

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

GARRISON DIVERSION OVERVIEW COMMITTEE

Thursday, September 17, 1998

Commanding Officer's Quarters, Building No. 3
Fort Totten State Historical Site, Fort Totten, North Dakota

Representative Pam Gulleson, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Pam Gulleson, Merle Boucher, John Dorso, Eugene Nicholas, Mike Timm; Senators Aaron Krauter, Tim Mathern, Gary J. Nelson, John T. Traynor

Members absent: Representative Alice Olson; Senators David E. Nething, Terry M. Wanzek

Others present: Robert Rostad, Richland County Water Resource District, Colfax

Al Biggs, Richland County Water Resource District, Fairmount

Russ Dushinske, Garrison Diversion Conservancy District, Devils Lake

Jeff Riedesel, Garrison Diversion Conservancy District, Carrington

Joe Belford, Ramsey County, Devils Lake

Gordon Weixel, Devils Lake Journal, Devils Lake

Bob Fosson, North Dakota Farm Bureau, Lakota

Dave Koland, North Dakota Rural Water Systems Association, Bismarck

David Sprynczynatyk, State Water Commission, Bismarck

Tom Moe, Traill County Water Resource District, Mayville

Norman Dahl, Griggs County Resource District, McHenry

Robert Boone, Traill County Water Resource District, Glynden, Minnesota

It was moved by Senator Krauter, seconded by Senator Mathern, and carried on a voice vote that the minutes of the December 11, 1997, and February 19, 1998, meetings be approved as mailed.

GARRISON DIVERSION UNIT PROJECT

At the request of Chairman Gulleson, Mr. Joe Belford, Cochairman, Lake Emergency Management Committee, Devils Lake, addressed the committee. He welcomed the members of the committee to the Devils Lake Basin and noted that Devils Lake continues to rise. He reviewed the activities of the Lake Emergency Management Committee. He noted that evaporation has reduced the lake level by approximately nine-tenths of one foot this summer, but even if the Devils Lake Basin is entering a dry cycle, it will still take several years for the lake level to

decrease to a level that is not dangerous to people and property. He said if the level of Devils Lake rises two and one-half feet, it will spill over into the Stump Lake system, and if the lake level rises to 1,459 feet mean sea level, it will flow naturally into the Sheyenne River. He said public officials in the Devils Lake Basin are pursuing a three-prong approach to deal with Devils Lake flooding. He said these include floodplain management, protecting Devils Lake Basin infrastructure, and working for an outlet. Concerning the outlet, he said, it is being constructed at the west end of Devils Lake to address downstream water quality concerns. In conclusion, he said, Devils Lake flooding is of statewide concern, and the residents of Devils Lake need the assistance of the state to deal with the problem.

At the request of Chairman Gulleson, Mr. Jeff Riedesel, Administrative Officer, Garrison Diversion Conservancy District, Carrington, addressed the committee. He distributed a summary of the Dakota Water Resources Act which reviews the rationale for the Act and contains a brief section by section summary of the Act. A copy of this summary is attached as Appendix A. He also distributed a press release dated September 3, 1998, entitled *Garrison Diversion Manager Addresses Red River Basin Management Board*. A copy of the press release is attached as Appendix B.

Concerning fiscal year 1999 Garrison appropriations, Mr. Riedesel said, the administration's proposal contained \$24.1 million. Of this amount, he said, \$20.6 million was allocated for construction, \$463,000 for the Jamestown Reservoir, and \$3 million for Indian municipal, rural, and industrial water supply projects and operation and maintenance of those projects. He said the administration's proposal did not include any money for the Oakes Test Area, but \$5.9 million has been written into the bill for additional municipal, rural, and industrial water supply funds and \$500,000 for the Oakes Test Area. He said the write-in amount was included in the Senate version of the bill but not in the House version, and the bill is currently in conference committee.

Concerning the Dakota Water Resources Act hearing in the House of Representatives, Mr. Riedesel said, the Garrison Diversion Conservancy District was pleased with the hearing. He said the

proponents received a positive reception and the Garrison Diversion Conservancy District is not aware of any negative feedback. At this time, he said, there are three panels planned for the next Dakota Water Resources Act hearing to be held on September 29. The first panel, he said, would consist of the Congressional Delegation, Governor, and state legislative leaders. The second panel, he said, will consist of Dan Beard, National Audubon Society; Mitchell McCormick, Southwest Pipeline Project; Bruce Furness, Mayor, City of Fargo; a representative of the state of Minnesota; and representatives of the state's Indian tribes. The third panel, he said, will consist of representatives of the Garrison Diversion Conservancy District; Mr. Dave Koland, Executive Director, North Dakota Rural Water Systems Association; a representative of the National Wildlife Federation; and a representative of the North Dakota Chapter of the Wildlife Society.

In response to a question from Senator Traynor, Mr. Riedesel said the legislation calls for a study of the best connecting link between the McClusky Canal and the New Rockford Canal.

In response to a further question from Senator Traynor, he said the bill calls for an assessment of water needs in the Red River Valley, and based upon this assessment, a determination will be made on the best facility to deliver this water.

In response to Mr. Riedesel's comments, Senator Traynor said the Garrison Diversion Conservancy District should ensure that the delivery feature is large enough to deliver water to Devils Lake when the inevitable dry cycle returns to the Devils Lake Basin.

At the request of Chairman Gulleeson, Mr. David Sprynczynatyk, State Engineer and Secretary, State Water Commission, addressed the committee. He said Devils Lake is approximately 10 inches below its July 1, 1998, level. He said even with the mild winter the lake peaked in July. He said water tables in the Devils Lake Basin are very high, and thus it will not require as much snowfall to create a large runoff in the basin next spring. However, he said, although Devils Lake may have received a reprieve during the last several months, there is no reason to suggest that the lake will not continue its rise next year.

Devils Lake flooding, Mr. Sprynczynatyk said, is a very complex issue that no single solution will be able to solve. Thus, he said, the State Water Commission has adopted a three-prong approach to address flooding in the Devils Lake Basin. The first prong, he said, is upper basin storage of water. Second, he said, is to fortify the infrastructure around the lake to protect the city of Devils Lake and its residents. Third, he said, is to remove water from the lake. However, he said, all the efforts to address Devils Lake flooding actually hinder efforts to construct an outlet. The reason for this, he said, is that if actions to ameliorate damages are undertaken, the necessity and the benefit of an outlet will be reduced. He said the

current plan for the outlet is that it be constructed from the west end of Devils Lake to the Sheyenne River. He said the outlet will be in the form of an 84-inch concrete pipeline with pump stations near the lake itself and a capacity of approximately 300 cubic feet per second. However, he said, it is unlikely that the outlet would ever be operated at its maximum capacity because of downstream flooding concerns, downstream water quality concerns, and Canadian concerns. The first two concerns, he said, can be dealt with operationally. However, the third concern is more problematical. Even though the Devils Lake Basin is a part of the Red River Basin and ultimately drains into Hudson Bay, he said, it has been a long time since Devils Lake overflowed into the Sheyenne and Red Rivers, and Canadians are concerned that there may be biota or organisms in Devils Lake that are not present in the Red River Basin. He said the Canadian issue is very complex and is not just an environmental or scientific issue. For example, he said, he has seen an editorial in the *Winnipeg Free Press* that states that even if the environmental studies reveal no possibility that biota not present in the Red River Basin would be transferred by an outlet to Devils Lake, the project would not necessarily be acceptable to Manitoba.

Concerning the United States Army Corps of Engineer's Outlet Study, he said, the study is to be presented to Congress in December and will address economics, environmental issues, compliance with the Boundary Waters Treaty of 1909, and engineering and feasibility. Under the traditional National Environmental Policy Act review, he said, the environmental impact statement would be scheduled to be completed in May of 2000, at which time construction could begin. However, he said, there is an expedited procedure whereby construction could start earlier. However, he said, even under the most optimistic scenario operations could not begin until 2000 and not until 2001 if the traditional timetable is followed. He said the outlet could release approximately 1.25 feet of water per year once it becomes operational, and had the outlet been in operation since 1995 Devils Lake would be two to four feet lower than it is today.

Mr. Sprynczynatyk distributed a chart showing the level of Devils Lake in 2002 if the next five years mirror the last five years. A copy of the chart is attached as Appendix C. The chart shows that even with an outlet Devils Lake will reach approximately 1450 feet mean sea level in December 2002 if the next five years are the same as the last five years. He also distributed a chart showing historic Devils Lake water levels between 1860 and 1998. A copy of this chart is attached as Appendix D.

In response to a question from Representative Gulleeson, Mr. Sprynczynatyk said the current estimated cost of the outlet to the Sheyenne River is approximately \$44 million. However, he said,

mitigation costs are unknown at this time. He said this cost will be split 65-35 with the federal government assuming 65 percent and 35 percent coming from nonfederal sources. He said the Legislative Assembly has authorized the State Water Commission to bond up to 25 percent of the cost of the outlet.

In response to a question from Representative Dorso, Mr. Sprynczynatyk said the cost benefit analysis for the Devils Lake outlet has been delayed from August 31 to December 31. He said the rationale for doing so is that an independent review is being conducted by Dr. Jay Leitch of North Dakota State University.

In response to a comment from Representative Dorso, Mr. Sprynczynatyk agreed that if the cost benefit ratio is less than one then the United States Army Corps of Engineers will not support the outlet. In this event, he said, the only solution would be congressional action to direct the Corps of Engineers to construct an outlet.

Representative Dorso said the more the state and local governments spend addressing Devils Lake flooding the less likely it will be that the cost benefit analysis for the Devils Lake outlet will show a ratio greater than one. Also, he said, it is his understanding that the environmental analyses required under the National Environmental Policy Act will not be fast tracked. Thus, he said, the Legislative Assembly should not appropriate scarce state funds to match federal funds for construction of an outlet if no progress can be made on construction of an outlet during the next biennium.

In response to a question from Representative Nicholas, Mr. Sprynczynatyk said it will not be possible to move water to Stump Lake this fall. The reason for this, he said, is that there has been no determination as to mitigation requirements if the federal wildlife refuge at Stump Lake is inundated by moving water from Devils Lake to Stump Lake.

In response to a question from Senator Traynor, Mr. Sprynczynatyk said Devils Lake must rise to a level of 1,446.6 feet mean sea level to begin spilling over into Stump Lake. At elevation 1,459 feet mean sea level, he said, Devils Lake will spill into the Sheyenne River.

Garrison Diversion Unit Municipal, Rural, and Industrial Water Supply Program

At the request of Chairman Gulleason, Mr. Sprynczynatyk distributed a chart containing a five-year fiscal plan for the Garrison municipal, rural, and industrial water supply program. A copy of the chart is attached as Appendix E.

He said the chart shows the allocation of the remaining \$53 million in federal funds under the municipal, rural, and industrial water supply program authorized by the Garrison Diversion Unit Reformulation Act of 1986. He said the chart allocates funds for the Benson Rural Water Project, Northwest Area

Water Supply Project Rugby phase, Northwest Area Water Supply Project Minot phase, Pierce County Rural Water Project, and Ransom Sargent Rural Water Users Project. Among other projects that are being constructed with Garrison municipal, rural, and industrial water supply funds, he said, are the Burleigh Water Users System, Dickey Rural Water System, All Seasons Rural Water System, Missouri West Rural Water System, and the North Valley Rural Water System.

Considering the Northwest Area Water Supply Project, Mr. Sprynczynatyk said the state is currently in negotiations with Canada over disinfection of Missouri River water entering the Hudson Bay drainage system. He said the planned disinfection method is ozonation. In 1994, he said, representatives of Canada indicated that disinfection would be sufficient to allow Missouri River water to enter the Northwest Area Water Supply System. However, recently, he said, Canadian officials have indicated this disinfection may not be sufficient and perhaps filtration may be necessary.

Concerning operation of the Boundary Waters Treaty of 1909, Mr. Sprynczynatyk said, the important thing to remember is that neither country has veto authority over the other. Under the treaty, he said, the obligation of each signatory is not to do harm to the other country. Thus, he said, the United States could say it is in compliance and move forward with construction of the Northwest Area Water Supply Project and Canada's only recourse would be to refer the dispute to international courts. If negotiations with Canada are successful, he said construction of the Northwest Area Water Supply Project can begin next year. Currently, he said, there are 15 communities that have agreed to participate and will be served by the Northwest Area Water Supply Project. Kenmare, he said, has just voted to join the project.

Southwest Pipeline Project

Concerning the Southwest Pipeline Project, Mr. Sprynczynatyk said the State Water Commission currently has four contracts under way and the project is currently serving 17 communities. He said it is hoped that Hebron can be brought on-line this fall and Glen Ullin in 1999. He said the pipeline is serving 1,200 rural hookups, and it is hoped that 200 more rural hookups can be added this year. He said the city of Lemmon, South Dakota, voted earlier this year to join the Southwest Pipeline Project and will be required to pay an additional \$4 or \$5 million in order to join the Southwest Pipeline Project.

In response to a question from Senator Krauter, Mr. Sprynczynatyk said future financing of the Southwest Pipeline Project is in doubt. He said that approximately \$71 million of the \$200 million authorized for the Southwest Pipeline Project has been exhausted. Also, he said the State Water Commission has leveraged the repayments to the extent

possible, and this has allowed construction to proceed in 1998. Until passage of the Dakota Water Resources Act and its additional authorization for Garrison municipal, rural, and industrial water supply projects, he said, the financial future of the Southwest Pipeline Project is questionable.

Committee council distributed a letter from Mr. Dennis E. Breitzman, Area Manager, Dakotas Area Office, Bureau of Reclamation, Department of the Interior. The letter contains information on the Red River Valley study, the Northwest Area Water Supply Project, fiscal year 1997 and 1998 construction activities, operation and maintenance activities, and the fiscal year 1999 budget. A copy of this material is attached as Appendix F.

In response to a question from Representative Dorso, Mr. Riedesel noted that the administration's budget calls for \$20,563,000 for Garrison Diversion Unit construction, \$463,000 for the Jamestown Dam, and \$3,088,000 for Indian municipal, rural, and industrial water supply programs and operation and maintenance of these programs.

In response to the report, Representative Dorso noted that the administration's budget calls for \$5,625,000 to be spent for mitigation and only \$8,490,000 for non-Indian municipal, rural, and industrial water supply projects.

In response to a question from Representative Dorso, Mr. Riedesel said it is unlikely that any of the money allocated for the municipal, rural, and industrial water supply systems will be reallocated for the Southwest Pipeline Project unless something unforeseen occurs to one of the projects that is currently slated to receive funding.

In response to the question from Representative Dorso, Mr. Sprynczynatyk said that the \$200 million authorized for municipal, rural, and industrial water supply projects in the Garrison Diversion Unit Reformulation Act of 1986 did not specify for which state projects the money had to be expended. In fact, he said, during the first seven years all municipal, rural, and industrial water supply funds were allocated to the Southwest Pipeline Project because it was the only project at the time far enough along in development to use the funds. However, he said, as a result of discussions in 1995, it was determined that the appropriate amount of the \$200 million allocated to the Southwest Pipeline Project is \$71 million. Now, he said, as of 1998, this amount has been exhausted. He said if it was determined to reallocate the \$53 million to the Southwest Pipeline Project, it could be done legally but probably not politically.

Missouri v. Craig Litigation

Mr. Sprynczynatyk said that oral arguments were scheduled for next week in the Eighth Circuit Court of Appeals in *Missouri v. Craig*. He said North Dakota and several other upper basin states had filed amicus briefs but will not participate in the oral argument and

will await the decision of the court before determining how to proceed.

Promised Payment Plan

Mr. Sprynczynatyk said the State Water Commission and local project sponsors are working on a memorandum of understanding for the promised payment plan.

In response to a question from Representative Nicholas, Mr. Sprynczynatyk said if the state were to attempt to finance the Devils Lake outlet as a state project with no federal involvement, it would still encounter many of the same problems. Also, he said, the project must comply with the Boundary Waters Treaty of 1909. He said the state would still require a Clean Water Act Section 404 permit and this would invoke National Environmental Policy Act requirements. In summary, he said, it would not be any easier for the state to forego federal participation and undertake and construct the project on its own.

At the request of Chairman Gulleon, committee counsel presented a memorandum on the authority of the State Water Commission to implement the promised payment plan as envisioned by the North Dakota Rural Water Systems Association.

In response to a question from Representative Dorso, committee counsel said under the proposed promised payment plan, the State Water Commission and project sponsors would look to Garrison municipal, rural, and industrial water supply funds to finance water projects and the state would not be responsible for paying notes issued in anticipation of receiving federal funds.

It was moved by Representative Dorso, seconded by Representative Nicholas, and carried on a voice vote that the Garrison Diversion Overview Committee express its support for the State Water Commission going forward to implement the promised payment plan.

In response to a question from Senator Nelson, Mr. David Koland, Executive Director, North Dakota Rural Water Systems Association, said that the promised payment plan is relying on the appropriated funds that have been authorized in the Garrison Diversion Reformulation Act of 1986. He said the promised payment plan is relying on funds yet to be appropriated and the fact that Congress has appropriated municipal, rural, and industrial water supply funds since 1986. However, he said, if Congress were to fail to appropriate the remaining municipal, rural, and industrial water supply funds authorized under the Act, then the promised payment plan could not be implemented.

At the request of Chairman Gulleon, committee counsel distributed a letter from former Representative Gordon Berg containing comments on the Devils Lake emergency outlet. A copy of the letter is attached as Appendix G.

WATERSHED DISTRICTS STUDY

At the request of Chairman Gulleston, committee counsel presented a bill draft relating to maintenance of natural water courses and debrisement of bridges and low water crossings.

At the request of Chairman Gulleston, Mr. Tom Moe, Counsel, Traill County and Griggs County Water Resource Districts and counsel, North Dakota Township Officers Association, Mayville, addressed the committee. He said the bill draft was proposed at the request of landowners in Traill County to implement clearing and snagging projects on the Goose River. He said the bill draft gives water resource districts a new tool to finance such projects.

In response to a question from Senator Nelson, Mr. Moe said the assessments in the bill draft were patterned after those used for federal projects as authorized in North Dakota Century Code Section 61-16.1-40.1.

Chairman Gulleston recognized Representative Dorso. He said that the assessment of up to 50 cents for each \$500 of taxable valuation for nonagricultural property is not fairly related to an assessment of up to 50 cents per acre for agricultural lands and as such he could not support the bill draft.

At the request of Chairman Gulleston, Mr. Al Biggs, Richland County Water Resource District, Fairmount, addressed the committee. He said he supports the bill draft and pointed out that the assessments are up to 50 cents per acre or 50 cents per \$500 of assessed valuation and thus are not unfair or excessive. One change, he said, that should be made in the bill draft is that the two-thirds requirement for members of the board of county commissioners to approve and levy the assessment should be reduced to 60 percent. Also, he said, the bill draft should be changed to define the area benefited as determined by a licensed engineer.

At the request of Chairman Gulleston, Mr. Sprynczynatyk addressed the committee. He addressed the bill draft from a water management standpoint and

said the bill draft provides a valuable tool for water resource districts to address an expensive problem, that of maintaining watercourses and clearing them of debris. He said many problems caused by fallen trees and debris are beyond the financial resources of local water resource districts to solve, and this bill draft would provide a tool for them. He said that perhaps the assessment formula for nonagricultural property is not appropriate and should be addressed on a per acre basis rather than taxable value of urban property.

At the request of Chairman Gulleston, Mr. Michael Dwyer, Executive Director, North Dakota Water Resource Districts Association, addressed the committee. He said the association as well as its members support this proposal even though the assessment provisions may need to be reviewed. He emphasized that there is a problem with funding clearing and snagging projects and this bill draft is an attempt to address this problem.

It was moved by Senator Nelson, seconded by Representative Dorso, and carried that the Chairman and the Legislative Council staff be requested to prepare a final report and to present the report to the Legislative Council.

No further business appearing, Chairman Gulleston adjourned the meeting at 4:45 p.m.

Jeffrey N. Nelson
Counsel

John D. Olsrud
Director

ATTACH:7