumping Plant and the McClusky Canal, which may be components of a RRVWSP water source.
- * Garrison Diversion already has staff, offices, equipment and shops located along the proposed pipeline route.
- * Garrison Diversion currently provides staff for LAWA by agreement and as directed in ND Century Code authority.
- * Garrison Diversion maintains good relationships with counties and townships in the construction area and service territory. Garrison Diversion has Board members from each of these counties, who are accountable to the local Project users and impacted landowners.
- * No non-project funding would be required from the Resources Trust Fund or other appropriation to cover staff salaries (like SWC would pay). Garrison Diversion staff is paid by county mill levies at this point.

- * Garrison Diversion's ownership and operation would ensure non-emergency operations costs are underwritten by the Project users and not the State, as is sometimes the case with other State-owned projects.
- * Garrison Diversion is responsive to stakeholders. LAWA has input on Garrison Diversion's decision-making per an existing contractual agreement. Stakeholder's counties have board member representation on the Garrison Diversion Board.
- * LAWA agreed, by contract, that Garrison Diversion should own and operate. There is a positive working relationship between the two entities.
- * Garrison Diversion has an existing relationship with the Bureau of Reclamation to act as the fiscal agent for Garrison Diversion Unit repayment, providing potential opportunities to optimize the cost-effective use of the federal GDU facilities.
- * Garrison Diversion has experience in addressing environmental review and navigating the Clean Water Act Waters of the United States jurisdictional issues, which will be necessary for ongoing construction, any extensions or additions to the project. Garrison Diversion is familiar with navigating other state and federal processes and permits.
- * Garrison Diversion's board includes directors from counties not included in the project area, so there is an outside, unbiased review for checks and balances.
- * If the project were taken away from Garrison Diversion, it does not eliminate the need for Garrison Diversion or change its mission or authorities.

Disadvantages:

- * The Garrison Diversion board members represent counties throughout the state, some of whom are outside the Project's service area and are less invested in the outcome. As such, there may be some question as to the commitment of Garrison Diversion leadership or priorities.
- * Garrison Diversion mill levies pays staff costs, which is financed by all 28 counties.
- * Garrison Diversion isn't the State and isn't the stakeholder, so it could be viewed as a middleman.
- * If the Project were removed from Garrison Diversion, it would eliminate jobs in rural ND and move them to Bismarck and Fargo.
- * Some may see it as a disadvantage from a funding standpoint, since the Project may receive preferential treatment for funding as a State-owned project.

Lake Agassiz Water Authority

Advantages:

- * LAWA would be locally controlled and driven by stakeholders with a passion and need for the Project.
- * LAWA is responsible to pay the local share, so some LAWA members believe they should own and control the Project.
- * A majority of ND water projects are stakeholder owned.
- * LAWA ownership would centralize the staff expense to users who benefit.

Disadvantages:

- * LAWA has no staff and would need to staff up, which they are reluctant to do with Garrison Diversion providing all necessary support.
- * Currently, Garrison Diversion has experienced staff filling many roles for Garrison Diversion's authorities, so if RRVWSP is slow, the staff always has something to work on. If LAWA staffs up and the Project slows down, this would be unnecessary overhead with no other projects to work on in the interim.
- * If LAWA owns the Project, and if the Chair and staff are in Fargo, this may be viewed by the legislature as a "Fargo project" instead of a regional project.
- * LAWA negotiated a contract identifying that Garrison Diversion should own and operate the Project. This arrangement is working well.
- * Payment for staff would likely be based on water nominations, so heavily paid by Fargo and Grand Forks, which may be viewed as an advantage or disadvantage, depending on the perspective of the audience.
- * To date, LAWA has acted in an advisory capacity, without a determination of who will ultimately be in the long-term Project. It is unclear who will be on the governance board once it is determined who will be part of the Project.

State Water Commission

Advantages:

- * The State Engineer's Office employs staff experienced in the construction and operations of large water pipeline projects like Northwest Area Water Supply (NAWS) and the Southwest Pipeline Project (SWPP).
- * With significant state funding, some legislators prefer state control and/or ownership of the Project.
- * The State Engineer's Office has experience navigating federal permits and regulatory processes.
- * The Project may receive preferential funding opportunities by the SWC if it is a State-owned project.

Disadvantages:

- * SWC is already the regulator and the funding agency. If SWC also seeks to own the RRVWSP, it may create a conflict of interest for other projects competing with RRVWSP for Resources Trust Fund money.
- * The State needs to staff up in order to add a \$1.2 billion project to the State Engineer's Office's responsibilities. Administrative and engineering staff from the SWC are funded by the Resource Trust Fund rather than the Project stakeholders. This allocates State money to the Project with no remuneration from Project users.
- * State-owned projects are a larger financial drain on the entire state to benefit one geographic area. This leads to arguments of inherent geographic unfairness.
- * Having the SWC and State Engineer's Office manage the Project in Bismarck removes input and influence of stakeholders relative to the financing, contracting, decision-making, rate setting, operations and management of the Project.
- * There has been a lack of consistent support from the SWC and State Engineer's Office for the RRVWSP over the years, so there would be elements of mistrust from stakeholders.
- * The legislature and administration are already questioning whether SWC should own the two projects currently owned, staffed and financially supported by SWC.

**ANALYSIS OF THE 2021-23 BIENNIUM HOUSE BILL NO. 1020
FOR THE STATE WATER COMMISSION**

| Senate Bill No. 2020 | | Executive Recommendation | | House Version A | | House Version B | | Variance from House Version A | |
|--|------------------|--------------------------|------------------|------------------|------------------|------------------|------------------|-------------------------------|------------------|
| Line item | 2021-23 Biennium | | Proposed | | Proposed | | | | |
| Salaries and wages | \$20,683,144 | | \$20,683,144 | | \$20,683,144 | | | | \$0 |
| Operating expenses ¹ | 43,366,550 | | 43,366,550 | | 43,366,550 | | | | 0 |
| Capital assets ^{1,2} | 165,284,777 | | 175,284,777 | | 175,284,777 | | | | 0 |
| Project carryover - Grants | 295,363,183 | | 295,363,183 | | 295,363,183 | | | | 0 |
| Water supply -Grants | 54,165,877 | | 100,000,000 | | 100,000,000 | | | | 0 |
| Rural water supply - Grants | 20,225,913 | | 41,600,000 | | 41,600,000 | | | | 0 |
| Fargo flood control | - | | - | | 66,500,000 | | | | 66,500,000 |
| Mouse River flood control | - | | 11,286,716 | | 85,786,716 | | | | 74,500,000 |
| Other flood control projects | 94,630,512 | | 49,000,000 | | 49,000,000 | | | | 0 |
| General water - Grants | 15,327,275 | | 14,227,275 | | 14,227,275 | | | | 0 |
| Basinwide plan implementation | | | 1,100,000 | | 1,100,000 | | | | 1,100,000 |
| Total appropriation | \$709,047,231 | | \$751,911,645 | | \$892,911,645 | | | | \$142,100,000 |
| Detail of Available Funding | | House Version A | | House Version B | | Variance | | | |
| Funding Source | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium | 2021-23 Biennium |
| NAWS Operations fund | \$2,239,575 | | \$2,239,575 | | \$2,239,575 | | \$2,239,575 | | \$0 |
| NAWS Project reserve fund | - | | - | | - | | - | | 0 |
| Reimbursements from political subdivisions - Water commission fund | 9,736,615 | | 9,736,615 | | 9,736,615 | | 9,736,615 | | 0 |
| ARB local cost share in new projects | 2,343,776 | | 2,343,776 | | 2,343,776 | | 2,343,776 | | 0 |
| Water rights filing fees | 210,000 | | 210,000 | | 210,000 | | 210,000 | | 0 |
| Total other income | | \$14,529,966 | | \$14,529,966 | | \$14,529,966 | | \$14,529,966 | \$0 |
| Federal funds | | 41,083,357 | | 41,083,357 | | 41,083,357 | | 41,083,357 | 0 |
| Resources trust fund (January 2021 legislative revenue forecast) | | 589,051,136 | | 607,090,224 | | 607,090,224 | | 607,090,224 | 0 |
| Bank of North Dakota line of credit | | 75,000,000 | | 75,000,000 | | 75,000,000 | | 75,000,000 | 0 |
| Total revenue available for appropriation | | \$719,664,459 | | \$737,703,547 | | \$737,703,547 | | \$737,703,547 | \$0 |
| RTF Balance (Shortfall) | | \$8,722,238 | | (\$16,103,088) | | (\$157,103,088) | | (\$157,103,088) | (\$141,000,000) |
| Water Commission Fund Balance (Shortfall) | | \$1,894,990 | | \$1,894,990 | | \$1,894,990 | | \$1,894,990 | \$0 |

¹Bank of North Dakota line of creditt proposed authorization is \$75 million of which \$4.4 million is in operating expenses and \$70.6 million is in capital assets for NAWS.

²Includes funding for state owned water projects (Northwest Area Water Supply and Southwest Pipeline)