



AGRICULTURE AND WATER MANAGEMENT COMMITTEE

Tuesday, March 31, 2026
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Dori Hauck, Chairman, called the meeting to order at 9:31 a.m.

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

Member absent: Representative Lisa Finley-DeVil

Others present: Representative LaurieBeth Hager, Fargo, member of the Legislative Management Aaron Birst, North Dakota Association of Counties; Doug Goehring, Agriculture Commissioner; Amy McBeth, Burlington Northern Santa Fe Railway; Jeffrey McCoy, Pacific Legal Foundation; John Paczkowski, Duane Pool, and Jennifer Verleger,* Department of Water Resources

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

**Attended remotely*

It was moved by Representative Beltz, seconded by Representative Frelich, and carried on a voice vote that the minutes of the November 13, 2025, meeting be approved as distributed.

REQUIRED REPORTS

Mr. Doug Goehring, Agriculture Commissioner, provided six reports ([Appendix B](#)) relating to autonomous technology grants, irrigation, the recent transactions of the Low-Carbon Fuels Fund, the recent disbursements from the Environmental Impact Mitigation Fund, animal feeding operations, and capacity requirements for fertilizer production facilities. He noted:

- While fertilizer storage has greatly increased in the past decade, fertilizer facilities in the state are not required to report the amount of fertilizer stored, but are required to report the amount of fertilizer distributed in the state.
- Conservation tillage practices have increased the use of anhydrous ammonia, with the greatest increases occurring in the western half of the state.
- The estimated capital construction costs for a small fertilizer facility typically ranges from \$150 million to \$350 million. Capital construction costs for a large fertilizer facility producing approximately 1,000,000 tons of fertilizer per year is between \$2.5 billion and \$3 billion.
- The Legislative Assembly's decision to invest in natural gas development and value-added agriculture operations has brought new businesses to the state, which has strengthened the state's agriculture industry.
- The odor detection tool being developed by the Department of Agriculture will allow the public to view potential odor effects associated with an animal feeding operation in a particular area. The tool will use prevailing wind patterns from the North Dakota Agricultural Weather Network to assist in determining the appropriate setbacks for a specific animal feeding operation.

- The department is working with other state agencies and engineering firms to explore new options to develop methods for using surplus sheetwater for irrigation.

ECONOMIC ANALYSIS STUDY

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

- Adding flexibility to the economic analysis tool, including a mechanism for recapturing benefits following project redesign or maintenance after a project has reached the end of its useful life, could better capture the nuances of individual projects.
- Changes to the economic analysis tool also could include a mechanism for re-evaluating original hydrology, climate, and drain design data to comport with and account for current data and practices.
- State law precludes the Department of Water Resources from considering indirect benefits and costs when conducting an economic analysis on a project.

Ms. Dani Quissell, Executive Vice President, North Dakota Water Users Association, presented information regarding the formula for conducting an economic analysis for assessment drain projects and the projected cost threshold for conducting economic analyses. She noted the North Dakota Water Users Association and the North Dakota Water Resource Districts Association are eager to continue working with the Department of Water Resources to discuss some of the proposed changes to the economic analysis tool and the methods to implement the changes.

WETLANDS AND INUNDATED LANDS STUDY

Mr. John Paczkowski, State Engineer, and Ms. Jennifer Verleger, General Counsel, Department of Water Resources, presented information ([Appendix D](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands, specifically applied to Devils Lake. They noted:

- The east side of Devils Lake has the highest sulfate levels in the lake, which has led to reduced water removal in that area.
- Based on studies related to the historical hydrology of the Devils Lake Basin, Devils Lake naturally flowed through the Tolna Coulee into Stump Lake approximately 2,000 years ago. The lake currently is not at an elevation at which a natural release into Stump Lake could occur.
- The Tolna Coulee control structure is not considered a dam because it was not designed to hold back the flow of water.
- The Department of Water Resources operates the two discharge outlets on Devils Lake. Pumping usually resumes in May of each year; however, if sulfate levels in the lake become too high, the discharge pumps may cease pumping operations earlier than anticipated.
- In 1995, the State Engineer declared all drainage in the Devils Lake Basin to be of statewide significance. Because of that declaration, the State Water Commission has final approval authority over drainage activities in the basin.
- At statehood, Devils Lake covered approximately 60,000 acres. Currently, the lake covers 155,000 acres. Under the equal footing and public trust doctrines, the state holds in trust for the public all sovereign lands of the state, including the beds of navigable waters up to the ordinary high water mark. Under the doctrines of reliction and submergence, the ordinary high water mark is ambulatory, so ownership interests of lands adjacent to sovereign lands shift as the ordinary high water mark rises and falls. All lands, including mineral interests, currently submerged under Devils Lake are considered sovereign lands.

Mr. Marty Haroldson, Director, Division of Water Quality, Department of Environmental Quality, presented information ([Appendix E](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state, specifically applied to Devils Lake. He noted:

- To protect aquatic organisms, the Department of Environmental Quality adheres to an aquatic water quality standard of 750 milligrams of pollutant per liter when monitoring and managing water pollutants.
- Membrane filtration, rather than chemical filtration, often is required to remove total dissolved solids, including sulfate, from untreated water.

Mr. Jeffrey W. McCoy, Senior Attorney, Pacific Legal Foundation, presented information ([Appendix F](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state. He noted:

- The setback rules for lands adjacent to a wetland under the Swampbuster Program administered by the United States Department of Agriculture are less burdensome for farmers than the setback rules for lands adjacent to a wetland subject to a conservation easement owned by the United States Fish and Wildlife Service (USFWS).
- Collaborating with North Dakota's congressional delegation and providing input during comment periods of a formal federal rulemaking process are effective ways for members of the Legislative Assembly to influence and effectuate change to the federal laws and rules governing USFWS easements.

Ms. Jennifer Vetter, Assistant State Conservationist of Compliance, and Mr. Richard Webb, State Resource Conservationist, Natural Resources Conservation Service, presented information ([Appendix G](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state. They noted:

- To be classified as a wetland under the federal Food Security Act, hydrophytic vegetation, hydric soils, and wetland hydrology must be present in the area being analyzed as a wetland.
- The Natural Resources Conservation Service (NRCS) considers off-site information, including past and current aerial imagery, climatic data, and soil and ecological information, to determine whether to classify an area as a wetland. If NRCS cannot make the determination using off-site information, an NRCS agent will conduct an onsite visit to determine classification.

Mr. Aaron Birst, Executive Director, North Dakota Association of Counties, and Mr. Stanley Dick, Commissioner, Cavalier County Board of County Commissioners, presented information ([Appendix H](#)) regarding the committee's study of water and wetlands regulations and the taxation of inundated lands in the state. They noted:

- When agricultural land is removed from production because of inundation, the property tax burden for the nonproducing parcel is shifted to the other landowners in the county.
- Approximately 66,000 acres in Cavalier county are inundated, with the majority of the inundation affecting agricultural land.
- Approximately 24,000 acres in Cavalier county are subject to USFWS easements. These parcels generate less revenue for the county than land classified as agricultural land.
- If all wetland acres across Cavalier county were converted into productive agricultural land, the true and full value of the taxable land in the county would increase by approximately \$65 million.

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

In response to Representative Frelich's presentation, Chairman Hauck invited Mr. Paczkowski to answer additional questions from committee members. He noted:

- The state is seeking to lower the level of Devils Lake through the use of pumps at discharge outlets rather than maintaining a specific level for the lake.

- When landowners along the Sheyenne River suffer damages caused by the Devils Lake discharge outlets, the affected landowners are compensated. Landowners around Devils Lake typically are not compensated for rising lake levels because, according to the North Dakota Supreme Court, damages around Devils Lake have been caused by an unprecedented wet cycle, also referred to as an "Act of God," not the state's operation of the discharge outlets.

COMMITTEE DISCUSSION

Committee members discussed the status of the proposed merger between Union Pacific Railroad and Norfolk Southern Railway. Committee members expressed concerns about how the merger, if approved, could decrease market competition, which may lead to higher costs for agricultural producers.

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

- To begin the process of merging railroad companies, an application must be filed with the federal Surface Transportation Board (STB).
- If the STB accepts the application for merger, interested parties have a limited amount of time to file a notice of intent to comment in the formal merger proceedings.
- The STB ultimately will decide whether to approve the proposed merger between Union Pacific Railroad and Norfolk Southern Railway.

It was moved by Representative Kempenich, and seconded by Representative Brandenburg, that the Legislative Council staff forward a letter to the Chairman of the Legislative Management requesting authorization for the committee to draft, publish, and distribute a statement opposing the proposed merger between Union Pacific Railroad and Norfolk Southern Railway.

Committee members discussed the possibility of submitting the statement of opposition as individual members of the Legislative Assembly rather than on behalf of the interim Agriculture and Water Management Committee. Committee members viewed that option as a viable and logistically effective option.

After further discussion, **Representative Kempenich withdrew his motion, and Representative Brandenburg withdrew his second.**

For the next meeting, committee members:

- Expressed interest in finding solutions for landowners affected by the flooding in the Devils Lake basin and across the state.
- Requested a presentation from the Department of Water Resources and the North Dakota Water Resource Districts Association to discuss policy changes to the economic analysis tool for assessment drain projects.

No further business appearing, Chairman Hauck adjourned the meeting at 4:22 p.m.

Dustin A. Richard
Counsel

ATTACH:9