

WATER TOPICS OVERVIEW COMMITTEE

North Dakota Century Code Section 54-35-02.7 directs the Legislative Management during each interim to appoint a Water Topics Overview Committee in the same manner as the Legislative Management appoints other interim committees and to designate a chairman. The committee must meet quarterly and is to operate according to the statutes and procedures governing the operation of other Legislative Management interim committees. This section originally created the Garrison Diversion Overview Committee in 1981 but was amended in 2009 to create the Water-Related Topics Overview Committee. The name was changed to its current form in 2013.

Section 54-35-02.7 provides the committee is responsible for:

1. Legislative overview of water topics and related matters;
2. The Garrison Diversion Project; and
3. Any necessary discussions with adjacent states on water topics.

In addition, the committee may meet with the State Water Commission and must:

1. Work collaboratively with the State Water Commission;
2. Report on the committee's project prioritization process;
3. Provide updates on allocated program expenditures; and
4. Report on the fund balances of projects, grants, and contracts.

The committee was assigned three studies in addition to its statutory responsibilities. Section 22 of 2015 Senate Bill No. 2020 required a study of the options available for providing a sustainable water supply to central and eastern North Dakota. Section 4 of 2015 House Bill No. 1095 required a study of the use of quick take eminent domain by water resource districts and provided the study must include input from stakeholders, including the State Water Commission, water resource districts, and landowners. House Concurrent Resolution No. 3020 (2015) directed a study of the impact on owners of land that has been inundated by the rising waters in Devils Lake and Stump Lake.

The committee was assigned the responsibility to receive five reports:

- Section 14 of Senate Bill No. 2020 required the Garrison Diversion Conservancy District to report its progress in planning and designing the Red River Valley Water Supply Project.
- Section 18 of Senate Bill No. 2020 required the State Water Commission to report regarding funding transfers approved by the Budget Section.
- Section 25 of Senate Bill No. 2020 required the State Water Commission to report every 6 months during the biennium regarding any changes made to the State Water Commission priority projects list from the one presented last session.
- Section 26 of Senate Bill No. 2020 required the FM Area Diversion Authority Board to report twice each year on congressional authorization of the diversion project and the status of the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and the project budget. The MnDak Upstream Coalition is required to report on the impacts of the Fargo flood control project and mitigation efforts, alternatives, and costs.
- Section 27 of Senate Bill No. 2020 required the independent water providers and the Western Area Water Supply Authority (WAWSA) to report regularly and collaborate with the committee and the State Water Commission to monitor water usage, rates, engineering contract procedures, and market share.

Committee members were Representatives Jim Schmidt (Chairman), Bill Amerman, Dick Anderson, Tom Kading, Naomi Muscha, Jon O. Nelson, Marvin E. Nelson, Todd Porter, Mark Sanford, Roscoe Streyle, Greg Westlind, and Denton Zubke and Senators Ronald Sorvaag, Jonathan Casper, Ray Holmberg, Gary A. Lee, Larry Luick, Larry J. Robinson, Donald Schaible, George Sinner, and Jessica Unruh. Representative Curt Hofstad was a committee member until his death on June 18, 2016.

GARRISON DIVERSION CONSERVANCY DISTRICT AND RED RIVER VALLEY WATER SUPPLY PROJECT Background

Research suggests a strong possibility of a drought in the Red River Valley area within the next 5 decades. As the population in that area grows, the impact of such a drought would be even greater than the impact of droughts in prior

years. The Red River Valley Water Supply Project (RRVWSP) was authorized by the Dakota Water Resources Act of 2000 to address this concern and provide a solution to the water supply and quality problems in the Red River Basin. That legislation also called for \$200 million of federal appropriations for the project. The Garrison Diversion Conservancy District, on behalf of the state, and the United States Bureau of Reclamation, on behalf of the federal government, executed a memorandum of understanding to begin studying these issues in 2000.

After years of work, the United States Bureau of Reclamation issued a draft environmental impact statement for the project in December 2005. The draft included analyses of eight alternative plans for accomplishing the objectives of the project. After additional information was obtained, a revised draft environmental impact statement was released in January 2007. In the revised draft, both parties identified the Garrison Diversion Unit import to the Sheyenne River as the preferred alternative for bringing a reliable supply of quality drinking water to the Red River Valley area. This alternative includes the installation of a pipeline from Washburn to the Red River Valley area through the Sheyenne River north of Lake Ashtabula, which will act as a regulating reservoir. From there, water will be released into the Sheyenne River and flow into the Red River supplying water systems in the Red River Valley with a reliable supply of drinking water. This plan will provide flexibility for future expansion so water can be conducted to residents in central North Dakota as well. In December 2007 the United States Bureau of Reclamation issued the final environmental impact statement for the project. It includes responses to public comments received on the prior iterations of the document, a final biological assessment prepared in compliance with the federal Endangered Species Act, an analysis of forecasted depletions and sedimentation on the Missouri River main stem reservoir system, and a review of climate change literature.

After due consideration and evaluation of technical, hydrologic, and design aspects, and water permitting and environmental impacts, the state and the United States Bureau of Reclamation each identified the Garrison Diversion Unit import to the Sheyenne River alternative as the preferred alternative. However, the federal government has not approved the project to date. As a result, it is now a state and local project, and the Garrison Diversion Conservancy District is the lead state entity on the project.

Testimony and Committee Deliberation

The committee has reviewed the status of the RRVWSP for each interim since the 2009-10 interim. During the 2015-16 interim, the committee was informed the state is moving forward on the project without federal funds, and the project must rely on a source of water with no federal nexus. The RRVWSP sponsor entities studied six options for the project, and the committee received information about the study results. The committee was informed the RRVWSP sponsor entities selected the option that will carry water from Washburn to the eastern part of the state. The committee received information about multiple options for the water treatment plant location, water turnout locations, and water treatment processes. The water carried by the pipeline likely will discharge into the Sheyenne River or Bald Hill Creek, and there likely will be minimal water treatment because meeting drinking water standards is costly. The project will use horizontal collector wells above the ordinary high-water mark of the Missouri River near Washburn to avoid a federal nexus to the water supply. The number of horizontal collector wells to be built will depend on the volume of water to be transported.

The committee received information about the cost and difficulty of transporting water over the continental divide. The anticipated cost of the project has grown and exceeded the amount appropriated for the current biennium. The design phase alone is projected to cost \$50 million, and the Garrison Diversion Conservancy District selected an engineering firm to provide design and engineering work for the project. A representative of the Garrison Diversion Conservancy District informed the committee the project cost was originally split 90/10 between the State Water Commission and the Lake Agassiz Water Authority approximately 5 years ago and the project is proceeding under the assumption there will continue to be a 90/10 cost-share with the State Water Commission. The cost-share is not mandated in legislation, and some committee members expressed concern about the state bearing 90 percent of the costs for a project the state is not managing. Options being considered for the 10 percent local share include increased water rates, special assessments, and increased sales taxes.

The committee received information regarding the potential risk of interstate litigation over the RRVWSP. Garrison Diversion Conservancy District representatives informed the committee any litigation over the RRVWSP is likely to differ from the litigation over the Northwest Area Water Supply Project (NAWSP) because the NAWSP litigation centers around that project's federal nexus and alleged noncompliance with the National Environmental Policy Act, which will not apply to the RRVWSP. The testimony also indicated post-design work on the RRVWSP must begin as soon as possible to ensure the project can rely on the current requirements for its Nationwide Permit 12 and to allow the project to be grandfathered under the federal Water of the United States rules if those rules go into effect. To meet the legal definition of "starting" work for permitting purposes, the project needs \$20 million, and the project could be completed by early 2019 if the Legislative Assembly approves the necessary funding.

COLLABORATION WITH THE STATE WATER COMMISSION

The State Water Commission was created in response to the drought of the 1930s and was charged with developing irrigation in the state. From 1937 to 1981, the Legislative Assembly funded the commission on a biennium-to-biennium basis with approximately \$500,000 to \$2,000,000 being appropriated per biennium. This changed with creation of the resources trust fund in 1981. When the resources trust fund was created, the proceeds of the fund were dedicated to financing the Southwest Pipeline Project--the first state water project. During this period, the scope of projects increased dramatically as the Southwest Pipeline Project was a \$100 million project. At present, there are three projects owned by the state of North Dakota--NAWSP, the Southwest Pipeline Project, and the Devils Lake Outlet Project.

The State Water Commission is required by Sections 61-01-26 and 61-02-14 to develop and maintain a comprehensive water plan for the sound management of North Dakota's water resources. The most recent comprehensive plan was completed in 1999. Since then, the state water management plan has been updated with supplements every biennium with water development reports published prior to legislative sessions.

The committee met twice with the State Water Commission during the 2015-16 interim, once in November 2015 and once in September 2016. During the joint meetings, the committee and commission expressed hope for continued collaboration and cooperation on water topics that affect North Dakota residents. The committee and the commission received updates and reports on multiple issues; received information on a variety of water projects around the state; and discussed future joint meetings, project prioritization, funding, the committee's concerns about carryover, cost-share policies, and accountability of project sponsors. The committee also received project funding updates from the State Water Commission and discussed the status of projects and the operation of purpose funding at each meeting.

Purpose Funding

A key topic of discussion for the State Water Commission and the committee is the use of purpose funding. For the 2015-17 biennium, the Legislative Assembly appropriated funding for the State Water Commission in categories, or "buckets," that correlate to various purposes, including flood control, floodway property acquisitions, state water supply, general water management, Devils Lake, and a revolving loan fund. The committee received frequent project summaries from the State Water Commission to monitor the distribution of funds within each category. The committee discussed the ability of the State Water Commission to seek flexibility from the Budget Section in the allocation of funds from one purpose to the other when necessary, and expressed support for the continuing use of purpose funding.

Prioritization

Representatives of the State Water Commission provided the committee information regarding the process the State Water Commission uses to prioritize projects for funding. The State Water Commission designates projects as low, medium, or high prioritization. The testimony indicated the commission does not prioritize any project in a city that is not growing at 3 percent or more per year. The committee generally expressed its support for legislative appropriations based upon purpose funding and for the State Water Commission to continue using its prioritization process.

Cost-Share Policy

The committee was informed the State Water Commission met in September 2015 to make changes to the commission's cost-share policy as directed by Senate Bill No. 2020. As a result of the changes, crop damages are eligible for cost-sharing. Also, water supply projects are eligible for up to 75 percent cost-share from the state, and pre-engineering costs are capped at 35 percent cost-share from the state. During the 2015-17 biennium, all rural water projects were approved at a 75 percent cost-share. Once a project is approved, the State Water Commission reimburses costs as submitted by the project sponsor. According to the report, the State Water Commission acts on applications as the applications are received.

WATER PROJECTS FUNDING REVIEW

The committee received a report regarding the total project cost, the completion dates, and sources of revenue for 15 water projects receiving funds from the State Water Commission. The projects selected for review were the projects with the most funding approved, excluding large flood-related projects. The projects reviewed included the Upper Maple River Dam construction, the Michigan spillway, the Horace diversion channel site A, the Jackson Township improvement district No. 1, the Pontiac Township improvement district No. 73, the City of Underwood floodwater outlet, the 2014 flood protection system modifications for Pembina, the Tri-County drain reconstruction, the Harmon Lake Recreational Facility, the Puppy Dog Coulee Flood Control Phase 1 2009 diversion ditch construction, the flood control levee recertification in Mapleton, the Sheyenne River diversion low flow channel phases 3 and 4 improvement reconstruction, the Red River Basin distributed detention plan study, the Haas Coulee drain, and the design and repair of Big Coulee Dam.

CENTRAL AND EASTERN DAKOTA WATER SUPPLY

The committee was required to study the options available for providing a sustainable water supply to central and eastern North Dakota. In addition, the State Water Commission was directed to conduct a study of the feasibility and

desirability of a central Dakota water supply project to supplement the committee's work. The study included a financial analysis as well as a detailed business plan for the project, including projected operational costs and projected water supply needs for the area to be served. Section 19 of Senate Bill No. 2020 designated \$70 million for a water reuse facility and the Central Dakota Water Supply Project, contingent on the State Water Commission entering an agreement that a fertilizer or chemical processing facility be constructed in Stutsman County. Of that amount, \$10 million was designated as a grant and \$40 million as a loan for a water reuse facility. The remaining \$20 million was designated for the Central Dakota Water Supply Project.

CHS, Inc., planned to build the requisite fertilizer plant in Stutsman County. However, in August 2015, the committee was informed CHS, Inc., decided not to build in the county. A representative of CHS, Inc., informed committee members water supply in the area was not a factor in the decision, rather, the risk profile for the plant was too high. As a result of the decision regarding the fertilizer plant, the \$70 million appropriated for the Central Dakota Water Supply Project, which was contingent on the plant's construction, became uncommitted funds. The committee noted the State Water Commission could use the funds as any other uncommitted funds.

QUICK TAKE EMINENT DOMAIN

Background

Quick take allows a public entity using eminent domain to immediately take private property after depositing a dollar amount of an offer to the landowner with the district court. This differs from traditional eminent domain in which a public entity does not acquire ownership rights until a price for those rights has been negotiated or determined through litigation. Under Section 61-16.1-09(2), water resource districts have authority to use quick take to acquire rights-of-way for projects for which federal or state funds have been appropriated.

During the 2015 legislative session, House Bill No. 1095 was amended to insert a condition precedent for a water resource district to use quick take. Limiting language was passed in Section 33 of 2015 Senate Bill No. 2015, which was the Office of Management and Budget appropriations bill. The language would have required that state funds must be appropriated by the Legislative Assembly for a specific project as a condition precedent for a water resource board to use quick take. The Governor's veto message stated the Governor vetoed this section of the bill because the section created confusion by not defining "specific project," a term he argued was open to a wide range of interpretations. The veto message pointed out the study of this issue "should provide the clear direction as to what policy changes, if any, are needed."

Testimony and Committee Considerations

The committee received written and verbal testimony regarding the exercise of quick take eminent domain by water resource districts. Some representatives of water resource districts expressed concern that project costs and timelines would increase if quick take were no longer available. They contended traditional eminent domain gives a landowner the ability to delay a project because work may have to stop if a water resource district and a landowner cannot agree on a price for the right of way at issue. Under quick take, a water resource district may take ownership of the right of way when there is a dispute over price and continue work on the project using the right of way while litigation over the price is ongoing. Representatives of water resource districts testified there is no evidence water resource districts have abused the authority to use quick take. In response, committee members noted water projects typically require a long time for planning and construction, and questioned why water resource districts did not begin price negotiations for rights of way earlier in projects to avoid possible delays rather than resorting to quick take.

The committee received testimony from landowners expressing concern about the lack of leverage landowners have in negotiating a price for a right of way after a water resource district takes ownership of the right of way. In addition, landowners indicated representatives of water resource districts would not negotiate before taking ownership of a right of way. The committee also was informed some water resource districts may use blanket easements. Blanket easements do not describe the right of way with particularity and can significantly encumber titles.

The committee was informed the Cass County Joint Water Resource Board had plans to exercise quick take eminent domain authority to acquire rights of way in Richland County for the FM Area Diversion Project. Although there has been no definitive case on the issue of a water resource board using eminent domain to acquire property outside the territory of the water resource district, the plain language of Section 61-16.1-09(12) appears to indicate it is permissible. The operative language states water resource districts have the authority to "[a]cquire by lease, purchase, gift, condemnation, or other lawful means . . . real and personal property and easements and rights of way within or without the limits of the district . . ." This language has remained unchanged for decades and applied to the predecessors of water resource districts. There is no legislative history to reveal the Legislative Assembly's intent behind this language when the provision was enacted.

The committee considered three bill drafts to limit the use of quick take eminent domain by a water resource district. One bill draft would have eliminated the authority of water resource districts to use quick take. Another bill draft would

have required a water resource district to obtain the approval of the board of county commissioners of the county in which a right of way is located before using quick take to acquire the right of way. The third bill draft set forth a specific negotiation process a water resource district would have to follow before acquiring ownership of a right of way using quick take. That bill draft also would require the chairman of the water resource board to file an affidavit with the court in the county in which the right of way is located which confirms the water resource district complied with the negotiation process. The negotiation process would include multiple written communications from the water resource district to the landowner with specific wait periods between the communications. A water resource district would be required to send the communications by certified mail or another method that requires a signed receipt. The bill draft would allow a landowner up to 75 days to negotiate a price for the right of way at issue or engage legal counsel to identify options for challenging the condemnation.

The committee considered options to address situations in which a landowner refuses to sign receipts for communications from a water resource district, including allowing a water resource district to rely on a landowner's constructive notice of the required communications.

Committee Recommendation

The committee [recommends a bill](#) to require a negotiation process and affidavit of compliance when a water resource district uses quick take eminent domain. The bill allows a landowner up to 75 days to negotiate with a water resource district before the district may take possession of property and ensures a landowner receives multiple communications from the water resource district during the 75-day negotiation period. The bill requires the water resource board chairman to file an affidavit confirming the district's compliance with the negotiation process and allows the water resource district to rely upon a landowner's actual or constructive notice of the required communications.

IMPACT ON LANDOWNERS OF DEVILS LAKE AND STUMP LAKE WATER LEVELS

The study of the impact on owners of land that has been inundated by the rising waters in Devils Lake and Stump Lake addressed the payment by landowners of property taxes on inundated lands and the fact that as inundated lands become sovereign lands, the landowner does not receive any compensation. The committee was informed an owner whose land is inundated by a lake generally pays property taxes on the inundated land. However, because most of the property under the water has been abated, the taxes are minimal. Nonetheless, the state may take possession of the property if the taxes are not paid.

The committee received testimony regarding the fluctuating water level and the need for consistent operation of the east and west lake outlets and pumps. Keeping the water level too high would harm farmers and residents whose land would be inundated, and keeping the water level too low would harm the tourism and recreation industry that has developed around Devils Lake.

The committee received comments from residents of the areas around Devils Lake and Stump Lake indicating the residents do not want compensation from the state for property lost to rising waters. Instead, the residents sought help repairing and reconstructing roads that had been damaged from water. Because funds from the Federal Emergency Management Agency often come with significant "red tape" and expensive conditions, residents of the area generally are not in favor of accepting the federal funds.

Committee Recommendation

Although committee members generally agreed recommending funding for repairing or reconstructing roads is outside the scope of the committee's study, the committee recommends the Legislative Assembly continue to monitor the impact on landowners in the Devils Lake and Stump Lake area whose lands have been inundated.

FARGO FLOOD CONTROL AND FM AREA DIVERSION PROJECT

Background

In 2009 and 2011, the Legislative Assembly provided \$45 million and \$30 million respectively for Fargo flood control. In 2013 the Legislative Assembly provided \$100 million for the Fargo flood control project to provide a total of \$175 million. In addition, the 2013 Legislative Assembly included legislative intent that the state provide up to \$450 million for the project, with the remaining \$275 million to be provided over the next 4 bienniums. The 2013 Legislative Assembly also limited the use of the funding designated for the Fargo flood control levee and dike protection until the Fargo flood control project receives federal authorization, a project partnership agreement is executed, a federal appropriation is provided for project construction, and the budget for the Fargo flood control project is approved by the State Water Commission.

The 2015 Legislative Assembly provided an additional \$69 million for the Fargo flood control project and \$60 million for Fargo interior flood control projects, of which \$30 million is from the state disaster relief fund, to provide a total of \$304 million for flood protection in Fargo. The Legislative Assembly also included legislative intent to provide up to

\$570 million for Fargo flood control projects, an increase of \$120 million. The \$120 million is to be used for Fargo interior flood control projects and requires 50 percent matching funds from the Fargo flood authority. These funds may be expended only for Fargo interior flood control projects, including levees and dikes, until a federal appropriation is provided for construction of the Fargo flood control project, at which time it may be used for a federally authorized Fargo flood control project. The Legislative Assembly also included legislative intent that funding for the Fargo flood control project will end June 30, 2021, if a federal appropriation has not been provided by that time. Of the \$570 million designated by the Legislative Assembly in 2009, 2011, 2013, and 2015 for Fargo flood control, \$266 million has yet to be appropriated. The 2015 Legislative Assembly provided legislative intent that the remaining funding be made available in equal installments over the next 4 bienniums.

Money from the Cass County sales tax has been used for levy work in small communities and for retention. There are 96 water retention projects that encompass 100,000 acres. The FM Area Diversion Authority supports retention and distributed storage, but it is not a replacement for the diversion, and the storage is not part of the diversion project. Retention is supported because it lessens the frequency of which the operation of the project will be required. With the retention projects, it becomes less likely there will be backup of water on other property. Retention projects also lessen the chance of the need to use insurance by agricultural producers.

The total amount of acres that will need to be purchased for the FM Area Diversion Project is around 8,000 acres. The authority will pay taxes on the land and has hired a land management company to take care of the land. The FM Area Diversion Authority likely will sell the land that is not needed in the footprint. Agricultural mitigation will provide financial compensation to landowners. It is a complex issue for agricultural producers to be provided a remedy if the producers will not be qualified for crop protection because of the project. To determine landowner compensation, a consultant has been hired to establish amounts that are available for farmers.

Testimony and Committee Considerations

The committee received several updates, including from the MnDak Upstream Coalition and the FM Area Diversion Authority, on the progress of the FM Area Diversion Project. Because federal approval for the project has not been received, the project has developed into a state project that will be completed within the state borders rather than extending into Minnesota as originally planned. The expansion of the project is expected to cover 6,000 more structures than the plan originally covered. Members of the committee expressed concern over the expanded scope of the project and the price of homes condemned through eminent domain for the project.

In March 2016 the committee was informed the expected cost of the project was \$1.8 billion. The expected cost rose to approximately \$2.1 billion later in the year. Fargo likely will attempt to use increased sales tax revenue to cover its share of the cost, and Fargo residents will vote on the extension of the sales tax in November 2016. The project sponsors are working with Ernst & Young Infrastructure Advisors, LLP, to develop a public-private funding model for the project. As of March 2016, Cass County and Fargo had each taken out a \$50 million loan to provide short-term financing for the project. In September 2016 a representative of Fargo indicated the Army Corps of Engineers is likely to provide \$60 million to \$70 million for the project in 2017. Although the State Water Commission requires the project to have flood mitigation down to 0.1 foot of water, a representative of Fargo testified that changing that requirement to a 0.5 foot limit, which is the limit used by Minnesota, would reduce the cost of the project by \$60 million.

The committee received testimony from a representative of the Army Corps of Engineers, which indicated the corps selected the FM Area Diversion Project as one of six projects to initiate in 2016. Although the representative of the corps suggested the selection indicated federal commitment to the project, committee members expressed concern regarding the availability of federal funding for the project. Because the corps altered the plan from the original National Economic Development plan, which was the basis for the federal and state cost-share for the diversion project, members of the committee expressed concern whether the corps had failed to follow the federal *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* by changing the project.

The committee received Minnesota's draft and final Environmental Impact Statements for the project, and reviewed correspondence from Governor Mark Dayton, Minnesota, to the corps, which cautioned the corps not to proceed with the FM Area Diversion Project until the Minnesota Department of Natural Resources decides whether to approve the project.

Representatives of Richland County and the MnDak Upstream Coalition raised concerns regarding the impact of the project on Richland County. The committee was informed the Cass County Joint Water Resource Board was using eminent domain to condemn property in Richland County and the FM Area Diversion Project may impede growth in Richland County, but would not include flood mitigation plans for Richland County. Representatives of Richland County informed the committee the county stands to lose tens of millions of dollars in tax revenue as a result of the diversion project.

Representatives of Richland County contended alternatives to the current project exist which would mitigate or eliminate the problems for Richland County, and questioned whether alternative plans had been considered adequately. They expressed support for alternatives that would move the project north and continue to provide protection for Fargo. Representatives of the FM Area Diversion Authority argued alternative plans were considered, but none of the alternatives proved reasonable.

The committee received an October 2015 North Dakota State University study of the FM Area Diversion Project entitled *Initial Assessment of the Agricultural Risk of Temporary Water Storage for FM Diversion* by the Department of Agribusiness and Applied Economics. The study is a preliminary evaluation of how temporary water storage during spring flood events may influence agricultural production in the staging area of the diversion project. The study authors rely on an assumption that spring flood events will trigger use of the temporary staging area when the predicted flow of the Red River and Wild Rice River exceeds 17,000 cubic feet per second in Fargo. Ten flood events since 1969 reached that flow level. The study authors concluded the project's temporary water storage plan has a high probability of causing modest revenue losses that will vary with the size of the flood event and will not uniformly affect individual agricultural producers in the staging area.

REPORTS

Souris River Basin Flood Control

The committee received updates regarding the status of the Souris River Basin flood control project in and around Minot. Of the multiple phases of the project, the first four were described as critical and will take about 60 percent of the 2,850 homes in the flood plain out of the flood plain. Removing the homes from the flood plain is estimated to lead to significant flood insurance relief for the homeowners, but will cost approximately \$250 million to complete. The committee was informed the project is short approximately \$100 million. Minot has committed 50 percent of a one-cent sales tax to the project and has a federal block grant that may be used to acquire properties. Minot is seeking a 75/25 cost-share with the state for the project. The 75 percent state share for the first four phases of the project would be approximately \$187 million, \$60 million of which has been appropriated by the Legislative Assembly for the project. To this point, the only federal funds for the project are the block grant for property acquisition. After the project feasibility study is complete other federal funding may become available. As of June 2016, approximately \$33 million had been spent on the project, including money spent to buyout 270 properties. Although the project needs the state's share of the funds for the first three phases immediately, the state funds for the fourth phase may be provided later.

The committee received information from representatives of the Army Corps of Engineers relating to controlling the water levels in the Souris River Basin. The basin has three reservoirs with flood control storage, and multiple government agencies work together to perform an annual spring forecast of water levels. The United States and Canada executed the *1989 Agreement Between the Government of Canada and the Government of the United States of America for Water Supply and Flood Control in the Souris River Basin*, which constrains the ability of the corps and other federal and state entities to manage water levels in the basin. Because the agreement was executed in a drought year, the agreement does not address problems resulting from high rainfall levels, and has not been updated to address nondrought conditions.

The committee received information from downstream landowners regarding efforts to mitigate impacts of the flood control project on downstream interests. The landowners expressed concern over the impact of flooding and dams on ranching and agricultural operations. Information provided to the committee also addressed how the project's environmental impact study considered downstream impacts of the project.

Grand Forks Water Treatment Plant

The committee received updates regarding the Grand Forks water treatment plant project for which state funds have been authorized. Sixty percent of the engineering design was completed as of November 2015. An at-risk contract was awarded to a construction manager, and planning of the offsite utility and road infrastructure had begun. Construction on the project was anticipated to begin in the fall of 2016. The local share of the project cost will be funded by utility rates, and the project should be completed in 2019 and fully functional by 2020.

Missouri River Correction Center and Fox Island Flood Control Projects

The committee received a status report regarding the Missouri River Correctional Center flood control project and the Fox Island flood control project in November 2015. The Legislative Assembly appropriated \$1.2 million for the correctional center flood control project for the 2015-17 biennium. The project sponsors requested the funds from the State Water Commission, and the project was in its final design phase. Easements for the project were being obtained, and the project was expected to be complete in the fall of 2016. The Legislative Assembly appropriated \$2.8 million for the Fox Island project for the 2015-17 biennium. Lincoln Township and Burleigh County authorized approximately \$920,000 for the project in October 2015, and Burleigh County planned to request the \$2.8 million in state funds from the State Water Commission in November 2015. The sponsors planned to initiate construction on the project in late 2016 or early 2017 and complete the project in 2017.

Water Recreation on State Land

The committee received updates from representatives of the Parks and Recreation Department on the status of projects funded by a \$1 million grant to develop recreational opportunities on sovereign lands in the state. As of November 2015, \$25,000 had been used for one of the projects, and the remainder of the grant remained unused. In 2016 the committee was informed one of the issues holding up the use of the grant is the difficulty of obtaining easements over private land adjacent to the sovereign lands where the projects will be constructed.

Regionalization of Water Supply Systems

The committee received updates regarding municipal water systems and regionalizing water systems from several individuals, including representatives of the North Dakota League of Cities and the North Dakota Rural Water Systems Association. Reasons cited for not joining regional systems included concerns over pricing and losing local control over water supply. In a regional system, the system sets the price charged to a city, and the city sets the rates the city charges residents. Reasons cited for joining regional systems include improved water quality, cost savings, not having to make costly repairs to or invest in costly maintenance of water treatment plants, and not being able to find a certified water treatment plant operator to run a local plant. Committee members expressed support for regionalization of water supply systems to promote economic efficiency and to address problems arising from a lack of certified water treatment plant operators in smaller cities.

Water Permits

The State Water Commission provided information regarding the commission's "in lieu of irrigation" policy (ILOP) pertaining to permits for industrial water supply. The commission has provided annual ILOP permits to private landowners to allow the landowners to sell water for industrial use. The policy allowing ILOP permits has existed since 2010, and the commission is re-evaluating whether to continue issuing ILOP permits in light of decreasing industrial need for water. According to the report, there are approximately 34 ground water ILOP permits and 966 surface water ILOP permits and most of the ground water ILOP taps are within 5 miles of a depot that would remain open without an ILOP permit. Independent water providers and representatives of industries that use independent water supplies expressed concern over the possible elimination of ILOP permits.

Zebra Mussels

The committee received a report regarding the Game and Fish Department's emergency administrative rule regarding aquatic nuisance species. The Game and Fish Department adopted the rule after adult zebra mussels were found in the Red River. Problems posed by zebra mussels include clogging water intakes, five of which exist on the Red River. The Game and Fish Department allowed North Dakota State University to conduct a study on polymer coating water pipes to prevent zebra mussels from affixing to the pipes. The report indicated it is a matter of time before there are zebra mussels in Devils Lake.

Sheyenne River Valley

The committee received a report regarding the progress of Sheyenne River Valley flood protection. Cities in the Sheyenne River Valley, including Lisbon and Valley City, have experienced significant flooding in several years. As a result, a permanent flood protection project for the valley is underway. The project includes buyouts of several properties; construction of levees, floodwalls, and pump stations; and stabilization of the riverbank. The project is funded by the State Water Commission with a local share supported by sales taxes.

Western Area Water Supply Authority

The Western Area Water Supply Authority (WAWSA) is a hybrid local and state water supply system. It is locally led and state funded. Not including any funding in the 2015-17 biennium, the state has provided \$229 million, with \$110 million in loans provided by the 2011 Legislative Assembly, to WAWSA. The 2013 Legislative Assembly provided \$119 million, \$40 million in loans, and \$79 million from the State Water Commission--\$39 million through grants and \$40 million through a loan. The Western Area Water Supply Authority did not use all of the \$79 million provided.

Historically, WAWSA received funding through specific appropriations in the State Water Commission's budget. The Western Area Water Supply Authority made prepayments, and the revenue forecast was ahead of projections. During the 2013-14 interim, there was a prepayment of approximately \$8.6 million on the guaranteed loans, and all interest was current. For the 2015-17 biennium, WAWSA planned to request a \$30 million loan from the resources trust fund and a \$90 million grant from the 2015 Legislative Assembly. The total amount that would have been requested through 2017 would have been \$349 million. The \$30 million loan requested was expected to be serviced through industrial sales. Before 2015, WAWSA had an 80 percent loan-to-grant ratio. The \$90 million grant request would move WAWSA total funding closer to 50 percent loan and 50 percent grant. In the 2015-17 biennium, WAWSA funding was provided through the State Water Commission allocation process.

The committee received information regarding the financial impact to WAWSA of the slowdown in oil development activity. The committee was informed total water demand and revenue for WAWSA has decreased. Moreover, the

WAWSA market share decreased. As of June 2016, WAWSA had approximately \$314 million in assets, \$223 million in liabilities, and \$91 million in equity. A representative of WAWSA informed the committee WAWSA will request \$60 million in funding from the state for the 2017-19 biennium to install pipelines and upgrade and maintain pump stations, reservoirs, and water treatment plants.

Although WAWSA has been current on its payments to the Bank of North Dakota, a representative of the Bank informed the committee the Legislative Assembly will need to consider restructuring the WAWSA debt. In 2016 \$8,262,000 in annual payments plus 21 percent in operating costs, for a total of \$10,458,000 in payments is due. To make the payments to the Bank, WAWSA must have \$871,000 per month in sales. Total sales in February 2016 were just over \$800,000. Committee members expressed concern with respect to the ability of WAWSA to maintain its current repayment schedule, especially if sales continue to decrease, and expressed the understanding that the \$8.6 million prepayment in the 2013-14 interim greatly helped WAWSA stay current on the loans.

The committee received testimony from representatives of WAWSA and independent water providers concerning the usage, rates, and relative market share of these providers. The Western Area Water Supply Authority charges 84 cents per barrel for water, and at least one independent water provider in the area charges 65 cents per barrel. However, the independent water provider did not supply potable water. Some independent water providers expressed concern that state-funded water suppliers like WAWSA compete with private entities. Contrarily, committee members asserted the water belongs to the state, and the independent water providers are able to sell a state resource for profit. Some members of the committee expressed concern that cities outside the WAWSA service area pay more for water than cities served by WAWSA.

The committee received a report on the status of WAWSA construction projects and information regarding the WAWSA administration, the method WAWSA uses to acquire easements, and the prices paid for those easements. According to the report, 386 miles of pipeline was laid during the biennium through August 2016, and WAWSA planned to lay an additional 313 miles before the end of the biennium. The Western Area Water Supply Authority serves approximately 60,000 residents and plans to serve up to 125,000 by 2038 based on current projections. The Western Area Water Supply Authority has 55 construction contracts for 29 projects.

Northwest Area Water Supply Project

The Northwest Area Water Supply Project (NAWSP) is a joint state and federal project to provide water to northwestern North Dakota. The Northwest Area Water Supply Project has been impacted by a federal injunction due to legal issues regarding whether NAWSP complied with the National Environmental Policy Act. The committee received updates on the litigation and the ongoing construction of NAWSP. The Northwest Area Water Supply Project serves approximately 25,000 residents, and approximately \$120 million has been spent on NAWSP. Approximately 44 percent of that amount has been reimbursed by the federal government, and Minot has paid about \$43 million of the \$120 million. The Legislative Assembly appropriated \$10 million for NAWSP in the 2015-17 biennium, and approximately \$5.5 million was carried over from the prior biennium. According to the testimony, about \$12 million was required to complete planning for NAWSP, and the remaining funds may be used for additional work on the water treatment plant in Minot. A representative of the Attorney General's office informed the committee the litigation over NAWSP is continuing.

Southwest Water Authority

The Southwest Water Authority operates and maintains the Southwest Pipeline Project, which is owned by the state and administered by the State Water Commission. The Southwest Water Authority is governed by a board of 15 members representing 12 counties in southwest North Dakota. The pipeline supplies water to approximately 56,000 residents in those counties. The Southwest Pipeline Project is funded through state bonds that are repaid by users, state and federal grants, and funds from the resources trust fund and water development trust fund.

According to the Southwest Water Authority's annual report and testimony provided to the committee, the authority projected revenue for 2016 to be \$13.7 million, and has approximately \$16 million in a replacement and extraordinary maintenance fund. More than 30 percent of the funds received from the resources trust fund have been repaid, and more than \$50 million has been repaid to the state through August 2016. Committee members encouraged the Southwest Water Authority to budget according to the decreasing demand for industrial water.

Status of Water Resource District Projects

The committee received information on the status of water resource district projects that received funding from the state. Most of the projects are related to recreation, flood control, levies, and agriculture improvement. A representative of the Water Resource Districts Association indicated the leadership of water resource districts would be amenable to stricter accountability standards for completing projects timely.

Bureau of Reclamation Municipal, Rural and Industrial Water Supply Program Funding

The committee received information from representatives of the United States Bureau of Reclamation regarding the bureau's funding of rural water projects. There will be \$55 million of carryover for approved projects that have not initiated or completed construction during the biennium, \$42 million of which is for tribal projects and \$13 million of which is for state projects. Committee members expressed concern regarding the high level of carryover, especially because there are shovel-ready projects that need funding.

Western North Dakota Surge Funding

The 2015 Legislative Assembly provided surge funding for infrastructure projects, including water projects in Watford City, McKenzie County, and Williston, due to the increased need for water supply and infrastructure which resulted from the oil development in that part of the state. The committee received detailed status reports relating to the projects undertaken with surge funding. The projects include planning, maintaining, and constructing roads, bridges, drainage ditches, water towers, water mains, government buildings, and other public works. Dozens of projects were completed in 2015 and 2016, and dozens more are under contract or planned for 2017 and beyond. The reports also described how funds from other sources, including private industry and local government budgets, are being used in conjunction with surge funding to complete public works projects.

Assiniboine Basin Commission

The committee received an update from a representative of the Assiniboine Basin Commission regarding the commission's history and activities.

Waters of the United States

The committee received updates from representatives of the Attorney General's office regarding the status of litigation by North Dakota and other states challenging the federal Waters of the United States regulations. The regulations would expand federal jurisdiction to wetlands, tributaries, waters adjacent to wetlands and tributaries, and many prairie potholes. The litigation asserts the regulations give the federal government jurisdiction over all significant bodies of water, are overbroad, and violate federal laws. The state joined with 11 other states to successfully argue for an injunction preventing implementation of the regulations while litigation continues.

Well Water Testing

The committee received a report from a representative of the State Department of Health regarding well water testing and the distribution of testing results to the public. Chapter 23-33 prohibits the department from linking the identity of landowners and well operators to the results of their well water testing. According to a 2003 Attorney General opinion, the department's testing results may not be disclosed if the manner of disclosure could link the owners to the results. The department provides testing results to well owners only and sends reminders to owners about the need to routinely test their well water.