



AGRICULTURE AND WATER MANAGEMENT COMMITTEE

Thursday, November 13, 2025
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Dori Hauck, Chairman, called the meeting to order at 10:01 a.m.

Members present: Representatives Dori Hauck, Mike Beltz, Mike Brandenburg, Kathy Frelich, Jeff Hoverson, Keith Kempenich, Dwight Kiefert, David Monson*, Dennis Nehring, Kathy Skroch; Senators Michael Dwyer, Robert Erbele, Larry Luick, Michelle Powers, Terry M. Wanzek, Mark F. Weber

Members absent: Representatives Karen A. Anderson, Lisa Finley-DeVille; Senators Cole Conley, Randy D. Lemm

Others present: Representative LaurieBeth Hager, Fargo, member of the Legislative Management United States Representative Julie Fedorchak*, North Dakota; Jeff Frith, Devils Lake Basin Joint Water Resource Board; Reice Haase and Duane Pool, Department of Water Resources; Karen Hausmann and Garland Hoistad, Churchs Ferry; Kurt Lysne, North Dakota Water Users Association; Amy McBeth*, Burlington Northern Santa Fe Railway; James Odermann, State Water Commission; Levi Otis*, Ellingson Companies; Matt Perdue and Matt Retka, North Dakota Agriculture Mitigation, Inc.; Keith Weston, North Dakota Water Resource Districts Association

See [Appendix A](#) for additional persons present.

**Attended remotely*

It was moved by Representative Kempenich, seconded by Senator Erbele, and carried on a voice vote that the minutes of the September 11, 2025, meeting be approved as distributed.

MISCELLANEOUS REPORT

Ms. Amy McBeth, General Director of Public Affairs, Burlington Northern Santa Fe Railway, presented information ([Appendix B](#)) regarding a proposed merger between Union Pacific Railroad and Norfolk Southern Railway and the potential effects on the agriculture industry. She noted:

- The proposed merger would control approximately 45 percent of the commercial rail market.
- The merger likely would reduce competition and impact the structure of the railroad industry, which could cause supply chain issues.
- Railroads are federally regulated to promote continuity and efficiency within the national railway network.

WETLANDS AND INUNDATED LANDS STUDY

United States Representative Julie Fedorchak, North Dakota, presented information ([Appendix C](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state. She noted:

- The Landowner Easement Rights Act would prohibit new conservation easements obtained by the United States Department of the Interior from exceeding a term of 30 years.
- If enacted, the Act would allow a landowner to renegotiate or buy back an easement lacking an official map or an easement over 30 years old.

- The methods deployed by the United States Fish and Wildlife Service to regulate setbacks adjacent to easement areas have changed as presidential administrations have changed.

Mr. Matt Perdue, Secretary/Treasurer, and Mr. Matt Retka, Technical Consultant, North Dakota Agricultural Mitigation, Inc., presented information ([Appendix D](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state. They noted:

- North Dakota Agricultural Mitigation (NDAM) assists landowners in navigating mitigation issues under the purview of the Natural Resources Conservation Service, not the United States Fish and Wildlife Service.
- NDAM evaluates a farmer's land to determine if NDAM's Wetland Mitigation Banking Program would help a farmer remain in compliance with federal farm programs.
- Under these mitigation programs, NDAM holds a 99-year easement, the maximum under state law, and the landowner reserves the right to access, hay, and graze the land but may not farm or alter the hydrology of the land, subject to the easement.
- The price for each site in the Wetland Mitigation Banking Program is determined by market conditions rather than by federal or state government programs.

Ms. Dani Quissell, Executive Vice President, North Dakota Water Users Association, presented information ([Appendix E](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state. She noted navigating federal wetland management programs often requires specialized knowledge, but recent court decisions should provide clarity to farmers participating in these programs, specifically the programs regulating Waters of the United States.

Mr. Jeff Frith, Manager, Devils Lake Basin Joint Water Resource Board, presented information ([Appendix F](#)) regarding the committee's study of water and wetlands regulations. He noted:

- The United States Fish and Wildlife Service owns easements in each county within the Devils Lake Basin, which is considered a closed basin.
- Compensation for downstream landowners is available under a mitigation plan administered by the Department of Water Resources (DWR), provided the landowners can prove the damages were caused by water discharged through one of Devils Lake's emergency outlets.
- If the level of Devils Lake rises to approximately 1,458 feet above sea level, water would naturally release into the Sheyenne River.
- Because Devils Lake was considered navigable at statehood, the state classifies the land under Devils Lake as sovereign lands, which is subject to the equal footing and public trust doctrines.

Comments from Interested Persons

Representative Kathy Frelich, Devils Lake, presented information ([Appendix G](#)) regarding the committee's study of water and wetlands regulations, specifically applied to Devils Lake.

Ms. Karen Hausmann, Churchs Ferry, presented information ([Appendix H](#)) regarding the committee's study of water and wetlands regulations, specifically applied to Devils Lake. She noted her family's farmland has become inundated because of the rising water levels in Devils Lake.

Mr. Garland Hoistad, Churchs Ferry, presented information regarding the committee's study of water and wetlands regulations, specifically applied to Devils Lake. He noted:

- His land has been inundated by Devils Lake, and questioned whether the state owns the inundated land under the lake.
- Due to the lake's rising levels, landowners have lost their homes, income, and communities and have been given no recourse to remedy the losses.

ECONOMIC ANALYSIS STUDY

Mr. Dustin Richard, Counsel, Legislative Council, presented a memorandum entitled [Economic Analysis Formula for Drain Projects Study - Background Memorandum](#).

Dr. Duane Pool, Director, Planning and Education Division, Department of Water Resources, presented information ([Appendix I](#)) regarding the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses. He noted:

- In DWR's budget update provided to committee members, the discretionary bucket figures are incorrect and should state that approximately \$1 million in that bucket has been obligated and approximately \$9 million is unobligated.
- As a result of the enactment of House Bill No. 1020 (2017), the State Water Commission (SWC) was required to conduct an economic analysis for certain projects costing more than \$1 million under North Dakota Century Code Section 61-02-01.3; however, following the enactment of the bill, SWC adopted an internal policy requiring an economic analysis for certain projects costing \$200,000 or more.
- The SWC and DWR use an objective, economic analysis tool rooted in actuarial science to determine the present day economic efficiencies of a project from a statewide perspective.
- The economic analysis tool analyzes only direct costs because it is too difficult to capture all relevant indirect costs.
- The economic analysis tool examines whether a project will enhance an agricultural operation, especially if nonfarmland acres are converted into productive farmland acres.

Mr. Reice Haase, Director, Department of Water Resources, Mr. James Odermann, Commissioner, State Water Commission, and Dr. Pool presented information ([Appendix J](#)) regarding the committee's study of the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses. They noted:

- Declining resources, diminished trust fund revenues, and rising project costs likely will result in less funding for water projects.
- In general, SWC affords first priority to funding requests for high- and medium-priority projects included in SWC's water development plan within the first 6 months of the biennium, and after 6 months, any project application is considered to receive cost-share funding from SWC.
- An individual who first establishes a water right has priority over another individual also seeking to establish a water right in the same water source.
- Competing water rights may lead to the issuance of fewer irrigation permits because the water in a given aquifer has been fully appropriated.

Mr. Kurt Lysne, Board Member, North Dakota Water Users Association, and Mr. Keith Weston, Board Member, North Dakota Water Resource Districts Association, presented information ([Appendix K](#)) regarding the committee's study of the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses. They noted:

- With regular maintenance, the useful life of an assessment drain and related components is approximately 50 years.
- The amount of cropland protected by a project is a major factor in determining whether a project will receive a favorable score under the economic analysis formula.
- An assessment drain constructed under current industry standards should have the capacity to withstand a 10-year moisture event, in which the drain is capable of conveying approximately 3.25 inches of water in a 24-hour period without sustaining damage.

Mr. Levi Otis, Director of Government Affairs, Ellingson Companies, presented information ([Appendix L](#)) regarding the committee's study of the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses. He noted farmers traveling in farm machinery are sometimes forced to use high-traffic roads because rural areas can become flooded from the lack of drain tile.

COMMITTEE DISCUSSION

Committee members expressed interest in:

- Presenters and industry leaders continuing to provide possible solutions related to the committee's studies for the committee's consideration.
- DWR providing a detailed presentation at the next meeting of the issues related to the Devils Lake Basin, including economic impacts for farmers and drainage issues.
- Discussing the administrative tools the United States Department of the Interior can use to positively affect landowners subject to United States Fish and Wildlife Service easements.
- Determining whether a fertilizer plant could be established in the state given the increased capacity to transport natural gas across the state.

It was moved by Representative Beltz, seconded by Representative Brandenburg, and carried on a roll call vote that the Legislative Council staff forward a letter to the Chairman of the Legislative Management requesting the addition to the committee's assignments a study to determine the feasibility of establishing and operating a fertilizer production facility in the state and the minimum capacity requirements to sustain a fertilizer production facility. Representatives Hauck, Beltz, Brandenburg, Frelich, Hoverson, Kempenich, Kiefert, Nehring, and Skroch and Senators Dwyer, Erbele, Luick, Powers, Wanzek, and Weber voted "aye." No negative votes were cast.

No further business appearing, Chairman Hauck adjourned the meeting at 4:59 p.m.

Dustin A. Richard
Counsel

ATTACH:12